Financial Services and Markets Act 2023

2023 CHAPTER 29

PART 1

REGULATORY FRAMEWORK

CHAPTER 2

NEW REGULATORY POWERS

Designated activities regime

8 Designated activities

(1) FSMA 2000 is amended as follows.

(2) After Part 5 insert—

“**PART 5A**

DESIGNATED ACTIVITIES

71K Designated activities

(1) The Treasury may by regulations provide for an activity of a specified description to be a designated activity for the purposes of this Act.

(2) Regulations under this section are referred to in this Act as designated activity regulations.

(3) Designated activity regulations may provide for an activity to be a designated activity only if the activity relates or is connected to—

(a) the financial markets or exchanges of the United Kingdom, or

(b) financial instruments, financial products or financial investments that are (or are proposed to be) issued or sold to, or by, persons in the United Kingdom.

(4) The description of an activity as a designated activity may be framed by reference to—

(a) the way in which the activity is carried on, or

(b) the description of persons who carry on the activity.

(5) Schedule 6B contains examples of activities that may be specified as designated activities.

(6) Nothing in Schedule 6B limits the powers conferred by subsection (1).

(7) The financial instruments, financial products and financial investments mentioned in subsection (3)(b) may include cryptoassets.

71L Restrictions on carrying on of designated activities

(1) A person must not carry on a designated activity if, or to the extent that, designated activity regulations prohibit the carrying on of that activity.

(2) A person carrying on a designated activity that is not prohibited by virtue of subsection (1) must comply with—

(a) designated activity rules relating to that activity, and

(b) any other requirements imposed in relation to that activity by designated activity regulations.

(3) For the purposes of this Act designated activity rules are rules made under section 71N.

71M Designated activity regulations: general

(1) Designated activity regulations may make provision generally in relation to the carrying on of designated activities.

(2) The following are examples of provision that may be made by designated activity regulations—

(a) provision about cases in which the restrictions imposed by section 71L are to apply to persons carrying on a designated activity outside the United Kingdom;

(b) provision supplementing, or in connection with, any requirements relating to a designated activity under designated activity rules.

(3) Designated activity regulations may—

(a) provide for exemptions (including exemptions that are subject to specified conditions);

(b) confer powers on the Treasury or the FCA.

71N Designated activities: rules

(1) The FCA may make rules relating to designated activities.

(2) The power under subsection (1) is only exercisable in so far as designated activity regulations provide for the FCA to make rules—
   (a) relating to the designated activity, or
   (b) relating to specified matters relating to designated activities.

(3) The FCA may by notice suspend any rules made under subsection (1) for such period as it considers appropriate.

(4) Rules under subsection (1) may include provision enabling requirements imposed by the rules to be dispensed with, or modified, in such cases or circumstances as may be determined by the FCA under the rules (subject to subsection (5)).

(5) The powers under subsections (3) and (4) are only exercisable in such circumstances as may be specified in designated activity regulations.

(6) Before suspending any rules in accordance with subsection (3), the FCA must consult the PRA.

(7) A notice under subsection (3) must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of persons likely to be affected by it.

(8) The reference in section 137T(a) (supplementary powers) to "authorised persons" includes, in relation to rules made under this section, a reference to any persons to whom the rules under this section apply.

71O Designated activities: directions

(1) The FCA may by directions impose such requirements on a person, or such description of persons, relating to the carrying on of designated activities as the FCA considers appropriate.

(2) The power under subsection (1) is only exercisable in so far as designated activity regulations provide for the FCA to make directions relating to the designated activity.

(3) A requirement may, in particular, be imposed so as to require the person concerned—
   (a) to take specified action, or
   (b) to refrain from taking specified action.

(4) A requirement may extend to activities which are not designated activities.

(5) A direction under this section—
   (a) may specify the way in which, and the time by which, a thing is to be done;
   (b) may be varied;
   (c) may be expressed to have effect during a specified period or until revoked.

(6) The FCA may at any time revoke a direction under this section by notice.

(7) The revocation of a direction does not affect the validity of anything previously done in accordance with it.

(8) A direction or notice under this section must be given in writing to the person or persons to whom it applies.

(9) But if in the circumstances the FCA considers it appropriate, the FCA may, in addition to, or instead of, proceeding under subsection (8), publish the direction or notice in the way appearing to the FCA to be best calculated to bring it to the attention of persons likely to be affected by it.

(10) Designated activity regulations may make provision for the exercise of the power under subsection (1) to be subject to such conditions as may be specified in the regulations.

(11) Provision under subsection (10) may (among other things) require, where the exercise of the power relates to a PRA-authorised person, consultation with the PRA.

(12) 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.

71P Designated activities: liability

(1) Designated activity regulations may make provision about liability and compensation in connection with this Part.

(2) A contravention of a requirement under designated activity regulations or designated activity rules—
  (a) does not, except as provided by designated activity regulations under section 71Q or by regulations under section 71R, make a person guilty of an offence;
  (b) does not, except as provided by designated activity regulations—
    (i) make any transaction void or unenforceable, or
    (ii) give rise to any action for breach of statutory duty.

(3) Designated activity regulations may in particular—
  (a) in cases where the regulations make provision for liability, make provision excluding civil liability (whether generally or to such extent as may be specified),
  (b) make provision for liability to be determined in accordance with designated activity rules,
  (c) make provision so that a person being subject to a liability includes another person being entitled as against that person to rescind or repudiate an agreement, and
  (d) make provision for the purposes of subsection (1) by applying provisions of this Act with or without modifications.

71Q Designated activities: enforcement

(1) Designated activity regulations may make provision about enforcement in connection with this Part.

(2) Provision about enforcement includes (among other things) provision—
  (a) requiring the supply of information;

(b) about investigations (including the making of reports);
(c) conferring powers of entry;
(d) conferring powers of inspection, search and seizure;
(e) conferring powers of censure;
(f) imposing monetary penalties;
(g) about appeals;
(h) conferring functions (including functions involving the exercise of a discretion) on a person.

(3) Designated activity regulations may in particular make provision for the purposes of subsection (1) by applying provisions of this Act with or without modifications, including any criminal offences created by this Act (and modifications made by virtue of this subsection may widen the scope of any such offences).

(4) The power under this section includes power to amend or repeal provisions of this Act.

71R Designated activities and rules: connected amendments

(1) The Treasury may by regulations make such modifications to provision made by or under this Act or any other enactment as the Treasury consider appropriate for purposes of, or connected with, any designated activity regulations or designated activity rules.

(2) The power under subsection (1) may in particular be exercised for the purpose of removing or varying any requirement imposed by or under this Act so far as applying to the carrying on of any designated activity.

(3) The power under subsection (1) includes power to modify any criminal offence created by this Act (including by widening the scope of any such offence).

(4) In this section—

“enactment” includes—

(a) an enactment comprised in subordinate legislation (within the meaning given by section 21 of the Interpretation Act 1978),
(b) an enactment comprised in, or in an instrument made under, a Measure or Act of Senedd Cymru,
(c) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
(d) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;

“modify” includes amend, repeal or revoke.

71S Designated activities regulations: Parliamentary control

(1) This section applies to regulations which contain provision made under section 71K which provides for an activity of a specified description to be a designated activity.

Status: This is the original version (as it was originally enacted).

(2) A statutory instrument containing regulations to which this section applies, other than regulations to which subsection (3) applies, may not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.

(3) This subsection applies to regulations which contain a statement made by the Treasury that they are of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft of the statutory instrument containing the regulations being laid and approved under subsection (2).

(4) Where subsection (3) applies to regulations, a statutory instrument containing the regulations must be laid before Parliament after being made.

(5) Regulations contained in a statutory instrument laid before Parliament under subsection (4) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.

(6) In calculating the period of 28 days, no account is to be taken of any whole days that fall within a period during which—

(a) Parliament is dissolved or prorogued, or

(b) either House of Parliament is adjourned for more than four days.

(7) If regulations cease to have effect as a result of subsection (5), that does not—

(a) affect the validity of anything previously done under the regulations, or

(b) prevent the making of new regulations."

(3) The following amendments are related to the new Part 5A of FSMA 2000 inserted by subsection (2).

(4) In section 3E (memorandum of understanding), in subsection (2) after paragraph (g) insert—

"(ga) directions under section 71O (designated activities: directions);".

(5) In section 3I (power of PRA to require the FCA to refrain from specified action), in subsection (3) in paragraph (a)—

(a) the words from "its powers in relation to the" to the end become sub-paragraph (i), and

(b) after that sub-paragraph insert ", or

(ii) its powers in relation to designated activities under Part 5A;".

(6) In section 138D (actions for damages), in subsection (5) after paragraph (za) insert—

"(zaa) rules under Part 5A;".

(7) In section 417 (definitions), at the appropriate place insert—

""designated activity" has the meaning given in section 71K;".

(8) In section 429 (Parliamentary control of statutory instruments)—

(a) in subsection (2B), after paragraph (a) insert—

"(aa) provision made under section 71Q which amends or repeals a provision of this Act;

(ab) provision made under section 71R which amends, repeals or revokes a provision of this Act or another Act of Parliament, an Act of the Scottish Parliament, an Act or Measure of Senedd Cymru, or Northern Ireland legislation;";

(b) in subsection (8), in the list of sections beginning with "22B,", insert at the appropriate place ", 71S";

(c) in subsection (9) (as inserted by the Financial Services Act 2021), for the words from "which" to the end substitute "which is subject to a procedure before Parliament for the approval of the instrument in draft before it is made or its approval after it is made."

(9) After Schedule 6A insert the Schedule 6B set out in Schedule 3 to this Act.

Financial market infrastructure: general rules and requirements

9 Rules relating to central counterparties and central securities depositories

(1) FSMA 2000 is amended as follows.

(2) After section 300E (power to disallow excessive regulatory provision: supplementary) insert—

"General rule-making powers

300F Rules relating to central counterparties and central securities depositories

(1) The Bank of England may make such rules applying to FMI entities—

(a) with respect to the carrying on by them of relevant regulated activities, or

(b) with respect to the carrying on by them of an activity which is not a relevant regulated activity,

as appear to the Bank to be necessary or expedient for the purpose of advancing its Financial Stability Objective.

(2) Each of the following is an "FMI entity" for the purposes of this section—

(a) a recognised central counterparty;

(b) a recognised CSD;

(c) a third country central counterparty;

(d) a third country CSD.

(3) The power to make rules under subsection (1), so far as applying to a third country central counterparty or a third country CSD, is subject to section 300G.

(4) In this section "relevant regulated activity"—

(a) in relation to a recognised central counterparty, means a regulated activity described in section 285(3A);

(b) in relation to a recognised CSD, means a regulated activity described in section 285(3D);

Status: *This is the original version (as it was originally enacted).*

(c) in relation to a third country central counterparty, means a regulated activity described in section 285(3C);

(d) in relation to a third country CSD, means a regulated activity described in section 285(3G).

(5) Rules under this section may include—

(a) provision applying to an FMI entity even though there is no relationship between the entity to which the rules will apply and the persons whose interests will be protected by the rules;

(b) requirements which take into account, in the case of an FMI entity which is a member of a group, any activity of another member of the group.

300G Section 300F: rules in relation to overseas FMI entities

(1) The power to make rules under section 300F, so far as applying to an FMI entity of the kind mentioned in subsection (2)(c) or (d) of that section (an "overseas FMI entity"), is exercisable—

(a) only by the application of corresponding rules, and

(b) except in the case of systemic third country CCPs (see subsection (6)), only so far as authorised by regulations made by the Treasury.

(2) The reference in subsection (1)(a) to "corresponding rules" is—

(a) in relation to rules that would apply to a third country central counterparty, rules under section 300F that apply to a recognised central counterparty;

(b) in relation to rules that would apply to a third country CSD, rules under section 300F that apply to a recognised CSD.

(3) Rules may be applied in accordance with subsection (1)(a)—

(a) by applying all corresponding rules or only such corresponding rules as the Bank considers appropriate;

(b) with such modifications as the Bank considers appropriate for the purpose of ensuring the effectiveness of the rules in their application to the overseas FMI entities concerned (having regard in particular to the establishment of such entities in countries other than the United Kingdom).

(4) Regulations under subsection (1)(b) may authorise the making of rules generally in respect of overseas FMI entities or only in respect of overseas FMI entities which—

(a) are specified or described in the regulations, or

(b) satisfy conditions specified in the regulations.

(5) Regulations under subsection (1)(b) may—

(a) provide for the power to make rules under section 300F, so far as applying to an overseas FMI entity, to be subject to such limitations or conditions as may be specified in the regulations;

(b) make provision by reference to matters to be determined by the Bank;

(c) provide for exemptions.

(6) The restriction imposed by subsection (1)(b) does not apply in the case of systemic third country CCPs (and accordingly references to overseas FMI entities in subsections (4) and (5) do not include references to systemic third country CCPs).

(7) A "systemic third country CCP" means any third country central counterparty that the Bank has determined is systemically important, or is likely to become systemically important, to the financial stability of the United Kingdom.

(8) The Bank must publish notice of any determination made under subsection (7).

(9) A determination under subsection (7) must be made in accordance with such criteria of general application as are set out in regulations made by the Treasury for the purposes of this section.

(10) In making a determination under subsection (7) the Bank must also have regard to any statement of policy prepared and published by the Bank for the purposes of providing further specification of the criteria of general application mentioned in subsection (9).

(11) The Bank—

(a) may alter or replace a statement of policy prepared for the purposes of this section;

(b) must publish a statement as altered or replaced.

(12) Publication under this section is to be made in such manner as the Bank considers best designed to bring the publication to the attention of the public.

(13) The Treasury must consult the Bank before making regulations under subsection (9).

(14) The Treasury may by regulations provide for other provisions of this Act to apply in relation to third country central counterparties, or third country CSDs, to which rules under section 300F apply, with such modifications as may be specified in the regulations."

(3) In section 165 (regulators' power to require information: authorised persons etc) omit subsection (8A).

(4) In section 165A (PRA's power to require information: financial stability) omit subsection (7A).

(5) In section 293 (notification requirements)—

(a) in subsection (7A) at the end insert "and a third country central counterparty";

(b) in subsection (8) for "or an overseas clearing house" substitute ", an overseas clearing house or a third country central counterparty".

(6) In section 417(1) (definitions), at the appropriate place insert—

""Financial Stability Objective" means the objective set out in section 2A of the Bank of England Act 1998;".

Status: *This is the original version (as it was originally enacted).*

10 Central counterparties and central securities depositories: other requirements

In Schedule 17A to FSMA 2000 (further provision in relation to exercise of Part 18 functions by Bank of England), before paragraph 10 (and the heading before it) insert—

"Requirements

9B (1) The powers conferred by section 55L(3) (FCA own-initiative power to impose requirements on authorised persons) are exercisable by the Bank to impose requirements on a relevant FMI entity.

(2) In this paragraph "relevant FMI entity" means—

(a) a recognised central counterparty,

(b) a recognised CSD, or

(c) a systemic third country CCP as defined by section 300G(7).

(3) The power under sub-paragraph (1) is exercisable only if it appears to the Bank that either (or both) of the following conditions is met.

(4) The first condition is that it is desirable to exercise the power in order to advance the Financial Stability Objective.

(5) The second condition is that the relevant FMI entity—

(a) has failed, or is likely to fail, to satisfy the recognition requirements, or

(b) has failed to comply with any other obligation imposed on it by or under this Act.

(6) The power conferred by sub-paragraph (1) may not be exercised so as to restrict or prohibit discretionary payments to employees or shareholders of a recognised central counterparty (and for this purpose "discretionary payment" has the meaning given by paragraph 13(11) of Schedule 11 to the Financial Services and Markets Act 2023 and "employee" has the meaning given by paragraph 154 of that Schedule).

(7) The powers conferred by section 55L(5) (FCA power to impose requirements on application of authorised persons with Part 4A permission) are exercisable by the Bank to impose requirements on a relevant FMI entity on the application of that entity.

(8) A power conferred by this paragraph is exercisable whether or not there is a relationship between the entity in relation to which it is exercised and the persons whose interests will be protected by its exercise.

(9) The following provisions apply in relation to requirements imposed by the Bank under this paragraph as they apply in relation to requirements imposed by the FCA under section 55L, with the modifications in sub-paragraph (10)—

(a) section 55L(6) (power to refuse application to impose etc requirements);

(b) section 55N (further provision in relation to requirements);

(c) section 55P (prohibitions and restrictions);

(d) section 55Q (exercise of power in support of overseas regulator);

(e) section 55R(1) (persons connected with applicant);
(f) section 55U(3) to (8) (applications for requirement to be imposed etc);
(g) section 55V(1) to (6) (determination of applications);
(h) section 55X(2) and (4)(f) (warning and decision notices on refusal of applications);
(i) section 55Y (exercise of own-initiative power: procedure);
(j) section 55Z3(1) and (2) (right to refer matters to the Tribunal).

(10) The modifications are—
(a) any reference to the FCA is to be read as a reference to the Bank;
(b) any references to own-initiative powers are to be read as references to the power conferred by sub-paragraph (1);
(c) any references to an authorised person are to be read as references to relevant FMI entities;
(d) in section 55L(6), the reference to the FCA's operational objectives is to be read as a reference to the Bank's Financial Stability Objective;
(e) section 55N has effect as if the reference to regulated activities in subsection (2) were a reference to activities in respect of which a recognition order is in force."

11 Rules relating to investment exchanges and data reporting service providers

(1) FSMA 2000 is amended as follows.

(2) After section 300G (section 300F: rules in relation to overseas FMI entities) (inserted by section 9) insert—

"300H Rules relating to investment exchanges and data reporting service providers

(1) The FCA may make such rules applying to recognised UK investment exchanges or data reporting service providers—
(a) with respect to the carrying on by them of relevant activities, or
(b) with respect to the carrying on by them of an activity which is not a relevant activity,

as appear to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives.

(2) In this section "relevant activity"—
(a) in relation to a recognised UK investment exchange, means a regulated activity described in section 285(2);
(b) in relation to a data reporting service provider, means providing a data reporting service.

(3) Rules under this section may include—
(a) provision applying to a recognised UK investment exchange or data reporting service provider even though there is no relationship between that person and the persons whose interests will be protected by the rules;

(b) requirements which take into account, in the case of a recognised UK investment exchange or data reporting service provider which is a member of a group, any activity of another member of the group.

(4) Rules under this section may not modify, amend or revoke any retained direct EU legislation (except retained direct EU legislation which takes the form of FCA rules).

(5) In this section—

“data reporting service” and “data reporting service provider” have the meanings given by regulation 2 of the Data Reporting Services Regulations 2017 (S.I. 2017/699);

“recognised UK investment exchange” means a recognised investment exchange that is not an overseas investment exchange as defined in section 313(1).”

(3) In section 166A (appointment of skilled person to collect and update information), after subsection (9) insert—

“(9A) The powers conferred by this section may also be exercised by the FCA in relation to a recognised investment exchange (and references to an authorised person are to be read accordingly).”

(4) In section 168 (appointment of persons to carry out investigations in particular cases), in subsection (4)(ca), at the end insert “or a rule made by the FCA under section 300H”.

(5) In section 312E (public censure)—

(a) in subsection (1)—

(i) after “recognised body” insert “or data reporting service provider”;

(ii) after “the body” insert “or provider”;

(b) in subsection (2)(a) after “exchange” insert “or data reporting service provider”;

(c) after subsection (3) insert—

“(4) In this Chapter “data reporting service provider” has the meaning given by regulation 2 of the Data Reporting Services Regulations 2017 (S.I. 2017/699).”

(6) In section 312F (financial penalties), in subsection (1)—

(a) after “recognised body” insert “or data reporting service provider”;

(b) after “the body”, in both places, insert “or provider”.

(7) In section 312G (proposal to take disciplinary measures), in subsection (1)—

(a) in paragraph (a), after “recognised body” insert “or data reporting service provider”;

(b) in the words after paragraph (b), after “body” insert “, provider”.

(8) In section 312H (decision notice)—

(a) in subsection (1)—

(i) in paragraph (a), after “recognised body” insert “or data reporting service provider”;

(ii) in the words after paragraph (b), after “body” insert “, provider”;

(b) in subsection (4)—

(i) in paragraph (a), after "recognised body" insert "or data reporting service provider";

(ii) in the words after paragraph (b), after "body" insert ", provider".

(9) In section 312I(a) (publication), after "recognised body" insert ", data reporting service provider".

12 Treasury directions to Bank of England: restrictions

(1) Section 4 of the Bank of England Act 1946 (Treasury directions to the Bank) is amended as follows.

(2) In subsection (1), after paragraph (b) insert—

"(c) the exercise by the Bank of its functions under any enactment in relation to the following bodies—

(i) recognised central counterparties;

(ii) recognised CSDs;

(iii) third country central counterparties;

(iv) third country CSDs."

(3) After subsection (1) insert—

"(2A) Expressions used in subsection (1)(c) have the same meaning as in section 285 of the Financial Services and Markets Act 2000 (exemption for recognised bodies etc)."

Financial market infrastructure: piloting powers

13 Testing of FMI technologies or practices

(1) The Treasury may by regulations make provision for the purposes of—

(a) testing, for a limited period, the efficiency or effectiveness of the carrying on of FMI activities in a particular way, and

(b) assessing whether or how relevant enactments should apply in relation to FMI activities carried on in that way.

(2) The reference in subsection (1)(a) to FMI activities being carried on in a particular way includes a reference to—

(a) the use of developing technology in the carrying on of FMI activities;

(b) the adoption of new or different practices in the carrying on of FMI activities.

(3) Provision made in regulations under subsection (1) is referred to in this group of sections as an FMI sandbox.

(4) An FMI sandbox must specify or otherwise provide for—

(a) the FMI activities to which the FMI sandbox arrangements relate;

(b) the description—

(i) of FMI entities eligible to participate in the FMI sandbox arrangements, and

(ii) of any other persons (including in particular the users of services provided by FMI entities) eligible to so participate;

(c) the limited period for which the FMI sandbox arrangements apply.

(5) An FMI sandbox may confer functions on the appropriate regulator in connection with the implementation and operation of the FMI sandbox arrangements.

(6) An FMI sandbox may—

(a) provide for a relevant enactment not to apply for the purposes of the FMI sandbox arrangements;

(b) provide for modifications in the application of a relevant enactment for those purposes;

(c) provide for the application of a relevant enactment (with or without modifications) for those purposes;

but provision under this subsection may not amend, repeal or revoke a relevant enactment.

(7) In the case of a relevant enactment that is a rule or another instrument made by an appropriate regulator, provision under subsection (6) may provide for the powers under that subsection to be exercisable by that regulator.

(8) Schedule 4 contains further examples of types of provision that an FMI sandbox may make.

(9) An FMI sandbox—

(a) may be replaced by another FMI sandbox of the same or similar effect;

(b) may have effect at the same time as one or more other FMI sandboxes.

(10) Regulations under this section are subject to the negative procedure.

(11) For the purposes of this group of sections—

(a) "FMI entity" means—

(i) a recognised investment exchange that is not an overseas investment exchange;

(ii) a recognised CSD;

(iii) the operator of a multilateral trading facility;

(iv) the operator of an organised trading facility;

(v) such other persons as may be specified in regulations under this section as eligible to participate in the FMI sandbox arrangements concerned;

(b) "FMI activities" are any activities carried on as part of the business of an FMI entity;

(c) "FMI sandbox arrangements" means any arrangements implemented as part of an FMI sandbox.

14 Reports on FMI sandboxes

(1) This section applies where the Treasury make regulations under section 13 implementing FMI sandbox arrangements.

(2) The Treasury must prepare and publish a report on the FMI sandbox arrangements.

(3) The report must be prepared by a date no later than the date specified in the regulations.

(4) The report must contain—

(a) a description of the FMI sandbox arrangements;

(b) an assessment of the efficiency or effectiveness of those arrangements;

(c) whether, and if so how, the Treasury propose exercising the power under section 15 in relation to those arrangements.

(5) The Treasury must consult the appropriate regulator in preparing the report.

(6) The appropriate regulator must provide to the Treasury such information or other assistance as the Treasury may require for the purposes of preparing the report.

(7) The Treasury must lay a copy of the report before Parliament.

15 Permanent implementation of arrangements tested under an FMI sandbox

(1) This section applies where, after testing the efficiency or effectiveness of FMI sandbox arrangements implemented under an FMI sandbox, the Treasury determine that arrangements of the same or similar effect should have effect after the expiry of the FMI sandbox.

(2) The Treasury may by regulations make provision implementing the FMI sandbox arrangements—

(a) as tested under the FMI sandbox, or

(b) with such variations as the Treasury consider appropriate.

(3) Regulations under this section that implement FMI sandbox arrangements may be made before (as well as after) the expiry of the FMI sandbox concerned.

(4) Regulations under this section may include provision that amends, repeals or revokes a relevant enactment.

(5) Regulations under this section that amend, repeal or revoke any provision of primary legislation are subject to the affirmative procedure.

(6) Regulations under this section to which subsection (5) does not apply are subject to the negative procedure.

16 Regulations

(1) A power to make regulations under this group of sections includes power conferring a discretion on an appropriate regulator, or another specified person, to do anything under, or for the purposes of, the regulations.

(2) Before making regulations under this group of sections the Treasury must consult—

(a) the appropriate regulators;

(b) such other persons as the Treasury consider appropriate.

17 Interpretation

(1) This section applies for the purposes of this section and sections 13 to 16.

(2) The "appropriate regulator", in relation to an FMI sandbox, means the regulator specified in that sandbox as the appropriate regulator (and both of the regulators may be specified); and for this purpose "regulator" means—

(a) the FCA, or

(b) the Bank of England.

(3) "Relevant enactment" means any provision made by or under—

(a) FSMA 2000;

(b) the Companies Act 2006;

(c) the Financial Markets Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979);

(d) the Uncertificated Securities Regulations 2001 (S.I. 2001/3755);

(e) the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226);

(f) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation);

(g) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments;

(h) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories;

(i) Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

(4) The following terms are defined as follows—

"FMI activities" has the meaning given by section 13(11)(b);

"FMI entity" has the meaning given by section 13(11)(a);

"FMI sandbox" has the meaning given by section 13(3);

"FMI sandbox arrangements" has the meaning given by section 13(11)(c);

"this group of sections" means the sections referred to in subsection (1).

(5) The following terms have the same meanings as in Part 18 of FSMA 2000—

"multilateral trading facility";

"organised trading facility";

"overseas investment exchange";

"recognised investment exchange";

"recognised CSD".

(6) The Treasury may by regulations amend subsection (3) so as to add to the list of relevant enactments.

(7) Regulations under subsection (6) are subject to the affirmative procedure.

Powers in relation to critical third parties

18 Critical third parties: designation and powers

(1) FSMA 2000 is amended as follows.

(2) In the heading to Part 18, for "and CSDs" substitute ", CSDs and other parties".

(3) After section 312K (statement of policy: procedure) insert—

“CHAPTER 3C

CRITICAL THIRD PARTIES

312L Critical third parties

(1) The Treasury may by regulations designate a person who provides services to one or more authorised persons, relevant service providers or FMI entities as a “critical third party”.

(2) The Treasury may designate a person under subsection (1) only if in the Treasury’s opinion a failure in, or disruption to, the provision of those services (either individually or, where more than one service is provided, taken together) could threaten the stability of, or confidence in, the UK financial system.

(3) The Treasury must have regard to the following factors when forming an opinion for the purposes of subsection (2)—

(a) the materiality of the services provided to the delivery, by any person, of essential activities, services or operations (wherever carried out);

(b) the number and type of authorised persons, relevant service providers or FMI entities to which the person provides services.

(4) Before making regulations under subsection (1) the Treasury must—

(a) consult each of the relevant regulators and such other persons as the Treasury consider appropriate,

(b) give notice in writing to the person to be designated specifying a reasonable period within which that person may make representations in writing about the proposal to the Treasury, and

(c) have regard to any representations made to them in accordance with paragraph (b).

(5) The Treasury may not designate the Bank of England under subsection (1).

(6) Each of the following is a relevant regulator for the purposes of this Chapter—

(a) the FCA,

(b) the PRA, and

(c) the Bank of England.

(7) Activities, services or operations are “essential” for the purposes of subsection (3) if they are essential to—

(a) the economy of the United Kingdom, or

(b) the stability of, or confidence in, the UK financial system.

(8) In this Chapter—

“critical third party” means a person designated under subsection (1);

“FMI entity” means—

(a) a recognised clearing house;

(b) a recognised CSD;

(c) a recognised investment exchange which is not an overseas investment exchange;

(d) a recognised payment system under section 184 of the Banking Act 2009;

(e) a person specified as a service provider in relation to a recognised payment system under section 206A of the Banking Act 2009;

“relevant service provider” means—

(a) an electronic money institution as defined by regulation 2(1) of the Electronic Money Regulations 2011 (S.I. 2011/99);

(b) an authorised payment institution, small payment institution or registered account information services provider as defined by regulation 2(1) of the Payment Services Regulations 2017 (S.I. 2017/752);

“service” includes facility.

312M Power to make rules

(1) A relevant regulator may make such rules imposing duties on critical third parties in connection with the provision of services to authorised persons, relevant service providers and FMI entities as appear to the regulator to be necessary or expedient for the purpose of advancing any of its objectives.

(2) The reference in subsection (1) to a relevant regulator’s objectives is a reference to—

(a) where the regulator is the FCA, one or more of its operational objectives;

(b) where the regulator is the PRA, one or more of its objectives;

(c) where the regulator is the Bank, the Bank’s Financial Stability Objective.

(3) In the application of Part 9A to rules made by the FCA or the PRA under this section, the following provisions apply with the modifications specified in this subsection—

(a) section 137T (general supplementary powers) applies as if—

(i) the reference in paragraph (a) to “authorised persons, activity or investment” were a reference to “critical third parties or services”, and

(ii) in paragraph (b) for the words from “as” to the end there were substituted “or the Bank, or standards issued by any other person, as those rules or standards have effect from time to time,”;

(b) section 138B (publication of directions) applies as if subsection (4) were omitted;

(c) section 138F (notification of rules) applies as if subsections (1A) and (2) were omitted;

(d) section 138I (consultation) applies as if the reference in subsection (1)(a) to the “PRA” were a reference to the “PRA and the Bank”;

(e) section 138J (consultation) applies as if the reference in subsection (1)(a) to the “FCA” were a reference to the “FCA and the Bank”.

312N Power of direction

(1) A relevant regulator may, if it appears to the regulator to be necessary or expedient for the purpose of advancing any of its objectives, direct a critical third party to—
   (a) do anything specified in the direction, or
   (b) refrain from doing anything specified in the direction.

(2) A direction under this section—
   (a) must be given by notice in writing,
   (b) may be expressed to have effect during a specified period or until revoked, and
   (c) may specify the way in which, and the time by which, a thing is to be done.

(3) Subsection (4) applies if a direction is given to a critical third party for the purpose of resolving or reducing a threat to the stability or integrity of the UK financial system.

(4) The critical third party (including the critical third party's officers and staff) has immunity from liability in damages in respect of action or inaction in accordance with the direction.

(5) A direction given for the purpose mentioned in subsection (3) must—
   (a) include a statement that it is given for that purpose, and
   (b) inform the critical third party of the effect of subsection (4).

(6) An immunity conferred by this section does not extend to action or inaction—
   (a) in bad faith, or
   (b) in contravention of section 6(1) of the Human Rights Act 1998.

(7) A relevant regulator may at any time revoke a direction under this section by giving notice in writing to the critical third party to which the direction relates.

(8) The revocation of the direction does not affect the validity of anything previously done in accordance with it.

(9) For the purposes of this section the objectives of a relevant regulator are as described in section 312M(2).

312O Directions: procedure

(1) If a relevant regulator proposes to give a direction under section 312N, or gives such a direction with immediate effect, it must give written notice to the critical third party to which the direction is given (or is to be given) (the "relevant critical third party").

(2) A direction under section 312N takes effect—
   (a) immediately, if the notice under subsection (1) states that this is the case,
   (b) on such other date as may be specified in the notice, or

(c) if neither paragraph (a) or (b) applies, when the matter to which the notice relates is no longer open to review.

(3) A direction may be expressed to take effect immediately, or on a specified date, only if the relevant regulator reasonably considers that it is necessary for the direction to take effect immediately or on that date.

(4) The notice under subsection (1) must—

(a) give details of the direction,

(b) state the relevant regulator's reasons for the direction and for its determination as to when the direction takes effect,

(c) inform the relevant critical third party that it may make representations to the regulator within such period as may be specified in the notice (whether or not the critical third party has referred the matter to the Tribunal), and

(d) inform the relevant critical third party of its right to refer the matter to the Tribunal (including giving an indication of the procedure on such a reference).

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

(6) If, having considered any representations made by the relevant critical third party, the regulator decides—

(a) to give the direction proposed, or

(b) if the direction has been given, not to revoke the direction,

it must give the critical third party written notice.

(7) If, having considered any representations made by the relevant critical third party, the regulator decides—

(a) not to give the direction proposed,

(b) to give a different direction, or

(c) to revoke a direction which has effect,

it must give the critical third party written notice.

(8) A notice given under subsection (6) must inform the relevant critical third party of its right to refer the matter to the Tribunal (including giving an indication of the procedure on such a reference).

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

(10) For the purposes of subsection (2)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

312P Information gathering and investigations

(1) The provisions of Part 11 (information gathering and investigations) mentioned in this section are to apply in relation to this Chapter in accordance with the provision made by this section.

(2) In any case where subsection (1) applies—

(a) any reference in Part 11 to the FCA or PRA which is contained in, or relates to, any of those provisions (however expressed) is to be read as a reference to a relevant regulator, and
(b) Part 11 has effect with any other necessary modifications.

(3) The powers conferred by section 165(1) and (3) (power to require information) are exercisable by a relevant regulator or (as the case may be) a relevant regulator's officers to impose requirements on a critical third party or a person connected with a critical third party.

(4) The information or documents that a relevant regulator may require to be produced or provided in accordance with subsection (3) are limited to information and documents reasonably required in connection with the exercise by the relevant regulator of functions conferred on it by or under this Chapter (and accordingly section 165(4) does not apply).

(5) The power conferred by section 166 (reports by skilled person) is exercisable by a relevant regulator in relation to a critical third party or a person connected with a critical third party.

(6) The power conferred by section 166A (appointment of skilled person) is exercisable by a relevant regulator in relation to a critical third party.

(7) The power conferred by section 168(5) (appointment of persons to carry out investigations in particular cases) is exercisable by a relevant regulator if it appears to the relevant regulator that there are circumstances suggesting that a person may have contravened any requirement imposed by or under this Chapter.

(8) In addition to the powers conferred by section 171, a person conducting an investigation under section 168(5) as a result of subsection (7) is to have the powers conferred by sections 172 and 173 (and for this purpose any references in those sections to an investigator are to be read accordingly).

(9) The power under section 176(1) (entry of premises under warrant) is exercisable on information on oath given by or on behalf of a relevant regulator, or an investigator appointed by a relevant regulator, as if the reference to the third set of conditions were omitted.

(10) For the purposes of this section a person is connected with a critical third party if that person is or has at any relevant time been—
(a) a member of the critical third party's group,
(b) a controller of the critical third party, or
(c) in relation to the critical third party, a person mentioned in Part 1 of Schedule 15 (reading references in that Part to the authorised person as references to the critical third party).

312Q Power of censure

If a relevant regulator considers that a critical third party has contravened a requirement imposed by or under this Chapter the regulator may publish a statement to that effect.

312R Disciplinary measures

(1) This section applies if a relevant regulator considers that a critical third party has contravened a requirement imposed by or under this Chapter.

(2) The relevant regulator may publish a notice—
   (a) prohibiting the critical third party from entering into arrangements, or continuing, to provide services to authorised persons, relevant service providers or FMI entities;
   (b) prohibiting authorised persons, relevant service providers or FMI entities who receive services from the critical third party from continuing to receive those services from that party;
   (c) prohibiting authorised persons, relevant service providers or FMI entities from entering into arrangements for receipt of services from the critical third party;
   (d) providing for the provision of any services by the critical third party to be subject to such conditions or limitations as are specified in the notice;
   (e) providing for any receipt of services by authorised persons, relevant service providers or FMI entities from the critical third party to be subject to such conditions or limitations as are specified in the notice.

(3) A notice under subsection (2) may make different provision for different cases and may in particular make different provision in respect of different descriptions of services, authorised persons, FMI entities or relevant service providers.

(4) A relevant regulator may only exercise the powers under subsection (2) if the regulator is satisfied that—
   (a) it is appropriate in the circumstances to take action against the critical third party,
   (b) the exercise of the power will not threaten the stability of, or confidence in, the UK financial system, and
   (c) it is desirable to exercise the power in order to advance one or more of the regulator's objectives.

(5) A relevant regulator may either on its own initiative or on an application by the critical third party concerned withdraw or vary a notice given by it under subsection (2) by publishing a further notice.

(6) Publication under this section is to be made in such manner as the relevant regulator considers best designed to bring the publication to the attention of the public.

(7) Where a notice includes a prohibition, condition or limitation imposed under subsection (2), publication of a notice under this section must in particular be made in a manner appearing to the relevant regulator to be best designed to bring the notice to the attention of the persons to whom the prohibition, condition or limitation applies.

(8) A person who breaches a prohibition, condition or limitation imposed by a notice under this section is to be taken to have contravened a requirement imposed on the person under this Act.

(9) For the purposes of this section the objectives of a relevant regulator are as described in section 312M(2).

312S Procedure and right to refer to Tribunal

(1) If a relevant regulator proposes to publish a statement or notice under section 312Q or 312R, it must give the critical third party, authorised persons, relevant service providers or FMI entities to whom the statement or notice would relate a warning notice.

(2) A warning notice must set out the terms of the proposed statement or notice.

(3) If a relevant regulator decides to publish a statement or notice under section 312Q or 312R it must give the critical third party, authorised persons, relevant service providers or FMI entities to whom the statement or notice relates a decision notice.

(4) A decision notice must set out the terms of the statement or notice.

(5) If a relevant regulator decides to act under section 312N or 312Q a critical third party who is aggrieved may refer the matter to the Tribunal.

(6) If a relevant regulator decides to act under section 312R a critical third party, authorised person, relevant service provider or FMI entity who is aggrieved may refer the matter to the Tribunal.

312T Statement of policy relating to disciplinary measures

(1) The relevant regulators must prepare and publish a statement of policy with respect to the exercise of powers under section 312Q and section 312R.

(2) The relevant regulators may alter or replace a statement published under this section.

(3) The relevant regulators must publish a statement as altered or replaced under subsection (2).

(4) Publication under this section is to be made in such manner as the relevant regulators consider best designed to bring the publication to the attention of the public.

312U Duty to ensure co-ordinated exercise of functions etc

(1) The relevant regulators must co-ordinate the exercise of their respective functions conferred by or under this Chapter.

(2) In complying with the duty in subsection (1) each relevant regulator must obtain information and advice from any of the other relevant regulators who may be expected to have relevant information or relevant expertise.

(3) The duty in subsection (1) applies only to the extent that compliance with the duty does not impose a burden on the relevant regulators that is disproportionate to the benefits of compliance.

(4) Before exercising any power conferred by or under this Chapter a relevant regulator must consult each of the other relevant regulators (where not otherwise required to do so).

312V Memorandum of understanding

(1) The relevant regulators must prepare and maintain a memorandum which describes in general terms—

(a) the role of the relevant regulators in relation to the exercise of functions conferred by or under this Chapter, and

(b) how they intend to comply with section 312U in relation to the exercise of such functions.

(2) The relevant regulators must review the memorandum at least once in each calendar year.

(3) The relevant regulators may revise a memorandum under this section.

(4) The relevant regulators must give the Treasury a copy of the memorandum and any revised memorandum.

(5) The Treasury must lay before Parliament a copy of any document received by them under this section.

(6) The relevant regulators must ensure that the memorandum as in force for the time being is published in the way appearing to them to be best calculated to bring it to the attention of the public.

(7) The memorandum need not relate to any aspect of compliance with section 312U if the relevant regulators consider—

(a) that publication of information about that aspect would be against the public interest, or

(b) that aspect is a technical or operational matter not affecting the public.

312W Application of provisions of this Act to this Chapter

The following provisions do not apply for the purposes of this Chapter—

(a) section 3D (duty to ensure co-ordinated exercise of functions);

(b) section 3E (memorandum of understanding);

(c) section 138D (actions for damages).”

19 Critical third parties: related amendments

(1) FSMA 2000 is amended as follows.

(2) In section 313 (interpretation of Part 18), in subsection (1), at the appropriate place insert—

““critical third party” has the same meaning as in Chapter 3C (see section 312L(8);”.

(3) In section 380 (injunctions), in subsection (11) after “requirement” insert “, other than a case falling within paragraph 26 of Schedule 17A”.

(4) In section 391 (publication), in subsection (1ZB) after paragraph (l) insert—

“(la) section 312S;”.

(5) In section 392 (third party rights and access to evidence)—

(a) in paragraph (a), after “312(G)(1),” insert “312S(1),”, and

(b) in paragraph (b) after “312H(1),” insert “312S(3),”.

(6) In section 429 (Parliamentary control of statutory instruments), in subsection (8), in the list of sections beginning with “3G(1),”, insert at the appropriate place “, 312L”.

(7) The following amendments are to Schedule 17A (application of provisions to Bank).

(8) In paragraph 10 (rules), after sub-paragraph (4) insert—

“(4A) Sub-paragraphs (1) to (4) do not apply in relation to rules made by the Bank under section 312M (in relation to which see paragraph 10A).”

(9) After paragraph 10 insert—

“10A The following provisions of Part 9A of this Act are to apply in relation to rules made by the Bank under section 312M, subject to the modifications specified in this subsection—

(a) section 137T (general supplementary powers) as if—

(i) the reference in paragraph (a) to “authorised persons, activity or investment” were a reference to “critical third parties or services”, and

(ii) for paragraph (b) there were substituted—

“(b) may make provision by reference to rules made by the FCA or PRA or standards issued by any other person, as those rules or standards have effect from time to time,”;

(b) sections 138A and 138B (modification or waiver of rules) as if—

(i) the reference in subsection (4)(b) of section 138A to any of regulator’s objectives were a reference to the Bank’s Financial Stability Objective,

(ii) subsection (5) of section 138A were omitted, and

(iii) subsection (4) of section 138B were omitted;

(c) section 138BA (disapplication or modification of rules in individual cases) as if subsection (3)(b) and (c) were omitted;

(d) section 138C (evidential provisions);

(e) section 138E (limits on effect of contravening rules);

(f) section 138EA (matters to consider when making rules) as if, for paragraphs (a) and (b) of subsection (5), there were substituted “complying with a recommendation of the Financial Policy Committee of the Bank of England under section 9O of the Bank of England Act 1998 (making of recommendations within the Bank).”;

(g) section 138F (notification of rules) as if subsections (1A) and (2) were omitted;

(h) section 138G (rule-making instruments);

(i) section 138H (verification of rules);

(j) section 138J (consultation) as if—
   (i) the reference in subsection (1)(a) to the "FCA" were a reference to the "FCA and the PRA";
   (ii) the reference in subsection (2)(d) to the compatibility of the proposed rules with the provisions mentioned in that subsection were a reference to their compatibility with the Bank's Financial Stability Objective; and
   (iii) in subsection (8A), in paragraph (a), for sub-paragraphs (i) and (ii) there were substituted "be prejudicial to advancing the Financial Stability Objective, or";
(k) section 138JA(2), (3) (4), (10) and (11) (duty to consult PRA Cost Benefit Analysis Panel);
(l) section 138JB (statement of policy in relation to cost benefit analyses);
(m) section 138L (consultation: general exemptions) as if—
   (i) subsection (1) were omitted, and
   (ii) in subsection (2) for paragraphs (a) and (b) there were substituted "be prejudicial to financial stability.";
(n) section 141A (power to make consequential amendments of references to rules);
(o) section 141B (power to consequentially amend enactments)."

(10) In paragraph 23(1) (public record and disclosure of information), after "discharge of," insert "any of its functions under Chapter 3C of Part 18 of this Act,".

(11) In paragraph 26(2) (injunctions), after paragraph (a) insert—

"(aa) a requirement that is imposed on a critical third party by the Bank by or under any provision of Chapter 3C of this Part of this Act;".

(12) In paragraph 28 (restitution)—
(a) in sub-paragraph (2), in the words before paragraph (a), for "or a recognised CSD" substitute ", a recognised CSD or a critical third party";
(b) in sub-paragraph (2)(a) for "or the recognised CSD" substitute ", the recognised CSD or the critical third party";
(c) in sub-paragraph (4)(a) for "or the recognised CSD" substitute ", the recognised CSD or the critical third party".

(13) In paragraph 29 (notices) for "or 312H" substitute ", 312H or 312S".

(14) In paragraph 30 (offences), after sub-paragraph (a) insert—

"(aa) a requirement that is imposed by or under any provision of Chapter 3C of Part 18 of this Act that relates to critical third parties;".

(15) In paragraph 32 (records) after "recognised CSDs" insert ", critical third parties".

(16) In paragraph 33(a) (annual report), in the substituted paragraph (a), after "recognised CSDs" insert ", critical third parties".

(17) See also Part 6 of Schedule 2.

Financial promotion

20 Financial promotion

(1) FSMA 2000 is amended as follows.

(2) In section 21 (restrictions on financial promotion), after subsection (2) insert—

"(2A) The content of a communication may be approved for the purposes of this section by an authorised person only if the giving of the approval—

(a) is permitted under section 55NA (which enables approval to be given with FCA permission), or

(b) falls within an exemption conferred by regulations under section 55NB."

(3) After section 55N insert—

"55NA General requirement relating to financial promotion approval

(1) An authorised person must not approve the content of a communication for the purposes of section 21 unless the person has permission to do so given by the FCA under this section.

(2) An authorised person who approves the content of a communication for the purposes of section 21 otherwise than in accordance with permission granted under this section is to be taken to have contravened a requirement imposed on the person by the FCA under this Act.

(3) Permission may be granted by the FCA under this section on the application of—

(a) an authorised person, or

(b) an applicant for Part 4A permission that has yet to be determined.

(4) The FCA may grant a person permission under this section—

(a) on the terms sought in the application (which may include the grant of permission to give approvals generally for the purposes of section 21), or

(b) subject to any other terms the FCA considers appropriate (which may in particular provide for the giving of permission in a narrower description of case than that sought in the application).

(5) Where the FCA grants permission to a person under this section, the FCA may vary or cancel the permission—

(a) on the application of the person to whom it was given, or

(b) of its own initiative,

and subsection (4)(b) applies to the variation of permission as it applies to its grant.

(6) If the FCA grants or varies permission under this section it must set out the terms on which the permission is given, described in such way as it considers appropriate.

(7) The FCA may refuse to grant an application for permission under this section, or for its variation or cancellation under subsection (5)(a), if it appears to

the FCA that it is desirable to do so in order to advance one or more of its operational objectives.

(8) The FCA may vary or cancel a person's permission under subsection (5)(b) if it appears to the FCA that—

(a) the person has failed, during a period of at least 12 months, to give, or to refuse to give, any approvals for the purposes of section 21 in accordance with the permission, or

(b) it is desirable to vary or cancel the permission in order to advance one or more of its operational objectives.

(9) The FCA must consult—

(a) the PRA before giving permission under this section to, or before varying or cancelling permission under this section given to—

(i) a person who is, or will on the granting of an application for Part 4A permission be, a PRA-authorised person, or

(ii) a person who is a member of a group which includes a PRA-authorised person;

(b) the Gibraltar regulator (within the meaning of Schedule 2A) before giving permission under this section to, or before varying or cancelling permission under this section given to, a Gibraltar-based person.

(10) Subsection (9)(b) does not apply in a case where the FCA varies or cancels permission of a Gibraltar-based person in exercise of its power under subsection (5)(b), but the FCA must inform the Gibraltar regulator in writing of the variation or cancellation.

(11) Subsections (1) and (2) do not apply if the giving of approval falls within an exemption conferred by regulations made under section 55NB.

(12) Nothing in this section limits any other power under this Act to impose requirements in relation to approvals given for the purposes of section 21 so far as those requirements are additional to the requirement imposed by subsection (1) of this section (but any such other requirement that is inconsistent with the requirement imposed by that subsection is of no effect to the extent of that inconsistency).

55NB Section 55NA: power to provide for exemptions

(1) The Treasury may by regulations provide for exemptions from the requirement imposed by section 55NA(1) not to give approvals for the purposes of section 21 without permission.

(2) Regulations under subsection (1) may provide for an exemption to have effect—

(a) in respect of specified persons;

(b) in respect of persons falling within a specified class;

(c) in respect of approval given in relation to activities of a specified description;

(d) only in specified circumstances;

(e) subject to specified conditions.

(3) In this section “specified” means specified in regulations under this section.”

(4) Schedule 5 contains amendments related to this section.

(5) The amendments made by this section and Schedule 5—
(a) apply to an authorised person whether the person became authorised before or after the coming into force of this section;
(b) do not affect the approval of a communication given before the coming into force of this section.

Sustainability disclosure requirements

21 Sustainability disclosure requirements

(1) FSMA 2000 is amended as follows.

(2) After section 416 insert—

“Sustainability disclosure requirements

416A SDR policy statement

(1) The Treasury may prepare an SDR policy statement.

(2) An “SDR policy statement” is a statement of the policies of His Majesty’s Government concerning disclosure requirements in connection with matters relating to sustainability.

(3) In preparing an SDR policy statement, the Treasury must consult the regulators.

(4) The Treasury must publish any SDR policy statement in such manner as they consider appropriate.

(5) The Treasury—
(a) must keep any SDR policy statement under review;
(b) may prepare a revised statement (and subsections (3) and (4) apply in relation to any revised statement);
(c) may withdraw any SDR policy statement.

(6) The Treasury may request a regulator to provide them with a report on any matter that the Treasury require in connection with the preparation of an SDR policy statement.

(7) A request for a report under subsection (6)—
(a) must be made in writing, and
(b) may require a regulator to send the report to the Treasury within such reasonable period as may be specified in the request (or such other period as may be agreed).

(8) A regulator must comply with a request under subsection (6).

(9) Nothing in section 348, or in regulations made under section 349, is to be taken as preventing or restricting the ability of a regulator to disclose information to the Treasury for the purposes of this section.

(10) Subsection (9) does not apply in relation to information provided to a regulator by a regulatory authority outside the United Kingdom.

416B FCA and PRA rules etc

(1) When making rules or issuing guidance in connection with disclosure concerning matters relating to sustainability, a regulator must have regard to any SDR policy statement (within the meaning of section 416A) that the Treasury have published and not withdrawn.

(2) For the purposes of this section, matters relating to sustainability include matters relating to—

(a) the environment, including climate change,

(b) social, community and human rights issues,

(c) tackling corruption and bribery, and

(d) governance, so far as relevant to matters within paragraphs (a) to (c).”

(3) In Schedule 1ZA (the Financial Conduct Authority), in paragraph 11 (annual report), in sub-paragraph (1)—

(a) after paragraph (ha) insert—

“(hc) how it has satisfied the requirement in section 138EA(2) so far as regarding disclosure requirements in connection with matters relating to sustainability;”;

(b) after paragraph (ia) insert—

“(ib) how it has satisfied the requirement in section 416B to have regard to any SDR policy statement of the Treasury published and not withdrawn under section 416A (sustainability disclosure requirements: policy statement);”.

(4) In Schedule 1ZB (the Prudential Regulation Authority), in paragraph 19 (annual report), in sub-paragraph (1)—

(a) after paragraph (e) insert—

“(ea) how it has satisfied the requirement in section 138EA(2) so far as regarding disclosure requirements in connection with matters relating to sustainability;”;

(b) after paragraph (fa) insert—

“(fb) how it has satisfied the requirement in section 416B to have regard to any SDR policy statement of the Treasury under section 416A (sustainability disclosure requirements: policy statement), and”.

Digital settlement assets

22 Digital settlement assets

In Schedule 6, which provides for the regulation of digital settlement assets—

(a) Part 1 extends Part 5 of the Banking Act 2009 (Bank of England oversight of payment systems) to payment systems using digital settlement assets and DSA service providers, and makes consequential provision;
(b) Part 2 extends Part 5 of the Financial Services (Banking Reform) Act 2013 (regulation of payment systems) to payment systems using digital settlement assets.

23 Digital settlement assets: power to make regulations

(1) The Treasury may by regulations make such provision as they consider appropriate for the purpose of, or in connection with—
(a) the regulation of payments that include digital settlement assets,
(b) the regulation of—
(i) recognised payment systems that include arrangements using digital settlement assets,
(ii) recognised DSA service providers, and
(iii) service providers connected with, or in relation to, the systems and providers mentioned in sub-paragraphs (i) and (ii),
as those terms are for the time being defined in Part 5 of the Banking Act 2009, and
(c) making insolvency arrangements (including administration, restructuring and any similar procedure) in respect of the systems and providers mentioned in paragraph (b).

(2) In this section, "digital settlement asset" means a digital representation of value or rights, whether or not cryptographically secured, that—
(a) can be used for the settlement of payment obligations,
(b) can be transferred, stored or traded electronically, and
(c) uses technology supporting the recording or storage of data (which may include distributed ledger technology).

(3) The provision that may be made by regulations under this section includes provision—
(a) applying legislation relating to the regulation of electronic money and payments to digital settlement assets (subject to whatever modifications the Treasury consider appropriate);
(b) applying legislation relating to insolvency arrangements and interactions between different arrangements to the systems and providers mentioned in subsection (1) (subject to whatever modifications the Treasury consider appropriate);
(c) conferring powers on the Treasury (including a power to legislate);
(d) conferring powers, or imposing duties, on a relevant regulator (including a power to make rules or other instruments);
(e) about fees or other charges payable to a relevant regulator;
(f) about recognition orders and recognition criteria in Part 5 of the Banking Act 2009;
(g) about the enforcement of obligations arising under or by virtue of the regulations;
(h) about appeals in respect of decisions made under or by virtue of the regulations;
(i) about the sharing of information.

(4) Provision under subsection (3)(g) may include provision creating offences punishable on summary conviction—

(a) in England and Wales, with imprisonment for a term not exceeding 3 months or a fine, or both;

(b) in Scotland and Northern Ireland, with imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.

(5) The power to make regulations under this section includes power to modify legislation.

(6) The power under subsection (5) includes power to modify the definition of "digital settlement asset" in subsection (2).

(7) Regulations under this section are—

(a) subject to the affirmative procedure, or

(b) if the Treasury consider it necessary for the regulations to come into force without delay, subject to the made affirmative procedure.

(8) Before making regulations under this section, the Treasury must consult—

(a) the FCA,

(b) the Bank of England, and

(c) in relation to regulations that refer to the PRA or to the Payment Systems Regulator, those bodies.

(9) Where regulations under this section are subject to the made affirmative procedure the statutory instrument containing them must be laid before Parliament after being made.

(10) Regulations contained in a statutory instrument laid before Parliament under subsection (9) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.

(11) In calculating the period of 28 days, no account is to be taken of any whole days that fall within a period during which—

(a) Parliament is dissolved or prorogued, or

(b) either House of Parliament is adjourned for more than four days.

(12) If regulations cease to have effect as a result of subsection (10), that does not—

(a) affect the validity of anything previously done under the regulations, or

(b) prevent the making of new regulations.

(13) In this section—

"legislation" means primary legislation, subordinate legislation and retained direct EU legislation;

"relevant regulator" means—

(a) the FCA,

(b) the Bank of England, or

(c) the Payment Systems Regulator.

Mutual recognition

24 Implementation of mutual recognition agreements

(1) The Treasury may by regulations make such provision as they consider appropriate for the purpose of, or in connection with, implementing any mutual recognition agreement to which the United Kingdom is, or is expected to become, a party.

(2) The reference in subsection (1) to a "mutual recognition agreement" is a reference to any international agreement so far as it provides for, or relates to—
  (a) the recognition that the law and practice of a foreign country is, in respect of relevant matters, equivalent to the law and practice of the United Kingdom, and
  (b) the recognition that the law and practice of the United Kingdom is, in respect of relevant matters, equivalent to the law and practice of that foreign country.

(3) Matters are "relevant matters" for the purposes of subsection (2) if they relate to financial services or markets (whether generally or in particular respects).

(4) The provision that may be made by regulations under this section includes provision—
  (a) conferring powers on the Treasury (including a power to legislate);
  (b) conferring powers, or imposing duties, on a relevant regulator (including a power to make rules or other instruments);
  (c) about fees or other charges payable to a relevant regulator;
  (d) about the enforcement of obligations arising under or by virtue of the regulations;
  (e) about appeals in respect of decisions made under or by virtue of the regulations;
  (f) about the sharing of information.

(5) The reference in this section to a mutual recognition agreement to which the United Kingdom is, or is expected to become, a party includes a reference to such an agreement as modified or supplemented from time to time.

(6) The power to make regulations under this section includes power to modify legislation.

(7) Before making provision under subsection (4)(b) that imposes a duty on a relevant regulator the Treasury must consult the regulator.

(8) Provision under subsection (4)(b) that imposes a duty on a relevant regulator to make rules may (among other things)—
  (a) specify matters that the rules must cover;
  (b) specify a period within which the rules must be made.

(9) But except so far as permitted by subsection (8), such provision may not require rules to be made in a specified form or with specified content.

(10) Regulations under this section are subject to the affirmative procedure.

(11) In this section—

"foreign country" means a country or territory outside the United Kingdom;

"legislation" means primary legislation, subordinate legislation and retained direct EU legislation;

"relevant regulator" means—

(a) the FCA,
(b) the PRA, or
(c) the Bank of England;

"specified" means specified in regulations under this section.