

SCHEDULE 1

Administration and enforcement of Parts 3, 4, and 5

PART 4

Application of the Act for the purposes of the Regulations

Application of Part 11 of the Act (information gathering and investigations)

19.—(1) Part 11 of the Act(1) (information gathering and investigations) applies with respect to the discharge by the regulators of their functions under these Regulations and with respect to Article 28 of the markets in financial instruments regulation as it applies with respect to the discharge by the regulators of their functions under the Act, with the following modifications.

(2) In this paragraph, “regulator” means the FCA or the PRA.

(3) Part 11 of the Act applies as if—

- (a) each reference to the Act included a reference to these Regulations and Article 28 of the markets in financial instruments regulation;
- (b) each reference to a section or Part of, or Schedule to, the Act were a reference to that section, Part or Schedule as applied by these Regulations;
- (c) each reference to an authorised person were a reference to a person in respect of whom a requirement is imposed by or under these Regulations or to a non-authorised counterparty in respect of whom a requirement is imposed by Article 28 of the markets in financial instruments regulation.

(4) Sections 165A (PRA’s power to require information: financial stability), 165B (safeguards etc. in relation to exercise of power under section 165A) and 165C (orders under section 165A(2) (d)) of the Act do not apply.

(5) Section 166A of the Act (appointment of skilled person to collect and update information) applies as if—

(a) for subsection (1) there were substituted—

“(1) This section applies if either regulator considers that a person has contravened a requirement imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 to collect, and keep up to date, information of a description specified in those Regulations.”;

(b) subsection (10) were omitted.

(6) Section 167 of the Act (appointment of persons to carry out general investigations) applies as if—

(a) for subsection (1) there were substituted—

“(1) If it appears to an investigating authority that there is good reason for doing so, the investigating authority may appoint one or more competent persons to conduct an investigation on its behalf into—

(1) Part 11 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c.44), paragraph 33 of Schedule 7 to the Counter Terrorism Act 2008 (c.28), section 18 of and Schedule 2 to the Financial Services Act 2010 (c.28), Schedule 12 to and paragraph 8 of Schedule 18 to the Financial Services Act 2012, paragraphs 36 and 37 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c.14), paragraph 9 of Schedule 2 to the Investigatory Powers Act 2016 (c.25), S.I. 2001/1090, 2005/1433, 2007/126, 2011/1043, 2012/2554, 2013/1773, 2015/575 and 2016/680. There are other amendments but none is relevant.

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

- (a) the nature, conduct or state of the business of a person in respect of whom a requirement is imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (“a person subject to the 2017 Regulations”) or a non-authorised counterparty in respect of whom a requirement is imposed by Article 28 of the markets in financial instruments regulation (“a non-authorised counterparty”);
 - (b) a particular aspect of that business; or
 - (c) the ownership or control of a person subject to the 2017 Regulations or a non-authorised counterparty.”;
- (b) for subsection (4) there were substituted—
- “(4) The power conferred by this section may be exercised in relation to a person who was formerly a person subject to the 2017 Regulations or a non-authorised counterparty but only in relation to—
- (a) business carried on when the person was a person subject to the 2017 Regulations or a non-authorised counterparty; or
 - (b) the ownership or control of a person who was formerly a person subject to the 2017 Regulations or a non-authorised counterparty at any time when the person was a person subject to the 2017 Regulations or a non-authorised counterparty.”;
- (c) in subsection (5A) for paragraphs (b) and (c) there were substituted—
- “(b) in relation to any other person subject to the 2017 Regulations, the FCA or the PRA;
 - (c) in relation to a non-authorised counterparty, the FCA.”;
- (d) subsection (6) were omitted.
- (7) Section 168 of the Act (appointment of persons to carry out investigations in particular cases) applies as if—
- (a) for subsection (1) there were substituted—
- “(1) Subsection (3) applies if it appears to an investigating authority that there are circumstances suggesting that—
- (a) a person may have contravened a requirement imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or by Article 28 of the markets in financial instruments regulation;
 - (b) a member of the management body of a person referred to in paragraph (a) or another member of the senior management of such a person may be responsible for the contravention of a requirement imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or by Article 28 of the markets in financial instruments regulation; or
 - (c) a person may be guilty of an offence under those Regulations or under this Act as applied by those Regulations.”;
- (b) subsections (2), (4) and (5) were omitted;
- (c) for subsection (6) there were substituted—
- “(6) “Investigating authority” means the FCA or the PRA.”.
- (8) Section 169 of the Act (investigations etc. in support of overseas regulator) applies as if—
- (a) subsection (2A) were omitted;
 - (b) for subsection (13) there were substituted—

“(13) “Overseas regulator” means an authority in a country or territory outside the United Kingdom which has functions corresponding to those of the FCA or the PRA under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or with respect to Article 28 of the markets in financial instruments regulation.”.

(9) Section 169A of the Act (support of overseas regulator with respect to financial stability) does not apply.

(10) Section 170 of the Act (investigations: general) applies as if—

- (a) in subsection (1) “or (5)” were omitted;
- (b) for subsection (3) there were substituted—

“(3) Subsections (2) and (9) do not apply if the investigator is appointed as a result of section 168(1) and the investigating authority believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated.”;

- (c) subsection (10)(b) were omitted.

(11) Section 172 of the Act (additional power of persons appointed as a result of section 168(1) or (4)) applies as if in the heading and in subsection (4) “or (4)” were omitted.

(12) Section 173 of the Act (powers of persons appointed as a result of section 168(2)) applies as if—

- (a) in the heading for “as a result of section 168(2)” there were substituted “in relation to a recognised investment exchange”;
- (b) in subsection (5) for “subsection (3) of section 168 (as a result of subsection (2) of that section)” there were substituted “section 167 in relation to a recognised investment exchange”.

(13) Section 174 of the Act (admissibility of statements made to investigators) applies as if—

- (a) in subsection (2) “or in proceedings in relation to action to be taken against that person under section 123 to which this section applies” were omitted;
- (b) in subsection (3)(a) for “398” substitute “paragraph 16 of Schedule 1 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017”;
- (c) subsection (3A) were omitted;
- (d) in subsection (4) the words from “or (5),” to the end were omitted.

(14) Section 175 of the Act (information and documents: supplemental provisions) applies as if in subsection (8) “or (5)” were omitted.

(15) Section 176 of the Act (entry of premises under warrant) applies as if—

- (a) in subsection (1) “the Secretary of State,” were omitted;
- (b) in subsection (3)(a) for “an authorised person or an appointed representative” there were substituted “a person in respect of whom a requirement is imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or a non-authorised counterparty in respect of whom a requirement is imposed by Article 28 of the markets in financial instruments regulation”;
- (c) in subsection (10) “or (5)” were omitted;
- (d) in subsection (11)(a) “87C, 87J,” and “165A, 169A” were omitted.