

FINANCIAL SERVICES AND MARKETS ACT 2000¹
PARTS 1, 5, 7, 9B, 15, 28, 29, 30, Sch. 1ZB, Sch. 12

CONSOLIDATED WITH FINANCIAL SERVICES (BANKING REFORM) BILL

Text in bold, with headings underlined shows amendments made by the Financial Services (Banking Reform) Bill (as at introduction into the House of Commons).

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¹ The Financial Services and Markets Act 2000 is shown as if all the amendments made by the Financial Services Act 2012 were in force.

Financial Services and Markets Act 2000

2000 CHAPTER 8

An Act to make provision about the regulation of financial services and markets; to provide for the transfer of certain statutory functions relating to building societies, friendly societies, industrial and provident societies and certain other mutual societies; and for connected purposes. 14th June 2000

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:—

PART 1A

THE REGULATORS

CHAPTER 1

THE FINANCIAL CONDUCT AUTHORITY

The Financial Conduct Authority

1A The Financial Conduct Authority

- (1) The body corporate previously known as the Financial Services Authority is renamed as the Financial Conduct Authority.
- (2) The Financial Conduct Authority is in this Act referred to as “the FCA”.
- (3) The FCA is to have the functions conferred on it by or under this Act.
- (4) The FCA must comply with the requirements as to its constitution set out in Schedule 1ZA.
- (5) Schedule 1ZA also makes provision about the status of the FCA and the exercise of certain of its functions.
- (6) References in this Act or any other enactment to functions conferred on the FCA by or under this Act include references to functions conferred on the FCA by or under—
 - (a) the Insolvency Act 1986,
 - (b) the Banking Act 2009,
 - (c) the Financial Services Act 2012, or
 - (d) a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

The FCA's general duties

1B The FCA's general duties

- (1) In discharging its general functions the FCA must, so far as is reasonably possible, act in a way which—
 - (a) is compatible with its strategic objective, and
 - (b) advances one or more of its operational objectives.

- (2) The FCA’s strategic objective is: ensuring that the relevant markets (see section 1F) function well.
- (3) The FCA’s operational objectives are—
 - (a) the consumer protection objective (see section 1C);
 - (b) the integrity objective (see section 1D);
 - (c) the competition objective (see section 1E).
- (4) The FCA must, so far as is compatible with acting in a way which advances the consumer protection objective or the integrity objective, discharge its general functions in a way which promotes effective competition in the interests of consumers.
- (5) In discharging its general functions the FCA must have regard to—
 - (a) the regulatory principles in section 3B, and
 - (b) the importance of taking action intended to minimise the extent to which it is possible for a business carried on—
 - (i) by an authorised person or a recognised investment exchange, or
 - (ii) in contravention of the general prohibition,to be used for a purpose connected with financial crime.
- (6) For the purposes of this Chapter, the FCA’s general functions are—
 - (a) its function of making rules under this Act (considered as a whole),
 - (b) its function of preparing and issuing codes under this Act (considered as a whole),
 - (c) its functions in relation to the giving of general guidance under this Act (considered as a whole), and
 - (d) its function of determining the general policy and principles by reference to which it performs particular functions under this Act.
- (7) Except to the extent that an order under section 50 of the Financial Services Act 2012 (orders relating to mutual societies functions) so provides, the FCA’s general functions do not include functions that are transferred functions within the meaning of section 52 of that Act.
- (8) “General guidance” has the meaning given in section 139B(5).

1C The consumer protection objective

- (1) The consumer protection objective is: securing an appropriate degree of protection for consumers.
- (2) In considering what degree of protection for consumers may be appropriate, the FCA must have regard to—
 - (a) the differing degrees of risk involved in different kinds of investment or other transaction;
 - (b) the differing degrees of experience and expertise that different consumers may have;
 - (c) the needs that consumers may have for the timely provision of information and advice that is accurate and fit for purpose;
 - (d) the general principle that consumers should take responsibility for their decisions;

- (e) the general principle that those providing regulated financial services should be expected to provide consumers with a level of care that is appropriate having regard to the degree of risk involved in relation to the investment or other transaction and the capabilities of the consumers in question;
- (f) the differing expectations that consumers may have in relation to different kinds of investment or other transaction;
- (g) any information which the consumer financial education body has provided to the FCA in the exercise of the consumer financial education function;
- (h) any information which the scheme operator of the ombudsman scheme has provided to the FCA pursuant to section 232A.

1D The integrity objective

- (1) The integrity objective is: protecting and enhancing the integrity of the UK financial system.
- (2) The “integrity” of the UK financial system includes—
 - (a) its soundness, stability and resilience,
 - (b) its not being used for a purpose connected with financial crime,
 - (c) its not being affected by behaviour that amounts to market abuse,
 - (d) the orderly operation of the financial markets, and
 - (e) the transparency of the price formation process in those markets.

1E The competition objective

- (1) The competition objective is: promoting effective competition in the interests of consumers in the markets for—
 - (a) regulated financial services, or
 - (b) services provided by a recognised investment exchange in carrying on regulated activities in respect of which it is by virtue of section 285(2) exempt from the general prohibition.
- (2) The matters to which the FCA may have regard in considering the effectiveness of competition in the market for any services mentioned in subsection (1) include—
 - (a) the needs of different consumers who use or may use those services, including their need for information that enables them to make informed choices,
 - (b) the ease with which consumers who may wish to use those services, including consumers in areas affected by social or economic deprivation, can access them,
 - (c) the ease with which consumers who obtain those services can change the person from whom they obtain them,
 - (d) the ease with which new entrants can enter the market, and
 - (e) how far competition is encouraging innovation.

Interpretation of terms used in relation to FCA’s general duties

1F Meaning of “relevant markets” in strategic objective

In section 1B(2) “the relevant markets” means—

- (a) the financial markets,
- (b) the markets for regulated financial services (see section 1H(2)), and
- (c) the markets for services that are provided by persons other than authorised persons in carrying on regulated activities but are provided without contravening the general prohibition.

1G Meaning of “consumer”

- (1) In sections 1B to 1E “consumers” means persons who—
 - (a) use, have used or may use—
 - (i) regulated financial services, or
 - (ii) services that are provided by persons other than authorised persons but are provided in carrying on regulated activities,
 - (b) have relevant rights or interests in relation to any of those services,
 - (c) have invested, or may invest, in financial instruments, or
 - (d) have relevant rights or interests in relation to financial instruments.
- (2) A person (“P”) has a “relevant right or interest” in relation to any services within subsection (1)(a) if P has a right or interest—
 - (a) which is derived from, or is otherwise attributable to, the use of the services by others, or
 - (b) which may be adversely affected by the use of the services by persons acting on P’s behalf or in a fiduciary capacity in relation to P.
- (3) If a person is providing a service within subsection (1)(a) as trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or may use the service.
- (4) A person who deals with another person (“B”) in the course of B providing a service within subsection (1)(a) is to be treated as using the service.
- (5) A person (“P”) has a “relevant right or interest” in relation to any financial instrument if P has—
 - (a) a right or interest which is derived from, or is otherwise attributable to, investment in the instrument by others, or
 - (b) a right or interest which may be adversely affected by the investment in the instrument by persons acting on P’s behalf or in a fiduciary capacity in relation to P.

1H Further interpretative provisions for sections 1B to 1G

- (1) The following provisions have effect for the interpretation of sections 1B to 1G.
- (2) “Regulated financial services” means services provided—
 - (a) by authorised persons in carrying on regulated activities;
 - (b) by authorised persons in carrying on a consumer credit business in connection with the accepting of deposits;
 - (c) by authorised persons in communicating, or approving the communication by others of, invitations to engage in investment activity;

- (d) by authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services;
 - (e) by persons acting as appointed representatives;
 - (f) by payment service providers in providing payment services;
 - (g) by electronic money issuers in issuing electronic money;
 - (h) by sponsors to issuers of securities;
 - (i) by primary information providers to persons who issue financial instruments.
- (3) “Financial crime” includes any offence involving—
- (a) fraud or dishonesty,
 - (b) misconduct in, or misuse of information relating to, a financial market,
 - (c) handling the proceeds of crime, or
 - (d) the financing of terrorism.
- (4) “Offence” includes an act or omission which would be an offence if it had taken place in the United Kingdom.
- (5) “Issuer”, except in the expression “electronic money issuer”, has the meaning given in section 102A(6).
- (6) “Financial instrument” has the meaning given in section 102A(4).
- (7) “Securities” has the meaning given in section 102A(2).
- (8) In this section—
- “accepting”, in relation to deposits, includes agreeing to accept;
- “consumer credit business” has the same meaning as in the Consumer Credit Act 1974;
- “credit institution” means—
- (a) a credit institution authorised under the banking consolidation directive, or
 - (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA State;
- “electronic money” has the same meaning as in the Electronic Money Regulations 2011;
- “electronic money issuer” means a person who is an electronic money issuer as defined in regulation 2(1) of the Electronic Money Regulations 2011 other than a person falling within paragraph (f), (g) or (j) of the definition;
- “engage in investment activity” has the meaning given in section 21;
- “financial instrument” has the meaning given in section 102A(4);
- “payment services” has the same meaning as in the Payment Services Regulations 2009;
- “payment service provider” means a person who is a payment service provider as defined in regulation 2(1) of the Payment Services Regulations 2009 other than a person falling within paragraph (g) or (h) of the definition;

“primary information provider” has the meaning given in section 89P(2);

“relevant ancillary service” means any service of a kind mentioned in Section B of Annex I to the markets in financial instruments directive the provision of which does not involve the carrying on of a regulated activity;

“sponsor” has the meaning given in section 88(2).

1I Meaning of “the UK financial system”

In this Act “the UK financial system” means the financial system operating in the United Kingdom and includes—

- (a) financial markets and exchanges,
- (b) regulated activities, and
- (c) other activities connected with financial markets and exchanges.

1IA Modifications applying if core activity not regulated by PRA

(1) If and so long as any regulated activity is a core activity (see section 142B) without also being a PRA-regulated activity (see section 22A), the provisions of this Chapter are to have effect subject to the following modifications.

(2) Section 1B is to have effect as if—

(a) in subsection (3) after paragraph (c) there were inserted—

“(d) in relation to the matters mentioned in section 1EA(2), the continuity objective (see section 1EA).”, and

(b) in subsection (4), for “or the integrity objective,” there were substituted “, the integrity objective or (in relation to the matters mentioned in section 1EA(2)) the continuity objective,”.

(3) After section 1E there is to be taken to be inserted—

“1EA Continuity objective

(1) In relation to the matters mentioned in subsection (2), the continuity objective is: protecting the continuity of the provision in the United Kingdom of core services (see section 142C).

(2) Those matters are—

(a) Part 9B (ring-fencing);

(b) ring-fenced bodies (see section 142A);

(c) any body corporate incorporated in the United Kingdom that has a ring-fenced body as a member of its group;

(d) applications under Part 4A which, if granted, would result, or would be capable of resulting, in a person becoming a ring-fenced body.

(3) The FCA’s continuity objective is to be advanced primarily by—

(a) seeking to ensure that the business of ring-fenced bodies is carried on in a way that avoids any adverse effect on the continuity of the provision in the United Kingdom of core services,

- (b) seeking to ensure that the business of ring-fenced bodies is protected from risks (arising in the United Kingdom or elsewhere) that could adversely affect the continuity of the provision in the United Kingdom of core services, and
- (c) seeking to minimise the risk that the failure of a ring-fenced body could adversely affect the continuity of the provision in the United Kingdom of core services.”

Power to amend objectives

1J Power to amend objectives

The Treasury may by order amend any of the following provisions—

- (a) in section 1E(1), paragraphs (a) and (b),
- (b) section 1G, and
- (c) section 1H(2) and (5) to (8).

Guidance about objectives

1K Guidance about objectives

- (1) The general guidance given by the FCA under section 139A must include guidance about how it intends to advance its operational objectives in discharging its general functions in relation to different categories of authorised person or regulated activity.
- (2) Before giving or altering any guidance complying with subsection (1), the FCA must consult the PRA.

Supervision, monitoring and enforcement

1L Supervision, monitoring and enforcement

- (1) The FCA must maintain arrangements for supervising authorised persons.
- (2) The FCA must maintain arrangements designed to enable it to determine whether persons other than authorised persons are complying—
 - (a) with requirements imposed on them by or under this Act, in cases where the FCA is the appropriate regulator for the purposes of Part 14 (disciplinary measures), or
 - (b) with requirements imposed on them by any qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
- (3) The FCA must also maintain arrangements for enforcing compliance by persons other than authorised persons with relevant requirements, within the meaning of Part 14, in cases where the FCA is the appropriate regulator for the purposes of any provision of that Part.

Arrangements for consulting practitioners and consumers

1M The FCA’s general duty to consult

The FCA must make and maintain effective arrangements for consulting practitioners and consumers on the extent to which its general policies and practices are consistent with its general duties under section 1B.

1N The FCA Practitioner Panel

- (1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as “the FCA Practitioner Panel”) to represent the interests of practitioners.

(2) The FCA must appoint one of the members of the Practitioner Panel to be its chair.

(3) The Treasury's approval is required for the appointment or dismissal of the chair.

(4) The FCA must appoint to the FCA Practitioner Panel such—

(a) persons representing authorised persons, and

(b) persons representing recognised investment exchanges,

as it considers appropriate.

(5) The FCA may appoint to the FCA Practitioner Panel such other persons as it considers appropriate.

10 The Smaller Business Practitioner Panel

(1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as "the Smaller Business Practitioner Panel") to represent the interests of eligible practitioners.

(2) "Eligible practitioners" means authorised persons of a description specified in a statement maintained by the FCA.

(3) The FCA must appoint one of the members of the Smaller Business Practitioner Panel to be its chair.

(4) The Treasury's approval is required for the appointment or dismissal of the chair.

(5) The FCA must appoint to the Smaller Business Practitioner Panel such—

(a) individuals who are eligible practitioners, and

(b) persons representing eligible practitioners,

as it considers appropriate.

(6) The FCA may appoint to the Smaller Business Practitioner Panel such other persons as it considers appropriate.

(7) In making the appointments, the FCA must have regard to the desirability of ensuring the representation of eligible practitioners carrying on a range of regulated activities.

(8) The FCA may revise the statement maintained under subsection (2).

(9) The FCA must—

(a) give the Treasury a copy of the statement or revised statement without delay, and

(b) publish the statement as for the time being in force in such manner as it thinks fit.

1P The Markets Practitioner Panel

(1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as "the Markets Practitioner Panel") to represent the interests of practitioners who are likely to be affected by the exercise by the FCA of its functions relating to markets, including its functions under Parts 6, 8A and 18.

(2) The FCA must appoint one of the members of the Markets Practitioner Panel to be its chair.

(3) The Treasury's approval is required for the appointment or dismissal of the chair.

- (4) The FCA must appoint to the Markets Practitioner Panel such persons to represent the interests of persons within subsection (5) as it considers appropriate.
- (5) The persons within this subsection are—
 - (a) authorised persons,
 - (b) persons who issue financial instruments,
 - (c) sponsors, as defined in section 88(2),
 - (d) recognised investment exchanges, and
 - (e) primary information providers, as defined in section 89P(2).
- (6) The FCA may appoint to the Markets Practitioner Panel such other persons as it considers appropriate.

1Q The Consumer Panel

- (1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as “the Consumer Panel”) to represent the interests of consumers.
- (2) The FCA must appoint one of the members of the Consumer Panel to be its chair.
- (3) The Treasury’s approval is required for the appointment or dismissal of the chair.
- (4) The FCA may appoint to the Consumer Panel such consumers, or persons representing the interests of consumers, as it considers appropriate.
- (5) The FCA must secure that membership of the Consumer Panel is such as to give a fair degree of representation to those who are using, or are or may be contemplating using, services otherwise than in connection with businesses carried on by them.
- (6) Sections 425A and 425B (meaning of “consumers”) apply for the purposes of this section, but the references to consumers in this section do not include consumers who are authorised persons.

1R Duty to consider representations made by the Panels

- (1) The FCA must consider representations that are made to it in accordance with arrangements made under section 1M.
- (2) The FCA must from time to time publish in such manner as it thinks fit responses to the representations.

Reviews

1S Reviews

- (1) The Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the FCA has used its resources in discharging its functions.
- (2) A review may be limited by the Treasury to such functions of the FCA (however described) as the Treasury may specify in appointing the person to conduct it.
- (3) A review is not to be concerned with the merits of the FCA’s general policy or principles in complying with its general duties under section 1B(1) and (4).
- (4) On completion of a review, the person conducting it must make a written report to the Treasury—
 - (a) setting out the result of the review, and

- (b) making such recommendations (if any) as the person considers appropriate.
- (5) A copy of the report must be—
 - (a) laid before Parliament, and
 - (b) published in such manner as the Treasury consider appropriate.
- (6) Any expenses reasonably incurred in the conduct of the review are to be met by the Treasury out of money provided by Parliament.
- (7) “Independent” means appearing to the Treasury to be independent of the FCA.

1T Right to obtain documents and information

- (1) A person conducting a review under section 1S—
 - (a) has a right of access at any reasonable time to all such documents as the person may reasonably require for the purposes of the review, and
 - (b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.
- (2) Subsection (1) applies only to documents in the custody of or under the control of the FCA.
- (3) An obligation imposed on a person as a result of the exercise of the powers conferred by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

CHAPTER 2

THE PRUDENTIAL REGULATION AUTHORITY

The Prudential Regulation Authority

2A The Prudential Regulation Authority

- (1) The body corporate originally incorporated as the Prudential Regulation Authority Limited is renamed as the Prudential Regulation Authority.
- (2) The Prudential Regulation Authority is in this Act referred to as “the PRA”.
- (3) The PRA is to have the functions conferred on it by or under this Act.
- (4) The PRA must comply with the requirements as to its constitution set out in Schedule 1ZB.
- (5) Schedule 1ZB also confers on the Bank of England functions in relation to the PRA and makes provision about the status of the PRA and the exercise of certain of its functions.
- (6) References in this Act or any other enactment to functions conferred on the PRA by or under this Act include references to functions conferred on the PRA by or under—
 - (a) the Insolvency Act 1986,
 - (b) the Banking Act 2009,
 - (c) the Financial Services Act 2012, or
 - (d) a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

The PRA's general duties

2B The PRA's general objective

- (1) In discharging its general functions the PRA must, so far as is reasonably possible, act in a way which advances its general objective.
- (2) The PRA's general objective is: promoting the safety and soundness of PRA-authorised persons.
- (3) That objective is to be advanced primarily by—
 - (a) seeking to ensure that the business of PRA-authorised persons is carried on in a way which avoids any adverse effect on the stability of the UK financial system, ~~and~~
 - (b) seeking to minimise the adverse effect that the failure of a PRA-authorised person could be expected to have on the stability of the UK financial system, **and**
 - (c) **discharging its general functions in relation to the matters mentioned in subsection 4A in a way that seeks to –**
 - (i) **ensure that the business of ring-fenced bodies is carried on in a way that avoids any adverse effect on the continuity of the provision in the United Kingdom of core services,**
 - (ii) **ensure that the business of ring-fenced bodies is protected from risks (arising in the United Kingdom or elsewhere) that could adversely affect the continuity of the provision in the United Kingdom of core services, and**
 - (iii) **minimise the risk that the failure of a ring-fenced body could affect the continuity of the provision of core services.**
- (4) The adverse effects mentioned in ~~subsection (3)~~ **subsection (3) (a) and (b)** may, in particular, result from the disruption of the continuity of financial services.

(4A) The matters referred to in subsection (3)(c) are—

- (a) Part 9B (ring-fencing);**
 - (b) ring-fenced bodies (see section 142A);**
 - (c) any body corporate incorporated in the United Kingdom that has a ring-fenced body as a member of its group;**
 - (d) applications under Part 4A which, if granted, would result, or would be capable of resulting, in a person becoming a ring-fenced body.**
- (5) In this Act “PRA-authorised person” means an authorised person who has permission—
- (a) given under Part 4A, or
 - (b) resulting from any other provision of this Act,

to carry on regulated activities that consist of or include one or more PRA-regulated activities (see section 22A).

- (6) Subsection (1) is subject to sections 2C and 2D.

2C Insurance objective

- (1) In discharging its general functions so far as relating to a PRA-regulated activity relating to the effecting or carrying out of contracts of insurance or PRA-authorized persons carrying on that activity, the PRA must, so far as is reasonably possible, act in a way—
 - (a) which is compatible with its general objective and its insurance objective, and
 - (b) which the PRA considers most appropriate for the purpose of advancing those objectives.
- (2) The PRA's insurance objective is: contributing to the securing of an appropriate degree of protection for those who are or may become policyholders.
- (3) This section applies only if the effecting or carrying out of contracts of insurance as principal is to any extent a PRA-regulated activity.

2D Power to provide for additional objectives

- (1) Subsection (2) applies to an order under section 22A which—
 - (a) is made at any time after the coming into force of the first order under that section, and
 - (b) contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order is that an activity would become a PRA-regulated activity.
- (2) An order to which this subsection applies may specify an additional objective ("the specified objective") in relation to specified activities that become PRA-regulated activities by virtue of the order ("the additional activities").
- (3) In discharging its general functions so far as relating to the additional activities or PRA-authorized persons carrying on those activities, the PRA must, so far as is reasonably possible, act in a way—
 - (a) which is compatible with its general objective and the specified objective, and
 - (b) which the PRA considers most appropriate for the purpose of advancing those objectives.

2E Strategy

- (1) The PRA must—
 - (a) determine its strategy in relation to its objectives, and
 - (b) from time to time review, and if necessary revise, the strategy.
- (2) Before determining or revising its strategy, the PRA must consult the court of directors of the Bank of England about a draft of the strategy or of the revisions.
- (3) The PRA must determine its strategy within 12 months of the coming into force of this section.
- (4) The PRA must carry out and complete a review of its strategy before the end of each relevant period.
- (5) The relevant period is 12 months beginning with the date on which the previous review was completed, except that in the case of the first review the relevant period is the period of 12 months beginning with the date on which the strategy was determined under subsection (3).
- (6) The PRA must publish its strategy.
- (7) If the strategy is revised the PRA must publish the revised strategy.
- (8) Publication under subsection (6) or (7) is to be in such manner as the PRA thinks fit.

2F Interpretation of references to objectives

In this Act, a reference, in relation to any function of the PRA, to the objectives of the PRA is a reference to its general objective but—

- (a) so far as the function is exercisable in relation to the activity of effecting or carrying out contracts of insurance, or PRA-authorized persons carrying on that activity, is a reference to its general objective and its insurance objective;
- (b) so far as the function is exercisable in relation to an activity to which an objective specified by order by virtue of section 2D(2) relates, or PRA-authorized persons carrying on that activity, is a reference to its general objective and the objective specified by the order.

2G Limit on effect of sections 2B to 2D

Nothing in section 2B to 2D is to be regarded as requiring the PRA to ensure that no PRA-authorized person fails.

2H Duty to have regard to regulatory principles

- (2) In discharging its general functions, the PRA must also have regard to—
 - (a) the regulatory principles in section 3B, and
 - (b) the need to minimise any adverse effect on competition in the relevant markets that may result from the manner in which the PRA discharges those functions.
- (2) In subsection (1)(b) “the relevant markets” means the markets for services provided by PRA-authorized persons in carrying out regulated activities.

2I Guidance about objectives

- (1) The PRA must give, and from time to time review, guidance about how it intends to advance its objectives in discharging its general functions in relation to different categories of PRA-authorized person or PRA-regulated activity.
- (2) Before giving or altering any guidance complying with subsection (1), the PRA must consult the FCA.
- (3) The PRA must publish the guidance as for the time being in force.

2J Interpretation of Chapter 2

- (1) For the purposes of this Chapter, the PRA’s general functions are—
 - (a) its function of making rules under this Act (considered as a whole),
 - (b) its function of preparing and issuing codes under this Act (considered as a whole), and
 - (c) its function of determining the general policy and principles by reference to which it performs particular functions under this Act.
- (2) Except to the extent that an order under section 50 of the Financial Services Act 2012 (orders relating to mutual societies functions) so provides, the PRA’s general functions do not include functions that are transferred functions within the meaning of section 52 of that Act.
- (3) For the purposes of this Chapter, the cases in which a PRA-authorized person (“P”) is to be regarded as failing include those where—
 - (a) P enters insolvency,
 - (b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to P, or

(c) P falls to be taken for the purposes of the compensation scheme to be unable, or likely to be unable, to satisfy claims against P.

(4) In subsection (3)(a) “insolvency” includes—

- (a) bankruptcy,
- (b) liquidation,
- (c) bank insolvency,
- (d) administration,
- (e) bank administration,
- (f) receivership,
- (g) a composition between P and P’s creditors, and
- (h) a scheme of arrangement of P’s affairs.

Supervision

2K Arrangements for supervision of PRA-authorised persons

The PRA must maintain arrangements for supervising PRA-authorised persons.

Arrangements for consulting practitioners

2L The PRA’s general duty to consult

(1) The PRA must make and maintain effective arrangements for consulting PRA-authorised persons or, where appropriate, persons appearing to the PRA to represent the interests of such persons on the extent to which its general policies and practices are consistent with its general duties under sections 2B to 2H.

2M The PRA Practitioner Panel

- (1) Arrangements under section 2L must include the establishment and maintenance of a panel of persons (to be known as “the PRA Practitioner Panel”) to represent the interests of practitioners.
- (2) The PRA must appoint one of the members of the PRA Practitioner Panel to be its chair.
- (3) The Treasury’s approval is required for the appointment or dismissal of the chair.
- (4) The PRA must appoint to the PRA Practitioner Panel such persons representing PRA-authorised persons as it considers appropriate.
- (5) The PRA may appoint to the PRA Practitioner Panel such other persons as it considers appropriate.

2N Duty to consider representations

- (1) The PRA must consider representations that are made to it in accordance with arrangements made under section 2L.
- (2) The PRA must from time to time publish in such manner as it thinks fit responses to the representations.

Reviews

2O Reviews

- (1) The Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the PRA has used its resources in discharging its functions.
- (2) A review may be limited by the Treasury to such functions of the PRA (however described) as the Treasury may specify in appointing the person to conduct it.
- (3) A review is not to be concerned with the merits of the PRA's general policy or principles in pursuing the PRA's objectives.
- (4) On completion of a review, the person conducting it must make a written report to the Treasury—
 - (a) setting out the result of the review, and
 - (b) making such recommendations (if any) as the person considers appropriate.
- (5) A copy of the report must be—
 - (a) laid before Parliament, and
 - (b) published in such manner as the Treasury consider appropriate.
- (6) Any expenses reasonably incurred in the conduct of the review are to be met by the Treasury out of money provided by Parliament.
- (7) "Independent" means appearing to the Treasury to be independent of the PRA.

2P Right to obtain documents and information

- (1) A person conducting a review under section 2O—
 - (a) has a right of access at any reasonable time to all such documents as the person may reasonably require for the purposes of the review, and
 - (b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.
- (2) Subsection (1) applies only to documents in the custody of or under the control of the PRA.
- (3) An obligation imposed on a person as a result of the exercise of the powers conferred by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

CHAPTER 3

FURTHER PROVISIONS RELATING TO FCA AND PRA

Introductory

3A Meaning of "regulator"

- (1) This section has effect for the interpretation of this Act.
- (2) The FCA and the PRA are the "regulators", and references to a regulator are to be read accordingly.
- (3) Subsection (2) does not affect—
 - (a) the meaning of the following expressions—

"home state regulator";

“host state regulator”;

“overseas regulator”, or

- (b) the meaning of “the appropriate regulator” in Part 18 (recognised investment exchanges and clearing houses).

Regulatory principles

3B Regulatory principles to be applied by both regulators

- (1) In relation to the regulators, the regulatory principles referred to in section 1B(5)(a) and 2H(1)(a) are as follows—
- (a) the need to use the resources of each regulator in the most efficient and economic way;
 - (b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
 - (c) the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term;
 - (d) the general principle that consumers should take responsibility for their decisions;
 - (e) the responsibilities of the senior management of persons subject to requirements imposed by or under this Act, including those affecting consumers, in relation to compliance with those requirements;
 - (f) the desirability where appropriate of each regulator exercising the functions in a way that recognises the differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under this Act;
 - (g) the desirability in appropriate cases of each regulator publishing information relating to persons on whom requirements are imposed by or under this Act, or requiring such persons to publish information, as a means of contributing to the advancement by each regulator of its objectives;
 - (h) the principle that the regulators should exercise their functions as transparently as possible.
- (2) “Consumer” has the meaning given in section 1G.
- (3) “Objectives”, in relation to the FCA, means operational objectives.
- (4) The Treasury may by order amend subsection (2).

Corporate governance

3C Duty to follow principles of good governance

In managing its affairs, each regulator must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

Relationship between FCA and PRA

3D Duty of FCA and PRA to ensure co-ordinated exercise of functions

- (1) The regulators must co-ordinate the exercise of their respective functions conferred by or under this Act with a view to ensuring—

- (a) that each regulator consults the other regulator (where not otherwise required to do so) in connection with any proposed exercise of a function in a way that may have a material adverse effect on the advancement by the other regulator of any of its objectives;
 - (b) that where appropriate each regulator obtains information and advice from the other regulator in connection with the exercise of its functions in relation to matters of common regulatory interest in cases where the other regulator may be expected to have relevant information or relevant expertise;
 - (c) that where either regulator exercises functions in relation to matters of common regulatory interest, both regulators comply with their respective duties under section 1B(5)(a) or 2H(1) (a), so far as relating to the regulatory principles in section 3B(1)(a) and (b).
- (2) The duty in subsection (1) applies only to the extent that compliance with the duty—
- (a) is compatible with the advancement by each regulator of any of its objectives, and
 - (b) does not impose a burden on the regulators that is disproportionate to the benefits of compliance.
- (3) A function conferred on either regulator by or under this Act relates to matters of common regulatory interest if—
- (a) the other regulator exercises similar or related functions in relation to the same persons,
 - (b) the other regulator exercises functions which relate to different persons but relate to similar subject-matter, or
 - (c) its exercise could affect the advancement by the other regulator of any of its objectives.
- (4) “Objectives”, in relation to the FCA, means operational objectives.

3E Memorandum of understanding

- (1) The regulators must prepare and maintain a memorandum which describes in general terms—
- (a) the role of each regulator in relation to the exercise of functions conferred by or under this Act which relate to matters of common regulatory interest, and
 - (b) how the regulators intend to comply with section 3D in relation to the exercise of such functions.
- (2) The memorandum may in particular contain provisions about how the regulators intend to comply with section 3D in relation to—
- (a) applications for Part 4A permission;
 - (b) the variation of permission;
 - (c) the imposition of requirements;
 - (d) the obtaining and disclosure of information;
 - (e) cases where a PRA-authorized person is a member of a group whose other members include one or more other authorised persons (whether or not PRA-authorized persons);
 - (f) functions under Schedule 3 (EEA passport rights) and Schedule 4 (Treaty rights);
 - (g) the making of rules;
 - (h) directions under section 138A (modification or waiver of rules);

- (i) powers to appoint competent persons under Part 11 (information gathering and investigations) to conduct investigations on their behalf;
 - (j) functions under Part 12 (control over authorised persons);
 - (k) functions under Part 13 (incoming firms: intervention by regulator);
 - (l) functions under Part 19 (Lloyd's);
 - (m) functions under section 347 (record of authorised persons etc.);
 - (n) functions under Part 24 (insolvency);
 - (o) fees payable to either regulator.
- (3) The memorandum must contain provision about the co-ordination by the regulators of—
- (a) the exercise of their functions relating to membership of, and their relations with, the European Supervisory Authorities (namely, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority),
 - (b) their relations with regulatory bodies outside the United Kingdom, and
 - (c) the exercise of their functions in relation to the compensation scheme.
- (4) The regulators must review the memorandum at least once in each calendar year.
- (5) The regulators must give the Treasury a copy of the memorandum and any revised memorandum.
- (6) The Treasury must lay before Parliament a copy of any document received by them under this section.
- (7) The regulators must ensure that the memorandum as currently in force is published in the way appearing to them to be best calculated to bring it to the attention of the public.
- (8) The memorandum need not relate to any aspect of compliance with section 3D if the regulators consider—
- (a) that publication of information about that aspect would be against the public interest, or
 - (b) that that aspect is a technical or operational matter not affecting the public.
- (9) The reference in subsection (1)(a) to matters of common regulatory interest is to be read in accordance with section 3D(3).

3F With-profits insurance policies

- (1) The regulators must prepare and maintain a memorandum which describes in general terms—
- (a) the role of each regulator in relation to the exercise of functions conferred by or under this Act so far as they relate to with-profits insurers, and
 - (b) how the regulators intend to comply with section 3D in relation to the exercise of those functions so far as they relate to the effecting or carrying out of with-profits policies by with-profits insurers.
- (2) The memorandum required by this section may be combined with the memorandum required by section 3E.
- (3) If the memorandum required by this section is contained in a separate document, the PRA and the FCA must publish the memorandum as currently in force in such manner as they think fit.

- (4) Subsections (1) to (3) apply only if the effecting or carrying out of with-profits policies is a PRA-regulated activity.
- (5) For the purposes of this section—
 - (a) a “with-profits policy” is a contract of insurance under which the policyholder is eligible to receive a financial benefit at the discretion of the insurer;
 - (b) a “with-profits insurer” is a PRA-authorised person who has a part 4A permission, or permission resulting from any other provision of this Act, relating to the effecting or carrying out of with-profits insurance policies (whether or not the permission also relates to contracts of insurance of other kinds).
- (6) The Treasury may by order amend the definition of “with-profits policy” applying for the purposes of this section.

3G Power to establish boundary between FCA and PRA responsibilities

- (1) The Treasury may by order specify matters that, in relation to the exercise by either regulator of its functions relating to PRA-authorised persons, are to be, or are to be primarily, the responsibility of one regulator rather than the other.
- (2) The order may—
 - (a) provide that one regulator is or is not to have regard to specified matters when exercising specified functions;
 - (b) require one regulator to consult the other.

3H Parliamentary control of orders under section 3G

- (1) No order may be made under section 3G unless—
 - (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
 - (b) subsection (3) applies.
- (2) Subsection (3) applies if an order under section 3G contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (3) Where this subsection applies the order—
 - (a) must be laid before Parliament after being made, and
 - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).
- (4) The “relevant period” is a period of 28 days beginning with the day on which the order is made.
- (5) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

Power of PRA to restrain proposed action by FCA

3I Power of PRA to require FCA to refrain from specified action

- (1) Where the first, second and third conditions are met, the PRA may give a direction under this section to the FCA.

- (2) The first condition is that the FCA is proposing—
- (a) to exercise any of its regulatory powers in relation to PRA-authorised persons generally, a class of PRA-authorised persons or a particular PRA-authorised person, or
 - (b) to exercise any of its insolvency powers in relation to—
 - (i) a PRA-authorised person,
 - (ii) an appointed representative whose principal, or one of whose principals, is a PRA-authorised person, or
 - (iii) a person who is carrying on a PRA-regulated activity in contravention of the general prohibition.
- (3) In subsection (2)—
- (a) “regulatory powers”, in relation to the FCA, means its powers in relation to the regulation of authorised persons, other than its powers in relation to consent for the purposes of section 55F or 55I or its powers under Part 24;
 - (b) “insolvency powers”, in relation to the FCA, means its powers under Part 24.
- (4) The second condition is that the PRA is of the opinion that the exercise of the power in the manner proposed may—
- (a) threaten the stability of the UK financial system, ~~or~~
 - (b) result in the failure of a PRA-authorised person in a way that would adversely affect the UK financial system **or**
 - (c) **threaten the continuity of core services provided in the United Kingdom**
- (5) The third condition is that the PRA is of the opinion that the giving of the direction is necessary in order to avoid the possible consequence falling within subsection (4).
- (6) A direction under this section is a direction requiring the FCA not to exercise the power or not to exercise it in a specified manner.
- (7) The direction may be expressed to have effect during a specified period or until revoked.
- (8) The FCA is not required to comply with a direction under this section if or to the extent that in the opinion of the FCA compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.
- (9) The reference in subsection (4)(b) to the “failure” of a PRA-authorised person is to be read in accordance with section 2J(3) and (4).

3J Power of PRA in relation to with-profits policies

- (1) Where the first, second and third conditions are met, the PRA may give a direction under this section to the FCA.
- (2) The first condition is that the FCA is proposing to exercise any of its regulatory powers in relation to with-profits insurers, a class of with-profits insurers or a particular with-profit insurer.
- (3) In subsection (2) “regulatory powers”, in relation to the FCA, means its powers in relation to the regulation of authorised persons, including its powers under Part 24 (insolvency) but not its powers in relation to consent for the purposes of section 55F or 55I.

- (4) The second condition is that the proposed exercise of the power relates to the provision of financial benefits under with-profits policies at the discretion of the insurer, or affects or may affect the amount, timing or distribution of financial benefits that are so provided or the entitlement to future benefits that are so provided.
- (5) The third condition is that the PRA is of the opinion that the giving of the direction is desirable in order to advance the PRAs general objective or its insurance objective.
- (6) A direction under this section is a direction requiring the FCA not to exercise the power or not to exercise it in a specified manner.
- (7) The direction may be expressed to have effect during a specified period or until revoked.
- (8) The FCA is not required to comply with a direction under this section if or to the extent that in the opinion of the FCA compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.
- (9) Subsections (1) to (8) apply only if the effecting or carrying out of with-profits policies is a PRA-regulated activity.
- (10) In this section “with-profits insurer” and “with-profits policy” have the same meaning as they have for the purposes of section 3F.

3K Revocation of directions under section 3I or 3J

- (1) The PRA may at any time by notice to the FCA revoke a direction under section 3I or 3J.
- (2) The revocation of a direction under section 3I or 3J does not affect the validity of anything previously done in accordance with it.

3L Further provisions about directions under section 3I or 3J

- (1) Before giving a direction under section 3I or 3J, the PRA must consult the FCA.
- (2) A direction under section 3I or 3J must be given or confirmed in writing, and must be accompanied by a statement of the reasons for giving it.
- (3) A notice revoking a direction under section 3I or 3J must be given or confirmed in writing.
- (4) The PRA must—
 - (a) publish the direction and statement, or the notice, in such manner as it thinks fit, and
 - (b) where the direction or notice relates to a particular authorised person or a particular with-profits insurer, give a copy of the direction and statement, or the notice, to that person.
- (5) The PRA must give the Treasury a copy of—
 - (a) a direction under section 3I;
 - (b) a statement relating to such a direction;
 - (c) a notice revoking such a direction.
- (6) The Treasury must lay before Parliament any document received by them under subsection (5).
- (7) Subsection (4) does not apply in a case where the PRA, after consulting the Treasury, decides that compliance with that subsection would be against the public interest, and at any time when this subsection excludes the application of subsection (4) in relation to a direction under section 3I, subsection (6) also does not apply.

- (8) Where the PRA decides that compliance with subsection (4) would be against the public interest, it must from time to time review that decision and if it subsequently decides that compliance is no longer against the public interest it must—
- (a) comply with that subsection, and
 - (b) in the case of a direction under section 3I, notify the Treasury for the purposes of subsection (6).

Directions relating to consolidated supervision

3M Directions relating to consolidated supervision of groups

- (1) This section applies where one of the regulators (“the supervising regulator”), but not the other, is the competent authority for the purpose of consolidated supervision that is required in relation to some or all of the members of a group (“the relevant group”) in pursuance of any of the relevant directives.
- (2) “Consolidated supervision” includes supplementary supervision.
- (3) The “relevant directives” are—
- (a) the banking consolidation directive;
 - (b) Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate;
 - (c) Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions;
 - (d) Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).
- (4) The supervising regulator may, if it considers it necessary to do so for the effective consolidated supervision of the relevant group, give the other regulator a direction under this section.
- (5) A direction under this section is a direction requiring the other regulator to exercise, or not to exercise, a relevant function in a specified manner in relation to authorised persons who are members of the relevant group.
- (6) The direction may relate to members of the relevant group other than the members in respect of which consolidated supervision is required.
- (7) A “relevant function”, in relation to either regulator, is a function conferred by or under this Act which relates to the regulation of authorised persons, but does not include—
- (a) the regulator’s function of making rules under this Act;
 - (b) its function of preparing and issuing codes under this Act;
 - (c) its function of determining the general policy and principles by reference to which it performs particular functions;
 - (d) the FCA’s functions in relation to the giving of general guidance;
 - (e) the PRA’s functions in relation to the giving of guidance under section 2I;
 - (f) the FCA’s functions in relation to consent for the purposes of section 55F or 55I.
- (8) The direction may not require the regulator to which it is given (“the directed regulator”) to do anything that it has no power to do, but the direction is relevant to the exercise of any discretion conferred on the directed regulator.

- (9) The directed regulator must comply with the direction as soon as practicable, but this is subject to subsections (10) and (11).
- (10) The directed regulator is not required to comply with a direction under this section if or to the extent that in its opinion compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.
- (11) Directions given by the FCA under this section are subject to any directions given to the FCA under section 3I or 3J.

3N Revocation of directions under section 3M

- (1) The supervising regulator may at any time by notice to the other regulator revoke a direction under section 3M.
- (2) The revocation of the direction does not affect the validity of anything previously done in accordance with it.
- (3) Expressions defined for the purposes of section 3M have the same meaning in this section.

3O Further provisions about directions under section 3M

- (1) Before giving a direction under section 3M, the supervising regulator must consult the other regulator.
- (2) A direction under section 3M must be given or confirmed in writing, and must be accompanied by a statement of the reasons for giving it.
- (3) A notice revoking a direction under section 3M must be given or confirmed in writing.
- (4) The regulator to which a direction under section 3M is given must give a copy of the direction and statement to each of the authorised persons to whom the direction relates.
- (5) The supervising regulator must publish the direction and statement, or the notice, in such manner as it thinks fit.
- (6) But subsection (4) or (5) does not apply in a case where the regulator on which the duty is imposed considers that compliance with that subsection would be against the public interest.
- (7) In a case where a regulator decides that compliance with subsection (4) or (5) would be against the public interest, the regulator must from time to time review that decision and if it subsequently decides that compliance is no longer against the public interest it must comply with the subsection.
- (8) Expressions defined for the purposes of section 3M have the same meaning in this section.

3P Consultation by regulator complying with direction

- (1) If the directed regulator is required by this Act to consult any person other than the supervising regulator before exercising the relevant function to which the direction relates, the directed regulator must give the supervising regulator copies of any written representations received from the persons consulted.
- (2) Expressions defined for the purposes of section 3M have the same meaning in this section.

Co-operation with Bank of England

3Q Co-operation by FCA and PRA with Bank of England

- (1) Each regulator must take such steps as it considers appropriate to co-operate with the Bank of England in connection with—

- (a) the pursuit by the Bank of its Financial Stability Objective, and
 - (b) the Bank's compliance with its duties under sections 58 and 59 of the Financial Services Act 2012 (duty to notify Treasury of possible need for public funds and of subsequent changes).
- (2) Co-operation under subsection (1) may include the sharing of information that the regulator is not prevented from disclosing.

Arrangements for provision of services

3R Arrangements for provision of services

- (1) The regulators may enter into arrangements with each other for the provision of services by one of them to the other.
- (2) Either regulator may enter into arrangements with the Bank of England for the provision of services—
 - (a) by the Bank to the regulator, or
 - (b) by the regulator to the Bank.
- (3) Either regulator may enter into arrangements with any of the bodies specified in subsection (4) for the provision of services by the regulator to that body.
- (4) Those bodies are—
 - (a) the consumer financial education body (see section 3S(2)),
 - (b) the scheme manager (see section 212(1)), and
 - (c) the scheme operator (see section 225(2)).
- (5) The FCA may enter into arrangements with—
 - (a) a local weights and measures authority in England, Wales or Scotland, or
 - (b) the Department of Enterprise, Trade and Investment in Northern Irelandfor the provision by the authority to the FCA of services which relate to activities to which this subsection applies.
- (6) Subsection (5) applies to activities that are regulated activities by virtue of—
 - (a) an order made under section 22(1) in relation to an investment of a kind falling within paragraph 23 or 23B of Schedule 2, or
 - (b) an order made under section 22(1A)(a).
- (7) Arrangements under this section are to be on such terms as may be agreed by the parties.

Enhancing public understanding of financial matters etc.

3S The consumer financial education body

- (1) The consumer financial education body continues to have the consumer financial education function.
- (2) The "consumer financial education body" means the body corporate originally established by the Financial Services Authority under section 6A of this Act (as it had effect before the passing of the Financial Services Act 2012).
- (3) The consumer financial education function is to enhance—

- (a) the understanding and knowledge of members of the public of financial matters (including the UK financial system), and
 - (b) the ability of members of the public to manage their own financial affairs.
- (4) The consumer financial education function includes, in particular—
- (a) promoting awareness of the benefits of financial planning;
 - (b) promoting awareness of the financial advantages and disadvantages in relation to particular decisions relating to different kinds of goods or services;
 - (c) promoting awareness of the benefits and risks associated with different kinds of financial dealing (which includes informing the FCA and other bodies of those benefits and risks);
 - (d) the publication of educational materials or the carrying out of other educational activities;
 - (e) the provision of information and advice to members of the public;
 - (f) assisting members of the public with the management of debt;
 - (g) working with other organisations which provide debt services, with a view to improving—
 - (i) the availability to the public of those services;
 - (ii) the quality of the services provided;
 - (iii) consistency in the services available, in the way in which they are provided and in the advice given.
- (5) In subsection (4) “debt services” means debt advice or assistance with the management of debt.
- (6) Schedule 1A makes further provision about the consumer financial education body.

PART 5
PERFORMANCE OF REGULATED ACTIVITIES

Prohibition orders

56 Prohibition orders

- (1) The FCA may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by—
 - (a) an authorised person,
 - (b) a person who is an exempt person in relation to that activity, or
 - (c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity.
- (1A) The PRA may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by—
 - (a) a PRA-authorised person, or
 - (b) a person who is an exempt person in relation to a PRA-regulated activity carried on by the person.
- (2) A “prohibition order” is an order prohibiting the individual from performing a specified function, any function falling within a specified description or any function.
- (3) A prohibition order may relate to—
 - (a) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities;
 - (b) all persons falling within subsection (3A) or a particular paragraph of that subsection or all persons within a specified class of person falling within a particular paragraph of that subsection.
- (3A) A person falls within this subsection if the person is—
 - (a) an authorised person,
 - (b) an exempt person, or
 - (c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to a regulated activity.
- (4) An individual who performs or agrees to perform a function in breach of a prohibition order is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) In proceedings for an offence under subsection (4) it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- (6) A person falling within subsection (3A) must take reasonable care to ensure that no function of his, in relation to the carrying on of a regulated activity, is performed by a person who is prohibited from performing that function by a prohibition order.
- (7) The regulator that has made a prohibition order may, on the application of the individual named in the order, vary or revoke it.
- (7A) If—
 - (a) the FCA proposes to vary or revoke a prohibition order, and
 - (b) as a result of the proposed variation or revocation, an individual—

- (i) will no longer be prohibited from performing a function of interest to the PRA, or
- (ii) will be prohibited from performing such a function,

the FCA must consult the PRA before varying or revoking the order.

(7B) A function is of interest to the PRA if it is performed in relation to a regulated activity carried on by—

- (a) a PRA-authorized person, or
- (b) a person who is an exempt person in relation to a PRA-regulated activity carried on by the person.

(7C) The PRA must consult the FCA before varying or revoking a prohibition order.

(8) repealed.

(9) “Specified” means specified in the prohibition order.

57 Prohibition orders: procedure and right to refer to Tribunal

(1) If a regulator proposes to make a prohibition order it must give the individual concerned a warning notice.

(2) The warning notice must set out the terms of the prohibition.

(3) If a regulator decides to make a prohibition order it must give the individual concerned a decision notice.

(4) The decision notice must—

- (a) name the individual to whom the prohibition order applies;
- (b) set out the terms of the order; and
- (c) be given to the individual named in the order.

(5) A person against whom a decision to make a prohibition order is made may refer the matter to the Tribunal.

(6) If—

- (a) the FCA proposes to make a prohibition order, and
- (b) as a result of the proposed order, an individual will be prohibited from performing a function of interest to the PRA,

the FCA must consult the PRA before giving a warning notice under this section.

(7) A function is of interest to the PRA if it is performed in relation to a regulated activity carried on by—

- (a) a PRA-authorized person, or
- (b) a person who is an exempt person in relation to a PRA-regulated activity carried on by the person.

(8) The PRA must consult the FCA before giving a warning notice under this section.

58 Applications relating to prohibitions: procedure and right to refer to Tribunal

(1) This section applies to an application for the variation or revocation of a prohibition order.

(2) If the appropriate regulator decides to grant the application, it must give the applicant written notice of its decision.

- (3) If the appropriate regulator proposes to refuse the application, it must give the applicant a warning notice.
- (4) If the appropriate regulator decides to refuse the application, it must give the applicant a decision notice.
- (5) If the appropriate regulator gives the applicant a decision notice, he may refer the matter to the Tribunal.
- (6) “The appropriate regulator” means the regulator to which the application is made.

Approval

59 Approval for particular arrangements

- (1) An authorised person (“A”) must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by A in relation to the carrying on by A of a regulated activity, unless the appropriate regulator approves the performance by that person of the controlled function to which the arrangement relates.
- (2) An authorised person (“A”) must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by a contractor of A in relation to the carrying on by A of a regulated activity, unless the appropriate regulator approves the performance by that person of the controlled function to which the arrangement relates.
- (3) “Controlled function”—
 - (a) in relation to the carrying on of a regulated activity by a PRA-authorised person, means a function of a description specified in rules made by the FCA or the PRA, and
 - (b) in relation to the carrying on of a regulated activity by any other authorised person, means a function of a description specified in rules made by the FCA.
- (4) “The appropriate regulator”—
 - (a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA, and
 - (b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA with the consent of the FCA.
- (5) The FCA may specify a description of function under subsection (3)(a) or (b) only if, in relation to the carrying on of a regulated activity by an authorised person, it is satisfied that the function is—
 - (a) a customer-dealing function, or
 - (b) a significant-influence function.
- (6) The PRA may specify a description of function under subsection (3)(a) only if, in relation to the carrying on of a regulated activity by a PRA-authorised person, it is satisfied that the function is a significant-influence function.
- (7) In determining whether a function is a significant-influence function, the FCA or the PRA may take into account the likely consequences of a failure to discharge the function properly.
- (7A) “Customer-dealing function”, in relation to the carrying on of a regulated activity by an authorised person (“A”), means a function that will involve the person performing it in dealing with—
 - (a) customers of A, or
 - (b) property of customers of A,in a manner substantially connected with the carrying on of the activity.

(7B) “Significant-influence function”, in relation to the carrying on of a regulated activity by an authorised person, means a function that is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the authorised person's affairs, so far as relating to the activity.

(7C) In relation to a ring-fenced body, the function of acting as a director (or, where the ring-fenced body does not have a board of directors, as a member of its equivalent management body)—

(a) is a significant-influence function, and

(b) must be specified as a controlled function by rules made—

(i) in relation to ring-fenced bodies that are PRA-authorised persons, by the PRA, or

(ii) in relation to other ring-fenced bodies, by the FCA.

(8) Neither subsection (1) nor subsection (2) applies to an arrangement which allows a person to perform a function if the question of whether he is a fit and proper person to perform the function is reserved under any of the single market directives [or the emission allowance auctioning regulation] to an authority in a country or territory outside the United Kingdom.

(9) [...]

(10) “Arrangement”—

(a) means any kind of arrangement for the performance of a function of A which is entered into by A or any contractor of his with another person; and

(b) includes, in particular, that other person's appointment to an office, his becoming a partner or his employment (whether under a contract of service or otherwise).

(11) “Customer”, in relation to an authorised person, means a person who is using, or who is or may be contemplating using, any of the services provided by the authorised person.

59A Specifying functions as controlled functions: supplementary

(1) The FCA must—

(a) keep under review the exercise of its power under section 59(3)(a) to specify any significant-influence function as a controlled function, and

(b) exercise that power in a way that it considers will minimise the likelihood that approvals fall to be given by both the FCA and the PRA in respect of the performance by a person of significant-influence functions in relation to the carrying on of a regulated activity by the same PRA-authorised person.

(2) The FCA and the PRA must each consult the other before exercising any power under section 59(3)(a).

(3) Any reference in this section to the exercise of a power includes its exercise by way of amendment or revocation of provision previously made in the exercise of the power.

(4) “Approval” means an approval under section 59.

(5) Any expression which is used both in this section and section 59 has the same meaning in this section as in that section.

59B Role of FCA in relation to PRA decisions

(1) The FCA may arrange with the PRA that in such cases as may be described in the arrangements the PRA may give approval under section 59 without obtaining the consent of the FCA.

(2) Arrangements under this section must be in writing, and must specify the date on which they come into force.

- (3) The regulators must publish any arrangements under this section in such manner as they think fit.
- (4) Section 59(4)(b) has effect subject to any arrangements in force under this section.

60 Applications for approval

- (1) An application for the appropriate regulator's approval under section 59 may be made by the authorised person concerned.
- (2) The application must—
 - (a) be made in such manner as the appropriate regulator may direct; and
 - (b) contain, or be accompanied by, such information as the appropriate regulator may reasonably require.
- (3) At any time after the application is received and before it is determined, the appropriate regulator may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application or, as the case requires, to decide whether to give consent.
- (4) The appropriate regulator may require an applicant to present information which he is required to give under this section in such form, or to verify it in such a way, as the appropriate regulator may direct.
- (5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.
- (6) “The authorised person concerned” includes a person who has applied for permission under Part 4A and will be the authorised person concerned if permission is given.
- (7) The PRA must consult the FCA before—
 - (a) giving a direction under subsection (2)(a) in relation to a class of applicants, or
 - (b) imposing a requirement under subsection (2)(b) on a class of applicants.
- (8) The PRA must as soon as practicable notify the FCA of the receipt or withdrawal of an application to the PRA, unless the case is one in which by virtue of arrangements under section 59B the consent of the FCA is not required.
- (9) “The appropriate regulator”—
 - (a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA;
 - (b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA, and for the purposes of subsection (3) also includes the FCA in cases where the consent of the FCA is required.

61 Determination of applications

- (1) The regulator to which an application is made under section 60 may grant the application only if it is satisfied that the person in respect of whom the application is made (“the candidate”) is a fit and proper person to perform the function to which the application relates.
- (2) In deciding that question, the regulator may have regard (among other things) to whether the candidate, or any person who may perform a function on his behalf—
 - (a) has obtained a qualification,
 - (b) has undergone, or is undergoing, training, or
 - (c) possesses a level of competence,

required by general rules made by that regulator in relation to persons performing functions of the kind to which the application relates.

- (2A) Subsections (1) and (2) apply in relation to the giving by the FCA of any required consent as they apply in relation to the grant of the application.
- (3) The regulator to which an application is made under section 60 must, before the end of the period for consideration, determine whether—
- (a) to grant the application; or
 - (b) to give a warning notice under section 62(2).
- (3A) “The period for consideration”—
- (a) in any case where the application under section 60 is made by a person applying for permission under Part 4A (see section 60(6)), means whichever ends last of—
 - (i) the period within which the application for that permission must be determined under section 55V(1) or (2), and
 - (ii) the period of 3 months beginning with the date on which the regulator receives the application under section 60, and
 - (b) in any other case, means the period of 3 months beginning with the date on which the regulator receives the application under section 60.
- (4) If a regulator imposes a requirement under section 60(3), the period for consideration stops running on the day on which the requirement is imposed but starts running again—
- (a) on the day on which the required information is received by a regulator; or
 - (b) if the information is not provided on a single day, on the last of the days on which it is received by a regulator.
- (5) A person who makes an application under section 60 may withdraw his application by giving written notice to the regulator to which the application was made at any time before the regulator determines it, but only with the consent of—
- (a) the candidate; and
 - (b) the person by whom the candidate is to be retained to perform the function concerned, if not the applicant.

62 Applications for approval: procedure and right to refer to Tribunal

- (1) If the regulator to which an application is made under section 60 (“an application”) decides to grant the application, it must give written notice of its decision to each of the interested parties.
- (2) If the regulator to which an application is made proposes to refuse the application, it must give a warning notice to each of the interested parties.
- (3) If the regulator to which an application is made decides to refuse the application, it must give a decision notice to each of the interested parties.
- (4) If the regulator to which an application is made decides to refuse the application, each of the interested parties may refer the matter to the Tribunal.
- (5) “The interested parties”, in relation to an application, are—
 - (a) the applicant;
 - (b) the person in respect of whom the application is made (“A”); and

- (c) the person by whom A's services are to be retained, if not the applicant.

63 Withdrawal of approval

- (1) The FCA may withdraw an approval under section 59 given by the FCA or the PRA in relation to the performance by a person of a function if the FCA considers that the person is not a fit and proper person to perform the function.
- (1A) The PRA may withdraw an approval under section 59 in relation to the performance by a person (“A”) of a function if—
 - (a) the PRA gave the approval, or the FCA gave the approval and the function is a significant-influence function performed in relation to the carrying on by a PRA-authorised person of a regulated activity, and
 - (b) the PRA considers that A is not a fit and proper person to perform the function.
- (1B) “Significant-influence function” has the same meaning as in section 59.
- (1C) Before one regulator withdraws an approval given by the other regulator, it must consult the other regulator.
- (2) When considering whether to withdraw an approval, the FCA or the PRA may take into account any matter which could be taken into account in considering an application made under section 60 in respect of the performance of the function to which the approval relates (on the assumption, if it is not the case, that the application was one falling to be considered by it).
- (3) If a regulator proposes to withdraw an approval, it must give each of the interested parties a warning notice.
- (4) If a regulator decides to withdraw an approval, it must give each of the interested parties a decision notice.
- (5) If a regulator decides to withdraw an approval, each of the interested parties may refer the matter to the Tribunal.
- (6) “The interested parties”, in relation to an approval, are—
 - (a) the person on whose application it was given (“A”);
 - (b) the person in respect of whom it was given (“B”); and
 - (c) the person by whom B's services are retained, if not A.

Performance of controlled functions without approval

63A Power to impose penalties

- (1) If the appropriate regulator is satisfied that—
 - (a) a person (“P”) has at any time performed a controlled function without approval, and
 - (b) at that time P knew, or could reasonably be expected to have known, that P was performing a controlled function without approval,
 it may impose a penalty on P of such amount as it considers appropriate.
- (2) For the purposes of this section P performs a controlled function without approval at any time if at that time—
 - (a) P performs a controlled function under an arrangement entered into by an authorised person (“A”), or by a contractor of A, in relation to the carrying on by A of a regulated activity; and

- (b) the performance by P of the function was not approved under section 59.
- (3) The appropriate regulator may not impose a penalty 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 concerned under section 63B(1).
- (4) “The limitation period” means the period of three years beginning with the first day on which the appropriate regulator knew that the person concerned had performed a controlled function without approval.
- (5) For this purpose the appropriate regulator is to be treated as knowing that a person has performed a controlled function without approval if it has information from which that can reasonably be inferred.
- (5A) The appropriate regulator”—
 - (a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA, and
 - (b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA.
- (6) Any other expression which is used both in this section and section 59 has the same meaning in this section as in that section.

63B Procedure and right to refer to Tribunal

- (1) If a regulator proposes to impose a penalty on a person under section 63A, it must give the person a warning notice.
- (2) A warning notice must state the amount of the penalty.
- (3) If a regulator decides to impose a penalty on a person under section 63A, it must give the person a decision notice.
- (4) A decision notice must state the amount of the penalty.
- (5) If a regulator decides to impose a penalty on a person under section 63A, the person may refer the matter to the Tribunal.

63C Statement of policy

- (1) Each regulator must prepare and issue a statement of its policy with respect to—
 - (a) the imposition of penalties under section 63A; and
 - (b) the amount of penalties under that section.
- (2) Each regulator's policy in determining whether a penalty should be imposed, and what the amount of a penalty should be, must include having regard to—
 - (a) the conduct of the person on whom the penalty is to be imposed;
 - (b) the extent to which the person could reasonably be expected to have known that a controlled function was performed without approval;
 - (c) the length of the period during which the person performed a controlled function without approval; and
 - (d) whether the person on whom the penalty is to be imposed is an individual.

- (3) Each regulator's policy in determining whether a penalty should be imposed on a person must also include having regard to the appropriateness of taking action against the person instead of, or in addition to, taking action against an authorised person.
- (4) A statement issued under this section must include an indication of the circumstances in which the regulator that has issued the statement would expect to be satisfied that a person could reasonably be expected to have known that the person was performing a controlled function without approval.
- (5) A regulator may at any time alter or replace a statement issued by it under this section.
- (6) If a statement issued under this section is altered or replaced by a regulator, the regulator must issue the altered or replaced statement.
- (7) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (8) A statement issued under this section by a regulator must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (9) The regulator may charge a reasonable fee for providing a person with a copy of the statement.
- (10) In exercising, or deciding whether to exercise, its power under section 63A in the case of any particular person a regulator must have regard to any statement of policy published by it under this section and in force at a time when the person concerned performed a controlled function without approval.

63D Statement of policy: procedure

- (1) Before a regulator issues a statement under section 63C, the regulator must publish a draft of the proposed statement in the way appearing to the regulator 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 regulator within a specified time.
- (3) Before issuing the proposed statement, the regulator must have regard to any representations made to it in accordance with subsection (2).
- (4) If the regulator 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 opinion of the regulator, significant, the regulator must (in addition to complying with subsection (4)) publish details of the difference.
- (6) A regulator may charge a reasonable fee for providing a person with a copy of a draft published by it under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.

Conduct of approved persons

64 Conduct: statements and codes

- (1) The FCA may issue statements of principle with respect to the conduct expected of persons in relation to whom either regulator has given its approval under section 59.
- (1A) The PRA may issue statements of principle with respect to—

- (a) the conduct expected of persons in relation to whom it has given its approval under section 59, and
 - (b) the conduct expected of persons in relation to whom the FCA has given its approval under section 59 in respect of the performance by them of significant-influence functions in relation to the carrying on by PRA-authorized persons of regulated activities.
- (1B) A statement of principle issued by either regulator may relate to conduct expected of persons in relation to—
- (a) the performance by them of controlled functions, or
 - (b) the performance by them of any other functions in relation to the carrying on by authorized persons of regulated activities.
- (2) If a regulator issues a statement of principle under subsection (1) or (1A), it must also issue a code of practice for the purpose of helping to determine whether or not a person's conduct complies with the statement of principle.
- (3) A code issued under subsection (2) may specify—
- (a) descriptions of conduct which, in the opinion of the regulator issuing the code, comply with a statement of principle;
 - (b) descriptions of conduct which, in the opinion of the regulator issuing the code, do not comply with a statement of principle;
 - (c) factors which, in the opinion of the regulator issuing the code, are to be taken into account in determining whether or not a person's conduct complies with a statement of principle.
- (4) A regulator may at any time alter or replace a statement or code issued by it under this section.
- (5) If a statement or code is altered or replaced by a regulator, the altered or replacement statement or code must be issued by the regulator.
- (6) A statement or code issued under this section must be published by the regulator that issued it in the way appearing to that regulator to be best calculated to bring it to the attention of the public.
- (7) A code published under this section and in force at the time when any particular conduct takes place may be relied on so far as it tends to establish whether or not that conduct complies with a statement of principle.
- (8) Failure to comply with a statement of principle under this section does not of itself give rise to any right of action by persons affected or affect the validity of any transaction.
- (9) A person is not to be taken to have failed to comply with a statement of principle if he shows that, at the time of the alleged failure, it or its associated code of practice had not been published.
- (10) A regulator must, without delay, give the Treasury a copy of any statement or code which it publishes under this section.
- (11) The power under this section to issue statements of principle and codes of practice—
- (a) includes power to make different provision in relation to persons, cases or circumstances of different descriptions; and
 - (b) is to be treated for the purposes of section 1B(6)(a) as part of the FCA's rule-making functions (where the power is exercisable by the FCA) and is to be treated for the purposes of section 2J(1)(a) as part of the PRA's rule-making functions (where the power is exercisable by the PRA).
- (12) A regulator may charge a reasonable fee for providing a person with a copy of a statement or code published by it under this section.

- (13) Any expression which is used both in this section and section 59 has the same meaning in this section as in that section.

65 Statements and codes: procedure

- (1) Before a regulator issues a statement or code under section 64, it must—
- (a) consult the other regulator; and
 - (b) after doing so, publish a draft of the statement or code in the way appearing to it to be best calculated to bring the statement or code to the attention of the public.
- (1A) The duty of the FCA to consult the PRA under subsection (1)(a) applies only in so far as the statement or code applies to persons in relation to whom approval is given under section 59 in respect of the performance by them of significant-influence functions (within the meaning of that section) in relation to the carrying on by PRA-authorised persons of regulated activities.
- (2) The draft must be accompanied by—
- (a) a cost benefit analysis; and
 - (b) notice that representations about the proposal may be made to the regulator publishing the draft within a specified time.
- (3) Before a regulator issues the proposed statement or code, it must have regard to any representations made to it in accordance with subsection (2)(b).
- (4) If a regulator issues the proposed statement or code it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with subsection (2)(b); and
 - (b) its response to them.
- (5) If the statement or code differs from the draft published under subsection (1) in a way which is, in the opinion of the regulator issuing the statement or code, significant—
- (a) the regulator must (in addition to complying with subsection (4)) publish details of the difference; and
 - (b) those details must be accompanied by a cost benefit analysis.
- (6) Neither subsection (2)(a) nor subsection (5)(b) applies if the regulator concerned considers—
- (a) that, making the appropriate comparison, there will be no increase in costs; or
 - (b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.
- (7) Subsections (1)(b) and (2) to (6) do not apply in relation to—
- (a) a statement or code issued by the FCA if it considers that the delay involved in complying with them would be prejudicial to the interests of consumers, as defined in section 425A; or
 - (b) a statement or code issued by the PRA if it considers that the delay involved in complying with them would—
 - (i) be prejudicial to the safety and soundness of PRA-authorised persons, or
 - (ii) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policyholders.
- (8) A statement or code must state that it is issued under section 64.

- (9) A regulator may charge a reasonable fee for providing a copy of a draft published [by it] under subsection (1).
- (10) This section also applies to a proposal to alter or replace a statement or code.
- (11) “Cost benefit analysis” means—
- (a) an analysis of the costs together with an analysis of the benefits that will arise—
 - (i) if the proposed statement or code is issued, or
 - (ii) if subsection (5)(b) applies, from the statement or code that has been issued, and
 - (b) subject to subsection (11A), an estimate of those costs and of those benefits.
- (11A) If, in the opinion of the regulator concerned—
- (a) the costs or benefits referred to in subsection (11) cannot reasonably be estimated, or
 - (b) it is not reasonably practicable to produce an estimate,
- the cost benefit analysis need not estimate them, but must include a statement of the opinion of the regulator concerned and an explanation of it.
- (12) “The appropriate comparison” means—
- (a) in relation to subsection (2)(a), a comparison between the overall position if the statement or code is issued and the overall position if it is not issued;
 - (b) in relation to subsection (5)(b), a comparison between the overall position after the issuing of the statement or code and the overall position before it was issued.

66 Disciplinary powers

- (1) A regulator may take action against a person under this section (whether or not it has given its approval in relation to the person) if—
- (a) it appears to the regulator that he is guilty of misconduct; and
 - (b) the regulator is satisfied that it is appropriate in all the circumstances to take action against him.
- (2) For the purposes of action by the FCA, a person is guilty of misconduct if, while an approved person—
- (a) the person has failed to comply with a statement of principle issued by the FCA under section 64, or
 - (b) the person has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person—
 - (i) by or under this Act, or
 - (ii) by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
- (2A) For the purposes of action by the PRA, a person is guilty of misconduct if, while an approved person in respect of the performance of a significant-influence function in relation to the carrying on by a PRA-authorised person of a regulated activity—
- (a) the person has failed to comply with a statement of principle issued by the PRA under section 64, or
 - (b) the person has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person—

- (i) by or under this Act, or
 - (ii) by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
- (3) If the regulator is entitled to take action under this section against a person, it may do one or more of the following—
- (a) impose a penalty on him of such amount as it considers appropriate;
 - (aa) suspend, for such period as it considers appropriate, any approval of the performance by him of any function to which the approval relates;
 - (ab) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance by him of any function to which any approval relates as it considers appropriate; or
 - (b) publish a statement of his misconduct.
- (3A) The period for which a suspension or restriction is to have effect may not exceed two years.
- (3B) A suspension or restriction may have effect in relation to part of a function.
- (3C) A restriction may, in particular, be imposed so as to require any person to take, or refrain from taking, specified action.
- (3D) The regulator taking action under this section may—
- (a) withdraw a suspension or restriction; or
 - (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (4) A regulator may not take action under this section after the end of the period of three years beginning with the first day on which the regulator knew of the misconduct, unless proceedings in respect of it against the person concerned were begun before the end of that period.
- (5) For the purposes of subsection (4)—
- (a) a regulator is to be treated as knowing of misconduct if it has information from which the misconduct can reasonably be inferred; and
 - (b) proceedings against a person in respect of misconduct are to be treated as begun when a warning notice is given to him under section 67(1).
- (5A) Approval” means an approval given under section 59.
- (6) Approved person” means a person in relation to whom an approval is given under that section.
- (7) “Relevant authorised person”, in relation to an approved person, means the person on whose application approval . . . was given.
- (8) In relation to any time while a suspension is in force under subsection (3)(aa) in relation to part of a function, any reference in section 59 or 63A to the performance of a function includes the performance of part of a function.
- (9) If at any time a restriction imposed under subsection (3)(ab) is contravened, the approval in relation to the person concerned is to be treated for the purposes of sections 59 and 63A as if it had been withdrawn at that time.

67 Disciplinary measures: procedure and right to refer to Tribunal

- (1) If a regulator proposes to take action against a person under section 66, it must give him a warning notice; and if it proposes to take action under subsection (3)(aa) or (ab) of that section, it must also give each of the other interested parties a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (2A) A warning notice about a proposal—
 - (a) to suspend an approval, or
 - (b) to impose a restriction in relation to the performance of a function,must state the period for which the suspension or restriction is to have effect.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (4) If a regulator decides to take action against a person under section 66, it must give him a decision notice; and if it decides to take action under subsection (3)(aa) or (ab) of that section, it must also give each of the other interested parties a decision notice.
- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (5A) A decision notice about—
 - (a) the suspension of an approval, or
 - (b) the imposition of a restriction in relation to the performance of a function,must state the period for which the suspension or restriction is to have effect.
- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If a regulator decides to take action against a person under section 66, he may refer the matter to the Tribunal; and if the regulator decides to take action under section 66(3)(aa) or (ab), each of the other interested parties may also refer the matter to the Tribunal.
- (8) Approval” means an approval given under section 59.
- (9) “Other interested parties”, in relation to a person (“A”) in relation to whom approval has been given, are—
 - (a) the person on whose application the approval was given (“B”); and
 - (b) the person by whom A's services are retained, if not B.

68 Publication

After a statement under section 66 is published, the regulator publishing it must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given.

69 Statement of policy

- (1) Each regulator must prepare and issue a statement of its policy with respect to—
 - (a) the imposition of penalties, suspensions or restrictions under section 66;
 - (b) the amount of penalties under that section; and
 - (c) the period for which suspensions or restrictions under that section are to have effect.
- (2) A regulator's policy in determining what the amount of a penalty should be, or what the period for which a suspension or restriction is to have effect should be, must include having regard to—

- (a) the seriousness of the misconduct in question in relation to the nature of the principle or requirement concerned;
 - (b) the extent to which that misconduct was deliberate or reckless; and
 - (c) whether the person against whom action is to be taken is an individual.
- (3) A regulator may at any time alter or replace a statement issued by it under this section.
 - (4) If a statement issued under this section is altered or replaced by a regulator, the regulator must issue the altered or replacement statement.
 - (5) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.
 - (6) A statement issued under this section by a regulator must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
 - (7) The regulator may charge a reasonable fee for providing a person with a copy of the statement.
 - (8) In exercising, or deciding whether to exercise, its power under section 66 in the case of any particular misconduct, a regulator must have regard to any statement of policy published by it under this section and in force at the time when the misconduct in question occurred.

70 Statements of policy: procedure

- (1) Before a regulator issues a statement under section 69, the regulator must publish a draft of the proposed statement in the way appearing to the regulator 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 regulator within a specified time.
- (3) Before issuing the proposed statement, the regulator must have regard to any representations made to it in accordance with subsection (2).
- (4) If the regulator 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 opinion of the regulator, significant, the regulator must (in addition to complying with subsection (4)) publish details of the difference.
- (6) A regulator may charge a reasonable fee for providing a person with a copy of a draft published by it under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.

Breach of statutory duty

71 Actions for damages

- (1) A contravention of section 56(6) or 59(1) or (2) is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (2) In prescribed cases, a contravention of that kind which would be actionable at the suit of a private person is actionable at the suit of a person who is not a private person, subject to the defences and other incidents applying to actions for breach of statutory duty.

(3) "Private person" has such meaning as may be prescribed.

PART 7

CONTROL OF BUSINESS TRANSFERS

103A Meaning of “the appropriate regulator”

(1) In this Part “the appropriate regulator” means—

- (a) in relation to ~~a scheme~~ **a ring-fencing transfer scheme or a scheme (other than a ring-fencing transfer scheme)** in respect of which ~~the authorised person concerned~~ **the transferor concerned** is a PRA-~~authorised person~~, the PRA;
- (b) in any other case, the FCA.

(2) In this Part, ~~“the authorised person concerned”~~ **“the transferor concerned”** means—

- (a) in the case of an insurance business transfer scheme, is to be read in accordance with section 105(2);
- (b) in the case of a banking business transfer scheme, is to be read in accordance with section 106(2);
- (c) in the case of a reclaim fund business transfer scheme, means the reclaim fund to whose business the scheme relates;
- (d) in the case of a ring-fencing transfer scheme, means the body to whose business the scheme relates.**

104 Control of business transfers

No insurance business transfer scheme is to have effect unless an order has been made in relation to it under section 111(1).

105 Insurance business transfer schemes

(1) A scheme is an insurance business transfer scheme if it—

- (a) satisfies one of the conditions set out in subsection (2);
- (b) results in the business transferred being carried on from an establishment of the transferee in an EEA State; and
- (c) is not an excluded scheme.

(2) The conditions are that—

- (a) the whole or part of the business carried on in one or more member States by a UK authorised person who has permission to effect or carry out contracts of insurance (~~“the authorised person concerned”~~ **“the transferor concerned”**) is to be transferred to another body (“the transferee”);
- (b) the whole or part of the business, so far as it consists of reinsurance, carried on in the United Kingdom through an establishment there by an EEA firm falling within paragraph 5(d) of Schedule 3 and qualifying for authorisation under that Schedule (~~“the authorised person concerned”~~ **“the transferor concerned”**) is to be transferred to another body (“the transferee”);
- (c) the whole or part of the business carried on in the United Kingdom by an authorised person who is neither a UK authorised person nor an EEA firm but who has permission to effect or carry out contracts of insurance (~~“the authorised person concerned”~~ **“the transferor concerned”**) is to be transferred to another body (“the transferee”).

(3) A scheme is an excluded scheme for the purposes of this section if it falls within any of the following cases:

(Case 1)

Where ~~the authorised person concerned~~ **the transferor concerned** is a friendly society.

(Case 2)

Where—

- (a) ~~the authorised person concerned~~ **the transferor concerned** is a UK authorised person;
- (aa) ~~the authorised person concerned~~ **the transferor concerned** is not a reinsurance undertaking (within the meaning of Article 2.1(c) of the reinsurance directive);
- (b) the business to be transferred under the scheme is business which consists of the effecting or carrying out of contracts of reinsurance in one or more EEA States other than the United Kingdom; and
- (c) the scheme has been approved by a court in an EEA State other than the United Kingdom or by the host state regulator.

(Case 3)

Where—

- (a) ~~the authorised person concerned~~ **the transferor concerned** is a UK authorised person;
- (b) the business to be transferred under the scheme is carried on in one or more countries or territories (none of which is an EEA State) and does not include policies of insurance ... against risks arising in an EEA State; and
- (c) the scheme has been approved by a court in a country or territory other than an EEA State or by the authority responsible for the supervision of that business in a country or territory in which it is carried on.

(Case 4)

Where —

- (a) the business to be transferred under the scheme is the whole of the business of ~~the authorised person concerned~~ **the transferor concerned**;
- (b) all the policyholders are controllers of the firm or of firms within the same group as the firm which is the transferee, and,
- (c) all of the policyholders who will be affected by the transfer have consented to it.

(CASE 5)

Where—

- (a) the business of ~~the authorised person concerned~~ **the transferor concerned** consists solely of the effecting or carrying out of contracts of reinsurance;
- (b) the business to be transferred is the whole or part of that business;
- (c) the scheme does not fall within Case 4;
- (d) all of the policyholders who will be affected by the transfer have consented to it; and

- (e) a certificate has been obtained under paragraph 2 of Schedule 12 in relation to the proposed transfer.
- (4) The parties to a scheme which falls within Case 2, 3, 4 or 5 may apply to the court for an order sanctioning the scheme as if it were an insurance business transfer scheme.
- (5) If the scheme involves a compromise or arrangement falling within Part 27 of the Companies Act 2006 (mergers and divisions of public companies), the provisions of that Part (and Part 26 of that Act) apply accordingly but this does not affect the operation of this Part in relation to the scheme.
- (8) “UK authorised person” means a body which is an authorised person and which—
 - (a) is incorporated in the United Kingdom; or
 - (b) is an unincorporated association formed under the law of any part of the United Kingdom.
- (9) “Establishment” means, in relation to a person, his head office or a branch of his.

106 Banking business transfer schemes

- (1) A scheme is a banking business transfer scheme if it—
 - (a) satisfies one of the conditions set out in subsection (2);
 - (b) is one under which the whole or part of the business to be transferred includes the accepting of deposits; and
 - (c) is not an excluded scheme **or a ring-fencing transfer scheme**.
- (2) The conditions are that—
 - (a) the whole or part of the business carried on by a UK authorised person who has permission to accept deposits (~~the authorised person concerned~~ “**the transferor concerned**”) is to be transferred to another body (“the transferee”);
 - (b) the whole or part of the business carried on in the United Kingdom by an authorised person who is not a UK authorised person but who has permission to accept deposits (~~“the authorised person concerned”~~ “**the transferor concerned**”) is to be transferred to another body which will carry it on in the United Kingdom (“the transferee”).
- (3) A scheme is an excluded scheme for the purposes of this section if—
 - (a) the **transferor concerned** ~~authorised person concerned~~ is a building society or a credit union; or
 - (b) the scheme is a compromise or arrangement to which Part 27 of the Companies Act 2006 (mergers and divisions of public companies) applies.
- (4) For the purposes of subsection (2)(a) it is immaterial whether or not the business to be transferred is carried on in the United Kingdom.
- (5) “UK authorised person” has the same meaning as in section 105.
- (6) “Building society” has the meaning given in the Building Societies Act 1986.
- (7) “Credit union” means a credit union within the meaning of—
 - (a) the Credit Unions Act 1979;
 - (b) the Credit Unions (Northern Ireland) Order 1985.

106A Reclaim fund business transfer scheme

- (1) A scheme is a reclaim fund business transfer scheme if, under the scheme, the whole or part of the business carried on by a reclaim fund is to be transferred to one or more other reclaim funds.
- (2) “Reclaim fund” has the meaning given by section 5(1) of the Dormant Bank and Building Society Accounts Act 2008.

106B Ring-fencing transfer scheme

- (1) A scheme is a ring-fencing transfer scheme if it—
 - (a) is one under which the whole or part of the business carried on —
 - (i) by a UK authorised person, or
 - (ii) by a qualifying subsidiary,is to be transferred to another body (“the transferee”),
 - (b) is to be made for one or more of the purposes mentioned in subsection (3), and
 - (c) is not an excluded scheme or an insurance business transfer scheme.
- (2) “Qualifying subsidiary” means a body which—
 - (a) is incorporated in the United Kingdom,
 - (b) is a subsidiary undertaking of a UK authorised person, and
 - (c) is not itself an authorised person.
- (3) The purposes are—
 - (a) enabling a UK authorised person to carry on core activities as a ring-fenced body in compliance with the ring-fencing provisions;
 - (b) enabling the transferee to carry on core activities as a ring-fenced body in compliance with the ring-fencing provisions;
 - (c) making provision in connection with the implementation of proposals that would involve a body corporate whose group includes the body corporate to whose business the scheme relates becoming a ring-fenced body while one or more other members of its group are not ring-fenced bodies.
- (4) a scheme is an excluded scheme for the purposes of this section if—
 - (a) the body to whose business the scheme relates is a building society or credit union, or
 - (b) the scheme is a compromise or arrangement to which Part 27 of the Companies Act 2006 (mergers and divisions of public companies) applies.
- (5) For the purposes of subsection (1) (a) it is immaterial whether or not the business to be transferred is carried on in the United Kingdom.
- (6) “UK authorised person” has the same meaning as in section 105.
- (7) “Building Society” and “credit union” have the same meanings as in section 106.
- (8) “The ring-fencing provisions” means ring-fencing rules and the duty imposed as a result of section 142G.

107 Application for order sanctioning transfer scheme

- (1) An application may be made to the court for an order sanctioning an insurance business transfer scheme, a banking business transfer scheme, ~~or a reclaim fund business transfer scheme~~ **or a ring-fencing transfer scheme.**
- (2) An application may be made by—
 - (a) ~~the authorised person concerned~~ **the transferor concerned;**
 - (b) the transferee; or
 - (c) both.

(2A) An application relating to a ring-fencing transfer scheme may only be made with the consent of the PRA.

- (3) The application must be made—
 - (a) if ~~the authorised person concerned~~ **the transferor concerned** and the transferee are registered or have their head offices in the same jurisdiction, to the court in that jurisdiction;
 - (b) if ~~the authorised person concerned~~ **the transferor concerned** and the transferee are registered or have their head offices in different jurisdictions, to the court in either jurisdiction;
 - (c) if the transferee is not registered in the United Kingdom and does not have his head office there, to the court which has jurisdiction in relation to ~~the authorised person concerned~~ **the transferor concerned.**
- (4) “Court” means—
 - (a) the High Court; or
 - (b) in Scotland, the Court of Session.

108 Requirements on applicants

- (1) The Treasury may by regulations impose requirements on applicants under section 107.
- (2) The court may not determine an application under that section if the applicant has failed to comply with a prescribed requirement.
- (3) The regulations may, in particular, include provision—
 - (a) as to the persons to whom, and periods within which, notice of an application must be given;
 - (b) enabling the court to waive a requirement of the regulations in prescribed circumstances.

109 Scheme reports

- (1) An application under section 107 in respect of an insurance business transfer scheme must be accompanied by a report on the terms of the scheme (“a scheme report”).
- (2) A scheme report may be made only by a person—
 - (a) appearing to the appropriate regulator to have the skills necessary to enable him to make a proper report; and
 - (b) nominated or approved for the purpose by the appropriate regulator.
- (3) A scheme report must be made in a form approved by the appropriate regulator.

- (4) Where the appropriate regulator is the PRA, it must consult the FCA before—
 - (a) nominating or approving a person under subsection (2)(b), or
 - (b) approving a form under subsection (3).
- (5) Subsection (6) applies where the appropriate regulator is the FCA and either—
 - (a) the transferee is a PRA-authorised person, or
 - (b) ~~the authorised person concerned~~ **the transferor concerned** or the transferee has as a member of its immediate group a PRA-authorised person.
- (6) The FCA must consult the PRA before—
 - (a) nominating or approving a person under subsection (2)(b), or
 - (b) approving a form under subsection (3).

110 Right to participate in proceedings

- (1) On an application under section 107 **relating to an insurance business transfer scheme, a banking business transfer scheme or a reclaim fund business transfer scheme**, the following are also entitled to be heard—
 - (a) the FCA,
 - (aa) in the case of a scheme falling within subsection (2), the PRA, and
 - (b) any person (including an employee of ~~the authorised person concerned~~ **the transferor concerned** or of the transferee) who alleges that he would be adversely affected by the carrying out of the scheme.
- (2) A scheme falls within this subsection if—
 - (a) ~~the authorised person concerned~~ **the transferor concerned** or the transferee is a PRA-authorised person, or
 - (b) ~~the authorised person concerned~~ **the transferor concerned** or the transferee has as a member of its immediate group a PRA-authorised person.
- (3) **Subsections (4) and (5) apply where an application under section 107 relates to a ring-fencing transfer scheme.**
- (4) **The following are also entitled to be heard—**
 - (a) **the PRA,**
 - (b) **where the transferee is an authorised person, the FCA, and**
 - (c) **any person (“P”) (including an employee of the transferor concerned or of the transferee) who alleges that P would be adversely affected by the carrying out of the scheme.**
- (5) **P is not entitled to be heard by virtue of subsection (4) (c) unless before the hearing P has—**
 - (a) **filed (in Scotland, lodged) with the court a written statement of the representations that P wishes the court to consider, and**
 - (b) **served copies of the statement on the PRA and the transferor concerned.**

111 Sanction of the court for business transfer schemes

- (1) This section sets out the conditions which must be satisfied before the court may make an order under this section sanctioning an insurance business transfer scheme, a banking business transfer scheme, ~~or~~ a reclaim fund business transfer scheme **or a ring-fencing transfer scheme.**
- (2) The court must be satisfied that—
- (a) in the case of an insurance business transfer scheme or a banking business transfer scheme, the appropriate certificates have been obtained (as to which see Parts I and II of Schedule 12);
 - (aa) in the case of a reclaim fund business transfer scheme, the appropriate certificate has been obtained (as to which see Part 2A of that Schedule);
 - (ab) in the case of a ring-fencing transfer scheme, the appropriate certificates have been obtained (as to which see Part 2B of that Schedule);**
 - (b) the transferee has the authorisation required (if any) to enable the business, or part, which is to be transferred to be carried on in the place to which it is to be transferred (or will have it before the scheme takes effect).
- (3) The court must consider that, in all the circumstances of the case, it is appropriate to sanction the scheme.

112 Effect of order sanctioning business transfer scheme

- (1) If the court makes an order under section 111(1), it may by that or any subsequent order make such provision (if any) as it thinks fit—
- (a) for the transfer to the transferee of the whole or any part of the undertaking concerned and of any property or liabilities of ~~the authorised person concerned~~ **the transferor concerned;**
 - (b) for the allotment or appropriation by the transferee of any shares, debentures, policies or other similar interests in the transferee which under the scheme are to be allotted or appropriated to or for any other person;
 - (c) for the continuation by (or against) the transferee of any pending legal proceedings by (or against) ~~the authorised person concerned~~ **the transferor concerned;**
 - (d) with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the scheme is fully and effectively carried out.
- (2) An order under subsection (1)(a) may—
- (a) transfer property or liabilities whether or not ~~the authorised person concerned~~ **the transferor concerned** otherwise has the capacity to effect the transfer in question;
 - (b) make provision in relation to property which was held by ~~the authorised person concerned~~ **the transferor concerned** as trustee;
 - (c) make provision as to future or contingent rights or liabilities of ~~the authorised person concerned~~ **the transferor concerned**, including provision as to the construction of instruments (including wills) under which such rights or liabilities may arise;
 - (d) make provision as to the consequences of the transfer in relation to any occupational pension scheme (within the meaning of section 150(5) of the Finance Act 2004) operated by or on behalf of ~~the authorised person concerned~~ **the transferor concerned.**
- (2A) Subsection (2)(a) is to be taken to include power to make provision in an order—

(a) for the transfer of property or liabilities which would not otherwise be capable of being transferred or assigned;

(b) for a transfer of property or liabilities to take effect as if there were—

(i) no such requirement to obtain a person's consent or concurrence, and

(ii) no such contravention, liability or interference with any interest or right,

as there would otherwise be (in the case of a transfer apart from this section) by reason of any provision falling within subsection (2B).

(2B) A provision falls within this subsection to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which ~~the authorised person concerned~~ **the transferor concerned** is entitled to the property or subject to the liabilities in question.

(2C) Nothing in subsection (2A) or (2B) is to be read as limiting the scope of subsection (1).

(3) If an order under subsection (1) makes provision for the transfer of property or liabilities—

(a) the property is transferred to and vests in, and

(b) the liabilities are transferred to and become liabilities of,

the transferee as a result of the order.

(4) But if any property or liability included in the order is governed by the law of any country or territory outside the United Kingdom, the order may require ~~the authorised person concerned~~ **the transferor concerned**, if the transferee so requires, to take all necessary steps for securing that the transfer to the transferee of the property or liability is fully effective under the law of that country or territory.

(5) Property transferred as the result of an order under subsection (1) may, if the court so directs, vest in the transferee free from any charge which is (as a result of the scheme) to cease to have effect.

(6) An order under subsection (1) which makes provision for the transfer of property is to be treated as an instrument of transfer for the purposes of section 770(1) of the Companies Act 2006 and any other enactment requiring the delivery of an instrument of transfer for the registration of property.

(7)

(8) If the court makes an order under section 111(1) in relation to an insurance business transfer scheme, it may by that or any subsequent order make such provision (if any) as it thinks fit—

(a) for dealing with the interests of any person who, within such time and in such manner as the court may direct, objects to the scheme;

(b) for the dissolution, without winding up, of ~~the authorised person concerned~~ **the transferor concerned**;

(c) for the reduction, on such terms and subject to such conditions (if any) as it thinks fit, of the benefits payable under—

(i) any description of policy, or

(ii) policies generally,

entered into by ~~the authorised person concerned~~ **the transferor concerned** and transferred as a result of the scheme.

(9) If, in the case of an insurance business transfer scheme, ~~the authorised person concerned~~ **the transferor concerned** is not an EEA firm, it is immaterial for the purposes of subsection (1)(a), (c) or

(d) or subsection (2), (2A), (3) or (4) that the law applicable to any of the contracts of insurance included in the transfer is the law of an EEA State other than the United Kingdom.

(10) The transferee must, if an insurance or banking business transfer scheme **or ring-fencing transfer scheme** is sanctioned by the court, deposit two office copies of the order made under subsection (1) with the appropriate regulator within 10 days of the making of the order.

(11) But the appropriate regulator may extend that period.

(12) “Property” includes property, rights and powers of any description.

(13) “Liabilities” includes duties.

(14) “Shares” and “debentures” have the same meaning as in the Companies Acts (see sections 540 and 738 of the Companies Act 2006).

(15) “Charge” includes a mortgage (or, in Scotland, a security over property).

112ZA Duty of regulator to provide copy of order

(1) Where the PRA receives under section 112(10) a copy of an order it must, without delay, give a copy of it to the FCA.

(2) Where the FCA receives under section 112(10) a copy of an order it must, without delay, give a copy of it to the PRA if the order relates to a scheme in respect of which—

(a) the transferee is a PRA-authorised person, or

(b) ~~the authorised person concerned~~ **the transferor concerned** or the transferee has as a member of its immediate group a PRA-authorised person.

112A Rights to terminate etc.

(1) Subsection (2) applies where (apart from that subsection) a person would be entitled, in consequence of anything done or likely to be done by or under this Part in connection with an insurance business transfer scheme, ~~or a banking business transfer scheme~~ **or a ring-fencing transfer scheme**—

(a) to terminate, modify, acquire or claim an interest or right; or

(b) to treat an interest or right as terminated or modified.

(2) The entitlement—

(a) is not enforceable in relation to that interest or right until after an order has been made under section 112(1) in relation to the scheme; and

(b) is then enforceable in relation to that interest or right only insofar as the order contains provision to that effect.

(3) Nothing in subsection (1) or (2) is to be read as limiting the scope of section 112(1).

113 Appointment of actuary in relation to reduction of benefits

(1) This section applies if an order has been made under section 111(1).

(2) The court making the order may, on the application of either regulator, appoint an independent actuary—

(a) to investigate the business transferred under the scheme; and

- (b) to report to the regulator which made the application on any reduction in the benefits payable under policies entered into by ~~the authorised person concerned~~ **the transferor concerned** that, in the opinion of the actuary, ought to be made.
- (3) An application under subsection (2) may be made by the PRA only if—
- (a) ~~the authorised person concerned~~ **the transferor concerned** or the transferee is a PRA-authorised person, or
 - (b) ~~the authorised person concerned~~ **the transferor concerned** or the transferee has as a member of its immediate group a PRA-authorised person.

114 Rights of certain policyholders

- (1) This section applies in relation to an insurance business transfer scheme if—
- (a) ~~the authorised person concerned~~ **the transferor concerned** is an authorised person other than an EEA firm qualifying for authorisation under Schedule 3;
 - (b) the court has made an order under section 111 in relation to the scheme; and
 - (c) an EEA State other than the United Kingdom is, as regards any policy included in the transfer which evidences a contract of insurance (other than a contract of reinsurance), the State of the commitment or the EEA State in which the risk is situated (“the EEA State concerned”).
- (2) The court must direct that notice of the making of the order, or the execution of any instrument, giving effect to the transfer must be published by the transferee in the EEA State concerned.
- (3) A notice under subsection (2) must specify such period as the court may direct as the period during which the policyholder may exercise any right which he has to cancel the policy.
- (4) The order or instrument mentioned in subsection (2) does not bind the policyholder if—
- (a) the notice required under that subsection is not published; or
 - (b) the policyholder cancels the policy during the period specified in the notice given under that subsection.
- (5) The law of the EEA State concerned governs—
- (a) whether the policyholder has a right to cancel the policy; and
 - (b) the conditions, if any, subject to which any such right may be exercised.
- (6) Paragraph 6 of Schedule 12 applies for the purposes of this section as it applies for the purposes of that Schedule.

114A Notice of transfer of reinsurance contracts

- (1) This section applies in relation to an insurance business transfer scheme if—
- (a) ~~the authorised person concerned~~ **the transferor concerned** is an authorised person other than an EEA firm qualifying for authorisation under Schedule 3;
 - (b) the court has made an order under section 111 in relation to the scheme; and
 - (c) an EEA State other than the United Kingdom is, as regards any policy included in the transfer which evidences a contract of reinsurance, the State in which the establishment of the policyholder to which the policy relates is situated at the date when the contract was entered into (“the EEA State concerned”).

- (2) The court may direct that notice of the making of the order, or the execution of any instrument, giving effect to the transfer must be published by the transferee in the EEA State concerned.

Business transfers outside the United Kingdom

115 Certificates for purposes of insurance business transfers overseas

Part III of Schedule 12 makes provision about certificates which the appropriate regulator may issue in relation to insurance business transfers taking place outside the United Kingdom.

116 Effect of insurance business transfers authorised in other EEA States

- (1) This section applies if, as a result of an authorised transfer, an EEA firm falling within paragraph 5(d) or (da) of Schedule 3 transfers to another body all its rights and obligations under any UK policies.
- (2) This section also applies if, as a result of an authorised transfer, any of the following transfers to another body all its rights and obligations under any UK policies—
- (a) an undertaking authorised in an EEA State other than the United Kingdom under Article 51 of the life assurance consolidation directive;
 - (b) an undertaking authorised in an EEA State other than the United Kingdom under Article 23 of the first non-life insurance directive;
 - (c) an undertaking, whose head office is not within the EEA, authorised under the law of an EEA State other than the United Kingdom to carry out reinsurance activities in its territory (as mentioned in Article 49 of the reinsurance directive).
- (3) If appropriate notice of the execution of an instrument giving effect to the transfer is published, the instrument has the effect in law—
- (a) of transferring to the transferee all the transferor's rights and obligations under the UK policies to which the instrument applies, and
 - (b) if the instrument so provides, of securing the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights and obligations.
- (4) No agreement or consent is required before subsection (3) has the effects mentioned.
- (5) "Authorised transfer" means—
- (a) in subsection (1), a transfer authorised in the home State of the EEA firm in accordance with—
 - (i) Article 14 of the life assurance consolidation directive; ...
 - (ii) Article 12 of the third non-life directive; or
 - (iii) Article 18 of the reinsurance directive; and
 - (b) in subsection (2), a transfer authorised in an EEA State other than the United Kingdom in accordance with—
 - (i) Article 53 of the life assurance consolidation directive; ...
 - (ii) Article 28a of the first non-life directive or
 - (iii) the provisions in the law of that EEA State which provide for the authorisation of transfers of all or part of a portfolio of contracts of an undertaking authorised to carry out reinsurance activities in its territory (as mentioned in Article 49 of the reinsurance directive).

(6) “UK policy” means—

- (a) in the case of an authorised transfer within the meaning of paragraph (a)(i) or (ii) or (b)(i) or (ii) of subsection (5), a policy evidencing a contract of insurance (other than a contract of reinsurance) to which the applicable law is the law of a part of the United Kingdom;
- (b) in the case of an authorised transfer within the meaning of paragraph (a)(iii) or (b)(iii) of that subsection, a policy evidencing a contract of reinsurance to which the applicable law is the law of a part of the United Kingdom.

(7) “Appropriate notice” means—

- (a) if the UK policy evidences a contract of insurance in relation to which an EEA State other than the United Kingdom is the State of the commitment, notice given in accordance with the law of that State;
- (b) if the UK policy evidences a contract of insurance where the risk is situated in an EEA State other than the United Kingdom, notice given in accordance with the law of that EEA State;
- (c) in any other case, notice given in accordance with the applicable law.

(8) Paragraph 6 of Schedule 12 applies for the purposes of this section as it applies for the purposes of that Schedule.

117 Power to modify this Part

The Treasury may by regulations—

- (a) provide for prescribed provisions of this Part to have effect in relation to prescribed cases with such modifications as may be prescribed;
- (b) make such amendments to any provision of this Part as they consider appropriate for the more effective operation of that or any other provision of this Part.

PART 9B
RING-FENCING

Introductory

142A “Ring-fenced body”

- (1) In this Act “ring-fenced body” means a UK institution which carries on one or more core activities (see section 142B) in relation to which it has a Part 4A permission.**
- (2) But “ring-fenced body” does not include—**
 - (a) a building society within the meaning of the Building Societies Act 1986, or**
 - (b) a UK institution of a class exempted by order made by the Treasury.**
- (3) An order under subsection (2)(b) may be made in relation to a class of UK institution only if the Treasury are of the opinion that the exemption conferred by the order would not be likely to have a significant adverse effect on the continuity of the provision in the United Kingdom of core services.**
- (4) An order under subsection (2)(b) may provide for the exemption to be subject to conditions.**
- (5) In this section “UK institution” means a body corporate incorporated in the United Kingdom.**

142B Core activities

- (1) References in this Act to a “core activity” are to be read in accordance with this section.**
- (2) The regulated activity of accepting deposits (whether carried on in the United Kingdom or elsewhere) is a core activity unless it is carried on in circumstances specified by the Treasury by order.**
- (3) An order under subsection (2) may be made only if the Treasury are of the opinion that it is not necessary for either of the following purposes that the regulated activity of accepting deposits should be a core activity when carried on in the specified circumstances.**
- (4) Those purposes are—**
 - (a) to secure an appropriate degree of protection for the depositors concerned, or**
 - (b) to protect the continuity of the provision in the United Kingdom of services provided in the course of carrying on the regulated activity of accepting deposits.**
- (5) The Treasury may by order provide for a regulated activity other than that of accepting deposits to be a core activity, either generally or when carried on in circumstances specified in the order.**
- (6) An order under subsection (5) may be made only if the Treasury are of the opinion—**
 - (a) that an interruption of the provision of services provided in the United Kingdom in the carrying on of the regulated activity concerned could adversely affect the stability of the UK financial system or of a significant part of that system, and**
 - (b) that the continuity of the provision of those services can more effectively be protected by treating the activity as a core activity.**

142C Core services

- (1) References in this Act to “core services” are to be read in accordance with this section.**
- (2) The following are core services—**
 - (a) facilities for the accepting of deposits or other payments into an account which is provided in the course of carrying on the core activity of accepting deposits;**
 - (b) facilities for withdrawing money or making payments from such an account;**
 - (c) overdraft facilities in connection with such an account.**
- (3) The Treasury may by order provide that any other specified services provided in the course of carrying on the core activity of accepting deposits are also core services.**
- (4) If an order under section 142B(5) provides for an activity other than that of accepting deposits to be a core activity, the Treasury must by order provide that specified services provided in the course of carrying on that activity are core services.**
- (5) The services specified by order under subsection (4) must be services in relation to which the Treasury are of the opinion mentioned in section 142B(6)(a).**

142D Excluded activities

- (1) References in this Act to an “excluded activity” are to be read in accordance with this section.**
- (2) The regulated activity of dealing in investments as principal (whether carried on in the United Kingdom or elsewhere) is an excluded activity unless it is carried on in circumstances specified by the Treasury by order.**
- (3) An order under subsection (2) may be made only if the Treasury are of the opinion that allowing ring-fenced bodies to deal in investments as principal in the specified circumstances would not be likely to result in any significant adverse effect on the continuity of the provision in the United Kingdom of core services.**
- (4) The Treasury may by order provide for an activity other than the regulated activity of dealing in investments as principal to be an excluded activity, either generally or when carried on in circumstances specified in the order.**
- (5) An activity to which an order under subsection (4) relates—**
 - (a) need not be a regulated activity, and**
 - (b) may be an activity carried on in the United Kingdom or elsewhere.**
- (6) In deciding whether to make an order under subsection (4) in relation to any activity, the Treasury must—**
 - (a) have regard to the risks to which a ring-fenced body would be exposed if it carried on the activity concerned, and**
 - (b) consider whether the carrying on of that activity by a ring-fenced body would make it more likely that the failure of the body would have an adverse effect on the continuity of the provision in the United Kingdom of core services.**
- (7) An order under subsection (4) may be made only if the Treasury are of the opinion that the making of the order is necessary or expedient for the purpose of protecting the continuity of the provision in the United Kingdom of core services.**

142E Power of Treasury to impose prohibitions

- (1) The Treasury may by order prohibit ring-fenced bodies from—**
 - (a) entering into transactions of a specified kind or with persons falling within a specified class;**
 - (b) establishing or maintaining a branch in a specified country or territory;**
 - (c) holding in specified circumstances shares or voting power in companies of a specified description.**
- (2) In deciding whether to make an order under this section imposing a prohibition, the Treasury must—**
 - (a) have regard to the risks to which a ring-fenced body would be exposed if it did the thing to which the prohibition relates, and**
 - (b) consider whether the doing of that thing by a ring-fenced body would make it more likely that the failure of the body would have an adverse effect on the continuity of the provision in the United Kingdom of core services.**
- (3) An order under this section may be made only if the Treasury are of the opinion that the making of the order is necessary or expedient for the purpose of protecting the continuity of the provision in the United Kingdom of core services.**
- (4) An order under this section may in particular—**
 - (a) provide for any prohibition to be subject to exemptions specified in the order;**
 - (b) provide for any exemption to be subject to conditions specified in the order.**

142F Orders under sections 142A, 142B, 142D or 142E

- (1) An order made under section 142A, 142B, 142D or 142E may—**
 - (a) authorise or require the making of rules by a regulator for the purposes of, or connected with, any provision of the order;**
 - (b) authorise the making of other instruments by a regulator for the purposes of, or connected with, any provision of the order;**
 - (c) refer to a publication issued by a regulator, another body in the United Kingdom or an international organisation, as the publication has effect from time to time.**
- (2) If the order confers powers on a regulator or authorises or requires the making of rules or other instruments by a regulator, the order may also—**
 - (a) impose conditions on the exercise of any power conferred on the regulator;**
 - (b) impose consultation requirements on the regulator;**
 - (c) make the exercise of a power by the regulator subject to the consent of the Treasury.**

Ring-fenced bodies not to carry on excluded activities or contravene prohibitions

142G Ring-fenced bodies not to carry on excluded activities or contravene prohibitions

- (1) A ring-fenced body which—**

- (a) carries on an excluded activity or purports to do so, or
- (b) contravenes any provision of an order under section 142E,

is to be taken to have contravened a requirement imposed on the body by the appropriate regulator under this Act.

(2) The contravention does not—

- (a) make a person guilty of an offence;
- (b) make a transaction void or unenforceable;
- (c) (subject to subsection (3)) give rise to any right of action for breach of statutory duty.

(3) In such cases as the Treasury may specify by order, the contravention is actionable at the suit of a person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(4) In this section “the appropriate regulator” means—

- (a) in relation to a ring-fenced body which is a PRA-authorized person, the PRA;
- (b) in relation to any other ring-fenced body, the FCA.

Ring-fencing rules

142H Ring-fencing rules

(1) In the exercise of its power to make general rules, the appropriate regulator must in particular make rules—

- (a) requiring a ring-fenced body to make arrangements to ensure the effective provision to the ring-fenced body of services and facilities that it requires in relation to the carrying on of a core activity, and
- (b) making provision for the group ring-fencing purposes applying to ring-fenced bodies and to authorised persons who are members of a ring-fenced body’s group.

(2) Section 142E(1)(c) does not affect the power of the appropriate regulator to make general rules imposing restrictions on the extent of the shares or voting power that a ring-fenced body may hold in another company, except where a restriction on the extent of the shares or voting power that the ring-fenced body may hold in the company is imposed by order under section 142E(1)(c).

(3) General rules that are required by this section or make provision falling within subsection (2) are in this Act referred to as “ring-fencing rules”.

(4) The “group ring-fencing purposes” are—

- (a) ensuring as far as reasonably practicable that the carrying on of core activities by a ring-fenced body is not adversely affected by the acts or omissions of other members of its group;
- (b) ensuring as far as reasonably practicable that in carrying on its business a ring-fenced body—
 - (i) is able to take decisions independently of other members of its group, and

- (ii) does not depend on resources which are provided by a member of its group and which would cease to be available to the ring-fenced body in the event of the insolvency of the other member;
 - (c) ensuring as far as reasonably practicable that the ring-fenced body would be able to continue to carry on core activities in the event of the insolvency of one or more other members of its group.
- (5) Ring-fencing rules made for the group ring-fencing purposes must include —
 - (a) provision restricting the power of a ring-fenced body to enter into contracts with other members of its group otherwise than on arm's length terms;
 - (b) provision restricting the payments that a ring-fenced body may make (by way of dividend or otherwise) to other members of its group;
 - (c) provision requiring the disclosure to the appropriate regulator of information relating to transactions between a ring-fenced body and other members of its group;
 - (d) provision requiring a ring-fenced body to ensure that its board of directors (or if there is no such board, the equivalent management body) includes to a specified extent —
 - (i) members who are treated by the rules as being independent of other members of the ring-fenced body's group,
 - (ii) members who are treated by the rules as being independent of the ring-fenced body itself, and
 - (iii) non-executive members;
 - (e) provision requiring a ring-fenced body to act in accordance with a remuneration policy meeting specified requirements;
 - (f) provision requiring a ring-fenced body to act in accordance with a human resources policy meeting specified requirements;
 - (g) provision requiring arrangements made by the ring-fenced body for the identification, monitoring and management of risk to meet specified requirements;
 - (h) such other provision as the appropriate regulator considers necessary or expedient for any of the purposes in subsection (4).
- (6) The reference in subsection (5) (e) to a remuneration policy is a reference to a policy about the remuneration of officers, employees and other persons who (in each case) are of a specified description.
- (7) The reference in subsection (5)(f) to a human resources policy is a reference to a policy about the appointment and management of officers, employees and other persons who (in each case) are of a specified description.
- (8) In this section —
 - “the appropriate regulator” means —
 - (a) in relation to a ring-fenced body which is a PRA-authorized person, the PRA;
 - (b) in relation to any other ring-fenced body, the FCA;
 - “shares” has the meaning given in section 422;

“specified” means specified in the rules;

“voting power” has the meaning given in section 422.

142I Powers of Treasury in relation to ring-fencing rules

- (1) The Treasury may by order require the appropriate regulator, as defined in section 142H(8), to include (or not to include) in ring-fencing rules specified provision relating to —
 - (a) any of the matters mentioned in section 142H(5)(a) to (g), or
 - (b) any other specified matter.
- (2) The power to make an order under this section is exercisable only if the Treasury consider it necessary or expedient to do so —
 - (a) for any of the group ring-fencing purposes as defined in section 142H(4), or
 - (b) otherwise for securing the independence of ring-fenced bodies from other members of their groups.
- (3) “Specified” means specified in the order.

142J Review of ring-fencing rules

- (1) The PRA must carry out reviews of its ring-fencing rules.
- (2) The first review must be completed before the end of the period of 5 years beginning with the day on which the first ring-fencing rules come into force.
- (3) Subsequent reviews must be completed before the end of the period of 5 years beginning with the date on which the previous review was completed.
- (4) The PRA must give the Treasury a report of each review.
- (5) The Treasury must lay a copy of the report before Parliament.
- (6) The PRA must publish the report in such manner as it thinks fit.
- (7) If (because any ring-fenced body is not a PRA-authorized person) section 142H has the effect of requiring the FCA to make ring-fencing rules, subsections (1) to (6) apply to the FCA as they apply to the PRA.

Pension liabilities

142K Pension liabilities

- (1) For the purposes of this section an occupational pension scheme is a “relevant pension scheme” if—
 - (a) it is a multi-employer scheme, as defined in section 75A(13) of the Pensions Act 1995 or Article 75A(13) of the Pensions (Northern Ireland) Order 1995,
 - (b) it is not a money purchase scheme,
 - (c) at least one of the employers in relation to the scheme is a ring-fenced body, and
 - (d) at least one of the employers in relation to the scheme is not a ring-fenced body.
- (2) The Treasury may by regulations —

- (a) require a ring-fenced body which is an employer in relation to a relevant pension scheme to make arrangements for the purpose of —
 - (i) ensuring that the ring-fenced body cannot become liable to meet, or contribute to the meeting of, liabilities in respect of pensions or other benefits payable to or in respect of employment by a person who is not a ring-fenced body, and
 - (ii) to the extent that it is not possible to ensure that result, minimising any potential liability falling within sub-paragraph (i);
 - (b) make other provision about the making of arrangements for that purpose by a ring-fenced body which is an employer in relation to a relevant pension scheme.
- (3) The regulations may in particular —
- (a) require a ring-fenced body to cease to participate in a relevant pension scheme unless the scheme is divided into two or more sections in relation to which prescribed conditions are met;
 - (b) provide that assets or liabilities of a relevant pension scheme may not be transferred under the arrangements to another occupational pension scheme unless the other scheme meets prescribed conditions;
 - (c) require ring-fenced bodies to establish new occupational pension schemes in prescribed circumstances;
 - (d) provide that any provision of a relevant pension scheme that might prevent a ring-fenced body from making the arrangements, other than a provision requiring the consent of the trustees or managers of the scheme, is not to have effect in prescribed circumstances;
 - (e) make provision enabling the trustees or managers of a relevant pension scheme, with the consent of the employers in relation to the scheme, to modify the scheme by resolution for the purpose of enabling a ring-fenced body to make the arrangements;
 - (f) make provision enabling the court, on an application made in accordance with the regulations by a ring-fenced body, if it appears to the court that the trustees or managers of a relevant pension scheme, or an employer in relation to such a scheme, have unreasonably refused their consent to any step that would enable the ring-fenced body to make the arrangements, to order that the step may be taken without that consent;
 - (g) require a ring-fenced body to make an application for clearance in connection with the making of the arrangements;
 - (h) confer exemptions from any provision of the regulations in prescribed cases;
 - (i) confer functions on the PRA;
 - (j) provide that a ring-fenced body which contravenes a prescribed requirement of the regulations is to be taken to have contravened a requirement imposed by the PRA under this Act.
- (4) An “application for clearance” is an application to the Pensions Regulator under any of the following provisions —
- (a) section 42 of the Pensions Act 2004 (clearance statement relating to a contribution notice under section 38);
 - (b) section 46 of that Act (clearance statements relating to financial support directions);

- (c) Article 38 of the Pensions (Northern Ireland) Order 2005 (clearance statements relating to contribution notices under article 34);
- (d) Article 42 of that Order (clearance statements relating to financial support directions).
- (5) In relation to a ring-fenced body that is not a PRA-authorized person, references in subsection (3) to the PRA are to be read as references to the FCA.
- (6) The regulations may not require ring-fenced bodies to achieve the results mentioned in subsection (2) before 1 January 2026, but this does not prevent the regulations requiring steps to be taken at any time after the regulations come into force.

142L Further interpretive provisions for section 142K

- (1) The following provisions have effect for the interpretation of section 142K.
- (2) “Occupational pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993 or section 1 of the Pension Schemes (Northern Ireland) Act 1993 and, in relation to such a scheme, “employer”, “member” and “trustees or managers” have the same meaning as in Part 1 of the Pensions Act 1995 or Part 2 of the Pensions (Northern Ireland) Order 1995.
- (3) “Money purchase scheme” has the meaning given in section 181(1) of the Pension Schemes Act 1993 or section 176(1) of the Pension Schemes (Northern Ireland) Act 1993.
- (4) “The court” means—
 - (a) in relation to England and Wales or Northern Ireland, the High Court, and
 - (b) in relation to Scotland, the Court of Session.

Loss Absorbency Requirements

142M Power of Treasury in relation to loss-absorbency requirements

- (1) The Treasury may by order make provision about the exercise by either regulator of its functions under this Act, so far as they are (apart from the order) capable of being exercised in relation to a relevant body so as to require the relevant body—
 - (a) to issue any debt instrument, or
 - (b) to ensure that any part of the relevant body’s debt consists of debt owed by it in respect of debt instruments, or debt instruments of a particular kind.
- (2) A “relevant body” is—
 - (a) a ring-fenced body,
 - (b) any other body corporate that has a Part 4A permission relating to the regulated activity of accepting deposits, or
 - (c) a body corporate that is a member of the group of a body falling within paragraph (a) or (b).
- (3) “Debt instrument” means—
 - (a) a bond,
 - (b) any other instrument creating or acknowledging a debt, or
 - (c) an instrument giving rights to acquire a debt instrument.

- (4) An order under this section may in particular—
- (a) require the regulator to exercise its functions so as to require relevant bodies to do either or both of the things mentioned in subsection (1);
 - (b) limit the extent to which the regulator may require a relevant body's debt to consist of debt owed in respect of debt instruments or of debt instruments of a kind specified in the order;
 - (c) require the regulator—
 - (i) to make, or not to make, provision by reference to specified matters, or
 - (ii) to have regard, or not to have regard, to specified matters;
 - (d) require the regulator to consult, or obtain the consent of, the Treasury before making rules of a specified description or exercising any other specified function;
 - (e) impose on the regulator in connection with the exercise of a specified function procedural requirements which would not otherwise apply to the exercise of the function;
 - (f) refer to a publication issued by a regulator, another body in the United Kingdom or an international organisation, as the publication has effect from time to time.
- (5) "Specified" means specified in the order.

General

142N Affirmative Procedure in relation to certain orders under Part 9B

- (1) This section applies to an order containing provision made under any of the following provisions of this Part—
- (a) section 142A(2)(b);
 - (b) section 142B(2) or (5);
 - (c) section 142D(2) or (4);
 - (d) section 142E;
 - (e) section 142I;
 - (f) section 142M.
- (2) No order to which this section applies may be made unless—
- (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
 - (b) subsection (4) applies.
- (3) Subsection (4) applies if an order under 142D(4) or 142E contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (4) Where this subsection applies the order—
- (a) must be laid before Parliament after being made, and

(b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).

(5) The “relevant period” is a period of 28 days beginning with the day on which the order is made.

(6) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than 4 days.

142O Interpretation of Part 9B

In this Part, any reference to—

(a) the regulated activity of accepting deposits, or

(b) the regulated activity of dealing in investments as principal,

is to be read in accordance with Schedule 2, taken with any order under section 22.

PART 15
THE FINANCIAL SERVICES COMPENSATION SCHEME

The scheme manager

212 The scheme manager

- (1) “The scheme manager” means the body corporate established by the Financial Services Authority under this section as originally enacted.
- (2) The regulators must take such steps as are necessary to ensure that the scheme manager is, at all times, capable of exercising the functions conferred on it by or under this Part or Part 15A.
- (3) The constitution of the scheme manager must provide for it to have—
 - (a) a chairman; ~~and~~
 - (aa) a chief executive (who is to be the accounting officer); and**
 - (b) a board (which must include the chairman **and chief executive**) whose members are the scheme manager's directors.
- (4) The chairman, **chief executive** and other members of the board must be persons appointed, and liable to removal from office, by the regulators (acting, in the case of the chairman **and the chief executive**, with the approval of the Treasury).
- (5) But the terms of their appointment (and in particular those governing removal from office) must be such as to secure their independence from the regulators in the operation of the compensation scheme.
- (6) The scheme manager is not to be regarded as exercising functions on behalf of the Crown.
- (7) The scheme manager's officers and staff are not to be regarded as Crown servants.

The scheme

213 The compensation scheme

- (1) The regulators must by rules made in accordance with an order under subsection (1A) establish a scheme for compensating persons in cases where—
 - (a) relevant persons are unable, or likely to be unable, to satisfy claims against them, or
 - (b) persons who have assumed responsibility for liabilities arising from acts or omissions of relevant persons (“successors”) are unable, or likely to be unable, to satisfy claims against the successors that are based on those acts or omissions.
- (1A) The Treasury must by order specify—
 - (a) the cases in which the FCA may, or may not, make rules under subsection (1), and
 - (b) the cases in which the PRA may, or may not, make rules under that subsection.
- (2) The rules (taken together) are to be known as the Financial Services Compensation Scheme (but are referred to in this Act as “the compensation scheme”).
- (3) The compensation scheme must, in particular, provide for the scheme manager—
 - (a) to assess and pay compensation, in accordance with the scheme, to claimants in respect of claims made in connection with regulated activities carried on (whether or not with permission) by relevant persons; and

- (b) to have power to impose levies on authorised persons, or any class of authorised person, for the purpose of meeting its expenses (including in particular expenses incurred, or expected to be incurred, in paying compensation, borrowing or insuring risks).
- (4) The compensation scheme may provide for the scheme manager to have power to impose levies on authorised persons, or any class of authorised person, for the purpose of recovering the cost (whenever incurred) of establishing the scheme.
- (5) In making any provision of the scheme by virtue of subsection (3)(b), the regulators must take account of the desirability of ensuring that the amount of the levies imposed on a particular class of authorised person reflects, so far as practicable, the amount of the claims made, or likely to be made, in respect of that class of person.
- (6) An amount payable to the scheme manager as a result of any provision of the scheme made by virtue of subsection (3)(b) or (4) may be recovered as a debt due to the scheme manager.
- (7) Sections 214 to 217 make further provision about the scheme but are not to be taken as limiting the power conferred on the regulators by subsection (1) (except where limitations are expressly stated).
- (8) In those sections “specified” means specified in the scheme.
- (9) In this Part (except in sections 219, 220 or 224) “relevant person” means a person who was—
 - (a) an authorised person at the time the act or omission giving rise to the claim against him, or against a successor falling within subsection (1)(b), took place; or
 - (b) an appointed representative at that time.
- (10) But a person who, at that time—
 - (a) qualified for authorisation under Schedule 3, and
 - (b) fell within a prescribed category in relation to any authorised activities,
 is not to be regarded as a relevant person in relation to those activities, unless the person had elected to participate in the scheme in relation to those activities at that time.
- (11) In subsection (10) “authorised activities”, in relation to a person, means activities for which the person had, at the time mentioned in that subsection, permission as a result of any provision of, or made under, Schedule 3.

Provisions of the scheme

214 General

- (1) The compensation scheme may, in particular, make provision—
 - (a) as to the circumstances in which a relevant person is to be taken (for the purposes of the scheme) to be unable, or likely to be unable, to satisfy claims made against him;
 - (aa) as to the circumstances in which a successor falling within section 213(1)(b) is to be taken (for the purposes of the scheme) to be unable, or likely to be unable, to satisfy claims against the successor that are based on the acts or omissions of a relevant person;
 - (b) for the establishment of different funds for meeting different kinds of claim;
 - (c) for the imposition of different levies in different cases;
 - (d) limiting the levy payable by a person in respect of a specified period;
 - (e) for repayment of the whole or part of a levy in specified circumstances;
 - (f) for a claim to be entertained only if it is made by a specified kind of claimant;

- (g) for a claim to be entertained only if it falls within a specified kind of claim;
 - (h) as to the procedure to be followed in making a claim;
 - (i) for the making of interim payments before a claim is finally determined;
 - (j) limiting the amount payable on a claim to a specified maximum amount or a maximum amount calculated in a specified manner;
 - (k) for payment to be made, in specified circumstances, to a person other than the claimant.
- (1A) Rules by virtue of subsection (1)(h) may, in particular, allow the scheme manager to treat persons who are or may be entitled to claim under the scheme as if they had done so.
- (1B) A reference in any enactment or instrument to a claim or claimant under this Part includes a reference to a deemed claim or claimant in accordance with subsection (1A).
- (1C) Rules by virtue of subsection (1)(j) may, in particular, allow, or be subject to rules which allow, the scheme manager to settle a class of claim by payment of sums fixed without reference to, or by modification of, the normal rules for calculation of maximum entitlement for individual claims.
- (2) Different provision may be made with respect to different kinds of claim.
- (3) The scheme may provide for the determination and regulation of matters relating to the scheme by the scheme manager.
- (4) The scheme, or particular provisions of the scheme, may be made so as to apply only in relation to—
- (a) activities carried on,
 - (b) claimants,
 - (c) matters arising, or
 - (d) events occurring,
- in specified territories, areas or localities.
- (5) The scheme may provide for a person who—
- (a) qualifies for authorisation under Schedule 3, and
 - (b) falls within a prescribed category,
- to elect to participate in the scheme in relation to some or all of the activities for which he has permission as a result of any provision of, or made under, that Schedule.
- (6) The scheme may provide for the scheme manager to have power—
- (a) in specified circumstances,
 - (b) but only if the scheme manager is satisfied that the claimant is entitled to receive a payment in respect of his claim—
 - (i) under a scheme which is comparable to the compensation scheme, or
 - (ii) as the result of a guarantee given by a government or other authority,

to make a full payment of compensation to the claimant and recover the whole or part of the amount of that payment from the other scheme or under that guarantee.

214A Contingency funding

- (1) The Treasury may make regulations (“contingency fund regulations”) permitting the scheme manager to impose levies under section 213 for the purpose of maintaining contingency funds from which possible expenses may be paid.

- (2) Contingency fund regulations may make provision about the establishment and management of contingency funds; in particular, the regulations may make provision about—
 - (a) the number and size of funds;
 - (b) the circumstances and timing of their establishment;
 - (c) the classes of person from whom contributions to the funds may be levied;
 - (d) the amount and timing of payments into and out of funds (which may include provision for different levies for different classes of person);
 - (e) refunds;
 - (f) the ways in which funds' contents may be invested (including (i) the extent of reliance on section 223A, and (ii) the application of investment income);
 - (g) the purposes for which funds may be applied, but only so as to determine whether a fund is to be used (i) for the payment of compensation, (ii) for the purposes of co-operating with a bank liquidator in accordance with section 99 of the Banking Act 2009, or (iii) for contributions under section 214B;
 - (h) procedures to be followed in connection with funds, including the keeping of records and the provision of information.
- (3) The compensation scheme may include provision about contingency funds provided that it is not inconsistent with contingency fund regulations.

214B Contribution to costs of special resolution regime

- (1) This section applies if—
 - (a) a stabilisation power under Part 1 of the Banking Act 2009 has been exercised in respect of a bank, building society, credit union or investment firm within the meaning of that Part (“the institution”); and
 - (b) the Treasury think that the institution was or was likely to have been, or but for the exercise of the power would have become, unable to satisfy claims against it.
- (2) The Treasury may require the scheme manager to make payments (to the Treasury or any other person) in respect of expenses of a prescribed description incurred (by the Treasury or that person) in connection with the exercise of the power.
- (3) Subsection (2) is subject to section 214C (limit on amount of special resolution regime payments).
- (4) In subsection (2) “expenses” includes interest at a specified rate on the difference, at any time, between—
 - (a) the total amount of expenses (including interest) incurred at or before that time; and
 - (b) the total amount recovered, or received from the scheme manager, in respect of the institution, at or before that time, by—
 - (i) the Treasury; and
 - (ii) any other person who has incurred expenses in connection with the exercise of the power that are of a description prescribed under subsection (2).
- (5) Any payment made by the scheme manager under subsection (2) is to be treated for the purposes of this Part as an expense under the compensation scheme.
- (6) In this section and section 214C “specified rate” means a rate specified by the Treasury.
- (7) Different rates may be specified under different provisions or for different periods.
- (8) A rate may be specified by reference to a rate set (from time to time) by any person.

214C Limit on amount of special resolution regime payments

- (1) The total amount of special resolution regime payments required to be made in respect of a person (“the institution”) may not exceed—
 - (a) notional net expenditure (see subsection (3)), minus
 - (b) actual net expenditure (see subsection (4)).
- (2) A “special resolution regime payment” is—
 - (a) a payment under section 214B(2); or
 - (b) a payment required to be made by the scheme manager by virtue of section 61 of the Banking Act 2009 (special resolution regime: compensation).
- (3) Notional net expenditure is—
 - (a) the total amount of expenses that would have been incurred under the compensation scheme in respect of the institution if the stabilisation power had not been exercised and the institution had been unable to satisfy claims against it, minus
 - (b) the total amount that would have been likely, at the time when the power was exercised, to be recovered by the scheme manager in respect of the institution in those circumstances.
- (4) Actual net expenditure is—
 - (a) the total amount of expenses (other than special resolution regime payments) actually incurred by the scheme manager in respect of the institution, minus
 - (b) the total amount actually recovered by the scheme manager in respect of the institution.
- (5) In subsection (3)(a) “expenses” includes interest at a specified rate on the difference, at any time, between—
 - (a) the total amount of expenses (including interest) that would have been incurred as mentioned in subsection (3)(a) at or before that time; and
 - (b) the total amount that would have been likely to have been recovered as mentioned in subsection (3)(b) at or before that time.
- (6) In subsection (4)(a) “expenses” includes interest at a specified rate on the difference, at any time, between—
 - (a) the total amount of expenses (including special resolution regime payments and interest) actually incurred by the scheme manager in respect of the institution at or before that time; and
 - (b) the total amount actually recovered by the scheme manager in respect of the institution at or before that time.
- (7) In paragraph (b) of subsections (3) to (6) references to amounts recovered (or likely to have been recovered) by the scheme manager do not include any levy received (or likely to have been received) by it.

214D Contributions under section 214B: supplementary

- (1) This section supplements sections 214B and 214C.
- (2) The scheme manager must determine—
 - (a) the amounts of expenses (other than interest) that would have been incurred as mentioned in section 214C(3)(a); and
 - (b) the time or times at which those amounts would have been likely to have been incurred.

- (3) The Treasury, or a person designated by the Treasury, must in accordance with regulations appoint a person (“the valuer”) to determine—
- (a) the amounts that would have been likely, at the time when the stabilisation power was exercised, to be recovered as mentioned in section 214C(3)(b); and
 - (b) the time or times at which those amounts would have been likely to be recovered.

The person appointed under this subsection may be the person appointed as valuer under section 54 of the Banking Act 2009 in respect of the exercise of the stabilisation power.

- (4) Regulations may enable the Treasury to specify principles to be applied by—
- (a) the scheme manager when exercising functions under subsection (2); or
 - (b) the valuer when exercising functions under subsection (3).
- (5) The regulations may in particular enable the Treasury to require the scheme manager or valuer—
- (a) to use, or not to use, specified methods;
 - (b) to take specified matters into account in a specified manner; or
 - (c) not to take specified matters into account.
- (6) Regulations—
- (a) must provide for independent verification of expenses within section 214B(2);
 - (b) may provide for the independent verification of other matters; and
 - (c) may contain provision about the appointment and payment of an auditor.
- (7) Regulations—
- (a) must contain provision enabling the valuer to reconsider a decision;
 - (b) must provide a right of appeal to a court or tribunal against any decision of the valuer;
 - (c) may provide for payment of the valuer; and
 - (d) may apply (with or without modifications) or make provision corresponding to—
 - (i) any provision of sections 54 to 56 of the Banking Act 2009; or
 - (ii) any provision made, or that could be made, by virtue of any of those sections.
- (8) Regulations may make provision for payments under section 214B(2) to be made—
- (a) before any verification required by the regulations is undertaken, and
 - (b) before the limit imposed by section 214C is calculated,
- subject to any necessary later adjustment.
- (9) If they do so they must provide that the amount of any payment required by virtue of subsection (8) must not be such as to give rise to an expectation that an amount will be required to be repaid to the scheme manager (once any necessary verification has been undertaken and the limit imposed by section 214C has been calculated).
- (10) Regulations may—
- (a) make provision supplementing section 214B or 214C or this section;
 - (b) make further provision about the method by which amounts to be paid under section 214B(2) are to be determined;
 - (c) make provision about timing;
 - (d) make provision about procedures to be followed;

- (e) provide for discretionary functions to be exercised by a specified body or by persons of a specified class; and
- (f) make provision about the resolution of disputes (which may include provision conferring jurisdiction on a court or tribunal).

- (11) “Regulations” means regulations made by the Treasury.
- (12) Any payment made by the Treasury by virtue of this section is to be met out of money provided by Parliament.
- (13) The compensation scheme may make provision about payments under section 214B(2) and levies in connection with such payments (except provision inconsistent with any provision made by or under section 214B or 214C or this section).

215 Rights of the scheme in insolvency

- (1) The compensation scheme may make provision—
 - (a) about the effect of a payment of compensation under the scheme on rights or obligations arising out of matters in connection with which the compensation was paid;
 - (b) giving the scheme manager a right of recovery in respect of those rights or obligations.
- (2) Such a right of recovery conferred by the scheme does not, in the event of a person's insolvency, exceed such right (if any) as the claimant would have had in that event.
- (3) If a person other than the scheme manager makes an administration application under Schedule B1 to the 1986 Act or Schedule B1 to the 1989 Order in relation to a company or partnership which is a relevant person, the scheme manager has the same rights as are conferred on the regulators by section 362.
- (3A) In subsection (3) the reference to making an administration application includes a reference to—
 - (a) appointing an administrator under paragraph 14 or 22 of Schedule B1 to the 1986 Act [or paragraph 15 or 23 of Schedule B1 to the 1989 Order], or
 - (b) filing with the court a copy of notice of intention to appoint an administrator under any of those paragraphs.
- (4) If a person other than the scheme manager presents a petition for the winding up of a body which is a relevant person, the scheme manager has the same rights as are conferred on the regulators by section 371.
- (5) If a person other than the scheme manager presents a bankruptcy petition to the court in relation to an individual who, or an entity which, is a relevant person, the scheme manager has the same rights as are conferred on the regulators by section 374.
- (6) Insolvency rules may be made for the purpose of integrating any procedure for which provision is made as a result of subsection (1) into the general procedure on the administration of a company or partnership or on a winding-up, bankruptcy or sequestration.
- (7) “Bankruptcy petition” means a petition to the court—
 - (a) under section 264 of the 1986 Act or Article 238 of the 1989 Order for a bankruptcy order to be made against an individual;
 - (b) under section 5 of the 1985 Act for the sequestration of the estate of an individual; or
 - (c) under section 6 of the 1985 Act for the sequestration of the estate belonging to or held for or jointly by the members of an entity mentioned in subsection (1) of that section.
- (8) “Insolvency rules” are—
 - (a) for England and Wales, rules made under sections 411 and 412 of the 1986 Act;

- (b) for Scotland, rules made by order by the Treasury, after consultation with the Scottish Ministers, for the purposes of this section; and
 - (c) for Northern Ireland, rules made under Article 359 of the 1989 Order and section 55 of the Judicature (Northern Ireland) Act 1978.
- (9) “The 1985 Act”, “the 1986 Act”, “the 1989 Order” and “court” have the same meaning as in Part XXIV.

216 Continuity of long-term insurance policies

- (1) The compensation scheme may, in particular, include provision requiring the scheme manager to make arrangements for securing continuity of insurance for policyholders, or policyholders of a specified class, of relevant long-term insurers.
- (2) “Relevant long-term insurers” means relevant persons who—
 - (a) have permission to effect or carry out contracts of long-term insurance; and
 - (b) are unable, or likely to be unable, to satisfy claims made against them.
- (3) The scheme may provide for the scheme manager to take such measures as appear to him to be appropriate—
 - (a) for securing or facilitating the transfer of a relevant long-term insurer's business so far as it consists of the carrying out of contracts of long-term insurance, or of any part of that business, to another authorised person;
 - (b) for securing the issue by another authorised person to the policyholders concerned of policies in substitution for their existing policies.
- (4) The scheme may also provide for the scheme manager to make payments to the policyholders concerned—
 - (a) during any period while he is seeking to make arrangements mentioned in subsection (1);
 - (b) if it appears to him that it is not reasonably practicable to make such arrangements.
- (5) A provision of the scheme made by virtue of section 213(3)(b) may include power to impose levies for the purpose of meeting expenses of the scheme manager incurred in—
 - (a) taking measures as a result of any provision of the scheme made by virtue of subsection (3);
 - (b) making payments as a result of any such provision made by virtue of subsection (4).

217 Insurers in financial difficulties

- (1) The compensation scheme may, in particular, include provision for the scheme manager to have power to take measures for safeguarding policyholders, or policyholders of a specified class, of relevant insurers.
- (2) “Relevant insurers” means relevant persons who—
 - (a) have permission to effect or carry out contracts of insurance; and
 - (b) are in financial difficulties.
- (3) The measures may include such measures as the scheme manager considers appropriate for—
 - (a) securing or facilitating the transfer of a relevant insurer's business so far as it consists of the carrying out of contracts of insurance, or of any part of that business, to another authorised person;
 - (b) giving assistance to the relevant insurer to enable it to continue to effect or carry out contracts of insurance.
- (4) The scheme may provide—

- (a) that if measures of a kind mentioned in subsection (3)(a) are to be taken, they should be on terms appearing to the scheme manager to be appropriate, including terms reducing, or deferring payment of, any of the things to which any of those who are eligible policyholders in relation to the relevant insurer are entitled in their capacity as such;
 - (b) that if measures of a kind mentioned in subsection (3)(b) are to be taken, they should be conditional on the reduction of, or the deferment of the payment of, the things to which any of those who are eligible policyholders in relation to the relevant insurer are entitled in their capacity as such;
 - (c) for ensuring that measures of a kind mentioned in subsection (3)(b) do not benefit to any material extent persons who were members of a relevant insurer when it began to be in financial difficulties or who had any responsibility for, or who may have profited from, the circumstances giving rise to its financial difficulties, except in specified circumstances;
 - (d) for requiring the scheme manager to be satisfied that any measures he proposes to take are likely to cost less than it would cost to pay compensation under the scheme if the relevant insurer became unable, or likely to be unable, to satisfy claims made against him.
- (5) The scheme may provide for the either regulator or both regulators to have power—
- (a) to give such assistance to the scheme manager as it considers appropriate for assisting the scheme manager to determine what measures are practicable or desirable in the case of a particular relevant insurer;
 - (b) to impose constraints on the taking of measures by the scheme manager in the case of a particular relevant insurer;
 - (c) to require the scheme manager to provide it with information about any particular measures which the scheme manager is proposing to take.
- (6) The scheme may include provision for the scheme manager to have power—
- (a) to make interim payments in respect of eligible policyholders of a relevant insurer;
 - (b) to indemnify any person making payments to eligible policyholders of a relevant insurer.
- (7) A provision of the scheme made by virtue of section 213(3)(b) may include power to impose levies for the purpose of meeting expenses of the scheme manager incurred in—
- (a) taking measures as a result of any provision of the scheme made by virtue of subsection (1);
 - (b) making payments or giving indemnities as a result of any such provision made by virtue of subsection (6).
- (8) “Financial difficulties” and “eligible policyholders” have such meanings as may be specified.

Relationship with the regulators

217A Co-operation

- (1) Each regulator and the scheme manager must take such steps as they consider appropriate to co-operate with each other in the exercise of their functions under this Part and Part 15A.
- (2) Each regulator and the scheme manager must prepare and maintain a memorandum describing how that regulator and the scheme manager intend to comply with subsection (1).
- (3) The scheme manager must ensure that the memoranda as currently in force are published in the way appearing to it to be best calculated to bring them to the attention of the public.

Annual plan and report

217B Annual plan

- (1) The scheme manager must in respect of each of its financial years prepare an annual plan.
- (2) The plan must be prepared before the start of the financial year.
- (3) An annual plan in respect of a financial year must make provision about the use of the resources of the scheme manager.
- (4) The plan may include material relating to periods longer than the financial year in question.
- (5) Before preparing an annual plan, the scheme manager must consult such persons (if any) as the scheme manager considers appropriate.
- (6) The scheme manager must publish each annual plan in the way it considers appropriate.

218 Annual report

- (1) At least once a year, the scheme manager must make a report to the regulators and the Treasury on the discharge of its functions.
- (2) The report must—
 - (a) include a statement setting out the value of each of the funds established by the compensation scheme; and
 - (b) comply with any requirements specified in rules made by the regulators or in contingency fund regulations.
- (3) The scheme manager must publish each report in the way it considers appropriate.
- (4) The Treasury may—
 - (a) require the scheme manager to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
 - (b) direct that any such provision of that Act is to apply to the scheme manager with such modifications as are specified in the direction.
- (5) Compliance with any requirement under subsection (4)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.
- (6) Proceedings under subsection (5) may be brought only by the Treasury.

218ZA Audit of accounts

- (1) The scheme manager must send a copy of its annual accounts to the Comptroller and Auditor General and the Treasury as soon as is reasonably practicable.
- (2) The Comptroller and Auditor General must—
 - (a) examine, certify and report on accounts received under this section, and
 - (b) send a copy of the certified accounts and the report to the Treasury.
- (3) The Treasury must lay the copy of the certified accounts and the report before Parliament.
- (4) The scheme manager must send a copy of the certified accounts and the report to the regulators.
- (5) Except as provided by section 218(4), the scheme manager is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.
- (6) In this section “annual accounts” has the meaning given by section 471 of the Companies Act 2006.

Information and documents

218A Regulators' power to require information

- (1) Each regulator may make rules enabling that regulator to require authorised persons to provide information, which may then be made available to the scheme manager by that regulator.
- (2) A requirement may be imposed only if the regulator thinks the information is of a kind that may be of use to the scheme manager in connection with functions in respect of the scheme.
- (3) A requirement under this section may apply—
 - (a) to authorised persons generally or only to specified persons or classes of person;
 - (b) to the provision of information at specified periods, in connection with specified events or in other ways.
- (4) In addition to requirements under this section, a notice under section 165 may relate to information or documents which the regulator thinks are reasonably required by the scheme manager in connection with the performance of functions in respect of the scheme; and section 165(4) is subject to this subsection.
- (5) Rules under subsection (1) shall be prepared, made and treated in the same way as (and may be combined with) the regulator's general rules.

218B Treasury's Power to require information from scheme manager

- (1) The Treasury may by notice in writing require the scheme manager to provide specified information or information of a specified description that the Treasury reasonably require in connection with the duties of the Treasury under the Government Resources and Accounts Act 2000.**
- (2) Information required under this section must be provided before the end of such reasonable period as may be specified.**
- (3) "Specified" means specified in the notice.**

219 Scheme manager's power to require information

- (1) The scheme manager may, by notice in writing require a person—
 - (a) to provide specified information or information of a specified description; or
 - (b) to produce specified documents or documents of a specified description.
- (1A) A requirement may be imposed only—
 - (a) on a person (P) against whom a claim has been made under the scheme,
 - (b) on a person (P) who is unable or likely to be unable to satisfy claims under the scheme against P,
 - (c) on a person ("the Third Party") whom the scheme manager thinks was knowingly involved in matters giving rise to a claim against another person (P) under the scheme, or
 - (d) on a person ("the Third Party") whom the scheme manager thinks was knowingly involved in matters giving rise to the actual or likely inability of another person (P) to satisfy claims under the scheme.
- (1B) For the purposes of subsection (1A)(b) and (d) whether P is unable or likely to be unable to satisfy claims shall be determined in accordance with provision to be made by the scheme (which may, in particular—
 - (a) apply or replicate, with or without modifications, a provision of an enactment;
 - (b) confer discretion on a specified person).]
- (2) The information or documents must be provided or produced—
 - (a) before the end of such reasonable period as may be specified; and

- (b) in the case of information, in such manner or form as may be specified.
- (3) This section applies only to information and documents the provision or production of which the scheme manager considers to be necessary (or likely to be necessary) for the fair determination of claims which have been or may be made against P.
- (3A) Where a stabilisation power under Part 1 of the Banking Act 2009 has been exercised in respect of a bank, building society or credit union, the scheme manager may by notice in writing require the bank, building society or credit union, or the Bank of England, to provide information that the scheme manager requires for the purpose of determining the matters mentioned in section 214D(2)(a) and (b) above.
- (4) If a document is produced in response to a requirement imposed under this section, the scheme manager may—
- (a) take copies or extracts from the document; or
 - (b) require the person producing the document to provide an explanation of the document.
- (5) If a person who is required under this section to produce a document fails to do so, the scheme manager may require the person to state, to the best of his knowledge and belief, where the document is.
- (6) If [P] is insolvent, no requirement may be imposed under this section on a person to whom section 220 or 224 applies.
- (7) If a person claims a lien on a document, its production under this Part does not affect the lien.
- (8) . . .
- (9) “Specified” means specified in the notice given under subsection (1).
- (10) . . .

220 Scheme manager's power to inspect information held by liquidator etc

- (1) For the purpose of assisting the scheme manager to discharge its functions in relation to a claim made in respect of an insolvent relevant person, a person to whom this section applies must permit a person authorised by the scheme manager to inspect relevant documents.
- (2) A person inspecting a document under this section may take copies of, or extracts from, the document.
- (3) This section applies to—
- (a) the administrative receiver, administrator, liquidator[, bank liquidator][, building society liquidator] or trustee in bankruptcy of an insolvent relevant person;
 - (b) the permanent trustee, within the meaning of the Bankruptcy (Scotland) Act 1985, on the estate of an insolvent relevant person.
- (4) This section does not apply to a liquidator, administrator or trustee in bankruptcy who is—
- (a) the Official Receiver;
 - (b) the Official Receiver for Northern Ireland; or
 - (c) the Accountant in Bankruptcy.
- (5) “Relevant person” has the same meaning as in section 224.

221 Powers of court where information required

- (1) If a person (“the defaulter”)—
- (a) fails to comply with a requirement imposed under section 219, or

- (b) fails to permit documents to be inspected under section 220,
the scheme manager may certify that fact in writing to the court and the court may enquire into the case.
- (2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement (or to permit the documents to be inspected), it may deal with the defaulter (and, in the case of a body corporate, any director or other officer) as if he were in contempt; and “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.
- (3) “Court” means—
- (a) the High Court;
 - (b) in Scotland, the Court of Session.

Miscellaneous

221A Delegation of functions

- (1) The scheme manager may arrange for any of its functions to be discharged on its behalf by another person (a “scheme agent”).
- (2) Before entering into arrangements the scheme manager must be satisfied that the scheme agent—
- (a) is competent to discharge the function, and
 - (b) has been given sufficient directions to enable the agent to take any decisions required in the course of exercising the function in accordance with policy determined by the scheme manager.
- (3) Arrangements may include provision for payments to be made by the scheme manager to the scheme agent (which payments are management expenses of the scheme manager except where the function in question is one under Part 15A).

222 Statutory immunity

- (1) Neither the scheme manager nor any person who is, or is acting as, its officer, scheme agent or member of staff is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the scheme manager’s functions.
- (2) Subsection (1) does not apply—
- (a) if the act or omission is shown to have been in bad faith; or
 - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

223 Management expenses

- (1) The amount which the scheme manager may recover, from the sums levied under the scheme, as management expenses attributable to a particular period may not exceed such amount as may be fixed by the scheme as the limit applicable to that period.
- (2) In calculating the amount of any levy to be imposed by the scheme manager, no amount may be included to reflect management expenses unless the limit mentioned in subsection (1) has been fixed by the scheme.
- (3) “Management expenses” means expenses incurred, or expected to be incurred, by the scheme manager in connection with its functions under this Act other than those incurred—
- (a) in paying compensation;
 - (b) as a result of any provision of the scheme made by virtue of section 216(3) or (4) or 217(1) or (6);
 - (c) under section 214B or 214D;

(d) under Part 15A.

223A Investing in National Loans Fund

- (1) Sums levied for the purpose of maintaining a contingency fund may be paid to the Treasury.
- (2) The Treasury may receive sums under subsection (1) and may set terms and conditions of receipts.
- (3) Sums received shall be treated as if raised under section 12 of the National Loans Act 1968 (and shall therefore be invested as part of the National Loans Fund).
- (4) Interest accruing on the invested sums may be credited to the contingency fund (subject to any terms and conditions set under subsection (2)).
- (5) The Treasury shall comply with any request of the scheme manager to arrange for the return of sums for the purpose of making payments out of a contingency fund (subject to any terms and conditions set under subsection (2)).

223B Borrowing from National Loans Fund

- (1) The scheme manager may request a loan from the National Loans Fund for the purpose of funding expenses incurred or expected to be incurred under the scheme.
- (2) The Treasury may arrange for money to be paid out of the National Loans Fund in pursuance of a request under subsection (1).
- (3) The Treasury shall determine—
 - (a) the rate of interest on a loan, and
 - (b) other terms and conditions.
- (4) The Treasury may make regulations—
 - (a) about the amounts that may be borrowed under this section;
 - (b) permitting the scheme manager to impose levies under section 213 for the purpose of meeting expenses in connection with loans under this section (and the regulations may have effect despite any provision of this Act);
 - (c) about the classes of person on whom those levies may be imposed;
 - (d) about the amounts and timing of those levies.
- (5) The compensation scheme may include provision about borrowing under this section provided that it is not inconsistent with regulations under this section.

223C Payments in error

- (1) Payments made by the scheme manager in error may be provided for in setting a levy by virtue of section 213, 214A, 214B or 223B.
- (2) This section does not apply to payments made in bad faith.

224 Scheme manager's power to inspect documents held by Official Receiver etc

- (1) If, as a result of the insolvency or bankruptcy of a relevant person, or a successor falling within section 213(1)(b), any documents have come into the possession of a person to whom this section applies, he must permit any person authorised by the scheme manager to inspect the documents for the purpose of establishing—
 - (a) the identity of persons to whom the scheme manager may be liable to make a payment in accordance with the compensation scheme; or

- (b) the amount of any payment which the scheme manager may be liable to make.
- (2) A person inspecting a document under this section may take copies or extracts from the document.
- (3) In this section “relevant person” means a person who was—
 - (a) an authorised person at the time the act or omission which may give rise to the liability mentioned in subsection (1)(a) took place; or
 - (b) an appointed representative at that time.
- (4) But a person who, at that time—
 - (a) qualified for authorisation under Schedule 3, and
 - (b) fell within a prescribed category,is not to be regarded as a relevant person for the purposes of this section in relation to any activities for which he had permission as a result of any provision of, or made under, that Schedule unless he had elected to participate in the scheme in relation to those activities at that time.
- (5) This section applies to—
 - (a) the Official Receiver;
 - (b) the Official Receiver for Northern Ireland; and
 - (c) the Accountant in Bankruptcy.

224ZA Discharge of Functions

- (1) In discharging its functions the scheme manager must have regard to—**
 - (a) the need to ensure efficiency and effectiveness in the discharge of those functions, and**
 - (b) the need to minimise public expenditure attributable to loans made or other financial assistance given to the scheme manager for the purposes of the scheme.**
- (2) In subsection (1)(b) “financial assistance” includes the giving of guarantees and indemnities and any other kind of financial assistance (actual or contingent).**

224A Functions under the Banking Act 2009

- (1) A reference in this Part to functions of the scheme manager (including a reference to functions conferred by or under this Part) includes a reference to functions conferred by or under the Banking Act 2009.
- (2) Any payment required to be made by the scheme manager by virtue of section 61 of that Act (special resolution regime: compensation) is to be treated for the purposes of this Part as an expense under the compensation scheme.

PART 28

MISCELLANEOUS

Consumer redress schemes

404 Consumer redress schemes

- (1) This section applies if—
 - (a) it appears to the FCA that there may have been a widespread or regular failure by relevant firms to comply with requirements applicable to the carrying on by them of any activity;
 - (b) it appears to it that, as a result, consumers have suffered (or may suffer) loss or damage in respect of which, if they brought legal proceedings, a remedy or relief would be available in the proceedings; and
 - (c) it considers that it is desirable to make rules for the purpose of securing that redress is made to the consumers in respect of the failure (having regard to other ways in which consumers may obtain redress).
- (2) “Relevant firms” means—
 - (a) authorised persons; ...
 - (b) payment service providers or
 - (c) electronic money issuers.
- (3) The FCA may make rules requiring each relevant firm (or each relevant firm of a specified description) which has carried on the activity on or after the specified date to establish and operate a consumer redress scheme.
- (4) A “consumer redress scheme” is a scheme under which the firm is required to take one or more of the following steps in relation to the activity.
- (5) The firm must first investigate whether, on or after the specified date, it has failed to comply with the requirements mentioned in subsection (1)(a) that are applicable to the carrying on by it of the activity.
- (6) The next step is for the firm to determine whether the failure has caused (or may cause) loss or damage to consumers.
- (7) If the firm determines that the failure has caused (or may cause) loss or damage to consumers, it must then—
 - (a) determine what the redress should be in respect of the failure; and
 - (b) make the redress to the consumers.
- (8) A relevant firm is required to take the above steps in relation to any particular consumer even if, after the rules are made, a defence of limitation becomes available to the firm in respect of the loss or damage in question.
- (9) Before making rules under this section, the FCA must consult the scheme operator of the ombudsman scheme.
- (10) For the meaning of consumers, see section 404E.

404A Rules under s.404: supplementary

- (1) Rules under section 404 may make provision—
- (a) specifying the activities and requirements in relation to which relevant firms are to carry out investigations under consumer redress schemes;
 - (b) setting out, in relation to any specified description of case, examples of things done, or omitted to be done, that are to be regarded as constituting a failure to comply with a requirement;
 - (c) setting out, in relation to any specified description of case, matters to be taken into account, or steps to be taken, by relevant firms for the purpose of—
 - (i) assessing evidence as to a failure to comply with a requirement; or
 - (ii) determining whether such a failure has caused (or may cause) loss or damage to consumers;
 - (d) as to the kinds of redress that are, or are not, to be made to consumers in specified descriptions of case and the way in which redress is to be determined in specified descriptions of case;
 - (e) as to the things that relevant firms are, or are not, to do in establishing and operating consumer redress schemes;
 - (f) securing that relevant firms are not required to investigate anything occurring after a specified date;
 - (g) specifying the times by which anything required to be done under any consumer redress scheme is to be done;
 - (h) requiring relevant firms to provide information to the FCA;
 - (i) authorising one or more competent persons to do anything for the purposes of, or in connection with, the establishment or operation of any consumer redress scheme;
 - (j) for the nomination or approval by the FCA of persons authorised under paragraph (i);
 - (k) as to the circumstances in which, instead of a relevant firm, the FCA (or one or more competent persons acting on the FCA's behalf) may carry out the investigation and take the other relevant steps under any consumer redress scheme;
 - (l) as to the powers to be available to those carrying out an investigation by virtue of paragraph (k);
 - (m) as to the enforcement of any redress (for example, in the case of a money award, as a debt owed by a relevant firm).
- (2) The only examples that may be set out in the rules as a result of subsection (1)(b) are examples of things done, or omitted to be done, that have been, or would be, held by a court or tribunal to constitute a failure to comply with a requirement.
- (3) Matters may not be set out in the rules as a result of subsection (1)(c) if they have not been, or would not be, taken into account by a court or tribunal for the purpose mentioned there.
- (4) The FCA must exercise the power conferred as a result of subsection (1)(d) so as to secure that, in relation to any description of case, the only kinds of redress to be made are those which it considers to be just in relation to that description of case.
- (5) In acting under subsection (4), the FCA must have regard (among other things) to the nature and extent of the losses or damage in question.

- (6) The provision that may be made under subsection (1)(h) includes provision applying (with or without modifications)—
- (a) any provision of section 165; or
 - (b) any provision of Part 11 relating to that section.
- (7) The reference in subsection (1)(k) to the other relevant steps under any consumer redress scheme is a reference to the FCA making the determinations mentioned in section 404(6) and (7) (with the firm still required to make the redress).
- (8) If the rules include provision under subsection (1)(k), they must also include provision for—
- (a) giving warning and decision notices, and
 - (b) conferring rights on relevant firms to refer matters to the Tribunal,
- in relation to any determination mentioned in section 404(6) and (7) made by the FCA.
- (9) Nothing in this section is to be taken as limiting the power conferred by section 404.

404B Complaints to the ombudsman scheme

- (1) If—
- (a) a consumer makes a complaint under the ombudsman scheme in respect of an act or omission of a relevant firm, and
 - (b) at the time the complaint is made, the subject-matter of the complaint falls to be dealt with (or has been dealt with) under a consumer redress scheme,
- the way in which the complaint is to be determined by the ombudsman is to be as mentioned in subsection (4).
- (2) If a consumer—
- (a) is not satisfied with a determination made by a relevant firm under a consumer redress scheme, or
 - (b) considers that a relevant firm has failed to make a determination in accordance with a consumer redress scheme,
- the consumer may, in respect of that determination or failure, make a complaint under the ombudsman scheme.
- (3) A complaint mentioned in subsection (1) or (2) is referred to in the following provisions of this section as a “relevant complaint”.
- (4) A relevant complaint is to be determined by reference to what, in the opinion of the ombudsman, the determination under the consumer redress scheme should be or should have been (subject to subsection (5)).
- (5) If, in determining a relevant complaint, the ombudsman determines that the firm should make (or should have made) a payment of an amount to the consumer, the amount awarded by the ombudsman (a “money award”) must not exceed the monetary limit (within the meaning of section 229).
- (6) But the ombudsman may recommend that the firm pay a larger amount.
- (7) A money award—
- (a) may specify the date by which the amount awarded is to be paid;

- (b) may provide for interest to be payable, at a rate specified in the award, on any amount which is not paid by that date; and
 - (c) is enforceable by the consumer in accordance with Part 3 or 3A of Schedule 17 (as the case may be).
- (8) If, in determining a relevant complaint, the ombudsman determines that the firm should take (or should have taken) particular action in relation to the consumer, the ombudsman may direct the firm to take that action.
- (9) Compliance with a direction under subsection (8) is enforceable, on the application of the consumer, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (10) In consequence of the provision made by this section, sections 228(2) and 229 do not apply in relation to relevant complaints; but all other provision made by or under Part 16 applies in relation to those complaints.
- (11) The compulsory jurisdiction of the ombudsman scheme is to include the jurisdiction resulting from this section.
- (12) Nothing in subsection (1) is to be taken as requiring the ombudsman to determine a complaint in any case where (apart from that subsection) the complaint would not fall to be determined (whether as a result of rules made under Schedule 17 or otherwise).
- (13) Nothing in subsection (2) is to be taken as conferring an entitlement on a person who, for the purposes of the ombudsman scheme, is not an eligible complainant in relation to the subject-matter of the determination mentioned there.

404C Enforcement

The following provisions—

- (a) Part 14 (disciplinary measures), and
- (b) so much of this Act as relates to any provision of that Part,

(which apply only in relation to authorised persons) are also to apply in relation to relevant firms which are not (or are no longer) authorised persons.

404D Applications to Tribunal to quash rules or provision of rules

- (1) Any person may apply to the Tribunal for a review of any rules made under section 404.
- (2) The Tribunal may—
- (a) dismiss the application; or
 - (b) make an order (a “quashing order”) quashing any rules made under section 404 or any provision of those rules.
- (3) An application may be made only if permission to make it has first been obtained from the Tribunal.
- (4) The Tribunal may grant permission to make an application only if it considers that the applicant has a sufficient interest in the matter to which the application relates.
- (5) The general rule is that, in determining an application, the Tribunal is to apply the principles applicable on an application for judicial review.

- (6) If (or so far as) an application relates to an example set out in the rules as a result of section 404A(1)(b), the Tribunal may determine whether the example constitutes a failure to comply with the requirement in question.
- (7) If (or so far as) an application relates to a matter set out in the rules as a result of section 404A(1)(c), the Tribunal may determine whether the matter should be taken into account as mentioned in that provision.
- (8) In the case of an application within subsection (6) or (7), the Tribunal's jurisdiction under that subsection is in addition to its jurisdiction under subsection (5).
- (9) A quashing order may be enforced as if it were an order made, on an application for judicial review, by the High Court or, in Scotland, the Court of Session.
- (10) The Tribunal may award damages to the applicant if—
 - (a) the application includes a claim for damages arising from any matter to which the application relates; and
 - (b) the Tribunal is satisfied that an award would have been made by the High Court or, in Scotland, the Court of Session if the claim had been made in an action begun in that court by the applicant when making the application.
- (11) An award of damages under subsection (10) may be enforced as if it were an award made by the High Court or, in Scotland, the Court of Session.
- (12) In the case of any proceedings under this section, the judge presiding at the proceedings must be—
 - (a) a judge of the High Court or the Court of Appeal or a judge of the Court of Session; or
 - (b) such other person as may be agreed from time to time by—
 - (i) the Lord Chief Justice, the Lord President or the Lord Chief Justice of Northern Ireland (as the case may be); and
 - (ii) the Senior President of Tribunals.
- (13) Section 133 does not apply in the case of an application under this section, but—
 - (a) Tribunal Procedure Rules may make provision for the suspension of rules made under section 404 or of any provision of those rules, pending determination of the application; and
 - (b) in the case of an application within subsection (6) or (7), the Tribunal may consider any evidence relating to the application's subject-matter, whether or not it was available at the time the rules were made.

(14) If—

- (a) the Tribunal refuses to grant permission to make an application under this section, and
- (b) on an appeal by the applicant, the Court of Appeal grants the permission,

the Court of Appeal may go on to decide the application under this section.

404E Meaning of “consumers”

- (1) For the purposes of sections 404 to 404B “consumers” means persons who—
 - (a) have used, or may have contemplated using, any of the services within subsection (2); or
 - (b) have relevant rights or interests in relation to any of the services within that subsection.

- (2) The services within this subsection are services provided by—
- (a) authorised persons in carrying on regulated activities;
 - (b) authorised persons in carrying on a consumer credit business in connection with the accepting of deposits;
 - (c) authorised persons in communicating, or approving the communication by others of, invitations or inducements to engage in investment activity;
 - (d) authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services;
 - (e) persons acting as appointed representatives;
 - (f) payment service providers in providing payment services; or
 - (g) electronic money issuers in issuing electronic money.
- (3) A person (“P”) has a “relevant right or interest” in relation to any services within subsection (2) if P has a right or interest—
- (a) which is derived from, or is otherwise attributable to, the use of the services by others; or
 - (b) which may be adversely affected by the use of the services by persons acting on P’s behalf or in a fiduciary capacity in relation to P.
- (4) If a person is providing a service within subsection (2) as a trustee, the persons who have been, or may have been, beneficiaries of the trust are to be treated as persons who have used, or may have contemplated using, the service.
- (5) A person who deals with another person (“B”) in the course of B providing a service within subsection (2) is to be treated as using the service.
- (6) In this section—
- “accepting”, in relation to deposits, includes agreeing to accept;
 - “consumer credit business” has the same meaning as in the Consumer Credit Act 1974 (see section 189(1));
 - “credit institution” has the meaning given by section 138(1B);
 - “engage in investment activity” has the meaning given by section 21;
 - “electronic money” has the same meaning as in the Electronic Money Regulations 2011 and any reference to issuing electronic money must be read accordingly;
 - “payment services” has the same meaning as in the Payment Services Regulations 2009;
 - “payment service provider” means a person who is a payment service provider for the purposes of those regulations as a result of falling within any of paragraphs (a) to (e) of the definition in regulation 2(1);
 - “relevant ancillary services” has the meaning given by section 138(1C).

404F Other definitions etc

- (1) For the purposes of sections 404 to 404B—

“redress” includes—

(a) interest; and

(b) a remedy or relief which could not be awarded in legal proceedings;

“specified” means specified in rules made under section 404.

(2) In determining for the purposes of those sections whether an authorised person has failed to comply with a requirement, anything which an appointed representative has done or omitted as respects business for which the authorised person has accepted responsibility is to be treated as having been done or omitted by the authorised person.

(3) References in those sections to the failure by a relevant firm to comply with a requirement applicable to the carrying on by it of any activity include anything done, or omitted to be done, by it in carrying on the activity—

(a) which is in breach of a duty or other obligation, prohibition or restriction; or

(b) which otherwise gives rise to the availability of a remedy or relief in legal proceedings.

(4) It does not matter whether—

(a) the duty or other obligation, prohibition or restriction, or

(b) the remedy or relief,

arises as a result of any provision made by or under this or any other Act, a rule of law or otherwise.

(5) References in sections 404 to 404B to a relevant firm include—

(a) a person who was at any time a relevant firm but has subsequently ceased to be one; and

(b) a person who has assumed a liability (including a contingent one) incurred by a relevant firm in respect of a failure by the firm to comply with a requirement applicable to the carrying on by it of any activity.

(6) References in those sections to the carrying on of an activity by a relevant firm are, accordingly, to be read in that case with the appropriate modifications.

(6A) References in sections 404 and 404E to an “electronic money issuer” are references to a person mentioned in paragraph (a), (b), (c), (d), (h) or (i) of the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011.

(7) If the FCA varies a permission or authorisation of a person so as to impose requirements on the person to establish and operate a scheme which corresponds to, or is similar to, a consumer redress scheme, the provision that may be included in the permission or authorisation as varied includes—

(a) provision imposing requirements on the person corresponding to those that could be included in rules made under section 404; and

(b) provision corresponding to section 404B.

(8) In subsection (7) the reference to the variation of a permission or authorisation by the FCA is a reference to—

(a) the variation under section 55H or 55J of a Part 4A permission,

(aa) the imposition or variation of a requirement under section 55L, or

(b) the variation under regulation 8 or 11 of the Payment Services Regulations 2009 of an authorisation under those regulations; or

- (c) the variation under regulation 8 or 11 of the Electronic Money Regulations 2011 of an authorisation under those regulations.

404G Power to widen the scope of consumer redress schemes

- (1) The Treasury may by order amend the definition of “relevant firms” in section 404 or the definition of “consumers” in section 404E (or both).
- (2) An order under this section may make consequential amendments of any provision of sections 404 to 404F.

Third countries

405 Directions

- (1) For the purpose of implementing a third country decision, the Treasury may direct the appropriate regulator to—
 - (a) refuse an application for permission under Part 4A made by a body incorporated in, or formed under the law of, any part of the United Kingdom;
 - (b) defer its decision on such an application either indefinitely or for such period as may be specified in the direction;
 - (c) give a notice of objection to a person who has served a section 178 notice to the effect that he proposes to acquire a 50% stake in a UK authorised person; or
 - (d) give a notice of objection to a person who has acquired a 50% stake in a UK authorised person without having served the required section 178 notice.
- (2) A direction may also be given in relation to—
 - (a) any person falling within a class specified in the direction;
 - (b) future applications, section 178 notices or acquisitions.
- (3) The Treasury may revoke a direction at any time.
- (4) But revocation does not affect anything done in accordance with the direction before it was revoked.
- (4A) “The appropriate regulator” —
 - (a) for the purposes of subsection (1)(a) and (b), is the regulator to which the application for permission under Part 4A is made;
 - (b) for the purposes of subsection 1(c) and (d), is the appropriate regulator as defined in section 178(2A).
- (4B) “Section 178 notice” means a notice given under section 178.
- (5) “Third country decision” means a decision of the Council or the Commission under—
 - (a) Article 15(3) of the markets in financial instruments directive;
 - (b)
 - (c) Article 29b(4) of the first non-life insurance directive; or
 - (d) Article 59(4) of the life assurance consolidation directive.

406 Interpretation of section 405

- (1) For the purposes of section 405, a person (“the acquirer”) acquires a 50% stake in a UK authorised person (“A”) on first falling within any of the cases set out in subsection (2).
- (2) The cases are where the acquirer—
 - (a) holds 50% or more of the shares in A;
 - (b) holds 50% or more of the shares in a parent undertaking (“P”) of A;
 - (c) is entitled to exercise, or control the exercise of, 50% or more of the voting power in A; or
 - (d) is entitled to exercise, or control the exercise of, 50% or more of the voting power in P.
- (3) In subsection (2) “the acquirer” means—
 - (a) the acquirer;
 - (b) any of the acquirer’s associates; or
 - (c) the acquirer and any of his associates.
- (4) “Associate”, “shares” and “voting power” have the same meaning as in section 422.

407 Consequences of a direction under section 405

- (1) If a regulator refuses an application for permission as a result of a direction under section 405(1)(a)—
 - (a) section 55X does not apply in relation to the refusal; but
 - (b) the regulator must notify the applicant of the refusal and the reasons for it.
- (2) If a regulator defers its decision on an application for permission as a result of a direction under section 405(1)(b)—
 - (a) the time limit for determining the application mentioned in subsections (1) to (3) of section 55V stops running on the day of the deferral and starts running again (if at all) on the day the period specified in the direction (if any) ends or the day the direction is revoked; and
 - (b) the regulator must notify the applicant of the deferral and the reasons for it.
- (3) If a regulator gives a notice of objection to a person as a result of a direction under section 405(1)(c) or (d)—
 - (a) sections 189 and 191 have effect as if the notice was a notice of objection within the meaning of Part XII; and
 - (b) the regulator must state in the notice the reasons for it.

408 EFTA firms

- (1) If a third country decision has been taken, the Treasury may make a determination in relation to an EFTA firm which is a subsidiary undertaking of a parent undertaking which is governed by the law of the country to which the decision relates.
- (2) “Determination” means a determination that the firm concerned does not qualify for authorisation under Schedule 3 even if it satisfies the conditions in paragraph 13 or 14 of that Schedule.
- (3) A determination may also be made in relation to any firm falling within a class specified in the determination.

- (4) The Treasury may withdraw a determination at any time.
- (5) But withdrawal does not affect anything done in accordance with the determination before it was withdrawn.
- (6) If the Treasury make a determination in respect of a particular firm, or withdraw such a determination, they must give written notice to that firm.
- (7) The Treasury must publish notice of any determination (or the withdrawal of any determination)—
 - (a) in such a way as they think most suitable for bringing the determination (or withdrawal) to the attention of those likely to be affected by it; and
 - (b) on, or as soon as practicable after, the date of the determination (or withdrawal).
- (8) “EFTA firm” means a firm, institution or undertaking which—
 - (a) is an EEA firm as a result of paragraph 5(a), (b) or (d) of Schedule 3; and
 - (b) is incorporated in, or formed under the law of, an EEA State which is not a member State.
- (9) “Third country decision” has the same meaning as in section 405.

409 Gibraltar

- (1) The Treasury may by order—
 - (a) modify Schedule 3 so as to provide for Gibraltar firms of a specified description to qualify for authorisation under that Schedule in specified circumstances;
 - (b) modify Schedule 3 so as to make provision in relation to the exercise by UK firms of rights under the law of Gibraltar which correspond to EEA rights;
 - (c) modify Schedule 4 so as to provide for Gibraltar firms of a specified description to qualify for authorisation under that Schedule in specified circumstances;
 - (d) modify section 264 so as to make provision in relation to collective investment schemes constituted under the law of Gibraltar;
 - (e)
 - (f) provide for this Act to apply to a Gibraltar recognised scheme as if the scheme were a scheme recognised under section 264.
- (2) The fact that a firm may qualify for authorisation under Schedule 3 as a result of an order under subsection (1) does not prevent it from applying for a Part 4A permission.
- (3) “Gibraltar firm” means a firm which has its head office in Gibraltar or is otherwise connected with Gibraltar.
- (4) “Gibraltar recognised scheme” means a collective investment scheme—
 - (a) constituted in an EEA State other than the United Kingdom, and
 - (b) recognised in Gibraltar under provisions which appear to the Treasury to give effect to the provisions of a relevant EU instrument.
- (5) “Specified” means specified in the order.
- (6) “UK firm” and “EEA right” have the same meaning as in Schedule 3.

*International obligations***410 International obligations**

- (1) If it appears to the Treasury that any action proposed to be taken by a relevant person would be incompatible with EU obligations or any other international obligations of the United Kingdom, they may direct that person not to take that action.
- (2) If it appears to the Treasury that any action which a relevant person has power to take is required for the purpose of implementing any such obligations, they may direct that person to take that action.
- (3) A direction under this section—
 - (a) may include such supplemental or incidental requirements as the Treasury consider necessary or expedient; and
 - (b) is enforceable, on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (4) “Relevant person” means—
 - (a) the FCA;
 - (aa) the PRA;
 - (ab) the Bank of England when exercising functions conferred on it by Part 18;
 - (b)
 - (c) any recognised investment exchange (other than one which is an overseas investment exchange);
 - (d) any recognised clearing house (other than one which is an overseas clearing house);
 - (e) a person included in the list maintained under section 301; or
 - (f) the scheme operator of the ombudsman scheme.

*Fees to meet Treasury expenses***410A Fees to meet certain expenses of the Treasury**

- (1) **The Treasury may by regulations—**
 - (a) **enable the Treasury from time to time by direction to require the FCA, the PRA or the Bank of England (each a “regulator”) to require the payment of fees by relevant persons, or such class of relevant person as may be specified in, or determined by the regulator in accordance with, the direction, for the purpose of meeting relevant expenses incurred by the Treasury;**
 - (b) **make provision about how the regulator to which a direction is given is to comply with the direction;**
 - (c) **require the regulator to pay to the Treasury, by such time or times as may be specified in the direction, the amount of any fees received by the regulator.**
- (2) **“Relevant expenses” are expenses (including any expenses of a capital nature) which are attributable to United Kingdom membership of, or Treasury participation in, a prescribed international organisation, so far as those expenses—**
 - (a) **represent a contribution (by way of subscription or otherwise) to the resources of the international organisation, and**

- (b) in the opinion of the Treasury are attributable to functions of the organisation which relate to financial stability or financial services.
- (3) The regulations must provide for the charging of fees in pursuance of a direction given under the regulations to the FCA or the PRA to be by rules made by that regulator.
- (4) The provisions of Chapter 2 of Part 9A apply to rules of the FCA or the PRA providing for the charging of fees in pursuance of a direction given under the regulations—

 - (a) in the case of the FCA, as they apply to rules relating to the payment of fees under paragraph 23 of Schedule 1ZA;
 - (b) in the case of the PRA, as they apply to rules relating to the payment of fees under paragraph 31 of Schedule 1ZB.
- (5) Paragraph 36(1) of Schedule 17A applies to the charging of fees by the Bank of England in pursuance of a direction given to the Bank under the regulations.
- (6) The regulations may in particular—

 - (a) make provision about what is, or is not, to be regarded as an expense;
 - (b) specify requirements that the Treasury must comply with before giving a direction;
 - (c) enable a direction to be varied or revoked by a subsequent direction;
 - (d) confer functions on a regulator.
- (7) An amount payable to a regulator as a result of—

 - (a) any provision of rules made by the FCA or the PRA as a result of the regulations, or
 - (b) the imposition of fees by the Bank of England as a result of a direction given under the regulations to the Bank,

may be recovered as a debt due to the regulator.
- (8) “Relevant persons” means—

 - (a) in the case of a direction given to the PRA, PRA-authorized persons;
 - (b) in the case of a direction given to the FCA, authorised persons and recognised investment exchanges who (in either case) are not PRA-authorized persons;
 - (c) in the case of a direction given to the Bank of England, recognised clearing houses, other than those falling within paragraph (a) or (b).
- (9) This section is subject to section 410B.

410B Directions in pursuance of section 410A

- (1) In this section “a fees direction” means a direction given by the Treasury as a result of regulations under section 410A.
- (2) Before giving a fees direction to the FCA, the PRA or the Bank of England (each a “regulator”), the Treasury must consult the regulator concerned.
- (3) A fees direction must—

 - (a) be in writing;

- (b) **except in the case of a direction that revokes a previous direction or a direction that varies a previous direction without affecting the total amount intended to be raised by the fees, specify the total amount intended to be raised by the fees to be charged by the regulator and explain how that amount is calculated;**
- (c) **contain such other information as may be prescribed.**
- (4) **As soon as practicable after giving a fees direction, the Treasury must lay before Parliament a copy of the direction.**

Tax treatment of levies and repayments

411 Tax treatment of levies and repayments

- (1)
- (2)

Gaming contracts

412 Gaming contracts

- (1) No contract to which this section applies is void or unenforceable because of—
 - (a) ... Article 170 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985; or
 - (b)
- (2) This section applies to a contract if—
 - (a) it is entered into by either or each party by way of business;
 - (b) the entering into or performance of it by either party constitutes an activity of a specified kind or one which falls within a specified class of activity; and
 - (c) it relates to an investment of a specified kind or one which falls within a specified class of investment.
- (3) Part II of Schedule 2 applies for the purposes of subsection (2)(c), with the references to section 22 being read as references to that subsection.
- (4) Nothing in Part II of Schedule 2, as applied by subsection (3), limits the power conferred by subsection (2)(c).
- (5) “Investment” includes any asset, right or interest.
- (6) “Specified” means specified in an order made by the Treasury.

Trade-matching and reporting systems

412A Approval and monitoring of trade-matching and reporting systems

- (1) A relevant system is an approved relevant system if it is approved by the FCA under subsection (2) for the purposes of Article 25.5 of the markets in financial instruments directive; and references in this section and section 412B to an “approved relevant system” are to be read accordingly.
- (2) The FCA must approve a relevant system if, on an application by the operator of the system, it is satisfied that the arrangements established by the system for reporting transactions comply with Article 12(1) of Commission Regulation 1287/2006 of 10 August 2006 (“the Regulation”).

- (3) Section 51(3) and (4) applies to an application under this section as it applies to an application under Part 4.
- (4) If, at any time after approving a relevant system under subsection (2), the FCA is not satisfied as mentioned in that subsection, it may suspend or withdraw the approval.
- (5) The FCA must keep under review the arrangements established by an approved relevant system for reporting transactions for the purpose of ensuring that the arrangements comply with Article 12(1) of the Regulation; and for the purposes of this subsection the FCA must have regard to information provided to it under subsections (6) and (7).
- (6) The operator of an approved relevant system must make reports to the FCA at specified intervals containing specified information relating to—
 - (a) the system,
 - (b) the reports made by the system in accordance with Article 25 of the markets in financial instruments directive and the Regulation, and
 - (c) the transactions to which those reports relate.“Specified” means specified by the FCA.
- (7) The FCA may by written notice require the operator of an approved relevant system to provide such additional information as may be specified in the notice, by such reasonable time as may be so specified, about any of the matters mentioned in subsection (6).
- (8) The recipient of a notice under subsection (7) must provide the information by the time specified in the notice.
- (9) In this section and section 412B, “relevant system” means a trade-matching or reporting system of a kind described in Article 12 of the Regulation.

412B Procedure for approval and suspension or withdrawal of approval

- (1) If the FCA approves a relevant system, it must give the operator of the system written notice specifying the date from which the approval has effect.
- (2) If the FCA proposes to refuse to approve a relevant system, it must give the operator of the system a warning notice.
- (3) If the FCA decides to refuse to approve a relevant system, it must give the operator of the system a decision notice.
- (4) If the FCA proposes to suspend or withdraw its approval in relation to an approved relevant system, it must give the operator of the system a warning notice.
- (5) If the FCA decides to suspend or withdraw its approval in relation to an approved relevant system, it must give the operator of the system a decision notice specifying the date from which the suspension or withdrawal is to take effect.
- (6) Subsections (7) to (9) apply if—
 - (a) the FCA has suspended its approval in relation to an approved relevant system, and
 - (b) the operator of the system has applied for the suspension to be cancelled.
- (7) The FCA must grant the application if it is satisfied as mentioned in section 412A(2); and in such a case the FCA must give written notice to the operator that the suspension is to be cancelled from the date specified in the notice.

- (8) If the FCA proposes to refuse the application, it must give the operator a warning notice.
- (9) If the FCA decides to refuse the application, it must give the operator a decision notice.
- (10) A person who receives a decision notice under subsection (3), (5) or (9) may refer the matter to the Tribunal.

Limitation on powers to require documents

413 Protected items

- (1) A person may not be required under this Act to produce, disclose or permit the inspection of protected items.
- (2) “Protected items” means—
 - (a) communications between a professional legal adviser and his client or any person representing his client which fall within subsection (3);
 - (b) communications between a professional legal adviser, his client or any person representing his client and any other person which fall within subsection (3) (as a result of paragraph (b) of that subsection);
 - (c) items which—
 - (i) are enclosed with, or referred to in, such communications;
 - (ii) fall within subsection (3); and
 - (iii) are in the possession of a person entitled to possession of them.
- (3) A communication or item falls within this subsection if it is made—
 - (a) in connection with the giving of legal advice to the client; or
 - (b) in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.
- (4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

Service of notices

414 Service of notices

- (1) The Treasury may by regulations make provision with respect to the procedure to be followed, or rules to be applied, when a provision of or made under this Act requires a notice, direction or document of any kind to be given or authorises the imposition of a requirement.
- (2) The regulations may, in particular, make provision—
 - (a) as to the manner in which a document must be given;
 - (b) as to the address to which a document must be sent;
 - (c) requiring, or allowing, a document to be sent electronically;
 - (d) for treating a document as having been given, or as having been received, on a date or at a time determined in accordance with the regulations;

- (e) as to what must, or may, be done if the person to whom a document is required to be given is not an individual;
 - (f) as to what must, or may, be done if the intended recipient of a document is outside the United Kingdom.
- (3) Subsection (1) applies however the obligation to give a document is expressed (and so, in particular, includes a provision which requires a document to be served or sent).
- (4) Section 7 of the Interpretation Act 1978 (service of notice by post) has effect in relation to provisions made by or under this Act subject to any provision made by regulations under this section.

Jurisdiction

415 Jurisdiction in civil proceedings

- (1) Proceedings arising out of any act or omission (or proposed act or omission) of—

- (a) the FCA,
- (aa) the PRA,
- (ab) the Bank of England,
- (b) [repealed]
- (c) the scheme manager, or
- (d) the scheme operator,

in the discharge or purported discharge of any of its functions under this Act may be brought before the High Court or the Court of Session.

- (2) The jurisdiction conferred by subsection (1) is in addition to any other jurisdiction exercisable by those courts.

Powers under the Act

415A Powers under the Act

Any power which the FCA, the PRA or the Bank of England has under any provision of this Act is not limited in any way by any other power which it has under any other provision of this Act.

Consultation

415B Consultation in relation to taking certain enforcement action

- (1) The FCA must consult the PRA before taking a qualifying step in relation to a person who—

- (a) is a PRA-authorized person, or
- (b) has a qualifying relationship with a PRA-authorized person.

- (2) The PRA must consult the FCA before taking a qualifying step.

- (3) In this section any reference to the taking of a qualifying step is a reference to—

- (a) the giving of a warning notice or decision notice under section 63B (performance of controlled functions without approval),

- (b) the giving of a warning notice or decision notice under section 67 (disciplinary powers in relation to approved person),
 - (c) the giving of a warning notice under section 126 or a decision notice under section 127 (market abuse),
 - (d) the giving of a warning notice or decision notice under section 131H (short selling),
 - (e) the giving of a warning notice under section 207 or a decision notice under section 208 (breaches of requirements imposed by or under Act etc),
 - (f) the giving of a warning notice under section 312G or a decision notice under section 312H (recognised bodies),
 - (g) the making of an application to the court under section 380, 381, 382 or 383 (injunctions or restitution), or
 - (h) the giving of a warning notice under section 385 or a decision notice under section 386 (power of FCA or PRA to require restitution).
- (4) A person has a qualifying relationship with a PRA-authorized person (“A”) for the purposes of this section if—
- (a) the person is a member of A’s immediate group, or
 - (b) in the case of a qualifying step within subsection (3)(a) or (b), the person performs a significant-influence function under an arrangement entered into by A, or by a contractor of A, in relation to the carrying on by A of a regulated activity.

“Significant-influence function” and “arrangement” have the same meanings as in section 59.

Removal of certain unnecessary provisions

416 Provisions relating to industrial assurance and certain other enactments

- (1) The following enactments are to cease to have effect—
 - (a) the Industrial Assurance Act 1923;
 - (b) the Industrial Assurance and Friendly Societies Act 1948;
 - (c) the Insurance Brokers (Registration) Act 1977.
- (2) The Industrial Assurance (Northern Ireland) Order 1979 is revoked.
- (3) The following bodies are to cease to exist—
 - (a) the Insurance Brokers Registration Council;
 - (b) the Policyholders Protection Board;
 - (c) the Deposit Protection Board;
 - (d) the Board of Banking Supervision.
- (4) If the Treasury consider that, as a consequence of any provision of this section, it is appropriate to do so, they may by order make any provision of a kind that they could make under this Act (and in particular any provision of a kind mentioned in section 339) with respect to anything done by or under any provision of Part XXI.

- (5) Subsection (4) is not to be read as affecting in any way any other power conferred on the Treasury by this Act.

PART 29

INTERPRETATION

417 Definitions

(1) In this Act—

“appointed representative” has the meaning given in section 39(2);

“auditors and actuaries rules” means rules made under section 340;

“authorisation offence” has the meaning given in section 23(2);

“authorised open-ended investment company” has the meaning given in section 237(3);

“authorised person” has the meaning given in section 31(2);

“body corporate” includes a body corporate constituted under the law of a country or territory outside the United Kingdom;

“chief executive”—

(a) in relation to a body corporate whose principal place of business is within the United Kingdom, means an employee of that body who, alone or jointly with one or more others, is responsible under the immediate authority of the directors, for the conduct of the whole of the business of that body; and

(b) in relation to a body corporate whose principal place of business is outside the United Kingdom, means the person who, alone or jointly with one or more others, is responsible for the conduct of its business within the United Kingdom;

“claim”, in relation to the Financial Services Compensation Scheme under Part XV, is to be construed in accordance with section 214(1B);

“collective investment scheme” has the meaning given in section 235;

“the Commission” means the European Commission (except in provisions relating to the Competition Commission);

“the compensation scheme” has the meaning given in section 213(2);

“control of information rules” has the meaning given in section 137P;

“core activities” has the meaning given in section 142B;

“core services” has the meaning given in section 142C;

“credit-related regulated activity” has the meaning given in section 23(1B);

“director”, in relation to a body corporate, includes—

(a) a person occupying in relation to it the position of a director (by whatever name called); and

(b) a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act;

“documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form, or in a form from which it can readily be produced in visible and legible form;

“EBA” means the European Banking Authority established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority);

“electronic commerce directive” means Directive 2000/31/EC of the European Parliament and the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);

“ESMA” means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority);

“excluded activities” has the meaning given in section 142D;

“exempt person”, in relation to a regulated activity, means a person who is exempt from the general prohibition in relation to that activity as a result of an exemption order made under section 38(1) or as a result of section 39(1) or 285(2) or (3);

“the FCA” means the Financial Conduct Authority;

“financial promotion rules” means rules made under section 137R;

“friendly society” means an incorporated or registered friendly society;

“general prohibition” has the meaning given in section 19(2);

“general rules”—

(a) in relation to the FCA, has the meaning given in section 137A(2), and

(b) in relation to the PRA, has the meaning given in section 137G(2);

“incorporated friendly society” means a society incorporated under the Friendly Societies Act 1992;

“industrial and provident society” means a society registered or deemed to be registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969;

“information society service” means an information society service within the meaning of Article 2(a) of the electronic commerce directive;

“investment services and activities” has the meaning given in Article 4.1.2 of the markets in financial instruments directive, read with—

(a) Chapter VI of Commission Regulation 1287/2006 of 10 August 2006,

(b) Article 52 of Commission Directive 2006/73/EC of 10 August 2006; and

(c) Article 6(5) of the emission allowance auctioning regulation;

“market abuse” has the meaning given in section 118;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

“the ombudsman scheme” has the meaning given in section 225(3);

- “open-ended investment company” has the meaning given in section 236;
- “Part 4A permission” has the meaning given in section 55A(5);
- “partnership” includes a partnership constituted under the law of a country or territory outside the United Kingdom;
- “the PRA” means the Prudential Regulation Authority;
- “PRA-authorised person” has the meaning given in section 2B(5);
- “PRA-regulated activity” has the meaning given in section 22A;
- “prescribed” (where not otherwise defined) means prescribed in regulations made by the Treasury;
- “price stabilising rules” means rules made under section 137Q;
- “principal” in relation to an appointed representative, is to be read in accordance with section 39;
- “private company” has the same meaning as in the Companies Acts (see section 4 of the Companies Act 2006);
- “prohibition order” has the meaning given in section 56(2);
- “recognised clearing house” and “recognised investment exchange” have the meaning given in section 285;
- “registered friendly society” means a society which is—
- (a) a friendly society within the meaning of section 7(1)(a) of the Friendly Societies Act 1974; and
 - (b) registered within the meaning of that Act;
- “regulated activity” has the meaning given in section 22;
- “regulating provisions” has the meaning given in section 140A;
- “regulator” has the meaning given in section 3A(2);
- “ring-fenced body” has the meaning given in section 142A;**
- “ring-fencing rules” has the meaning given in section 142H;**
- “rule” means a rule made by the FCA or the PRA under this Act;
- “rule-making instrument” has the meaning given in section 138G;
- “the scheme manager” has the meaning given in section 212(1);
- “the scheme operator” has the meaning given in section 225(2);
- “scheme particulars rules” has the meaning given in section 248(1);
- “Seventh Company Law Directive” means the European Council Seventh Company Law Directive of 13 June 1983 on consolidated accounts (No.83/349/EEC);
- “short selling regulation” means Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March on short selling and certain aspects of credit default swaps;
- “Takeovers Directive” means Directive 2004/25/EC of the European Parliament and of the Council;
- “threshold conditions”, in relation to a regulated activity, has the meaning given in section 55B(1);

“the Treaty” means the Treaty on the Functioning of the European Union;

“the Tribunal” means the Upper Tribunal;

“trust scheme rules” has the meaning given in section 247(1);

“UK authorised person” has the meaning given in section 191G(1);

“the UK financial system” has the meaning given in section 11; and

“unit trust scheme” has the meaning given in section 237.

- (2) In the application of this Act to Scotland, references to a matter being actionable at the suit of a person are to be read as references to the matter being actionable at the instance of that person.
- (3) For the purposes of any provision of this Act (other than a provision of Part 6) authorising or requiring a person to do anything within a specified number of days no account is to be taken of any day which is a public holiday in any part of the United Kingdom.
- (4) For the purposes of this Act—
 - (a) an information society service is provided from an EEA State if it is provided from an establishment in that State;
 - (b) an establishment, in connection with an information society service, is the place at which the provider of the service (being a national of an EEA State or a company or firm as mentioned in Article 54 of the Treaty) effectively pursues an economic activity for an indefinite period;
 - (c) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute that place as an establishment of the kind mentioned in paragraph (b);
 - (d) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment where the provider has the centre of his activities relating to the service.

418 Carrying on regulated activities in the United Kingdom

- (1) In the five cases described in this section, a person who—
 - (a) is carrying on a regulated activity, but
 - (b) would not otherwise be regarded as carrying it on in the United Kingdom,is, for the purposes of this Act, to be regarded as carrying it on in the United Kingdom.
- (2) The first case is where—
 - (a) his registered office (or if he does not have a registered office his head office) is in the United Kingdom;
 - (b) he is entitled to exercise rights under a single market directive as a UK firm; and
 - (c) he is carrying on in another EEA State a regulated activity to which that directive applies.
- (3) The second case is where—
 - (a) his registered office (or if he does not have a registered office his head office) is in the United Kingdom;

- (b) he is the manager of a scheme which is entitled to enjoy the rights conferred by an instrument which is a relevant EU instrument for the purposes of section 264; and
 - (c) persons in another EEA State are invited to become participants in the scheme.
- (4) The third case is where—
- (a) his registered office (or if he does not have a registered office his head office) is in the United Kingdom;
 - (b) the day-to-day management of the carrying on of the regulated activity is the responsibility of—
 - (i) his registered office (or head office); or
 - (ii) another establishment maintained by him in the United Kingdom.
- (5) The fourth case is where—
- (a) his head office is not in the United Kingdom; but
 - (b) the activity is carried on from an establishment maintained by him in the United Kingdom.
- (5A) The fifth case is any other case where the activity—
- (a) consists of the provision of an information society service to a person or persons in one or more EEA States; and
 - (b) is carried on from an establishment in the United Kingdom.
- (6) For the purposes of subsections (2) to (5A) it is irrelevant where the person with whom the activity is carried on is situated.
- (7) For the purposes of subsection (2)(b) and (c), the emission allowance auctioning regulation is a single market directive.

419 Carrying on regulated activities by way of business

- (1) The Treasury may by order make provision—
- (a) as to the circumstances in which a person who would otherwise not be regarded as carrying on a regulated activity by way of business is to be regarded as doing so;
 - (b) as to the circumstances in which a person who would otherwise be regarded as carrying on a regulated activity by way of business is to be regarded as not doing so.
- (2) An order under subsection (1) may be made so as to apply—
- (a) generally in relation to all regulated activities;
 - (b) in relation to a specified category of regulated activity; or
 - (c) in relation to a particular regulated activity.
- (3) An order under subsection (1) may be made so as to apply—
- (a) for the purposes of all provisions;
 - (b) for a specified group of provisions; or
 - (c) for a specified provision.
- (4) “Provision” means a provision of, or made under, this Act.

(5) Nothing in this section is to be read as affecting the provisions of section 428(3).

420 Parent and subsidiary undertaking

(1) In this Act, except in relation to an incorporated friendly society, “parent undertaking” and “subsidiary undertaking” have the same meaning as in the Companies Acts (see section 1162 of, and Schedule 7 to, the Companies Act 2006).

(2) But—

(a) “parent undertaking” also includes an individual who would be a parent undertaking for the purposes of those provisions if he were taken to be an undertaking (and “subsidiary undertaking” is to be read accordingly);

(b) “subsidiary undertaking” also includes, in relation to a body incorporated in or formed under the law of an EEA State other than the United Kingdom, an undertaking which is a subsidiary undertaking within the meaning of any rule of law in force in that State for purposes connected with implementation of the Seventh Company Law Directive (and “parent undertaking” is to be read accordingly).

(3) In this Act “subsidiary undertaking”, in relation to an incorporated friendly society, means a body corporate of which the society has control within the meaning of section 13(9)(a) or (aa) of the Friendly Societies Act 1992 (and “parent undertaking” is to be read accordingly).

421 Group

(1) In this Act “group”, in relation to a person (“A”), means A and any person who is—

(a) a parent undertaking of A;

(b) a subsidiary undertaking of A;

(c) a subsidiary undertaking of a parent undertaking of A;

(d) a parent undertaking of a subsidiary undertaking of A;

(e) an undertaking in which A or an undertaking mentioned in paragraph (a), (b), (c) or (d) has a participating interest;

(f) if A or an undertaking mentioned in paragraph (a) or (d) is a building society, an associated undertaking of the society; or

(g) if A or an undertaking mentioned in paragraph (a) or (d) is an incorporated friendly society, a body corporate of which the society has joint control (within the meaning of section 13(9)(c) or (cc) of the Friendly Societies Act 1992).

(2) “Participating interest” has the meaning given in section 421A; but also includes an interest held by an individual which would be a participating interest for the purposes of those provisions if he were taken to be an undertaking.

(3) “Associated undertaking” has the meaning given in section 119(1) of the Building Societies Act 1986.

421ZA Immediate group

In this Act “immediate group”, in relation to a person (“A”), means—

(a) A;

(b) a parent undertaking of A;

(c) a subsidiary undertaking of A;

(d) a subsidiary undertaking of a parent undertaking of A;

(e) a parent undertaking of a subsidiary undertaking of A.

421A Meaning of “participating interest”

(1) In section 421 a “participating interest” means an interest held by an undertaking in the shares of another undertaking which it holds on a long-term basis for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest.

(2) A holding of 20% or more of the shares of an undertaking is presumed to be a participating interest unless the contrary is shown.

(3) The reference in subsection (1) to an interest in shares includes—

(a) an interest which is convertible into an interest in shares, and

(b) an option to acquire shares or any such interest;

and an interest or option falls within paragraph (a) or (b) notwithstanding that the shares to which it relates are, until the conversion or the exercise of the option, unissued.

(4) For the purposes of this section an interest held on behalf of an undertaking shall be treated as held by it.

(5) In this section “undertaking” has the same meaning as in the Companies Acts (see section 1161(1) of the Companies Act 2006).

422 Controller

(1) In this Act “controller”, in relation to an undertaking (“B”), means a person (“A”) who falls within any of the cases in subsection (2).

(2) The cases are where A holds—

(a) 10% or more of the shares in B or in a parent undertaking of B (“P”);

(b) 10% or more of the voting power in B or P; or

(c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

(3) For the purposes of calculations relating to this section, the holding of shares or voting power by a person (“A1”) includes any shares or voting power held by another (“A2”) if A1 and A2 are acting in concert.

(4) In this section “shares”—

(a) in relation to an undertaking with a share capital, means allotted shares;

(b) in relation to an undertaking with capital but no share capital, means rights to share in the capital of the undertaking;

(c) in relation to an undertaking without capital, means interests—

(i) conferring any right to share in the profits, or liability to contribute to the losses, of the undertaking; or

(ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.

(5) In this section “voting power”—

(a) includes, in relation to a person (“H”)—

- (i) voting power held by a third party with whom H has concluded an agreement, which obliges H and the third party to adopt, by concerted exercise of the voting power they hold, a lasting common policy towards the management of the undertaking in question;
- (ii) voting power held by a third party under an agreement concluded with H providing for the temporary transfer for consideration of the voting power in question;
- (iii) voting power attaching to shares which are lodged as collateral with H, provided that H controls the voting power and declares an intention to exercise it;
- (iv) voting power attaching to shares in which H has a life interest;
- (v) voting power which is held, or may be exercised within the meaning of subparagraphs (i) to (iv), by a subsidiary undertaking of H;
- (vi) voting power attaching to shares deposited with H which H has discretion to exercise in the absence of specific instructions from the shareholders;
- (vii) voting power held in the name of a third party on behalf of H;
- (viii) voting power which H may exercise as a proxy where H has discretion about the exercise of the voting power in the absence of specific instructions from the shareholders; and

(b) in relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, means the right under the constitution of the undertaking to direct the overall policy of the undertaking or alter the terms of its constitution.

422A Disregarded holdings

- (1) For the purposes of section 422, shares and voting power that a person holds in an undertaking (“B”) or in a parent undertaking of B (“P”) are disregarded in the following circumstances.
- (2) Shares held only for the purposes of clearing and settling within a short settlement cycle are disregarded.
- (3) Shares held by a custodian or its nominee in a custodian capacity are disregarded, provided that the custodian or nominee is only able to exercise voting power attached to the shares in accordance with instructions given in writing.
- (4) Shares representing no more than 5% of the total voting power in B or P held by an investment firm are disregarded, provided that it—
 - (a) holds the shares in the capacity of a market maker (as defined in article 4.1(8) of the markets in financial instruments directive);
 - (b) is authorised by its home state regulator under the markets in financial instruments directive; and
 - (c) neither intervenes in the management of B or P nor exerts any influence on B or P to buy the shares or back the share price.
- (5) Shares held by a credit institution or investment firm in its trading book are disregarded, provided that—
 - (a) the shares represent no more than 5% of the total voting power in B or P; and

- (b) the credit institution or investment firm ensures that the voting power is not used to intervene in the management of B or P.
- (6) Shares held by a credit institution or an investment firm are disregarded, provided that—
 - (a) the shares are held as a result of performing the investment services and activities of—
 - (i) underwriting shares; or
 - (ii) placing shares on a firm commitment basis in accordance with Annex I, section A.6 of the markets in financial instruments directive; and
 - (b) the credit institution or investment firm—
 - (i) does not exercise voting power represented by the shares or otherwise intervene in the management of the issuer; and
 - (ii) retains the holding for a period of less than one year.
- (7) Where a management company (as defined in Article 2.1(b) of the UCITS directive) and its parent undertaking both hold shares or voting power, each may disregard holdings of the other, provided that each exercises its voting power independently of the other.
- (8) But subsection (7) does not apply if the management company—
 - (a) manages holdings for its parent undertaking or an undertaking in respect of which the parent undertaking is a controller;
 - (b) has no discretion to exercise the voting power attached to such holdings; and
 - (c) may only exercise the voting power in relation to such holdings under direct or indirect instruction from—
 - (i) its parent undertaking; or
 - (ii) an undertaking in respect of which of the parent undertaking is a controller.
- (9) Where an investment firm and its parent undertaking both hold shares or voting power, the parent undertaking may disregard holdings managed by the investment firm on a client by client basis and the investment firm may disregard holdings of the parent undertaking, provided that the investment firm—
 - (a) has permission to provide portfolio management;
 - (b) exercises its voting power independently from the parent undertaking; and
 - (c) may only exercise the voting power under instructions given in writing, or has appropriate mechanisms in place for ensuring that individual portfolio management services are conducted independently of any other services.
- (10) In this section “credit institution” means—
 - (a) a credit institution authorised under the banking consolidation directive; or
 - (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA State.

423 Manager

- (1) In this Act, except in relation to a unit trust scheme or a registered friendly society, “manager” means an employee who—

- (a) under the immediate authority of his employer is responsible, either alone or jointly with one or more other persons, for the conduct of his employer's business; or
 - (b) under the immediate authority of his employer or of a person who is a manager by virtue of paragraph (a) exercises managerial functions or is responsible for maintaining accounts or other records of his employer.
- (2) If the employer is not an individual, references in subsection (1) to the authority of the employer are references to the authority—
- (a) in the case of a body corporate, of the directors;
 - (b) in the case of a partnership, of the partners; and
 - (c) in the case of an unincorporated association, of its officers or the members of its governing body.
- (3) "Manager", in relation to a body corporate, means a person (other than an employee of the body) who is appointed by the body to manage any part of its business and includes an employee of the body corporate (other than the chief executive) who, under the immediate authority of a director or chief executive of the body corporate, exercises managerial functions or is responsible for maintaining accounts or other records of the body corporate.

424 Insurance

- (1) In this Act, references to—
- (a) contracts of insurance,
 - (b) reinsurance,
 - (c) contracts of long-term insurance,
 - (d) contracts of general insurance,
- are to be read with section 22 and Schedule 2.
- (2) In this Act "policy" and "policyholder", in relation to a contract of insurance, have such meaning as the Treasury may by order specify.
- (3) The law applicable to a contract of insurance, the effecting of which constitutes the carrying on of a regulated activity, is to be determined, if it is of a prescribed description, in accordance with regulations made by the Treasury.

424A Investment firm

- (1) In this Act, "investment firm" has the meaning given in Article 4.1.1 of the markets in financial instruments directive.
- (2) Subsection (1) is subject to subsections (3) to (5).
- (3) References in this Act to an "investment firm" include references to a person who would be an investment firm (within the meaning of Article 4.1.1 of the markets in financial instruments directive) if—
- (a) in the case of a body corporate, his registered office or, if he has no registered office, his head office, and
 - (b) in the case of a person other than a body corporate, his head office,
- were in an EEA State.

- (4) But subsection (3) does not apply if the person in question is one to whom the markets in financial instruments directive would not apply by virtue of Article 2 of that directive.
- (5) References in this Act to an “investment firm” do not include references to—
- (a) a person to whom the markets in financial instruments directive does not apply by virtue of Article 2 of the directive; or
 - (b) a person whose home Member State (within the meaning of Article 4.1.20 of the markets in financial instruments directive) is an EEA State and to whom, by reason of the fact that the State has given effect to Article 3 of that directive, that directive does not apply by virtue of that Article.

425 Expressions relating to authorisation elsewhere in the single market

(1) In this Act—

- (a) “banking consolidation directive”, “life assurance consolidation directive” “EEA authorisation”, “EEA firm”, “EEA right”, “EEA State”, “emission allowance auctioning regulation”, “first non-life insurance directive”, “insurance directives”, “reinsurance directive”, “insurance mediation directive”, ...“markets in financial instruments directive”, “single market directives”“, tied agent” and “UCITS directive” have the meaning given in Schedule 3; and
- (b) “home state regulator”, in relation to an EEA firm, has the meaning given in Schedule 3.

(2) In this Act—

- (a) “home state authorisation” has the meaning given in Schedule 4;
- (b) “Treaty firm” has the meaning given in Schedule 4; and
- (c) “home state regulator”, in relation to a Treaty firm, has the meaning given in Schedule 4.

425A Consumers: regulated activities etc carried on by authorised persons

(1) This section has effect for the purposes of the provisions of this Act which apply this section.

(2) “Consumers” means persons who—

- (a) use, have used or may use any of the services within subsection (3); or
- (b) have relevant rights or interests in relation to any of those services.

(3) The services within this subsection are services provided by—

- (a) authorised persons in carrying on regulated activities;
- (b) authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services; or
- (c) persons acting as appointed representatives.

(4) A person (“P”) has a “relevant right or interest” in relation to any services within subsection (3) if P has a right or interest—

- (a) which is derived from, or is otherwise attributable to, the use of the services by others; or
- (b) which may be adversely affected by the use of the services by persons acting on P's behalf or in a fiduciary capacity in relation to P.

- (5) If a person is providing a service within subsection (3) as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or may use the service.
- (6) A person who deals with another person (“A”) in the course of A providing a service within subsection (3) is to be treated as using the service.
- (7) In this section—

“credit institution” means—

- (a) a credit institution authorised under the banking consolidation directive; or
- (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if does not have one, its head office) in an EEA State;

“relevant ancillary service” means any service of a kind mentioned in Section B of Annex I to the markets in financial instruments directive the provision of which does not involve the carrying on of a regulated activity.

425B Consumers: regulated activities carried on by others

- (1) This section has effect for the purposes of the provisions of this Act which apply this section.
- (2) “Consumers” means persons who, in relation to regulated activities carried on otherwise than by authorised persons, would be consumers as defined by section 425A if the activities were carried on by authorised persons.

425C Qualifying EU provision”

- (1) In this Act “qualifying EU provision” means a provision of—
- (a) a directly applicable EU regulation, or
- (b) an EU decision for whose enforcement the United Kingdom is required by an EU obligation to make provision.
- (2) In subsection (1)(b) “EU decision” means a decision under an EU directive or EU regulation.

PART 30

SUPPLEMENTAL

426 Consequential and supplementary provision

- (1) A Minister of the Crown may by order make such incidental, consequential, transitional or supplemental provision as he considers necessary or expedient for the general purposes, or any particular purpose, of this Act or in consequence of any provision made by or under this Act or for giving full effect to this Act or any such provision.
- (2) An order under subsection (1) may, in particular, make provision—
- (a) for enabling any person by whom any powers will become exercisable, on a date set by or under this Act, by virtue of any provision made by or under this Act to take before that date any steps which are necessary as a preliminary to the exercise of those powers;
- (b) for applying (with or without modifications) or amending, repealing or revoking any provision of or made under an Act passed before this Act or in the same Session;

- (c) dissolving any body corporate established by any Act passed, or instrument made, before the passing of this Act;
 - (d) for making savings, or additional savings, from the effect of any repeal or revocation made by or under this Act.
- (3) Amendments made under this section are additional, and without prejudice, to those made by or under any other provision of this Act.
- (4) No other provision of this Act restricts the powers conferred by this section.

427 Transitional provisions

- (1) Subsections (2) and (3) apply to an order under section 426 which makes transitional provisions or savings.
- (2) The order may, in particular—
- (a) if it makes provision about the authorisation and permission of persons who before commencement were entitled to carry on any activities, also include provision for such persons not to be treated as having any authorisation or permission (whether on an application to the Authority or otherwise);
 - (b) make provision enabling the Authority to require persons of such descriptions as it may direct to re-apply for permissions having effect by virtue of the order;
 - (c) make provision for the continuation as rules of such provisions (including primary and subordinate legislation) as may be designated in accordance with the order by the Authority, including provision for the modification by the Authority of provisions designated;
 - (d) make provision about the effect of requirements imposed, liabilities incurred and any other things done before commencement, including provision for and about investigations, penalties and the taking or continuing of any other action in respect of contraventions;
 - (e) make provision for the continuation of disciplinary and other proceedings begun before commencement, including provision about the decisions available to bodies before which such proceedings take place and the effect of their decisions;
 - (f) make provision as regards the Authority's obligation to maintain a record under section 347 as respects persons in relation to whom provision is made by the order.
- (3) The order may—
- (a) confer functions on the Treasury, the Secretary of State, a regulator, the scheme manager, the scheme operator, members of the panel established under paragraph 4 of Schedule 17, the Competition Commission or the Office of Fair Trading;
 - (b) confer jurisdiction on the Tribunal;
 - (c) provide for fees to be charged in connection with the carrying out of functions conferred under the order;
 - (d) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act).
- (4) In subsection (2) "commencement" means the commencement of such provisions of this Act as may be specified by the order.

428 Regulations and orders

- (1) Any power to make an order which is conferred on a Minister of the Crown by this Act and any power to make regulations which is conferred by this Act is exercisable by statutory instrument.
- (2) The Lord Chancellor's power to make rules under section 132 is exercisable by statutory instrument.
- (3) Any statutory instrument made under this Act may—
 - (a) contain such incidental, supplemental, consequential and transitional provision as the person making it considers appropriate; and
 - (b) make different provision for different cases.

429 Parliamentary control of statutory instruments

- (1) No order is to be made under—
 - (a) section 1J, 3B(4), 3F(6), 55C, ~~144(4), 192(b) or (e), 138K(6)(c)~~**138K(6)(c), 144(4), 192(b) or (e), 192B(6), 204A(7), 213(1A), 236(5), 285(4), 380(12), 382(15), 384(13), 404G ... or 419, or**
 - (b) [repealed]

unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (2) No regulations are to be made under section 90B, **142K**, 214A, 214B, 214D or 262 unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.
- (2A) Regulations to which subsection (2B) applies are not to be made unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.**
- (2B) This subsection applies to regulations which contain provision made under section 410A, other than provision made only by virtue of subsection (2) of that section.**
- (3) An order to which, if it is made, subsection (4) or (5) will apply is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (4) This subsection applies to an order under section 21 if—
 - (a) it is the first order to be made, or to contain provisions made, under section 21(4);
 - (b) it varies an order made under section 21(4) so as to make section 21(1) apply in circumstances in which it did not previously apply;
 - (c) it is the first order to be made, or to contain provision made, under section 21(5);
 - (d) it varies a previous order made under section 21(5) so as to make section 21(1) apply in circumstances in which it did not, as a result of that previous order, apply;
 - (e) it is the first order to be made, or to contain provisions made, under section 21(9) or (10);
 - (f) it adds one or more activities to those that are controlled activities for the purposes of section 21; or
 - (g) it adds one or more investments to those which are controlled investments for the purposes of section 21.
- (5) This subsection applies to an order under section 38 if—

- (a) it is the first order to be made, or to contain provisions made, under that section; or
 - (b) it contains provisions restricting or removing an exemption provided by an earlier order made under that section.
- (6) An order containing a provision to which, if the order is made, subsection (7) will apply is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (7) This subsection applies to a provision contained in an order if—
- (a) it is the first to be made in the exercise of the power conferred by subsection (1) of section 326 or it removes a body from those for the time being designated under that subsection; or
 - (b) it is the first to be made in the exercise of the power conferred by subsection (6) of section 327 or it adds a description of regulated activity or investment to those for the time being specified for the purposes of that subsection.
- (8) Any other statutory instrument made under this Act, apart from one made under section 3G(1), 137D(1)(b), 165A(2)(d), 192A(4) or 431(2) or to which section 22B, ~~or 23A 23A or 142N~~ or paragraph 26 of Schedule 2 applies, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

430 Extent

- (1) This Act, except Chapter IV of Part XVII, extends to Northern Ireland.
- (2) Except where Her Majesty by Order in Council provides otherwise, the extent of any amendment or repeal made by or under this Act is the same as the extent of the provision amended or repealed.
- (3) Her Majesty may by Order in Council provide for any provision of or made under this Act relating to a matter which is the subject of other legislation which extends to any of the Channel Islands or the Isle of Man to extend there with such modifications (if any) as may be specified in the Order.

431 Commencement

- (1) The following provisions come into force on the passing of this Act—
 - (a) this section;
 - (b) sections 428, 430 and 433;
 - (c) paragraphs 1 and 2 of Schedule 21.
- (2) The other provisions of this Act come into force on such day as the Treasury may by order appoint; and different days may be appointed for different purposes.

432 Minor and consequential amendments, transitional provisions and repeals

- (1) Schedule 20 makes minor and consequential amendments.
- (2) Schedule 21 makes transitional provisions.
- (3) The enactments set out in Schedule 22 are repealed.

433 Short title

This Act may be cited as the Financial Services and Markets Act 2000.

SCHEDULE 1ZB
THE PRUDENTIAL REGULATION AUTHORITY

Section 2A

PART 1
GENERAL*Interpretation*

1 In this Schedule—

“the Bank” means the Bank of England;

“functions”, in relation to the PRA, means functions conferred on the PRA by or under any provision of this Act (see section 2A(6) which affects the meaning of references to such functions).

Constitution

2 The constitution of the PRA must provide—

- (a) for the Governor of the Bank to be the chair of the PRA,
- (b) for the Bank's Deputy Governor for prudential regulation to be the chief executive of the PRA, and
- (c) for the PRA to have a governing body.

3 The governing body must consist of—

- (a) the chair,
- (b) the chief executive,
- (c) the Bank's Deputy Governor for financial stability,
- (d) the chief executive of the FCA, and
- (e) other members (in this Schedule referred to as “appointed members”).

4 The validity of any act of the PRA is not affected—

- (a) by any vacancy resulting from a vacancy in the office of Governor of the Bank, Deputy Governor of the Bank for prudential regulation, Deputy Governor of the Bank for financial stability, or chief executive of the FCA, or
- (b) by a defect in the appointment of a person—
 - (i) to any of those offices, or
 - (ii) as an appointed member.

5 The chief executive of the FCA must not take part in any discussion by or decision of the PRA which relates to—

- (a) the exercise of the PRA's functions in relation to a particular person, or
- (b) a decision not to exercise those functions.

Appointed members of governing body

6 The appointed members must be appointed by the court of directors of the Bank with the approval of the Treasury.

7 Paragraphs 8 to 12 apply to the exercise by the court of directors of the Bank of its power to appoint appointed members.

- 8 The court of directors must secure that the majority of the members of the governing body of the PRA are non-executive members.
- 9 For the purposes of paragraph 8, and for the purposes of the PRA's duty in section 3C (duty to follow principles of good governance) none of the following is a non-executive member—
 - (a) the members referred to in paragraph 3(a), (b) and c), and
 - (b) a member who is an employee of the PRA or of the Bank.
- 10 The court of directors must have regard to generally accepted principles of good practice relating to the making of public appointments.
- 11 (1) Before appointing a person as an appointed member, the court of directors must consider whether the person has any financial or other interests that could have a material effect on the extent of the functions as member that it would be proper for the person to discharge.
 - (2) The terms on which an appointed member (“M”) is appointed must be such as—
 - (a) to secure that M is not subject to direction by the Bank,
 - (b) to require M not to act in accordance with the directions of any other person, and
 - (c) to prohibit M from acquiring any financial or other interests that have a material effect on the extent of the functions as member that it would be proper for M to discharge.
 - (3) If M is an employee of the PRA, M's interest as employee is to be disregarded for the purposes of sub-paragraphs (1) and (2)(c) and paragraph 14.
- 12 An employee of the FCA is disqualified for appointment as an appointed member.
- 13 The PRA must pay to the Bank the amount of any expenses incurred by the Bank in connection with the appointment of appointed members.
- 14 The court of directors of the Bank may, with the approval of the Treasury, remove an appointed member from office—
 - (a) on the grounds of incapacity or serious misconduct, or
 - (b) on the grounds that in all the circumstances the member's financial or other interests are such as to have a material effect on the extent of the functions as member that it would be proper for the person to discharge.

Terms of service

- 15 (1) The terms of service of the members of the governing body are to be determined by the Oversight Committee of the Bank.
 - (2) The PRA must pay to the members of its governing body such remuneration as may be determined by that Committee.

Arrangements for discharging functions

- 16 (1) The PRA may make arrangements for any of its functions to be discharged by a committee, sub-committee, officer or member of staff of the PRA, but subject to the following provision.
 - (2) In exercising its legislative functions or its functions under section 2E (strategy), the PRA must act through its governing body.
 - (3) For that purpose, the following are the PRA's legislative functions—
 - (a) making rules;
 - (b) issuing codes under section 64;

- (c) issuing statements under—
 - (i) section 63C, 64, 69, 192H, 192N, 210 or 345D, or
 - (ii) section 80 of the Financial Services Act 2012;
- (d) giving directions under section 316 or 318;
- (e) issuing guidance under section 2I.

Records

- 17 The PRA must maintain satisfactory arrangements for—
- (a) recording decisions made in the exercise of its functions, and
 - (b) the safe-keeping of those records which it considers ought to be preserved.

Budget

- 18 (1) The PRA must, for each of its financial years, adopt an annual budget which has been approved by the Bank.
- (2) The budget must be adopted before the start of the financial year to which it relates, except that the first budget must be adopted as soon as reasonably practicable after the coming into force of this paragraph.
 - (3) The PRA may, with the approval of the Bank, vary the budget for a financial year at any time after its adoption.
 - (4) The PRA must publish each budget, and each variation of a budget, in such manner as the PRA thinks fit.

Annual report

- 19 (1) At least once a year the PRA must make a report to the Treasury on—
- (a) the discharge of its functions,
 - (b) the extent to which, in its opinion, its objectives have been advanced,
 - (c) its consideration of the principles in section 3B and of the matter mentioned in section 2H(1)(b),
 - (d) how it has complied with section 3D,
 - (e) any direction given under section 3I or 3J during the period to which the report relates,
 - (f) how it has complied with section 354B(1) so far as relating to co-operation with persons outside the United Kingdom, and
 - (g) such other matters as the Treasury may from time to time direct.
- (1A) In the report the PRA must also report in general terms on—**
- (a) the extent to which, in its opinion, ring-fenced bodies have complied with the ring-fencing provisions,**
 - (b) steps taken by ring-fenced bodies in order to comply with the ring-fencing provisions,**
 - (c) steps taken by it to enforce the ring-fencing provisions, and**
 - (d) the extent to which ring-fenced bodies appear to it to have acted in accordance with any guidance which it has given to ring-fenced bodies and which relates to the operation of the ring-fencing provisions.**

(1B) In sub-paragraph 1A—

- (a) references to “ring-fenced bodies” relate only to ring-fenced bodies that are PRA-
authorised persons, and**
- (b) “the ring-fencing provisions” means ring-fencing rules and the duty imposed as a result
of section 142G.**
- (2) ~~Sub-paragraph (1) does not~~ **Sub-paragraphs (1) and (1A) do not** require the inclusion in the report of any information whose publication would in the opinion of the PRA be against the public interest.
- (3) The report must be accompanied by—
 - (a) a statement of the remuneration of the members of the governing body of the PRA during the period to which the report relates, and
 - (b) such other reports or information, prepared by such persons, as the Treasury may from time to time direct.
- (4) The Treasury must lay before Parliament a copy of each report received by them under this paragraph.

Consultation about annual report

- 20 (1) In relation to each report made under paragraph 19, the PRA must publish at the same time as the report an invitation to members of the public to make representations to the PRA, within the 3 months beginning with the date of publication—
- (a) about the report,
 - (b) about the way in which the PRA has discharged, or failed to discharge, its functions during the period to which the report relates, and
 - (c) about the extent to which, in their opinion, the PRA's objectives have been advanced and the PRA has considered the regulatory principles in section 3B and the matter mentioned in section 2H(1)(b).
- (2) The invitation must be published in the way appearing to it to be best calculated to bring the invitation to the attention of the public.

Report on consultation

- 21 (1) The PRA must publish a report about its consultation in accordance with paragraph 20.
- (2) The report must contain an account, in general terms, of any representations received in pursuance of the invitation published under that paragraph.
 - (3) The report must be published not later than 4 months after the date on which the report under paragraph 19 was published.

Accounts and audit

- 22 (1) The Treasury may—
- (a) require the PRA to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
 - (b) direct that any provision of that Act about accounts and their audit is to apply to the PRA with such modifications as are specified in the direction, whether or not the provision would otherwise apply to the PRA.

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- (2) Compliance with any requirement under sub-paragraph (1)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.
- (3) Proceedings under sub-paragraph (2) may be brought only by the Treasury.
- 23 (1) The PRA must send a copy of its annual accounts to the Comptroller and Auditor General as soon as is reasonably practicable.
- (2) The Comptroller and Auditor General must—
- (a) examine, certify and report on accounts received under this paragraph, and
 - (b) send a copy of the certified accounts and the report to the Treasury.
- (3) The Treasury must lay the copy of the certified accounts and the report before Parliament.
- (4) The PRA must send a copy of the certified accounts and the report to the Bank.
- (5) Except as provided by paragraph 22(1), the PRA is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.
- (6) In this paragraph “annual accounts” has the meaning given in section 471 of the Companies Act 2006.

PART 2

STATUS

Status

- 24 In relation to any of its functions—
- (a) the PRA is not to be regarded as acting on behalf of the Crown, and
 - (b) its members, officers and staff are not to be regarded as Crown servants.

Exemption from requirement for use of “limited” in name of PRA

- 25 The PRA is to be exempt from the requirements of the Companies Act 2006 relating to the use of “limited” as part of its name.
- 26 If the Secretary of State is satisfied that any action taken by the PRA makes it inappropriate for the exemption given by paragraph 25 to continue, the Secretary of State may, after consulting the Treasury, give a direction removing it.

PART 3

PENALTIES AND FEES

Penalties

- 27 In determining its policy with respect to the amounts of penalties to be imposed by it under this Act, the PRA must take no account of the expenses which it incurs, or expects to incur, in discharging its functions.
- 28 (1) The PRA must in respect of each of its financial years pay to the Treasury its penalty receipts after deducting its enforcement costs.
- (2) The PRA's “penalty receipts” in respect of a financial year are any amounts received by it during the year by way of penalties imposed under this Act.
 - (3) The PRA's “enforcement costs” in respect of a financial year are the expenses incurred by it during the year in connection with—

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- (a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
 - (b) the recovery of penalties imposed under this Act.
- (4) For this purpose the PRA's enforcement powers are—
- (a) its powers under any of the provisions mentioned in section 133(7A),
 - (b) its powers under section 56 (prohibition orders),
 - (c) its powers under Part 25 of this Act (injunctions and restitution),
 - (d) its powers under any other enactment specified by the Treasury by order,
 - (e) its powers in relation to the investigation of relevant offences, and
 - (f) its powers in England and Wales or Northern Ireland in relation to the prosecution of relevant offences.
- (5) “Relevant offences” are—
- (a) offences under FSMA 2000,
 - (b) offences under subordinate legislation made under that Act, and
 - (c) any other offences specified by the Treasury by order.
- (6) The Treasury may give directions to the PRA as to how the PRA is to comply with its duty under sub-paragraph (1).
- (7) The directions may in particular—
- (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in sub-paragraph (3),
 - (b) relate to the calculation and timing of the deduction in respect of the PRA's enforcement costs, and
 - (c) specify the time when any payment is required to be made to the Treasury.
- (8) The directions may also require the PRA to provide the Treasury at specified times with information relating to—
- (a) penalties that the PRA has imposed under FSMA 2000, or
 - (b) the PRA's enforcement costs.
- (9) The Treasury must pay into the Consolidated Fund any sums received by them under this paragraph.
- 29 (1) The PRA must prepare and operate a scheme (“the financial penalty scheme”) for ensuring that the amounts that, as a result of the deduction for which paragraph 28(1) provides, are retained by the PRA in respect of amounts paid to it by way of penalties imposed under this Act are applied for the benefit of PRA-authorized persons.
- (2) The financial penalty scheme may, in particular, make different provision with respect to different classes of PRA-authorized person.
 - (3) The financial penalty scheme must ensure that those who have become liable to pay a penalty to the PRA in any financial year of the PRA do not receive any benefit under the scheme in the following financial year.
 - (4) Up-to-date details of the financial penalty scheme must be set out in a document (“the scheme details”).
- 30 (1) The scheme details must be published by the PRA in the way appearing to it to be best calculated to bring them to the attention of the public.

- (2) Before making the financial penalty scheme, the PRA must publish a draft of the proposed scheme in the way appearing to the PRA to be best calculated to bring it to the attention of the public.
- (3) The draft must be accompanied by notice that representations about the proposals may be made to the PRA within a specified time.
- (4) Before making the scheme, the PRA must have regard to any representations made to it in accordance with sub-paragraph (3).
- (5) If the PRA makes the proposed scheme, it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with sub-paragraph (3), and
 - (b) its response to them.
- (6) If the scheme differs from the draft published under sub-paragraph (2) in a way which is, in the opinion of the PRA, significant, the PRA must (in addition to complying with sub-paragraph (5)) publish details of the difference.
- (7) The PRA must, without delay, give the Treasury a copy of any scheme details published by it.
- (8) The PRA may charge a reasonable fee for providing a person with a copy of—
 - (a) a draft published under sub-paragraph (2);
 - (b) scheme details.
- (9) Sub-paragraphs (2) to (6) and (8)(a) also apply to a proposal to alter or replace the financial penalty scheme.

Fees

- 31 (1) The PRA may make rules providing for the payment to it of such fees, in connection with the discharge of any of its qualifying functions, as it considers will (taking account of its expected income from fees and charges provided for by any other provision of this Act) enable it—
 - (a) to meet expenses incurred in carrying out its functions or for any incidental purpose,
 - (b) to repay the principal of, and pay any interest on, any relevant borrowing and to meet relevant commencement expenses, and
 - (c) to maintain adequate reserves.
- (2) The “qualifying functions” of the PRA are—
 - (a) its functions under or as a result of this Act or any of the other Acts mentioned in section 2A(6), and
 - (b) its functions under or as a result of a qualifying EU provision that is specified, or of a description specified, for the purposes of this sub-paragraph by the Treasury by order.
- (3) In sub-paragraph (1)(b)—

“relevant borrowing” means any money borrowed by the PRA which has been used for the purpose of meeting expenses incurred in relation to its assumption of functions under this Act, and

“relevant commencement expenses” means expenses incurred by the PRA, the FCA or the Bank—

 - (a) in preparation for the exercise of functions by the PRA under this Act, or
 - (b) for the purpose of facilitating the exercise by the PRA of those functions or otherwise in connection with their exercise by it.
- (4) Neither section 2A(6)(d) nor the definition of “functions” in paragraph 1 applies for the purposes of sub-paragraph (2).

- (5) For the purposes of sub-paragraph (3) it is irrelevant when the borrowing of the money, the incurring of the expenses or the assumption of functions took place (and, in particular, it is irrelevant if expenses were incurred by the FCA at a time when it was known as the Financial Services Authority).
- (6) In fixing the amount of any fee which is to be payable to the PRA, no account is to be taken of any sums which the PRA receives, or expects to receive, by way of penalties imposed by it under this Act.
- (7) Any fee which is owed to the PRA under any provision made by or under this Act may be recovered as a debt due to the PRA.

Services for which fees may not be charged

- 32 The power conferred by paragraph 31 may not be used to require—
- (a) a fee to be paid in respect of the discharge of any of the PRA's functions under paragraph 13, 14, 19 or 20 of Schedule 3, or
 - (b) a fee to be paid by any person whose application for approval under section 59 has been granted.

PART 4
MISCELLANEOUS

Exemption from liability in damages

- 33 (1) None of the following is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the PRA's functions—
- (a) the PRA;
 - (b) any person ("P") who is, or is acting as, a member, officer or member of staff of the PRA;
 - (c) any person who could be held vicariously liable for things done or omitted by P, but only in so far as the liability relates to P's conduct.
- (2) Anything done or omitted by a person mentioned in sub-paragraph (1)(a) or (b) while acting, or purporting to act, as a result of an appointment under any of sections 97, 166 to 169 and 284 is to be taken for the purposes of sub-paragraph (1) to have been done or omitted in the discharge, or as the case may be purported discharge, of the PRA's functions.
- (3) Sub-paragraph (1) does not apply—
- (a) if the act or omission is shown to have been in bad faith, or
 - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

Accredited financial investigators

- 34 For the purposes of this Act anything done by an accredited financial investigator within the meaning of the Proceeds of Crime Act 2002 who—
- (a) is, or is acting as, an officer of, or member of the staff of, the PRA, or
 - (b) is appointed by the PRA under section 167 or 168 to conduct an investigation,
- is to be treated as done in the exercise or discharge of a function of the PRA.

Amounts required by rules to be paid to the PRA

- 35 Any amount (other than a fee) which is required by rules to be paid to the PRA may be recovered as a debt due to the PRA.

SCHEDULE 12

TRANSFER SCHEMES: CERTIFICATES

Sections 111(2) and 115

PART I

INSURANCE BUSINESS TRANSFER SCHEMES

- 1 (1) For the purposes of section 111(2) the appropriate certificates, in relation to an insurance business transfer scheme, are—
 - (a) a certificate under paragraph 2;
 - (b) if sub-paragraph (2) applies, a certificate under paragraph 3;
 - (c) if sub-paragraph (3) applies, a certificate under paragraph 4;
 - (d) if sub-paragraph (4) applies, a certificate under paragraph 5;
 - (e) if sub-paragraph (5) applies, the certificates under paragraph 5A.
- (2) This sub-paragraph applies if—
 - (a) the authorised person concerned is a UK authorised person which has received authorisation under Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive from the appropriate regulator; and
 - (b) the establishment from which the business is to be transferred under the proposed insurance business transfer scheme is in an EEA State other than the United Kingdom.
- (3) This sub-paragraph applies if—
 - (a) the authorised person concerned has received authorisation under Article 4 or Article 51 of the life assurance consolidation directive from the appropriate regulator;
 - (b) the proposed transfer relates to business which consists of the effecting or carrying out of contracts of long-term insurance; and
 - (c) as regards any policy which is included in the proposed transfer and which evidences a contract of insurance (other than reinsurance), an EEA State other than the United Kingdom is the State of the commitment.
- (4) This sub-paragraph applies if—
 - (a) the authorised person concerned has received authorisation under Article 6 or Article 23 of the first non-life insurance directive from the appropriate regulator;
 - (b) the business to which the proposed insurance business transfer scheme relates is business which consists of the effecting or carrying out of contracts of general insurance; and
 - (c) as regards any policy which is included in the proposed transfer and which evidences a contract of insurance (other than reinsurance), the risk is situated in an EEA State other than the United Kingdom.
- (5) This sub-paragraph applies if—
 - (a) the authorised person concerned has received authorisation under Article 23 of the first non-life insurance directive or Article 51 of the life assurance consolidation directive from the appropriate regulator; and

- (b) the proposed transfer is to a branch or agency, in an EEA State other than the United Kingdom, authorised under the same Article.

Certificates as to margin of solvency

- 2 (1) A certificate under this paragraph is to be given—
- (a) by the relevant authority; or
 - (b) in a case in which there is no relevant authority, by the appropriate regulator.
- (2) A certificate given under sub-paragraph (1)(a) is one certifying that, taking the proposed transfer into account—
- (a) the transferee possesses, or will possess before the scheme takes effect, the necessary margin of solvency; or
 - (b) there is no necessary margin of solvency applicable to the transferee.
- (3) A certificate under sub-paragraph (1)(b) is one certifying that the appropriate regulator has received from the authority which it considers to be the authority responsible for supervising persons who effect or carry out contracts of insurance in the place to which the business is to be transferred certification that, taking the proposed transfer into account—
- (a) the transferee possesses or will possess before the scheme takes effect the margin of solvency required under the law applicable in that place; or
 - (b) there is no such margin of solvency applicable to the transferee.
- (4) “Necessary margin of solvency” means the margin of solvency required in relation to the transferee, taking the proposed transfer into account, under the law which it is the responsibility of the relevant authority to apply.
- (5) “Margin of solvency” means the excess of the value of the assets of the transferee over the amount of its liabilities.
- (6) “Relevant authority” means—
- (a) if the transferee is an EEA firm falling within paragraph 5(d) or (da) of Schedule 3, its home state regulator;
 - (aa) if the transferee is a non-EEA branch, the competent authorities of the EEA State in which the transferee is situated or, where appropriate, the competent authorities of an EEA State which supervises the state of solvency of the entire business of the transferee's agencies and branches within the EEA in accordance with Article 26 of the first non-life insurance directive or Article 56 of the life assurance consolidation directive;
 - (b) if the transferee is a Swiss general insurer, the authority responsible in Switzerland for supervising persons who effect or carry out contracts of insurance;
 - (c) if the transferee is an authorised person not falling within paragraph (a), (aa) or (b)—
 - (i) the PRA, if the transferee is a PRA-authorised person with a Part 4A permission or with permission under Schedule 4;
 - (ii) the FCA, if the transferee is a person with a Part 4A permission or with permission under Schedule 4 but is not a PRA-authorised person.
- (7) In sub-paragraph (6), any reference to a transferee of a particular description includes a reference to a transferee who will be of that description if the proposed scheme takes effect.

(7A) “Competent authorities” has the same meaning as in the insurance directives.

(8) “Swiss general insurer” means a body—

- (a) whose head office is in Switzerland;
- (b) which has permission to carry on regulated activities consisting of the effecting and carrying out of contracts of general insurance; and
- (c) whose permission is not restricted to the effecting or carrying out of contracts of reinsurance.

(9) “Non-EEA branch” means a branch or agency which has received authorisation under Article 23 of the first non-life insurance directive or Article 51 of the life assurance consolidation directive.

Certificates as to consent

3 A certificate under this paragraph is one given by the appropriate regulator and certifying that the host State regulator has been notified of the proposed scheme and that—

- (a) that regulator has responded to the notification; or
- (b) that it has not responded but the period of three months beginning with the notification has elapsed.

Certificates as to long-term business

4 A certificate under this paragraph is one given by the appropriate regulator and certifying that the authority responsible for supervising persons who effect or carry out contracts of insurance in the State of the commitment has been notified of the proposed scheme and that—

- (a) that authority has consented to the proposed scheme; or
- (b) the period of three months beginning with the notification has elapsed and that authority has not refused its consent.

Certificates as to general business

5 A certificate under this paragraph is one given by the appropriate regulator and certifying that the authority responsible for supervising persons who effect or carry out contracts of insurance in the EEA State in which the risk is situated has been notified of the proposed scheme and that—

- (a) that authority has consented to the proposed scheme; or
- (b) the period of three months beginning with the notification has elapsed and that authority has not refused its consent.

Certificates as to legality and as to consent

5 (1) The certificates under this paragraph are to be given—

- (a) in the case of the certificate under sub-paragraph (2), by the appropriate regulator;
- (b) in the case of the certificate under sub-paragraph (3), by the relevant authority.

(2) A certificate given under this sub-paragraph is one certifying that the relevant authority has been notified of the proposed scheme and that—

- (a) the relevant authority has consented to the proposed scheme; or

- (b) the period of three months beginning with the notification has elapsed and that relevant authority has not refused its consent.
- (3) A certificate given under this sub-paragraph is one certifying that the law of the EEA State in which the transferee is set up permits such a transfer.
- (4) “Relevant authority” means the competent authorities (within the meaning of the insurance directives) of the EEA State in which the transferee is set up.

Interpretation of Part I

- 6 (1) “State of the commitment”, in relation to a commitment entered into at any date, means—
- (a) if the policyholder is an individual, the State in which he had his habitual residence at that date;
 - (b) if the policyholder is not an individual, the State in which the establishment of the policyholder to which the commitment relates was situated at that date.
- (2) “Commitment” means a commitment represented by contracts of insurance of a prescribed class.
- (3) References to the EEA State in which a risk is situated are—
- (a) if the insurance relates to a building or to a building and its contents (so far as the contents are covered by the same policy), to the EEA State in which the building is situated;
 - (b) if the insurance relates to a vehicle of any type, to the EEA State of registration;
 - (c) in the case of policies of a duration of four months or less covering travel or holiday risks (whatever the class concerned), to the EEA State in which the policyholder took out the policy;
 - (d) in a case not covered by paragraphs (a) to (c)—
 - (i) if the policyholder is an individual, to the EEA State in which he has his habitual residence at the date when the contract is entered into; and
 - (ii) otherwise, to the EEA State in which the establishment of the policyholder to which the policy relates is situated at that date.
- (4) If the insurance relates to a vehicle dispatched from one EEA State to another, in respect of the period of 30 days beginning with the day on which the purchaser accepts delivery a reference to the EEA State in which a risk is situated is a reference to the State of destination (and not, as provided by sub-paragraph (3)(b), to the State of registration).

PART II

BANKING BUSINESS TRANSFER SCHEMES

- 7 (1) For the purposes of section 111(2) the appropriate certificates, in relation to a banking business transfer scheme, are—
- (a) a certificate under paragraph 8; and
 - (b) if sub-paragraph (2) applies, a certificate under paragraph 9.
- (2) This sub-paragraph applies if the authorised person concerned or the transferee is an EEA firm falling within paragraph 5(b) of Schedule 3.

Certificates as to financial resources

- 8 (1) A certificate under this paragraph is one given by the relevant authority and certifying that, taking the proposed transfer into account, the transferee possesses, or will possess before the scheme takes effect, adequate financial resources.
- (2) “Relevant authority” means—
- (a) if the transferee is a PRA-authorized person with a Part 4A permission or with permission under Schedule 4, the PRA;
 - (aa) if the transferee is a person with Part 4A permission or with permission under Schedule 4 but is not a PRA-authorized person, the FCA;
 - (b) if the transferee is an EEA firm falling within paragraph 5(b) of Schedule 3, its home state regulator;
 - (c) if the transferee does not fall within paragraph (a), (aa) or (b), the authority responsible for the supervision of the transferee's business in the place in which the transferee has its head office.
- (3) In sub-paragraph (2), any reference to a transferee of a particular description of person includes a reference to a transferee who will be of that description if the proposed banking business transfer scheme takes effect.

Certificates as to consent of home state regulator

- 9 A certificate under this paragraph is one given by the appropriate regulator and certifying that the home State regulator of the authorized person concerned or of the transferee has been notified of the proposed scheme and that—
- (a) the home State regulator has responded to the notification; or
 - (b) the period of three months beginning with the notification has elapsed.

PART 2A
RECLAIM FUND BUSINESS TRANSFER SCHEMES

Certificate as to financial resources

- 9A (1) For the purposes of section 111(2) the appropriate certificate, in relation to a reclaim fund business transfer scheme, is a certificate given by the relevant regulator certifying that, taking the proposed transfer into account, the transferee possesses, or will possess before the scheme takes effect, adequate financial resources.
- (2) In this paragraph the “relevant regulator” means—
- (a) if the transferee is a PRA-authorized person, the PRA;
 - (b) in any other case, the FCA.

PART 2B

RING-FENCING TRANSFER SCHEMES

Appropriate certificates

9B (1) For the purposes of section 111(2) the appropriate certificates, in relation to a ring-fencing transfer scheme, are—

- (a) a certificate given by the PRA certifying its approval of the application,
- (b) a certificate under paragraph 9C, and
- (c) if sub-paragraph (2) applies, a certificate under paragraph 9D.

(2) This sub-paragraph applies if the transferee is an EEA firm falling within paragraph 5(a) or (b) of Schedule 3.

Certificate as to financial resources

9C (1) A certificate under this paragraph is one given by the relevant authority and certifying that, taking the proposed transfer into account, the transferee possesses, or will possess before the scheme takes effect, adequate financial resources.

(2) “Relevant authority” means—

- (a) if the transferee is a PRA-authorized person with a Part 4A permission or with permission under Schedule 4, the PRA;
- (b) if the transferee is an EEA firm falling within paragraph 5(a) or (b) of Schedule 3, its home state regulator;
- (c) if the transferee does not fall within paragraph (a) or (b) but is subject to regulation in a country or territory outside the United Kingdom, the authority responsible for the supervision of the transferee’s business in the place in which the transferee has its head office;
- (d) in any other case, the FCA.

(3) In sub-paragraph (2), any reference to a transferee of a particular description includes a reference to a transferee who will be of that description if the proposed ring-fencing transfer scheme takes effect.

Certificate as to consent of home state regulator

9D (1) A certificate under this paragraph is one given by the appropriate regulator and certifying that the home state regulator of the transferee has been notified of the proposed scheme and that—

- (a) the home state regulator has responded to the notification, or
- (b) the period of 3 months beginning with the notification has elapsed.

PART III

INSURANCE BUSINESS TRANSFERS EFFECTED OUTSIDE THE UNITED KINGDOM

10 (1) This paragraph applies to a proposal to execute under provisions corresponding to Part VII in a country or territory other than the United Kingdom an instrument transferring all the rights and obligations of the transferor under general or long-term insurance policies, or under such descriptions

of such policies as may be specified in the instrument, to the transferee if any of the conditions in subparagraphs (2), (3) or (4) is met in relation to it.

- (2) The transferor is an EEA firm falling within paragraph 5(d) or (da) of Schedule 3 and the transferee is an authorised person whose margin of solvency is supervised by the FCA or the PRA.
- (3) The transferor is a company authorised in an EEA State other than the United Kingdom under Article 51 of the life assurance consolidation directive, or Article 23 of the first non-life insurance directive and the transferee is a UK authorised person which has received authorisation under Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive.
- (4) The transferor is a Swiss general insurer and the transferee is a UK authorised person which has received authorisation under Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive.
- (5) In relation to a proposed transfer to which this paragraph applies, the regulator which supervises the transferee's margin of solvency may, if it is satisfied that the transferee possesses the necessary margin of solvency, issue a certificate to that effect.
- (6) "Necessary margin of solvency" means the margin of solvency which the transferee, taking the proposed transfer into account, is required by the FCA or the PRA to maintain.
- (7) "Swiss general insurer" has the same meaning as in paragraph 2.
- (8) "General policy" means a policy evidencing a contract which, if it had been effected by the transferee, would have constituted the carrying on of a regulated activity consisting of the effecting of contracts of general insurance.
- (9) "Long-term policy" means a policy evidencing a contract which, if it had been effected by the transferee, would have constituted the carrying on of a regulated activity consisting of the effecting of contracts of long-term insurance.