Financial Services and Markets Act 2023

2023 CHAPTER 29

An Act to make provision about the regulation of financial services and markets; and for connected purposes. [29th June 2023]

BE IT ENACTED by the King'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 1

REGULATORY FRAMEWORK

CHAPTER 1

REVOCATION OF RETAINED EU LAW

1 Revocation of retained EU law relating to financial services and markets

(1) The legislation referred to in Schedule 1 is revoked.

(2) In that Schedule—

(a) Part 1 refers to retained direct principal EU legislation;

(b) Part 2 refers to subordinate legislation;

(c) Part 3 refers to EU tertiary legislation and subordinate legislation made under an instrument referred to in Part 2;

(d) Part 4 refers to primary legislation;

(e) Part 5 refers to other EU-derived legislation not covered by Parts 1 to 3.

(3) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which—

(a) continue to be recognised and available in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018, and

(b) are derived from any provision of legislation referred to in Schedule 1,

cease to be so recognised and available in domestic law.

(4) The revocation of any legislation in accordance with this section does not affect the continued effect of any amendments to other legislation made by that revoked legislation (as those amendments had effect immediately before the revocation).

(5) The Treasury may by regulations provide for specified subordinate legislation, or for subordinate legislation of a specified description, otherwise falling within Part 5 of Schedule 1, not to fall within that Part.

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

2 Transitional amendments

(1) Schedule 2 amends particular legislation referred to in Schedule 1 in relation to the transitional period.

(2) In this Chapter "the transitional period", in relation to any legislation, means the period ending with the revocation of that legislation.

(3) The amendments in Schedule 2 do not restrict the power in section 3 to modify legislation as amended by that Schedule.

3 Power to make further transitional amendments

(1) The Treasury may by regulations modify legislation referred to in Schedule 1 in relation to the transitional period.

(2) The power under subsection (1) is exercisable only by making such modifications as the Treasury consider necessary or desirable for or in connection with one or more of the following purposes—

(a) protecting and enhancing the integrity or stability of the financial system operating in the United Kingdom;

(b) promoting the safety and soundness of persons providing financial services;

(c) promoting effectiveness in the functioning of financial markets;

(d) promoting effective competition in the interests of consumers in financial services and markets or persons who use, or are likely to use, services provided by payment systems in the course of business carried on by those persons;

(e) facilitating the international competitiveness of the economy of the United Kingdom and its growth in the medium to long term;

(f) protecting consumers and those who are, or may become, insurance policyholders;

(g) providing for efficient and effective arrangements in relation to the exercise of functions under the Banking Act 2009 or Part 4 of this Act;

(h) protecting public funds;

(i) implementing, or making changes to reflect, developments in international standards and practices relating to, or applied for the purposes of, the provision of financial services or the operation of financial markets;

(j) providing for efficient and effective regulatory, enforcement, investigatory and supervisory arrangements in relation to the provision of financial services or the operation of financial markets;

(k) removing provisions that are yet to be commenced or changing the timing of their commencement.

(3) In subsection (2)—

(a) the integrity of the financial system operating in the United Kingdom includes the matters listed in section 1D(2) of FSMA 2000;

(b) references to financial markets include references to financial exchanges;

(c) "consumer" has the meaning given by section 1G(1) of FSMA 2000;

(d) "payment system" has the same meaning as in Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 41 of that Act);

(e) the reference to regulatory arrangements includes (among other things) a reference to arrangements for the making of rules.

(4) In modifying legislation for or in connection with a purpose mentioned in subsection (2) regulations under this section may—

(a) confer powers on the Treasury or on a regulator;

(b) authorise the making of subordinate legislation by the Treasury;

(c) authorise the making of rules or other instruments by a regulator;

(d) provide for fees to be charged by a regulator in connection with the carrying out of its functions;

(e) apply (with or without modifications), or make equivalent or similar provision to, provisions made by or under FSMA 2000 (including criminal offences created by that Act).

(5) The power under section 84(2)(c) to make supplementary, incidental, consequential, transitional, transitory or saving provision includes, in relation to regulations under this section, power to restate legislation in a clearer or more accessible way.

(6) Before making regulations under this section the Treasury must consult the regulators.

(7) The duty under subsection (6), so far as relating to the Bank of England or the Payment Systems Regulator, applies only if, and to the extent that, the Treasury think it appropriate to consult that regulator in view of the modifications being made by the regulations.

(8) The power under subsection (1) to modify legislation does not include power to modify—

(a) primary legislation referred to in Part 4 of Schedule 1;

(b) technical standards of the kind mentioned in section 138P(2)(a) of FSMA 2000;

(c) EU tertiary legislation of the kind mentioned in section 138P(2)(b) of FSMA 2000.

(9) Regulations under this section that modify only the following kinds of legislation referred to in Schedule 1 are subject to the negative procedure—

(a) EU tertiary legislation;

(b) subordinate legislation that was not subject to affirmative resolution on being made.

(10) Regulations under this section to which subsection (9) does not apply are subject to the affirmative procedure.

4 Power to restate and modify saved legislation

(1) The power under section 86(5) to make saving provision in connection with the revocation of any legislation referred to in Schedule 1 includes power to restate that legislation (as it has effect immediately before its revocation)—

(a) by amending primary legislation or subordinate legislation, or

(b) by making new subordinate legislation.

(2) Regulations made by virtue of subsection (1) may make such modifications of the legislation being restated as the Treasury consider necessary or desirable for or in connection with—

(a) the purpose of making the law clearer or more accessible, or

(b) any of the purposes mentioned in section 3(2).

(3) Legislation restated by virtue of subsection (1) is not retained EU law.

(4) Where legislation is restated by virtue of subsection (1), the Treasury may by regulations make such further modifications of that legislation as they consider necessary or desirable for or in connection with a purpose referred to in subsection (2)(a) or (b).

(5) Subsection (4) of section 3 applies to regulations made under, or by virtue of, this section as it applies to regulations made under that section.

(6) The power conferred by virtue of subsection (1) to restate legislation may be exercised in relation to the entirety of that legislation or in relation to such parts of it as the Treasury consider appropriate.

(7) The power conferred by virtue of subsection (1) to restate legislation does not include power to restate—

(a) technical standards of the kind mentioned in section 138P(2)(a) of FSMA 2000, or

(b) EU tertiary legislation of the kind mentioned in section 138P(2)(b) of FSMA 2000.

(8) Regulations made by virtue of this section that do not amend primary legislation and contain provision restating only the following kinds of legislation referred to in Schedule 1 are subject to the negative procedure—

(a) EU tertiary legislation;

(b) subordinate legislation that was not subject to affirmative resolution on being made;

(c) any other legislation, so far as restated without any modifications made for a purpose mentioned in section 3(2).

(9) Regulations made by virtue of this section to which subsection (8) does not apply are subject to the affirmative procedure.

5 Power to replace references to EU directives

(1) The Treasury may by regulations modify legislation for or in connection with the purpose of replacing any reference (however expressed) to an EU directive referred to in Part 3 of Schedule 1 with such other provision (if any) as the Treasury consider appropriate.

(2) The power under subsection (1) is exercisable only if the Treasury consider it necessary or desirable to replace the reference for or in connection with—

(a) the purpose of making the law clearer or more accessible, or

(b) any of the purposes mentioned in section 3(2).

(3) Regulations under this section are subject to the affirmative procedure if they amend primary legislation.

(4) Regulations under this section to which subsection (3) does not apply are subject to the negative procedure.

6 Restatement in rules: exemption from consultation requirements etc

(1) A relevant requirement does not apply to the making of rules by a regulator if and to the extent that—

(a) the proposed rules make excluded provision in relation to provisions of legislation referred to in Schedule 1, and

(b) those provisions of legislation are specified, or fall within a description of provisions specified, in relation to the making of rules by the regulator in regulations made by the Treasury for the purposes of this section.

(2) A relevant requirement does not apply to the making of rules by a regulator if and to the extent that—

(a) the proposed rules make excluded changes to provision of existing rules made by the regulator containing a retained EU obligation, and

(b) the retained EU obligation is specified, or falls within a description of obligations specified, in relation to the making of rules by the regulator in regulations made by the Treasury for the purposes of this section.

(3) A relevant requirement does not apply to the revocation of rules by a regulator if and to the extent that—

(a) the rules being revoked make provision containing a retained EU obligation, and

(b) the rules are revoked without being replaced by other rules made by the regulator.

(4) For the purposes of subsection (1), rules make excluded provision in relation to provisions of legislation if, in the opinion of the regulator making the rules, the rules reproduce those provisions—

(a) without any changes that are material, or

(b) with changes that are material but their effect is to reduce a regulatory burden without having any other effects that are material.

(5) For the purposes of subsection (2), rules make excluded changes to provision of existing rules if, in the opinion of the regulator making the rules—

(a) the effect of the changes is to reduce a regulatory burden, and

(b) the changes have no other effects that are material.

(6) In this section references to a "regulatory burden" include (among other things) references to—

(a) a financial cost;

(b) an administrative inconvenience;

(c) an obstacle to trade or innovation;

(d) an obstacle to efficiency, productivity or profitability.

(7) Where a relevant requirement does not apply to the making or revocation of rules by virtue of subsection (1), (2) or (3), the requirement also does not apply to any rules that contain incidental, supplemental, consequential or transitional provision so far as made in connection with provision made by virtue of that subsection.

(8) "Relevant requirement" means—

(a) in relation to rules made by the FCA, the requirements imposed by—

(i) section 138I of FSMA 2000, except for subsection (1)(a), and

(ii) section 138K of FSMA 2000;

(b) in relation to rules made by the PRA, the requirements imposed by—

(i) section 138J of FSMA 2000, except for subsection (1)(a), and

(ii) section 138K of FSMA 2000;

(c) in relation to rules made by the Bank of England, the requirements imposed by paragraph 10(1)(i) of Schedule 17A to FSMA 2000;

(d) in relation to rules made by the Payment Systems Regulator, the requirements imposed by section 104 of the Financial Services (Banking Reform) Act 2013, except for subsection (2)(a).

(9) Where a regulator makes or revokes rules without complying with a relevant requirement by virtue of subsection (1), (2) or (3), the regulator must publish a statement which must—

(a) in a case falling within subsection (1), list the provisions of legislation that have been restated by the rules;

(b) in a case falling within subsection (2), specify or describe the retained EU obligations in relation to which changes have been made by the rules;

(c) in a case falling within subsection (3), specify or describe the retained EU obligations that have been removed by the revocation of the rules.

(10) Where the statement relates to the making of rules that include provision of a kind mentioned in subsection (4)(b) or (5)(a) and (b), the statement must—

(a) if made by the FCA, include an explanation of the FCA's reasons for believing that making the proposed rules is compatible with its duties under section 1B(1), (4A) and (5)(a) of FSMA 2000;

(b) if made by the PRA, include an explanation of the PRA's reasons for believing that making the proposed rules is compatible with its duties under—

(i) section 2B(1) or, as the case requires, section 2C(1) or 2D(3) of FSMA 2000, and

(ii) section 2H of FSMA 2000;

(c) if made by the Bank of England, include an explanation of the Bank's reasons for believing that making the proposed rules is compatible with—

(i) the Bank's financial stability objective under section 2A of the Bank of England Act 1998, and

(ii) the Bank's duties under section 30D(1)(a) of that Act;

(d) if made by the Payment Systems Regulator, include an explanation of the Regulator's reasons for believing that making the proposed rules is compatible with its duties under section 49 of the Financial Services (Banking Reform) Act 2013.

(11) The statement must be published in the way appearing to the regulator to be best calculated to bring the statement to the attention of the public.

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

(13) In this section "rules"—

(a) in relation to the Payment Systems Regulator, means—

(i) generally applicable requirements within the meaning of Part 5 of the Financial Services (Banking Reform) Act 2013 (as amended by Schedule 7 to this Act), or

(ii) directions of general application imposed under any other enactment;

(b) in relation to any other regulator, means rules made by that regulator under FSMA 2000 or any other enactment.

7 Interpretation of Chapter

(1) In this Chapter—

"EU directive" means a directive within the meaning of Article 288 of the Treaty on the Functioning of the European Union;

"EU tertiary legislation" has the same meaning as in the European Union (Withdrawal) Act 2018 (see section 20(1));

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

"regulator" means—

(a) the FCA,

(b) the PRA,

(c) the Bank of England, or

(d) the Payment Systems Regulator;

"the transitional period" has the meaning given in section 2(2).

(2) For the purposes of this Chapter, references to legislation do not include references to rules made by a regulator.

(3) For the purposes of this Chapter, subordinate legislation was subject to affirmative resolution on being made if it was made with approval given by a resolution of each House of Parliament (whether before or after it was made).

(4) References in this Chapter to the revocation of legislation are, in relation to the legislation referred to in Part 4 of Schedule 1, to be read as references to its repeal.

CHAPTER 2

NEW REGULATORY POWERS

Designated activities regime

8 Designated activities

(1) FSMA 2000 is amended as follows.

(2) After Part 5 insert—

"**PART 5A**

DESIGNATED ACTIVITIES

71K Designated activities

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

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

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

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

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

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

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

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

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

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

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

71L Restrictions on carrying on of designated activities

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

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

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

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

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

71M Designated activity regulations: general

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

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

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

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

(3) Designated activity regulations may—

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

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

71N Designated activities: rules

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

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

(a) relating to the designated activity, or

(b) relating to specified matters relating to designated activities.

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

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

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

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

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

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

71O Designated activities: directions

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

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

(3) A requirement may, in particular, be imposed so as to require the person concerned—

(a) to take specified action, or

(b) to refrain from taking specified action.

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

(5) A direction under this section—

(a) may specify the way in which, and the time by which, a thing is to be done;

(b) may be varied;

(c) may be expressed to have effect during a specified period or until revoked.

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

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

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

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

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

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

(12) The imposition of a requirement that expires at the end of a specified period does not affect the FCA's power to impose a new requirement.

71P Designated activities: liability

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

(2) A contravention of a requirement under designated activity regulations or designated activity rules—

(a) does not, except as provided by designated activity regulations under section 71Q or by regulations under section 71R, make a person guilty of an offence;

(b) does not, except as provided by designated activity regulations—

(i) make any transaction void or unenforceable, or

(ii) give rise to any action for breach of statutory duty.

(3) Designated activity regulations may in particular—

(a) in cases where the regulations make provision for liability, make provision excluding civil liability (whether generally or to such extent as may be specified),

(b) make provision for liability to be determined in accordance with designated activity rules,

(c) make provision so that a person being subject to a liability includes another person being entitled as against that person to rescind or repudiate an agreement, and

(d) make provision for the purposes of subsection (1) by applying provisions of this Act with or without modifications.

71Q Designated activities: enforcement

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

(2) Provision about enforcement includes (among other things) provision—

(a) requiring the supply of information;

(b) about investigations (including the making of reports);

(c) conferring powers of entry;

(d) conferring powers of inspection, search and seizure;

(e) conferring powers of censure;

(f) imposing monetary penalties;

(g) about appeals;

(h) conferring functions (including functions involving the exercise of a discretion) on a person.

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

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

71R Designated activities and rules: connected amendments

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

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

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

(4) In this section—

"enactment" includes—

(a) an enactment comprised in subordinate legislation (within the meaning given by section 21 of the Interpretation Act 1978),

(b) an enactment comprised in, or in an instrument made under, a Measure or Act of Senedd Cymru,

(c) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and

(d) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;

"modify" includes amend, repeal or revoke.

71S Designated activities regulations: Parliamentary control

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

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

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

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

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

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

(a) Parliament is dissolved or prorogued, or

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

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

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

(b) prevent the making of new regulations."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Financial market infrastructure: general rules and requirements

9 Rules relating to central counterparties and central securities depositories

(1) FSMA 2000 is amended as follows.

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

"General rule-making powers

300F Rules relating to central counterparties and central securities depositories

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

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

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

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

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

(a) a recognised central counterparty;

(b) a recognised CSD;

(c) a third country central counterparty;

(d) a third country CSD.

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

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

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

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

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

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

(5) Rules under this section may include—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) satisfy conditions specified in the regulations.

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

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

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

(c) provide for exemptions.

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

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

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

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

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

(11) The Bank—

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

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

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

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

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

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

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

(5) In section 293 (notification requirements)—

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

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

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

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

10 Central counterparties and central securities depositories: other requirements

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

"Requirements

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

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

(a) a recognised central counterparty,

(b) a recognised CSD, or

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

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

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

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

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

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

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

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

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

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

(a) section 55L(6) (power to refuse application to impose etc requirements);
(b) section 55N (further provision in relation to requirements);
(c) section 55P (prohibitions and restrictions);
(d) section 55Q (exercise of power in support of overseas regulator);
(e) section 55R(1) (persons connected with applicant);
(f) section 55U(3) to (8) (applications for requirement to be imposed etc);
(g) section 55V(1) to (6) (determination of applications);
(h) section 55X(2) and (4)(f) (warning and decision notices on refusal of applications);
(i) section 55Y (exercise of own-initiative power: procedure);
(j) section 55Z3(1) and (2) (right to refer matters to the Tribunal).

(10) The modifications are—

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

11 Rules relating to investment exchanges and data reporting service providers

(1) FSMA 2000 is amended as follows.

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

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

(1) The FCA may make such rules applying to recognised UK investment exchanges or data reporting service providers—

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

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

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

(2) In this section "relevant activity"—

(a) in relation to a recognised UK investment exchange, means a regulated activity described in section 285(2);

(b) in relation to a data reporting service provider, means providing a data reporting service.

(3) Rules under this section may include—

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

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

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

(5) In this section—

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

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

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

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

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

(5) In section 312E (public censure)—

(a) in subsection (1)—

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

(ii) after "the body" insert "or provider";

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

(c) after subsection (3) insert—

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

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

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

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

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

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

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

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

(a) in subsection (1)—

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

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

(b) in subsection (4)—

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

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

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

12 Treasury directions to Bank of England: restrictions

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

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

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

(i) recognised central counterparties;

(ii) recognised CSDs;

(iii) third country central counterparties;

(iv) third country CSDs."

(3) After subsection (1) insert—

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

Financial market infrastructure: piloting powers

13 Testing of FMI technologies or practices

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

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

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

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

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

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

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

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

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

(b) the description—

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

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

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

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

(6) An FMI sandbox may—

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

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

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

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

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

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

(9) An FMI sandbox—

(a) may be replaced by another FMI sandbox of the same or similar effect;
(b) may have effect at the same time as one or more other FMI sandboxes.

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

(11) For the purposes of this group of sections—
(a) "FMI entity" means—
(i) a recognised investment exchange that is not an overseas investment exchange;
(ii) a recognised CSD;
(iii) the operator of a multilateral trading facility;
(iv) the operator of an organised trading facility;
(v) such other persons as may be specified in regulations under this section as eligible to participate in the FMI sandbox arrangements concerned;
(b) "FMI activities" are any activities carried on as part of the business of an FMI entity;
(c) "FMI sandbox arrangements" means any arrangements implemented as part of an FMI sandbox.

14 Reports on FMI sandboxes

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

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

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

(4) The report must contain—
(a) a description of the FMI sandbox arrangements;
(b) an assessment of the efficiency or effectiveness of those arrangements;
(c) whether, and if so how, the Treasury propose exercising the power under section 15 in relation to those arrangements.

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

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

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

15 Permanent implementation of arrangements tested under an FMI sandbox

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

(2) The Treasury may by regulations make provision implementing the FMI sandbox arrangements—
(a) as tested under the FMI sandbox, or
(b) with such variations as the Treasury consider appropriate.

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

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

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

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

16 Regulations

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

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

(a) the appropriate regulators;

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

17 Interpretation

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

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

(a) the FCA, or

(b) the Bank of England.

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

(a) FSMA 2000;

(b) the Companies Act 2006;

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

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

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

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

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

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

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

(4) The following terms are defined as follows—

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

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

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

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

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

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

"multilateral trading facility";

"organised trading facility";

"overseas investment exchange";

"recognised investment exchange";

"recognised CSD".

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

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

Powers in relation to critical third parties

18 Critical third parties: designation and powers

(1) FSMA 2000 is amended as follows.

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

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

"**CHAPTER 3C**

CRITICAL THIRD PARTIES

312L Critical third parties

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

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

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

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

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

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

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

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

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

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

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

(a) the FCA,

(b) the PRA, and

(c) the Bank of England.

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

(a) the economy of the United Kingdom, or

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

(8) In this Chapter—

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

"FMI entity" means—

(a) a recognised clearing house;

(b) a recognised CSD;

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

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

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

"relevant service provider" means—

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

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

"service" includes facility.

312M Power to make rules

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

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

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

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

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

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

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

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

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

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

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

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

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

312N Power of direction

(1) A relevant regulator may, if it appears to the regulator to be necessary or expedient for the purpose of advancing any of its objectives, direct a critical third party to—

(a) do anything specified in the direction, or

(b) refrain from doing anything specified in the direction.

(2) A direction under this section—

(a) must be given by notice in writing,

(b) may be expressed to have effect during a specified period or until revoked, and

(c) may specify the way in which, and the time by which, a thing is to be done.

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

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

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

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

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

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

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

312O Directions: procedure

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

(2) A direction under section 312N takes effect—
(a) immediately, if the notice under subsection (1) states that this is the case,
(b) on such other date as may be specified in the notice, or
(c) if neither paragraph (a) or (b) applies, when the matter to which the notice relates is no longer open to review.

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

(4) The notice under subsection (1) must—
(a) give details of the direction,
(b) state the relevant regulator's reasons for the direction and for its determination as to when the direction takes effect,
(c) inform the relevant critical third party that it may make representations to the regulator within such period as may be specified in the notice (whether or not the critical third party has referred the matter to the Tribunal), and
(d) inform the relevant critical third party of its right to refer the matter to the Tribunal (including giving an indication of the procedure on such a reference).

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

(6) If, having considered any representations made by the relevant critical third party, the regulator decides—
(a) to give the direction proposed, or

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

it must give the critical third party written notice.

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

(a) not to give the direction proposed,

(b) to give a different direction, or

(c) to revoke a direction which has effect,

it must give the critical third party written notice.

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

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

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

312P Information gathering and investigations

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

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

(a) any reference in Part 11 to the FCA or PRA which is contained in, or relates to, any of those provisions (however expressed) is to be read as a reference to a relevant regulator, and

(b) Part 11 has effect with any other necessary modifications.

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

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

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

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

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

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

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

(10) For the purposes of this section a person is connected with a critical third party if that person is or has at any relevant time been—

(a) a member of the critical third party's group,

(b) a controller of the critical third party, or

(c) in relation to the critical third party, a person mentioned in Part 1 of Schedule 15 (reading references in that Part to the authorised person as references to the critical third party).

312Q Power of censure

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

312R Disciplinary measures

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

(2) The relevant regulator may publish a notice—

(a) prohibiting the critical third party from entering into arrangements, or continuing, to provide services to authorised persons, relevant service providers or FMI entities;

(b) prohibiting authorised persons, relevant service providers or FMI entities who receive services from the critical third party from continuing to receive those services from that party;

(c) prohibiting authorised persons, relevant service providers or FMI entities from entering into arrangements for receipt of services from the critical third party;

(d) providing for the provision of any services by the critical third party to be subject to such conditions or limitations as are specified in the notice;

(e) providing for any receipt of services by authorised persons, relevant service providers or FMI entities from the critical third party to be subject to such conditions or limitations as are specified in the notice.

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

(4) A relevant regulator may only exercise the powers under subsection (2) if the regulator is satisfied that—

(a) it is appropriate in the circumstances to take action against the critical third party,

(b) the exercise of the power will not threaten the stability of, or confidence in, the UK financial system, and

(c) it is desirable to exercise the power in order to advance one or more of the regulator's objectives.

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

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

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

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

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

312S Procedure and right to refer to Tribunal

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

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

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

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

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

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

312T Statement of policy relating to disciplinary measures

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

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

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

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

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

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

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

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

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

312V Memorandum of understanding

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

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

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

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

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

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

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

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

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

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

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

312W Application of provisions of this Act to this Chapter

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

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

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

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

19 Critical third parties: related amendments

(1) FSMA 2000 is amended as follows.

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

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

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

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

“(la) section 312S;”.

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

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

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

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

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

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

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

(9) After paragraph 10 insert—

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

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

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

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

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

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

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

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

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

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

(d) section 138C (evidential provisions);

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

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

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

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

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

(j) section 138J (consultation) as if—

(i) the reference in subsection (1)(a) to the "FCA" were a reference to the "FCA and the PRA";

(ii) the reference in subsection (2)(d) to the compatibility of the proposed rules with the provisions mentioned in that subsection were a reference to their compatibility with the Bank's Financial Stability Objective; and

(iii) in subsection (8A), in paragraph (a), for sub-paragraphs (i) and (ii) there were substituted "be prejudicial to advancing the Financial Stability Objective, or";

(k) section 138JA(2), (3) (4), (10) and (11) (duty to consult PRA Cost Benefit Analysis Panel);

(l) section 138JB (statement of policy in relation to cost benefit analyses);

(m) section 138L (consultation: general exemptions) as if—

(i) subsection (1) were omitted, and

(ii) in subsection (2) for paragraphs (a) and (b) there were substituted "be prejudicial to financial stability.";

(n) section 141A (power to make consequential amendments of references to rules);

(o) section 141B (power to consequentially amend enactments)."

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

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

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

(12) In paragraph 28 (restitution)—

(a) in sub-paragraph (2), in the words before paragraph (a), for "or a recognised CSD" substitute ", a recognised CSD or a critical third party";

(b) in sub-paragraph (2)(a) for "or the recognised CSD" substitute ", the recognised CSD or the critical third party";

(c) in sub-paragraph (4)(a) for "or the recognised CSD" substitute ", the recognised CSD or the critical third party".

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

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

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

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

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

(17) See also Part 6 of Schedule 2.

Financial promotion

20 Financial promotion

(1) FSMA 2000 is amended as follows.

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

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

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

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

(3) After section 55N insert—

"**55NA General requirement relating to financial promotion approval**

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

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

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

(a) an authorised person, or

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

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

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

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

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

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

(b) of its own initiative,

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

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

(7) The FCA may refuse to grant an application for permission under this section, or for its variation or cancellation under subsection (5)(a), if it appears to the FCA that it is desirable to do so in order to advance one or more of its operational objectives.

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

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

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

(9) The FCA must consult—

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

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

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

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

(10) Subsection (9)(b) does not apply in a case where the FCA varies or cancels permission of a Gibraltar-based person in exercise of its power under

subsection (5)(b), but the FCA must inform the Gibraltar regulator in writing of the variation or cancellation.

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

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

55NB Section 55NA: power to provide for exemptions

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

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

(a) in respect of specified persons;
(b) in respect of persons falling within a specified class;
(c) in respect of approval given in relation to activities of a specified description;
(d) only in specified circumstances;
(e) subject to specified conditions.

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

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

(5) The amendments made by this section and Schedule 5—

(a) apply to an authorised person whether the person became authorised before or after the coming into force of this section;
(b) do not affect the approval of a communication given before the coming into force of this section.

Sustainability disclosure requirements

21 Sustainability disclosure requirements

(1) FSMA 2000 is amended as follows.

(2) After section 416 insert—

"Sustainability disclosure requirements

416A SDR policy statement

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

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

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

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

(5) The Treasury—

(a) must keep any SDR policy statement under review;

(b) may prepare a revised statement (and subsections (3) and (4) apply in relation to any revised statement);

(c) may withdraw any SDR policy statement.

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

(7) A request for a report under subsection (6)—

(a) must be made in writing, and

(b) may require a regulator to send the report to the Treasury within such reasonable period as may be specified in the request (or such other period as may be agreed).

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

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

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

416B FCA and PRA rules etc

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

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

(a) the environment, including climate change,

(b) social, community and human rights issues,

(c) tackling corruption and bribery, and

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

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

(a) after paragraph (ha) insert—

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

(b) after paragraph (ia) insert—

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

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

(a) after paragraph (e) insert—

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

(b) after paragraph (fa) insert—

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

Digital settlement assets

22 Digital settlement assets

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

(a) Part 1 extends Part 5 of the Banking Act 2009 (Bank of England oversight of payment systems) to payment systems using digital settlement assets and DSA service providers, and makes consequential provision;

(b) Part 2 extends Part 5 of the Financial Services (Banking Reform) Act 2013 (regulation of payment systems) to payment systems using digital settlement assets.

23 Digital settlement assets: power to make regulations

(1) The Treasury may by regulations make such provision as they consider appropriate for the purpose of, or in connection with—

(a) the regulation of payments that include digital settlement assets,

(b) the regulation of—

(i) recognised payment systems that include arrangements using digital settlement assets,

(ii) recognised DSA service providers, and

(iii) service providers connected with, or in relation to, the systems and providers mentioned in sub-paragraphs (i) and (ii),

as those terms are for the time being defined in Part 5 of the Banking Act 2009, and

(c) making insolvency arrangements (including administration, restructuring and any similar procedure) in respect of the systems and providers mentioned in paragraph (b).

(2) In this section, "digital settlement asset" means a digital representation of value or rights, whether or not cryptographically secured, that—

(a) can be used for the settlement of payment obligations,

(b) can be transferred, stored or traded electronically, and

(c) uses technology supporting the recording or storage of data (which may include distributed ledger technology).

(3) The provision that may be made by regulations under this section includes provision—

(a) applying legislation relating to the regulation of electronic money and payments to digital settlement assets (subject to whatever modifications the Treasury consider appropriate);

(b) applying legislation relating to insolvency arrangements and interactions between different arrangements to the systems and providers mentioned in subsection (1) (subject to whatever modifications the Treasury consider appropriate);

(c) conferring powers on the Treasury (including a power to legislate);

(d) conferring powers, or imposing duties, on a relevant regulator (including a power to make rules or other instruments);

(e) about fees or other charges payable to a relevant regulator;

(f) about recognition orders and recognition criteria in Part 5 of the Banking Act 2009;

(g) about the enforcement of obligations arising under or by virtue of the regulations;

(h) about appeals in respect of decisions made under or by virtue of the regulations;

(i) about the sharing of information.

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

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

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

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

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

(7) Regulations under this section are—

(a) subject to the affirmative procedure, or

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

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

(a) the FCA,

(b) the Bank of England, and

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

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

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

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

(a) Parliament is dissolved or prorogued, or

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

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

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

(b) prevent the making of new regulations.

(13) In this section—

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

"relevant regulator" means—

(a) the FCA,

(b) the Bank of England, or

(c) the Payment Systems Regulator.

Mutual recognition

24 Implementation of mutual recognition agreements

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

(2) The reference in subsection (1) to a "mutual recognition agreement" is a reference to any international agreement so far as it provides for, or relates to—

(a) the recognition that the law and practice of a foreign country is, in respect of relevant matters, equivalent to the law and practice of the United Kingdom, and

(b) the recognition that the law and practice of the United Kingdom is, in respect of relevant matters, equivalent to the law and practice of that foreign country.

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

(4) The provision that may be made by regulations under this section includes provision—

(a) conferring powers on the Treasury (including a power to legislate);

(b) conferring powers, or imposing duties, on a relevant regulator (including a power to make rules or other instruments);

(c) about fees or other charges payable to a relevant regulator;

(d) about the enforcement of obligations arising under or by virtue of the regulations;

(e) about appeals in respect of decisions made under or by virtue of the regulations;

(f) about the sharing of information.

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

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

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

(8) Provision under subsection (4)(b) that imposes a duty on a relevant regulator to make rules may (among other things)—

(a) specify matters that the rules must cover;

(b) specify a period within which the rules must be made.

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

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

(11) In this section—

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

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

"relevant regulator" means—

(a) the FCA,

(b) the PRA, or

(c) the Bank of England;

"specified" means specified in regulations under this section.

CHAPTER 3

ACCOUNTABILITY OF REGULATORS

FCA and PRA objectives and regulatory principles

25 Competitiveness and growth objective

(1) FSMA 2000 is amended as follows.

(2) In section 1B (FCA's general duties), after subsection (4) insert—

"(4A) When discharging its general functions in the way mentioned in subsection (1) the FCA must, so far as reasonably possible, act in a way which, as a secondary objective, advances the competitiveness and growth objective (see section 1EB)."

(3) After section 1E insert—

"**1EB Competitiveness and growth objective**

The competitiveness and growth objective is: facilitating, subject to aligning with relevant international standards—

(a) the international competitiveness of the economy of the United Kingdom (including in particular the financial services sector), and

(b) its growth in the medium to long term."

(4) In section 2H—

(a) in the title, for "competition objective" substitute "objectives";

(b) for subsection (1) substitute—

"(1) When discharging its general functions in a way that advances its objectives (see section 2F), the PRA must, so far as reasonably possible, act in a way that advances the following secondary objectives—

(a) the competition objective, and

(b) the competitiveness and growth objective.

(1A) The competition objective is: facilitating effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities.

(1B) The competitiveness and growth objective is: facilitating, subject to aligning with relevant international standards—

(a) the international competitiveness of the economy of the United Kingdom (including in particular the financial services sector through the contribution of PRA-authorised persons), and

(b) its growth in the medium to long term."

26 Competitiveness and growth objective: reporting requirements

(1) Each regulator must make two reports to the Treasury on how it has complied with its duty to advance the competitiveness and growth objective.

(2) The reports prepared by each regulator under subsection (1) must in particular explain—

(a) the action taken by the regulator to ensure that the competitiveness and growth objective is embedded in its operations, processes and decision-making, and

(b) how any rules and guidance that the regulator has made advance that objective.

(3) The first report under this section must be made before the end of 12 months beginning with the first day on which section 25 of this Act comes into force, and must relate to that period.

(4) The second report under this section must be made before the end of 24 months beginning with the first day on which section 25 of this Act comes into force, and must relate to the period beginning with the day on which the first report is published.

(5) The Treasury must lay a copy of each report prepared under this section before Parliament.

(6) Each regulator must publish its reports prepared under this section in such manner as it thinks fit.

(7) In this section—

(a) "regulator" means the FCA and the PRA;

(b) references to the competitiveness and growth objective, and the duty to advance that objective, are—

(i) in relation to the FCA, references to its objective in section 1EB of FSMA 2000 and to its duty to advance that objective under section 1B(4A) of that Act, and

(ii) in relation to the PRA, references to its objective in section 2H(1B) of FSMA 2000 and to its duty to advance that objective under section 2H(1)(b) of that Act.

27 Regulatory principles

In section 3B of FSMA 2000 (regulatory principles to be applied by both regulators), in subsection (1) for paragraph (c) substitute—

"(c) the need to contribute towards achieving compliance by the Secretary of State with section 1 of the Climate Change Act 2008 (UK net zero emissions target) and section 5 of the Environment Act 2021 (environmental targets) where each regulator considers the exercise of its functions to be relevant to the making of such a contribution;".

28 Sections 25 and 27: consequential amendments

(1) FSMA 2000 is amended as follows.

(2) In section 1JA (Treasury recommendations in connection with general duties), after subsection (1)(c) insert—

"(ca) how to discharge the duty in section 1B(4A) (duty to advance competitiveness and growth objective),".

(3) In section 1K (guidance about objectives), after subsection (1) insert—

"(1A) The reference in subsection (1) to the FCA's operational objectives includes, in its application as a secondary objective, the competitiveness and growth objective (see section 1EB)."

(4) In section 2I (guidance about objectives), after subsection (1) insert—

"(1A) The reference in subsection (1) to the PRA's objectives includes, in their application as secondary objectives, the competition objective and competitiveness and growth objective (see section 2H)."

(5) In section 3B (regulatory principles to be applied by both regulators), for subsection (3) substitute—

"(3) "Objectives"—

(a) in relation to the FCA means—

(i) operational objectives, and

(ii) in its application as a secondary objective, the competitiveness and growth objective (see section 1EB), and

(b) in relation to the PRA means—

(i) the PRA's objectives, and

(ii) in their application as secondary objectives, the competition objective and competitiveness and growth objective (see section 2H)."

(6) In section 3D (duty of FCA and PRA to ensure co-ordinated exercise of functions), for subsection (4) substitute—

"(4) In this section, "objectives"—

(a) in relation to the FCA means—

(i) operational objectives, and

(ii) in its application as a secondary objective, the competitiveness and growth objective (see section 1EB), and

(b) in relation to the PRA means—

(i) the PRA's objectives, and

(ii) in their application as secondary objectives, the competition objective and competitiveness and growth objective (see section 2H).

(5) Where a regulator is proposing to exercise a function that is not one of its general functions, the reference to "objectives" in subsection (1)(a) does not include the secondary objectives mentioned in subsection (4)(a)(ii) and (b)(ii).

(6) In this section, "general functions"—

(a) in relation to the FCA, has the same meaning as in section 1B(6), and

(b) in relation to the PRA, has the same meaning as in section 2J(1)."

(7) In section 138I (consultation by the FCA), in subsection (2)(d) after "1B(1)" insert ", (4A)".

(8) In section 143G (matters to consider when making Part 9C rules)—

(a) in subsection (1)—

(i) insert "and" after paragraph (a), and

(ii) omit paragraphs (b) and (c);

(b) omit subsection (2).

(9) In section 232A (scheme operator's duty to provide information to FCA)—

(a) the existing words become subsection (1), and

(b) after that subsection insert—

"(2) The reference in subsection (1) to the FCA's operational objectives includes, in its application as a secondary objective, the competitiveness and growth objective (see section 1EB)."

(10) In paragraph 11 of Schedule 1ZA (FCA annual report), in sub-paragraph (1) after paragraph (d) insert—

"(da) how, in its opinion, it has complied with the duty in section 1B(4A),".

(11) In paragraph 20 of Schedule 1ZB (consultation about PRA annual report), in sub-paragraph (1)(c) for "and the PRA has facilitated effective competition in accordance with" substitute "including its secondary objectives under".

FCA and PRA powers to make rules etc

29 Review of rules

(1) FSMA 2000 is amended as follows.

(2) After section 3R (arrangements for provision of services) insert—

"Rules

3RA Duty of FCA and PRA to review rules

(1) Each regulator must keep under review generally any rules made by the regulator under this Act or any other enactment (whenever passed or made).

(2) Subsection (1) does not apply to rules made for the purpose of complying with a direction or recommendation of the Financial Policy Committee of the Bank of England under—

(a) section 9H of the Bank of England Act 1998 (directions to FCA or PRA requiring macro-prudential measures), or

(b) section 9Q of that Act (recommendations to FCA and PRA).

3RB Statement of policy relating to review of rules

(1) Each regulator must prepare and publish a statement of its policy with respect to its review of rules under section 3RA.

(2) The statement must provide information about—

(a) how representations (including by a statutory panel) can be made to each regulator with respect to its review of rules under section 3RA, and

(b) the arrangements to ensure that those representations are considered.

(3) In this section "statutory panel" has the meaning given by section 1RB(5).

(4) If a statement published under this section is altered or replaced by a regulator, the regulator must publish the altered or replaced statement.

(5) A statement prepared under this section must be published by the regulator in the way appearing to that regulator to be best designed to bring it to the attention of the public.

3RC Requirement to review specified rules

(1) The Treasury may by direction require a regulator to carry out a review of specified rules if—

(a) the rules have been in force for at least 12 months,

(b) the Treasury consider that it is in the public interest that the rules are reviewed, and

(c) it does not appear to the Treasury that—

(i) the regulator is carrying out, or proposes to carry out, a review of those rules, or

(ii) if the regulator proposes to carry out a review, the proposals are appropriate for the purposes of carrying out an effective review.

(2) Subsection (1) only applies to rules falling within section 3RA(1).

(3) The Treasury must consult the regulator concerned before giving a direction under subsection (1).

(4) In exercising the power under this section, the Treasury must have regard to the desirability of minimising any adverse effect that the carrying out of the review may have on the exercise by the regulator of any of its other functions.

(5) A direction under subsection (1) may—

(a) specify the period within which a review must be carried out;

(b) determine the scope and conduct of a review;

(c) require the provision of interim reports during the carrying out of a review.

(6) Provision made in a direction under subsection (5)(b) may include a requirement—

(a) for a review to be carried out by a person appointed by the regulator who is independent of the regulator;

(b) for any such appointment to be made only with the approval of the Treasury.

(7) As soon as practicable after giving a direction under subsection (1) the Treasury must—

(a) lay before Parliament a copy of the direction, and

(b) publish the direction in such manner as the Treasury think fit.

(8) Subsection (7) does not apply where the Treasury consider that publication of the direction would be against the public interest.

(9) A direction under subsection (1) may be varied or revoked by the giving of a further direction.

3RD Report on certain reviews

(1) This section applies where the Treasury have given a direction to a regulator under section 3RC(1) to carry out a review.

(2) The regulator must make a written report to the Treasury as to the opinion of the regulator in relation to the following matters—

(a) if the regulator is the FCA, whether the rules under review—

(i) are compatible with the FCA's strategic objective,

(ii) advance one or more of the FCA's operational objectives, and

(iii) advance the competitiveness and growth objective;

(b) if the regulator is the PRA, whether the rules under review—

(i) advance one or more of the PRA's objectives, and

(ii) advance the PRA's competition objective and the PRA's competitiveness and growth objective;

(c) whether and to what extent the rules are functioning effectively and achieving their intended purpose;
(d) whether any amendments should be made to the rules and, if so, what those amendments should be;
(e) whether any rules should be revoked (with or without replacement);
(f) whether any other action should be taken and, if so, what that action should be.

(3) As soon as practicable after receiving the report the Treasury must—
(a) lay before Parliament a copy of the report, and
(b) publish the report in such manner as the Treasury think fit.

(4) When complying with subsection (3) the Treasury may withhold material from the report if the Treasury consider that publication of the material would be against the public interest."

30 Treasury power in relation to rules

(1) FSMA 2000 is amended as follows.

(2) After section 3RD (inserted by section 29) insert—

"**3RE Power of Treasury to require making of rules by regulations**

(1) The Treasury may by regulations require a regulator to exercise a power under this Act to make rules in relation to a specified activity or a specified description of person.

(2) Regulations under this section may—
(a) specify matters that the rules must cover;
(b) specify a period within which the rules must be made.

(3) But except so far as permitted by subsection (2), regulations under this section may not require rules to be made—
(a) in a specified form or with specified content, or
(b) to achieve or advance a specified outcome.

(4) If no period is specified under subsection (2)(b) the rules must be made as soon as reasonably practicable after the coming into force of the regulations."

(3) In section 429 (Parliamentary control of statutory instruments) in subsection (2) after "section" insert "3RE,".

31 Matters to consider when making rules

(1) FSMA 2000 is amended as follows.

(2) Before section 138F (under the italic heading "Procedural provisions") insert—

"**138EA Matters to consider when making rules**

(1) This section applies where either regulator proposes to make rules.

(2) The regulator must have regard to any specified matters that are relevant to the making of the rules in question.

(3) "Specified" means specified in regulations made by the Treasury for the purposes of this section.

(4) The specification of a matter for the purposes of this section may apply generally to the making of rules or be limited in whatever way the Treasury consider appropriate, including by reference to—

(a) the power under which the rules are made;

(b) the persons to whom the rules apply;

(c) the activities or subject-matter to which the rules relate.

(5) The requirement imposed by subsection (2) does not apply in respect of any rules if, or to the extent that, the rules are made for the purposes of—

(a) complying with a direction given by the Financial Policy Committee of the Bank of England under section 9H of the Bank of England Act 1998 (directions requiring macro-prudential measures), or

(b) acting in accordance with a recommendation made by that Committee under section 9Q of that Act (recommendations about the exercise of the FCA and PRA functions).

(6) The requirement to have regard to specified matters under this section when making rules is in addition to any other requirements to have regard to matters when making such rules imposed by another provision of this Act or by any other enactment."

(3) In section 138I (consultation by the FCA)—

(a) in subsection (2) after paragraph (b) insert—

"(ba) an explanation of the ways in which having regard to specified matters under section 138EA(2) has affected the proposed rules,";

(b) after subsection (8) insert—

"(8A) The requirement to provide the explanation referred to in subsection (2)(ba) does not apply in relation to any rules if—

(a) the FCA considers that the delay involved in complying with that requirement would be prejudicial to the interests of consumers (as defined in section 425A) or other persons whose interests would be protected by the rules, or

(b) the rules change existing rules and the changes consist of, or include, changes which, in the FCA's opinion, are not material.

(8B) Where an explanation is not provided by virtue of subsection (8A)(b), the draft of the rules must be accompanied by a statement of the FCA's opinion."

(4) In section 138J (consultation by the PRA)—

(a) in subsection (2) after paragraph (b) insert—

"(ba) an explanation of the ways in which having regard to specified matters under section 138EA(2) has affected the proposed rules,";

(b) after subsection (8) insert—

"(8A) The requirement to provide the explanation referred to in subsection (2)(ba) does not apply in relation to any rules if—

(a) the PRA considers that the delay involved in complying with that requirement 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, or

(b) the rules change existing rules and the changes consist of, or include, changes which, in the PRA's opinion, are not material.

(8B) Where an explanation is not provided by virtue of subsection (8A)(b), the draft of the rules must be accompanied by a statement of the PRA's opinion."

(5) In section 429 (Parliamentary procedure for statutory instruments), in subsection (2), in the list of sections beginning with "90B" insert at the appropriate place "138EA(3),".

32 Effect of rules etc on deference decisions

(1) FSMA 2000 is amended as follows.

(2) In the italic heading before section 410, after "international" insert "powers and".

(3) Before section 410 insert—

"**409A Consultation in relation to deference decisions**

(1) This section applies where a regulator is proposing to take a relevant action.

(2) The regulator—

(a) must consider the effect of the relevant action on notified deference decisions, and

(b) if having done so it appears to the regulator that there is a material risk that the relevant action would be incompatible with a notified deference decision, must consult the Treasury about the likely effect of the action on the decision.

(3) Subsection (2) applies only if a duty to consult applies in respect of the taking of the relevant action.

(4) For the purposes of subsection (1) a regulator proposes to take a "relevant action" if—

(a) it proposes to make rules under this Act or any other enactment, or

(b) it proposes to make changes to its general policies and practices so far as relating to its supervisory functions under section 1L (FCA supervisory functions) or (as the case may be) section 2K (PRA supervisory functions).

(5) For the purposes of subsection (2)—

(a) "deference decision" means a decision of the Treasury that the law and practice of another country or territory is, so far as relating to financial services and markets, equivalent to the law and practice of the United Kingdom (either generally or as it relates to a particular matter);

(b) a deference decision is a "notified deference decision" if the Treasury have, by notice in writing, informed the regulator that it is relevant for the purposes of this section;

(c) a relevant action is "incompatible" with a notified deference decision if the action would result in the law and practice of the United Kingdom ceasing to be equivalent to the law and practice of the other country or territory to which the deference decision relates.

(6) For the purposes of subsection (3) a duty to consult applies in respect of a relevant action if—

(a) the duty imposed by section 138I or 138J to publish a draft of proposed rules applies in respect of the action, or

(b) any other duty (whether or not imposed by a provision of this Act) to publish the proposal to take the action in question applies.

(7) Section 138M(1) (consultation: exemptions for temporary product intervention rules) is to be ignored for the purposes of subsection (6) in determining whether a duty to consult applies in respect of a relevant action.

(8) The requirement imposed by subsection (2)(b) must be carried out before the duty to consult in respect of the relevant action is carried out.

(9) The requirements imposed by subsection (2) do not apply to the extent that the regulator takes a relevant action—

(a) by the making of product intervention rules under section 137D if the condition in subsection (10) is met,

(b) by the making of rules under Part 9C (see instead section 143G(3)),

(c) by the making of rules under Part 9D (see instead section 144C(3)),

(d) by the making of rules under Part 12B (see instead section 192XB(2)),

(e) in order to comply with a direction given by the Financial Policy Committee of the Bank of England under section 9H of the Bank of England Act 1998 (directions required macro-prudential measures), or

(f) in order to act in accordance with a recommendation made by that Committee under section 9Q of that Act (recommendations about the exercise of functions).

(10) The condition referred to in subsection (9)(a) is that the FCA considers it necessary not to comply with the requirement imposed by subsection (2) for the purpose of advancing—

(a) the consumer protection objective, or

(b) if an order under section 137D(1)(b) is in force, the integrity objective."

33 Effect of rules etc on international trade obligations

In FSMA 2000 after section 409A (inserted by section 32) insert—

"**409B Notification in relation to international trade obligations**

(1) This section applies where it appears to a regulator that there is a material risk that a relevant action it proposes to take would be incompatible with an international trade obligation.

(2) The regulator must give written notice to the Treasury of the proposed action before proceeding to take it.

(3) Subsection (2) applies only if a duty to consult applies in respect of the taking of the relevant action.

(4) For the purposes of subsection (1) a regulator proposes to take a "relevant action" if—

(a) it proposes to make rules under this Act or any other enactment, or

(b) it proposes to make changes to its general policies and practices so far as relating to its supervisory functions under section 1L (FCA supervisory functions) or (as the case may be) section 2K (PRA supervisory function).

(5) For the purposes of subsection (3) a duty to consult applies in respect of a relevant action if—

(a) the duty imposed by section 138I or 138J to publish a draft of proposed rules applies in respect of the action, or

(b) any other duty (whether or not imposed by a provision of this Act) to publish the proposal to take the action in question applies.

(6) Section 138M(1) (consultation: exemptions for temporary product intervention rules) is to be ignored for the purposes of subsection (5) in determining whether a duty to consult applies in respect of a relevant action.

(7) The requirement imposed by subsection (2) must be carried out before the duty to consult in respect of the relevant action is carried out.

(8) The requirement imposed by subsection (2) does not apply to the extent that the regulator takes a relevant action—

(a) by the making of product intervention rules under section 137D if the condition in subsection (9) is met,

(b) in order to comply with a direction given by the Financial Policy Committee of the Bank of England under section 9H of the Bank of England Act 1998 (directions requiring macro-prudential measures), or

(c) in order to act in accordance with a recommendation made by that Committee under section 9Q of that Act (recommendations about the exercise of functions).

(9) The condition referred to in subsection (8)(a) is that the FCA considers it necessary not to comply with the requirement imposed by subsection (2) for the purpose of advancing—

(a) the consumer protection objective, or

(b) if an order under section 137D(1)(b) is in force, the integrity objective.

(10) Subsection (11) applies in a case where a notice under subsection (2) is not given because of subsection (3) or (8)(a).

(11) The regulator must give written notice to the Treasury of the relevant action it has taken as soon as reasonably practicable after taking it if it appears to the regulator that there is a material risk that the action is incompatible with an international trade obligation.

(12) In this section "international trade obligation" means an obligation of the United Kingdom that relates to financial services or markets under—

(a) a free trade agreement, as defined by section 5(1) of the Trade Act 2021, or

(b) the agreement establishing the World Trade Organisation signed at Marrakesh on 15 April 1994."

34 Power to disapply or modify rules

(1) FSMA 2000 is amended as follows.

(2) After section 138B insert—

"**138BA Disapplication or modification of rules in individual cases**

(1) This section applies to rules made by a regulator if, or to the extent that, regulations made by the Treasury provide for it to apply.

(2) The regulator may, on the application or with the consent of a person who is subject to the rules, give the person a permission that enables the person—

(a) not to apply the rules, or

(b) to apply the rules with the modifications specified in the permission.

(3) Subsections (1) and (2) do not apply to—

(a) rules made by either regulator under section 64A (rules of conduct);

(b) rules made by either regulator under section 137O (threshold condition code);

(c) rules made by the FCA under section 247 (trust scheme rules), section 248 (scheme particular rules), section 261I (contractual scheme rules) or section 261J (contractual scheme particulars rules);

(d) rules made by the FCA under section 309Z(1) (rules of conduct).

(4) The regulator may—

(a) give permission under this section subject to conditions, and

(b) revoke or vary permission given under this section.

(5) Regulations under subsection (1) may make provision about procedural matters in relation to the giving of permission under this section.

(6) Provision under subsection (5) may (among other things) include provision about—

(a) the making of applications;

(b) the determination of applications (including matters to be taken into account in doing so);

(c) the giving and withdrawal of consent;

(d) requirements as to notification or publication of decisions of a regulator under this section;

(e) appeals in respect of decisions of a regulator under this section.

(7) Before making regulations under this section in relation to rules made by a regulator the Treasury must consult the regulator."

(3) In section 429 (Parliamentary control of statutory instruments), in subsection (2), in the list of sections beginning with "90B" insert at the appropriate place "138BA,".

FCA and PRA engagement

35 Responses to recommendations of the Treasury

(1) Section 1JA of FSMA 2000 (recommendations by Treasury in connection with general duties) is amended in accordance with subsections (2) and (3).

(2) After subsection (2) insert—

"(2A) The FCA must respond to each recommendation made to it under subsection (1) by notifying the Treasury in writing of—

(a) action that the FCA has taken or intends to take in accordance with the recommendation, or

(b) the reasons why the FCA has not acted or does not intend to act in accordance with the recommendation.

(2B) The notice under subsection (2A) must be given before the end of 12 months beginning with the date the notice containing the recommendation was given under subsection (1).

(2C) Where the FCA has given notice under subsection (2A) in relation to a recommendation, the FCA must by notice in writing update the Treasury on the matters mentioned in subsection (2A)(a) and (b) before the end of each subsequent period of 12 months.

(2D) Subsection (2C) does not apply if the Treasury have notified the FCA in writing that no update (or further update) is required.

(2E) The FCA is not required under subsection (2A) or (2C) to provide any information whose publication would in the opinion of the FCA be against the public interest."

(3) In subsection (3), for "subsection (1)" substitute "subsection (1), (2A) or (2C)".

(4) Section 30B of the Bank of England Act 1998 (recommendations by Treasury) is amended in accordance with subsections (5) and (6).

(5) After subsection (2) insert—

"(2A) The Prudential Regulation Committee must respond to each recommendation made to it under subsection (1) by notifying the Treasury in writing of—

(a) action that the Prudential Regulation Committee has taken or intends to take in accordance with the recommendation, or

(b) the reasons why the Prudential Regulation Committee has not acted or does not intend to act in accordance with the recommendation.

(2B) The notice under subsection (2A) must be given before the end of 12 months beginning with the date the notice containing the recommendation was given under subsection (1).

(2C) Where the Prudential Regulation Committee has given notice under subsection (2A) in relation to a recommendation, it must by notice in writing update the Treasury on the matters mentioned in subsection (2A)(a) and (b) before the end of each subsequent period of 12 months.

(2D) Subsection (2C) does not apply if the Treasury have notified the Prudential Regulation Committee in writing that no update (or further update) is required.

(2E) The Prudential Regulation Committee is not required under subsection (2A) or (2C) to provide any information whose publication would in the opinion of the Committee be against the public interest."

(6) In subsection (3), for "subsection (1)" substitute "subsection (1), (2A) or (2C)".

36 Public consultation requirements

(1) After section 1RA of FSMA 2000 (inserted by section 45) insert—

"Requirements for public consultation

1RB Requirements in connection with public consultations

(1) This section applies where the FCA issues a public consultation.

(2) The FCA must include information in the consultation about any engagement by the FCA with the statutory panels of the FCA, the PRA or the Payment Systems Regulator in relation to the matters being consulted on.

(3) The FCA is not required under subsection (2) to include any information whose publication would in the opinion of the FCA be against the public interest.

(4) For the purposes of this section, the FCA issues a public consultation if it publishes the draft of any proposals for the purpose of bringing them to the attention of the public (whether or not under a duty to do so imposed by an enactment).

(5) In this section "statutory panel"—

(a) in relation to the FCA, has the meaning given by section 1RA(8),

(b) in relation to the PRA, has the meaning given by section 2NA(8), and

(c) in relation to the Payment Systems Regulator, means a panel established under section 103(3) of the Financial Services (Banking Reform) Act 2013."

(2) After section 2NA of FSMA 2000 (inserted by section 45) insert—

"Requirements for public consultation

2NB Requirements in connection with public consultations

(1) This section applies where the PRA issues a public consultation.

(2) The PRA must include information in the consultation about any engagement by the PRA with the statutory panels of the FCA, the PRA or the Payment Systems Regulator in relation to the matters being consulted on.

(3) The PRA is not required under subsection (2) to include any information whose publication would in the opinion of the PRA be against the public interest.

(4) For the purposes of this section, the PRA issues a public consultation if it publishes the draft of any proposals for the purpose of bringing them to the attention of the public (whether or not under a duty to do so imposed by an enactment).

(5) In this section "statutory panel" has the meaning given by section 1RB(5)."

37 Engagement with statutory panels

(1) Paragraph 11 of Schedule 1ZA to FSMA 2000 (annual report of the Financial Conduct Authority) is amended in accordance with subsections (2) and (3).

(2) In sub-paragraph (1)—

(a) omit the "and" at the end of paragraph (ia), and

(b) after paragraph (ia) insert—

"(ib) any engagement with the statutory panels of the FCA, the PRA or the Payment Systems Regulator,

(ic) how it has complied with the statement of policy on panel appointments prepared under section 1RA in relation to the process for making appointments and the matters considered in determining who is appointed, and".

(3) After sub-paragraph (4) insert—

"(5) In this paragraph "statutory panel" has the meaning given in section 1RB(5)."

(4) Paragraph 19 of Schedule 1ZB to FSMA 2000 (annual report of the PRA) is amended in accordance with subsections (5) and (6).

(5) In sub-paragraph (1)—

(a) after paragraph (ba) insert—

"(bb) how it has complied with the statement of policy on panel appointments prepared under section 2NA in relation to the process for making appointments and the matters considered in determining who is appointed,",

(b) omit the "and" at the end of paragraph (f), and

(c) after paragraph (f) insert—

"(fa) any engagement with the statutory panels of the FCA, the PRA or the Payment Systems Regulator, and".

(6) After sub-paragraph (5) insert—

"(6) In this paragraph "statutory panel" has the meaning given in section 1RB(5)."

38 Engagement with Parliamentary Committees

(1) FSMA 2000 is amended as follows.

(2) In Part 4 of Schedule 1ZA (miscellaneous provisions relating to Financial Conduct Authority), after paragraph 27 insert—

"Engagement with Parliamentary Committees

28 (1) This paragraph applies where the FCA issues a relevant consultation.

(2) For the purposes of this paragraph the FCA issues a relevant consultation if it—

(a) publishes a draft of proposed rules under section 138I,

(b) publishes a proposal under a duty imposed by another provision of this Act or by any other enactment, or

(c) publishes other proposals about the exercise of any of its general functions.

(3) The FCA must, as soon as reasonably practicable after issuing the consultation, notify in writing the chair of each relevant Parliamentary Committee that the consultation has been issued.

(4) The notification must specify the parts of the consultation (if any) that address the ways in which the proposals subject to consultation—

(a) advance the FCA's operational objectives,

(b) are compatible with the FCA's strategic objective,

(c) demonstrate that the FCA has had regard to the regulatory principles in section 3B when preparing the proposals, and

(d) engage with matters to which the FCA must have regard under regulations made under section 138EA.

(5) The reference in sub-paragraph (4)(a) to the FCA's operational objectives includes, in its application as a secondary objective, the competitiveness and growth objective (see section 1EB).

(6) The notification must also specify any other part of the consultation which the FCA considers should be drawn to the attention of the relevant Parliamentary Committees.

(7) References in this paragraph to the relevant Parliamentary Committees are references to—

(a) the Treasury Committee of the House of Commons,

(b) the Committee of the House of Lords which—

(i) is charged with responsibility by that House for the purposes of this paragraph, and

(ii) has notified the FCA that it is a relevant Parliamentary Committee for those purposes, and

(c) the Joint Committee of both Houses which—

(i) is charged with responsibility by those Houses for the purposes of this paragraph, and

(ii) has notified the FCA that it is a relevant Parliamentary Committee for those purposes.

(8) References in this paragraph to the Treasury Committee of the House of Commons—

(a) if the name of that Committee is changed, are references to that Committee by its new name, and

(b) if the functions of that Committee (or substantially corresponding functions) become functions of a different Committee of the House of Commons, are to be treated as references to the Committee by which the functions are exercisable.

(9) Any question arising under sub-paragraph (8) is to be determined by the Speaker of the House of Commons.

29 (1) This paragraph applies where—

(a) the FCA issues a public consultation, and

(b) a Committee of the House of Commons or the House of Lords, or a joint Committee of both Houses, has provided to the FCA representations in response to the consultation.

(2) For the purposes of this paragraph, the FCA issues a public consultation if it publishes the draft of any proposals for the purpose of bringing them to the attention of the public (whether or not under a duty to do so imposed by an enactment).

(3) The FCA must give to the chair of the Committee concerned a written response to the representations.

(4) The duty to respond imposed by sub-paragraph (3) applies only so far as the FCA would not be under a corresponding duty to do so imposed by another enactment.

(5) The FCA is not required under sub-paragraph (3) to provide any information whose publication would in the opinion of the FCA be against the public interest."

(3) In Part 4 of Schedule 1ZB (miscellaneous provisions relating to the PRA), after paragraph 35 insert—

"Engagement with Parliamentary Committees

36 (1) This paragraph applies where the PRA issues a relevant consultation.

(2) For the purposes of this paragraph the PRA issues a relevant consultation if it—

(a) publishes a draft of proposed rules under section 138J,

(b) publishes a proposal under a duty imposed by another provision of this Act or by any other enactment, or

(c) publishes other proposals about the exercise of any of its general functions.

(3) The PRA must, as soon as reasonably practicable after issuing the consultation, notify in writing the chair of each relevant Parliamentary Committee that the consultation has been issued.

(4) The notification must specify the parts of the consultation (if any) that address the ways in which the proposals subject to consultation—

(a) advance the PRA's objectives,

(b) demonstrate that the PRA has had regard to the regulatory principles in section 3B when preparing the proposals, and

(c) engage with matters to which the PRA must have regard under regulations made under section 138EA.

(5) The reference in sub-paragraph (4)(a) to the PRA's objectives includes, in their application as secondary objectives, the competition objective and the competitiveness and growth objective (see section 2H).

(6) The notification must also specify any other part of the consultation which the PRA considers should be drawn to the attention of the relevant Parliamentary Committees.

(7) References in this paragraph to the relevant Parliamentary Committees are references to—

(a) the Treasury Committee of the House of Commons,

(b) the Committee of the House of Lords which—

(i) is charged with responsibility by that House for the purposes of this paragraph, and

(ii) has notified the PRA that it is a relevant Parliamentary Committee for those purposes, and

(c) the Joint Committee of both Houses which—

(i) is charged with responsibility by those Houses for the purposes of this paragraph, and

(ii) has notified the PRA that it is a relevant Parliamentary Committee for those purposes.

(8) References in this paragraph to the Treasury Committee of the House of Commons—

(a) if the name of that Committee is changed, are references to that Committee by its new name, and

(b) if the functions of that Committee (or substantially corresponding functions) become functions of a different Committee of the House of Commons, are to be treated as references to the Committee by which the functions are exercisable.

(9) Any question arising under sub-paragraph (8) is to be determined by the Speaker of the House of Commons.

37 (1) This paragraph applies where—

(a) the PRA issues a public consultation, and

(b) a Committee of the House of Commons or the House of Lords, or a joint Committee of both Houses, has provided to the PRA representations in response to the consultation.

(2) For the purposes of this paragraph, the PRA issues a public consultation if it publishes the draft of any proposals for the purpose of bringing the proposals to the attention of the public (whether or not under a duty to do so imposed by an enactment).

(3) The PRA must give to the chair of the Committee concerned a written response to the representations.

(4) The duty to respond imposed by sub-paragraph (3) applies only so far as the PRA would not be under a corresponding duty to do so imposed by another enactment.

(5) The PRA is not required under sub-paragraph (3) to provide any information whose publication would in the opinion of the PRA be against the public interest."

39 Reporting requirements

(1) FSMA 2000 is amended as follows.

(2) After paragraph 11 of Schedule 1ZA insert—

"Other reports

11A (1) The Treasury may (subject to this paragraph) at any time by direction require the FCA to publish a report containing information about—

(a) any of the matters mentioned in paragraphs (a) to (ia) of paragraph 11(1);

(b) such other matters that the direction may specify.

(2) The Treasury may give a direction under this paragraph requiring information to be published only if the Treasury consider that—

(a) the information is reasonably necessary for the purpose of reviewing and scrutinising the discharge of the FCA's functions, and

(b) other available information is not sufficient to meet that purpose.

(3) Subject to sub-paragraph (4), the FCA must publish a report prepared under a direction given under this paragraph in such manner, and within such period, as the direction may require.

(4) Nothing in this paragraph requires the inclusion in the report of any information whose publication would be against the public interest.

(5) A direction under this paragraph may not—

(a) require a report to be published more than once in each quarter;

(b) require the publication of information that is confidential information for the purposes of Part 23 (see section 348(2)).

(6) The Treasury must consult the FCA before giving a direction under this paragraph.

(7) In exercising the power under this paragraph, the Treasury must have regard to the desirability of minimising any adverse effect that the preparation of the report required in accordance with the direction may have on the exercise by the FCA of any of its other functions.

(8) The Treasury must—

(a) lay before Parliament a copy of a direction given under this paragraph, and

(b) publish the direction in such manner as the Treasury think fit.

(9) A direction under this paragraph may be varied or revoked by the giving of a further direction."

(3) After paragraph 21 of Schedule 1ZB insert—

"Other reports

21A (1) The Treasury may (subject to this paragraph) at any time by direction require the PRA to publish a report containing information about—

(a) any of the matters mentioned in paragraphs (a) to (f) of paragraph 19(1);

(b) such other matters that the direction may specify.

(2) The Treasury may give a direction under this paragraph requiring information to be published only if the Treasury consider that—

(a) the information is reasonably necessary for the purpose of reviewing and scrutinising the discharge of the PRA's functions, and

(b) other available information is not sufficient to meet that purpose.

(3) Subject to sub-paragraph (4), the PRA must publish a report prepared under a direction given under this paragraph in such manner, and within such period, as the direction may require.

(4) Nothing in this paragraph requires the inclusion in the report of any information whose publication would be against the public interest.

(5) A direction under this paragraph may not—

(a) require a report to be published more than once in each quarter;

(b) require the publication of information that is confidential information for the purposes of Part 23 (see section 348(2)).

(6) The Treasury must consult the PRA before giving a direction under this paragraph.

(7) In exercising the power under this paragraph, the Treasury must have regard to the desirability of minimising any adverse effect that the preparation of the report required in accordance with the direction may have on the exercise by the PRA of any of its other functions.

(8) The Treasury must—

(a) lay before Parliament a copy of a direction given under this paragraph, and

(b) publish the direction in such manner as the Treasury think fit.

(9) A direction under this paragraph may be varied or revoked by the giving of a further direction."

Co-operation of FCA and others

40 Duty to co-operate and consult in exercising functions

(1) FSMA 2000 is amended as follows.

(2) In the italic heading before section 415B, at the end insert "and co-operation".

(3) After section 415B (consultation) insert—

"**415C Co-operation and consultation in relation to exercise of functions**

(1) In exercising its functions under this Act a relevant organisation ("R") must—
  (a) take such steps as R considers appropriate to co-operate with each of the other relevant organisations in relation to matters of interest to that organisation, and
  (b) consult such other persons as R considers appropriate in relation to any matters that R considers to be of interest to those persons.

(2) A matter is of interest to another relevant organisation for the purposes of subsection (1) if it appears to R that it has, or is likely to have, significant implications in relation to—
  (a) the exercise by that other relevant organisation of functions under this Act, or
  (b) the functioning generally of relevant markets within the meaning of section 1F.

(3) The relevant organisations must prepare and publish a statement of policy with respect to compliance with the duty under subsection (1).

(4) The relevant organisations may alter or replace a statement published under subsection (3).

(5) The relevant organisations must publish a statement as altered or replaced under subsection (4).

(6) The relevant organisations—
  (a) must, at least once a year, prepare and publish a report on their compliance with the duty under subsection (1), and
  (b) must put in place arrangements enabling representations to be made about their compliance with that duty (whether by seeking representations in response to the report or otherwise).

(7) Except in the case of the first report to be prepared under this section, a report prepared under subsection (6)(a) must include a summary of representations received in the preceding year in accordance with arrangements made under subsection (6)(b).

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

(9) In this section "relevant organisation" means—

(a) the FCA;

(b) the scheme operator of the ombudsman scheme within the meaning of section 225(2);

(c) the scheme manager of the Financial Services Compensation Scheme within the meaning of section 212."

Panels and policy statements

41 Listing Authority Advisory Panel

In FSMA 2000, after section 1Q insert—

"**1QA The Listing Authority Advisory Panel**

(1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as "the Listing Authority Advisory Panel") to represent the interests of practitioners who are likely to be affected by the exercise by the FCA of its relevant functions.

(2) The reference in subsection (1) to the FCA's relevant functions is to its functions relating to the listing, issue or trading of products on recognised investment exchanges and other markets the operation of which is regulated by the FCA, including in particular—

(a) the issuing of transferable securities, and

(b) the trading of transferable securities on regulated markets and multilateral trading facilities.

(3) The FCA must appoint one of the members of the Listing Authority Advisory Panel to be the chair of the Panel.

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

(5) The FCA must appoint to the Listing Authority Advisory Panel such persons to represent the interests of issuers and investors as it considers appropriate.

(6) The FCA may appoint to the Listing Authority Advisory Panel such other persons as it considers appropriate.

(7) Subsections (5) and (6) are subject to section 1MA.

(8) In this section—

"multilateral trading facility", "recognised investment exchange" and "regulated markets" have the same meaning as in Part 18 (see section 313(1));

"transferable securities" has the meaning given by section 102A(3)."

42 Insurance Practitioner Panel

In FSMA 2000, after section 2M insert—

"**2MA The Insurance Practitioner Panel**

(1) Arrangements under section 2L must include the establishment and maintenance of a panel of persons (to be known as "the Insurance Practitioner Panel") to represent the interests of practitioners involved in the carrying on of the activity of effecting or carrying out of contracts of insurance.

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

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

(4) The PRA must appoint to the Insurance Practitioner Panel at least one person representing PRA-authorised persons engaged in the activity of effecting or carrying out of contracts of insurance.

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

(6) Subsections (4) and (5) are subject to section 2LA."

43 Cost Benefit Analysis Panels

(1) FSMA 2000 is amended as follows.

(2) After section 138I insert—

"**138IA FCA Cost Benefit Analysis Panel**

(1) The FCA must establish and maintain a panel of persons (to be known as the "FCA Cost Benefit Analysis Panel") to provide advice in relation to cost benefit analyses for the purposes of section 138I.

(2) Except as provided by subsection (3), the FCA must consult the FCA Cost Benefit Analysis Panel about the following matters—

(a) the preparation of a cost benefit analysis under section 138I(2)(a) or (5)(a);

(b) the preparation of its statement of policy under section 138IB.

(3) The requirement to consult under subsection (2)(a) does not apply in such cases as may be set out in the statement of policy maintained under section 138IB.

(4) Arrangements made by the FCA under subsection (1) for the establishment and maintenance of the FCA Cost Benefit Analysis Panel must include arrangements for the Panel to—

(a) keep under review how the FCA is performing generally in carrying out its duties under section 138I(2)(a) and (5)(a), and

(b) provide to the FCA whatever recommendations the Panel thinks appropriate as a result of such review.

(5) The FCA must appoint one of the members of the FCA Cost Benefit Analysis Panel to be the chair of the Panel.

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

(7) The FCA must appoint to the FCA Cost Benefit Analysis Panel such persons with knowledge or experience of the preparation of cost benefit analyses as it considers appropriate.

(8) The FCA must appoint to the FCA Cost Benefit Analysis Panel at least two individuals who are employed by persons authorised for the purposes of this Act by the FCA, with each one being employed by a different person.

(9) The FCA may appoint to the FCA Cost Benefit Analysis Panel such other persons as it considers appropriate.

(10) Subsections (7) to (9) are subject to section 1MA.

(11) The FCA must consider representations that are made to it by the FCA Cost Benefit Analysis Panel.

(12) The FCA must from time to time publish in such manner as it thinks fit responses to the representations."

(3) After section 138J insert—

"**138JA PRA Cost Benefit Analysis Panel**

(1) The PRA must establish and maintain a panel of persons (to be known as the "PRA Cost Benefit Analysis Panel") to provide advice in relation to cost benefit analyses for the purposes of section 138J.

(2) Except as provided by subsection (3), the PRA must consult the PRA Cost Benefit Analysis Panel about the following matters—

(a) the preparation of a cost benefit analysis under section 138J(2)(a) or (5)(a);

(b) the preparation of its statement of policy under section 138JB.

(3) The requirement to consult under subsection (2)(a) does not apply in such cases as may be set out in the statement of policy maintained under section 138JB.

(4) Arrangements made by the PRA under subsection (1) for the establishment and maintenance of the PRA Cost Benefit Analysis Panel must include arrangements for the Panel to—

(a) keep under review how the PRA is performing generally in carrying out its duties under section 138J(2)(a) and (5)(a), and

(b) provide to the PRA whatever recommendations the Panel thinks appropriate as a result of such review.

(5) The PRA must appoint one of the members of the PRA Cost Benefit Analysis Panel to be the chair of the Panel.

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

(7) The PRA must appoint to the PRA Cost Benefit Analysis Panel such persons with knowledge or experience of the preparation of cost benefit analyses as it considers appropriate.

(8) The PRA must appoint to the PRA Cost Benefit Analysis Panel at least two individuals who are employed by PRA-authorised persons, with each one being employed by a different person.

(9) The PRA may appoint to the PRA Cost Benefit Analysis Panel such other persons as it considers appropriate.

(10) Subsections (7) to (9) are subject to section 2LA.

(11) The PRA must consider representations that are made to it by the PRA Cost Benefit Analysis Panel.

(12) The PRA must from time to time publish in such manner as it thinks fit responses to the representations.

(13) The reference in subsection (1) to section 138J includes a reference to that section as applied in relation to the Bank of England by paragraphs 10(1) and 10A of Schedule 17A."

44 Statement of policy on cost benefit analyses

(1) FSMA 2000 is amended as follows.

(2) After section 138IA (inserted by section 43) insert—

"**138IB Statement of policy in relation to cost benefit analyses**

(1) The FCA must prepare and publish a statement of policy in relation to the preparation of cost benefit analyses for the purposes of section 138I.

(2) The statement must provide information about—

(a) the methodology adopted in preparing cost benefit analyses;

(b) matters to which the FCA has regard in determining whether section 138I(8) applies;

(c) matters to which the FCA has regard in determining whether an exemption under section 138L applies in relation to the preparation of a cost benefit analysis;

(d) arrangements to ensure that representations in connection with a cost benefit analysis that are made in accordance with section 138I(2)(e) are considered;

(e) cases in which the requirement to consult the FCA Cost Benefit Analysis Panel in relation to the preparation of a cost benefit analysis does not apply;

(f) arrangements to ensure that any recommendations in connection with cost benefit analyses that are made following a review carried out under section 138IA(4) are considered.

(3) The statement may include whatever other information in relation to cost benefit analyses that the FCA considers appropriate.

(4) The FCA may alter or replace a statement published under this section.

(5) The FCA must publish a statement as altered or replaced under subsection (4).

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

(3) After section 138JA (inserted by section 43) insert—

"**138JB Statement of policy in relation to cost benefit analyses**

(1) The PRA must prepare and publish a statement of policy in relation to the preparation of cost benefit analyses for the purposes of section 138J.

(2) The statement must provide information about—

(a) the methodology adopted in preparing cost benefit analyses;

(b) matters to which the PRA has regard in determining whether section 138J(8) applies;

(c) matters to which the PRA has regard in determining whether an exemption under section 138L applies in relation to the preparation of a cost benefit analysis;

(d) arrangements to ensure that representations in connection with a cost benefit analysis that are made in accordance with section 138J(2)(e) are considered;

(e) cases in which the requirement to consult the PRA Cost Benefit Analysis Panel in relation to the preparation of a cost benefit analysis does not apply;

(f) arrangements to ensure that any recommendations in connection with cost benefit analyses that are made following a review carried out under section 138JA(4) are considered.

(3) The statement may include whatever other information in relation to cost benefit analyses that the PRA considers appropriate.

(4) The PRA may alter or replace a statement published under this section.

(5) The PRA must publish a statement as altered or replaced under subsection (4).

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

45 Statement of policy on panel appointments

(1) FSMA 2000 is amended as follows.

(2) After section 1R insert—

"**1RA Statement of policy on panel appointments**

(1) The FCA must prepare and publish a statement of policy in relation to the appointment of members of its statutory panels.

(2) The statement must provide information about—

(a) the process adopted for making appointments;

(b) matters considered in determining who is appointed.

(3) The statement may provide whatever other information in relation to the making of appointments that the FCA considers appropriate.

(4) The FCA may alter or replace a statement published under this section.

(5) The FCA must publish a statement as altered or replaced under subsection (4).

(6) Before publishing a statement under this section the FCA must—
(a) consult the Treasury about the proposed statement, and
(b) have regard to any representations the Treasury make in response to the consultation.

(7) Publication under this section is to be made in such manner as the FCA considers best designed to bring the statement to the attention of the public.

(8) In this section "statutory panel" means a panel established under section 1N, 1O, 1P, 1Q, 1QA or 138IA."

(3) After section 2N insert—

"**2NA Statement of policy on panel appointments**

(1) The PRA must prepare and publish a statement of policy in relation to the appointment of members of its statutory panels.

(2) The statement must provide information about—
(a) the process adopted for making appointments;
(b) matters considered in determining who is appointed.

(3) The statement may provide whatever other information in relation to the making of appointments that the PRA considers appropriate.

(4) The PRA may alter or replace a statement published under this section.

(5) The PRA must publish a statement as altered or replaced under subsection (4).

(6) Before publishing a statement under this section the PRA must—
(a) consult the Treasury about the proposed statement, and
(b) have regard to any representations the Treasury make in response to the consultation.

(7) Publication under this section is to be made in such manner as the PRA considers best designed to bring the statement to the attention of the public.

(8) In this section "statutory panel" means a panel established under section 2M, 2MA or 138JA."

46 Composition of panels

(1) FSMA 2000 is amended in accordance with subsections (2) to (8).

(2) After section 1M (FCA's general duty to consult) insert—

"**1MA Composition of Panels**

(1) A person who receives remuneration from the FCA, the PRA, the Payment Systems Regulator, the Bank of England or the Treasury is disqualified from being appointed as a member of a panel established under any of sections 1N to 1QA or 138IA.

(2) Subsection (1) does not apply in respect of a panel mentioned in that subsection if regulations made by the Treasury provide for it not to apply to that panel.

(3) Regulations under subsection (2) may make provision in respect of a panel—

(a) generally, or

(b) only in relation to such descriptions of persons or cases as the regulations may specify (but the power to make such regulations may not be exercised so as to specify persons by name)."

(3) In section 1N (FCA Practitioner Panel), after subsection (5) insert—

"(6) Subsections (4) and (5) are subject to section 1MA."

(4) In section 1O (Smaller Business Practitioner Panel), after subsection (6) insert—

"(6A) Subsections (5) and (6) are subject to section 1MA."

(5) In section 1P (Markets Practitioner Panel), after subsection (6) insert—

"(7) Subsections (4) to (6) are subject to section 1MA."

(6) In section 1Q (Consumer Panel), after subsection (4) insert—

"(4A) Subsection (4) is subject to section 1MA."

(7) After section 2L (PRA's general duty to consult) insert—

"**2LA Composition of Panels**

(1) A person who receives remuneration from the FCA, the PRA, the Payment Systems Regulator, the Bank of England or the Treasury is disqualified from being appointed as a member of a panel established under any of sections 2M, 2MA or 138JA.

(2) Subsection (1) does not apply in respect of a panel mentioned in that subsection if regulations made by the Treasury provide for it not to apply to that panel.

(3) Regulations under subsection (2) may make provision in respect of a panel—

(a) generally, or

(b) only in relation to such descriptions of persons or cases as the regulations may specify (but the power to make such regulations may not be exercised so as to specify persons by name)."

(8) In section 2M (the PRA Practitioner Panel), after subsection (5) insert—

"(6) Subsections (4) and (5) are subject to section 2LA."

(9) In section 103 of the Financial Services (Banking Reform) Act 2013 (regulator's general duty to consult) after subsection (5) insert—

"(5A) A person who receives remuneration from the FCA, the PRA, the Payment Systems Regulator, the Bank of England or the Treasury is disqualified from being appointed as a member of a panel established under subsection (3).

(5B) Subsection (5A) does not apply in respect of a panel mentioned in that subsection if regulations made by the Treasury provide for it not to apply to that panel.

(5C) Regulations under subsection (5B) may make provision in respect of a panel—

(a) generally, or

(b) only in relation to such descriptions of persons or cases as the regulations may specify (but the power to make such regulations may not be exercised so as to specify persons by name)."

47 Panel reports

(1) The Treasury may by regulations require specified statutory panels of the regulator to produce an annual report on their work and provide that report to the Treasury.

(2) Regulations under subsection (1) may make provision about the content of the annual report.

(3) The Treasury must lay a copy of each report prepared by virtue of this section before Parliament.

(4) Each specified statutory panel of the regulator must publish its reports prepared by virtue of this section in such manner as it thinks fit.

(5) In this section—

(a) "statutory panels of the regulator" means—

(i) in relation to the FCA, the panels mentioned in section 1RA(8) of FSMA 2000,

(ii) in relation to the PRA, the panels mentioned in section 2NA(8) of FSMA 2000, and

(iii) in relation to the Payment Systems Regulator, a panel established under section 103(3) of the Financial Services (Banking Reform) Act 2013;

(b) "specified" means specified in regulations under this section.

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

Bank of England regulatory powers

48 Exercise of FMI regulatory powers

After section 30C of the Bank of England Act 1998 insert—

"**PART 3B**

CENTRAL COUNTERPARTIES AND CENTRAL SECURITIES DEPOSITORIES

30D Exercise of functions relating to CCPs and CSDs

(1) In exercising its FMI functions in a way that advances the Financial Stability Objective (and subject to that), the Bank must have regard to—

(a) the regulatory principles in section 30E;

(b) the effects generally that the exercise of FMI functions will or may have on the financial stability of countries or territories (other than the United Kingdom) in which FMI entities are established or provide services;

(c) the desirability of exercising FMI functions in a manner that is not determined by whether the persons to whom FMI services are provided are located in the United Kingdom or elsewhere.

(2) In exercising its FMI functions in a way that advances the Financial Stability Objective the Bank must, so far as reasonably possible, act in a way which, as a secondary objective, facilitates innovation in the provision of FMI services (including in the infrastructure used for that purpose) with a view to improving the quality, efficiency and economy of the services.

(3) For the purposes of this Part the Bank's "FMI functions" are the following functions so far as exercisable in relation to FMI entities—

(a) its function of making rules under FSMA 2000 (considered as a whole);

(b) its function of making technical standards in accordance with Chapter 2A of Part 9A of FSMA 2000;

(c) its function of preparing and issuing codes under FSMA 2000 (considered as a whole);

(d) its function of determining the general policy and principles by reference to which it performs particular functions under FSMA 2000.

(4) In this Part—

"FMI entities" means—

(a) a recognised central counterparty within the meaning of Part 18 of FSMA 2000 (see section 285(1)(b)(i) of that Act),

(b) a recognised CSD as defined by section 285(1)(e) of FSMA 2000,

(c) a third country central counterparty as defined by section 285(1)(d) of FSMA 2000, and

(d) a third country CSD as defined by section 285(1)(g) of FSMA 2000;

"FMI services" means services provided by FMI entities as part of their business as FMI entities;

"FSMA 2000" means the Financial Services and Markets Act 2000.

30E Regulatory principles

(1) These are the regulatory principles referred to in section 30D(1)(a)—

(a) the need to use the resources of the Bank 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, including in a way consistent with contributing towards achieving compliance by the Secretary of State with section 1 of the Climate Change Act 2008 (UK net zero emissions target) and section 5 of the Environment Act 2021 (environmental targets) where the Bank considers the exercise of its FMI functions to be relevant to the making of such a contribution;

(d) the general principle that consumers should take responsibility for their decisions;

(e) the responsibilities of the senior management of FMI entities subject to requirements imposed by or under FSMA 2000, including those affecting consumers, in relation to compliance with those requirements;

(f) the desirability where appropriate of the Bank exercising its FMI functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons;

(g) the desirability in appropriate cases of the Bank publishing information relating to persons on whom requirements are imposed as a result of the exercise of the Bank's FMI functions, or requiring such persons to publish information, as a means of contributing to the advancement by the Bank of its Financial Stability Objective and its objective under section 30D(2);

(h) the principle that the Bank should exercise its FMI functions as transparently as possible;

(i) the desirability of facilitating fair and reasonable access to FMI services.

(2) For the purposes of subsection (1) "consumer" has the same meaning as in section 3B of FSMA 2000 (and for these purposes includes in particular persons who receive FMI services).

30F Financial Market Infrastructure Committee

(1) There is to be a committee of the Bank known as the Financial Market Infrastructure Committee (the "FMI Committee").

(2) The FMI Committee is to consist of—

(a) a chair appointed by the Bank;

(b) at least three independent members appointed by the Bank;

(c) such other members as may be appointed from time to time by the Bank.

(3) The person appointed as chair under subsection (2)(a) must be the Governor, or a Deputy Governor, of the Bank.

(4) A person is an independent member for the purposes of subsection (2)(b) if the person is an officer, employee or agent of the Bank—

(a) as a result only of their membership of one or more of the Bank's committees, or

(b) is appointed as an independent member to the FMI Committee with the consent of the Treasury.

(5) For the purposes of subsection (4)(a)—

(a) the Bank's committees are—

(i) the FMI Committee,

(ii) the Financial Policy Committee,

(iii) the Monetary Policy Committee, and

(iv) the Prudential Regulation Committee;

(b) the reference to a person who is an officer, employee or agent of the Bank as result of their membership of one or more of those committees includes a reference to a person who becomes such an officer, employee or agent as a result of their appointment to the FMI Committee under this section.

(6) Before appointing a person under subsection (2)(b) the Bank must—

(a) be satisfied that the person has knowledge or experience which is likely to be relevant to the FMI Committee's functions, and

(b) consider whether the person has any financial or other interests that could substantially affect the functions as member that it would be proper for the person to discharge.

30G Functions of the Financial Market Infrastructure Committee

(1) The following functions of the Bank are to be exercised by the Bank acting through the FMI Committee (and, except as authorised by this section, are not to be exercised in any other way)—

(a) its FMI functions;

(b) such other functions of the Bank as the court of directors may specify as functions that are to be discharged by the FMI Committee.

(2) The FMI Committee may arrange for such of its functions as it thinks fit to be carried out only by, or after consultation with, the Governor of the Bank.

(3) Except as provided by subsection (4), the FMI Committee may delegate such of its functions as it thinks fit to—

(a) a member of the FMI Committee;

(b) a sub-committee of the FMI Committee consisting of members of the FMI Committee or one or more such members and one or more officers, employees or agents of the Bank;

(c) an officer, employee or agent of the Bank;

(d) a committee consisting of officers, employees or agents of the Bank.

(4) The FMI Committee may not delegate under subsection (3) its FMI functions under FSMA 2000 of making rules or technical standards (but this does not prevent arrangements under subsection (2) being made in respect of such functions).

30H Information

(1) The Bank must publish a statement setting out the following matters in respect of the FMI Committee—

(a) the number of members and whether each such member is a Bank member or an independent member;

(b) if the Committee includes any Bank members, the role of each such member within the Bank;

(c) arrangements for meetings and how proceedings at meetings are conducted;

(d) arrangements for the taking of decisions otherwise than at meetings;

(e) arrangements for any functions to be carried out by, or after consultation with, the Governor of the Bank (including details of the functions to which such arrangements relate);

(f) arrangements for the delegation of functions.

(2) If there is a material change in any of the matters contained in the statement the Bank must publish an updated statement.

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

(4) For the purposes of subsection (1)—

(a) a person is an independent member if they are appointed in accordance with section 30F(2)(b) and (4);

(b) a person is a Bank member if they are an officer or employee of the Bank who is not appointed as mentioned in paragraph (a).

30I Recommendations by Treasury

(1) The Treasury may at any time by notice in writing to the FMI Committee make recommendations about aspects of the economic policy of His Majesty's Government to which the Bank should have regard—

(a) when considering how to advance the Financial Stability Objective and the objective under section 30D(2), and

(b) when considering the application of the regulatory principles set out in section 30E.

(2) The Treasury must make recommendations under subsection (1) at least once in each Parliament.

(3) The Treasury must—

(a) publish in such manner as they think fit any notice given under subsection (1), and

(b) lay a copy of it before Parliament.

(4) The FMI Committee must respond to each recommendation made under subsection (1) by notifying the Treasury in writing of—

(a) action that the Bank has taken or intends to take in accordance with the recommendation, or

(b) the reasons why the Bank has not acted or does not intend to act in accordance with the recommendation.

(5) The notice under subsection (4) must be given before the end of 12 months beginning with the date the notice containing the recommendation was given under subsection (1).

(6) Where the FMI Committee has given notice under subsection (4) in relation to a recommendation, it must by notice in writing update the Treasury on the matters mentioned in subsection (4)(a) and (b) before the end of each subsequent period of 12 months.

(7) Subsection (6) does not apply if the Treasury have notified the FMI Committee in writing that no update (or further update) is required.

(8) The FMI Committee is not required under subsection (4) or (6) to provide any information whose publication would in the opinion of the Committee be against the public interest."

49 Bank of England: rule-making powers

(1) FSMA 2000 is amended as follows.

(2) After section 300H (inserted by section 11) insert—

"Bank of England rules

300I Duty of Bank of England to review rules

(1) The Bank of England must keep under review generally any rules made by the Bank under this Act.

(2) Subsection (1) does not apply to rules made for the purpose of complying with a recommendation of the Financial Policy Committee of the Bank of England under section 9O of the Bank of England Act 1998 (making of recommendations within the Bank).

300J Statement of policy relating to review of rules

(1) The Bank of England must prepare and publish a statement of policy with respect to its review of rules under section 300I.

(2) The statement must provide information about—

(a) how representations (including by a statutory panel) can be made to the Bank with respect to its review of rules under section 300I, and

(b) the arrangements to ensure that those representations are considered.

(3) In this section "statutory panel" has the meaning given by section 1RB(5).

(4) If a statement published under this section is altered or replaced, the Bank must publish the altered or replaced statement.

(5) A statement prepared under this section must be published by the Bank in the way appearing to the Bank to be best designed to bring it to the attention of the public.

300K Requirement to review specified rules

(1) The Treasury may by direction require the Bank of England to carry out a review of specified rules made by the Bank under this Act if—

(a) the rules have been in force for at least 12 months,

(b) the Treasury consider that it is in the public interest that the rules are reviewed, and

(c) it does not appear to the Treasury that—

(i) the Bank is carrying out, or plans to carry out, a review of those rules, or

(ii) if the Bank proposes to carry out a review, the proposals are appropriate for the purposes of carrying out an effective review.

(2) Subsection (1) only applies to rules falling within section 300I(1).

(3) The Treasury must consult the Bank before giving a direction under subsection (1).

(4) In exercising the power under this section, the Treasury must have regard to the desirability of minimising any adverse effect that the carrying out of the review may have on the exercise by the Bank of any of its other functions.

(5) A direction under subsection (1) may—

(a) specify the period within which a review must be carried out;

(b) determine the scope and conduct of a review;

(c) require the provision of interim reports during the carrying out of a review.

(6) Provision made in a direction under subsection (5)(b) may include a requirement—

(a) for a review to be carried out by a person appointed by the Bank who is independent of the Bank;

(b) for any such appointment to be made only with the approval of the Treasury.

(7) As soon as practicable after giving a direction under subsection (1) the Treasury must—

(a) lay before Parliament a copy of the direction, and

(b) publish the direction in such manner as the Treasury think fit.

(8) Subsection (7) does not apply where the Treasury consider that publication of the direction would be against the public interest.

(9) A direction under subsection (1) may be varied or revoked by the giving of a further direction.

300L Report on certain reviews

(1) This section applies where the Treasury have given a direction to the Bank of England under section 300K to carry out a review.

(2) The Bank must make a written report to the Treasury as to the opinion of the Bank in relation to the following matters—

(a) whether the rules under review advance—

(i) the Bank's Financial Stability Objective, and

(ii) the Bank's secondary innovation objective (see section 30D(2) of the Bank of England Act 1998);

(b) whether and to what extent the rules are functioning effectively and achieving their intended purpose;

(c) whether any amendments need to be made to the rules and, if so, what those amendments should be;

(d) whether any rules should be revoked (with or without replacement);

(e) whether any other action should be taken and, if so, what that action should be.

(3) As soon as practicable after receiving the report the Treasury must—

(a) lay before Parliament a copy of the report, and

(b) publish the report in such manner as the Treasury think fit.

(4) When complying with subsection (3) the Treasury may withhold material from the report if the Treasury consider that publication of the material would be against the public interest.

300M Power of Treasury to require making of rules by regulations

(1) The Treasury may by regulations require the Bank of England to exercise a power under this Act to make rules in relation to a specified activity or a specified description of person.

(2) Regulations under this section may—

(a) specify matters that the rules must cover;

(b) specify a period within which the rules must be made.

(3) But except so far as permitted by subsection (2), regulations under this section may not require rules to be made—

(a) in a specified form or with specified content, or

(b) to achieve or advance a specified outcome.

(4) If no period is specified under subsection (2)(b) the rules must be made as soon as reasonably practicable after the coming into force of the regulations."

(3) In section 429 (Parliamentary control of statutory instruments), in subsection (2), in the list of sections beginning with "90B" insert at the appropriate place "300M,".

50 Application of FSMA 2000 to FMI functions

(1) FSMA 2000 is amended as follows.

(2) In section 285A (powers exercisable in relation to recognised bodies)—

(a) in the title at the end insert "etc";

(b) in subsection (3), at the end of paragraph (b) insert "or as a consequence of conferring other FMI functions on the Bank".

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

""FMI functions", in relation to the Bank of England, has the meaning given by section 30D(3) of the Bank of England Act 1998;".

(4) Schedule 17A to FSMA 2000 (further provision in relation to exercise of Bank of England functions under Part 18 of that Act) is amended as follows.

(5) In the title to the Schedule, after "functions" insert ", or other FMI functions,".

(6) After paragraph 9 insert—

"Public consultations

9A (1) Section 1RB (requirements in connection with public consultations) applies in relation to the Bank but as if, in subsection (4), after "proposals" there were inserted "in connection with the carrying on by the Bank of its FMI functions.

(2) For this purpose, paragraph 9(2)(a) does not apply so far as relating to the following references in section 1RB—

(a) in subsection (2), the reference after "statutory panels of" to the FCA and the PRA;

(b) in subsection (5)(a), the reference to the FCA;

(c) in subsection (5)(b), the reference to the PRA."

(7) In paragraph 10—

(a) in sub-paragraph (1)(b), for the words from "subsection (4)(b)" to the end substitute "subsection (5) of section 138A, subsection (4) of section 138B, and, apart from in relation to rules made under section 300F, subsection (4)(b) of section 138A;";

(b) after sub-paragraph (1)(b) insert—

"(ba) section 138BA (disapplication or modification of rules in individual cases);";

(c) in sub-paragraph (1)(d) for "subsection (2)" substitute "subsections (2) and (3), and any references to those subsections";

(d) after sub-paragraph (1)(e) insert—

"(ea) section 138EA (matters to consider when making rules);";

(e) at the end of sub-paragraph (1)(f) insert "but with the omission of subsections (1A) and (2)";

(f) at the end of sub-paragraph (1)(i) omit "and";

(g) after sub-paragraph (1)(i) insert—

"(ia) section 138JA(2), (3) (4), (10) and (11) (duties in relation to PRA Cost Benefit Analysis Panel);

(ib) section 138JB (statement of policy in relation to cost benefit analyses);";

(h) after sub-paragraph (1)(j) insert—

"(k) section 141A (power to make consequential amendments of references to rules);

(l) section 141B (power to consequentially amend enactments).";

(i) in sub-paragraph (2) at the end insert "or other persons in respect of whom FMI functions are exercised";

(j) after sub-paragraph (2) insert—

"(2A) Section 137T has effect as if, in paragraph (b), for "the other regulator" there were substituted "the FCA or the PRA".

(2B) Section 138A has effect as if the reference in subsection (4)(b) to any of the regulator's objectives were a reference to the Bank's Financial Stability Objective.

(2C) Section 138BA has effect as if subsection (3)(b) and (c) were omitted.

(2D) Section 138EA(5) has effect as if, for paragraphs (a) and (b), there were substituted "complying with a recommendation of the Financial Policy Committee of the Bank of England under section 9O of the Bank of England Act 1998 (making of recommendations within the Bank).";

(k) after sub-paragraph (3) insert—

"(3A) Section 138J(8A) has effect as if, in paragraph (a), for sub-paragraphs (i) and (ii) there were substituted "be prejudicial to advancing the Financial Stability Objective, or".

(8) After paragraph 12 insert—

"12A (1) Section 166A applies in relation to rules made by the Bank under section 300F.

(2) For this purpose any reference in section 166A to an authorised person is to be read as a reference to a relevant FMI entity (as defined by paragraph 9B(2)).".

(9) In paragraph 14(2)—

(a) in paragraph (a) omit "an offence under section 398(1) or";

(b) for paragraph (g) substitute—

"(g) a person may be guilty of an offence under section 398(1), as applied by paragraph 30 of this Schedule;".

(10) In paragraph 29 before "192L," insert "55X(2) or (4),".

(11) After paragraph 31 insert—

"International obligations

31A (1) The following provisions of Part 28 of this Act apply in relation to the exercise by the Bank of its FMI functions with the modifications in sub-paragraphs (2) and (3)—

(a) section 409A (consultation in relation to deference decisions), and

(b) section 409B (notification in relation to international trade obligations).

(2) Section 409A applies as if—

(a) in subsection (4), in paragraph (b), for the words after "proposes to" to the end there were substituted "exercise any of its other FMI functions";

(b) in subsection (6)(a), the reference to the duty imposed by section 138J were a reference to that duty as it applies in relation to the Bank under paragraph 10(1) of this Schedule;

(c) in subsection (9), for paragraphs (a) to (f) there were substituted "in order to comply with a recommendation of the Financial Policy Committee of the Bank of England under section 9O of the Bank of England Act 1998 (making of recommendations within the Bank).";

(d) subsections (7) and (10) were omitted.

(3) Section 409B applies as if—

(a) in subsection (4), in paragraph (b), for the words after "proposes to" to the end there were substituted "exercise any of its other FMI functions";

(b) in subsection (5)(a), the reference to the duty imposed by section 138J were a reference to that duty as it applies in relation to the Bank under paragraph 10(1) of this Schedule;

(c) in subsection (8), for paragraphs (a) to (c) there were substituted "in order to comply with a recommendation of the Financial Policy Committee of the Bank of England under section 9O of the Bank of England Act 1998 (making of recommendations within the Bank).";

(d) subsections (6) and (9) were omitted."

(12) In paragraph 33(a), for "(f)" substitute "(fa)" and in the substituted paragraph (b)—

(a) for "financial stability objective has been met" substitute "Financial Stability Objective and its objective under section 30D(2) of the Bank of England Act 1998 have been advanced";

(b) after "been met," insert—

"(c) the efforts it has made to engage with persons (other than those mentioned in paragraph (a)) appearing to the Bank to have an interest in the discharge of those functions, and

(d) the results of that engagement,".

(13) In paragraph 33(b), for "sub-paragraph (3)" substitute "sub-paragraphs (1A), (1B), (3) and (6)".

(14) After paragraph 33 insert—

"Other reports

33A Paragraph 21A of Schedule 1ZB (other reports by PRA) applies in relation to the Bank, but as if—

(a) the reference in sub-paragraph (1)(a) to paragraphs (a) to (f) of paragraph 19(1) were a reference to those paragraphs as substituted in relation to the Bank under paragraph 33 of this Schedule;

(b) the reference in sub-paragraph (1)(b) to such other matters were a references to such other matters so far as relating to the exercise of the Bank's FMI functions;

(c) the reference in sub-paragraph (5)(b) to section 348 were a reference to that section as it applies in relation to the Bank under paragraph 23 of this Schedule.

Engagement with Parliamentary Committees

33B (1) Paragraph 36 of Schedule 1ZB (PRA engagement with Parliamentary Committees) applies in relation to the Bank, but as if—

(a) in sub-paragraph (2)(a), the reference to section 138J were a reference to that section as it applies in relation to the Bank under paragraph 10(1) of this Schedule;

(b) in sub-paragraph (2)(b), the reference to a proposal were to a proposal so far as relating to the exercise of the Bank's FMI functions;

(c) in sub-paragraph (2)(c), the reference to general functions were a reference to the Bank's FMI functions;

(d) in sub-paragraph (4)(a), the reference to the PRA's objectives were a reference to the Financial Stability Objective and the Bank's secondary innovation objective (see section 30D(2) of the Bank of England Act 1998);

(e) in sub-paragraph (4)(b), the reference to section 3B were a reference to section 30E of the Bank of England Act 1998;

(f) in sub-paragraph (4)(c), the reference to section 138EA were a reference to that section as it applies in relation to the Bank under paragraph 10(1) of this Schedule;

(g) in sub-paragraph (5A)(b)(ii) and (c)(ii), the references to the PRA being notified were references to the Bank being notified.

(2) Paragraph 37 of Schedule 1ZB applies in relation to the Bank, but as if, in sub-paragraph (2), after "the draft of any proposals" there were inserted "so far as relating to the exercise by the Bank of its FMI functions"."

Payment Systems Regulator

51 Payment Systems Regulator

Schedule 7 makes provision corresponding or similar to provision made by preceding provisions of this Chapter relating to the accountability of the Payment Systems Regulator.

52 Chair of the Payment Systems Regulator as member of FCA Board

(1) FSMA 2000 is amended as follows.

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

""the Payment Systems Regulator" means the body established under section 40(1) of the Financial Services (Banking Reform) Act 2013;".

(3) Schedule 1ZA (FCA: constitution etc) is amended as follows.

(4) In paragraph 2—

(a) in sub-paragraph (2), after paragraph (c) insert—

"(ca) the Chair of the Payment Systems Regulator,";

(b) in sub-paragraph (3), after "(c)" insert ", (ca)".

(5) In paragraph 3—

(a) in sub-paragraph (6) after "PRA" insert "or of the Payment Systems Regulator";

(b) in sub-paragraph (7) for "the Bank's Deputy Governor for prudential regulation" substitute "a person holding an office mentioned in paragraph 2(2)(c) or (ca)".

(6) In paragraph 5(a) for "or (c)" substitute ", (c) or (ca)".

(7) After paragraph 6 insert—

"6A (1) The Chair of the Payment Systems Regulator must not take part in any discussion by or decision of the FCA which relates to—

(a) the exercise of the FCA's functions in relation to a particular person, or

(b) a decision not to exercise those functions.

(2) Sub-paragraph (1) does not apply at any time when the person who is the Chair of the Payment Systems Regulator also holds the office mentioned in paragraph 2(2)(a)."

Consultation on rules

53 Consultation on rules

(1) In section 138I of FSMA 2000 (consultation by the FCA), after subsection (4) insert—

"(4A) The FCA must include, in the account mentioned in subsection (4), a list of the respondents who made the representations, where those respondents have consented to the publication of their names.

(4B) The duty in subsection (4A) is not to be read as authorising or requiring such processing of personal data as would contravene the data protection legislation (but the duty is to be taken into account in determining whether particular processing of data would contravene that legislation).

(4C) For the purposes of this section, the exemption relating to functions conferred on the FCA mentioned in paragraph 11 of Schedule 2 to the Data Protection Act 2018 (exemption from application of listed GDPR provisions) does not apply.

(4D) Where representations are made to the FCA by a Committee of the House of Commons or the House of Lords or a Joint Committee of both Houses in accordance with subsection (2)(e), the FCA's account mentioned in subsection (4) must also describe how the FCA has considered the representations made by that Committee in making the proposed rules."

(2) In section 138J of FSMA 2000 (consultation by the PRA), after subsection (4) insert—

"(4A) The PRA must include, in the account mentioned in subsection (4), a list of the respondents who made the representations, where those respondents have consented to the publication of their names.

(4B) The duty in subsection (4A) is not to be read as authorising or requiring such processing of personal data as would contravene the data protection legislation (but the duty is to be taken into account in determining whether particular processing of data would contravene that legislation).

(4C) For the purposes of this section, the exemption relating to functions conferred on the PRA mentioned in paragraph 9 of Schedule 2 to the Data Protection Act 2018 (exemption from application of listed GDPR provisions) does not apply.

(4D) Where representations are made to the PRA by a Committee of the House of Commons or the House of Lords or a Joint Committee of both Houses in accordance with subsection (2)(e), the PRA's account mentioned in subsection (4) must also describe how the PRA has considered the representations made by that Committee in making the proposed rules."

(3) In section 104 of the Financial Services (Banking Reform) Act 2013 (consultation requirements), after subsection (5) insert—

"(5A) The Payment Systems Regulator must include, in the account mentioned in subsection (5), a list of the respondents who made the representations, where those respondents have consented to the publication of their names.

(5B) The duty in subsection (5A) is not to be read as authorising or requiring such processing of personal data as would contravene the data protection legislation (but the duty is to be taken into account in determining whether particular processing of data would contravene that legislation).

(5C) In this section "data protection legislation" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

(5D) Where representations are made to the Payment Systems Regulator by a Committee of the House of Commons or the House of Lords or a Joint Committee of both Houses in accordance with subsection (3)(d), the Payment Systems Regulator's account mentioned in subsection (5) must also describe how the Payment Systems Regulator has considered the representations made by that Committee in making the proposed requirement."

PART 2

ACCESS TO CASH

54 Cash access services

Schedule 8 makes provision about the provision of cash deposit and withdrawal services in the United Kingdom or a part of the United Kingdom.

55 Wholesale cash distribution

Schedule 9 makes provision about persons involved in wholesale cash distribution (as that term is defined in the Schedule).

PART 3

PERFORMANCE OF FUNCTIONS RELATING TO FINANCIAL MARKET INFRASTRUCTURE

56 Recognised bodies: senior managers and certification

Schedule 10 amends FSMA 2000 to make provision about the performance, by senior managers and others, of functions in relation to activities carried on by recognised bodies (within the meaning of Part 18 of that Act) of types specified by the Treasury.

PART 4

CENTRAL COUNTERPARTIES IN FINANCIAL DIFFICULTIES

57 Central counterparties in financial difficulties

Schedule 11 makes provision for a special resolution regime for central counterparties where all or part of its business has encountered, or is likely to encounter, financial difficulties.

PART 5

INSURERS IN FINANCIAL DIFFICULTIES

58 Insurers in financial difficulties

(1) Schedule 12 makes provision about the powers of the court in relation to liabilities of an insurer that is, or is likely to become, unable to pay its debts (an order made in exercise of these powers is a "write-down order").

(2) Schedule 13 makes provision about the enforcement of contracts to which an insurer is a party, where the insurer is subject to a write-down order or to certain insolvency proceedings.

PART 6

MISCELLANEOUS

Amendments to FSMA 2000

59 Application of provisions to regulatory functions under this Act

(1) FSMA 2000 is amended as follows.

(2) In section 1A (the FCA), in subsection (6) after paragraph (czb) insert—

"(czc) the Financial Services and Markets Act 2023,".

(3) In section 2AB (functions of the PRA), in subsection (3) after paragraph (c) insert—

"(ca) the Financial Services and Markets Act 2023,".

60 Formerly authorised persons

(1) FSMA 2000 is amended as follows.

(2) In section 404C after "(which" insert ", subject to section 415AA(1),".

(3) After section 415A insert—

"**415AA Application of powers to formerly authorised persons**

(1) A power in the following provisions may be exercised in relation to persons who were at any time authorised persons (in addition to persons who are authorised persons at the time when the power is exercised)—

(a) section 168 (appointment of investigators in certain cases);

(b) section 205 (public censure);

(c) section 206 (financial penalties);

(d) section 384 (power to require restitution).

(2) Accordingly, references in the provisions listed in subsection (1), and in sections 207 to 209, to an authorised person are (so far as appropriate) to be read as including a person who was at any time an authorised person but who has ceased to be an authorised person."

(4) The amendments made by this section have effect only in relation to persons who cease to be authorised persons on or after 20 July 2022.

61 Control over authorised persons

In Part 12 of FSMA 2000 (control over authorised persons), in section 187 (approval with conditions), in subsection (2)—

(a) at the end of paragraph (a) omit "or", and

(b) after that paragraph insert—

"(aa) it appears to that regulator that it is desirable to impose those conditions in order to advance any of that regulator's objectives (subject to section 185(2)(c)), or".

62 Financial services compensation scheme

(1) FSMA 2000 is amended as set out in subsections (2) and (3).

(2) In section 212 (the scheme manager), in subsection (3)(aa) omit the words "(who is to be the accounting officer)".

(3) Omit section 218B (Treasury's power to receive information).

(4) Omit section 15 of the Financial Services (Banking Reform) Act 2013 (which inserted section 218B of FSMA 2000).

63 The Ombudsman scheme

(1) FSMA 2000 is amended as follows.

(2) In section 429 (Parliamentary control of statutory instruments), in subsection (2B) after paragraph (c) insert—

"(d) provision made under paragraph 15(3) of Schedule 17."

(3) Paragraph 15 of Schedule 17 (the Ombudsman scheme: power of scheme operator to charge fees) is amended as set out in subsections (4) and (5).

(4) In sub-paragraph (1) after "respondent" insert "or other persons of a specified description".

(5) After sub-paragraph (2) insert—

"(3) The reference in sub-paragraph (1) to persons of a specified description is a reference to such descriptions of persons as may be specified in regulations made by the Treasury.

(4) The power conferred by sub-paragraph (3) to specify descriptions of persons may not be exercised so as to provide for eligible complainants to fall within a specified description of persons.

(5) The reference in sub-paragraph (4) to "eligible complainants" is a reference to complainants who are eligible in relation to the compulsory or voluntary jurisdiction of the ombudsman scheme (see section 226(6) and 227(7)).

(6) Before making regulations under sub-paragraph (3) the Treasury must consult the scheme operator."

64 Unauthorised co-ownership AIFs

(1) FSMA 2000 is amended as follows.

(2) In section 261E (authorised contractual schemes: holding of units)—

(a) before subsection (1) insert—

"(A1) This section sets out requirements for the purposes of section 261D(1)(a) (authorisation orders).";

(b) in subsection (1) for "a contractual" substitute "the".

(3) After section 261Z5 insert—

"**CHAPTER 3B**

UNAUTHORISED CO-OWNERSHIP AIFS

261Z6 Power to make provision about unauthorised co-ownership AIFs

(1) The Treasury may by regulations make provision about unauthorised co-ownership AIFs that corresponds or is similar to, or applies with modifications, any of sections 261M to 261O and section 261P(1) and (2) (rights and liabilities of participants in authorised co-ownership schemes).

(2) Regulations under subsection (1) may make provision about unauthorised co-ownership AIFs generally, or about unauthorised co-ownership AIFs of a description specified in the regulations.

(3) In this section "unauthorised co-ownership AIF" means a co-ownership scheme that—

(a) is an AIF, and

(b) is not authorised for the purposes of this Act by an authorisation order in force under section 261D(1)."

65 Power to amend enactments in consequence of rules

(1) FSMA 2000 is amended as follows.

(2) After section 141A insert—

"**141B Power to consequentially amend enactments**

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

(2) In this section—

"enactment" includes—

(a) an enactment comprised in subordinate legislation,

(b) retained direct EU legislation,

(c) an enactment comprised in, or in an instrument made under, a Measure or Act of Senedd Cymru,

(d) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and

(e) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;

"subordinate legislation" has the same meaning as in the Interpretation Act 1978 (see section 21 of that Act) but does not include rules of either regulator."

(3) Omit section 144F (power to consequentially amend enactments).

(4) In section 429 (Parliamentary control of statutory instruments), in subsection (2), in the list of sections beginning with "90B"—

(a) insert at the appropriate place "141B,";

(b) omit "144F,".

66 Ambulatory references

(1) FSMA 2000 is amended as follows.

(2) In section 137T (regulator rules: general supplementary powers), after paragraph (a) insert—

"(aa) may make provision for any reference in the rules to an enactment (including an enactment comprised in subordinate legislation) to be read as a reference to that enactment as it has effect from time to time,".

(3) In section 428 (regulations and orders)—

(a) in subsection (3) before paragraph (a) insert—

"(za) make provision by reference to any rules or other instruments as they have effect from time to time;";

(b) after subsection (3) insert—

"(4) In subsection (3)(za) "rules" includes rules made by the Bank of England under this Act."

67 Power to amend or repeal certain provisions of FSMA 2000

(1) The Treasury may by regulations amend or repeal the following provisions in Part 9C of FSMA 2000—

(a) section 143C (duty to make rules applying to FCA investment firms);

(b) section 143D (duty to make rules applying to parent undertakings);

(c) section 143G (matters to consider when making Part 9C rules).

(2) In consequence of provision made in regulations under subsection (1), the Treasury may by regulations amend or repeal other provisions of FSMA 2000.

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

68 Power under FSMA 2000 to make transitional provisions

(1) FSMA 2000 is amended as follows.

(2) In section 427 (transitional provisions)—

(a) in subsection (2)(a) to (c), for "the Authority", in each place, substitute "a regulator";

(b) in subsection (2)(f), for "the Authority's" substitute "the FCA's";

(c) in subsection (3)(a), for "the Authority" substitute "a regulator".

(3) In Schedule 17A, after paragraph 31A (inserted by section 50), insert—

"Transitional provisions

31B Section 427 (transitional provisions), so far as it relates to an order under section 426 which makes provision in connection with this Part of this Act, applies in relation to the Bank."

69 Cryptoassets

(1) FSMA 2000 is amended as follows.

(2) In section 21 (restrictions on financial promotion), in subsection (14) at end insert "(including where an asset, right or interest is, or comprises or represents, a cryptoasset)".

(3) In section 22 (regulated activities), in subsection (4) at end insert "(including where an asset, right or interest is, or comprises or represents, a cryptoasset)".

(4) In section 417 (definitions)—

(a) in subsection (1), insert at the appropriate place—

""cryptoasset" means any cryptographically secured digital representation of value or contractual rights that—

(a) can be transferred, stored or traded electronically, and

(b) that uses technology supporting the recording or storage of data (which may include distributed ledger technology).";

(b) at end insert—

"(5) The Treasury may by regulations amend the definition of "cryptoasset" in subsection (1)."

(5) In section 429 (Parliamentary control of statutory instruments), in subsection (2) leave out "or 333T" and insert ", 333T or 417(5)".

Bank of England levy

70 Bank of England levy

(1) The Bank of England Act 1998 is amended as follows.

(2) Omit section 6 and Schedule 2 (cash ratio deposits).

(3) Before section 7 insert—

"**6A Bank of England levy**

Schedule 2ZA makes provision for the Bank to impose a charge on financial institutions in connection with the pursuit of its financial stability and monetary policy objectives."

(4) Before Schedule 2A (financial policy committee) insert—

"SCHEDULE 2ZA — Section 6A

BANK OF ENGLAND LEVY

"The levy"

1 (1) The Bank may impose a charge on eligible institutions in accordance with this Schedule.

(2) The charge is to be known as the Bank of England levy (and is referred to in this Schedule as "the levy").

"Eligible institutions"

2 (1) For the purposes of this Schedule, an "eligible institution" is a person who, at any time during a levy year, is an authorised deposit-taker.

(2) An "authorised deposit-taker" for these purposes is a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to accept deposits, other than—

(a) a credit union;

(b) a friendly society;

(c) a person who has such permission only in the course of effecting or carrying out contracts of insurance in accordance with that permission.

(3) In this paragraph—

"credit union" has the meaning given by section 31(1) of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985;

"friendly society" means a society that is registered within the meaning of the Friendly Societies Act 1974 or incorporated under the Friendly Societies Act 1992;

"levy year" has the meaning given by paragraph 3.

(4) The Treasury may by regulations—

(a) amend the foregoing provisions of this paragraph;

(b) amend any other provision of this Schedule in consequence of provision made under paragraph (a).

"Levy year"

3 (1) For the purposes of this Schedule, a "levy year" is—

(a) the period of 12 months beginning on such day as the Bank may determine, and

(b) each subsequent period of 12 months.

(2) The day determined under sub-paragraph (1)(a) may not be before the day on which the Financial Services and Markets Act 2023 is passed.

"Anticipated levy requirement"

4 (1) The Bank must, in respect of a levy year—

(a) determine which of its policy functions it intends to fund (in whole or in part) by means of the levy;

(b) determine the total amount of the levy it reasonably considers it requires in connection with the funding of those functions ("the anticipated levy requirement").

(2) The Bank may add to the anticipated levy requirement for a levy year such amount (if any) that—

(a) was required in connection with the funding of policy functions in the previous levy year, and

(b) was in excess of the total amount of the levy that it received in respect of that previous levy year.

(3) For the purposes of this Schedule, a function of the Bank is a "policy function" if it is exercised in pursuit of—

(a) the Financial Stability Objective (see section 2A), or

(b) its objectives in relation to monetary policy (see section 11).

(4) In making a determination in accordance with sub-paragraph (1), the Bank must take account of any other amounts which are, or are likely to be,

available in the levy year to fund policy functions (for example, amounts of the levy received in respect of a previous levy year or amounts available from sources other than the levy).

(5) The Bank must publish a determination made in accordance with sub-paragraph (1)—

(a) at such time before or during the levy year to which the determination relates as the Bank considers appropriate, and

(b) in such manner as the Bank considers appropriate.

(6) The reference in sub-paragraph (3) to the exercise of a function includes anything done in preparation for, to facilitate, or otherwise in connection with, the exercise of the function.

Liability to pay the levy

5 (1) The amount of the levy that an eligible institution is liable to pay in respect of a levy year is to be determined by the Bank in accordance with regulations made by the Treasury.

(2) Regulations under sub-paragraph (1) may—

(a) make provision by reference to the Bank's anticipated levy requirement in respect of the levy year (see paragraph 4);

(b) make provision by reference to specified liabilities of an eligible institution;

(c) make provision for cases in which no amount of the levy or a reduced amount of the levy is payable.

(3) Regulations made by virtue of sub-paragraph (2)(b) may include (among other things) provision—

(a) specifying types of liability that may or may not be taken into account for specified purposes;

(b) about how and when liabilities of a specified type are to be taken into account for specified purposes;

(c) about how the amount of a liability of a specified type is to be determined, including specifying times, or periods of time, by reference to which the amount is to be determined;

(d) for an amount of a liability of a specified type to be treated as reduced by the amount of assets of a specified type.

(4) Regulations under sub-paragraph (1) may include provision conferring a discretion on the Bank to determine specified matters (including matters mentioned in sub-paragraph (2)(b) or (3)).

(5) Regulations made by virtue of sub-paragraph (4) may, in particular, confer a discretion—

(a) to determine the method used to determine a matter, and

(b) to determine different methods to be used in relation to different eligible institutions.

(6) In this section, "specified" means specified in the regulations.

Payment of the levy

6 (1) The Bank must notify each eligible institution that is liable to pay the levy in respect of a levy year of the following matters—

(a) the levy year in respect of which the levy is payable;

(b) the amount of the levy the institution is liable to pay;

(c) the time by which the levy must be paid (or, if the Bank determines that the levy may be paid in instalments, the times by which each instalment must be paid);

(d) the methods by which the levy may be paid.

(2) A time notified in accordance with sub-paragraph (1)(c) (or if more than one time is notified, the earliest of them) may not be before the end of the period of 30 days beginning with the day on which the notification is given.

(3) Notification may be given in such form or in such manner as the Bank considers appropriate (and may be given in a different form or manner to different eligible institutions or eligible institutions of a different description).

Recovery of the levy

7 The levy is recoverable as a civil debt due to the Bank.

See also paragraph 8 (interest on unpaid amounts of the levy).

Interest

8 (1) This paragraph applies where an eligible person has been notified—

(a) of an amount of the levy that is payable, and

(b) the time by which the amount must be paid.

(2) Interest is payable, at the rate mentioned in sub-paragraph (3), on any part of the amount mentioned in sub-paragraph (1)(a) which remains unpaid after the time mentioned in sub-paragraph (1)(b).

(3) The rate mentioned in this sub-paragraph is the rate equivalent to an annual percentage rate of 4% above the benchmark rate.

(4) The "benchmark rate" is—

(a) the percentage rate announced from time to time by the Monetary Policy Committee of the Bank as the official dealing rate, or

(b) where an order under section 19 (Treasury reserve powers) is in force, any equivalent percentage rate determined by the Treasury under that order.

(5) The Treasury may by regulations amend this paragraph so as to change the rate of interest payable on an unpaid amount of the levy.

Power to obtain information

9 (1) The Bank may, by written notice, require an eligible institution to provide information or documents in connection with the levy.

(2) The notice must specify—

(a) the information required;

(b) the form or manner in which the information must be provided;

(c) the time at which, or period within which, the information must be provided;

(d) the period to which the information must relate.

Regulations

10 (1) Before making regulations under this Schedule the Treasury must consult—

(a) the Bank, and

(b) such other persons who appear to the Treasury to be representative of persons who are likely to be affected by the regulations.

(2) When making regulations under this Schedule the Treasury must have regard to the financial needs of the Bank.

(3) Regulations under this Schedule are to be made by statutory instrument.

(4) Regulations under this Schedule may—

(a) make different provision for different purposes;

(b) make incidental, supplemental, consequential, saving or transitional provision.

(5) A statutory instrument containing (whether alone or with other provision) regulations under paragraphs 2(4) or 5(1) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(6) A statutory instrument containing only regulations under paragraph 8(5) is subject to annulment in pursuance of a resolution of either House of Parliament."

71 Bank of England levy: consequential amendments

(1) The Bank of England Act 1998 is amended as follows in consequence of provision made by section 70.

(2) In section 37 (restriction on disclosure of information), for "cash ratio deposit" substitute "Bank of England levy".

(3) In section 38 (offences in relation to supplying information to the Bank), in each of subsections (1) and (3), for "paragraph 9 of Schedule 2" substitute "paragraph 9 of Schedule 2ZA".

(4) In section 40 (orders)—

(a) in subsection (2)—

(i) after "section 17(4) or (5)," insert "or";

(ii) omit "paragraph 1(2) or 5 of Schedule 2, or";

(b) in subsection (3) omit "paragraph 2(2) or 8 of Schedule 2,".

(5) Schedule 7 (restriction on disclosure of information) is amended in accordance with subsections (6) to (8).

(6) In paragraph 1(1)(a), for "paragraph 9 of Schedule 2" substitute "paragraph 9 of Schedule 2ZA".

(7) In paragraph 2(1)(c), for "Schedule 2" substitute "Schedule 2ZA".

(8) In paragraph 5(a), for "Schedule 2 (payment in lieu of cash ratio deposit)" substitute "Schedule 2ZA (Bank of England levy)".

Other miscellaneous provisions

72 Liability of payment service providers for fraudulent transactions

(1) The Payment Systems Regulator must prepare and publish a draft of a relevant requirement for reimbursement in such qualifying cases of payment orders as the Regulator considers should be eligible for reimbursement.

(2) A case is a "qualifying case" for the purposes of this section if—

(a) the case relates to a payment order executed over the Faster Payments Scheme, and

(b) the payment order was executed subsequent to fraud or dishonesty.

(3) The draft of the relevant requirement must—

(a) be published in the way appearing to the Payment Systems Regulator to be best calculated to bring it to the attention of the public;

(b) be accompanied by notice that representations about the proposed relevant requirement may be made to the Payment Systems Regulator within a specified time.

(4) The duty imposed by subsection (1) must be carried out before the end of two months beginning with the day on which this section comes into force.

(5) The Payment Systems Regulator must impose a relevant requirement, in whatever way and to whatever extent it considers appropriate, for reimbursement to be made in qualifying cases of payment orders.

(6) In complying with the duty imposed by subsection (5) the Payment Systems Regulator must have regard to any representations made in accordance with subsection (3)(b).

(7) The duty imposed by subsection (5) must be carried out before the end of 6 months beginning with the day on which this section comes into force.

(8) The duty under subsections (1) to (3), and under section 104(2) of the Financial Services (Banking Reform) Act 2013 in the application of that section to a relevant requirement imposed under subsection (5) of this section, may be satisfied by things done before (as well as after) this section comes into force.

(9) Nothing in subsections (1) to (8) is to be taken as limiting the power of the Payment Systems Regulator—

(a) to vary or revoke a relevant requirement imposed under the duty imposed by subsection (5), or

(b) to impose further relevant requirements (after that duty is complied with) in connection with reimbursement of payment orders executed subsequent to fraud or dishonesty.

(10) In subsections (1) to (9)—

"the Faster Payments Scheme" means the payment system, known as the Faster Payments Scheme, designated as a regulated payment system for the purposes of Part 5 of the Financial Services (Banking Reform) Act 2013 by order made by the Treasury in exercise of the power conferred by section 43(1) of that Act;

"relevant requirement" means a requirement imposed by or under section 54 or 55 of the Financial Services (Banking Reform) Act 2013 (or by or under a combination of those sections).

(11) In regulation 90 of the Payment Services Regulations 2017 (S.I. 2017/752) (liability of payment service providers for incorrect unique identifiers), after paragraph (5) insert—

"(6) Nothing in this regulation affects the liability of a payment service provider under a relevant requirement in a case where the payment order is executed subsequent to fraud or dishonesty (and the requirements imposed by this regulation are subject to any such relevant requirements).

(7) In this regulation, a "relevant requirement" means a requirement imposed by or under—

(a) a direction given under regulation 125,

(b) a direction given under section 54 of the Financial Services (Banking Reform) Act 2013,

(c) a rule made under section 55 of that Act,

(d) an order made under section 56(3) of that Act, or

(e) a variation of an agreement under section 57(2) of that Act."

73 Credit unions

Schedule 14 amends the Credit Unions Act 1979 to make provision about additional financial activities credit unions may choose to carry on.

74 Reinsurance for acts of terrorism

(1) The Reinsurance (Acts of Terrorism) Act 1993 is amended as follows.

(2) After section 2, insert—

"**2A Directions**

(1) A relevant person must comply with any directions given to it by the Treasury under this section.

(2) For the purposes of this section, a "relevant person" means—

(a) a person who—

(i) has entered into arrangements to which this Act applies (see section 2(1)) (whether before or after the passing of this Act), and

(ii) has been classified as a public sector body by the Office for National Statistics (whether before or after the passing of this Act), or

(b) a group undertaking of a person falling within paragraph (a) (within the meaning of section 1161 of the Companies Act 2006).

(3) The Treasury may direct a relevant person to appoint a person to perform the functions of an accounting officer.

(4) The Treasury may give a direction to a relevant person under this subsection if the Treasury consider it necessary for the purpose of ensuring compliance with any requirements associated with the classification, as mentioned in subsection (2)(a)(ii), of a person falling within subsection (2)(a).

(5) Directions under subsection (4) may include provision about compliance with requirements relating to—

(a) auditing;

(b) accounting;

(c) budgeting;

(d) arm's length bodies;

(e) public sector bodies.

(6) Before giving a direction under this section the Treasury must consult the relevant person to whom the Treasury intend to give a direction.

(7) A direction under this section must be accompanied by a notice that—

(a) states when the direction takes effect (see subsection (8)), and

(b) gives the Treasury's reasons for giving the direction.

(8) A direction may, if the Treasury reasonably consider it necessary, take effect—

(a) immediately it is given to the relevant person, or

(b) on a later date specified in the direction.

(9) A direction may be given so as to have effect—

(a) for a specified period, or

(b) until the occurrence of a specified event.

(10) A direction under this section must be given in writing.

(11) A direction under this section must—

(a) be published in whatever manner the Treasury consider appropriate, and

(b) be laid before Parliament.

(12) A direction under this section may be varied or revoked by another direction under this section.

2B Compliance

(1) Compliance with a direction given under section 2A is enforceable—

(a) by injunction, or

(b) in Scotland, by interdict or by an order for specific performance under section 45 of the Court of Session Act 1988.

(2) Proceedings under subsection (1) may be brought only by the Treasury."

75 Banking Act 2009: miscellaneous amendments

(1) The Banking Act 2009 is amended as follows.

(2) In section 7A (effect on other group members, financial stability in UK etc)—

(a) in subsection (1), for "(4)(b)(ii)" substitute "(4), (4B)(b),";

(b) after subsection (1) insert—

"(1A) Subsection (1) does not apply in relation to a requirement under section 3A(4) for a person to maintain (but not issue) a particular kind of bail-in liability."

(3) In section 83ZD (appointment of person to carry out investigations in particular cases), in subsection (3)(a), for "83ZN" substitute "83ZR".

(4) In section 89H (recognition of third-country resolution actions), in subsection (7), in the definition of "third-country resolution action"—

(a) in the words before paragraph (a), for ", third country parent undertaking or a bank, building society, credit union or investment firm" substitute "or third-country parent undertaking";

(b) in paragraph (a), omit "or a bank, building society, credit union or investment firm".

(5) In section 182 (interpretation: "payment system")—

(a) in subsection (1), after "arrangements" insert ", or proposed arrangements,";

(b) in subsection (5), after "operates" insert ", or is intended to operate,".

(6) In section 244 (immunity), in subsection (2)(c) after "2000," insert "of its functions under, or as a result of regulations made under, the Financial Services and Markets Act 2023,".

76 Arrangements for the investigation of complaints

(1) The Financial Services Act 2012 is amended in accordance with subsections (2) and (3).

(2) In section 84 (arrangements for the investigation of complaints)—

(a) omit the "and" at the end of subsection (1)(a);

(b) omit subsection (1)(b);

(c) after subsection (1) insert—

"(1A) The Treasury must appoint an independent person ("the investigator") to be responsible for the conduct of investigations in accordance with the complaints scheme.";

(d) omit subsection (4);

(e) in subsection (5), in the opening words, for "regulators" substitute "Treasury".

(3) In section 87 (investigation of complaints)—

(a) in subsection (9A), after paragraph (b) insert—

"(ba) for the regulator's response under paragraph (b) to include a summary of—

(i) the cases in which the regulator decided not to follow any relevant recommendations, and

(ii) the reasons for not following those recommendations;";

(b) in subsection (9B), after paragraph (e) insert—

"(f) such other matters as the Treasury may from time to time direct.";

(c) after subsection (9B) insert—

"(9C) In subsection (9A)(ba) the reference to "relevant recommendations", in relation to the regulator's response in respect of an annual report, is a reference to—

(a) any recommendations to the regulator contained in that annual report, and

(b) any recommendations to the regulator contained in final reports relating to individual complaints given during the period to which that annual report relates."

77 Politically exposed persons: money laundering and terrorist financing

(1) The Treasury must exercise the power conferred by section 49 of the Sanctions and Anti-Money Laundering Act 2018 (power of appropriate Minister to make regulations about money laundering etc) for the purpose mentioned in subsection (2).

(2) The purpose is to make provision amending Part 3 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) ("the 2017 Regulations") (customer due diligence) so as to secure the result required by subsection (3).

(3) The result required by this subsection is that, where a customer is a domestic PEP, or a family member or a known close associate of a domestic PEP—

(a) the starting point for the relevant person's assessment under regulation 35(3) of the 2017 Regulations is that the customer presents a lower level of risk than a non-domestic PEP, and

(b) if no enhanced risk factors are present, the extent of enhanced customer due diligence measures to be applied in relation to that customer is less than the extent to be applied in the case of a non-domestic PEP.

(4) In this section—

(a) "customer" includes a potential customer;

(b) "domestic PEP" means a politically exposed person entrusted with prominent public functions by the United Kingdom;

(c) "enhanced risk factors", in relation to a customer who is a domestic PEP or a family member or a known close associate of that domestic PEP, mean risk factors other than the customer's position as a domestic PEP or as a family member or known close associate of that domestic PEP;

(d) "non-domestic PEP" means a politically exposed person who is not a domestic PEP;

(e) the following terms have the same meaning as in regulation 35(12) of the 2017 Regulations—

"politically exposed person" or "PEP";

"family member";

"known close associate".

(5) Section 55 of the Sanctions and Anti-Money Laundering Act 2018 (Parliamentary procedure for regulations) does not apply to regulations made in compliance with the duty imposed by subsection (1).

(6) Regulations made in compliance with the duty imposed by subsection (1)—

(a) are subject to the negative procedure, and

(b) must be laid before Parliament in accordance with paragraph (a) before the end of 12 months starting with the day on which this section comes into force.

(7) The Treasury must, before the end of 6 months starting with the day on which this section comes into force, lay before Parliament a statement setting out what progress has been made towards making the regulations in compliance with the duty imposed by subsection (1).

(8) The duty in subsection (7) does not apply where the regulations have been laid before Parliament in accordance with subsection (6)(a) before the end of 6 months starting with the day on which this section comes into force.

78 Politically exposed persons: review of guidance

(1) The FCA must review its guidance on politically exposed persons ("PEPs") given under section 139A of FSMA 2000 and in compliance with the requirements under regulation 48 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) ("the 2017 Regulations").

(2) The review required under subsection (1) must include—

(a) an assessment of the extent to which the guidance is followed by those persons to whom it is given under regulation 48 of the 2017 Regulations, and

(b) in the light of that assessment, consideration as to whether the guidance remains appropriate or whether it should be revised.

(3) The FCA must—

(a) before the end of 3 months beginning with the day on which this section comes into force, publish an update on the FCA's plan for the review required under subsection (1), and

(b) before the end of 12 months beginning with the day on which this section comes into force—

(i) publish the conclusions of the review, and

(ii) where the FCA concludes that the guidance should be revised, publish draft revised guidance for consultation.

(4) Publication as required by subsection (3) must be in the way appearing to the FCA to be best calculated to bring the publication to the attention of persons likely to be affected by it.

(5) The FCA is not required under this section to publish any information whose publication would be against the public interest.

(6) In this section—

(a) "domestic PEP" means a politically exposed person entrusted with prominent public functions by the United Kingdom;

(b) the following terms have the same meaning as in regulation 35(12) of the 2017 Regulations—

"politically exposed person" or "PEP";

"family member";

"known close associate".

79 Forest risk commodities: review

(1) The Treasury must carry out a review to assess the extent to which regulation of the UK financial system is adequate for the purpose of eliminating the financing of the use of prohibited forest risk commodities.

(2) In subsection (1) the reference to "prohibited" forest risk commodities is a reference to forest risk commodities, or products derived from forest risk commodities, the use of which is prohibited by paragraph 2 of Schedule 17 to the Environment Act 2021.

(3) Having carried out a review the Treasury must lay before Parliament, and publish, a report stating—

(a) the conclusions of the review, and

(b) the steps the Treasury consider it appropriate to take to improve the effectiveness of the regulation of the UK financial system for the purpose stated in subsection (1).

(4) Subsection (3) must be complied with before the end of 9 months beginning with the day on which the first regulations under paragraph 1 of Schedule 17 to the Environment Act 2021 are made.

(5) In this section—

"forest risk commodities" has the same meaning as in Schedule 17 to the Environment Act 2021;

"UK financial system" has the same meaning as in FSMA 2000 (see section 1I of that Act).

PART 7

GENERAL

80 Interpretation

(1) In this Act—

"domestic law" means the law of England and Wales, Scotland or Northern Ireland;

"enactment" means an enactment whenever passed or made and includes—

(a) an enactment contained in any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made under an Act,

(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,

(c) an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru,

(d) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and

(e) any retained direct EU legislation;

"FCA" means the Financial Conduct Authority;

"FSMA 2000" means the Financial Services and Markets Act 2000;

"modify" includes amend, repeal or revoke (and related expressions are to be read accordingly);

"Payment Systems Regulator" means the body established under section 40(1) of the Financial Services (Banking Reform) Act 2013;

"PRA" means the Prudential Regulation Authority;

"primary legislation" means—

(a) an Act of Parliament,

(b) an Act of the Scottish Parliament,

(c) an Act or Measure of Senedd Cymru, or

(d) Northern Ireland legislation;

"subordinate legislation" means—

(a) any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made under any Act, or

(b) any instrument made under an Act of the Scottish Parliament, a Measure or Act of Senedd Cymru or Northern Ireland legislation,

and includes any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made on or after IP completion day under any retained direct EU legislation.

(2) In this Act references to anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 include references to any modifications made by or under that Act, this Act or by other domestic law from time to time, of the rights, powers, liabilities, obligations, restrictions, remedies or procedures concerned.

81 Pre-commencement consultation

(1) Subsection (2) applies to a duty to consult, so far as applying to or in connection with, or otherwise arising in consequence of, a provision of an enactment as modified or made—

(a) by or under this Act, or

(b) by or under another Act as amended by this Act.

(2) The duty to consult may be satisfied by things done before the commencement date (as well as by things done on or after that date).

(3) The "commencement date", in relation to a provision of an enactment as modified or made—

(a) by or under this Act, or

(b) by or under another Act as amended by this Act,

means the date on which the modification or making of that provision comes into force.

82 Financial provision

There is to be paid out of money provided by Parliament any expenditure incurred by the Treasury for any purpose in connection with this Act.

83 Power to make consequential provision

(1) The Treasury may by regulations make provision that is consequential on this Act or on any provision made under it.

(2) The power to make regulations under this section may (among other things) be exercised by modifying any provision made by or under an enactment (including this Act).

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

(4) Regulations under this section to which subsection (3) does not apply are subject to the negative procedure.

84 Regulations

(1) Any power to make regulations under this Act is exercisable by statutory instrument.

(2) Any power to make regulations under this Act includes power—

(a) to make provision by reference to any rules or other instruments as they have effect from time to time;

(b) to make different provision for different purposes;

(c) to make supplementary, incidental, consequential, transitional, transitory or saving provision.

(3) Where regulations under this Act are subject to "the affirmative procedure", the regulations may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

(4) Where regulations under this Act are subject to "the negative procedure", the statutory instrument containing them is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Any provision that may be made by regulations under this Act, or under any other enactment, subject to the negative procedure may be made in regulations, made under or by virtue of this Act, subject to the affirmative procedure.

(6) If an instrument, or a draft of an instrument, containing regulations under this Act would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.

(7) This section does not apply to regulations under section 86, except so far as making provision by virtue of section 4(1).

85 Extent

(1) This Act extends to England and Wales, Scotland and Northern Ireland except as provided by subsection (2).

(2) The following extend to England and Wales and Scotland only—
- (a) section 73;
- (b) section 74.

(3) The power under section 430(3) of FSMA 2000 may be exercised so as to extend to any of the Channel Islands or the Isle of Man any amendment or repeal made by or under this Act of any part of that Act (with or without modifications).

86 Commencement

(1) The following come into force on the day on which this Act is passed—
- (a) this Part;
- (b) Part 5 of Schedule 2, and section 2 so far as relating to that Part;
- (c) section 20(3), so far as conferring a power to make regulations;
- (d) section 24;
- (e) section 56 and Schedule 10, so far as conferring power to make regulations;
- (f) section 77;
- (g) section 78.

(2) The following provisions come into force two months after Royal Assent—
- (a) section 22;
- (b) section 52;
- (c) section 54;
- (d) section 55;
- (e) section 58;
- (f) section 60;
- (g) section 61;
- (h) section 62;
- (i) section 72;
- (j) section 74.

(3) The rest of this Act comes into force on such day as the Treasury may by regulations appoint.

(4) Different days may be appointed for different purposes.

(5) The Treasury may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.

(6) The power to make regulations under subsection (5) includes power to make different provision for different purposes.

(7) Regulations under this section are to be made by statutory instrument.

87 Short title

This Act may be cited as the Financial Services and Markets Act 2023.

SCHEDULES

SCHEDULE 1

Section 1

REVOCATION OF RETAINED EU LAW RELATING TO FINANCIAL SERVICES

PART 1

RETAINED DIRECT PRINCIPAL EU LEGISLATION

Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001

Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies

Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No 1060/2009 on credit rating agencies

Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps

Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009

Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds

Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds

Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012

Regulation (EU) No 248/2014 of the European Parliament and of the Council of 26 February 2014 amending Regulation (EU) No 260/2012 as regards the migration to Union-wide credit transfers and direct debits

Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC

Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012

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

depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012

Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products

Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions

Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds

Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012

Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014

Regulation (EU) 2016/1033 of the European Parliament and of the Council of 23 June 2016 amending Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) No 596/2014 on market abuse and Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories

Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC

Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds

Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms

Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012

Regulation (EU) 2019/113 of the European Central Bank of 7 December 2018 amending Regulation (EU) No 1333/2014 concerning statistics on the money markets (ECB/2018/33)

Regulation (EU) 2019/630 of the European Parliament and of the Council of 17 April 2019 amending Regulation (EU) No 575/2013 as regards minimum loss coverage for non-performing exposures

Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012

Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector

Regulation (EU) 2019/2155 of the European Central Bank of 5 December 2019 amending Regulation (EU) No 1163/2014 on supervisory fees (ECB/2019/37)

Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds

Regulation (EU) 2020/605 of the European Central Bank of 9 April 2020 amending Regulation (EU) 2015/534 on reporting of supervisory financial information (ECB/2020/22)

Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment

PART 2

SUBORDINATE LEGISLATION

Official Listing of Securities (Change of Competent Authority) Regulations 1991 (S.I. 1991/2000)

Credit Institutions (Protection of Depositors) Regulations 1995 (S.I. 1995/1442)

Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979)

Official Listing of Securities (Change of Competent Authority) Regulations 2000 (S.I. 2000/968)

Financial Markets and Insolvency (Settlement Finality) (Revocation) Regulations 2001 (S.I. 2001/1349)

Financial Services (EEA Passport Rights) Regulations 2001 (S.I. 2001/1376)

Financial Services and Markets Act 2000 (Communications by Auditors) Regulations 2001 (S.I. 2001/2587)

Public Offers of Securities (Exemptions) Regulations 2001 (S.I. 2001/2955)

Financial Services and Markets Act 2000 (Official Listing of Securities) Regulations 2001 (S.I. 2001/2956)

Financial Services and Markets Act 2000 (Official Listing of Securities) (Transitional Provisions) Order 2001 (S.I. 2001/2957)

Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775)

Electronic Commerce Directive (Financial Services and Markets) (Amendment) Regulations (S.I. 2002/2015)

Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (S.I. 2002/2706)

Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473)

Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2066)

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

Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353)

Credit Institutions (Reorganisation and Winding up) Regulations 2004 (S.I. 2004/1045)

Financial Conglomerates and Other Financial Groups Regulations 2004 (S.I. 2004/1862)

Financial Services (Distance Marketing) Regulations 2004 (S.I. 2004/2095)

Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 (S.I. 2004/3379)

Building Societies Act 1986 (International Accounting Standards and Other Accounting Amendments) Order 2004 (S.I. 2004/3380)

Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381)

Prospectus Regulations 2005 (S.I. 2005/1433)

Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005 (S.I. 2005/1998)

Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Modification of Powers) Regulations 2006 (S.I. 2006/2975)

Financial Services (EEA State) Regulations 2007 (S.I. 2007/108)

Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126)

Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Amendment No. 2) Regulations 2007 (S.I. 2007/2160)

Financial Services and Markets Act 2000 (Motor Insurance) Regulations 2007 (S.I. 2007/2403)

Reinsurance Directive Regulations 2007 (S.I. 2007/3253)

Financial Services and Markets Act 2000 (Reinsurance Directive) Order 2007 (S.I. 2007/3254)

Financial Services and Markets Act 2000 (Reinsurance Directive) Regulations 2007 (S.I. 2007/3255)

Regulated Covered Bonds Regulations 2008 (S.I 2008/346)

Friendly Societies Act 1992 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1140)

Building Societies (Accounts and Related Provisions) (Amendment) Regulations 2008 (S.I. 2008/1143)

Friendly Societies (Accounts and Related Provisions) (Amendment) Regulations 2008 (S.I. 2008/1144)

Financial Services and Markets Act 2000 (Market Abuse) Regulations 2008 (S.I. 2008/1439)

The Financial Services and Markets Act 2000 (Amendment of section 323) Regulations 2008 (S.I. 2008/1469)

Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519)

Regulated Covered Bonds (Amendment) Regulations 2008 (S.I. 2008/1714)

Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008 (S.I. 2008/1950)

Definition of Financial Instrument Order 2008 (S.I. 2008/3053)

Takeover Code (Concert Parties) Regulations 2008 (S.I. 2008/3073)

Payment Services Regulations 2009 (S.I. 2009/209)

Financial Services and Markets Act 2000 (Controllers) Regulations 2009 (S.I. 2009/534)

Financial Services and Markets Act 2000 (Amendment) Regulations 2009 (S.I. 2009/2461)

Payment Services (Amendment) Regulations 2009 (S.I. 2009/2475)

Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2009 (S.I. 2009/3075)

Financial Services and Markets Act 2000 (Market Abuse) Regulations 2009 (S.I. 2009/3128)

Credit Rating Agencies Regulations 2010 (S.I. 2010/906)

Consumer Credit (EU Directive) Regulations 2010 (S.I. 2010/1010)

Consumer Credit (Disclosure of Information) Regulations 2010 (S.I. 2010/1013)

Consumer Credit (Agreements) Regulations 2010 (S.I. 2010/1014)

Financial Services and Markets Act 2000 (Amendments to Part 18A etc) Regulations 2010 (S.I. 2010/1193)

Consumer Credit (Amendment) Regulations 2010 (S.I. 2010/1969)

Consumer Credit (Amendment) Regulations 2011 (S.I. 2011/11)

Electronic Money Regulations 2011 (S.I. 2011/99)

Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613)

Prospectus Regulations 2011 (S.I. 2011/1668)

Recognised Auction Platforms Regulations 2011 (S.I. 2011/2699)

Financial Services and Markets Act 2000 (Market Abuse) Regulations 2011 (S.I. 2011/2928)

Financial Services (Omnibus 1 Directive) Regulations 2012 (S.I. 2012/916)

Prospectus Regulations 2012 (S.I. 2012/1538)

Payment Services Regulations 2012 (S.I. 2012/1791)

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2012 (S.I. 2012/1906)

Undertakings for Collective Investment in Transferable Securities (Amendment) Regulations 2012 (S.I 2012/2015)

Financial Services and Markets Act 2000 (Short Selling) Regulations 2012 (S.I. 2012/2554)

Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (S.I 2012/3122)

Financial Services and Markets Act 2000 (Qualifying Provisions) Order 2013 (S.I. 2013/419)

Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504)

Prospectus Regulations 2013 (S.I. 2013/1125)

Financial Conglomerates and Other Financial Groups (Amendment) Regulations 2013 (S.I. 2013/1162)

Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388)

Credit Rating Agencies (Civil Liability) Regulations 2013 (S.I. 2013/1637)

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

Alternative Investment Fund Managers (Amendment) Regulations 2013 (S.I. 2013/1797)

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881)

Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908)

Companies and Partnerships (Accounts and Audit) Regulations 2013 (S.I. 2013/2005)

Capital Requirements Regulations 2013 (S.I. 2013/3115)

Financial Services and Markets Act 2000 (Qualifying Provisions) (No.2) Order 2013 (S.I. 2013/3116)

Capital Requirements (Country-by-Country Reporting) Regulations 2013 (S.I. 2013/3118)

Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) Order 2014 (S.I. 2014/208)

Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) (No. 2) Order 2014 (S.I. 2014/506)

Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014 (S.I. 2014/894)

Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (Amendment) Regulations 2014 (S.I. 2014/905)

Alternative Investment Fund Managers Order 2014 (S.I. 2014/1292)

Central Securities Depositories Regulations 2014 (S.I. 2014/2879)

Financial Services and Markets Act 2000 (Market Abuse) Regulations 2014 (S.I. 2014/3081)

Payments to Governments and Miscellaneous Provisions Regulations 2014 (S.I. 2014/3293)

Bank Recovery and Resolution Order 2014 (S.I. 2014/3329)

Banking Act 2009 (Mandatory Compensation Arrangements Following Bail-in) Regulations 2014 (S.I. 2014/3330)

Building Societies (Bail-in) Order 2014 (S.I. 2014/3344)

Bank Recovery and Resolution (No. 2) Order 2014 (S.I. 2014/3348)

Banking Act 2009 (Restriction of Special Bail-in Provision, etc.) Order 2014 (S.I. 2014/3350)

Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486)

Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (Amendment) Regulations 2015 (S.I. 2015/348)

Payment Services (Amendment) Regulations 2015 (S.I. 2015/422)

Deposit Guarantee Scheme Regulations 2015 (S.I. 2015/486)

Solvency 2 Regulations 2015 (S.I. 2015/575)

Mortgage Credit Directive Order 2015 (S.I. 2015/910)

Transparency Regulations 2015 (S.I. 2015/1755)

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 3) Order 2015 (S.I. 2015/1863)

European Long-term Investment Funds Regulations 2015 (S.I. 2015/1882)

Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911)

Payment Accounts Regulations 2015 (S.I 2015/2038)

Undertakings for Collective Investment in Transferable Securities Regulations 2016 (S.I. 2016/225)

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392)

Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680)

Financial Services and Markets Act 2000 (Transparency of Securities Financing Transactions and of Reuse) Regulations 2016 (S.I 2016/715)

Financial Services and Markets Act 2000 (Qualifying EU Provisions) (Amendment) Order 2016 (S.I. 2016/936)

Financial Services and Markets (Disclosure of Information to the European Securities and Markets Authority etc. and Other Provisions) Regulations 2016 (S.I. 2016/1095)

Companies Act 2006 (Distributions of Insurance Companies) Regulations 2016 (S.I. 2016/1194)

Bank Recovery and Resolution Order 2016 (S.I. 2016/1239)

Financial Services & Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (2017/488)

Data Reporting Services Regulations 2017 (S.I. 2017/699)

Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701)

Payment Services Regulations 2017 (S.I. 2017/752)

Central Securities Depositories Regulations 2017 (S.I. 2017/1064)

Packaged Retail and Insurance-based Investment Products Regulations 2017 (S.I 2017/1127)

Payment Systems and Services and Electronic Money (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/1173)

Risk Transformation Regulations 2017 (S.I. 2017/1212)

Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255)

Alternative Investment Fund Managers (Amendment) Regulations 2018 (S.I. 2018/134)

Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135)

Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546)

Money Market Funds Regulations 2018 (S.I. 2018/698)

Financial Services and Markets Act 2000 (Prospectus and Markets in Financial Instruments) Regulations 2018 (S.I. 2018/786)

Consumer Credit (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1038)

Friendly Societies (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1039)

Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115)

EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1149)

Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1184)

Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1187)

Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1199)

Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1201)

Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244)

Deposit Guarantee Scheme and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1285)

Securitisation Regulations 2018 (S.I. 2018/1288)

Bank of England (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1297)

Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1318)

Central Securities Depositories (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1320)

Short Selling (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1321)

Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1394)

Capital Requirements (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1401)

Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403)

Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/38)

Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/264)

Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/266)

Interchange Fee (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/284)

Market Abuse (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/310)

Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/325)

Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328)

Venture Capital Funds (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/333)

Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335)

Long-term Investment Funds (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/336)

Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I 2019/341)

Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/343)

Money Market Funds (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/394)

Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019 (S.I 2019/403)

Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405)

Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019 (S.I. 2019/407)

Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/541)

Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/542)

Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019 (S.I. 2019/574)

Financial Regulators' Powers (Technical Standards etc.) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/576)

Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/589)

Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632)

Mortgage Credit (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/656)

Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657)

Securitisation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/660)

Payment Accounts (Amendment) (EU Exit) Regulations 2019 (S.I 2019/661)

Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/662)

Insurance Distribution (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/663)

Uncertificated Securities (Amendment and EU Exit) Regulations 2019 (S.I. 2019/679)

Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/680)

Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/681)

Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/707)

Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/710)

Financial Services and Markets (Insolvency) (Amendment of Miscellaneous Enactments) Regulations 2019 (S.I. 2019/755)

Proxy Advisors (Shareholders' Rights) Regulations 2019 (S.I 2019/926)

Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1010)

Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (Amendment) Regulations 2019 (S.I. 2019/1031)

Financial Services and Markets Act 2000 (Prospectus) Regulations 2019 (S.I. 2019/1043)

Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/1212)

Capital Requirements (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1232)

Risk Transformation and Solvency 2 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1233)

Prospectus (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1234)

Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1361)

Cross-Border Distribution of Funds, Proxy Advisors, Prospectus and Gibraltar (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1370)

Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 3) Regulations 2019 (S.I. 2019/1390)

Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416)

Financial Services (Consequential Amendments) Regulations 2020 (S.I. 2020/56)

Financial Services and Markets Act 2000 (Central Counterparties, Investment Exchanges, Prospectus and Benchmarks) (Amendment) Regulations 2020 (S.I. 2020/117)

Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2020/628)

Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (S.I. 2020/646)

Equivalence Determinations for Financial Services (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1055)

Payment Services and Electronic Money (Amendment) Regulations 2020 (S.I. 2020/1275)

Financial Services and Economic and Monetary Policy (Consequential Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1301)

Bearer Certificates (Collective Investment Schemes) Regulations 2020 (S.I. 2020/1346)

Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I 2020/1350)

Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020 (S.I. 2020/1385)

Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1406)

Solvency 2 (Credit Risk Adjustment) Regulations 2021 (S.I. 2021/463)

Capital Requirements Regulation (Amendment) (EU Exit) Regulations 2021 (S.I. 2021/558)

Financial Markets and Insolvency (Transitional Provision) (EU Exit) (Amendment) Regulations 2021 (S.I. 2021/782)

Markets in Financial Instruments, Benchmarks and Financial Promotions (Amendment) (EU Exit) Regulations 2021 (S.I. 2021/1074)

Capital Requirements Regulation (Amendment) Regulations 2021 (S.I. 2021/1078)

Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2021 (S.I. 2021/1252)

Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376)

Solvency 2 (Group Supervision) (Amendment) Regulations 2021 (S.I. 2021/1408)

Financial Services and Markets Act 2000 (Qualifying Provisions) (Amendment) Order 2022 (S.I. 2022/1252)

PART 3

EU TERTIARY LEGISLATION ETC

Any provision made under any of the following EU directives—

(a) Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems;

(b) Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions;

(c) Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities;

(d) Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements;

(e) Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services;

(f) Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate;

(g) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market;

(h) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers;

(i) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities;

(j) Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability;

(k) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions;

(l) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance;

(m) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers;

(n) Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate;

(o) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms;

(p) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property;

(q) Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes;

(r) Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse;

(s) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms;

(t) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments;

(u) Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features;

(v) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market;

(w) Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution;

(x) Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision;

(y) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms.

Any provision made under an instrument listed in Part 1 (including any such instrument as it had effect in EU law before IP completion day).

Any provision made under an instrument listed in Part 2.

Any technical standards to which Chapter 2A of Part 9A of FSMA 2000 applies.

PART 4

PRIMARY LEGISLATION

In FSMA 2000—

(a) section 55J(7A) to (7C);

(b) section 55KA;
(c) section 137A(6) and (7);
(d) section 137G(6) and (7);
(e) Chapter 2A of Part 9A;
(f) Part 9D;
(g) section 192XA(3) and (4);
(h) section 300H(4) (as inserted by section 11(2) of this Act);
(i) section 367(3)(za);
(j) paragraph 10(5) of Schedule 17A.

PART 5

OTHER EU-DERIVED LEGISLATION

EU-derived legislation not falling within Parts 1 to 3 so far as relating to financial services or markets (other than instruments excluded from this Part by regulations under section 1(5)).

For this purpose—

(a) "EU-derived legislation" means—
  (i) retained direct EU legislation,
  (ii) subordinate legislation so far as it contains provision for the purpose of implementing, or otherwise in relation to, an EU directive or any other obligation that was created or arose by or under the EU Treaties before IP completion day,
  (iii) subordinate legislation made under section 3, or
  (iv) subordinate legislation made under the European Union (Withdrawal) Act 2018;
(b) EU-derived legislation is to be taken as "relating" to financial services or markets if its purpose, or one of its main purposes, is for or in connection with the imposition of requirements on the provision of financial services or the operation of financial markets or exchanges.

SCHEDULE 2

Section 2

TRANSITIONAL AMENDMENTS

PART 1

AMENDMENTS TO THE MARKETS IN FINANCIAL INSTRUMENTS REGULATION

Introductory

1 Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments is amended in accordance with this Part of this Schedule.

Transparency requirements for equities

2 In Article 3 (pre-trade transparency requirements), after paragraph 3 insert—

"4. The FCA may make technical standards to specify—

(a) the range of bid and offer prices, or designated market-maker quotes, to be made public for each class of financial instrument concerned in accordance with paragraph 1, and

(b) the depth of trading interest at those prices.

5. In making technical standards under paragraph 4 the FCA must take into account the necessary calibration for the different types of trading systems referred to in paragraph 2."

3 For Article 4 substitute—

"Article 4

Waivers for equity instruments

1. The FCA may by rules provide for the obligation for market operators and investment firms operating a trading venue to make public the information referred to in Article 3(1) to be waived in such cases as the rules may specify.

2. The power to make rules under paragraph 1 is exercisable only if the FCA considers that the rules are necessary or expedient for the purpose of advancing one or more of its operational objectives referred to in section 1B(3) of FSMA.

3. Rules under paragraph 1 may impose whatever conditions on the application of the waiver the FCA considers appropriate.

4. The FCA must monitor the application of waivers conferred by rules under paragraph 1 (in particular the effect of such waivers on price formation and compliance with any conditions imposed under paragraph 3).

5. The FCA may by notice given to a market operator, or an investment firm operating a trading venue, withdraw a waiver granted by rules made under this Article if the FCA considers that the waiver is being used—

(a) in a way that deviates from its original purpose, or

(b) to avoid requirements imposed by the rules."

4 After Article 4 insert—

"Article 4a

Suspension of waivers

1. The FCA may direct that a waiver provided for by Article 4 is suspended (whether entirely or to such an extent as may be specified in the direction) if it considers that continued use of the waiver would unduly harm price formation.

2. The suspension of a waiver by virtue of a direction under paragraph 1 may not have effect for a period longer than six months, but this does not prevent the giving of a further direction under that paragraph by which the suspension is renewed for a period no longer than six months.

3. The FCA may give a direction under paragraph 1 only if it considers that the direction is necessary to advance the FCA's integrity objective under section 1D of FSMA.

4. In deciding whether to give a direction under paragraph 1 to suspend (or renew the suspension of) a waiver the FCA must have regard to—
   (a) its consumer protection objective under section 1C of FSMA and its competition objective under section 1E of FSMA,
   (b) relevant information produced under Article 3, or under equivalent pre-trading transparency requirements in other jurisdictions, about the use of the waiver in the United Kingdom, or under equivalent waiver arrangements in any other country, in relation to the financial instrument concerned, and
   (c) any other relevant information available in relation to trading volumes in the financial instrument concerned, whether in the United Kingdom or elsewhere.

5. The FCA must consult the Treasury before giving a direction under paragraph 1.

6. The requirement to consult under paragraph 5 does not apply if the FCA considers it necessary by reason of urgency to give the direction before such consultation can be carried out in order to protect—
   (a) the transparency of the price formation process, or
   (b) the interests of consumers (within the meaning of section 1G of FSMA)."

5 Omit Article 5 (volume cap mechanism).

6 (1) Article 14 (obligation for systematic internalisers to make public firm quotes in respect of shares etc) is amended as follows.

(2) In paragraph 6A, omit "referred to in Article 5(3A)".

(3) After paragraph 6C insert—

"6D. The reference in paragraph 6A to the "transitional period" is a reference to—
   (a) the period of four years beginning with IP completion day; or
   (b) the period ending on such day as the Treasury may direct, if that period ends earlier than the period mentioned in sub-paragraph (a).

6E. In deciding whether to issue a direction under paragraph 6D(b), the Treasury must take into account whether the FCA is able to carry out its functions relating to transparency under this Regulation and its implementing measures."

Transparency requirements for fixed income instruments and derivatives etc

7 For Articles 8 to 11 substitute—

"Article 8

Pre-trade transparency requirements for fixed income instruments and derivatives etc

1. The FCA must by rules impose pre-trade transparency requirements on relevant persons in respect of the trading of such relevant instruments as the FCA determines should be subject to the requirements for the purposes of furthering—
   (a) efficient price formation, and
   (b) the fair evaluation of financial assets.

2. The power to make rules under paragraph 1 is exercisable only if the FCA considers that the rules are necessary or expedient for the purpose of advancing one or more of its operational objectives referred to in section 1B(3) of FSMA.

3. In making rules under paragraph 1 the FCA must (in particular) have regard to the impact that requirements imposed by the rules will have on market liquidity.

4. The reference in paragraph 1 to "pre-trade transparency requirements" is a reference to whatever kinds of requirements relating to transparency before trading that the rules may specify, for example—
   (a) requirements to make public matters specified in the rules in respect of the trading of relevant instruments;
   (b) requirements about the means by which, and the times at which, such matters are to be made public;
   (c) requirements for the giving of access to the arrangements employed for the making of such matters public;
   (d) requirements in respect of relevant instruments that are traded in a standardised and frequent way, if not subject to disclosure requirements of the kind mentioned in sub-paragraph (a).

5. Rules under paragraph 1 may—
   (a) impose requirements by reference to the types of trading system used;
   (b) impose different requirements in relation to different types of trading system;
   (c) provide for the criteria by which the determination referred to in that paragraph is to be made.

6. In this Article and in Article 9—

   "relevant instruments" means bonds, structured finance products, emission allowances, derivatives and instruments included within package orders;

   "relevant persons" means market operators and investment firms operating a trading venue.

Article 9

Article 8: waivers or suspensions for fixed income instruments and derivatives etc

1. Rules under Article 8 may include provision for any requirements imposed by the rules to be waived in such cases, and to such extent, as may be determined by or under the rules.

2. Rules that include provision under paragraph 1 may impose whatever conditions on the application of a waiver the FCA considers appropriate.

3. The FCA may by notice given to a relevant person withdraw a waiver granted by virtue of paragraph 1 if the FCA considers that the waiver is being used—
   (a) in a way that deviates from its original purpose, or
   (b) to avoid requirements provided for in the rules.

4. The FCA may by notice suspend requirements imposed by rules under Article 8 in the case of such relevant instruments, or class of relevant instruments, as may be specified in the notice.

5. A notice under paragraph 4 suspending requirements—
   (a) may be given subject to conditions;
   (b) must specify the period for which the suspension has effect;
   (c) must be published in the manner appearing to the FCA to be best calculated to bring it to the attention of persons likely to be affected by it;
   (d) may be varied or withdrawn by the giving of a further notice (and sub-paragraph (c) applies to any such notice).

6. The power under paragraph 4 to suspend requirements is exercisable only if the FCA considers that it is necessary to do so to advance the FCA's integrity objective under section 1D of FSMA.

7. In deciding whether to exercise the power under paragraph 4 to suspend requirements the FCA must also have regard to—
   (a) its consumer protection objective under section 1C of FSMA, and
   (b) its competition objective under section 1E of FSMA.

Article 10

Post-trade transparency requirements for fixed income instruments and derivatives etc

1. The FCA must by rules impose post-trade transparency requirements on relevant persons in respect of the trading of such relevant instruments as the FCA determines should be subject to the requirements for the purposes of furthering—
   (a) efficient price formation, and
   (b) the fair evaluation of financial assets.

2. The power to make rules under paragraph 1 is exercisable only if the FCA considers that the rules are necessary or expedient for the purpose of advancing one or more of its operational objectives referred to in section 1B(3) of FSMA.

3. In making rules under paragraph 1 the FCA must (in particular) have regard to the impact that requirements imposed by the rules will have on market liquidity.

4. The reference in paragraph 1 to "post-trade transparency requirements" is a reference to whatever kinds of requirements relating to transparency after the execution of trades that the rules may specify, for example—
   (a) requirements to make public matters specified in the rules in respect of the trading of relevant instruments (including the price, volume and time of transactions);
   (b) requirements about the means by which, and the times at which, such matters are to be made public;
   (c) requirements for the giving of access to the arrangements employed for the making of such matters public.

5. Rules under paragraph 1 may—
   (a) impose requirements by reference to the types of trading system used;
   (b) impose different requirements in relation to different types of trading system;
   (c) provide for the criteria by which the determination referred to in that paragraph is to be made.

6. In this Article and in Article 11—

   "relevant instruments" means bonds, structured finance products, emission allowances, derivatives and instruments included within package transactions;

   "relevant persons" means market operators and investment firms operating a trading venue.

Article 11

Article 10: deferrals and suspensions for fixed income instruments and derivatives etc

1. Rules under Article 10 may include provision authorising relevant persons to defer complying with requirements imposed by the rules in such cases and to such extent as the rules may specify.

2. Rules made by virtue of paragraph 1 may impose whatever conditions on the application of a deferral the FCA considers appropriate.

3. The FCA may by notice suspend any requirements imposed by rules under Article 10 in the case of such relevant instruments, or class of relevant instruments, as may be specified in the notice.

4. A notice under paragraph 3 suspending requirements—
   (a) may be given subject to conditions;
   (b) must specify the period for which the suspension has effect;
   (c) must be published in the manner appearing to the FCA to be best calculated to bring it to the attention of persons likely to be affected by it;
   (d) may be varied or withdrawn by the giving of a further notice (and sub-paragraph (c) applies to any such notice).

5. The power under paragraph 3 to suspend requirements is exercisable only if the FCA considers that it is necessary to do so to advance the FCA's integrity objective under section 1D of FSMA.

6. In deciding whether to exercise the power under paragraph 3 to suspend requirements the FCA must also have regard to—
   (a) its consumer protection objective under section 1C of FSMA, and
   (b) its competition objective under section 1E of FSMA."

Systematic internalisers and other investment firms

8 In Article 2(1) (definitions), for points (12) and (12A) substitute—

"(12) "systematic internaliser" means an investment firm which deals on own account when executing client orders outside a UK regulated market, UK MTF or UK OTF without operating a multilateral system and which—
   (a) does so on an organised, frequent, systematic and substantial basis, or
   (b) has chosen to opt in to the systematic internaliser regime;

(12A) for the purposes of point (12), whether dealing is taking place on a basis that is organised, frequent, systematic and substantial is to be determined in accordance with rules made by the FCA (but the power to make such rules is subject to any provision contained in regulations in respect of point (12) under paragraph 2 of this Article);".

9 In Article 17a (tick sizes), in the second paragraph, omit "large in scale".

10 For Article 18 substitute—

"Article 18

Systematic internalisers: pre-trade transparency requirements for fixed income instruments and derivatives etc

1. The FCA may by rules impose pre-trade transparency requirements on systematic internalisers in respect of the trading of such relevant instruments as the FCA determines should be subject to the requirements for the purposes of furthering—
   (a) efficient price formation, and
   (b) the fair evaluation of financial assets.

2. The power to make rules under paragraph 1 is exercisable only if the FCA considers that the rules are necessary or expedient for the purposes of advancing one or more of its operational objectives referred to in section 1B(3) of FSMA.

3. In making rules under paragraph 1 the FCA must (in particular) have regard to the impact that requirements imposed by the rules will have on market liquidity.

4. The reference in paragraph 1 to "pre-trade transparency requirements" is a reference to whatever kinds of requirements relating to transparency before trading that the rules may specify, for example—

(a) requirements to make public matters specified in the rules in respect of the trading of relevant instruments (for example, quotes);

(b) requirements about the means by which, and the times at which, such matters are to be made public or otherwise disclosed;

(c) requirements relating to the determination of quotes in relation to relevant instruments;

(d) requirements in relation to the entering of transactions on the basis of such quotes.

5. Rules under paragraph 1 may include provision for quotes issued by systematic internalisers to be updated or withdrawn in such cases as the rules may determine.

6. In this Article and in Article 18a "relevant instruments" means bonds, structured finance products, emission allowances, derivatives and instruments included within package orders.

Article 18a

Article 18: waivers and suspensions for fixed income instruments and derivatives etc

1. Rules under Article 18 may include provision for any requirements imposed by those rules to be waived in such cases, and to such extent, as may be determined by or under the rules.

2. Rules that include provision under paragraph 1 may impose whatever conditions on the application of a waiver as the FCA considers appropriate.

3. The FCA may by notice given to a systematic internaliser withdraw a waiver granted by virtue of paragraph 1 if the FCA considers that the waiver is being used—

(a) in a way that deviates from its original purpose, or

(b) to avoid requirements imposed by the rules.

4. The FCA may by notice suspend requirements imposed by rules under Article 18 in the case of such relevant instruments, or class of relevant instruments, as may be specified in the notice.

5. A notice under paragraph 4 suspending requirements—

(a) may be given subject to conditions;

(b) must specify the period for which the suspension has effect;

(c) must be published in the manner appearing to the FCA to be best calculated to bring it to the attention of persons likely to be affected by it;

(d) may be varied or withdrawn by the giving of a further notice (and sub-paragraph (c) applies to any such notice).

6. The power under paragraph 4 to suspend requirements is exercisable only if the FCA considers that it is necessary to do so to advance the FCA's integrity objective under section 1D of FSMA.

7. In deciding whether to exercise the power under paragraph 4 to suspend requirements the FCA must also have regard to—

(a) its consumer protection objective under section 1C of FSMA, and

(b) its competition objective under section 1E of FSMA.

Article 18b

Notification and publication requirements

1. Firms meeting the definition of systematic internaliser must notify the FCA of that fact in accordance with rules made by the FCA.

2. The FCA must publish, and keep up to date, a list of the systematic internalisers for which it has received notification under paragraph 1."

11 For Article 21 substitute—

"Article 21

Investment firms (including systematic internalisers): post-trade transparency requirements for fixed income instruments and derivatives etc

1. The FCA must by rules impose post-trade transparency requirements on relevant persons in respect of the trading of such relevant instruments as the FCA determines should be subject to the requirements for the purposes of furthering—
   (a) efficient price formation, and
   (b) the fair evaluation of financial assets.

2. The power to make rules under paragraph 1 is exercisable only if the FCA considers that the rules are necessary or expedient for the purpose of advancing one or more of its operational objectives referred to in section 1B(3) of FSMA.

3. In making rules under paragraph 1 the FCA must (in particular) have regard to the impact that requirements imposed by the rules will have on market liquidity.

4. The reference in paragraph 1 to "post-trade transparency requirements" is a reference to whatever kinds of requirements relating to transparency after the conclusion of trades that the rules may specify, for example—
   (a) requirements to make public matters specified in the rules in respect of the trading of relevant instruments (including the price, volume and time of transactions);
   (b) requirements about the means by which, and the times at which, such matters are to be made public.

5. Rules under paragraph 1 may—
   (a) provide for the criteria by which the determination referred to in that paragraph is to be made;
   (b) in cases where both parties to a transaction are relevant persons, provide for which of those parties is to comply with the requirements imposed by the rules.

6. Rules under paragraph 1 may include provision authorising relevant persons to defer complying with requirements imposed by the rules in such cases and to such extent as the rules may specify.

7. Rules made by virtue of paragraph 6 may impose whatever conditions on the application of a deferral as the FCA considers appropriate.

8. The FCA may by notice suspend requirements imposed by rules under paragraph 1 in the case of such relevant instruments, or class of relevant instruments, as may be specified in the notice.

9. A notice under paragraph 8 suspending requirements—
   (a) may be given subject to conditions;
   (b) must specify the period for which the suspension has effect;
   (c) must be published in the manner appearing to the FCA to be best calculated to bring it to the attention of persons likely to be affected by it;
   (d) may be varied or withdrawn by the giving of a further notice (and sub-paragraph (c) applies to any such notice).

10. The power under paragraph 8 to suspend requirements is exercisable only if the FCA considers that it is necessary to do so to advance the FCA's integrity objective under section 1D of FSMA.

11. In deciding whether to exercise the power under paragraph 8 to suspend requirements the FCA must also have regard to—
   (a) its consumer protection objective under section 1C of FSMA, and
   (b) its competition objective under section 1E of FSMA.

12. In this Article—

"relevant instruments" means bonds, structured finance products, emission allowances, derivatives and instruments included within package transactions;

"relevant persons" means investment firms which, either on own account or on behalf of clients, conclude transactions in relevant instruments."

12 In Article 22 (providing information for the purposes of transparency and other calculations), in paragraph 1 omit "and for determining whether an investment firm is a systematic internaliser".

Share trading obligation

13 (1) Article 23 (trading obligation for investment firms) is amended as follows.

(2) Omit paragraphs 1, 1A, 3, 4, 5 and 6.

(3) In the title, for "Trading obligation for investment firms" substitute "Investment firms operating internal matching systems".

14 In Article 1(2E), omit "Article 23,".

Derivatives trading obligation

15 In Article 1(3) (subject matter and scope), for "financial counterparties" to the end substitute "counterparties that are relevant financial counterparties, or relevant non-financial counterparties, for the purposes of Article 28 (see paragraph 1A of that Article)".

16 (1) Article 28 (obligation to trade on regulated markets, MTFs or OTFs) is amended as follows.

(2) In paragraph 1, for the words from the beginning to "Article 10(1)(b) of Regulation (EU) No 648/2012" substitute "Relevant financial counterparties and relevant non-financial counterparties shall conclude transactions which are neither intragroup transactions as defined in Article 3 of Regulation (EU) No 648/2012 nor transactions covered by the transitional provisions in Article 89 of that Regulation with other relevant financial counterparties or other relevant non-financial counterparties".

(3) After paragraph 1 insert—

"1A. For the purposes of this Article—

(a) "financial counterparty" and "non-financial counterparty" have the same meanings as in Regulation (EU) No 648/2012 (see Article 2(8) and (9) of that Regulation);

(b) a financial counterparty is a "relevant" financial counterparty if it is subject to the clearing obligation referred to in Article 4 of Regulation (EU) No 648/2012;

(c) a non-financial counterparty is a "relevant" non-financial counterparty in respect of derivative contracts pertaining to any asset classes if it is subject to that clearing obligation in respect of derivative contracts pertaining to those asset classes."

17 After Article 28 insert—

"Article 28a

Suspension or modification of Article 28

1. The FCA may direct that the trading obligation imposed by Article 28(1) and (2) (the "DTO") is suspended or modified in accordance with the direction if it considers that the suspension or modification—

(a) is necessary for the purpose of preventing or mitigating disruption to financial markets, and

(b) advances one or more of the FCA's operational objectives referred to in section 1B(3) of FSMA.

2. A direction under this Article may provide for the DTO to be suspended or modified—

(a) in the case of all persons to whom the DTO applies or only to such persons or descriptions of persons as are specified in the direction;

(b) in the case of all derivatives to which the DTO applies or only to such derivatives, or classes of derivatives, as are specified in the direction;

(c) by reference to the venues on which derivative transactions are concluded under the DTO;

(d) subject to conditions.

3. In giving a direction under this Article the FCA must have regard to its competitiveness and growth objective in section 1EB of FSMA.

4. Before giving a direction under this Article the FCA must consult—

(a) the Bank of England, and

(b) the PRA, if the PRA has an interest in the proposed direction.

The PRA has an interest in a proposed direction if the direction—

(a) might affect the PRA's discharge of its functions conferred by or under FSMA or any other enactment, or

(b) would apply to a PRA-authorised person or to a person connected with a PRA-authorised person (and for this purpose "PRA authorised person" has the same meaning as in FSMA and "connected" is to be read in accordance with section 165(11) of FSMA).

5. A direction under this Article may be given only with the consent of the Treasury.

The Treasury must notify the FCA in writing whether or not consent is given before the end of four weeks beginning with the day on which the proposed direction is submitted to the Treasury for consent (and if the notice is not given before the end of that period the Treasury are deemed to have consented).

6. Where the FCA gives a direction under this Article it must also prepare a statement setting out—

(a) an explanation of the purpose of the direction, including (where relevant) the ways in which the direction will further the purpose mentioned in paragraph 1(a) and advance one or more of the objectives mentioned in paragraph 1(b), and

(b) such guidance in connection with the direction that the FCA considers appropriate.

7. The FCA must publish a direction given under this Article together with the statement mentioned in paragraph 6.

8. The Treasury must lay before Parliament a copy of a direction given under this Article and the statement mentioned in paragraph 6.

9. If a direction under this Article has effect for a period lasting longer than 6 months, the FCA must publish, as soon as reasonably practicable after the end of each applicable 6 month period, a statement with an explanation as to why the conditions in paragraph 1(a) and (b) continue to be met.

The reference to each "applicable 6 month period" is to—

(a) the period of 6 months beginning with the day on which the direction is given, and

(b) each subsequent 6 month period during which the direction continues in effect.

10. Publication under paragraph 7 or 9 is to be in whatever way appears to the FCA to be best calculated to bring the publication to the attention of the public.

11. A direction under this Article may be varied or revoked by the giving of a further direction under this Article.

12. For the purposes of this Article—

(a) the variation of a direction by virtue of paragraph 11 is not to be treated as the giving of a new direction for the purposes of paragraph 9;

(b) paragraphs 6(b) and 9 do not apply to the revocation of a direction by virtue of paragraph 11.

13. The functions of the FCA under this Article are not "relevant functions" for the purposes of section 84 of the Financial Services Act 2012 (arrangements for the investigation of complaints relating to exercise of relevant functions of regulators)."

18 For Article 31 substitute—

"Article 31

Risk reduction services

1. The FCA may by rules provide for one or more relevant obligations not to apply—
   (a) in relation to activities or transactions of a specified description carried out as part of a risk reduction service, or
   (b) to persons of a specified description in the provision of such services.
2. The power to make rules under paragraph 1 is exercisable only if the FCA considers that the rules are necessary or expedient for the purpose of advancing one or more of its operational objectives referred to in section 1B(3) of FSMA.
3. The risk reduction services to which the rules relate may only be post-trade services that do not give rise to any transactions that contribute to the price discovery process.
4. The rules—
   (a) may describe the risk reduction services to which they relate in whatever way the FCA considers appropriate (subject to paragraph 3);
   (b) may provide for whatever conditions or exceptions the FCA considers appropriate.
5. Before making rules under paragraph 1 the FCA must consult the Bank of England.
6. In this Article—

   "relevant obligation" means—
   (a) the best execution obligation in section 11.2A of the Conduct of Business sourcebook;
   (b) the obligation in rule 5AA.1.1 in the Market Conduct sourcebook;
   (c) the trading obligation imposed by Article 28 of this Regulation;

   "risk reduction service" means a service provided to two or more counterparties to derivatives transactions for the purpose of reducing non-market risks in derivatives portfolios (including, for example, portfolio compression);

   "specified" means specified in the rules."

Consequential amendments relating to this Part

19 In Article 2(1) (definitions), in point (17) ("liquid market")—
   (a) omit paragraph (a);

(b) in paragraph (b), for "Articles 4, 5 and 14" substitute "Article 14".

20 In Article 12(1) after "accordance with" insert ", or with rules made under,".

21 In Article 13(1) after "accordance with" insert ", or with rules made under,".

22 Omit Article 19.

23 In Article 26(3), omit "and Article 21(5)(a)".

24 In Article 47(1A)(a), after "Regulation" insert "or in rules made by the FCA under this Regulation".

25 In Article 50B (FCA directions), omit "Article 5, Article 9 or".

26 (1) Article 50C (other FCA directions) is amended as follows.

(2) In paragraph 2 after "Article" insert "4a or".

(3) In paragraph 3 after "Article" insert "4a or".

(4) In paragraph 4 after "Article" insert "4a or".

27 (1) Article 50D (FCA rules) is amended as follows.

(2) In paragraph 1—

(a) for "Article 46(6B) or 48A" substitute "this Regulation";

(b) for "modification in paragraph 3" substitute "modifications in paragraphs 2A and 3".

(3) In paragraph 2(b) after "damages)" insert "and section 138EA (matters to consider when making rules)".

(4) After paragraph 2 insert—

"2A. In its application to rules made under Article 31, section 138I has effect as if the reference to the PRA in subsection (1)(a) were a reference to the Bank of England."

(5) In paragraph 3, for the words after "authorised persons" substitute "included a reference to persons who are not authorised persons but to whom any of the rules made by the FCA under this Regulation apply".

PART 2

AMENDMENTS TO THE EUROPEAN MARKET INFRASTRUCTURE REGULATION

28 Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories is amended in accordance with this Part of this Schedule.

29 After Article 6a insert—

"Article 6b

Risk reduction services

1. The Bank of England may by rules provide for the clearing obligation referred to in Article 4(1) in respect of a class or classes of OTC derivatives not to apply—

(a) in relation to activities or transactions of a specified description carried out as part of a risk reduction service, or

(b) to persons of a specified description in the provision of such services.

2. The power to make rules under paragraph 1 is exercisable only if the Bank of England considers that the rules are necessary or expedient for the purpose of advancing the financial stability objective under section 2A of the Bank of England Act 1998.

3. The risk reduction services to which the rules relate may only be post-trade services that do not give rise to any transactions that contribute to the price discovery process.

4. The rules—

(a) may describe the risk reduction services to which they relate in whatever way the Bank of England considers appropriate (subject to paragraph 3);

(b) may provide for whatever conditions or exceptions the Bank of England considers appropriate.

5. In this Article—

"risk reduction service" means a service provided to two or more counterparties to derivatives transactions for the purpose of reducing non-market risks in derivatives portfolios (including, for example, portfolio compression);

"specified" means specified in the rules."

30 After Article 84b insert—

"Article 84c

Bank of England rules

1. The provisions of Part 9A of FSMA (rules and guidance) listed in paragraph 2 apply in relation to rules made by the Bank of England under Article 6b, subject to the modifications in paragraphs 3 to 5.

2. The provisions are—

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

(b) sections 138A and 138B (modification or waiver of rules), but with the omission of subsection (4)(b) of section 138A and subsection (4) of section 138B;

(c) section 138C (evidential provisions);

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

(e) section 138F (notification of rules);

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

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

(h) section 138J (consultation by the PRA), but with the omission of subsections (2)(c) and (5)(b);

(i) section 138L (consultation: general exceptions), but with the omission of subsection (1).

3. Any reference in any of those provisions to an authorised person is to be read as a reference to a person to whom the clearing obligation referred to in Article 4(1) applies.

4. Section 138J(2)(d) has effect in relation to rules proposed to be made by the Bank of England as if the reference to the compatibility of the proposed rules with the provisions mentioned in section 138J(2)(d) were a reference to their compatibility with the Bank of England's financial stability objective under section 2A of the Bank of England Act 1998.

5. Section 138L(2) has effect as if for paragraphs (a) and (b) there were substituted "be prejudicial to financial stability"."

PART 3

AMENDMENTS TO THE EU SECURITISATION REGULATION

Introductory

31 Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 ("the EU Securitisation Regulation 2017") is amended in accordance with this Part of this Schedule.

STS equivalent non-UK securitisations

32 (1) Article 2 (definitions) is amended as follows.

(2) Omit point (A8) (definition of "third country").

(3) Before point (1) insert—

"(A9) 'STS equivalent non-UK securitisation' means a securitisation of a description in relation to which a country or territory outside the United Kingdom is designated by regulations under Article 28A;

(A10) 'territory' includes the European Union and any other international organisation or authority comprising countries or territories;".

(4) In point (5) (definition of "sponsor"), for "third country" substitute "country or territory outside the United Kingdom".

33 After Article 28 (third party verifying STS compliance) insert—

"CHAPTER 4A

STS EQUIVALENT NON-UK SECURITISATIONS

Designation of country or territory in relation to securitisations

1. The Treasury may by regulations designate a country or territory in relation to securitisations of descriptions specified in the regulations.

2. The power in paragraph 1 is exercisable only if the Treasury are satisfied that the law and practice which applies in the country or territory, in relation to securitisations of the descriptions specified, has equivalent effect (taken as a whole) to applicable UK law.

3. "Applicable UK law" means:
   (a) this Regulation, as it applies to STS securitisations, and
   (b) the Securitisation Regulations 2018 (S.I. 2018/2188), as those regulations apply to STS securitisations.

4. In making regulations under paragraph 1, the Treasury must have regard, in addition to any other matters they consider relevant, to whether the FCA (and, where relevant, the PRA) have established effective cooperation arrangements with the competent authorities of the country or territory.

5. When considering whether to make, vary or revoke regulations under paragraph 1, the Treasury may, by making a request in writing to the FCA, require the FCA to prepare a report on the law and practice of a country or territory outside the United Kingdom, or particular aspects of such law and practice, in relation to securitisations of descriptions specified in the request.

6. If the Treasury request a report under paragraph 5, the FCA must:
   (a) consult the PRA when preparing the report, and
   (b) provide the Treasury with the report within such reasonable period as may be specified in the request (or such other period as may be agreed with the Treasury).

7. Regulations under paragraph 1 may—
   (a) specify matters that a person carrying out a due-diligence assessment required by Article 5(3) must consider with regard to an STS equivalent non-UK securitisation;
   (b) in relation to a matter specified, specify the extent to which the person may rely on the matter.

8. Regulations under this Article are to be made by statutory instrument.

9. Such regulations may—
   (a) contain incidental, supplemental, consequential and transitional provision; and
   (b) make different provision for different purposes.

>10.. Regulations under this Article are subject to annulment in pursuance of a resolution of either House of Parliament."

Minor and consequential amendments

34 The EU Securitisation Regulation 2017 is amended in accordance with paragraphs 35 to 37.

35 In Article 4 (requirements for securitisation special purpose entities)—

(a) in the words before point (a), for "third country" substitute "country or territory outside the United Kingdom";

(b) in point (a), for "third country" substitute "country or territory";

(c) in point (b), for "third country", in both places, substitute "country or territory".

36 (1) Article 5 (due-diligence requirements for institutional investors) is amended as follows.

(2) In paragraph 1, for "third country", in each place, substitute "country or territory outside the United Kingdom".

(3) In paragraph 3, after point (d) insert—

"(da) with regard to an STS equivalent non-UK securitisation, such matters as may be specified in regulations under Article 28A (and may rely on such matters to such extent as may be specified)."

37 (1) Article 46 (Treasury review) is amended as follows.

(2) In paragraph 1, omit the second subparagraph.

(3) In paragraph 2—

(a) in point (a), omit "in the Union";

(b) omit point (e).

38 In Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, in Article 242 (definitions), in point (10) (meaning of "simple, transparent and standardised securitisation" or "STS securitisation")—

(a) the words from "a securitisation" to the end become paragraph (a);

(b) at the end of that paragraph, insert "; or

(b) an STS equivalent non-UK securitisation as defined in point (A9) of Article 2 of Regulation (EU) 2017/2402;".

39 In Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), in Article 1 (definitions), in point 18b (meaning of "STS securitisation")—

(a) the words from "a securitisation" to the end become paragraph (a);

(b) at the end of that paragraph, insert "; or

(b) an STS equivalent non-UK securitisation within the meaning of Article 2(A9) of Regulation (EU) 2017/2402;".

40 In Article 11(1) of Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (eligible securitisations and ABCPs), after paragraph (c) insert—

"(d) an STS equivalent non-UK securitisation as defined in point (A9) of Article 2 of Regulation (EU) 2017/2402."

41 The Securitisation Regulations 2018 (S.I. 2018/1288) are amended in accordance with paragraphs 42 and 43.

42 In regulation 2 (interpretation), in the definition of "SRUP", in paragraph (c), for "third country" substitute "country or territory outside the United Kingdom".

43 In regulation 4 (designation of competent authorities), in paragraph (1)(b), for "third country" substitute "country or territory outside the United Kingdom".

PART 4

AMENDMENTS TO THE FINANCIAL SERVICES AND MARKETS ACT 2000 (MARKETS IN FINANCIAL INSTRUMENTS) REGULATIONS 2017

Introductory

44 The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701) is amended in accordance with this Part of this Schedule.

Position limits for commodity derivatives

45 In Part 3 (position limits and position management controls in commodity derivatives), before regulation 16 insert—

FCA rules relating to position limits

"15A(1) The FCA may by rules require relevant persons to establish and apply—

(a) position limits in respect of specified commodity derivatives, or commodity derivatives of a specified class, that are traded on a trading venue, and

(b) position management controls in relation to the trading of commodity derivatives.

(2) The power to make rules under paragraph (1) is exercisable only if the FCA considers that the rules are necessary or expedient for the purpose of advancing one or more of its operational objectives referred to in section 1B(3) of the Act.

(3) In making rules under paragraph (1) the FCA must have regard to its competitiveness and growth objective in section 1EB of the Act.

(4) Rules under paragraph (1) may provide for matters that relevant persons must have regard to when establishing position limits, or position management controls, under requirements imposed by the rules.

(5) Rules under paragraph (1) may provide for exemptions from the requirements imposed by the rules to such extent, and in such cases, as the rules may specify.

(6) The reference in paragraph (1)(b) to position management controls includes (for example) arrangements under which—

(a) the open interest positions of persons can be monitored;

(b) information and documentation can be obtained from persons about the size of positions entered into;

(c) requirements can be imposed on persons to terminate or reduce positions or to provide liquidity.

(7) The following provisions of Part 9A of the Act (rules and guidance) apply in relation to rules made by the FCA under this regulation as they apply in relation to rules made by the FCA under that Part of the Act, subject to the modification in paragraph (8)—

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

(b) Chapter 2 (modification, waiver, contravention and procedural provisions), with the exception of sections 138D (actions for damages) and 138EA (matters to consider when making rules);

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

(8) Section 137T applies as if the reference to authorised persons were a reference to relevant persons to whom rules under this regulation apply.

(9) A requirement imposed by rules under this regulation is, for the purposes of section 296 of the Act (regulator's power to give directions), to be treated as an obligation imposed under the Act.

(10) In this Part "relevant persons" means market operators and investment firms operating a trading venue."

46 (1) Regulation 16 (FCA duty to establish position limits) is amended as follows.

(2) In the title, for "duty" substitute "power".

(3) In paragraph (1)—

(a) for "must" substitute "may";

(b) for the words from "traded" to the end substitute "to which requirements imposed by rules under regulation 15A apply".

(4) After that paragraph insert—

"(1A) The power to give a direction under paragraph (1) is exercisable only if the FCA considers that it is necessary to give the direction for the purpose of advancing one or more of its operational objectives referred to in section 1B(3) of the Act.

(1B) Position limits established by virtue of regulation 15A do not apply to the extent that position limits established by virtue of this regulation apply instead."

(5) Omit paragraphs (2), (3) and (5).

47 (1) Regulation 27 (FCA power to require information) is amended as follows.

(2) In paragraph (1), in both of sub-paragraphs (a) and (b) omit "or over the counter contract".

(3) In paragraph (2) omit "or over the counter contract".

(4) For paragraph (3) substitute—

"(3) For the purposes of this regulation a commodity derivative is a "relevant" commodity derivative if—

(a) requirements imposed by rules under regulation 15A apply to the commodity derivative (or to commodity derivatives of that class), or

(b) it is a commodity derivative (or falls within a class of commodity derivatives) to which the FCA is considering making such requirements apply."

48 (1) Regulation 28 (FCA power to intervene) is amended as follows.

(2) In paragraph (1), in the words before sub-paragraph (a), for the words from "the exercise" to "regulation" substitute "advancing one or more of its operational objectives referred to in section 1B(3) of the Act".

(3) In paragraph (2) after "established" insert "in accordance with rules made under regulation 15A or".

(4) In paragraph (3) omit "or an economically equivalent over the counter contract".

49 In regulation 29 (interpretation of Part 3), in paragraph (2)—

(a) before the definition of "position" insert—

""market operator" has the same meaning as in the markets in financial instruments regulation;";

(b) after the definition of "position limit" insert—

""relevant person" has the meaning given by regulation 15A(10)".

Consequential revocations relating to this Part

50 The following provisions are revoked—

(a) paragraph 7BA of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (S.I. 2001/995);

(b) in the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017—

(i) regulation 17;

(ii) regulation 18;

(iii) regulation 19;

(iv) regulation 25;

(v) regulation 29(1);

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

(i) in Article 26(3), the last sentence;

(ii) in Schedule 3, paragraphs 31 and 32;

(d) Commission Delegated Regulation (EU) 2017/591 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives.

PART 5

AMENDMENTS TO THE CENTRAL COUNTERPARTIES (AMENDMENT, ETC., AND TRANSITIONAL PROVISION) (EU EXIT) REGULATIONS 2018

51 (1) Regulation 19B of the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1184) is amended as follows.

(2) In paragraph (2) for "one year" substitute "3 years and 6 months".

(3) After paragraph (3) insert—

"(4) The period determined by the Bank of England in a particular case under paragraph (2) (whenever determined) may be varied by the making of a subsequent determination.

(5) Paragraph (6) applies where—

(a) a central counterparty (A) was taken to be recognised pursuant to Article 25 of the EMIR regulation in accordance with regulation 19A(3), and

(b) A ceased to be taken to be so recognised by virtue of the relevant period in the case of A having expired before the commencement day.

(6) The Bank of England—

(a) may determine that the relevant period in the case of A is (in spite of its expiry) to be treated, as from the making of the determination, as not having expired, and

(b) may accordingly exercise its power under this regulation to vary the relevant period on or after the commencement day.

(7) In paragraphs (5) and (6) "the commencement day" means the day on which Part 5 of Schedule 2 to the Financial Services and Markets Act 2023 comes into force.

(8) Paragraphs (5) to (7) expire at the end of 31 December 2025 (but without affecting any variation of a relevant period made under this regulation by virtue of paragraph (6)(b) before that time)."

PART 6

AMENDMENTS RELATING TO CRITICAL THIRD PARTIES

52 The Electronic Money Regulations 2011 (S.I. 2011/99) are amended in accordance with paragraphs 53 to 62.

53 In regulation 48 (monitoring and enforcement), after paragraph (1)(a) insert—

"(aa) electronic money institutions on whom requirements are imposed by or under section 312R of the 2000 Act are complying with them;".

54 In regulation 49 (reporting requirements), after paragraph (1) insert—

"(1A) An electronic money institution must give the Authority such information in respect of its compliance with requirements imposed by or under section 312R of the 2000 Act as the Authority may direct."

55 In regulation 50 (public censure), after "Regulations" insert "or, in the case of an electronic money institution, section 312R of the 2000 Act".

56 In regulation 51 (financial penalties)—

(a) omit "or" at the end of paragraph (1)(a), and

(b) after that paragraph insert—

"(aa) an electronic money institution who has contravened a requirement imposed on it by or under section 312R of the 2000 Act; or".

57 In regulation 52 (suspending authorisation etc), in paragraph (1) after "Regulations" insert "or by or under section 312R of the 2000 Act".

58 In regulation 54 (injunctions)—

(a) omit "or" at the end of paragraph (1)(a);

(b) after paragraph (1)(b) insert—

"(c) that there is a reasonable likelihood that an electronic money institution will contravene a requirement imposed on it by or under section 312R of the 2000 Act; or

(d) that an electronic money institution has contravened such a requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,";

(c) in paragraph (2)(a) after "Regulations" insert "or an electronic money institution has contravened a requirement imposed on it by or under section 312R of the 2000 Act";

(d) in the words after paragraph (2)(b), after "that person" insert "or institution";

(e) omit "or" at the end of paragraph (3)(a);

(f) after that paragraph insert—

"(aa) in the case of an electronic money institution, contravened a requirement imposed on it by or under section 312R of the 2000 Act; or";

(g) in paragraph (3)(b) for "such a requirement" substitute "a requirement described in sub-paragraph (a) or (aa)".

59 In regulation 55 (power to require restitution), in paragraph (1) after "requirement," insert "or, where the electronic money issuer is an electronic money institution, has contravened a requirement imposed on it by or under section 312R of the 2000 Act, or been knowingly concerned in the contravention of such a requirement,".

60 In regulation 57 (restitution orders), in paragraph (1) after "requirement," insert "or, where the electronic money issuer is an electronic money institution, has contravened a requirement imposed on it by or under section 312R of the 2000 Act, or been knowingly concerned in the contravention of such a requirement,".

61 In regulation 58 (complaints), in paragraph (1)—

(a) the words from "a requirement" to the end become sub-paragraph (a), and

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

(b) a requirement imposed by or under section 312R of the 2000 Act has been breached by an electronic money institution."

62 In Schedule 3 (application and modification of legislation)—

(a) in paragraph 1(b), in the inserted text substituting section 66A of the 2000 Act—

(i) in subsection (1), the words from "a contravention" to the end become sub-paragraph (a),

(ii) after that paragraph insert ", or

(b) a contravention of a requirement imposed by or under section 312R of the 2000 Act by an electronic money institution.", and

(iii) for subsection (2) substitute—

"(2) "Relevant person" means—

(a) in relation to subsection (1)(a), any person responsible for the management of the electronic money issuer or, where relevant, any person responsible for the management of electronic money issuance by the electronic money issuer, or

(b) in relation to subsection (1)(b), any person responsible for the management of the electronic money institution or, where relevant, any person responsible for the management of electronic money issuance by the electronic money institution.";

(b) in paragraph 3(d)(i), in the inserted subsection (1)(ab), after "2011" insert "or section 312R".

63 The Payment Services Regulations 2017 (S.I. 2017/752) are amended in accordance with paragraphs 64 to 72.

64 In regulation 108 (monitoring and enforcement), after paragraph (1)(a) insert—

"(aa) authorised payment institutions, small payment institutions or registered account information services providers on whom requirements are imposed by or under section 312R of the 2000 Act are complying with them;".

65 In regulation 109 (reporting requirements), after paragraph (1) insert—

"(1A) An authorised payment institution, small payment institution, or registered account information services provider must give the FCA such information as the FCA may direct in respect of its compliance with requirements imposed by or under section 312R of the 2000 Act."

66 In regulation 110 (public censure), after "Regulations" insert "or, in the case of an authorised payment institution, small payment institution, or registered account information services provider, section 312R of the 2000 Act".

67 In regulation 111 (financial penalties)—

(a) omit "or" at the end of paragraph (1)(a), and

(b) after that paragraph insert—

"(aa) an authorised payment institution, small payment institution, or registered account information services provider who has contravened a requirement imposed on it by or under section 312R of the 2000 Act; or".

68 In regulation 113 (injunctions)—

(a) omit "or" at the end of paragraph (1)(a);

(b) after paragraph (1)(b) insert—

"(c) that there is a reasonable likelihood that an authorised payment institution, small payment institution, or registered account information services provider will contravene a requirement imposed on it by or under section 312R of the 2000 Act; or

(d) that an authorised payment institution, small payment institution, or registered account information services provider has contravened such a requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,";

(c) in paragraph (2)(a) after "Regulations" insert "or an authorised payment institution, small payment institution, or registered account information services provider has contravened a requirement imposed on it by or under section 312R of the 2000 Act";

(d) in the words after paragraph (2)(b), after "that person" insert "or institution or provider";

(e) omit "or" at the end of paragraph (3)(a);

(f) after that paragraph insert—

"(aa) in the case of an authorised payment institution, small payment institution, or registered account information services provider contravened a requirement imposed on it by or under section 312R of the 2000 Act; or";

(g) in paragraph (3)(b) for "such a requirement" substitute "a requirement described in sub-paragraph (a) or (aa)".

69 In regulation 114 (power to require restitution), in paragraph (1) after "requirement," insert "or, where the payment service provider is an authorised payment institution, small payment institution, or registered account information services provider, has contravened a requirement imposed on it by or under section 312R of the 2000 Act, or been knowingly concerned in the contravention of such a requirement,".

70 In regulation 116 (restitution orders), in paragraph (1) after "requirement," insert "or, where the payment service provider is an authorised payment institution, small payment institution, or registered account information services provider, has contravened a requirement imposed on it by or under section 312R of the 2000 Act, or been knowingly concerned in the contravention of such a requirement,".

71 In regulation 117 (complaints), in paragraph (1)—

(a) the words from "a requirement" to the end become sub-paragraph (a), and

(b) after that sub-paragraph insert "or

(b) a requirement imposed by or under section 312R of the 2000 Act has been breached by an authorised payment institution, small payment institution, or registered account information services provider."

72 In Schedule 6 (application and modification of legislation)—

(a) in paragraph 1, in the inserted text substituting section 66A of the 2000 Act—

(i) in subsection (1), the words from "a contravention" to the end become sub-paragraph (a), and

(ii) after that paragraph insert "or

(b) a contravention of a requirement imposed by or under section 312R of the 2000 Act by an authorised payment institution, small payment institution, or registered account information services provider.";

(iii) for subsection (2) substitute—

"(2) "Relevant person" means—

(a) in relation to subsection (1)(a), any person responsible for the management of the payment service provider or, where relevant, any person responsible for the management of the payment service provider's payment services activities, or

(b) in relation to subsection (1)(b), any person responsible for the management of the authorised payment institution, small payment institution, or registered account information services provider or, where relevant, any person responsible for the management of the authorised payment institution's, small payment institution's, or registered account information services provider's payment services activities.";

(b) in paragraph 4(e), in the inserted subsection (1)(c), after "2017" insert "or section 312R".

SCHEDULE 3

Section 8

NEW SCHEDULE 6B TO FSMA 2000

"SCHEDULE 6B

DESIGNATED ACTIVITIES

Introductory

1 The matters with respect to which provision may be made under section 71K in respect of activities include (but are not limited to) those described in general terms in this Schedule.

Derivatives

2 Activities related to entering into derivative contracts (including those contracts not cleared by a central counterparty).

3 Holding positions in commodity derivatives.

Short selling

4 Engaging in short selling in relation to specified financial instruments ("shorted instruments") including where—

(a) a person enters into a transaction which creates, or relates to, another financial instrument, and

(b) the effect (or one of the effects) of the transaction is to confer a financial advantage on that person in the event of a decrease in the price or value of the shorted instrument.

Securitisation

5 Acting as one of the following in a securitisation—

(a) an originator,

(b) a sponsor,

(c) an original lender, or

(d) a securitisation special purpose entity.

6 Selling a securitisation position to a retail client located in the United Kingdom.

Financial markets

7 Offering securities to the public.

8 Applying for, securing or maintaining the admission of securities to trading on a securities market.

Using a benchmark

9 Issuing an instrument which references a benchmark.

10 Determining the amount payable under an instrument or financial contract by reference to a benchmark or otherwise being a party to a financial contract which references a benchmark.

11 Measuring the performance of an investment fund through a benchmark.

Contributing to a benchmark

12 Acting as a "benchmark contributor" including persons in the United Kingdom or a third country.

13 Contributing data to a regulated benchmark administrator for the purpose of the administrator determining a benchmark."

SCHEDULE 4

Section 13

FMI SANDBOXES

Participation

1 (1) Eligibility for participation in the FMI sandbox arrangements for FMI entities and persons other than FMI entities.

(2) The requirements mentioned in sub-paragraph (1) may be framed by reference to—

(a) the description of persons who carry on activities;

(b) the description of activities carried on by persons;

(c) the relationship of persons with FMI entities.

(3) Application or other procedures for participating in the FMI sandbox arrangements.

(4) Information to be supplied by persons wishing to participate in the FMI sandbox arrangements for the purposes of assessing eligibility.

(5) Information to be supplied by persons participating in the FMI sandbox arrangements for the purposes of notifying other persons of their participation.

Technology

2 The particular kinds of technology that may be used under the FMI sandbox arrangements for the purposes of assessing their efficiency or effectiveness.

Practices

3 (1) The particular kinds of practices that may be adopted under the FMI sandbox arrangements for the purposes of assessing their efficiency or effectiveness.

(2) The practices referred to in sub-paragraph (1) include practices adopted in the issuance, trading or settlement of financial instruments in a way not otherwise possible or practicable as a result of requirements imposed by relevant enactments.

Financial instruments

4 (1) Descriptions of financial instrument ("the FMI sandbox instruments") that may be traded under the FMI sandbox arrangements.

(2) The forms that the FMI sandbox instruments may take for the purposes of trading as part of the FMI sandbox arrangements.

(3) Limitations or prohibitions on the trading of the FMI sandbox instruments, or of other instruments that are converted from, or are otherwise linked to, the FMI sandbox instruments.

(4) Limitations (whether by reference to number, value or another metric) on the amount of FMI sandbox instruments permitted for trading under the FMI sandbox arrangements.

(5) References in this paragraph to the trading of FMI sandbox instruments include references to their settlement.

Settlement of payments

5 (1) How payments are to be settled in respect of transactions taking place under the FMI sandbox arrangements.

(2) Provision under sub-paragraph (1) includes provision as to cash settlement or whatever other forms of settlement the provision may specify.

Requirements

6 (1) Requirements applicable—

(a) to persons participating in the FMI sandbox arrangements, and

(b) to other persons in connection with such arrangements.

(2) Provision under this paragraph includes provision conferring powers on the appropriate regulator to make rules or technical standards applicable for the purposes of the FMI sandbox arrangements.

Cooperation

7 Duties of the appropriate regulators to cooperate with each other for the purposes of implementing and operating the FMI sandbox arrangements.

Transparency and reporting

8 (1) Publication of specified details of the FMI sandbox arrangements by the Treasury or the appropriate regulator (or both).

(2) Duties of appropriate regulators to provide the Treasury with information about the operation of the FMI sandbox arrangements.

(3) Requirements imposed by virtue of this paragraph are in addition to the requirement imposed by section 14.

Enforcement

9 (1) How requirements imposed by or under the FMI sandbox arrangements are to be enforced.

(2) Provision under sub-paragraph (1) may be made by—

(a) conferring powers on the appropriate regulator;

(b) applying provisions of FSMA 2000 in relation to enforcement;

(c) imposing other means of enforcement set out in the arrangements.

(3) The powers mentioned in sub-paragraph (2)(a) include powers to—

(a) suspend or terminate a person's participation in the FMI sandbox arrangements;

(b) impose civil penalties.

SCHEDULE 5

Section 20

FINANCIAL PROMOTION: RELATED AMENDMENTS

1 FSMA 2000 is amended as follows.

2 In section 1H (further interpretative provisions for sections 1B to 1G), in subsection (2)(c) after "invitations" insert "or inducements".

3 In section 25 (contravention of section 21), in subsection (2)(a) after "section 21" insert "in accordance with subsection (2A) of that section".

4 In section 55A (application for permission), after subsection (5) insert—

"(6) References in this section to permission under this Part do not include references to permission under section 55NA."

5 (1) Section 55O (imposition of requirements on acquisition of control) is amended as follows.

(2) In subsection (1)(b), after "power" insert "or (as the case may be) the power under section 55NA(5)(b)".

(3) In subsection (2)(a) for "or 55M" substitute ", 55M or 55NA".

(4) In subsection (3), after "PRA-authorised person" insert "and the case does not relate to a requirement that is imposed (or that could be imposed) under section 55NA".

6 In section 55R (persons connected with an applicant), in subsection (1) after paragraph (b) insert—

"(ba) an application for permission under section 55NA,

(bb) whether to vary or cancel permission under section 55NA,".

7 In section 55U (applications under Part 4A), after subsection (3) insert—

"(3A) An application for permission under section 55NA, or for the variation of permission under that section, must contain a statement of the desired permission or variation."

8 In section 55V (determination of applications), in subsection (5)—

(a) omit "or" at the end of paragraph (c);

(b) after paragraph (d) insert ", or

(e) for permission under section 55NA or for the variation or cancellation of permission granted under that section,".

9 (1) Section 55X (determination of applications: warning notices and decision notices) is amended as follows.

(2) In subsection (1)—

(a) omit "or" at the end of paragraph (d);

(b) after paragraph (e) insert—

"(f) to give permission under section 55NA but to exercise its power under subsection (4)(b) of that section, or

(g) to vary permission under section 55NA on the application of an authorised person but to exercise its power under subsection (4)(b) of that section,".

(3) In subsection (4)—

(a) omit "or" at the end of paragraph (e);

(b) after that paragraph insert—

"(ea) to give permission under section 55NA but to exercise its power under subsection (4)(b) of that section,

(eb) to vary permission under section 55NA on the application of an authorised person but to exercise its power under subsection (4)(b) of that section, or".

10 (1) Section 55Y (exercise of own-initiative power: procedure) is amended as follows.

(2) After subsection (1) insert—

"(1A) This section also applies to an exercise of the FCA's power under subsection (5)(b) of section 55NA to vary of its own initiative a permission given under that section to an authorised person ("A").

(1B) References in this section to a regulator's own initiative variation power are to be taken as including the power mentioned in subsection (1A)."

(3) For subsection (4) substitute—

"(4) If either regulator—

(a) proposes to vary a Part 4A permission or to impose or vary a requirement,

(b) varies a Part 4A permission, or imposes or varies a requirement, with immediate effect,

(c) proposes to vary a permission under section 55NA, or

(d) varies permission under section 55NA with immediate effect,

it must give A written notice."

11 (1) Section 55Z (cancellation of Part 4A permission: procedure) is amended as follows.

(2) In the heading, after "permission" insert "or permission under section 55NA".

(3) In subsection (1) after "permission" insert "or permission under section 55NA".

(4) In subsection (2) after "permission" insert "or permission under section 55NA".

12 In section 55Z3 (right to refer matters to the Tribunal), after subsection (2) insert—

"(2A) An authorised person who is aggrieved by the exercise by the FCA of its power under section 55NA(5)(b) may refer the matter to the Tribunal."

SCHEDULE 6

Section 22

DIGITAL SETTLEMENT ASSETS

PART 1

AMENDMENTS TO THE BANKING ACT 2009

1 The Banking Act 2009 is amended as follows.

2 In the heading to Part 5 (payment systems), after "systems" insert "and service providers".

3 In section 181 (overview), after "services" insert ", including".

4 (1) Section 182 (interpretation of payment system) is amended as follows.

(2) In the heading, for ""payment system"" substitute "key terms".

(3) In subsection (1), after "money" insert "or digital settlement assets".

(4) After subsection (4) insert—

"(4A) In subsection (1) "digital settlement asset" means a digital representation of value or rights, whether or not cryptographically secured, that—

(a) can be used for the settlement of payment obligations,

(b) can be transferred, stored or traded electronically, and

(c) uses technology supporting the recording or storage of data (which may include distributed ledger technology).

(4B) In this section, "digital settlement asset" includes a right to, or an interest in, a digital settlement asset."

(5) After subsection (5) insert—

"(5A) In this Part, a "DSA service provider" is a person who provides one or more services in relation to a payment system that includes arrangements using digital settlement assets where—

(a) the person creates or issues the digital settlement assets involved in the payment system,

(b) the person provides services to safeguard, or to safeguard and administer, digital settlement assets including their private cryptographic keys (or means of access),

(c) the person is directly involved in any of the activities mentioned in paragraphs (a) or (b),

(d) the person is a digital settlement asset exchange provider,

(e) the person sets rules, standards, or conditions of access or participation in relation to the payment system, or

(f) the person provides any service that facilitates, or supports, a transfer of money or digital settlement assets to be made using the payment system, including any infrastructure provider in relation to the system.

(5B) In this Part "digital settlement asset exchange provider" means a person who provides one or more of the following services, including as creator or issuer of any of the digital settlement assets, by—

(a) exchanging, or arranging the exchange of—

(i) digital settlement assets for money,

(ii) money for digital settlement assets,

(iii) digital settlement assets and money for digital settlement assets, or

(iv) digital settlement assets and money for money,

(b) exchanging, or arranging the exchange of, one digital settlement asset for another, or

(c) operating an automated process to carry out any of the activities mentioned in paragraphs (a) and (b).

(5C) The Treasury may by regulations amend—

(a) the definition of "digital settlement asset" in subsection (4A);

(b) the definition of "DSA service provider" in subsection (5A);

(c) the definition in section 206AA of a person who provides services connected with a recognised payment system that uses digital settlement assets."

5 (1) Section 183 (interpretation of other expressions) is amended as follows.

(2) In the opening words of paragraph (k) after "system" insert "or to a DSA service provider".

(3) In sub-paragraph (i) of paragraph (k), after "constituting" insert ", or connected with,".

6 In the cross-heading before section 184 (recognition order), after "systems" insert "and service providers".

7 In the heading to section 184 , after "order" insert ": payment system".

8 In section 184, in subsection (4), after "constituting" insert "or connected with".

9 After section 184 insert—

"**184A Recognition order: DSA service provider**

(1) The Treasury may by order ("recognition order") specify a DSA service provider as a recognised DSA service provider for the purposes of this Part.

(2) A recognition order under this section must specify in as much detail as is reasonably practicable the services provided.

(3) The Treasury may not specify a DSA service provider operated solely by the Bank of England."

10 In the heading to section 185 (recognition criteria) after "criteria" insert ": payment system".

11 After section 185 insert—

"**185A Recognition criteria: DSA service provider**

(1) The Treasury may make a recognition order in respect of a DSA service provider only if satisfied that any deficiencies in the services provided by the service provider, or any disruption to the provision of those services, would be likely—

(a) to threaten the stability of, or confidence in, the UK financial system, or

(b) to have serious consequences for business or other interests throughout the United Kingdom.

(2) In considering whether to specify a DSA service provider the Treasury must have regard to—

(a) the value of the services in relation to payment systems that the DSA service provider presently provides or is likely to provide in the future,

(b) the nature of the services in relation to payment systems that the DSA service provider provides,

(c) whether those services or their equivalent could be provided by others, and

(d) the relationship between the DSA service provider and—

(i) operators of payment systems that use digital settlement assets, and

(ii) other DSA service providers."

12 (1) Section 186 (procedure) is amended as follows.

(2) In the opening words of subsection (1) after "system" insert "or a DSA service provider".

(3) After subsection (1)(a) insert—

"(aa) in the case of a recognition order in respect of a DSA service provider, consult the FCA,".

(4) In subsection (1)(b), after "system" insert "or the DSA service provider (as appropriate)".

(5) In subsection (2)(a), for "the operator of which" substitute "or a DSA service provider, where the operator of the system or the provider".

(6) In subsection (2)(b), after "operator" insert "or provider".

(7) In subsection (3), after "system" insert "or a DSA service provider".

13 (1) Section 186A (amendment of recognition order) is amended as follows.

(2) After subsection (2)(a) insert—

"(aa) in the case of a recognition order in respect of a DSA service provider, consult the FCA,".

(3) In subsection (2)(b), after "system" insert "or the recognised DSA service provider (as appropriate)".

(4) In subsection (3)(a), for "the operator of which" substitute "or a DSA service provider, where the operator of the system or the provider".

(5) In subsection (3)(b), after "operator" insert "or provider".

(6) In subsection (4)—

(a) after first "system" insert "or by a recognised DSA service provider",

(b) after second "system" insert "or provider,".

14 (1) Section 187 (de-recognition) is amended as follows.

(2) In subsection (2)—

(a) the words after "satisfied" become paragraph (a),

(b) after that paragraph insert ", or

(b) that the criteria in section 185A are met in respect of the recognised DSA service provider."

(3) After subsection (3)(a) insert—

"(aa) in the case of a recognition order in respect of a DSA service provider, consult the FCA,".

(4) In subsection (3)(b), after "system" insert "or the recognised DSA service provider (as appropriate)".

(5) In subsection (4)(a), for "the operator of which" substitute "or a DSA service provider, where the operator of the system or the provider".

(6) In subsection (4)(b), after "operator" insert "or provider".

(7) In subsection (5), after "system" insert ", or by a recognised DSA service provider".

15 (1) Section 188 (principles) is amended as follows.

(2) In subsection (1)—

(a) the words after "publish" to the second "systems" become paragraph (a);

(b) after that paragraph insert ",

(b) principles to which recognised DSA service providers are to have regard in the provision of services to payment systems (whether or not recognised),";

(c) the words after "and" become paragraph (c);

(d) at end insert "or to such DSA service providers".

16 In section 189 (codes of practice)—

(a) the words after "about" to the first "systems" become paragraph (a);

(b) after that paragraph, insert ",

(b) the provision of services by DSA service providers in relation to payment systems (whether or not recognised), or";

(c) omit "and";

(d) the words after "and" become paragraph (c);

(e) at end insert "or to such DSA service providers".

17 In section 190 (system rules), in subsection (1)(a)—

(a) after "constituting" insert ", or connected with,";

(b) at end insert ", or a DSA service provider".

18 After section 190 insert—

"**190A Service provider rules**

(1) The Bank of England may require a recognised DSA service provider—

(a) to establish rules for the operation of services provided by the recognised DSA service provider;

(b) to establish rules for the operation of services provided by a service provider to the recognised DSA service provider;

(c) to change the rules in a specified way or so as to achieve a specified purpose;

(d) to notify the Bank of any proposed change to the rules;

(e) not to change the rules without the approval of the Bank.

(2) A requirement under subsection (1)(d) or (e) may be general or specific."

19 (1) Section 191 (directions) is amended as follows.

(2) In subsection (1)—

(a) the words after the first "to" to the first "system" become paragraph (a);

(b) after that paragraph insert ",

(b) to a recognised DSA service provider,";

(c) the words after "or" become paragraph (c);

(d) at the end of that paragraph insert "or to such DSA service providers".

(3) In subsection (2)—

(a) in paragraph (a), omit "to the system";

(b) in paragraph (b), omit "to the system".

(4) In subsection (3)—

(a) after "operator" insert ", DSA service provider";

(b) after "operator's" insert ", DSA service provider's".

(5) In subsection (4)(b), after "operator" insert ", DSA service provider".

20 After section 192 (role of FCA and PRA), insert—

"**192A Power of Bank to require FCA to refrain from specified action**

(1) Where the first, second and third conditions are met, the Bank of England 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 powers in relation to—

(a) a recognised payment system that includes arrangements using digital settlement assets, or

(b) a recognised DSA service provider.

(3) The second condition is that the Bank of England is of the opinion that the exercise of the power in the manner proposed may—

(a) threaten the stability of the UK financial system,

(b) have serious consequences for business or other interests in the United Kingdom (including for the payment system or provider in relation to which the powers are proposed to be exercised), or

(c) have an adverse effect on the Bank's ability to act in its capacity as a monetary authority.

(4) The third condition is that the Bank of England is of the opinion that the giving of the direction is necessary in order to avoid an outcome mentioned in subsection (3).

(5) 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.

(6) The direction may be expressed to have effect during a specified period or until revoked.

(7) 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 international obligation of the United Kingdom."

21 (1) Section 193 (inspection) is amended as follows.

(2) In subsection (1)—

(a) after first "system" insert ", a recognised DSA service provider";

(b) after second "system" insert "or such a DSA service provider".

(3) In the opening words of subsection (2)—

(a) after first "system" insert ", or a recognised DSA service provider";

(b) after second "system" insert "or such a DSA service provider".

22 (1) Section 194 (inspection: warrant) is amended as follows.

(2) In subsection (1)(a)—

(a) at end of sub-paragraph (i), omit "or" and insert—

"(ia) a recognised DSA service provider, or";

(b) in sub-paragraph (ii), after "system" insert "or a recognised DSA service provider".

(3) In subsection (2)(a), after "system" insert ", the DSA service provider".

(4) In subsection (3), after "system" insert ", the DSA service provider".

23 (1) Section 195 (independent report) is amended as follows.

(2) In subsection (1)(a), omit "or".

(3) After subsection (1)(b), insert—

"(c) a recognised DSA service provider to appoint an expert to report on the provision of services to payment systems (whether or not recognised), or

(d) a service provider in relation to a recognised DSA service provider to appoint an expert to report on the provision of services to the DSA service provider."

(4) In subsection (2)(a), after "operator" insert ", recognised DSA service provider".

(5) In subsection (2)(b), after "operator" insert ", recognised DSA service provider".

24 In section 196 (compliance failure)—

(a) after first "system" insert ", a recognised DSA service provider";

(b) after second "system" insert "or such a DSA service provider".

25 In section 197 (publication), in subsection (1)—

(a) after first "system" insert ", a recognised DSA service provider";

(b) after second "system" insert "or such a DSA service provider".

26 In section 198 (penalty), in subsection (1)—

(a) after first "system" insert ", a recognised DSA service provider";

(b) after second "system" insert "or such a DSA service provider".

27 (1) Section 199 (closure) is amended as follows.

(2) In subsection (2)—

(a) after "concerned" insert ", the DSA service provider concerned";

(b) after second "system" insert ", providing services,";

(c) after third "system" insert "or recognised DSA service provider".

(3) In subsection (3)(a)—

(a) after first "system" insert ", or DSA service provider";

(b) after second "system" insert ", or a recognised DSA service provider".

(4) In subsection (3A)—

(a) after "system" insert ", or of each recognised DSA service provider,";

(b) after "206A(2)(b)" insert "or 206A(2A)(b) (as the case may be)."

(5) In subsection (4), after "operator" insert ", DSA service provider,".

28 (1) Section 200 (management disqualification) is amended as follows.

(2) In subsection (1), after "system" insert "or from being a DSA service provider".

(3) In subsection (2)—

(a) after first "system" insert ", or a recognised DSA service provider,";

(b) after second "system" insert "or such a DSA service provider".

(4) In subsection (2A)—

(a) after "system" insert ", or of each recognised DSA service provider,";

(b) after "206A(2)(b)" insert "or 206A(2A)(b) (as the case may be)."

29 (1) Section 201 (warning) is amended as follows.

(2) In subsection (1)—

(a) after first "system" insert ", on a DSA service provider,";

(b) after second "system" insert "or such a DSA service provider";

(c) in paragraph (a), after "operator" insert ", DSA service provider";

(d) in paragraph (b), after "operator" insert ", DSA service provider";

(e) in paragraph (d), after "operator" insert ", DSA service provider".

(3) In subsection (1A)—

(a) after first "system" insert "or recognised DSA service provider";

(b) in paragraph (a), after "system" insert ", or DSA service provider";

(c) in paragraph (b), after "operator" insert ", or DSA service provider";

(d) in paragraph (d), after "operator" insert "or DSA service provider".

30 In section 202 (appeal), in subsection (2)—

(a) after first "system" insert "or recognised DSA service provider";

(b) after second "system" insert "or DSA service provider (as the case may be)".

31 (1) Section 202A (injunctions) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (a)—

(i) after first "system" insert ", a recognised DSA service provider,";

(ii) after second "system" insert "or such a DSA service provider";

(b) in the words following paragraph (b), after "operator" insert ", DSA service provider".

(3) In subsection (3)—

(a) in paragraph (a)—

(i) after first "system" insert ", a recognised DSA service provider,";

(ii) after second "system" insert "or such a DSA service provider";

(b) in the words following paragraph (b), after "operator" insert ", DSA service provider,".

32 In section 203 (fees), in subsection (1)—

(a) after first "systems" insert ", recognised DSA service providers,";

(b) after second "systems" insert "or such DSA service providers".

33 After section 203B (annual report) insert—

"**203C Policy statement**

(1) The Bank of England must prepare a statement of the general policy it proposes to follow in relation to its oversight under this Part of —

(a) recognised payment systems that include arrangements using digital settlement assets,

(b) DSA service providers, and

(c) service providers as described in sections 206A and 206AA.

(2) Before issuing a statement of policy under this section, the Bank must consult the FCA.

(3) The Bank must —

(a) publish the statement on its website,

(b) send a copy to the Treasury, and

(c) review the statement from time to time and revise it if necessary (and paragraphs (a) and (b) apply to a revision).

(4) Nothing in this section is to be regarded as preventing the Bank of England from exercising any of its powers under this Part where it considers it necessary to do so by reason of urgency, before it has prepared a statement under this section."

34 (1) Section 204 (information) is amended as follows.

(2) In subsection (1)(a), after "206A(2)(b)" insert "or 206A(2A)(b)".

(3) In subsection (1A)—

(a) after first "system" insert ", a recognised DSA service provider,";

(b) after second "system" insert "or such a DSA service provider".

(4) In subsection (2)—

(a) after first "system" insert ", a recognised DSA service provider,";

(b) after second "system" insert "or such a DSA service provider".

35 (1) Section 205 (pretending to be recognised) is amended as follows.

(2) In the opening words of subsection (1) after "system" insert "or DSA service provider".

(3) In subsection (1)(a), after "system" insert "or provider".

(4) In subsection (1)(b), after "system" insert "or provider".

(5) In subsection (1A), after "system" insert "or recognised DSA service provider".

36 (1) Section 206 (saving for informal oversight) is amended as follows.

(2) In subsection (1)—

(a) after first "systems" insert ", DSA service providers";

(b) after second "systems" insert "or DSA service providers".

(3) In subsection (2)—

(a) after first "systems" insert ", DSA service providers";

(b) after second "systems" insert "or DSA service providers".

37 (1) Section 206A (services forming part of recognised payment systems) is amended as follows.

(2) For the heading substitute "Service providers".

(3) In subsection (1)—

(a) omit the words "persons who are";

(b) the words after "providers" become paragraph (a);

(c) after that paragraph insert ", or

(b) in relation to a recognised DSA service provider."

(4) After subsection (2) insert—

"(2A) A person is a service provider in relation to a recognised DSA service provider if—

(a) the person provides services to the recognised DSA service provider, and

(b) the person is specified as a person within paragraph (a) by the Treasury in the recognition order made in respect of the DSA service provider.

(2B) A payment system that includes arrangements using digital settlement assets is a service provider in relation to a recognised DSA service provider if—

(a) the system provides services to the recognised DSA service provider, and

(b) the system is specified as a system within paragraph (a) by the Treasury in the recognition order made in respect of the DSA service provider."

(5) After subsection (3) insert—

"(3A) In relation to a recognised payment system that includes arrangements using digital settlement assets, subsection (2)(a) includes a person providing services connected with the system. See section 206AA."

(6) In the opening words of subsection (4), after "(2)(b)" insert "or (2A)(b) or systems under subsection (2B)(b)".

(7) In subsection (4)(b) after "system" insert "or DSA service provider".

(8) In subsection (5) after "(2)(b)" insert ", (2A)(b) or (2B)(b)".

38 After section 206A insert—

"**206AA Service providers connected with a recognised payment system that uses digital settlement assets**

For the purposes of section 206A(3A), a person provides services connected with the system where—

(a) the person creates or issues the digital settlement assets involved in the payment system,

(b) the person provides services to safeguard, or to safeguard and administer, digital settlement assets including their private cryptographic keys (or means of access),

(c) the person is directly involved in any of the activities mentioned in paragraphs (a) or (b),

(d) the person is a digital settlement asset exchange provider,

(e) the person sets rules, standards, or conditions of access or participation in relation to the payment system, or

(f) the person provides any service that facilitates, or supports, a transfer of money or digital settlement assets to be made using the payment system, including any infrastructure provider in relation to the system."

39 In section 259 (statutory instruments), in the Table in subsection (3), in Part 5, at the appropriate place insert—

"182(5C)	Meaning of "digital settlement asset" and "DSA service provider"	Draft affirmative resolution"

PART 2

AMENDMENTS TO THE FINANCIAL SERVICES (BANKING REFORM) ACT 2013

40 The Financial Services (Banking Reform) Act 2013 is amended as follows.

41 (1) Section 41 (meaning of payment system) is amended as follows.

(2) After subsection (2) insert—

"(2A) In this Part—

"funds" includes digital settlement assets (except in section 41(2)(e));

"digital settlement asset" means a digital representation of value or rights, whether or not cryptographically secured, that—

(a) can be used for the settlement of payment obligations,

(b) can be transferred, stored or traded electronically, and

(c) uses technology supporting the recording or storage of data (which may include distributed ledger technology).

(2B) In this section, "digital settlement asset" includes a right to, or interest in, a digital settlement asset.

(2C) The Treasury may by regulations amend the definition of "digital settlement asset" in subsection (2A)."

42 (1) Section 42 (participants in payment systems) is amended as follows.

(2) In subsection (2)(c), for "subsection (5)" substitute "subsections (5) and (5A)".

(3) After subsection (5) insert—

"(5A) "Payment service provider" in relation to a payment system that includes arrangements using digital settlement assets means—

(a) a person responsible for managing the issuance and redemption of digital settlement assets;

(b) a person whose business or occupation is to safeguard, or to safeguard and administer digital settlement assets, including their private cryptographic keys (or means of access);

(c) a digital settlement asset exchange provider;

(d) a person who—

(i) sets rules, standards, or conditions of access or participation in relation to the system, or

(ii) provides any service that facilitates, or supports, a transfer of money or digital settlement assets to be made using the system, including any infrastructure provider in relation to the system."

43 In section 98 (duty of regulators to ensure co-ordinated exercise of functions), for paragraph (c) of subsection (5) substitute—

"(c) in relation to the FCA—

(i) the functions conferred on it by or under FSMA 2000 (see section 1A(6) of that Act);

(ii) the functions conferred on it by or under Part 3 of the Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911);

(iii) the functions conferred on it by or under the Electronic Money Regulations 2011 (S.I. 2011/99);

(iv) its functions in regulating—

(a) credit institutions where authorised under Part 4A of FSMA 2000, or

(b) authorised payment institutions under the Payment Services Regulations 2017 (S.I. 2017/752)."

44 In section 110 (interpretation of Part), at the appropriate place insert—

""digital settlement asset" has the meaning given by section 41(2A);";

""digital settlement asset exchange provider" has the meaning given by section 182(5B) of the Banking Act 2009;".

45 In section 112 (interpretation: infrastructure companies), after subsection (2)(a) insert—

"(aa) a recognised DSA service provider,"

46 In section 113 (interpretation: other expressions), in subsection (1) at the appropriate place insert—

""recognised DSA service provider" means a DSA service provider, as defined by section 182(5A) of the Banking Act 2009, in respect of which a recognition order under section 184A of that Act is in force;".

47 (1) Section 115 (objective of FMI administration) is amended as follows.

(2) In the opening words of subsection (1) after system insert ", or a recognised DSA service provider,".

(3) In subsection (1)(a) after "system" in each place, insert "or provider".

48 In section 143 (Parliamentary control of orders and regulations), after subsection (2)(a) insert—

"(aa) regulations under section 41(2C) (meaning of "digital settlement asset");".

SCHEDULE 7

Section 51

ACCOUNTABILITY OF THE PAYMENT SYSTEMS REGULATOR

1 The Financial Services (Banking Reform) Act 2013 is amended as follows.

2 In section 39 (overview)—

(a) after subsection (11) insert—

"(11A) Sections 102A and 102B contain provision about Treasury powers to make recommendations in connection with the Payment Systems Regulator's general duties and to specify matters to which the Regulator must have regard when exercising certain functions.";

(b) in subsection (12) for "107" substitute "107A".

3 In section 53 (regulatory principles), in paragraph (c) at the end insert ", including in a way consistent with contributing towards achieving compliance by the Secretary of State with section 1 of the Climate Change Act 2008 (UK net zero emissions target) and section 5 of the Environment Act 2021 (environmental targets) where the Payment Systems Regulator considers the exercise of its functions to be relevant to the making of such a contribution;".

4 After section 102 (power of PRA to require Regulator to refrain from specified action), insert—

"Recommendations

102A Recommendations by Treasury in connection with general duties

(1) The Treasury may at any time by notice in writing to the Payment Systems Regulator make recommendations to the Regulator about aspects of the economic policy of His Majesty's Government to which the Regulator should have regard when considering—

(a) how to advance one or more of its payment systems objectives,

(b) the application of the regulatory principles in section 53, and

(c) its exercise of functions under—

(i) Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions,

(ii) the Payment Card Interchange Fee Regulations 2015 (S.I. 2015/1911), or

(iii) the Payment Services Regulations 2017 (S.I. 2017/752).

(2) The Treasury must make recommendations under subsection (1) at least once in each Parliament.

(3) The Payment Systems Regulator must respond to each recommendation made to it under subsection (1) by notifying the Treasury in writing of—

(a) action that the Regulator has taken or intends to take in accordance with the recommendation, or

(b) the reasons why the Regulator has not acted or does not intend to act in accordance with the recommendation.

(4) The notice under subsection (3) must be given before the end of 12 months beginning with the date the notice containing the recommendation was given under subsection (1).

(5) Where the Payment Systems Regulator has given notice under subsection (3) in relation to a recommendation, the Regulator must by notice in writing update the Treasury on the matters mentioned in subsection (3)(a) and (b) before the end of each subsequent period of 12 months.

(6) Subsection (5) does not apply if the Treasury have notified the Payment Systems Regulator in writing that no update (or further update) is required.

(7) The Payment Systems Regulator is not required under subsection (3) or (5) to provide any information whose publication would in the opinion of the Regulator be against the public interest.

(8) The Treasury must—

(a) publish in such manner as they think fit any notice given under subsection (1), (3) or (5), and

(b) lay a copy of it before Parliament."

5 Before section 103 (regulator's general duty to consult) insert (under the italic heading "Consultation, accountability and oversight")—

"**102B Matters to consider when imposing generally applicable requirements**

(1) This section applies where the Payment Systems Regulator proposes to impose a generally applicable requirement (as defined by section 104(1)).

(2) The Regulator must have regard to any specified matters that are relevant to the imposition of the requirement in question.

(3) "Specified" means specified in regulations made by the Treasury for the purposes of this section.

(4) The specification of a matter for the purposes of this section may apply generally to the exercise of a function or be limited in whatever way the Treasury consider appropriate, including by reference to—

(a) the power under which the function is carried out;

(b) the persons to whom the carrying out of the function apply;

(c) the activities or subject-matter to which the function relates.

(5) The duty under subsection (2) is in addition to any other requirements to have regard to matters when exercising relevant functions imposed by another provision of this Act or by any other enactment."

6 In section 104 (consultation in relation to generally applicable requirements)—

(a) in subsection (1), in the words before paragraph (a) for "section" substitute "Part";

(b) in subsection (3) after paragraph (b) insert—

"(ba) an explanation of the ways in which having regard to specified matters under section 102B(2) has affected the proposed requirement,";

(c) after subsection (12) insert—

"(12A) The duty to provide the explanation referred to in subsection (3)(ba) does not apply in relation to any proposed requirement which changes an existing requirement and the changes consist of, or include, changes which, in the Payment Systems Regulator's opinion, are not material.

(12B) Where an explanation is not provided by virtue of subsection (12A), the draft of the proposed requirement must be accompanied by a statement of the Payment Systems Regulator's opinion."

7 After section 104 insert—

"**104A Requirements in connection with public consultations**

(1) This section applies where the Payment Systems Regulator issues a public consultation.

(2) The Payment Systems Regulator must include information in the consultation about any engagement by the Payment Systems Regulator with the statutory panels of the Payment Systems Regulator, the FCA and the PRA in relation to the matters being consulted on.

(3) The Payment Systems Regulator is not required under subsection (2) to include any information whose publication would in the opinion of the Payment Systems Regulator be against the public interest.

(4) For the purposes of this section, the Payment Systems Regulator issues a public consultation if it publishes any proposals for the purpose of bringing them to the attention of the public (whether or not under a duty to do so imposed by an enactment).

(5) In this section a "statutory panel"—

(a) in relation to the Payment Systems Regulator, means a panel established under section 103(3),

(b) in relation to the FCA, has the meaning given by section 1RA(8) of FSMA 2000, and

(c) in relation to the PRA, has the meaning given by section 2NA(8) of FSMA 2000.

104B Duty of Regulator to review generally applicable requirements

The Payment Systems Regulator must keep under review generally any generally applicable requirements.

104C Statement of policy relating to review of requirements

(1) The Payment Systems Regulator must prepare and publish a statement of its policy with respect to its review of requirements under section 104B.

(2) The statement must provide information about—

(a) how representations (including by a relevant panel) can be made to the Regulator with respect to its review of requirements under section 104B, and

(b) the arrangements to ensure that those representations are considered.

(3) In this section "relevant panel" means—

(a) a panel of the Payment Systems Regulator established under section 103(3),

(b) a panel of the FCA mentioned in section 1RA(8) of FSMA 2000, and

(c) a panel of the PRA mentioned in section 2NA(8) of FSMA 2000.

(4) If a statement published under this section is altered or replaced by the Payment Systems Regulator, the Regulator must publish the altered or replaced statement.

(5) A statement prepared under this section must be published by the Payment Systems Regulator in the way appearing to the Regulator to be best designed to bring it to the attention of the public.

104D Requirement to review specified requirements

(1) The Treasury may by direction require the Payment Systems Regulator to carry out a review of any generally applicable requirement specified in the direction if—

(a) the requirement has been in force for at least 12 months,

(b) the Treasury consider that it is in the public interest that the requirement is reviewed, and

(c) it does not appear to the Treasury that—

(i) the regulator is carrying out, or proposes to carry out, a review of that requirement, or

(ii) if the regulator proposes to carry out a review, the proposals are appropriate for the purposes of carrying out an effective review.

(2) The Treasury must consult the Payment Systems Regulator before giving a direction under subsection (1).

(3) In exercising the power under this section, the Treasury must have regard to the desirability of minimising any adverse effect that the carrying out of the review may have on the exercise by the Payment Systems Regulator of any of its other functions.

(4) A direction under subsection (1) may—

(a) specify the period within which a review must be carried out;

(b) determine the scope and conduct of a review;

(c) require the provision of interim reports during the carrying out of a review.

(5) Provision made in a direction under subsection (4)(b) may include a requirement—

(a) for a review to be carried out by a person appointed by the Payment Systems Regulator who is independent of the Regulator;
(b) for any such appointment to be made only with the approval of the Treasury.

(6) As soon as practicable after giving the direction the Treasury must—
(a) lay before Parliament a copy of the direction, and
(b) publish the direction in such manner as the Treasury think fit.

(7) Subsection (6) does not apply where the Treasury consider that publication of the direction would be against the public interest.

(8) A direction under this section may be varied or revoked by the giving of a further direction.

104E Report on certain reviews

(1) This section applies where the Treasury have given a direction to the Payment Systems Regulator under section 104D(1) to carry out a review.

(2) The Payment Systems Regulator must provide a written report to the Treasury as to the opinion of the Regulator in relation to the following matters—
(a) whether the requirements under review advance one or more of the payment systems objectives;
(b) whether and to what extent the requirements are functioning effectively and achieving their intended purpose;
(c) whether any amendments need to be made to the requirements and, if so, what those amendments should be;
(d) whether any requirements should be withdrawn (with or without replacement);
(e) whether any other action should be taken and, if so, what that action should be.

(3) As soon as practicable after receiving the report the Treasury must—
(a) lay before Parliament a copy of the report, and
(b) publish the report in such manner as the Treasury think fit.

(4) When complying with subsection (3) the Treasury may withhold material from the report if the Treasury consider that publication of the material would be against the public interest.

104F Power of Treasury to require the imposition of generally applicable requirements

(1) The Treasury may by regulations require the Payment Systems Regulator to exercise a power under this Part to impose a generally applicable requirement in relation to a specified activity or a specified description of person.

(2) Regulations under this section may—
(a) specify matters that the requirement must cover;
(b) specify a period within which the requirement must be made.

(3) But except so far as permitted by subsection (2), regulations under this section may not require the requirement to be imposed—

(a) in a specified form or with specified content, or

(b) to achieve or advance a specified outcome.

(4) If no period is specified under subsection (2)(b) the requirement must be imposed as soon as reasonably practicable after the coming into force of the regulations.

104G Consultation with the FCA Cost Benefit Analysis Panel

(1) Except as provided by subsection (2), the Payment Systems Regulator must consult the FCA Cost Benefit Analysis Panel, and that Panel must provide advice, about the following matters—

(a) the preparation of a cost benefit analysis under section 104(3)(a) or (6);

(b) the preparation of its statement of policy under section 104H.

(2) The requirement to consult under subsection (1)(a) does not apply in such cases as may be set out in the statement of policy maintained under section 104H.

(3) The FCA Cost Benefit Analysis Panel must—

(a) keep under review how the Payment Systems Regulator is performing generally in carrying out its duties under section 104(3)(a) and (6), and

(b) provide to the Payment Systems Regulator whatever recommendations the Panel thinks appropriate as a result of such review.

(4) The Payment Systems Regulator must consider representations that are made to it by the FCA Cost Benefit Analysis Panel.

(5) The Payment Systems Regulator must from time to time publish in such manner as it thinks fit responses to the representations.

(6) In this section references to the "FCA Cost Benefit Analysis Panel" are to the panel established under section 138IA of FSMA 2000.

104H Statement of policy in relation to cost benefit analyses

(1) The Payment Systems Regulator must prepare and publish a statement of policy in relation to the preparation of cost benefit analyses for the purposes of section 104.

(2) The statement must provide information about—

(a) the methodology adopted in preparing cost benefit analyses;

(b) matters to which the Payment Systems Regulator has regard in determining whether section 104(8) applies;

(c) matters to which the Payment Systems Regulator has regard in determining whether section 104(10) or (11) applies in relation to the preparation of a cost benefit analysis;

(d) arrangements to ensure that representations in connection with a cost benefit analysis that are made in accordance with section 104(3)(d) are considered;

(e) cases in which the requirement to consult the FCA Cost Benefit Analysis Panel in relation to the preparation of a cost benefit analysis does not apply.

(3) The statement may include whatever other information in relation to cost benefit analyses that the Payment Systems Regulator considers appropriate.

(4) The Payment Systems Regulator may alter or replace a statement published under this section.

(5) The Payment Systems Regulator must publish a statement as altered or replaced under subsection (4).

(6) Publication under this section is to be made in such manner as the Payment Systems Regulator considers best designed to bring the statement to the attention of the public.

104I Statement of policy on panel appointments

(1) The Payment Systems Regulator must prepare and publish a statement of policy in relation to the appointment of members to any panel established under section 103(3).

(2) The statement must provide information about—

(a) the process adopted for making appointments;

(b) matters considered in determining who is appointed.

(3) The statement may provide whatever other information in relation to the making of appointments that the Payment Systems Regulator considers appropriate.

(4) The Payment Systems Regulator may alter or replace a statement published under this section.

(5) The Payment Systems Regulator must publish a statement as altered or replaced under subsection (4).

(6) Before publishing a statement under this section the Payment Systems Regulator must—

(a) consult the Treasury about the proposed statement, and

(b) have regard to any representations the Treasury make in response to the consultation.

(7) Publication under this section is to be made in such manner as the Payment Systems Regulator considers best designed to bring the statement to the attention of the public."

8 After section 107 insert—

"**107A International trade obligations**

(1) This section applies where it appears to the Payment Systems Regulator that there is a material risk that a relevant action it proposes to take would be incompatible with an international trade obligation.

(2) The Payment Systems Regulator must give written notice to the Treasury of the proposed action before proceeding to take it.

(3) Subsection (2) applies only if a duty to consult applies in respect of the taking of the relevant action.

(4) For the purposes of subsection (1) the Payment Systems Regulator proposes to take a "relevant action" if it—

(a) proposes to impose a generally applicable requirement, or

(b) proposes to make changes to its general policies and practices.

(5) For the purposes of subsection (3) a duty to consult applies in respect of a relevant action if—

(a) the duty imposed by section 104 to publish a draft of a proposed requirement applies in respect of the action, or

(b) any other duty (whether or not imposed by a provision of this Act) to publish the proposal to take the action in question applies.

(6) The requirement imposed by subsection (2) must be carried out before the duty to consult in respect of the relevant action is carried out.

(7) Subsection (8) applies in a case where a notice under subsection (2) is not given because of subsection (3).

(8) The Payment Systems Regulator must give written notice to the Treasury of the relevant action it has taken as soon as reasonably practicable after taking it if it appears to the Regulator that there is a material risk that the action is incompatible with an international trade obligation.

(9) In this section "international trade obligation" means an obligation of the United Kingdom that relates to financial services or markets under—

(a) a free trade agreement, as defined by section 5(1) of the Trade Act 2021, or

(b) the agreement establishing the World Trade Organisation signed at Marrakesh on 15 April 1994."

9 In section 110(1) (interpretation), at the appropriate place insert—

""generally applicable requirement" has the meaning given by section 104(1);".

10 In section 143 (orders and regulations: Parliamentary control), in subsection (2), after paragraph (b) insert—

"(ba) regulations under section 102B (matters to consider when imposing generally applicable requirements);

(bb) regulations under section 104F (power to require imposition of generally applicable requirements);".

11 In Schedule 4 (the Payment Systems Regulator), after paragraph 7(2)(b) insert—

"(ba) set out any engagement with a statutory panel established under section 103(3),

(bb) set out how the Regulator has complied with the statement of policy on panel appointments prepared under section 104I in relation to the process for making appointments and the matters considered in determining who is appointed,".

12 In Schedule 4, after paragraph 7 insert—

"Other reports

7A (1) The Treasury may (subject to this paragraph) at any time by direction require the Regulator to publish a report containing information about such matters as are specified in the direction.

(2) The Treasury may give a direction under this paragraph requiring information to be published only if the Treasury consider that—

(a) the information is reasonably necessary for the purpose of reviewing and scrutinising the discharge of the Regulator's functions, and

(b) other available information is not sufficient to meet that purpose.

(3) Subject to sub-paragraph (4), the Regulator must publish a report prepared under a direction given under this paragraph in such manner, and within such period, as the direction may require.

(4) Nothing in this paragraph requires the inclusion in the report of any information whose publication would be against the public interest.

(5) A direction under this paragraph may not—

(a) require a report to be published more than once in each quarter;

(b) require the publication of information that is confidential information as defined by section 91(2).

(6) The Treasury must consult the Regulator before giving a direction under this paragraph.

(7) In exercising the power under this paragraph, the Treasury must have regard to the desirability of minimising any adverse effect that the preparation of the report required in accordance with the direction may have on the exercise by the Regulator of any of its other functions.

(8) The Treasury must—

(a) lay before Parliament a copy of a direction given under this paragraph, and

(b) publish the direction in such manner as the Treasury think fit.

(9) A direction under this paragraph may be varied or revoked by the giving of a further direction."

13 In Schedule 4, after paragraph 14 insert—

"Engagement with Parliamentary Committees

14A (1) This paragraph applies where the Regulator issues a relevant consultation.

(2) For the purposes of this paragraph the Regulator issues a relevant consultation if it—

(a) publishes proposed generally applicable requirements under section 104,

(b) publishes a proposal under a duty imposed by another provision of this Act or by any other enactment, or

(c) publishes other proposals about the exercise of any of its general functions.

(3) The Regulator must, as soon as reasonably practicable after issuing the consultation, notify in writing the chair of each relevant Parliamentary Committee that the consultation has been issued.

(4) The notification must specify the parts of the consultation (if any) that address the ways in which the proposals subject to consultation—

(a) advance the Regulator's payment systems objectives,

(b) demonstrate that the Regulator has had regard to the regulatory principles in section 53 when preparing the proposals, and

(c) engage with matters to which the Regulator must have regard under regulations made under section 102B.

(5) The notification must also specify any other part of the consultation which the Regulator considers should be drawn to the attention of the relevant Parliamentary Committees.

(6) References in this paragraph to the relevant Parliamentary Committees are references to—

(a) the Treasury Committee of the House of Commons,

(b) the Committee of the House of Lords which—

(i) is charged with responsibility by that House for the purposes of this paragraph, and

(ii) has notified the Regulator that it is a relevant Parliamentary Committee for those purposes, and

(c) the Joint Committee of both Houses which—

(i) is charged with responsibility by those Houses for the purposes of this paragraph, and

(ii) has notified the Regulator that it is a relevant Parliamentary Committee for those purposes.

(7) References in this paragraph to the Treasury Committee of the House of Commons—

(a) if the name of that Committee is changed, are references to that Committee by its new name, and

(b) if the functions of that Committee (or substantially corresponding functions) become functions of a different Committee of the House of Commons, are to be treated

as reference to the Committee by which the functions are exercisable.

(8) Any question arising under sub-paragraph (7) is to be determined by the Speaker of the House of Commons.

14B (1) This paragraph applies where—

(a) the Regulator issues a public consultation, and

(b) a Committee of the House of Commons or the House of Lords, or a joint Committee of both Houses, has provided to the Regulator representations in response to the consultation.

(2) For the purposes of this paragraph, the Regulator issues a public consultation if it publishes the draft of any proposals for the purpose of bringing them to the attention of the public (whether or not under a duty to do so imposed by an enactment).

(3) The Regulator must give to the chair of the Committee concerned a written response to the representations.

(4) The duty to respond imposed by sub-paragraph (3) applies only so far as the Regulator would not be under a corresponding duty to do so imposed by another enactment.

(5) The Regulator is not required under sub-paragraph (3) to provide any information whose publication would in the opinion of the Regulator be against the public interest."

SCHEDULE 8

Section 54

CASH ACCESS SERVICES

PART 1

NEW PART 8B OF FSMA 2000

1 After Part 8A of FSMA 2000 (short selling) insert—

"**PART 8B**

CASH ACCESS SERVICES

Introductory

131M Overview

This Part—

(a) requires the Treasury to publish a statement of policy concerning cash deposit and withdrawal services,

(b) enables the Treasury to designate persons involved in the provision of such services, and

(c) gives the FCA functions in relation to designated persons.

131N Cash access services and coordination arrangements

(1) This section defines "cash", "cash access service", "free cash access service" and "cash access coordination arrangements" for the purposes of this Part.

(2) "Cash" means—

(a) banknotes issued by the Bank of England, or an authorised bank in its capacity as an issuer of banknotes in Scotland or Northern Ireland (see Part 6 of the Banking Act 2009), or

(b) coins made by the Mint, within the meaning of the Coinage Act 1971 (see section 11 of that Act).

(3) A "cash access service" is—

(a) a service which enables cash to be placed on a relevant current account (a "cash deposit service"), or

(b) a service which enables cash to be withdrawn from a relevant current account (a "cash withdrawal service").

(4) A "free cash access service" is a cash access service that is—

(a) a free of charge service which enables cash to be placed on a relevant personal current account, or

(b) a free of charge service which enables cash to be withdrawn from a relevant personal current account.

(5) "Cash access coordination arrangements" are arrangements—

(a) which are designed to coordinate the provision of cash access services by two or more providers of such services, but

(b) which do not directly provide cash access services to any person.

(6) In relation to cash access coordination arrangements—

(a) a reference to the "operator" of such arrangements is to any person with responsibility under the arrangements for managing or operating them;

(b) a reference to the operation of such arrangements includes their management.

(7) In this section, "relevant current account" has the meaning given by section 131O.

131O Current accounts and relevant current account providers

(1) This section defines "current account", "relevant current account", "relevant personal current account" and "relevant current account provider" for the purposes of this Part.

(2) "Current account" means an account by means of which one or more named persons are able to—

(a) place cash,

(b) withdraw cash, and

(c) execute and receive payment transactions to and from third parties, including the execution of credit transfers.

(3) For the purposes of subsection (2)(c), "payment transaction" means an act initiated by the payer or payee, or on behalf of the payer, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee.

(4) A "relevant personal current account" means a relevant current account held by one or more individuals for purposes outside any business, trade, craft or profession of that individual or those individuals.

(5) "Relevant current account provider" means a person—

(a) who has a Part 4A permission to accept deposits, and

(b) who provides current accounts in reliance on that permission ("relevant current accounts").

(6) But the following are not relevant current account providers—

(a) credit unions, within the meaning given by section 31(1) of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205)(N.I.12);

(b) a society that is registered within the meaning of the Friendly Societies Act 1974 (see section 111(1) of that Act) or incorporated under the Friendly Societies Act 1992.

(7) The Treasury may by regulations—

(a) amend a definition in this section;

(b) amend any other provision of this Part in consequence of provision made under paragraph (a).

Cash access policy statement

131P Cash access policy statement

(1) The Treasury must prepare a cash access policy statement.

(2) A "cash access policy statement" is a statement of the policies of His Majesty's Government concerning cash access services in the United Kingdom, or a part of the United Kingdom.

(3) The reference to cash access services in subsection (2) includes free cash access services.

(4) Policies may be stated in relation to, among other things—

(a) cash deposit services and cash withdrawal services;

(b) services provided in relation to current accounts of different descriptions;

(c) services provided in predominantly urban areas and services provided in predominantly rural areas.

(5) In preparing a cash access policy statement, the Treasury must—

(a) consult the FCA, and

(b) have regard to any report provided under section 131Q.

(6) The Treasury must publish a cash access policy statement in such manner as they consider appropriate.

(7) The Treasury—

(a) must keep the cash access policy statement under review;

(b) may prepare a revised statement (and subsections (5) and (6) apply in relation to any revised statement).

131Q Provision of reports to assist the Treasury

(1) The FCA must, on a request from the Treasury, prepare and send to the Treasury a report on a matter specified in the request.

(2) The Treasury may only make a request under this section for a report that they reasonably require in connection with—

(a) the preparation of a cash access policy statement (see section 131P), or

(b) a decision whether or not to designate a person for the purposes of this Part (see section 131R).

(3) A request for a report under this section—

(a) must be made in writing, and

(b) may require the FCA to send the report to the Treasury within such reasonable period as may be specified in the request (or such other period as may be agreed).

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

(5) Subsection (4) does not apply in relation to information provided to the FCA by a regulatory authority outside the United Kingdom.

Designation

131R Designation

(1) The Treasury may designate a person for the purposes of this Part if the person is—

(a) a relevant current account provider, or

(b) an operator of cash access coordination arrangements, and at least one of the participants in the arrangements is a relevant current account provider designated under this section.

(2) A person is designated by giving the person (the "designated person") a notice in accordance with this Part (a "designation notice").

(3) A designation notice must specify whether the person is designated in relation to—

(a) the United Kingdom,

(b) Great Britain only, or

(c) Northern Ireland only.

(4) A designation notice given to the operator of cash access coordination arrangements must specify the arrangements in as much detail as is reasonably practicable.

(5) Before giving a designation notice to a person the Treasury must—

(a) consult the FCA,

(b) notify the person, and

(c) consider any representations made.

(6) A designated person must—

(a) comply with rules made by the FCA under section 131V;

(b) comply with directions given by the FCA to the designated person under section 131W.

131S Designation criteria

(1) The Treasury may designate a person for the purposes of this Part, in relation to the United Kingdom, Great Britain only, or Northern Ireland only (as the case may be), only if satisfied that doing so is likely to further the purpose mentioned in section 131U(1).

(2) In considering whether to designate a relevant current account provider, the Treasury must have regard to—

(a) the distribution of cash access services operated by the provider in the United Kingdom, Great Britain or Northern Ireland (as the case may be);

(b) the distribution in the United Kingdom, Great Britain or Northern Ireland (as the case may be) of persons holding current accounts provided by the provider;

(c) the provider's share of the current account market in the United Kingdom, Great Britain or Northern Ireland (as the case may be);

(d) the total value of the deposits held in current accounts provided by the provider in the United Kingdom, Great Britain or Northern Ireland (as the case may be).

(3) If a relevant current account provider is part of a group which includes one or more other relevant current account providers, references in subsection (2) to the provider are to be read as references to—

(a) the provider, and

(b) each of those other relevant current account providers.

(4) For the purposes of subsection (3), section 421 (meaning of "group") applies with the omission of subsection (1)(g) of that section.

131T Cancellation or variation of a designation notice

(1) If a designation notice has been given to a person the Treasury may, by further notice, cancel the designation notice.

(2) If a designation notice has been given to a person (including a designation notice as varied by a notice under this subsection), the Treasury may by further notice, vary the earlier notice.

(3) If a further notice under subsection (2) would designate a person in relation to a part of the United Kingdom in relation to which the person was not designated by the earlier notice, sections 131R(3) and (5) and 131S apply in relation to the further notice.

Supervision of designated persons

131U Purpose for which FCA must exercise functions under this Part

(1) The FCA must exercise its functions under this Part for the purpose of seeking to ensure reasonable provision of cash access services in the United Kingdom, or a part of the United Kingdom.

(2) In this section references to cash access services include references to free cash access services.

(3) "Reasonable provision" of cash access services is provision of such nature and extent as the FCA may determine, having regard to—

(a) the cash access policy statement currently in effect (see section 131P), and

(b) such other matters as it considers appropriate.

(4) In making a determination for the purposes of subsection (3) the FCA must, in particular, have regard to any local deficiencies in provision of cash access services—

(a) which the FCA is aware of, and

(b) the impacts of which the FCA considers to be significant.

(5) A local deficiency in provision of cash access services is a circumstance which limits the ability of persons in any locality in a part of the United Kingdom to—

(a) withdraw cash from a relevant current account, or

(b) place cash on a relevant current account.

(6) In determining whether there are local deficiencies in the provision of cash access services, and the significance of the impacts of such deficiencies, the FCA must have regard to—

(a) the cash access policy statement currently in effect, and

(b) such other matters as it considers appropriate.

(7) Those other matters may include (but are not limited to)—

(a) the number of persons likely to be affected by the deficiency;

(b) the characteristics of the persons likely to be affected by the deficiency;

(c) the likely impact on the persons likely to be affected.

131V FCA rules

(1) The FCA may make such rules applying to designated persons as appear to the FCA to be necessary or expedient for the purpose mentioned in section 131U(1).

(2) Rules under this section must not require a designated person to do (or refrain from doing) any thing in relation to a part of the United Kingdom in relation to which the person is not designated.

(3) Section 137T (general supplementary powers for rules made by a regulator) applies in relation to rules made by the FCA under this section as if, in paragraph (a), the reference to descriptions of authorised persons, activity or investment were to descriptions of designated persons and activities carried on by such persons.

(4) Section 138A (modification or waiver of rules) applies in relation to rules made by the FCA under this section as if subsection (4)(b) were omitted.

(5) Section 138I (consultation by FCA before making rules) applies to rules under this section as if, in subsection (2)(d), the reference to the FCA's duties under section 1B(1) and (5)(a) were to the purpose for which the FCA must exercise its functions under this Part.

131W Power to direct designated persons

(1) The FCA may give a direction under this section to a designated person if it considers that it is desirable to give the direction for the purpose mentioned in section 131U(1).

(2) A direction under this section must not require a designated person to do (or refrain from doing) any thing in relation to a part of the United Kingdom in relation to which the person is not designated.

(3) A direction under this section may require the person to—

(a) take specified action;

(b) refrain from taking specified action;

(c) review, or take remedial action in respect of, past conduct.

(4) A requirement imposed by a direction under this section may be expressed to expire at the end of a specified period, but the imposition of a requirement that expires at the end of a specified period does not affect the power to give a further direction imposing a new requirement.

(5) A direction under this section—

(a) may be revoked by the FCA by written notice to the person to whom it is given, and

(b) ceases to be in force if the person to whom it is given ceases to be a designated person.

131X Procedure for directions

(1) If the FCA proposes to give a direction under section 131W, or gives such a direction with immediate effect, it must give written notice to the designated person to whom the direction is given (or to be given).

(2) A direction under section 131W takes effect—

(a) immediately, if the notice under subsection (1) states that is the case,

(b) on such other date as may be specified in the notice, or

(c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(3) A direction under section 131W may be expressed to take effect immediately (or on a specified date) only if the FCA reasonably considers that it is necessary for the direction to take effect immediately (or on that date).

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

(a) give details of the direction;

(b) state the FCA's reasons for the direction and for its determination as to when the direction takes effect;

(c) inform the designated person that the person may make representations to the FCA within such period as may be specified in the notice (whether or not the person has referred the matter to the Tribunal);

(d) inform the designated person of the person's right to refer the matter to the Tribunal.

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

(6) The FCA must give the designated person written notice if, having considered any representations made by the person, it decides—

(a) to give the direction proposed;

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

(7) The FCA must give the designated person written notice if, having considered any representations made by the person, it decides—

(a) not to give the direction proposed;

(b) to give a different direction;

(c) to revoke a direction.

(8) A notice given under subsection (6) must inform the notified person of the person's right to refer the matter to the Tribunal.

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

(10) If a notice informs the designated person of the person's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

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

131Y Information gathering and investigations

(1) For the purposes of this Part, Part 11 (information gathering and investigations) applies in accordance with this section.

(2) Sections 165A to 165C, 169 and 169A do not apply.

(3) Any reference to an authorised person includes a person designated for the purposes of this Part (whether or not the person is an authorised person).

(4) In addition—

(a) references to an authorised person in sections 165 and 176(3A)(a) include a person mentioned in subsection (5) (whether or not the person is an authorised person);

(b) sections 175 to 177 apply in relation to section 165 as modified in accordance with paragraph (a).

(5) The persons are—

(a) a relevant current account provider who is not a designated person for the purposes of this Part;

(b) an operator of cash access coordination arrangements who is not a designated person for the purposes of this Part;

(c) the operator of, or an infrastructure provider in relation to, a payment system, who is not a designated person for the purposes of this Part;

(d) a person (other than a person mentioned in paragraph (a), (b) or (c)) who provides cash access services and is not a designated person for the purposes of this Part;

(e) a person who provides a relevant service to a person mentioned in paragraph (a), (b), (c) or (d) and is not a designated person for the purposes of this Part.

(6) In subsection (5)(c), "payment system", and "operator" and "infrastructure provider" in relation to a payment system, have the same meanings as in Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 110 of that Act).

(7) For the purposes of subsection (5)(e), a "relevant service" is a service provided in connection with the provision of cash access services.

(8) In relation to a person who is not an authorised person but is treated as such for the purposes of this Part (by virtue of subsection (3) or (4)), any reference to "either regulator" is to the FCA only.

131Z Disciplinary measures

For the purposes of enforcing a requirement imposed by or under this Part, Part 14 (disciplinary measures) applies as if—

(a) any reference to an authorised person includes a person designated for the purposes of this Part (whether or not that person is an authorised person), and

(b) section 206A (suspending permission to carry on regulated activities etc) were omitted.

131Z1 Costs of supervision

Rules made under paragraph 23 of Schedule 1ZA, in connection with the carrying out of any of the FCA's functions under this Part, must not provide for the payment of fees to the FCA by any person other than a designated person who is a relevant current account provider.

131Z2 Exclusion and modification of other FCA duties

(1) Where the FCA is discharging a function under this Part, section 1B (FCA's general duties) applies as if—

(a) in subsection (1)(b), the reference to one or more of the FCA's operational objectives were to the purpose mentioned in section 131U(1);

(b) subsections (4) and (4A) (promoting effective competition in the interests of consumers and advancing competitiveness and growth) do not apply.

(2) In discharging its functions under this Part, the regulatory principles in section 3B(1) have effect as if, in paragraph (g), the reference to the FCA's objectives included the purpose mentioned in section 131U(1).

(3) Section 395 applies in relation to a decision of the FCA made in connection with a function under this Part as if, in subsection (3)(a), the reference to the FCA's operational objectives included the purpose mentioned in section 131U(1)."

PART 2

CONSEQUENTIAL AMENDMENTS TO FSMA 2000

2 FSMA 2000 is amended as follows.

3 In section 3D (duty of FCA and PRA to ensure co-ordinated exercise of functions), in subsection (4), after "operational objectives", insert ", or the purpose for which the FCA must exercise its functions under Part 8B (see section 131U(1))".

4 In section 55H (variation by FCA at request of authorised person), in subsection (4), after "objectives" insert ", or the purpose for which the FCA must exercise its functions under Part 8B (see section 131U(1))".

5 In section 55L (imposition of requirements by FCA), in subsection (6), after "objectives" insert ", or the purpose for which the FCA must exercise its functions under Part 8B (see section 131U(1))".

6 In section 55T (persons whose interests are protected), after "operational objectives," insert "the purpose for which the FCA must exercise its functions under Part 8B,".

7 In section 232A (ombudsman scheme operator's duty to provide information to FCA), after "objectives," insert ", or the purpose for which the FCA must exercise its functions under Part 8B (see section 131U(1)),".

8 In section 395 (the FCA's and PRA's procedures), in subsection (13), after paragraph (bbzb) insert—

"(bbzc) 131W;"

9 In section 429 (Parliamentary control of statutory instruments), in subsection (2), in the list of sections beginning with "90B" insert at the appropriate place "131O(7),".

SCHEDULE 9

Section 55

WHOLESALE CASH DISTRIBUTION

PART 1

NEW PART 5A OF THE BANKING ACT 2009

1 After Part 5 of the Banking Act 2009 (payment systems) insert—

"PART 5A

WHOLESALE CASH DISTRIBUTION

Introduction

206C Overview and purpose

(1) This Part enables the Bank of England to oversee certain persons involved in wholesale cash distribution (as defined in section 206E).

(2) The Bank must exercise its powers under this Part for the purpose of managing risks to the effectiveness, resilience and sustainability of wholesale cash distribution—

(a) throughout the United Kingdom, or

(b) throughout any part of the United Kingdom.

206D Policy statement

(1) The Bank of England—

(a) must prepare a statement of its policy with respect to the exercise of its powers under this Part,

(b) must from time to time review the statement, and

(c) may prepare a revised statement.

(2) When preparing a statement under this section, the Bank must consult such persons as appear to the Bank to be representative of persons likely to be affected by the statement.

(3) After preparing a statement under this section the Bank must—

(a) provide the statement to the Treasury, and

(b) publish the statement.

(4) The Treasury must lay a copy of each statement received under this section before Parliament.

(5) No power conferred on the Bank by this Part may be exercised before a statement under this section has been published.

206E Interpretation: "wholesale cash distribution"

(1) In this Part—

"wholesale cash distribution" means the arrangements (taken as a whole) by which banknotes issued by an issuing authority, or coins made by the Mint, are—

(a) made available for retail cash distribution, and

(b) removed from circulation;

"wholesale cash distribution activities" are activities intended to facilitate or control wholesale cash distribution and include (but are not limited to)—

(a) purchasing cash from issuing authorities or the Mint;

(b) storing cash;

(c) transporting cash;

(d) undertaking authentication processes;

(e) facilitating the return of cash to issuing authorities or the Mint.

(2) For these purposes—

"authorised bank" has the meaning given by section 210;

"banknote" has the meaning given by section 208;

"cash" means—

(a) banknotes issued by the Bank of England, or an authorised bank in its capacity as an issuer of banknotes in Scotland or Northern Ireland, or

(b) coins made by the Mint, within the meaning of the Coinage Act 1971 (see section 11 of that Act);

"issue", in relation to banknotes, has the meaning given by section 209;

"issuing authority" means—

(a) the Bank of England, or

(b) an authorised bank in its capacity as an issuer of banknotes in Scotland or Northern Ireland;

"retail cash distribution" means arrangements for the provision of cash to end users of cash.

206F Interpretation: other terms

(1) In this Part—

"FCA" means the Financial Conduct Authority;

"FCA-regulated person" means—

(a) a person who has Part 4A permission,

(b) an authorised payment institution or small payment institution, within the meaning of the Payment Services Regulations 2017 (S.I. 2017/752), or

(c) an authorised electronic money institution or small electronic money institution, within the meaning of the Electronic Money Regulations 2011 (S.I. 2011/99);

"Part 4A permission" has the meaning given by section 55A of the Financial Services and Markets Act 2000;

"the Payment Systems Regulator" means the Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013;

"PRA" means the Prudential Regulation Authority;

"PRA-regulated activity" has the meaning given by section 22A of the Financial Services and Markets Act 2000;

"the UK financial system" has the meaning given by section 1I of the Financial Services and Markets Act 2000.

(2) For the purposes of this Part, a company (within the meaning of the Companies Act 2006) is wholly owned by the Crown if, and only if, every member of the company is—

(a) a Minister of the Crown, government department or company wholly owned by the Crown, or

(b) a person acting on behalf of a Minister of the Crown, government department or company wholly owned by the Crown.

Recognised persons

206G Wholesale cash oversight orders

(1) The Treasury may by order (a "wholesale cash oversight order") specify a person as a recognised person for the purposes of this Part.

(2) A person may be specified only if the person—

(a) performs a relevant function in relation to a wholesale cash distribution activity, and

(b) is recognised as having market significance (see section 206H).

(3) The following are relevant functions in relation to a wholesale cash distribution activity—

(a) undertaking the activity;

(b) managing the activity;

(c) providing a service in relation to the activity;

(d) providing financial assistance in relation to the activity.

(4) A wholesale cash oversight order must specify in as much detail as is reasonably practicable—

(a) each wholesale cash distribution activity in relation to which the specified person performs a relevant function, and

(b) each relevant function the person performs.

(5) The Treasury may not make a wholesale cash oversight order in respect of an issuing authority or the Mint.

206H "Market significance" and "systemic significance"

(1) A wholesale cash oversight order must specify whether the person in respect of whom the order is made is recognised—

(a) as having market significance only, or

(b) as also having systemic significance.

(2) The Treasury may recognise a person as having market significance only if satisfied that any significant deficiency in, or disruption to, the performance of the person's relevant functions in relation to wholesale cash distribution activities would be likely to undermine the effectiveness, resilience, or sustainability of wholesale cash distribution—

(a) throughout the United Kingdom, or

(b) throughout any part of the United Kingdom.

(3) The Treasury may recognise a person as having systemic significance only if satisfied that any significant deficiency in, or disruption to, the performance of the person's relevant functions in relation to wholesale cash distribution activities would be likely (in addition to the consequences mentioned in subsection (2))—

(a) to threaten the stability of, or confidence in, the UK financial system, or

(b) to have serious consequences for business or other interests throughout the United Kingdom or any part of the United Kingdom.

(4) Where a person is part of a group, the Treasury may have regard to functions performed by other members of the group when determining matters mentioned in subsection (2) or (3).

(5) In subsection (4), "group" has the meaning given by section 421 of the Financial Services and Markets Act 2000.

(6) The Treasury must not recognise a company wholly owned by the Crown as having systemic significance.

206I Procedure

(1) Before making a wholesale cash oversight order in respect of a person the Treasury must—

(a) consult the Bank of England,

(b) notify the person, and

(c) consider any representations made.

(2) In addition, the Treasury must—

(a) consult the FCA before making a wholesale cash oversight order in respect of a person who is, or has applied to be, an FCA-regulated person;

(b) consult the PRA before making a wholesale cash oversight order in respect of a person who has, or has applied for, Part 4A permission for the carrying on of a PRA-regulated activity;

(c) consult the Payment Systems Regulator before making a wholesale cash oversight order in respect of a person who is a participant in a regulated payment system.

(3) In subsection (2)(c), "participant" and "regulated payment system" have the same meanings as in Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 110 of that Act).

(4) In considering whether to make the order, the Treasury may rely on information provided by—

(a) the Bank of England;

(b) the FCA;

(c) the PRA;

(d) the Payment Systems Regulator.

206J Amendment or revocation of a wholesale cash oversight order

(1) The Treasury may amend or revoke a wholesale cash oversight order.

(2) The Treasury must revoke a wholesale cash oversight order if no longer satisfied that the person specified in the order—

(a) performs a relevant function in relation to a wholesale cash distribution activity, and

(b) has market significance.

(3) If a person is specified in a wholesale cash oversight order as having systemic significance, the Treasury must amend the order (so that the person is specified as having market significance only) if—

(a) satisfied that the person continues to have market significance, but

(b) no longer satisfied that the person has systemic significance.

(4) Subject to subsections (2) and (3), the Treasury must consider any request by a person specified in a wholesale cash oversight order for the amendment or revocation of the order.

(5) Section 206I (procedure) applies to the amendment or revocation of a wholesale cash oversight order as it applies to the making of the order.

Regulation

206K Principles

(1) The Bank of England may publish principles to which recognised persons must have regard in performing relevant functions in relation to wholesale cash distribution activities.

(2) Different principles may be published in relation to—

(a) different wholesale cash distribution activities;

(b) different relevant functions;

(c) persons recognised as having market significance only and persons recognised as also having systemic significance.

(3) Before publishing such principles, the Bank must—

(a) consult such persons as appear to the Bank to be representative of persons likely to be affected by the principles, and

(b) obtain the approval of the Treasury.

206L Codes of practice

(1) The Bank of England may publish codes of practice about the performance by recognised persons of relevant functions in relation to wholesale cash distribution activities.

(2) Different codes of practice may be published in relation to—

(a) different wholesale cash distribution activities;

(b) different relevant functions;

(c) persons recognised as having market significance only and persons recognised as also having systemic significance.

(3) Before publishing a code of practice, the Bank of England must consult such persons as appear to the Bank to be representative of persons likely to be affected by the code.

206M Directions

(1) The Bank of England may give directions in writing to a recognised person.

(2) A direction may—

(a) require or prohibit the taking of specified action in relation to the performance of a specified relevant function in relation to a specified wholesale cash distribution activity;

(b) set standards to be met in the performance of a specified relevant function in relation to a specified wholesale cash distribution activity.

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

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

(5) A direction given for the purpose mentioned in subsection (3) must—

(a) include a statement that it is given for that purpose, and

(b) inform the recognised person of the effect of subsection (4).

(6) The Treasury may by regulations confer immunity on any person from liability in damages in respect of action or inaction in accordance with a direction under this section (including a direction given for the purpose mentioned in subsection (3)).

(7) Regulations under subsection (6)—

(a) are to be made by statutory instrument, and

(b) are subject to annulment in pursuance of a resolution of either House of Parliament.

(8) An immunity conferred by or under this section does not extend to action or inaction—

(a) in bad faith, or

(b) in contravention of section 6(1) of the Human Rights Act 1998.

(9) In this section, "specified" means specified in the direction.

206N Role of the FCA, PRA and Payment Systems Regulator

(1) In exercising powers under this Part, the Bank of England must have regard to any action that the FCA, PRA or Payment Systems Regulator has taken or could take.

(2) The Bank of England must—

(a) consult the FCA before taking action under this Part in respect of a person who is, or has applied to be, an FCA-regulated person;

(b) consult the PRA before taking action under this Part in respect of a person who has, or has applied for, Part 4A permission for the carrying on of a PRA-regulated activity;

(c) consult the Payment Systems Regulator before taking action under this Part in respect of a participant in a regulated payment system.

(3) In subsection (2)(c), "participant" and "regulated payment system" have the same meanings as in Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 110 of that Act).

(4) If the FCA, PRA or Payment Systems Regulator gives the Bank of England notice that it is considering taking action in respect of a person mentioned in subsection (2), the Bank may not take action under this Part in respect of the person unless—

(a) the FCA, PRA or Payment Systems Regulator (as the case may be) consents, or

(b) the notice is withdrawn.

Enforcement

206O Inspection

(1) The Bank of England may appoint one or more persons to inspect the performance by a recognised person of a relevant function in relation to a wholesale cash distribution activity.

(2) A recognised person who performs a relevant function in relation to a wholesale cash distribution activity must—

(a) grant an inspector access, on request and at any reasonable time, to premises on or from which any part of the function is performed, and

(b) otherwise co-operate with an inspector.

206P Inspection: warrant

(1) A justice of the peace may, on the application of an inspector appointed under section 206O, issue a warrant entitling an inspector or a constable to enter premises if—

(a) there is performed on the premises any part of a relevant function in relation to a wholesale cash distribution activity, and

(b) any of the following conditions is satisfied.

(2) Condition 1 is that—

(a) a requirement under section 206Z3 (information) in relation to the relevant function has not been complied with, and

(b) there is reason to believe that information relevant to the requirement is on the premises.

(3) Condition 2 is that there is reason to suspect that if a requirement under section 206Z3 were imposed in relation to the relevant function in respect of information on the premises—

(a) the requirement would not be complied with, and

(b) the information would be destroyed or otherwise tampered with.

(4) Condition 3 is that an inspector—

(a) gave reasonable notice of a wish to enter the premises, and

(b) was refused entry.

(5) Condition 4 is that a person occupying or managing the premises has failed to co-operate with an inspector.

(6) A warrant—

(a) permits an inspector or a constable to enter the premises,

(b) permits an inspector or a constable to search the premises and copy or take possession of information or documents, and

(c) permits a constable to use reasonable force.

(7) Sections 15(5) to (8) and 16 of the Police and Criminal Evidence Act 1984 (warrants: procedure) apply to warrants under this section.

(8) In the application of this section to Scotland—

(a) the reference to a justice of the peace includes a reference to a sheriff, and

(b) ignore subsection (7).

(9) In the application of this section to Northern Ireland—

(a) the reference to a justice of the peace is a reference to a lay magistrate, and

(b) the reference to sections 15(5) to (8) and 16 of the Police and Criminal Evidence Act 1984 is a reference to the equivalent provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989.

206Q Independent report

(1) The Bank of England may require a recognised person who performs a relevant function in relation to a wholesale cash distribution activity to appoint an expert to report on the performance of the function.

(2) The Bank may impose a requirement only if it thinks—

(a) the person is not having sufficient regard to principles published by the Bank under section 206K,

(b) the person is failing to comply with a code of practice under section 206L, or

(c) the report is likely for any other reason to assist the Bank in the performance of its functions under this Part.

(3) The Bank may impose requirements about—

(a) the nature of the expert to be appointed;

(b) the content of the report;

(c) treatment of the report (including disclosure and publication);

(d) timing.

206R Compliance failure

In this Part "compliance failure" means a failure by a recognised person to—

(a) comply with a code of practice under section 206L,

(b) comply with a direction under section 206M, or

(c) ensure compliance with a requirement under section 206Q (independent reports).

206S Publication

The Bank of England may publish details of—

(a) a compliance failure by a recognised person;

(b) a sanction imposed under sections 206T to 206V.

206T Penalty

(1) The Bank of England may require a recognised person to pay a penalty in respect of a compliance failure.

(2) A penalty—

(a) must be paid to the Bank, and

(b) may be enforced by the Bank as a civil debt owed to the Bank.

(3) The Bank must prepare a statement of the principles which it will apply in determining—

(a) whether to impose a penalty, and

(b) the amount of a penalty.

(4) The Bank must—

(a) publish the statement on its website,

(b) send a copy to the Treasury,

(c) review the statement from time to time and revise it if necessary (and paragraphs (a) and (b) apply to a revision), and

(d) in applying the statement to a compliance failure, apply the version in force when the failure occurred.

206U Closure

(1) This section applies if the Bank of England thinks that a compliance failure by a person recognised for the purposes of this Part as having systemic significance—

(a) threatens the stability of, or confidence in, the UK financial system, or

(b) has serious consequences for business or other interests throughout the United Kingdom.

(2) The Bank may give the person an order (a "closure order") to stop performing specified relevant functions in relation to specified wholesale cash distribution activities—

(a) for a specified period,

(b) until further notice, or

(c) permanently.

(3) Before giving a closure order to a recognised person, the Bank must have regard to the public interest in the continued performance by the person of relevant functions (whether or not specified) in relation to wholesale cash distribution activities (whether or not specified).

(4) A recognised person who fails to comply with a closure order commits an offence.

(5) A person who commits an offence under this section is liable—

(a) on summary conviction in England and Wales, to a fine;

(b) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;

(c) on summary conviction in Northern Ireland, to a fine not exceeding the statutory maximum;

(d) on conviction on indictment, to a fine.

(6) In this section, "specified" means specified in the closure order.

206V Management disqualification

(1) The Bank of England may by order prohibit a specified person from holding an office or position involving responsibility for taking decisions about the management of a recognised person—

(a) for a specified period,

(b) until further notice, or

(c) permanently.

(2) A person who breaches a prohibition under subsection (1) commits an offence.

(3) A person who commits an offence under this section is liable—

(a) on summary conviction in England and Wales, to a fine;

(b) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;

(c) on summary conviction in Northern Ireland, to a fine not exceeding the statutory maximum;
(d) on conviction on indictment, to a fine.

(4) In this section, "specified" means specified in the order.

206W Warning

(1) Before imposing a sanction on a person the Bank of England must—
(a) give the person a notice ("a warning notice"),
(b) give the person at least 21 days from the date of the notice to make representations,
(c) consider any representations made, and
(d) as soon as reasonably practicable, give the person a notice stating whether the Bank intends to impose the sanction.

(2) In subsection (1), "imposing a sanction" means—
(a) publishing details under section 206S;
(b) requiring the payment of a penalty under section 206T;
(c) giving a closure order under section 206U;
(d) making an order under section 206V.

(3) Despite subsection (1), if satisfied that it is necessary, the Bank may without notice—
(a) give a closure order under section 206U, or
(b) make an order under section 206V.

206X Appeal

(1) Where the Bank of England notifies a person under section 206W(1) that it intends to impose a sanction, the person may appeal to the Upper Tribunal.

(2) Where the Bank imposes a sanction on a person without notice in reliance on section 206W(3), the person may appeal to the Upper Tribunal.

(3) The Bank of England may not impose a sanction while an appeal under this section could be brought or is pending.

206Y Injunctions

(1) If, on the application of the Bank of England, the court is satisfied—
(a) that there is a reasonable likelihood that there will be a compliance failure, or
(b) that there has been a compliance failure and there is a reasonable likelihood that it will continue or be repeated,

the court may make an order restraining the conduct constituting the failure.

(2) If, on the application of the Bank of England, the court is satisfied—
(a) that there has been a compliance failure by a recognised person, and
(b) that there are steps which could be taken for remedying the failure,

the court may make an order requiring the recognised person, and any other person who appears to have been knowingly concerned in the failure, to take such steps as the court may direct to remedy it.

(3) If, on the application of the Bank of England, the court is satisfied—

(a) that there may have been a compliance failure by a recognised person, or

(b) that any other person may have been knowingly concerned in a compliance failure,

the court may make an order restraining the person from dealing with any assets which it is satisfied the person is reasonably likely to deal with.

(4) The jurisdiction conferred by this section is exercisable—

(a) in England and Wales and Northern Ireland, by the High Court;

(b) in Scotland, by the Court of Session.

(5) In this section—

(a) references to an order restraining anything are, in Scotland, to be read as references to an interdict prohibiting that thing;

(b) references to an order requiring steps to be taken are, in Scotland, to be read as references to an order for specific performance under section 45 of the Court of Session Act 1988;

(c) references to remedying a failure include mitigating its effect;

(d) references to dealing with assets include disposing of them.

Miscellaneous

206Z Fees

(1) The Bank of England may require a recognised person to pay fees.

(2) A requirement under subsection (1) must relate to a scale of fees approved by the Treasury by regulations.

(3) Regulations under subsection (2)—

(a) are to be made by statutory instrument, and

(b) are subject to annulment in pursuance of a resolution of either House of Parliament.

(4) A requirement under subsection (1) may be enforced by the Bank as a civil debt owed to the Bank.

206Z1 Records

The Bank of England must maintain satisfactory arrangements for—

(a) recording decisions made in the exercise of functions under this Part, and

(b) the safe-keeping of those records which it considers ought to be preserved.

206Z2 Annual report

(1) At least once a year the Bank of England must make a report to the Treasury on—

(a) the discharge of its functions under this Part, and

(b) such other matters as the Treasury may from time to time direct.

(2) A report on the discharge of the Bank's functions under this Part must, in particular, include the Bank's opinion as to—

(a) the extent to which risks to the effectiveness, resilience and sustainability of wholesale cash distribution throughout the United Kingdom, or throughout any part of the United Kingdom, have been managed, and

(b) the extent to which, in relation to the exercise of functions in relation to persons recognised as having systemic significance, risks to the stability of the UK financial system have been managed.

(3) This section does not require the inclusion in a report of any information the publication of which would, in the opinion of the Bank, be against the public interest.

(4) The Treasury must lay before Parliament a copy of each report received under this section.

206Z3 Requirement to provide information

(1) The Bank of England may by notice in writing require a person to provide information—

(a) which the Bank thinks will help the Treasury in determining whether to make a wholesale cash oversight order, or

(b) which the Bank otherwise requires in connection with its functions under this Part.

(2) The Bank of England may by notice in writing require a person who performs a relevant function in relation to wholesale cash distribution activity to provide information which the Bank requires in connection with the exercise of its functions (whether under this Part or otherwise) in pursuance of—

(a) the purpose mentioned in section 206C(2), or

(b) the Bank's Financial Stability Objective (see section 2A of the Bank of England Act 1998).

(3) In particular, a notice under subsection (1) or (2) may require the person to notify the Bank if events of a specified kind occur.

(4) A notice under subsection (1) or (2) may require information to be provided—

(a) in a specified form or manner;

(b) at, or by, a specified time;

(c) in respect of a specified period.

(5) It is an offence—

(a) to fail without reasonable excuse to comply with a requirement under this section;
(b) knowingly or recklessly to give false information in pursuance of this section.

(6) A person who commits an offence under this section is liable—
(a) on summary conviction in England and Wales, to a fine;
(b) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;
(c) on summary conviction in Northern Ireland, to a fine not exceeding the statutory maximum;
(d) on conviction on indictment, to a fine.

(7) In this section, "specified" means specified in the notice.

206Z4 Disclosure of information

(1) The Bank of England may disclose information obtained by virtue of section 206Z3 to—
(a) the Treasury;
(b) the FCA;
(c) the PRA;
(d) the Mint.

(2) Subsection (1)—
(a) overrides a contractual or other requirement to keep information in confidence, and
(b) is without prejudice to any other power to disclose information.

(3) The Treasury may by regulations—
(a) permit the disclosure by the Bank of information obtained by virtue of section 206Z3 to specified persons;
(b) permit the publication of specified information and make provision about the manner and extent of publication.

(4) In subsection (3), "specified" means specified in the regulations.

(5) Regulations under subsection (3)—
(a) are to be made by statutory instrument, and
(b) are subject to annulment in pursuance of a resolution of either House of Parliament.

206Z5 Saving for informal oversight

Nothing in this Part prevents the Bank of England—

(1) from having dealings with persons who are not recognised persons for the purposes of this Part;
(a) from having dealings with recognised persons other than through the provisions of this Part.

Companies wholly owned by the Crown

206Z6 Power to disapply regulation and enforcement provisions

(1) The Treasury may by regulations provide for any provision of sections 206K to 206Z4 not to apply (insofar as it would otherwise do so), or to apply with modifications, in relation to recognised persons that are companies wholly owned by the Crown.

(2) Regulations under subsection (1) may modify legislation (including any provision of, or made under, this Act).

(3) In subsection (2)—

"legislation" means primary legislation, subordinate legislation (within the meaning of the Interpretation Act 1978) and retained direct EU legislation, but does not include rules or other instruments made by any regulator;

"modify" includes amend, repeal or revoke.

(4) Before making regulations under this section, the Treasury must consult the Bank of England.

(5) Regulations under subsection (1)—

(a) are to be made by statutory instrument, and

(b) may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament."

PART 2

AMENDMENTS TO PART 6 OF THE FINANCIAL SERVICES (BANKING REFORM) ACT 2013

2 Part 6 of the Financial Services (Banking Reform) Act 2013 (special administration for operators of certain infrastructure systems) is amended as follows.

3 In section 111 (financial market infrastructure administration), in the heading, after "market" insert "and cash".

4 (1) Section 112 (interpretation: infrastructure companies) is amended as follows.

(2) In subsection (2), omit the "or" at the end of paragraph (b) and insert—

"(ba) a person recognised for the purposes of Part 5A of the Banking Act 2009 (wholesale cash distribution) as having systemic significance, or".

(3) In subsection (4)—

(a) in paragraph (a), for "(2)(a) or (b)" substitute "(2)(a), (b) or (ba)";

(b) in paragraph (b), after "question" insert "or, in the case of a person falling within subsection (2)(ba), a relevant function".

(4) In subsection (6), in paragraph (b), for "(2)(a) or (b)" substitute "(2)(a), (b) or (ba)".

(5) After subsection (6) insert—

"(7) In subsection (4)(b), "relevant function" means a function performed by the person in relation to wholesale cash distribution."

5 In section 113 (interpretation: other expressions), in subsection (1)—

(a) in the definition of "the relevant system", after paragraph (b) insert—

"(ba) in relation to an infrastructure company falling within subsection (2)(ba) of that section, any system used by the company to facilitate or control wholesale cash distribution,";

(b) at the end insert—

""wholesale cash distribution" and "wholesale cash distribution activities" have the meanings given by section 206E of the Banking Act 2009."

6 In section 115 (objective of FMI administration), after subsection (1A) insert—

"(1B) Where an FMI administrator is appointed in relation to a company that is a person recognised for the purposes of Part 5A of the Banking Act 2009, the objective of the FMI administration is—

(a) to ensure that the functions performed by the person in relation to wholesale cash distribution are and continue to be performed efficiently and effectively, and

(b) to ensure by one or both of the specified means that it becomes unnecessary for the FMI administration order to remain in force for that purpose or those purposes."

7 In section 119 (continuity of supply), in subsection (6), in the definition of "supply", after paragraph (a) insert—

"(aa) in the case of an infrastructure company that is a person recognised for the purposes of Part 5A of the Banking Act 2009, goods or services used by the person in connection with wholesale cash distribution activities;".

8 In section 120 (power to direct FMI administrator), in subsection (8), at the end insert "or section 206M of that Act (directions) in relation to a person recognised for the purposes of Part 5A of that Act".

9 In section 127 (interpretation of Part), in subsection (1), at the end insert—

""wholesale cash distribution" and "wholesale cash distribution activities" have the meanings given by section 113."

PART 3

CONSEQUENTIAL AMENDMENTS

Banking Act 2009

10 The Banking Act 2009 is amended as follows.

11 In section 259 (statutory instruments), in subsection (3), in the Table, after the entry for section 206A (services forming part of recognised payment systems) insert—

"**PART 5A - Wholesale cash distribution**

206M	Bank of England directions: immunity	Negative resolution
206Z	Fees regulations	Negative resolution
206Z4	Information	Negative resolution
206Z6	Power to disapply regulation and enforcement provisions	Draft affirmative resolution"

12 In section 261 (index of defined terms)—

(a) in the entry for "FCA", in the second column, for "& 183" substitute ", 183 & 206F";

(b) in the entry for "Payment Systems Regulator", in the second column, after "183" insert "& 206F";

(c) in the entry for "PRA", in the second column, for "& 183" substitute ", 183 & 206F".

Financial Services Act 2012

13 The Financial Services Act 2012 is amended as follows.

14 (1) Section 85 (relevant functions in relation to complaints scheme) is amended as follows.

(2) In subsection (3)(a), after "(payment systems)" insert "or Part 5A of that Act (wholesale cash distribution)".

(3) In subsection (7)—

(a) in the words before paragraph (a), for "Part 5" substitute "Parts 5 and 5A";

(b) in paragraph (a), for "and 189" substitute ",189, 206K and 206L";

(c) in paragraph (b), at the end insert "and 206T(3)".

15 (1) Section 110 (payment to Treasury of penalties received by Bank of England) is amended as follows.

(2) In subsection (2), in paragraph (b), for "section 198" substitute "sections 198 and 206T".

(3) In subsection (5)—

(a) omit the "and" at the end of paragraph (c);

(b) at the end of paragraph (d) insert ", and

(e) sections 206S to 206V and 206Y of that Act (wholesale cash distribution)."

Financial Services (Banking Reform) Act 2013

16 In section 98 of the Financial Services (Banking Reform) Act 2013 (duty of regulators to ensure co-ordinated exercise of functions), in subsection (5)(b), at the end insert "or Part 5A of that Act (wholesale cash distribution)".

SCHEDULE 10

Section 56

PERFORMANCE OF FUNCTIONS RELATING TO FINANCIAL MARKET INFRASTRUCTURE

PART 1

NEW CHAPTER 2A OF PART 18 OF FSMA 2000

1 In Part 18 of FSMA 2000 (recognised investment exchanges, clearing houses and CSDs), before Chapter 3B insert—

"**CHAPTER 2A**

PERFORMANCE OF FUNCTIONS OF RECOGNISED BODIES

Relevant recognised bodies

309A Recognised bodies to which this Chapter applies

(1) The Treasury may by regulations specify as a "relevant recognised body" for the purposes of this Chapter a type of recognised body mentioned in subsection (2).

(2) The types of recognised bodies are—

(a) recognised investment exchanges;

(b) recognised central counterparties;

(c) recognised CSDs.

(3) Before making regulations under subsection (1), the Treasury—

(a) must consult the FCA if it proposes to specify recognised investment exchanges (or recognised investment exchanges of a specified description);

(b) must consult the Bank of England if it proposes to specify recognised central counterparties or recognised CSDs (or recognised central counterparties or recognised CSDs of a specified description);

(c) in any case, must consult such persons as appear to it to be representative of interests likely to be affected by the application of this Chapter to the types, or descriptions, of bodies it proposes to specify.

(4) In this Chapter, references to "the appropriate regulator" are to be read in accordance with section 285A (accordingly, the appropriate regulator in relation to a recognised investment exchange is the FCA, and in any other case is the Bank of England).

(5) Nothing in this Chapter applies to overseas investment exchanges.

Prohibition

309B Part 18 prohibition orders

(1) This section applies if it appears to the appropriate regulator that an individual is not a fit and proper person to perform functions in relation to an activity carried on by a relevant recognised body.

(2) The appropriate regulator may make an order (a "Part 18 prohibition order") prohibiting the individual from performing a specified function, any function falling within a specified description or any function.

(3) A Part 18 prohibition order may relate to—

(a) a specified activity, any activity falling within a specified description or all activities (but see subsection (5));

(b) all persons falling within subsection (4), or a particular paragraph of that subsection, or all persons within a specified class of person falling within a particular paragraph of that subsection.

(4) A person falls within this subsection if the person is—

(a) a relevant recognised body (whether or not the appropriate regulator making the order is the appropriate regulator in relation to relevant recognised bodies of that type),

(b) an authorised person,

(c) an exempt person (other than a relevant recognised body), or

(d) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to a regulated activity.

(5) If a Part 18 prohibition order makes provision in relation to a person or persons falling within subsection (4)(b), (c) or (d), subsection (3)(a) applies in relation to such provision as if references to an activity or activities were to a regulated activity or regulated activities.

(6) In this section, "specified" means specified in the Part 18 prohibition order.

309C Procedure for making Part 18 prohibition orders

(1) If the appropriate regulator proposes to make a Part 18 prohibition order it must—

(a) comply with such consultation requirements as may be prescribed, and

(b) give the individual to whom the order would apply a warning notice.

(2) A warning notice under subsection (1)(b) must set out the terms of the prohibition.

(3) If the appropriate regulator decides to make a Part 18 prohibition order it must give the individual to whom the order applies a decision notice.

(4) The decision notice must—

(a) name the individual to whom the Part 18 prohibition order applies, and

(b) set out the terms of the order.

(5) If the appropriate regulator decides to make a Part 18 prohibition order, the individual to whom the order applies may refer the matter to the Tribunal.

309D Varying and withdrawing Part 18 prohibition orders

(1) This section applies where the appropriate regulator has made a Part 18 prohibition order in relation to an individual.

(2) The appropriate regulator may vary or revoke the Part 18 prohibition order on the application of the individual.

(3) Before varying or revoking a Part 18 prohibition order, the appropriate regulator must comply with such consultation requirements as may be prescribed.

(4) On an application for the variation or revocation of a Part 18 prohibition order—

(a) if the appropriate regulator decides to grant the application, it must give the applicant written notice of its decision;

(b) if the appropriate regulator proposes to refuse the application, it must give the applicant a warning notice;

(c) 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 under subsection (4)(c), the applicant may refer the matter to the Tribunal.

309E Offence of breaching prohibition

(1) An individual who performs a function, or agrees to perform a function, in breach of a Part 18 prohibition order is guilty of an offence.

(2) An individual who commits an offence under this section is liable—

(a) on summary conviction in England and Wales, to a fine;

(b) on summary conviction in Scotland, to a fine not exceeding level 5 on the standard scale;

(c) on summary conviction in Northern Ireland, to a fine not exceeding level 5 on the standard scale.

(3) In proceedings for an offence under this section, it is a defence for the individual to show that the individual took all reasonable precautions and exercised all due diligence to avoid committing the offence.

309F Duty in relation to prohibited individuals

(1) A person ("P") falling within section 309B(4) must take reasonable care to ensure that no function in relation to the carrying on of P's activities is performed by an individual who is prohibited from performing that function by a Part 18 prohibition order.

(2) A contravention of subsection (1) 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.

(3) In prescribed cases, a contravention of subsection (1) 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.

(4) In this section "private person" has such meaning as may be prescribed.

Approval

309G Requirement for approval

(1) A relevant recognised body must take reasonable care to ensure that a person does not perform a designated senior management function in relation to the carrying on of an activity by the body, unless the person is acting in accordance with an approval given by the appropriate regulator under this section.

(2) Subsection (1) applies only in relation to a function performed under—

(a) an arrangement entered into by the relevant recognised body, or

(b) an arrangement entered into by a contractor of the relevant recognised body.

(3) "Designated senior management function" means a function of a description specified in rules made by the appropriate regulator.

(4) The appropriate regulator may specify a description of function under subsection (3) only if it is satisfied that the function is a senior management function.

(5) A function is a "senior management function" in relation to the carrying on of a relevant recognised body's activities if—

(a) the function will require the person performing it to be responsible for managing one or more aspects of the body's affairs, and

(b) those aspects involve, or might involve, a risk of serious consequences—

(i) for the body, or

(ii) for business or other interests in the United Kingdom.

(6) In subsection (5)(a), the reference to managing one or more aspects of a relevant recognised body's affairs includes a reference to taking decisions, or participating in the taking of decisions, about how one or more aspects of those affairs should be carried on.

(7) In subsection (2), "arrangement"—

(a) means any kind of arrangement for the performance of a function of a relevant recognised body which is entered into by the body, or by a contractor of the body, and another person, and

(b) includes, in particular, an arrangement under which the other person is appointed to an office, becomes a partner or is employed (whether under a contract of service or otherwise).

309H Rules under section 309G(3): transitional provision

(1) In relation to rules made by the Bank of England or the FCA under section 309G(3), the power conferred by section 137T(c) to make transitional provision includes, in particular, power—

(a) to provide for anything done under this Chapter, or under Part 5 (performance of regulated activities), in relation to a senior management function of a particular description to be treated as having been done in relation to a senior management function of a different description;

(b) to provide for anything done under this Chapter, or under Part 5 (including any application or order made, any requirement imposed and any approval or notice given) to cease to have effect, to continue to have effect, or to continue to have effect with modifications, or subject to time limits or conditions;

(c) to provide for rules made by the regulator making the rules under section 309G(3) to apply with modifications;

(d) to make saving provision.

(2) The Treasury may by regulations make whatever incidental, consequential, transitional, supplemental or saving provision the Treasury consider appropriate in connection with the making of rules under section 309G(3).

(3) Regulations under subsection (2) may—

(a) confer functions on the Bank of England or the FCA (including the function of making rules);

(b) modify legislation (including any provision of, or made under, this Act).

(4) In subsection (3)(b)—

"legislation" means primary legislation, subordinate legislation (within the meaning of the Interpretation Act 1978) and retained direct EU legislation, but does not include rules or other instruments made by any regulator;

"modify" includes amend, repeal or revoke.

309I Applications for approval

(1) A relevant recognised body may apply for approval from the appropriate regulator under section 309G for a person to perform a designated senior management function in relation to the carrying on of the body's activities.

(2) The application must be made in such manner as the appropriate regulator may direct.

(3) The application must contain—

(a) a statement setting out the aspects of the applicant's affairs which it is intended that the person will be responsible for managing in performing the function, and

(b) such other information as the appropriate regulator may reasonably require.

(4) A statement provided under subsection (3)(a) is known as a "statement of responsibilities".

(5) 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.

(6) The appropriate regulator may require the applicant to present information provided under this section in such form, or to verify the information in such a way, as the appropriate regulator may direct.

(7) Different directions may be given, and different requirements may be imposed, in relation to different applications or categories of application.

(8) In subsection (1), "relevant recognised body" includes—

(a) if recognised investment exchanges are a type of recognised body to which this Chapter applies, a person who has applied for recognition as such under section 287;

(b) if recognised central counterparties are a type of recognised body to which this Chapter applies, a person who has applied for recognition as such under section 288;

(c) if recognised CSDs are a type of recognised body to which this Chapter applies, a person who has applied for recognition as such under section 288A.

309J Vetting by relevant recognised bodies

(1) Before making an application under section 309I for approval for a person to perform a designated senior management function, a relevant recognised body must be satisfied that the person is a fit and proper person to perform the function.

(2) In deciding that question, the relevant recognised body must have regard, among other things, to whether the person, or any person who may perform a function on the person's behalf—

(a) has obtained a specified qualification;

(b) has undergone, or is undergoing, specified training;

(c) possesses a specified level of competence;

(d) has specified personal characteristics.

(3) In subsection (2), "specified" means specified in rules made by the appropriate regulator.

(4) Before making rules for the purposes of this section, the appropriate regulator must comply with such consultation requirements as may be prescribed.

309K Determining applications: power to grant approval

(1) The appropriate regulator may grant an application under section 309I for approval for a person to perform a designated senior management function only if—

(a) it is satisfied that the person is a fit and proper person to perform the function, or

(b) it is satisfied that the condition in paragraph (a) will be met if the application is granted subject to one or more conditions (see subsection (3)).

(2) In determining the application, the appropriate regulator may have regard, among other things, to the matters mentioned in section 309J(2) (qualifications etc of person for whom approval sought).

(3) The appropriate regulator may, if it appears to it that it is desirable to do so in order to advance a relevant objective—

(a) grant the application subject to any conditions that it considers appropriate;

(b) grant the application so as to give approval only for a limited period.

(4) For the purposes of subsection (3), "relevant objective" means—

(a) if the appropriate regulator is the FCA, any of its operational objectives;

(b) if the appropriate regulator is the Bank of England, the Financial Stability Objective.

(5) Before granting approval under this section (whether or not subject to conditions or for a limited period), the appropriate regulator must comply with such consultation requirements as may be prescribed.

309L Determining applications: period for approval

(1) The appropriate regulator must, before the end of the period for consideration, determine whether—

(a) to grant an application under section 309I for approval for a person to perform a function, without imposing conditions or limiting the period for which the approval has effect, or

(b) to give a warning notice under section 309M(2).

(2) In subsection (1), "the period for consideration" means the period of 3 months beginning with the day on which the appropriate regulator receives the application.

This is subject to subsections (3) and (4).

(3) Where the application under section 309I is made by a person in reliance on section 309I(8) (applicants for recognition to be treated as relevant recognised bodies), "the period for consideration" means whichever of the following periods ends later—

(a) the period described in subsection (2), and

(b) the period within which the person's application for recognition must be determined—

(i) in the case of an application under section 287, in accordance with section 290(1B);

(ii) in the case of an application under section 288, in accordance with Article 17(7) of the EMIR regulation;

(iii) in the case of an application under section 288A, in accordance with section 290(4A).

(4) If the appropriate regulator imposes a requirement under section 309I(5), the period described in subsection (2) 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 the appropriate 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 the appropriate regulator.

(5) An applicant may withdraw an application under section 309I, by giving written notice to the appropriate regulator, at any time before the appropriate regulator determines the application, but only with the consent of—

(a) the person in relation to whom the application is made, and

(b) the person by whom that person is to be retained to perform the function to which the application relates, if not the applicant.

309M Determining applications: further procedure

(1) If the appropriate regulator decides to grant an application under section 309I without imposing conditions or limiting the period for which approval is given, it must give written notice of its decision to each of the interested parties.

(2) If the appropriate regulator proposes to refuse the application, or to grant the application subject to conditions or for a limited period (or both), it must give a warning notice to each of the interested parties.

(3) If the appropriate regulator decides to refuse the application, or to grant the application subject to conditions or for a limited period (or both), it must give a decision notice to each of the interested parties.

(4) If the appropriate regulator decides to refuse the application, or to grant the application subject to conditions or for a limited period (or both), each of the interested parties may refer the matter to the Tribunal.

(5) In this section, "the interested parties", in relation to an application under section 309I for approval for a person to perform a function, are—

(a) the applicant,

(b) the person in relation to whom the application is made, and

(c) the person by whom that person is to be retained to perform the function to which the application relates, if not the applicant.

309N Changes in responsibilities

(1) This section applies where, on an application made by a relevant recognised body under section 309I, the appropriate regulator has given approval for a person to perform a designated senior management function (and has not withdrawn the approval).

(2) Each time there is a notifiable change in the aspects of the relevant recognised body's affairs which the person is responsible for managing in performing the function, the relevant recognised body must provide the appropriate regulator with a revised statement of responsibilities (see section 309I(4)).

(3) Whether a change is "notifiable" is to be determined by the relevant recognised body in accordance with rules made by the appropriate regulator.

(4) The appropriate regulator may require the relevant recognised body to present information provided under this section in such form, or to verify the information in such a way, as the appropriate regulator may direct.

309O Withdrawing approval

(1) This section applies if an approval under section 309G has been given by the appropriate regulator in relation to the performance by a person of a designated senior management function.

(2) The appropriate regulator may withdraw the approval if it considers that the person is not a fit and proper person to perform the function.

(3) In considering whether to withdraw an approval, the appropriate regulator may take into account any matter which may be taken into account in considering an application under section 309I.

(4) The relevant recognised body on whose application the approval was given must, at specified intervals—

(a) consider whether there are grounds on which the appropriate regulator could withdraw the approval under this section, and

(b) if it considers that there are such grounds, notify the appropriate regulator of those grounds.

(5) For the purposes of subsection (4), a "specified interval" is an interval specified in rules made by the appropriate regulator for the purposes of this section.

309P Procedure for withdrawing approval

(1) If the appropriate regulator proposes to withdraw an approval given under section 309G, it must—

(a) comply with such consultation requirements as may be prescribed, and

(b) give each of the interested parties a warning notice.

(2) If the appropriate regulator decides to withdraw the approval, it must give each of the interested parties a decision notice.

(3) If the appropriate regulator decides to withdraw the approval, each of the interested parties may refer the matter to the Tribunal.

(4) In this section, "the interested parties", in relation to an approval given under section 309G, are—

(a) the relevant recognised body on whose application the approval was given,

(b) the person in relation to whom the approval was given, and

(c) the person by whom that person's services are retained, if not the relevant recognised body.

309Q Varying approval at request of relevant recognised body

(1) Where an approval under section 309G has effect subject to conditions, the relevant recognised body that applied for the approval may apply to the appropriate regulator to vary the approval by—

(a) varying a condition,

(b) removing a condition, or

(c) imposing a new condition.

(2) Where an approval under section 309G has effect for a limited period, the relevant recognised body that applied for the approval may apply to the appropriate regulator to vary the approval by—

(a) varying the period, or

(b) removing the limit on the period for which the approval is to have effect.

(3) The appropriate regulator must, before the end of the consultation period, determine whether—

(a) to grant the application, or

(b) to give a warning notice under section 309M(2) (as applied by subsection (8)).

(4) The "consultation period" is—

(a) such period as may be prescribed (and different periods may be prescribed in relation to different types of relevant recognised bodies), or

(b) if no such period is prescribed, the period of 3 months beginning with the day on which the appropriate regulator receives the application to vary the approval.

(5) The appropriate regulator may refuse an application under this section, if it appears to it that it is desirable to do so in order to advance a relevant objective.

(6) For the purposes of subsection (5), "relevant objective" means—

(a) if the appropriate regulator is the FCA, any of its operational objectives;

(b) if the appropriate regulator is the Bank of England, the Financial Stability Objective.

(7) An application may not be made under this section to vary or remove a condition or limit that was imposed under section 309Z2.

(8) Except as provided for below, the following sections apply to an application under this section for variation of an approval as they apply to an application under section 309I—

(a) section 309I(2) to (8),

(b) section 309L(4) and (5), and

(c) section 309M, but as if the references in subsections (1) to (4) to granting the application subject to conditions or for a limited period, or without imposing conditions or limiting the period for which approval is given, were omitted.

309R Varying approval on the appropriate regulator's initiative

(1) The appropriate regulator may vary an approval under section 309G if it considers it desirable to do so in order to advance a relevant objective.

(2) For these purposes, "relevant objective" means—

(a) if the appropriate regulator is the FCA, any of its operational objectives;

(b) if the appropriate regulator is the Bank of England, the Financial Stability Objective.

(3) The appropriate regulator may vary the approval by doing the following—

(a) imposing a condition,

(b) varying a condition,

(c) removing a condition,

(d) where the approval has effect for an unlimited period, limiting the period of the approval, or

(e) where the approval has effect for a limited period, varying that period or removing the limit on the period.

(4) A variation under this section takes effect—

(a) immediately, if the notice given under subsection (5) states that to be the case,

(b) on a date specified in the notice, or

(c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(5) If the appropriate regulator proposes to vary an approval or varies an approval with immediate effect, it must give each of the interested parties written notice—

(a) setting out details of the variation,

(b) stating the reasons for the variation,

(c) stating that each of the interested parties may make representations to the appropriate regulator within the period specified in the notice (whether or not any of the interested parties has referred the matter to the Tribunal),

(d) stating when the variation takes effect, and

(e) setting out each interested party's right to refer the matter to the Tribunal.

(6) A variation may be expressed to take effect immediately or on a specified date only if the appropriate regulator, having regard to its reason for varying the approval, reasonably considers that it is necessary for the variation to take effect immediately or on that date (as appropriate).

(7) The appropriate regulator may extend the period allowed under the notice for making representations.

(8) The appropriate regulator must give each of the interested parties written notice if, having considered the representations made, it decides—

(a) to vary the approval, or

(b) if the variation has taken effect, not to rescind it.

(9) A notice under subsection (8) must inform the interested parties of the right of each of them to refer the matter to the Tribunal.

(10) The appropriate regulator must give each of the interested parties written notice if, having considered the representations made, it decides—

(a) not to vary the approval,

(b) to vary the approval in a different way, or

(c) if the variation has taken effect, to rescind it.

(11) A notice under subsection (10)(b) must comply with the requirements set out in subsection (5)(a) to (e).

(12) A notice under this section which informs the interested parties of the right to refer a matter to the Tribunal must give an indication of the procedure on such a reference.

(13) In this section, "the interested parties" has the same meaning as in section 309P.

(14) For the purposes of subsection (4)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

309S Statement of policy on approval

(1) The appropriate regulator must prepare and issue a statement of its policy with respect to—

(a) the giving of approval under section 309G subject to conditions or for a limited period only, and

(b) the variation under section 309Q or 309R of an approval given under section 309G.

(2) The appropriate regulator—

(a) may alter or replace a statement issued under this section, and

(b) if it does so, must issue the altered or replacement statement.

(3) Before the appropriate regulator issues a statement of policy under this section, it must publish a draft of the proposed statement in the way appearing to it to be best calculated to bring it to the attention of the public.

(4) The draft statement must be accompanied by a notice stating that representations about the proposal may be made to the appropriate regulator within a period specified in the notice.

(5) Before issuing the proposed statement, the appropriate regulator must have regard to any representations made to it in accordance with subsection (4).

(6) If the appropriate regulator issues the proposed statement it must publish the following in the way appearing to it to be best calculated to bring them to the attention of the public—

(a) the statement,

(b) an account, in general terms, of the representations made to it in accordance with subsection (4) and its response to them, and

(c) if the statement issued differs from the draft published under subsection (3) in a way which the appropriate regulator considers to be significant, details of the difference.

(7) The appropriate regulator may charge a reasonable fee for providing a person with—

(a) a copy of a draft statement published under subsection (3), or

(b) a copy of a statement published under subsection (6)(a).

(8) The appropriate regulator must, without delay, give the Treasury a copy of each statement it publishes under subsection (6)(a).

309T Breach of statutory duty by relevant recognised bodies

(1) A contravention of section 309G(1) 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 section 309G(1) 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) In this section "private person" has such meaning as may be prescribed.

309U Power to impose penalties

(1) The appropriate regulator may impose a penalty on a person if it is satisfied that—

(a) the person has at any time performed a designated senior management function without approval, and

(b) at that time the person knew, or could reasonably be expected to have known, that they were performing a designated senior management function without approval.

(2) The penalty may be of such amount as the appropriate regulator considers appropriate.

(3) A person performs a designated senior management function without approval at a time if—

(a) the person performs a designated senior management function under an arrangement entered into by a relevant recognised body, or by a contractor of a relevant recognised body, in relation to the carrying on of an activity by the body, and

(b) when performing the function, the person is not acting in accordance with an approval given under section 309G.

(4) The appropriate regulator may not impose a penalty on a person under this section after the end of the limitation period unless it gave the person a warning notice under section 309V before the end of that period.

(5) For the purposes of subsection (4)—

(a) "the limitation period" means the period of 6 years beginning with the first day on which the appropriate regulator knew that the person concerned had performed a designated senior management function without approval, and

(b) the appropriate regulator is to be treated as knowing that a person has performed a designated senior management function without approval if it has information from which that can reasonably be inferred.

309V Procedure for imposing penalties

(1) If the appropriate regulator proposes to impose a penalty on a person under section 309U, it must give the person a warning notice.

(2) A warning notice under this section must state the amount of the penalty.

(3) If the appropriate regulator decides to impose a penalty on a person under section 309U, it must give the person a decision notice.

(4) A decision notice under this section must state the amount of the penalty.

(5) If the appropriate regulator decides to impose a penalty on a person under section 309U, the person may refer the matter to the Tribunal.

309W Statement of policy on penalties

(1) The appropriate regulator must prepare and issue a statement of its policy with respect to—

(a) the imposition of penalties under section 309U, and

(b) the amount of penalties under that section.

(2) The appropriate 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 designated senior management function was performed without approval,

(c) the length of the period during which the person performed a designated senior management function without approval, and

(d) whether the person on whom the penalty is to be imposed is an individual.

(3) The appropriate 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 a relevant recognised body.

(4) A statement issued under this section must include an indication of the circumstances in which the appropriate regulator would expect to be satisfied that a person could reasonably be expected to have known that the person was performing a designated senior management function without approval.

(5) The appropriate regulator—

(a) may alter or replace a statement issued under this section, and

(b) if it does so, must issue the altered or replacement statement.

(6) When imposing, or deciding whether to impose, a penalty on a person under section 309U, the appropriate regulator must have regard to any statement of policy published under this section (which was in force at a time when the person performed a designated senior management function without approval).

309X Procedure for statement of policy on penalties

(1) Before the appropriate regulator issues a statement under section 309W(1) or (5), it must publish a draft of the proposed statement in the way appearing to it to be best calculated to bring it to the attention of the public.

(2) The draft statement must be accompanied by a notice stating that representations about the proposal may be made to the appropriate regulator within the period specified in the notice.

(3) Before issuing the proposed statement, the appropriate regulator must have regard to any representations made to it in accordance with subsection (2).

(4) If the appropriate regulator issues the proposed statement it must publish the following in the way appearing to it to be best calculated to bring them to the attention of the public—

(a) the statement,

(b) an account, in general terms, of the representations made to the appropriate regulator in accordance with subsection (2) and the appropriate regulator's response to them, and

(c) if the statement issued differs from the draft published under subsection (1) in a way which the appropriate regulator considers to be significant, details of the difference.

(5) The appropriate regulator may charge a reasonable fee for providing a person with—

(a) a copy of a draft statement published under subsection (1), or

(b) a copy of a statement published under subsection (4)(a).

(6) The appropriate regulator must, without delay, give the Treasury a copy of a statement which it publishes under subsection (4)(a).

Certification of employees

309Y Certification of employees by relevant recognised bodies

(1) A relevant recognised body must take reasonable care to ensure that none of its employees performs a specified function in relation to the carrying on of an activity by the body, unless the employee has a valid certificate issued by the body under section 309Z.

(2) Subsection (1) applies only in relation to a function performed under an arrangement entered into by the body.

(3) In this section, "specified function" means a function of a description specified in rules made by the appropriate regulator.

(4) The appropriate regulator may specify a description of function under subsection (3) only if, in relation to the carrying on of an activity by a relevant recognised body of a particular description—

(a) the function is not a designated senior management function in relation to the carrying on of that activity by a relevant recognised body of that description, and

(b) the appropriate regulator is satisfied that the function is a significant-harm function.

(5) A function is a "significant-harm function", in relation to the carrying on of an activity by a relevant recognised body, if—

(a) the function will require the person performing it to be involved in one or more aspects of the body's affairs, so far as relating to the activity, and

(b) those aspects involve, or might involve, a risk of significant harm to the body or to any of its consumers.

(6) In this section, "consumers", in relation to a relevant recognised body, means—

(a) persons who use, have used or may use a service provided by the body, or

(b) persons who have relevant rights or interests in relation to any such service.

(7) A person ("P") has a "relevant right or interest" in relation to a service provided by a relevant recognised body if P has a right or interest—

(a) which is derived from, or is otherwise attributable to, the use of the service by others, or

(b) which may be adversely affected by the use of the service by persons acting on P's behalf or in a fiduciary capacity in relation to P.

(8) For these purposes—

(a) if a person is providing a service 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;

(b) a person who deals with another person ("A") in the course of A providing a service is to be treated as using the service.

309Z Issuing certificates

(1) A relevant recognised body may issue a certificate to a person under this section in relation to a function only if the body is satisfied that the person is a fit and proper person to perform the function.

(2) In deciding that question the body must have regard, among other things, to whether the person—

(a) has obtained a specified qualification,

(b) has undergone, or is undergoing, specified training,

(c) possesses a specified level of competence, or

(d) has specified personal characteristics.

(3) In subsection (2), "specified" means specified in rules made by the appropriate regulator.

(4) A certificate issued by a relevant recognised body to a person under this section must—

(a) state that the body is satisfied that the person is a fit and proper person to perform the function to which the certificate relates, and

(b) set out the aspects of the body's affairs in which the person will be involved in performing the function.

(5) A certificate issued under this section is valid for a period of 12 months beginning with the day on which it is issued.

(6) If, after having considered whether a person is a fit and proper person to perform a function, a relevant recognised body decides not to issue a certificate to the person under this section, the body must give the person a notice in writing stating—

(a) what steps (if any) the body proposes to take in relation to the person as a result of the decision, and

(b) the reasons for proposing to take those steps.

(7) A relevant recognised body must maintain a record of every employee who has a valid certificate issued by it under this section.

Rules of conduct

309Z1 Rules of conduct

(1) If it appears to the appropriate regulator to be necessary or expedient for the purposes of advancing a relevant objective, the appropriate regulator may make rules about the conduct of the following persons in relation to the performance by them of qualifying functions—

(a) persons in relation to whom the appropriate regulator has given its approval under section 309G ("Part 18 approved persons");

(b) directors of relevant recognised bodies;

(c) employees of relevant recognised bodies.

(2) Rules under subsection (1) may include provision requiring a relevant recognised body to—

(a) notify persons mentioned in subsection (1) of the rules that apply to them;

(b) take specified steps to secure that such persons understand how those rules apply in relation to them.

(3) Rules under subsection (1) may include provision requiring a relevant recognised body to notify the appropriate regulator if the body takes specified disciplinary action in relation to a person mentioned in subsection (1).

(4) In this section—

"qualifying function" means a function relating to the carrying on of activities by the following—

(a) in the case of a Part 18 approved person, the relevant recognised body on whose application approval was given;

(b) in the case of a director or employee of a relevant recognised body, who is not a Part 18 approved person, the relevant recognised body;

"relevant objective" means—

(a) if the appropriate regulator is the FCA, any of its operational objectives;

(b) if the appropriate regulator is the Bank of England, the Financial Stability Objective.

"specified" means specified in the rules.

Disciplinary action by appropriate regulator

309Z2 Power to take disciplinary action for misconduct

(1) Subsection (2) applies if—

(a) it appears to the appropriate regulator that a person is guilty of misconduct (see section 309Z3), and

(b) the appropriate regulator is satisfied that it is appropriate in all the circumstances to take action against the person.

(2) The appropriate regulator may do one or more of the following—

(a) publish a statement of the person's misconduct;

(b) impose a penalty on the person of such amount as the appropriate regulator considers appropriate;

(c) suspend an approval of the performance of a function by the person under section 309G for such period as the appropriate regulator considers appropriate;

(d) impose such conditions as the appropriate regulator considers appropriate in relation to such an approval for such period as the appropriate regulator considers appropriate;

(e) limit the period for which such an approval is to have effect.

(3) Where the appropriate regulator takes action described in subsection (2)(c), (d) or (e)—

(a) it may not suspend an approval for more than 2 years;

(b) it may not impose conditions which have effect for more than 2 years;

(c) it may impose a condition so as to, among other things, require a person to take, or refrain from taking, specified action;

(d) it may impose a suspension, condition or limitation that has effect in relation to part of a function.

(4) The appropriate regulator that has taken action described in subsection (2)(c), (d) or (e) may (at any time)—

(a) withdraw a suspension, condition or limitation;

(b) vary a suspension or condition so as to reduce the period for which it has effect or otherwise to limit its effect;

(c) vary a limitation so as to increase the period for which the approval is to have effect.

(5) The appropriate regulator may not take action under this section after the end of the period of 6 years beginning with the first day on which the appropriate regulator knew of the misconduct unless, before the end of that period, it gave a warning notice to the person concerned under section 309Z4.

(6) For the purposes of subsection (5), the appropriate regulator is to be treated as knowing of misconduct if it has information from which the misconduct can reasonably be inferred.

(7) When a suspension is in force under subsection (2)(c) in relation to part of a function, the references in section 309G and 309U to the performance of a function include the performance of part of a function.

(8) If at any time a condition imposed under subsection (2)(d) is contravened, the approval in relation to the person concerned is to be treated for the purposes of sections 309G and 309U as if it had been withdrawn at that time.

309Z3 Meaning of "misconduct"

(1) For the purposes of section 309Z2, a person is guilty of misconduct if any of conditions A to C is met.

(2) Condition A is that—

(a) the person has at any time failed to comply with rules made under section 309Z1, and

(b) at that time the person was—

(i) a Part 18 approved person,

(ii) an employee of a relevant recognised body, or

(iii) a director of a relevant recognised body.

(3) Condition B is that—

(a) the person has at any time after the passing of this Act been knowingly concerned in a contravention by a relevant recognised body of a relevant requirement, and

(b) at that time the person was—

(i) a Part 18 approved person in relation to the relevant recognised body,

(ii) an employee of the relevant recognised body, or

(iii) a director of the relevant recognised body.

(4) Condition C is that—

(a) the person has at any time been a Part 18 approved person in relation to a relevant recognised body,

(b) at that time there was, or continued to be, a contravention by the body of a relevant requirement,

(c) the person was at that time responsible for the management of any of the body's activities in relation to which the contravention occurred, and

(d) the person did not take such steps as a person in that position could reasonably be expected to take to avoid the contravention occurring or continuing.

(5) In this section—

"Part 18 approved person"—

(a) means a person in relation to whom an approval is given under section 309G, and

(b) in relation to a relevant recognised body, means a person in relation to whom such approval is given on the application of the relevant recognised body;

"relevant requirement" has the meaning given by section 312E(2) and (3).

309Z4 Procedure for disciplinary action

(1) If the appropriate regulator proposes to take action against a person under section 309Z2, it must—

(a) give the person a warning notice, and

(b) in the case of proposed action under section 309Z2(2)(c), (d) or (e), give each of the other interested parties a warning notice.

(2) A warning notice under this section about a proposal to publish a statement of a person's misconduct must set out the terms of the statement.

(3) A warning notice under this section about a proposal to impose a penalty must state the amount of the penalty.

(4) A warning notice under this section about—

(a) a proposal to suspend an approval given under section 309G, or

(b) a proposal to impose a condition in relation to such an approval,

must state the period for which the suspension or condition is to have effect.

(5) A warning notice under this section about a proposal to limit the period for which an approval under section 309G is to have effect must state the length of that period.

(6) If the appropriate regulator decides to take action against a person under section 309Z2, it must—

(a) give the person a decision notice, and

(b) in the case of proposed action under section 309Z2(2)(c), (d) or (e), give each of the other interested parties a copy of the decision notice.

(7) A decision notice under this section about the publication of a statement of a person's misconduct must set out the terms of the statement.

(8) A decision notice under this section about the imposition of a penalty must state the amount of the penalty.

(9) A decision notice under this section about—

(a) the suspension of an approval given under section 309G, or

(b) the imposition of a condition in relation to such an approval,

must state the period for which the suspension or condition is to have effect.

(10) A decision notice under this section about limiting the period for which an approval under section 309G is to have effect must state the length of that period.

(11) If the appropriate regulator decides to take action against a person under section 309Z2—

(a) the person may refer the matter to the Tribunal, and

(b) in the case of proposed action under section 309Z2(2)(c), (d) or (e), each of the other interested parties may also refer the matter to the Tribunal.

(12) After a statement of a person's misconduct is published under section 309Z2, the appropriate regulator must send a copy of it to—

(a) the person concerned, and

(b) any person to whom a copy of the decision notice was given.

(13) In this section—

"Part 18 approved person", in relation to a relevant recognised body, has the meaning given by section 309Z3(5);

"the other interested parties", in relation to a Part 18 approved person in relation to a relevant recognised body, are—

(a) the relevant recognised body, and

(b) the person by whom the Part 18 approved person's services are retained, if different from the relevant recognised body.

309Z5 Statement of policy about disciplinary action

(1) The appropriate regulator must prepare and issue a statement of its policy with respect to—

(a) the imposition of penalties, suspensions, conditions or limitations under section 309Z2,

(b) the amount of penalties under that section,

(c) the period for which suspensions or conditions under that section are to have effect, and

(d) the period for which approvals under section 309G are to have effect as a result of a limitation under section 309Z2.

(2) The appropriate 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,

(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) The appropriate regulator—

(a) may alter or replace a statement issued under this section, and

(b) if it does so, must issue the altered or replacement statement.

(4) In exercising, or deciding whether to exercise, its power under section 309Z2 in the case of particular misconduct, the appropriate regulator must have regard to any statement of policy published under this section and in force at the time when the misconduct in question occurred.

309Z6 Procedure for statement of policy about disciplinary action

(1) Before the appropriate regulator issues a statement under section 309Z5(1) or (3), it must publish a draft of the proposed statement in the way appearing to it to be best calculated to bring it to the attention of the public.

(2) The draft statement must be accompanied by a notice stating that representations about the proposal may be made to the appropriate regulator within a period specified in the notice.

(3) Before issuing the proposed statement, the appropriate regulator must have regard to any representations made to it in accordance with subsection (2).

(4) If the appropriate regulator issues the proposed statement it must publish the following in the way appearing to the appropriate regulator to be best calculated to bring it to the attention of the public—

(a) the statement,

(b) an account, in general terms, of the representations made to the appropriate regulator in accordance with subsection (2) and the appropriate regulator's response to them, and

(c) if the statement differs from the draft published under subsection (1) in a way which the appropriate regulator considers significant, details of the difference.

(5) The appropriate regulator may charge a reasonable fee for providing a person with—

(a) a copy of a draft statement published under subsection (1), or

(b) a copy of a statement published under subsection (4)(a).

(6) The appropriate regulator must, without delay, give the Treasury a copy of any statement which it publishes under subsection (4)(a).

Interpretation

309Z7 Interpretation of Chapter 2A

(1) In this Chapter—

"director", in relation to a relevant recognised body, means a member of the board of directors of the body or, if there is no such

board, the equivalent body responsible for the management of the body;

"employee", in relation to a relevant recognised body, includes a person who—

(a) personally provides, or is under an obligation personally to provide, services to the body under an arrangement made between the body and the person providing the services or another person, and

(b) is subject to, or to the right of, supervision, direction or control by the body as to the manner in which those services are provided;

"relevant recognised body" has the meaning given in section 309A;

"senior management function" and "designated senior management function" have the meanings given in section 309G (see subsections (3) and (5) of that section).

(2) In this Chapter, references to performing a designated senior management function without approval have the meaning given in section 309U(3).

Application of this Chapter to credit rating agencies

309Z8 Power to apply this Chapter to credit rating agencies

(1) The Treasury may by regulations provide for this Chapter, or any provision of this Chapter, to apply (with or without modifications) in relation to—

(a) registered credit rating agencies, or

(b) registered credit rating agencies of descriptions specified in the regulations.

(2) Regulations under subsection (1) must provide for the FCA to be the appropriate regulator in relation to a registered credit rating agency to which any provision of this Chapter is applied by the regulations.

(3) Regulations under subsection (1) may modify legislation (including any provision of, or made under, this Act).

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

(a) the FCA, and

(b) such other persons who appear to the Treasury to be representative of persons likely to be affected by the application of this Chapter to registered credit rating agencies, or registered credit rating agencies of descriptions specified in the regulations.

(5) In this section—

"legislation" means primary legislation, subordinate legislation (within the meaning of the Interpretation Act 1978) and retained direct EU legislation, but does not include rules or other instruments made by any regulator;

"modify" includes amend, repeal or revoke;

"registered credit rating agency" means a credit rating agency registered in accordance with Regulation (EC) No 1060/2009 of the European Parliament and the Council of 16 September 2009 on credit rating agencies."

PART 2

RELATED AMENDMENTS

Amendments to FSMA 2000

2 FSMA 2000 is amended as follows.

3 (1) Section 56 (prohibition orders) is amended as follows—

(2) After subsection (7C) insert—

"(7D) If—

(a) the FCA proposes to vary or revoke a prohibition order which makes provision in relation to a recognised body, and

(b) the FCA is not the appropriate regulator in relation to recognised bodies of that type,

the FCA must consult the appropriate regulator.

(7E) If the PRA proposes to vary or revoke a prohibition order which makes provision in relation to a recognised body, the PRA must consult the appropriate regulator in relation to recognised bodies of that type."

(3) For subsection (9) substitute—

"(9) In this section—

"the appropriate regulator", in relation to a recognised body, has the meaning given by section 285A;

"recognised body" has the meaning given by section 313;

"specified" means specified in the prohibition order."

4 (1) Section 57 (prohibition orders: procedure and right to refer to Tribunal) is amended as follows.

(2) After subsection (8) insert—

"(9) If—

(a) the FCA proposes to make a prohibition order which makes provision in relation to a recognised body, and

(b) the FCA is not the appropriate regulator in relation to recognised bodies of that type,

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

(10) If the PRA proposes to make a prohibition order which makes provision in relation to a recognised body, the PRA must consult the appropriate regulator in relation to recognised bodies of that type before giving a warning notice under this section.

(11) In this section—

"the appropriate regulator", in relation to a recognised body, has the meaning given by section 285A;

"recognised body" has the meaning given by section 313;".

5 In section 59AB(1) (specifying functions as controlled functions: transitional provision), after "this Part", in both places, insert "or Chapter 2A of Part 18".

6 In section 133(7A) (proceedings before Tribunal: general provision), after paragraph (l) insert—

"(la) a decision to impose a penalty under section 309U;

(lb) a decision to take action under section 309Z2;".

7 In section 138A (modification or waiver of rules), in subsection (2), after paragraph (b) insert—

"(c) rules made by the FCA under section 309Z1 (rules of conduct)."

8 (1) Section 168 (appointment of persons to carry out investigations in particular cases) is amended as follows.

(2) After subsection (4) insert—

"(4A) Subsection (5) applies if it appears to the investigating authority that there are circumstances suggesting that—

(a) an individual may not be a fit and proper person to perform functions in relation to an activity carried on by a relevant recognised body;

(b) an individual may have performed, or agreed to perform, a function in breach of a Part 18 prohibition order;

(c) a person may have failed to comply with section 309F(1);

(d) a relevant recognised body may have failed to comply with section 309G(1);

(e) a person in relation to whom the FCA has given approval under section 309G may not be a fit and proper person to perform the function to which that approval relates;

(f) a person may have performed a designated senior management function without approval under section 309G (see section 309U(3));

(g) a person may be guilty of misconduct for the purposes of section 309Z2."

(3) In subsection (6), after paragraph (b) insert—

"(c) in subsection (4A), the FCA."

(4) After subsection (6), insert—

"(7) "Relevant recognised body" has the same meaning as in Chapter 2A of Part 18 (see section 309A)."

9 In the heading of Chapter 3B of Part 18, at the end insert "in respect of recognised bodies".

10 Section 312FA is omitted.

11 In section 313 (interpretation of Part 18), in subsection (1)—

(a) omit the definition of "application";

(b) omit the definition of "applicant".

12 (1) Section 347 (the record of authorised persons etc) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (g), for "or Part 9C prohibition order" substitute ", Part 9C prohibition order or Part 18 prohibition order";

(b) after paragraph (h), insert—

"(hza) Part 18 approved person;".

(3) In subsection (2)—

(a) in paragraph (f), after "prohibition order" insert ", Part 9C prohibition order or Part 18 prohibition order";

(b) after paragraph (h) insert—

"(ha) in the case of a person who is a Part 18 approved person—

(i) the person's name;

(ii) the name of the relevant recognised body concerned;

(iii) if the Part 18 approved person is performing a designated senior management function under an arrangement with a contractor of the relevant recognised body concerned, the name of the contractor;

(iv) whether a final notice has been given to the person under section 390;

(v) if so, any information about the matter to which the notice relates which has been published under section 391(4);".

(4) In subsection (8), after ""Approved person"" insert "(except in the expression "Part 18 approved person")".

(5) After subsection (8) insert—

"(8ZA) "Part 18 approved person" means a person in relation to whom the FCA has given its approval under section 309G."

(6) In subsection (8A)—

(a) in the definition of "designated senior management function", for the words after "function"" substitute "—

(a) in relation to an authorised person, has the meaning given by section 59ZB;

(b) in relation to a relevant recognised body, has the meaning given by section 309G(3);".

(b) at the end insert—

""relevant recognised body" has the same meaning as in Chapter 2A of Part 18 (see section 309A)."

(7) In subsection (9), after "approval" insert "under section 59".

(8) After subsection (9) insert—

"(10) "The relevant recognised body concerned", in relation to a Part 18 approved person, means the relevant recognised body on whose application approval under section 309G was given."

13 In section 391 (publication of notices), in subsection (1ZB), after paragraph (k) insert—

"(ka) section 309V;

(kb) section 309Z4;".

14 (1) Section 392 (application of sections 393 and 394) is amended as follows.

(2) In paragraph (a) (warning notices), after "282B(3)," insert "309C(1)(b), 309P(1)(b), 309V(1), 309Z4(1),".

(3) In paragraph (b) (decision notices), after "282B(4)," insert "309C(3), 309P(2), 309V(3), 309Z4(6),".

15 In section 395 (the FCA's and PRA's procedures), in subsection (13), after paragraph (fa) insert—

"(fb) 309R(5), (8) or (10)(b);".

16 (1) Section 417(1) (interpretation) is amended as follows.

(2) In the appropriate place insert—

""Part 18 prohibition order" has the meaning given in section 309B;".

(3) In the definition of "prohibition order", after ""Part 9C prohibition order"" insert "or ""Part 18C prohibition order"".

17 In section 429 (Parliamentary control of statutory instruments)

(a) in subsection (2), in the list of sections beginning with "90B" insert at the appropriate place "309Z8,";

(b) in subsection (2B), after paragraph (ba) insert—

"(bb) provision made under section 309H(2) which modifies, excludes or applies with modifications any provision of primary legislation;".

18 (1) Schedule 1ZA (the Financial Conduct Authority) is amended as follows.

(2) In paragraph 20(4), after paragraph (ba) insert—

"(bb) its powers under section 309B (Part 18 prohibition orders),".

(3) In paragraph 24, after paragraph (b) insert—

"(c) a fee to be paid by any person whose application under section 309I for approval under section 309G has been granted."

19 In Schedule 2A (Gibraltar-based persons carrying on activities in the UK), in paragraph 19 (power to reject: prohibition order in respect of senior manager), in sub-paragraph (2)(b)—

(a) omit the "or" at the end of paragraph (ii) and insert—

"(iia) an order under section 309B, or";

(b) in paragraph (iii) for "or 143S" substitute ", 143S or 309B".

20 (1) Schedule 17A (further provision in relation to exercise of Part 18 functions by Bank of England) is amended as follows.

(2) After paragraph 6 insert—

"6A (1) If the Bank makes a Part 18 prohibition order relating to an individual, the Bank must—

(a) provide the FCA with information falling within section 347(2)(f) in relation to the order, and

(b) where the FCA has notified the Bank that it considers it appropriate to include in the record maintained under section 347 information of a certain description, disclose to the FCA such information of that description relating to the order or the individual as the Bank has in its possession.

(2) The duty to provide information under sub-paragraph (1)—

(a) does not apply to information which the Bank reasonably believes is in the possession of the FCA;

(b) does not require or authorise the disclosure of information whose disclosure is prohibited by or under section 348;

(c) is without prejudice to any other power of the Bank to disclose information."

(3) In paragraph 14(2) (investigations)—

(a) in paragraph (b), for "clearing house or central securities depository" substitute "person";

(b) at the end insert—

"(i) an individual may not be a fit and proper person to perform functions in relation to an activity carried on by a relevant recognised body;

(j) an individual may have performed, or agreed to perform, a function in breach of a Part 18 prohibition order;

(k) a relevant recognised body may have failed to comply with section 309F(1);

(l) a relevant recognised body may have failed to comply with section 309G(1);

(m) a person in relation to whom the Bank has given approval under section 309G may not be a fit and proper person to perform the function to which that approval relates;

(n) a person may have performed a designated senior management function without approval under section 309G (see section 309U(3));

(o) a person may be guilty of misconduct for the purposes of section 309Z2."

(4) In paragraph 22 (application of section 347 to the Bank)—

(a) the words after "etc)" become paragraph (a);

(b) after that paragraph insert—

"(b) so far as it relates to approved persons, applies in relation to the Bank as if references in that section to an approved person were to a person in relation to whom the Bank has given approval under section 309G."

(5) In paragraph 29 (notices)—

(a) the words after "(notices) apply" become paragraph (a);

(b) in that paragraph, after "192L," insert "309C, 309D, 309M, 309P, 309V, 309Z4,";

(c) after that paragraph insert—

"(b) in relation to a notice under section 309R(5), (8) or (10)(b) as they apply in relation to such a notice given by the FCA under those provisions."

(6) In paragraph 31(1) (proceedings for an offence), after paragraph (c) insert—

"(ca) an offence under section 309E;".

(7) In paragraph 36 (fees), after sub-paragraph (4) insert—

"(5) The power conferred by this paragraph may not be used to require a fee to be paid by any person whose application under section 309I for approval under section 309G has been granted."

Financial Services Act 2012

21 (1) Section 110 of the Financial Services Act 2012 (payment to Treasury of penalties received by Bank of England) is amended as follows.

(2) In subsection (2)(a), after "192K" insert ", 309U, 309Z2".

(3) In subsection (5), after paragraph (a) insert—

"(aa) sections 309B, 309U and 309Z2 of that Act (Part 18 prohibition orders),".

SCHEDULE 11

Section 57

CENTRAL COUNTERPARTIES

PART 1

INTRODUCTORY

Overview

1 (1) The purpose of the special resolution regime for CCPs (see Part 5 of this Schedule) is to address the situation where all or part of the business of a CCP has encountered, or is likely to encounter, financial difficulties.

(2) The special resolution regime consists of the eight stabilisation options.

(3) The eight stabilisation options are—

(a) transfer to a private sector purchaser (paragraph 27),

(b) transfer to a bridge central counterparty (paragraph 29),

(c) transfer of ownership (paragraph 30),

(d) terminating clearing member contracts (paragraph 31),

(e) making a cash call (paragraph 32),

(f) reducing variation margin payments (paragraph 33),
(g) writing down liabilities (paragraphs 34 and 35), and
(h) taking control of the CCP (paragraph 38).

(4) The stabilisation options are achieved through the exercise of one or more of the "stabilisation powers" which are—
(a) the share transfer powers (paragraphs 41 and 49 to 53),
(b) the property transfer powers (paragraphs 54 and 67 to 74), and
(c) the other resolution powers (paragraphs 31 to 35 and 38).

(5) Each of the following has a role in the operation of the special resolution regime—
(a) the Bank,
(b) the Treasury,
(c) the PRA, and
(d) the FCA.

(6) Other Parts of this Schedule deal with the following matters—
(a) powers and requirements in relation to CCPs which are exercisable by the Bank in advance of reliance on the special resolution regime (see Parts 2 to 4);
(b) powers relating to information, investigation and enforcement in relation to requirements under this Schedule (see Part 6);
(c) third-country resolution action (see Part 7);
(d) other general provision, financial provision and consequential amendments (see Parts 8 to 10).

PART 2

PRE-RESOLUTION POWERS OF THE BANK OF ENGLAND

Removal of impediments to the exercise of stabilisation powers etc

2 (1) The Bank may give directions to a CCP to take measures which the Bank considers are required to address impediments to the effective exercise of the stabilisation powers.

(2) The power conferred by sub-paragraph (1) includes (but is not limited to) a power to direct the CCP—
(a) to enter into or revise an agreement for the provision of services relating to the provision of critical clearing services;
(b) to limit its maximum individual and aggregate exposures to loss;
(c) to produce information which is relevant to the exercise of the stabilisation powers, and to provide that information to the Bank;
(d) to dispose of specified assets;
(e) to cease carrying out specified activities, or observe restrictions in relation to the carrying out of specified activities;
(f) to cease the development of new or existing business operations, or observe restrictions in relation to the development of such operations;
(g) to make specified changes to its recovery plan, rules or contractual arrangements;

(h) in order to ensure that it is possible for the performance of critical clearing services to be legally or operationally separated from the performance of other functions—

(i) to change its legal or operational structure, or

(ii) so far as it is able to do so, to change the legal or operational structure of a subsidiary;

(i) to change its operational and financial arrangements so as to separate specified classes of assets from other specified classes of assets;

(j) to restrict netting sets in relation to specified classes of assets;

(k) to establish a parent company in the United Kingdom.

(3) Where a CCP is a subsidiary of a company incorporated in the United Kingdom, the Bank may give directions to its parent company requiring the parent company to establish a separate holding company as a parent of the subsidiary for the purpose of—

(a) facilitating the exercise of the stabilisation powers, or

(b) ensuring that the exercise of a stabilisation power does not have an adverse effect on any other entities in the group.

(4) Before giving directions under this paragraph the Bank must have regard to the potential impact of the direction on—

(a) the CCP or entity in question,

(b) the market for financial services within the United Kingdom, and

(c) the financial stability of the United Kingdom.

(5) Where the CCP in question is a PRA-authorised person, the Bank must consult the PRA before giving directions under this paragraph.

(6) Directions under this paragraph—

(a) must be in writing,

(b) may be given with general effect or with respect to a particular CCP or class of CCPs, and

(c) may be varied or revoked.

(7) Nothing in this paragraph limits the powers of the Bank under section 296 or 296A of, or paragraph 9B of Schedule 17A to, FSMA 2000.

(8) In this paragraph, "recovery plan" in relation to a CCP, means a plan required under paragraph 29B of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (S.I. 2001/995).

Safeguards relating to directions under paragraph 2

3 (1) A direction given to a relevant person under paragraph 2 must be accompanied by a notice which—

(a) states when the direction takes effect (see sub-paragraphs (2) and (3)),

(b) gives the Bank's reasons for giving the direction, and

(c) specifies a reasonable period within which the person may make representations to the Bank about the direction.

(2) The direction may, if the Bank considers it necessary, take effect—

(a) immediately it is given to the relevant person, or

(b) on a later date specified in the direction.

(3) In any other case the direction takes effect when—

(a) it has been confirmed by a notice under sub-paragraph (5), and

(b) the period during which the direction may be referred to the Upper Tribunal (under sub-paragraph (6)) has expired and, if the matter was so referred, the reference and any appeal against the Tribunal's determination, has been finally disposed of.

(4) Where representations are made by the relevant person within the period specified under sub-paragraph (1)(c), the Bank must, within a reasonable period, consider those representations and decide—

(a) whether to confirm or revoke the direction, and

(b) if the direction is revoked, whether to give a different direction.

(5) The Bank must—

(a) if no representations are made within that specified period, give the relevant person written notice that the direction is confirmed, and

(b) if representations are made, give the relevant person written notice of its decision under sub-paragraph (4).

(6) If the relevant person is aggrieved by the confirmation of the direction, the person may refer the matter to the Upper Tribunal.

(7) A notice under sub-paragraph (5)(a) or (b) confirming the direction must—

(a) inform the relevant person of the right to refer the matter to the Upper Tribunal, and

(b) indicate the procedure on such a reference.

(8) A notice given under sub-paragraph (5)(b) of a decision by the Bank to give a different direction must comply with sub-paragraph (1).

(9) The Bank must prepare and publish a statement of its policy with respect to the giving of directions under paragraph 2.

(10) The Bank may alter or replace a statement of policy published under this paragraph.

(11) The Bank must publish a statement as altered or replaced under sub-paragraph (10).

(12) No directions may be given under paragraph 2 before the statement of policy under sub-paragraph (9) has been published.

(13) In this paragraph "relevant person" means—

(a) a CCP, or

(b) a parent of a CCP.

PART 3

RESOLUTION PLANS

Resolution plans

4 (1) The Treasury may by regulations make provision requiring the Bank to create and maintain a resolution plan for each CCP.

(2) The following are examples of provision that regulations under sub-paragraph (1) may make—

(a) provision specifying the information that must be contained in a resolution plan (including provision enabling the Bank to specify such information);

(b) provision requiring CCPs to give specified information to the Bank for the purpose of the Bank creating and maintaining a resolution plan (including provision enabling the Bank to specify the way in which such information is to be given);

(c) provision specifying the form of resolution plans (including provision enabling the Bank to specify the form);

(d) provision requiring the Bank to review resolution plans at specified intervals;

(e) provision requiring the Bank to provide specified information relating to a review to specified persons;

(f) provision requiring the Bank to give specified persons a copy of the resolution plan and any revised plans (including provision about the way in which a copy of a plan is to be given).

(3) Regulations under this paragraph may provide for exemptions.

(4) Regulations under this paragraph are subject to the negative procedure.

(5) In this paragraph "resolution plan", in relation to a CCP, means a document setting out the actions that the Bank proposes to take in the event that the CCP meets the conditions under paragraph 17 for the exercise of the stabilisation powers.

PART 4

REMOVAL OF DIRECTORS AND SENIOR MANAGERS

Removal of directors and senior managers

5 (1) If the Bank is satisfied that the conditions in paragraph 7(1) and (2) are met in relation to a CCP, the Bank may require the CCP to remove—

(a) any person who is a director of the CCP;

(b) any person who is a senior manager of the CCP.

(2) If the Bank imposes a requirement under sub-paragraph (1), the Bank may also require the CCP—

(a) to replace a director or senior manager who has been removed, and

(b) to take any step needed to give effect to the replacement, including, where necessary, calling a general meeting of the CCP's shareholders or, if the CCP is an unincorporated association, its members.

(3) If the Bank is satisfied that the condition in paragraph 7(5) is met in relation to a person who is a director of a CCP, the Bank may require that CCP to remove that person from the board of directors.

(4) Nothing in this Schedule affects the powers under Article 31 of EMIR or paragraphs 45 and 58.

Temporary manager

6 (1) If the Bank is satisfied that the conditions in paragraph 7(1), (2) and (4) are met in relation to a CCP, the Bank may appoint a person to act (or more than one persons to act jointly) as a temporary manager of that CCP.

(2) A temporary manager may be appointed under sub-paragraph (1)—

(a) to replace the directors of a CCP where they have been removed in compliance with a requirement imposed under paragraph 5, or

(b) to work with the directors of a CCP.

(3) A temporary manager has the functions specified in the instrument of appointment (see paragraph 9).

(4) The functions which may be specified include (amongst other things)—

(a) ascertaining the financial position of the CCP;

(b) managing the business or part of the business of the CCP in order to preserve or restore the financial position of the CCP;

(c) taking measures to restore the prudent management of the CCP;

(d) any functions of the directors.

(5) The temporary manager may, with the consent of the Bank—

(a) require the directors to call a general meeting of the shareholders, or in the case of an unincorporated association, the members of the CCP, or

(b) in the case where all of the directors have been removed in compliance with a requirement imposed under paragraph 5, call a general meeting of the shareholders of the CCP or, if the CCP is an unincorporated association, the members of the CCP.

(6) The temporary manager may propose business for consideration at the general meeting.

(7) If the temporary manager is being appointed to work with the directors, the Bank—

(a) may require the directors not to exercise specified functions during the period of appointment;

(b) may require the directors to consult the temporary manager, or obtain the consent of the temporary manager, before taking such decisions or actions as may be specified in the requirement.

Paragraphs 5 and 6: conditions

7 (1) The condition in this sub-paragraph is met if—

(a) there is a significant deterioration in the financial situation of the CCP, or

(b) there is a serious infringement by the CCP of—

(i) a relevant requirement, or

(ii) its rules.

(2) The condition in this sub-paragraph is met if it is not reasonably likely that the deterioration would be reversed or the infringement would be brought to an end by any measure which could be taken by the Bank under the provisions listed in sub-paragraph (3).

(3) The provisions mentioned in sub-paragraph (2) are—

(a) section 296 or 296A of FSMA 2000 (power to direct CCPs);

(b) paragraph 13 (power to impose stay on distributions).

(4) The condition in this sub-paragraph is met if the imposition of one or more requirements under paragraph 5 (removal and replacement of directors and senior managers) would not be sufficient to reverse the deterioration or bring the infringement to an end.

(5) The condition in this sub-paragraph is met in relation to a director of a CCP, if the director—

(a) is no longer of sufficiently good repute to perform their duties,

(b) no longer possesses sufficient knowledge, skills, experience, honesty, integrity or independence of mind to perform their duties, or

(c) is no longer able to commit sufficient time to perform their duties.

(6) For the purposes of this paragraph—

(a) "relevant requirement" means a requirement imposed by or under—

(i) FSMA 2000;

(ii) EMIR;

(iii) another enactment (or provision of an enactment) specified in regulations made by the Treasury;

(b) a deterioration in the financial situation of a CCP is significant if the deterioration places the CCP at risk of meeting condition 1 under paragraph 17.

(7) Regulations under this paragraph are subject to the negative procedure.

Temporary manager: further provisions in relation to the appointment

8 (1) Before appointing a person to act as a temporary manager, the Bank must be satisfied that the person—

(a) has the qualifications, ability and knowledge to carry out the functions to be given to the temporary manager, and

(b) would not be subject to a conflict of interest as a result of the appointment.

(2) A person may not be appointed to act as a temporary manager for a period longer than one year, but is eligible for re-appointment (or further re-appointment) if paragraph 6(1) continues to apply in relation to the CCP.

(3) The Bank may vary the terms of the appointment of a temporary manager, or remove the temporary manager, at any time.

(4) A temporary manager is not liable for damages in respect of anything done in good faith for the purposes of or in connection with the functions of the appointment (subject to section 8 of the Human Rights Act 1998).

Temporary manager: instrument of appointment

9 (1) The power in paragraph 6(1) is to be exercised by an instrument of appointment.

(2) The instrument of appointment must—

(a) specify the functions of the temporary manager,

(b) specify the date on which the appointment of the temporary manager has effect,

(c) specify the period for which the temporary manager is appointed, and

(d) make provision for the resignation and replacement of the person who is appointed as the temporary manager.

(3) The instrument of appointment may—

(a) require the temporary manager to consult the Bank or other specified person before exercising specified functions,

(b) specify particular matters on which the Bank or other specified person must be consulted, and

(c) provide that the temporary manager is not to exercise specified functions without the consent of the Bank or other specified person.

(4) The instrument of appointment may require the temporary manager to make reports to the Bank, at specified times or intervals, on—

(a) the financial position of the CCP,

(b) the actions taken by the temporary manager during the course of the temporary manager's appointment, and

(c) any other specified matters.

(5) The instrument of appointment may provide for the payment of remuneration and allowances to a temporary manager.

(6) Provision under sub-paragraph (5) may provide that the amounts are—

(a) to be paid by the Bank, or

(b) to be determined by the Bank and paid by the CCP.

(7) If a temporary manager—

(a) is appointed to replace the directors of the CCP, or

(b) is appointed to work with the directors of the CCP and has the power to represent the CCP,

the Bank must publish the instrument of appointment on its website.

Right to refer matters to the Tribunal

10 (1) A CCP which is aggrieved by one of the following may refer the matter to the Tribunal—

(a) the imposition of a requirement on that CCP under paragraph 5, or

(b) the appointment, or the terms of the appointment, of a person to act as a temporary manager of that CCP under paragraph 6.

(2) A director or senior manager (or a former director or senior manager) of a CCP who is aggrieved by the imposition of a requirement on that CCP under paragraph 5 may refer the matter to the Tribunal.

(3) A director (or a former director) of a CCP who is aggrieved by the imposition of a requirement on that director under paragraph 6(7) may refer the matter to the Tribunal.

Removal of directors and senior managers and appointment of temporary manager: procedure

11 (1) A requirement under paragraph 5 or 6(7) or the appointment of a temporary manager under paragraph 6(1) may be expressed to take effect immediately or on a specified date only if the Bank, having regard to the grounds for imposing the requirement or making the appointment, reasonably considers that it is necessary for the requirement or the appointment to take effect immediately or on that date.

(2) If the Bank proposes to impose a requirement on a CCP under paragraph 5 or imposes such a requirement with immediate effect, it must give written notice—

(a) to that CCP, and

(b) to each of the directors or senior managers to whom the requirement relates.

(3) If the Bank—

(a) proposes to appoint a person to act as a temporary manager under paragraph 6 or to vary the terms on which such a person is appointed, or

(b) makes such an appointment or variation with immediate effect,

the Bank must give written notice to the CCP.

(4) If the Bank proposes to impose a requirement on the directors under paragraph 6(7), or imposes such a requirement with immediate effect, the Bank must give written notice to each director.

(5) If, having considered any representations made by a person to whom notice (the "original notice") has been given (see paragraph 12), the Bank decides—

(a) to impose the requirement, make the appointment or vary the terms of an appointment in accordance with the original notice, or

(b) not to rescind the imposition of any such requirement or the making of any such appointment or variation which has already taken effect,

the Bank must give written notice to each person to whom the original notice was given.

(6) A written notice under sub-paragraph (5) must inform the person to whom it is given of the right of that person to refer the matter to the Tribunal and give an indication of the procedure on such a reference.

(7) If, having considered any representations made by a person to whom the original notice has been given (see paragraph 12), the Bank decides—

(a) to impose a requirement, make an appointment or vary the terms of an appointment in a way that is different from the requirement, appointment or variation described in the original notice,

(b) not to impose the requirement, make the appointment or vary the terms of an appointment in accordance with the original notice, or

(c) to rescind the imposition of any such requirement, or the making of any such appointment or variation that has already taken effect,

the Bank must give written notice to each person to whom the original notice was given.

Removal of directors and senior managers and appointment of temporary manager: notice requirements

12 (1) A notice under paragraph 11(2) must—

(a) give details of the requirement,

(b) identify each of the directors or senior managers to whom the requirement relates ("the interested parties"),

(c) give the Bank's reasons for imposing the requirement—

(i) in the case of a notice given to the CCP, in relation to each interested party;

(ii) in the case of a notice given to an interested party, in relation to that interested party,

(d) inform the CCP and the interested parties that each of them may make representations to the Bank within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal),

(e) state when the requirement takes effect, and

(f) inform the CCP and each of the interested parties of their right to refer the matter to the Tribunal.

(2) A notice given under paragraph 11(3) must—

(a) state when the appointment or variation takes effect, and be accompanied by the instrument, or revised instrument, of appointment,

(b) give the Bank's reasons for making the appointment or variation,

(c) inform the CCP that it may make representations to the Bank within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal), and

(d) inform the CCP of its right to refer the matter to the Tribunal.

(3) A notice given under paragraph 11(4) must—

(a) give details of the requirement,

(b) give the Bank's reasons for imposing the requirement,

(c) state when the requirement takes effect,

(d) inform the director that the director may make representations to the Bank within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal), and

(e) inform the director of the director's right to refer the matter to the Tribunal.

(4) The Bank may extend the period allowed by the notice given under paragraph 11(2), (3) or (4) for making representations.

(5) A notice under paragraph 11(7)(a) about the imposition of a requirement under paragraph 5 must comply with sub-paragraph (1).

(6) A notice under paragraph 11(7)(a) about the appointment of a person as a temporary manager or the variation of the terms of the appointment of a person as a temporary manager must comply with sub-paragraph (2).

(7) A notice under paragraph 11(7)(a) about the imposition of a requirement under paragraph 6(7) must comply with sub-paragraph (3).

(8) In this paragraph, any reference to "appointment" includes re-appointment.

Temporary restriction on remuneration

13 (1) The Bank may by direction restrict or prohibit for a specified period discretionary payments to specified employees of a CCP or specified shareholders of a CCP.

(2) The power under sub-paragraph (1) may be exercised only if—

(a) a stabilisation power is not being exercised in relation to the CCP,

(b) at least one of the conditions in sub-paragraph (3) is met, and

(c) the condition in sub-paragraph (4) is met.

(3) The conditions in this sub-paragraph are—

(a) there is or is likely soon to be a significant deterioration in the financial situation of the CCP (within the meaning given by paragraph 7(6));

(b) there is a material risk of a threat to the ability of the CCP to maintain critical clearing services;

(c) there is a risk of a significant disruption to the operation of the CCP;

(d) the operation of the CCP poses a risk to the financial stability of the United Kingdom.

(4) The condition in this sub-paragraph is that the exercise of the power is necessary or desirable having regard to the public interest in—

(a) the stability of the UK financial system, or

(b) the continuity of critical clearing services.

(5) The Bank must prepare and publish a statement of its policy with respect to the giving of directions under this paragraph.

(6) The Bank may alter or replace a statement of policy published under this paragraph.

(7) The Bank must publish a statement as altered or replaced under sub-paragraph (6).

(8) No directions may be given under this paragraph before the statement of policy under sub-paragraph (5) has been published.

(9) The specified period for the purposes of sub-paragraph (1) must not exceed 5 years.

(10) Directions under this paragraph—

(a) must be given in writing to the employees or shareholders that the directions apply to;

(b) may be varied or revoked.

(11) In this paragraph "discretionary payments" means payments, made otherwise than under a contractual obligation, of any of the following—

(a) equity remuneration;

(b) dividend payments;

(c) share buy-backs;

(d) variable remuneration including, where an employee is a senior manager, bonuses, discretionary pension benefits and severance payments.

Restriction on remuneration: review and revocation

14 (1) This paragraph applies where a direction has been given under paragraph 13(1) in relation to a CCP.

(2) The Bank must, at least once every 3 months after giving the direction, carry out a review of whether the requirements for the exercise of the power continue to be met.

(3) If at any time the Bank becomes aware that the requirements for the exercise of the power cease to be met, the Bank must revoke the direction with immediate effect.

(4) The direction ceases to have effect if a stabilisation power is exercised in respect of the CCP.

PART 5

Special resolution action

Special resolution objectives

15 (1) This paragraph sets out the special resolution objectives.

(2) The Bank must have regard to the special resolution objectives in using, or considering the use of, the stabilisation powers.

(3) Objective 1 is to protect and enhance the stability of the UK financial system, including in particular by—

(a) preventing contagion (including contagion to market infrastructures), and

(b) maintaining market discipline.

(4) Objective 2 is to protect and enhance public confidence in the stability of the UK financial system.

(5) Objective 3 is to maintain the continuity of central counterparty clearing services.

(6) Objective 4 is to protect public funds.

(7) Objective 5 is to avoid interfering with property rights in contravention of a Convention right (within the meaning of the Human Rights Act 1998).

(8) The order in which the objectives are listed in this paragraph is not significant; they are to be balanced as appropriate in each case.

(9) In this paragraph, "market infrastructures" include recognised investment exchanges, recognised clearing houses and recognised CSDs, within the meaning of section 285 of FSMA 2000.

Code of Practice

16 (1) The Treasury must issue a code of practice about the use of the stabilisation powers.

(2) The code may, in particular, provide guidance on—

(a) how the special resolution objectives are to be understood and achieved,

(b) the choice between different options,

(c) the information to be provided in the course of a consultation under this Schedule,

(d) how to determine whether Condition 2 in paragraph 17 is met,

(e) how to determine whether the test for the use of stabilisation powers under paragraph 19 is satisfied,

(f) paragraphs 89 and 92, and

(g) compensation, including how the Treasury intend to satisfy the requirement under paragraph 87(3).

(3) See also paragraph 29 which requires the inclusion in the code of certain matters about bridge central counterparties.

(4) The Treasury may revise and re-issue the code of practice.

(5) Before issuing or re-issuing the code of practice the Treasury must consult the Bank, the FCA and the PRA.

(6) The Bank must have regard to the code of practice.

(7) As soon as is reasonably practicable after issuing or re-issuing the code of practice the Treasury must lay a copy before Parliament.

General conditions

17 (1) A stabilisation power may be exercised in respect of a CCP only if the Bank is satisfied that each of the following conditions is met.

(2) Condition 1 is that the CCP is failing or likely to fail.

(3) Condition 2 is that—

(a) having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the CCP that will result in Condition 1 ceasing to be met, or

(b) in the Bank's assessment, the action that may be taken by or in respect of the CCP for the purpose of ensuring that Condition 1 is no longer met might have an adverse impact on the stability of the UK financial system.

(4) Condition 3 is that the exercise of the power is necessary having regard to the public interest in the advancement of one or more of the special resolution objectives.

(5) Condition 4 is that one or more of the special resolution objectives would not be met to the same extent by the winding up of the CCP.

(6) For the purposes of Condition 1, a CCP is failing or likely to fail if one or more of the following apply—

(a) the CCP is failing or is likely to fail to meet the recognition requirements (within the meaning of section 286 of FSMA 2000);

(b) the value of the assets of the CCP is less than the amount of its liabilities;

(c) the CCP is unable to pay its debts or other liabilities as they fall due;

(d) any of paragraphs (a) to (c) will, in the near future, apply to the CCP;

(e) extraordinary public financial support is required in respect of the CCP and sub-paragraph (9) does not apply to that support.

(7) The Bank may treat Condition 1 as met if satisfied that it would be met but for the withdrawal or possible withdrawal of critical clearing services by the CCP.

(8) The Bank must treat Conditions 1 and 2(a) as met if satisfied that those conditions would be met but for financial assistance provided by—

(a) the Treasury, or

(b) the Bank (disregarding ordinary market assistance offered by the Bank on its usual terms).

(9) This sub-paragraph applies where, in order to remedy a serious disturbance in the economy of the United Kingdom and preserve financial stability, the extraordinary public financial support takes either of the following forms—

(a) a State guarantee to back liquidity facilities provided by the Bank, or

(b) a State guarantee of newly issued liabilities.

(10) Before determining that Conditions 2, 3 and 4 are met the Bank must consult—

(a) if the CCP is a PRA-authorised person, the PRA,

(b) the FCA, and

(c) the Treasury.

Effect on other group members

18 Where the Bank is considering the exercise of a stabilisation power in respect of a CCP which is a member of a group, the Bank must have regard to—

(a) the need to minimise the effect of the exercise of the power on other undertakings in the same group, and

(b) the potential effect of the exercise of the power on the financial stability of countries other than the United Kingdom (particularly those countries in which any member of that group is operating).

Specific conditions: financial assistance cases

19 (1) In a financial assistance case, the Bank may exercise a stabilisation power in respect of the CCP concerned in accordance with paragraph 27, 29 or 30 only if satisfied that the condition in sub-paragraph (3) is met.

(2) "Financial assistance case" means a case where the Treasury notify the Bank that they have provided financial assistance in respect of a CCP for the purpose of resolving or reducing a serious threat to the stability of the UK financial system.

(3) The condition is that—

(a) the Treasury have given a recommendation to the Bank to exercise the stabilisation power on the grounds that it is necessary in order to protect the public interest, and

(b) the Bank considers that the exercise of the stabilisation power is an appropriate way to provide that protection.

(4) The condition in this paragraph is in addition to the conditions in paragraph 17.

Resolution liaison panel

20 (1) The Treasury must make arrangements for a panel to advise the Treasury about the effect of the special resolution regime on—

(a) CCPs,

(b) persons with whom CCPs do business, and

(c) the financial markets.

(2) In particular, the panel may advise the Treasury about—

(a) the exercise of powers to make statutory instruments under or by virtue of this Schedule, (excluding the stabilisation powers and regulations under paragraphs 87 and 153),
(b) the code of practice under paragraph 16, and
(c) anything else referred to the panel by the Treasury.

(3) The Treasury must ensure that the panel includes—
(a) a member appointed by the Treasury,
(b) a member appointed by the Bank,
(c) a member appointed by the PRA,
(d) a member appointed by the FCA,
(e) one or more persons who in the Treasury's opinion represent the interests of CCPs,
(f) one or more persons who in the Treasury's opinion represent the interests of clearing members of CCPs,
(g) one or more persons who in the Treasury's opinion have expertise in law relating to the UK financial system, and
(h) one or more persons who in the Treasury's opinion have expertise in insolvency law and practice.

Restrictions on use of certain resolution powers

21 (1) Where the Bank has exercised the first stabilisation option (private sector purchaser) in respect of a CCP it may only exercise the relevant resolution powers in relation to the residual CCP.

(2) Where the Bank has exercised the third stabilisation option (transfer of ownership) in respect of a CCP it may only exercise the relevant resolution powers in respect of the CCP where the transferee under paragraph 30 is—
(a) the Bank,
(b) a company wholly owned by the Bank or the Treasury, or
(c) a nominee of the Treasury.

(3) In this paragraph—
"relevant resolution powers" means any of the resolution powers under paragraphs 27 to 38;
the "residual CCP" means the CCP all or part of whose business has been transferred in accordance with paragraph 27(2).

Pre-resolution valuation

22 (1) Before the Bank exercises a stabilisation power in respect of a CCP, it must ensure that the assets and liabilities of the CCP are valued.

(2) The purpose of a valuation carried out under sub-paragraph (1) is to—
(a) inform the decision as to—
(i) whether the conditions for the exercise of a stabilisation power are satisfied,
(ii) which stabilisation option should be employed,
(iii) the extent to which any liabilities should be cancelled, modified, converted or deferred through the use of a write-down instrument,

(iv) the extent to which any securities should be cancelled, diluted, modified, converted or deferred through the use of a write-down instrument,

(v) what assets, liabilities or securities (if any) are to be transferred by a property transfer instrument, share transfer instrument or write-down instrument, and

(vi) the value of any consideration to be paid to the CCP or the owners of the securities for any assets, liabilities or securities so transferred, and

(b) ensure that the full extent of any losses on the assets of that CCP are appreciated at the time that the Bank exercises a stabilisation power.

(3) Unless sub-paragraph (4) applies, the Bank must arrange for the appointment of an independent valuer in accordance with paragraph 24 to carry out a valuation for the purposes of sub-paragraph (1).

(4) Where the Bank considers that the urgency of the case makes it appropriate to exercise the stabilisation power before a valuation can be carried out by a person appointed in accordance with sub-paragraph (3), the Bank may carry out a provisional valuation of the assets and liabilities of the CCP for the purposes of sub-paragraph (1).

(5) In carrying out a valuation required under sub-paragraph (1), the person carrying out the valuation must—

(a) make prudent assumptions as to possible rates of default and the severity of losses suffered by the CCP,

(b) disregard potential financial assistance which may be provided by the Bank or the Treasury after the Bank has exercised the stabilisation power (except for ordinary market assistance offered by the Bank on its usual terms),

(c) take account of the fact that the Bank and the Treasury may charge interest or fees in respect of any loans or guarantees provided to the CCP after the Bank has exercised the stabilisation power,

(d) apply any relevant methodology specified in regulations made under this paragraph.

(6) A provisional valuation carried out under sub-paragraph (4) must in particular make provision in respect of additional losses by the CCP in accordance with any regulations made under this paragraph.

(7) A valuation under sub-paragraph (1) must be accompanied by—

(a) a balance sheet of the CCP as at the date of the valuation,

(b) a report on the financial position of the CCP,

(c) an analysis and an estimate of the accounting value of the assets of the CCP,

(d) a list of the outstanding liabilities of the CCP (including any off-balance sheet liabilities), with the creditors subdivided into classes according to the priority their claims would receive in insolvency proceedings, and

(e) an estimate of the amount that each class of creditors and shareholders might be expected to receive if the CCP went into insolvent liquidation.

(8) Where appropriate, the information in sub-paragraph (7)(c) may be supplemented by an analysis and estimate of the value of the assets and liabilities of the CCP on a market value basis.

(9) Where a provisional valuation is carried out under sub-paragraph (4), the Bank need only comply with sub-paragraph (7) as far as it is reasonable to do so in the circumstances.

(10) The Treasury may by regulations make provision for the purposes of a valuation under this paragraph specifying—

(a) the methodology for assessing the value of the assets and liabilities of a CCP;

(b) the methodology for calculating and including a buffer for additional losses in the provisional valuation.

(11) Before making regulations under sub-paragraph (10) the Treasury must consult the Bank.

(12) Regulations under this paragraph are subject to the negative procedure.

Replacement of Bank's provisional valuation

23 (1) Where the Bank has carried out a provisional valuation under paragraph 22 before exercising a stabilisation power, the Bank must arrange for the appointment of an independent valuer in accordance with paragraph 24 to carry out a full valuation in accordance with this paragraph as soon as reasonably practicable.

(2) The purpose of the valuation carried out under sub-paragraph (1) is to—

(a) ensure the full extent of any losses on the assets of the CCP is recognised in the accounting records of the CCP, and

(b) inform a decision by the Bank as to whether—

(i) additional consideration should be paid by a bridge central counterparty for any property, rights or liabilities transferred by a property transfer instrument, or securities transferred by a share transfer instrument, or

(ii) the Bank should exercise the power under paragraph 26 to increase or reinstate any liability which has been reduced, cancelled or deferred by a write-down instrument.

(3) A valuation carried out under sub-paragraph (1) must comply with sub-paragraph (5) of paragraph 22 and be accompanied by the information required in sub-paragraph (7) of that paragraph.

Independent valuer: valuation under paragraph 22 or 23

24 (1) The Bank must make arrangements for the appointment of a person to act as an independent valuer for the purposes of a valuation to be conducted under paragraph 22 or 23.

(2) The Bank may require the CCP to which the valuation relates to reimburse the Bank for costs it incurs in relation to the independent valuer (including remuneration and allowances paid to the valuer and the valuer's staff).

(3) A person may not be appointed as an independent valuer under sub-paragraph (1) unless the Bank is satisfied that the person is independent from the Bank and the CCP to which the valuation relates.

(4) An independent valuer is to hold and vacate office in accordance with the terms of the appointment.

(5) An independent valuer may be removed from office only on the grounds of incapacity or serious misconduct.

(6) In the event of the death of an independent valuer, or an independent valuer being removed from office or resigning, a new independent valuer must be appointed by the Bank in accordance with this paragraph.

Independent valuer: supplemental

25 (1) An independent valuer may do anything necessary or desirable for the purposes of or in connection with the performance of the functions of the office.

(2) The Treasury may by regulations confer specific functions on independent valuers; in particular, the regulations may—

(a) enable an independent valuer to apply to a court or tribunal for an order requiring the provision of information or the giving of oral or written evidence;

(b) enable or require independent valuers to publish, disclose or withhold information.

(3) Provision under sub-paragraph (2) may—

(a) confer a discretion on independent valuers;

(b) confer jurisdiction on a court or tribunal;

(c) make provision about oaths, expenses and other procedural matters relating to the giving of evidence or the provision of information;

(d) make provision about enforcement.

(4) An independent valuer may appoint staff.

(5) The Treasury may by regulations make provision about the procedure to be followed by independent valuers.

(6) Independent valuers (and their staff) are neither servants nor agents of the Crown (and, in particular, are not civil servants).

(7) Records of an independent valuer are public records for the purposes of the Public Records Act 1958.

(8) Regulations under this paragraph are subject to the negative procedure.

Consequences of a replacement valuation

26 (1) Where the independent valuation carried out under paragraph 23(1) produces a higher valuation of the net asset value of the CCP than a provisional valuation carried out under paragraph 22(4), the Bank may—

(a) modify any liability of the CCP which has been reduced, deferred or cancelled by a write-down instrument so as to increase or reinstate that liability, or

(b) instruct a bridge central counterparty to pay additional consideration—

(i) to the CCP for any property, rights or liabilities transferred to the bridge central counterparty by a property transfer instrument, or

(ii) to the previous holders of securities issued by the CCP for any securities transferred to the bridge central counterparty by a share transfer instrument.

(2) The power in sub-paragraph (1)(a)—

(a) may not be exercised so as to increase the value of the liability beyond the value it would have had if the write-down instrument which reduced, cancelled or deferred it had not been made, and

(b) must be exercised by a resolution instrument (whether or not that instrument contains any other provision authorised by this Schedule).

Private sector purchaser

27 (1) The first stabilisation option is to sell all or part of the business of the CCP to a commercial purchaser.

(2) For that purpose the Bank may make—

(a) one or more share transfer instruments;

(b) one or more property transfer instruments.

Private sector purchaser: marketing

28 (1) Subject to sub-paragraph (4) and (5), the Bank must make arrangements for marketing—

(a) any securities issued by the CCP which the Bank intends to transfer by a share transfer instrument under paragraph 27(2)(a), or

(b) any property, rights or liabilities of the CCP which the Bank intends to transfer by a property transfer instrument under paragraph 27(2)(b).

(2) The arrangements under sub-paragraph (1) must—

(a) be as transparent as possible having regard to the circumstances and the need to maintain financial stability;

(b) ensure there is no conflict of interest;

(c) take account of the need for the Bank to act quickly to address the situation where a CCP is failing or likely to fail;

(d) aim at maximising, as far as possible, the sale price for the property, rights or liabilities involved.

(3) The arrangements under sub-paragraph (1) must not—

(a) materially misrepresent the securities, property, rights or liabilities which the Bank intends to transfer;

(b) favour or discriminate between potential purchasers or grant an unfair advantage to a potential purchaser.

(4) Sub-paragraph (1) does not apply if the Bank considers that complying with that sub-paragraph would undermine one or more of the special resolution objectives.

(5) In particular sub-paragraph (1) does not apply if the Bank considers that—

(a) there is a material threat to financial stability in the United Kingdom arising from or aggravated by the failure or likely failure of the CCP, and

(b) complying with sub-paragraph (1) would undermine the effectiveness of the first stabilisation option in addressing that threat or achieving the objective in paragraph 15(4).

Bridge central counterparty

29 (1) The second stabilisation option is to transfer all or part of the business of the CCP to a company which meets the requirements of sub-paragraph (2) (a "bridge central counterparty").

(2) Those requirements are that the company—

(a) is wholly or partially owned by the Bank,

(b) is controlled by the Bank, and

(c) is created for the purposes of receiving a transfer by virtue of this paragraph with a view to maintaining access to critical clearing services and (in due course) selling the CCP or its business.

(3) For that purpose the Bank may make—

(a) one or more property transfer instruments;

(b) one or more share transfer instruments.

(4) The code of practice under paragraph 16 must include provision about the management and control of bridge central counterparties including, in particular, provision about—

(a) setting objectives,

(b) the content of the articles of association,

(c) the content of reports under paragraph 114,

(d) different arrangements for management and control at different stages, and

(e) eventual disposal.

(5) The Bank must, without delay, take all necessary steps to wind up the bridge central counterparty if—

(a) all or substantially all of the bridge central counterparty's assets, rights and liabilities have been transferred to a third party, or

(b) following a transfer to the bridge central counterparty under this paragraph, no further transfer to the bridge central counterparty is made under this paragraph during the relevant post-transfer period.

(6) Sub-paragraph (5) does not apply if the bridge central counterparty—

(a) has merged with another entity,

(b) has ceased to meet the requirements of sub-paragraph (2)(a) or (b), or

(c) has already been wound up.

(7) "The relevant post-transfer period" means the period of two years beginning with the day of the transfer mentioned in sub-paragraph (5)(a), subject to any extension under sub-paragraph (8).

(8) The Bank may extend (or further extend) the relevant post-transfer period by one year if it is satisfied that the extension—

(a) would support one or more of the outcomes mentioned in sub-paragraph (5)(a) or (6)(a), (b) or (c), or

(b) is necessary to ensure the continuity of critical clearing services.

(9) Where property, rights or liabilities are first transferred by property transfer instrument to a bridge central counterparty and later transferred (whether or not by the exercise of a power under this Schedule) to another company which is wholly owned by the Bank, that other company is an "onward bridge central counterparty".

(10) An onward bridge central counterparty—

(a) is a bridge central counterparty for the purposes of—

(i) sub-paragraphs (4) to (6),

(ii) paragraph 34(6)(d),

(iii) paragraph 110,

(iv) paragraph 112, and

(v) paragraph 114(5), but

(b) is not a bridge central counterparty for the purposes of—

(i) paragraph 52,

(ii) paragraph 69, and

(iii) paragraph 114(1).

Transfer of ownership

30 (1) The third stabilisation option is to transfer ownership of the CCP to any person other than a bridge central counterparty or a commercial purchaser.

(2) For that purpose the Bank may make one or more share transfer instruments.

Tear-up power

31 (1) The fourth stabilisation option is to make one or more tear-up instruments for the purpose of ensuring that the CCP has a matched book.

(2) A tear-up instrument is an instrument that makes provision terminating one or more contracts held by the CCP with clearing members.

(3) Where the Bank exercises the power under sub-paragraph (1), it must as soon as reasonably practicable determine the value of the terminated contract.

(4) On the basis of the determination under sub-paragraph (3) the Bank must as soon as reasonably practicable either—

(a) require the CCP to make a commercially reasonable payment, representing the value of the terminated contract, to the clearing member who is a party to the contract, or

(b) require the clearing member who is a party to the contract to make a commercially reasonable payment, representing the value of the terminated contract, to the CCP.

(5) The Bank must within 12 months of this paragraph coming into force publish a statement of policy as to how it determines what a commercially reasonable payment is for the purpose of complying with sub-paragraph (4).

(6) The Bank may alter or replace a statement of policy published under this paragraph.

(7) The Bank must publish a statement as altered or replaced under sub-paragraph (6).

(8) For the purposes of this paragraph, a CCP has a matched book when the sum of the financial obligations owed by the CCP to its clearing members is equal to the sum of the financial obligations owed to the CCP by its clearing members.

Cash call power

32 (1) The fifth stabilisation option is to make one or more cash call instruments.

(2) A cash call instrument is an instrument that makes provision requiring one or more clearing members of the CCP to pay an amount in cash specified in the instrument to the CCP.

(3) The Treasury may by regulations—

(a) make provision for calculating the maximum cash amount that may be specified for the purposes of sub-paragraph (2);

(b) specify circumstances in which the Bank may require a CCP to use specified funds of specified clearing members to satisfy all or part of that member's obligations under sub-paragraph (2).

(4) The power under sub-paragraph (1) does not apply to a clearing member—

(a) which is an interoperable CCP,

(b) which falls within Article 1(4) or (5) of EMIR, or

(c) in relation to which a direction under regulation 3(1)(f) of the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/541) is in force.

(5) Regulations under this paragraph are subject to the negative procedure.

Power to reduce variation margin payments

33 (1) The sixth stabilisation option is to make one or more variation instruments.

(2) A variation instrument is an instrument that makes provision to reduce or cancel a variation margin payment that a CCP would have otherwise paid to a clearing member of the CCP.

(3) The power under this paragraph may be exercised only for the purpose of recovering losses arising as a result of a clearing member defaulting on the member's obligations to the CCP.

(4) The power under sub-paragraph (1) does not apply to a clearing member—

(a) which falls within Article 1(4) or (5) of EMIR, or

(b) in relation to which a direction under regulation 3(1)(f) of the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/541) is in force.

(5) In this paragraph, a "variation margin payment" means a payment reflecting an increase in the market value of a clearing member's position in the market.

Write-down power

34 (1) The seventh stabilisation option is for the Bank to make one or more write-down instruments.

(2) A write-down instrument is an instrument that makes any of the following provision (or any combination of the following)—

(a) provision cancelling an unsecured liability owed by the CCP;

(b) provision modifying or changing the form of an unsecured liability owed by the CCP;

(c) provision that a contract under which the CCP has an unsecured liability is to have effect as if a specified right had been exercised under it;

(d) provision under paragraph 35(1).

(3) The power under this paragraph may be exercised only for the purpose of recovering losses arising otherwise than as a result of a clearing member defaulting on the member's obligations to the CCP.

(4) The power under sub-paragraph (2) may not be exercised so as to affect the following liabilities—

(a) liabilities to employees or workers, including liabilities owed to a pension scheme in respect of those persons;

(b) liabilities to commercial or trade creditors arising from the provision to the CCP of goods or services that are critical to the continuity of the CCP's critical clearing services;

(c) HMRC debts which are preferential debts within the meaning of section 386 of the Insolvency Act 1986;

(d) liabilities to designated systems, operators of designated systems, or participants in such systems to the extent that the liabilities arise from their participation in the system;

(e) liabilities to interoperable CCPs;

(f) liabilities to central banks;

(g) liabilities to clearing members so far as these relate to initial margin requirements;

(h) liabilities to small enterprises.

(5) The reference to modifying a liability owed by the CCP includes a reference to modifying the terms (or the effect of the terms) of a contract under which the CCP has a liability.

(6) The reference to changing the form of a liability owed by the CCP includes, for example—

(a) converting an instrument under which a CCP owes a liability from one form or class to another,

(b) replacing such an instrument with another instrument of a different form or class,

(c) creating a new security (of any form or class) in connection with the modification of such an instrument, or

(d) converting those liabilities into securities issued by the CCP or a bridge central counterparty or UK parent of the CCP.

(7) The Treasury may by regulations amend sub-paragraph (4) by—

(a) adding to the list of liabilities;

(b) amending or omitting any liability listed.

(8) Regulations under this paragraph are subject to the affirmative procedure.

(9) In this paragraph—

"designated system" has the meaning given by regulation 2 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979) as amended from time to time;

"initial margin requirements" means margins provided by clearing members to a CCP to cover the CCP's potential future exposure in the event of default by those members;

"small enterprise" means an enterprise which employs fewer than 50 people and whose annual turnover or annual balance sheet total does not exceed £10 million.

Powers in relation to securities

35 (1) A write-down instrument may—

(a) cancel, transfer, dilute or modify any securities to which this sub-paragraph applies;

(b) convert any such securities from one form or class into another.

(2) Sub-paragraph (1) applies to securities issued by the CCP that fall within class 1 in paragraph 40.

(3) A write-down instrument may—

(a) make provision with respect to rights attaching to securities issued by the CCP;

(b) provide for the listing of securities issued by the CCP to be discontinued or suspended;

(c) provide for the listing or admission to trading on a regulated market of securities in class 1 (and related class 3 securities) created in accordance with that or any other write-down instrument;

(d) provide for the listing or admission to trading on a regulated market of existing securities in class 2 modified by that or any other write-down instrument (and, in that connection, for the disapplication of section 85(1) and (2) of FSMA 2000 (prohibition on listing etc of transferable securities without approved prospectus).

(4) The reference in sub-paragraph (1) to converting securities from one form or class into another includes creating a new security in connection with the modification of an existing security.

(5) In sub-paragraph (3) any reference to a class of securities is to be construed in accordance with paragraph 40.

(6) The provision that may be made under sub-paragraph (3)(a) includes, for example—

(a) provision that specified rights attaching to securities are to be treated as having been exercised;

(b) provision that the Bank is to be treated as authorised to exercise specified rights attaching to securities;

(c) provision that specified rights attaching to securities may not be exercised for a period specified in the instrument.

(7) In sub-paragraph (3)—

(a) the reference to "listing" is to listing under section 74 of FSMA 2000, and

(b) "regulated market" has the meaning given in section 103(1) of FSMA 2000.

(8) Where the listing of securities is suspended in accordance with a write-down instrument, those securities are to be treated for the purposes of section 96 of, and paragraph 23(6) of Schedule 1ZA to, FSMA 2000 as still being listed.

(9) The provision that may be made under this paragraph in relation to any securities is in addition to any provision that the Bank may have power to make in relation to them under paragraph 34.

Report on provisions in write-down instrument

36 (1) This paragraph applies to a relevant provision in a write-down instrument.

(2) The Bank must report to the Chancellor of the Exchequer stating the reasons why that provision has been made in the case of the securities or liabilities concerned.

(3) If the provision departs from the insolvency treatment principles, the report must state the reasons why it does so.

(4) The insolvency treatment principles are that where an instrument includes a relevant provision—

(a) the provision made by the instrument must be consistent with treating existing claims in respect of the CCP's shares and all the liabilities of the CCP in accordance with the priority they would enjoy on a liquidation, and

(b) any creditors who would have equal priority on a liquidation are to bear losses on an equal footing with each other.

(5) A report must comply with any other requirements as to content that may be specified by the Treasury.

(6) A report must be made as soon as reasonably practicable after the making of the instrument to which it relates.

(7) The Chancellor of the Exchequer must lay a copy of each report under sub-paragraph (2) before Parliament.

(8) In this paragraph a "relevant provision" means a provision falling within paragraph 34(2).

Priority between creditors

37 (1) The Treasury may, for the purpose of ensuring that the treatment of any claims in respect of a CCP's shares or any liabilities in any write-down instrument is aligned to an appropriate degree with the treatment of claims and liabilities on an insolvency, by regulations specify matters or principles to which the Bank is to be required to have regard in making any such instrument.

(2) Regulations under this paragraph may for example—

(a) specify the insolvency treatment principles (as defined in paragraph 36(4)) or alternative principles;

(b) specify the meaning of "insolvency" for one or more purposes of the regulations.

(3) Regulations under this paragraph may amend paragraph 36(4).

(4) Regulations under this paragraph are subject to the affirmative procedure.

Power to take control

38 (1) The eighth stabilisation option is for the Bank to make one or more instruments of control.

(2) An instrument of control is an instrument that makes any of the following provision —

(a) provision transferring any voting rights exercisable by shareholders of the CCP or, if the CCP is an unincorporated association, members of the CCP to the Bank for a specified period;

(b) provision transferring specified powers, rights, duties or liabilities of the directors or senior managers of the CCP to the Bank for a specified period.

(3) Provision made under sub-paragraph (2) may for example include—

(a) provision for exemptions or applying modifications in relation to any powers, rights, duties or liabilities transferred;

(b) provision for the Bank to exercise such powers, rights, duties or liabilities under the CCP's rules as may be specified in the instrument;

(c) provision for the Bank to exercise such powers, rights, duties or liabilities in relation to any contracts that the CCP is a party to as may be specified in the instrument.

Shadow directors etc

39 (1) This paragraph applies where the Bank uses one or more of the stabilisation options mentioned in paragraph 1(3) in respect of a CCP unless the CCP has ceased to be subject to the exercise of any stabilisation power mentioned in paragraph 1(4).

(2) A relevant person is not to be treated in relation to the CCP—

(a) as a shadow director for the purposes of the relevant enactments,

(b) as a person who discharges managerial responsibilities for the purposes of those enactments (unless that person has been appointed as a director or a senior manager), or

(c) as a director within the meaning of section 417(1)(b) of FSMA 2000 (a person in accordance with whose directions or instructions the directors of a body corporate are accustomed to act).

(3) In this paragraph—

"relevant enactment" means—

(a) the Companies Act 2006;

(b) the Insolvency Act 1986;

(c) the Company Directors Disqualification Act 1986;

(d) FSMA 2000;

(e) the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));

(f) the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4));

"relevant person" means—

(a) the Bank,

(b) persons who are employed by, or act on behalf of, the Bank, and

(c) a temporary manager appointed under paragraph 6 of this Schedule.

Interpretation: "securities"

40 (1) In this Schedule "securities" includes anything falling within any of the following classes.

(2) Class 1: shares and stock.

(3) Class 2: debentures, including—

(a) debenture stock,

(b) loan stock,

(c) bonds,

(d) certificates of deposit, and

(e) any other instrument creating or acknowledging a debt.

(4) Class 3: warrants or other instruments that entitle the holder to acquire anything in Class 1 or 2.

Share transfer instrument

41 (1) A share transfer instrument is for purposes of this Schedule an instrument which—

(a) provides for securities issued by a specified CCP to be transferred;

(b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by a specified CCP (whether or not the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).

(2) A share transfer instrument may relate to—

(a) specified securities, or

(b) securities of a specified description.

Effect

42 (1) In this paragraph "transfer" means a transfer provided for by a share transfer instrument.

(2) A transfer takes effect by virtue of the instrument (and in accordance with its provisions as to timing or other ancillary matters).

(3) A transfer takes effect despite any restriction arising by virtue of contract or legislation or in any other way.

(4) In sub-paragraph (3) "restriction" includes—

(a) any restriction, inability or incapacity affecting what can or cannot be assigned or transferred (whether generally or by a particular person), and

(b) a requirement for consent (by any name).

(5) A share transfer instrument may provide for a transfer to take effect free from any trust, liability or other encumbrance (and may include provision about their extinguishment).

(6) A share transfer instrument may extinguish rights to acquire securities falling within Class 1 or 2 in paragraph 40.

Continuity

43 (1) A share transfer instrument may provide for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.

(2) A share transfer instrument may provide for agreements made or other things done by or in relation to a transferor to be treated as made or done by or in relation to the transferee.

(3) A share transfer instrument may provide for anything (including legal proceedings) that relates to anything transferred and is in the process of being done by or in relation to the transferor immediately before the transfer date, to be continued by or in relation to the transferee.

(4) A share transfer instrument may modify references (express or implied) in an instrument or document to a transferor.

(5) A share transfer instrument may require or permit—

(a) a transferor to provide a transferee with information and assistance;

(b) a transferee to provide a transferor with information and assistance.

Conversion and delisting

44 (1) A share transfer instrument may provide for securities to be converted from one form or class to another.

(2) A share transfer instrument may provide for the listing of securities, under section 74 of FSMA 2000, to be discontinued or suspended.

(3) Where the listing of securities is suspended in accordance with a share transfer instrument, those securities are to be treated for the purposes of section 96 of, and paragraph 23(6) of Schedule 1ZA to, FSMA 2000 as still being listed.

Directors and senior managers

45 (1) A share transfer instrument may enable the Bank—

(a) to remove a director or senior manager of a specified CCP;

(b) to vary the service contract of a director or senior manager of a specified CCP;

(c) to terminate the service contract of a director or senior manager of a specified CCP;

(d) to appoint a director or a senior manager of a specified CCP.

(2) Sub-paragraph (1) also applies to a director or senior manager of a relevant CCP group company of the specified CCP.

(3) A "relevant CCP group company" means a CCP group company that is incorporated in, or formed under the law of any part of, the United Kingdom.

(4) Appointments under sub-paragraph (1)(d) are to be on terms and conditions agreed with the Bank.

Ancillary instruments: production, registration, etc

46 (1) A share transfer instrument may permit or require the execution, issue or delivery of an instrument.

(2) A share transfer instrument may provide for a transfer to have effect irrespective of—

(a) whether an instrument has been produced, delivered, transferred or otherwise dealt with;

(b) registration.

(3) A share transfer instrument may provide for the effect of an instrument executed, issued or delivered, in accordance with the instrument.

(4) A share transfer instrument may modify or annul the effect of an instrument.

(5) A share transfer instrument may—

(a) entitle a transferee to be registered in respect of transferred securities;

(b) require a person to effect registration.

Incidental provision

47 (1) A share transfer instrument may include incidental, consequential or transitional provision.

(2) In relying on sub-paragraph (1) a share transfer instrument—

(a) may make provision generally or only for specified purposes, cases or circumstances, and

(b) may make different provision for different purposes, cases or circumstances.

Procedure: instruments

48 (1) As soon as is reasonably practicable after making a share transfer instrument in respect of a CCP, the Bank must send a copy to—

(a) the CCP,

(b) the Treasury,

(c) if the CCP is a PRA-authorised person, the PRA,

(d) the FCA, and

(e) any other person specified in the code of practice under paragraph 16.

(2) As soon as is reasonably practicable after making share transfer instrument the Bank must publish a copy—

(a) on the Bank's website,

(b) in at least one other medium chosen by the Bank to maximise the likelihood of the instrument coming to the attention of persons likely to be affected by it, and

(c) if securities of the CCP have been admitted to trading on a regulated market (within the meaning of section 103(1) of FSMA 2000), by means of a regulatory information service (within the meaning of section 313D of that Act),

and arrange for the publication of a copy on the website of the CCP in respect of which the instrument was made.

(3) Where the Treasury receive a copy of a share transfer instrument under sub-paragraph (1) they must lay a copy before Parliament.

Supplemental instruments

49 (1) This paragraph applies where the Bank has made a share transfer instrument, in respect of securities issued by a CCP, in accordance with paragraph 27(2), 29(3) or 30(2) ("the original instrument").

(2) The Bank may make one or more supplemental share transfer instruments.

(3) A supplemental share transfer instrument is a share transfer instrument which—

(a) provides for the transfer of securities which were issued by the CCP before the original instrument and have not been transferred by the original instrument or another supplemental share transfer instrument;

(b) makes provision of a kind that a share transfer instrument may make under paragraph 41(1)(b) (whether or not in connection with a transfer under the original instrument).

(4) Paragraphs 17 and 19 do not apply to a supplemental share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Schedule).

(5) Before making a supplemental share transfer instrument the Bank must consult—

(a) if the CCP is a PRA-authorised person, the PRA,

(b) the FCA, and

(c) the Treasury.

(6) The possibility of making a supplemental share transfer instrument in reliance on sub-paragraph (2) is without prejudice to the possibility of making a new instrument in accordance with paragraphs 27(2), 29(3) and 30(2) (and not in reliance on sub-paragraph (2) above).

(7) Paragraph 48 applies where the Bank has made a supplemental share transfer instrument.

Onward transfer

50 (1) This paragraph applies where the Bank has made a share transfer instrument, in respect of securities issued by a CCP, in accordance with paragraph 27(2), 29(3) or 30(2) ("the original instrument").

(2) The Bank may make one or more onward share transfer instruments.

(3) An onward share transfer instrument is a share transfer instrument which—

(a) provides for the transfer of—

(i) securities which were issued by the CCP before the original instrument and have been transferred by the original instrument or a supplemental share transfer instrument, or

(ii) securities which were issued by the CCP after the original instrument;

(b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the CCP (whether the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).

(4) An onward share transfer instrument may not transfer securities to the transferor under the original instrument.

(5) The Bank may not make an onward share transfer instrument unless the transferee under the original instrument is—

(a) the Bank,

(b) a nominee of the Treasury, or

(c) a company wholly owned by the Bank or the Treasury.

(6) Paragraphs 17 and 19 do not apply to an onward share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Schedule).

(7) Before making an onward share transfer instrument the Bank must consult—

(a) if the CCP is a PRA-authorised person, the PRA, and

(b) the FCA.

(8) Paragraph 48 applies where the Bank has made an onward share transfer instrument.

Reverse share transfer

51 (1) This paragraph applies where the Bank has made a share transfer instrument in accordance with paragraph 27(2), 29(3) or 30(2) ("the original instrument") providing for the transfer of securities issued by a CCP to a person ("the original transferee").

(2) The Bank may make one or more reverse share transfer instruments in respect of securities issued by the CCP and held by the original transferee (whether or not they were transferred by the original instrument).

(3) If the Bank makes an onward share transfer instrument in respect of securities transferred by the original instrument, the Bank may make one or more reverse share transfer instruments in respect of securities issued by the CCP and held by a transferee under the onward share transfer instrument ("the onward transferee").

(4) A reverse share transfer instrument is a share transfer instrument which—

(a) provides for transfer to the transferor under the original instrument (where sub-paragraph (2) applies);

(b) provides for transfer to the original transferee (where sub-paragraph (3) applies);

(c) makes other provision for the purposes of, or in connection with, the transfer of securities which are, could be or could have been transferred under paragraph (a) or (b).

(5) The Bank may not make a reverse share transfer instrument under sub-paragraph (2) unless—

(a) the original transferee is—

(i) the Bank,

(ii) a company wholly owned by the Bank or the Treasury, or

(iii) a nominee of the Treasury, or

(b) the reverse share transfer instrument is made with the written consent of the original transferee.

(6) The Bank may not make a reverse share transfer instrument under sub-paragraph (3) unless—

(a) the onward transferee is—

(i) the Bank,

(ii) a company wholly owned by the Bank or the Treasury, or

(iii) a nominee of the Treasury, or

(b) the reverse share transfer instrument is made with the written consent of the onward transferee.

(7) Paragraphs 17 and 19 do not apply to a reverse share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes including for the purposes of the application of a power under this Schedule).

(8) Before making a reverse share transfer instrument the Bank must consult—

(a) if the CCP is a PRA-authorised person, the PRA, and

(b) the FCA.

(9) Paragraph 48 applies where the Bank has made a reverse share transfer instrument.

Bridge central counterparties: share transfers

52 (1) This paragraph applies where the Bank has made a property transfer instrument or share transfer instrument in respect of a bridge central counterparty in accordance with paragraph 29(3) ("the original instrument").

(2) The Bank may make one or more bridge central counterparty share transfer instruments.

(3) A bridge central counterparty share transfer instrument is a share transfer instrument which—

(a) provides for securities issued by the bridge central counterparty to be transferred;

(b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the bridge central counterparty (whether the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).

(4) Paragraphs 17 and 19 do not apply to a bridge central counterparty share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Schedule).

(5) Before making a bridge central counterparty share transfer instrument the Bank must consult—

(a) if the CCP is a PRA-authorised person, the PRA,

(b) the FCA, and

(c) the Treasury.

(6) Paragraph 48 applies where the Bank has made a bridge central counterparty share transfer instrument.

Bridge central counterparties: reverse share transfer

53 (1) This paragraph applies where the Bank has made a bridge central counterparty share transfer instrument in accordance with paragraph 52(2) ("the original instrument").

(2) The Bank may make one or more bridge central counterparty reverse share transfer instruments in respect of securities issued by the bridge central counterparty and held by a transferee under the original instrument.

(3) A bridge central counterparty reverse share transfer instrument is a share transfer instrument which—

(a) provides for transfer to the transferor under the original instrument;

(b) makes other provision for the purposes of, or in connection with, the transfer of securities which are, could be or could have been transferred under paragraph (a).

(4) The Bank must not make a bridge central counterparty reverse share transfer instrument unless—

(a) the transferee under the original instrument is—

(i) a company wholly owned by the Bank,

(ii) a company wholly owned by the Treasury, or

(iii) a nominee of the Treasury, or

(b) the bridge central counterparty reverse share transfer instrument is made with the written consent of the transferee under the original instrument.

(5) Paragraphs 17 and 19 do not apply to a bridge central counterparty reverse share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes including for the purposes of the application of a power under this Schedule).

(6) Before making a bridge central counterparty reverse share transfer instrument the Bank must consult—

(a) if the CCP is a PRA-authorised person, the PRA,

(b) the FCA, and

(c) the Treasury.

(7) Paragraph 48 applies where the Bank has made a bridge central counterparty reverse share transfer instrument.

Property transfer instrument

54 (1) A property transfer instrument is an instrument which—

(a) provides for property, rights or liabilities of a specified CCP to be transferred;

(b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of a specified CCP (whether the transfer has been or is to be effected by that instrument, by another property transfer instrument or otherwise).

(2) A property transfer instrument may relate to—

(a) all property, rights and liabilities of the specified CCP,
(b) all its property, rights and liabilities subject to specified exceptions,
(c) specified property, rights or liabilities, or
(d) property, rights or liabilities of a specified description.

Effect

55 (1) In this paragraph "transfer" means a transfer provided for by a property transfer instrument.

(2) A transfer takes effect by virtue of the instrument (and in accordance with its provisions as to timing or other ancillary matters).

(3) A transfer takes effect despite any restriction arising by virtue of contract or legislation or in any other way.

(4) In sub-paragraph (3) "restriction" includes—
(a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person), and
(b) a requirement for consent (by any name).

(5) A property transfer instrument may provide for a transfer to be conditional upon a specified event or situation—
(a) occurring or arising, or
(b) not occurring or arising.

(6) A property transfer instrument may include provision dealing with the consequences of breach of a condition imposed under sub-paragraph (5); and the consequences may include—
(a) automatic vesting in the original transferor;
(b) an obligation to effect a transfer back to the original transferor, with specified consequences for failure to comply (which may include provision conferring a discretion on a court or tribunal);
(c) provision making a transfer or anything done in connection with a transfer void or voidable.

(7) Where a property transfer instrument makes provision in respect of property held on trust (however arising) it may also make provision about—
(a) the terms on which the property is to be held after the instrument takes effect, and
(b) how any powers, rights or obligations in respect of the property are to be exercisable or have effect after the instrument takes effect.

(8) Provision under sub-paragraph (7)(a) may remove or alter the terms of the trust on which the property is held only to the extent that the Bank thinks it necessary or expedient for the purpose of transferring—
(a) the legal or beneficial interest of the transferor in the property;
(b) any powers, rights or obligations of the transferor in respect of the property.

(9) In sub-paragraph (8) references to the transferor are references to the transferor under the property transfer instrument.

Transferable property

56 A property transfer instrument may transfer any property, rights or liabilities including, in particular—

(a) property, rights and liabilities acquired or arising between the making of the instrument and the transfer date,

(b) rights and liabilities arising on or after the transfer date in respect of matters occurring before that date,

(c) property outside the United Kingdom,

(d) rights and liabilities under the law of a country or territory outside the United Kingdom, and

(e) rights and liabilities under an enactment.

Continuity

57 (1) A property transfer instrument may provide—

(a) for a transfer to be, or to be treated as, a succession;

(b) for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.

(2) A property transfer instrument may provide for agreements made or other things done by or in relation to a transferor to be treated as made or done by or in relation to the transferee.

(3) A property transfer instrument may provide for anything (including legal proceedings) that relates to anything transferred and is in the process of being done by or in relation to the transferor immediately before the transfer date, to be continued by or in relation to the transferee.

(4) A property transfer instrument which transfers or enables the transfer of a contract of employment may include provision about continuity of employment.

(5) A property transfer instrument may modify references (express or implied) in an instrument or document to a transferor.

(6) In so far as rights and liabilities in respect of anything transferred are enforceable after transfer, a property transfer instrument may provide for apportionment between transferor and transferee to a specified extent and in specified ways.

(7) A property transfer instrument may enable the transferor and transferee by agreement to modify a provision of the instrument; but a modification—

(a) must achieve a result that could have been achieved by the instrument, and

(b) may not transfer (or arrange for the transfer of) property, rights or liabilities.

(8) A property transfer instrument may require or permit—

(a) a transferor to provide a transferee with information and assistance;

(b) a transferee to provide a transferor with information and assistance.

Directors and senior managers

58 (1) A property transfer instrument may enable the Bank—

(a) to remove a director or senior manager of a specified CCP;

(b) to vary the service contract of a director or senior manager of a specified CCP;

(c) to terminate the service contract of a director or senior manager of a specified CCP;

(d) to appoint a director or senior manager of a specified CCP.

(2) Sub-paragraph (1) also applies to a director or senior manager of a relevant CCP group company of the specified CCP.

(3) A "relevant CCP group company" means a CCP group company incorporated in, or formed under the law of any part of, the United Kingdom.

(4) Appointments under sub-paragraph (1)(d) are to be on terms and conditions agreed with the Bank.

Recognised central counterparty rules

59 (1) A property transfer instrument made in respect of a CCP may make provision about the consequences of a transfer for the rules of the CCP.

(2) In particular, an instrument may—

(a) modify or amend the rules of a CCP;

(b) in a case where some, but not all, of the business of a CCP is transferred, make provision as to the application of the rules in relation to the parts of the business that are, and are not, transferred.

(3) Provision by virtue of this paragraph may (but need not) be limited so as to have effect—

(a) for a specified period, or

(b) until a specified event occurs or does not occur.

Recognised central counterparty membership

60 (1) A property transfer instrument made in respect of a CCP may make provision about the consequences of a transfer for membership of the CCP.

(2) In particular, an instrument may—

(a) make provision modifying the terms on which a person is a clearing member of a CCP;

(b) in a case where some, but not all, of the business of a CCP is transferred, provide for a person who was a clearing member of the transferor to remain a clearing member of the transferor while also becoming a clearing member of the transferee.

Licences

61 (1) A licence in respect of anything transferred by a property transfer instrument continues to have effect despite the transfer.

(2) A property transfer instrument may disapply sub-paragraph (1) to a specified extent.

(3) Where a licence imposes rights or obligations, a property transfer instrument may apportion responsibility for exercise or compliance between transferor and transferee.

(4) In this paragraph "licence" includes permission and approval and any other permissive document in respect of anything transferred.

Foreign property

62 (1) This paragraph applies where a property transfer instrument transfers foreign property.

(2) In sub-paragraph (1) "foreign property" means—

(a) property outside the United Kingdom, or

(b) rights and liabilities under foreign law.

(3) The transferor and the transferee must each take any necessary steps to ensure that the transfer is effective as a matter of foreign law (if it is not wholly effective by virtue of the property transfer instrument).

(4) Until the transfer is effective as a matter of foreign law, the transferor must—

(a) hold the property or right for the benefit of the transferee (together with any additional property or right accruing by virtue of the original property or right), or

(b) discharge the liability on behalf of the transferee.

(5) If the Bank determines that, in spite of any action taken by the transferee or the transferor, it is not possible for the transfer of certain property to be effective under the law of the jurisdiction where the property is located or (where the property consists of rights or liabilities) the law under which it arises—

(a) sub-paragraph (4) ceases to apply, and

(b) the provisions of the property transfer instrument relating to that property are void.

(6) The Bank must give notice of any determination under sub-paragraph (5) to the transferor and the transferee.

(7) The transferor must meet any expenses of the transferee in complying with this paragraph.

(8) An obligation imposed by this paragraph is enforceable as if created by contract between the transferor and transferee.

(9) The transferor must comply with any directions of the Bank in respect of the obligations under sub-paragraphs (3) and (4); and—

(a) a direction may disapply sub-paragraphs (3) and (4) to a specified extent, and

(b) obligations imposed by direction are enforceable as if created by contract between the transferor and the Bank.

(10) In this paragraph "foreign law" means the law of a country or territory outside the United Kingdom.

Incidental provision

63 (1) A property transfer instrument may include incidental, consequential or transitional provision.

(2) In relying on sub-paragraph (1) an instrument—

(a) may make provision generally or only for specified purposes, cases or circumstances, and

(b) may make different provision for different purposes, cases or circumstances.

Procedure

64 (1) As soon as is reasonably practicable after making a property transfer instrument in respect of a CCP, the Bank must send a copy to—

(a) the CCP,

(b) the Treasury,

(c) if the CCP is a PRA-authorised person, the PRA,

(d) the FCA, and

(e) any other person specified in the code of practice under paragraph 16.

(2) As soon as is reasonably practicable after making a property transfer instrument the Bank must publish a copy—

(a) on the Bank's website,

(b) in at least one other medium chosen by the Bank to maximise the likelihood of the instrument coming to the attention of persons likely to be affected, and

(c) if securities of the CCP have been admitted to trading on a regulated market (within the meaning of section 103(1) of FSMA 2000), by means of a regulatory information service (within the meaning of section 313D of that Act),

and arrange for the publication of a copy on the website of the CCP in respect of which the instrument was made.

(3) Where the Treasury receive a copy of a property transfer instrument under sub-paragraph (1) they must lay a copy before Parliament.

Property transfer instrument: delisting

65 (1) A property transfer instrument may provide for the listing of securities, under section 74 of FSMA 2000, to be discontinued or suspended.

(2) Where the listing of securities is suspended in accordance with a property transfer instrument, those securities are to be treated for the purposes of section 96 of, and paragraph 23(6) of Schedule 1ZA to, FSMA 2000 as still being listed.

Transfer of property subsequent to resolution instrument

66 (1) This paragraph applies where the Bank has made a resolution instrument.

(2) The Bank may make one or more property transfer instruments in respect of property, rights or liabilities of the CCP.

(3) Paragraph 17 does not apply to a property transfer instrument under sub-paragraph (2).

(4) Before making a property transfer instrument under sub-paragraph (2) the Bank must consult—

(a) if the CCP is a PRA-authorised person, the PRA,

(b) the FCA, and

(c) the Treasury.

Supplemental instruments

67 (1) This paragraph applies where the Bank has made a property transfer instrument in accordance with paragraph 27(2) or 29(3) ("the original instrument").

(2) The Bank may make one or more supplemental property transfer instruments.

(3) A supplemental property transfer instrument is a property transfer instrument which—

(a) provides for property, rights or liabilities to be transferred from the transferor under the original instrument (whether accruing or arising before or after the original instrument);

(b) makes other provision of a kind that an original property transfer instrument may make under paragraph 54(1)(b) (whether in connection with a transfer under the original instrument or in connection with a transfer under that or another supplemental instrument).

(4) Paragraphs 17 and 19 do not apply to a supplemental property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes, including for the purposes of the application of a power under this Schedule).

(5) Before making a supplemental property transfer instrument the Bank must consult—

(a) if the CCP is a PRA-authorised person, the PRA,

(b) the FCA, and

(c) the Treasury.

(6) The possibility of making a supplemental property transfer instrument in reliance on sub-paragraph (2) is without prejudice to the possibility of making a new instrument in accordance with paragraph 27(2) or 29(3) (and not in reliance on sub-paragraph (2) above).

(7) Paragraph 64 applies where the Bank has made a supplemental property transfer instrument.

Private sector purchaser: reverse property transfer

68 (1) This paragraph applies where the Bank has made a property transfer instrument in accordance with paragraph 27(2) ("the original instrument") providing for the transfer of property, rights or liabilities of a CCP to a person ("the original transferee").

(2) The Bank may make one or more private sector reverse property transfer instruments in respect of property, rights or liabilities of the original transferee.

(3) A private sector reverse property transfer instrument is a property transfer instrument which—

(a) provides for transfer to the transferor under the original instrument;

(b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities that are, could be or could have been transferred under paragraph (a) (whether the transfer has been or is to be effected by that instrument or otherwise).

(4) The Bank must not make a private sector reverse property transfer instrument without the written consent of the original transferee.

(5) Paragraphs 17 and 19 do not apply to a private sector reverse property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Schedule).

(6) Before making a private sector reverse property transfer instrument the Bank must consult—

(a) if the CCP is a PRA-authorised person, the PRA,

(b) the FCA, and

(c) the Treasury.

(7) Paragraph 64 applies where the Bank has made a private sector reverse property transfer instrument.

Onward transfer

69 (1) This paragraph applies where the Bank has made a property transfer instrument in respect of a bridge central counterparty in accordance with paragraph 29(3) ("the original instrument").

(2) The Bank may make one or more onward property transfer instruments.

(3) An onward property transfer instrument is a property transfer instrument which—

(a) provides for property, rights or liabilities of the bridge central counterparty to be transferred (whether accruing or arising before or after the original instrument);

(b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the bridge central counterparty (whether the transfer has been or is to be effected by that instrument, by another property transfer instrument or otherwise).

(4) An onward property transfer instrument may relate to property, rights or liabilities of the bridge central counterparty whether or not they were transferred under the original instrument.

(5) An onward property transfer instrument may not transfer property, rights or liabilities to the transferor under the original instrument.

(6) Paragraphs 17 and 19 do not apply to an onward property transfer instrument (but for other purposes it is to be treated in the same way as any other property transfer instrument, including for the purposes of the application of a power under this Schedule).

(7) Before making an onward property transfer instrument the Bank must consult—

(a) if the CCP is a PRA-authorised person, the PRA

(b) the FCA, and

(c) the Treasury.

(8) Paragraph 64 applies where the Bank of England has made an onward property transfer instrument.

Bridge central counterparties: reverse property transfer

70 (1) This paragraph applies where the Bank has made a property transfer instrument in accordance with paragraph 29(3) ("the original instrument") providing for the transfer of property, rights or liabilities to a bridge central counterparty.

(2) The Bank may make one or more bridge central counterparty reverse property transfer instruments in respect of property, rights or liabilities of the bridge central counterparty.

(3) If the Bank makes an onward property transfer instrument under paragraph 69 the Bank may make one or more reverse property transfer instruments in respect of property, rights or liabilities of a transferee under the onward property transfer instrument ("the onward transferee").

(4) A bridge central counterparty reverse property transfer instrument is a property transfer instrument which—

(a) provides for transfer to the transferor under the original instrument (where sub-paragraph (2) applies);

(b) provides for transfer to the bridge central counterparty (where sub-paragraph (3) applies);

(c) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities that are, could be or could have been transferred under paragraph (a) or (b) (whether the transfer has been or is to be effected by that instrument or otherwise).

(5) The Bank must not make a bridge central counterparty reverse property transfer instrument unless—

(a) the onward transferee is—

(i) a company wholly owned by the Bank,

(ii) a company wholly owned by the Treasury, or

(iii) a company wholly owned by a nominee of the Treasury, or

(b) the bridge central counterparty reverse property transfer is made with the written consent of the onward transferee.

(6) Paragraphs 17 and 19 do not apply to a bridge central counterparty reverse property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Schedule).

(7) Before making a bridge central counterparty reverse property transfer instrument the Bank must consult—

(a) if the CCP is a PRA-authorised person, the PRA,

(b) the FCA, and

(c) the Treasury.

(8) Paragraph 64 applies where the Bank has made a bridge central counterparty reverse property transfer instrument.

Transfer of ownership and private sector purchaser: property transfer

71 (1) This paragraph applies where the Bank has made a share transfer instrument, in respect of securities issued by a CCP, in accordance with paragraph 27(2) or 30(2) ("the original instrument").

(2) The Bank may make one or more property transfer instruments.

(3) A property transfer instrument is an instrument which—

(a) provides for property, rights or liabilities of the CCP to be transferred (whether accruing or arising before or after the original instrument);

(b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the CCP (whether the transfer has been or is to be effected by the instrument or otherwise).

(4) The Bank may not make a property transfer instrument in accordance with this paragraph unless the original instrument transferred securities to—

(a) the Bank,

(b) a company wholly owned by the Bank or the Treasury, or

(c) a nominee of the Treasury.

(5) Paragraphs 17 and 19 do not apply to a property transfer instrument made in accordance with this paragraph.

(6) Before making a property transfer instrument in accordance with this paragraph, the Bank must consult—

(a) if the CCP is a PRA-authorised person, the PRA, and

(b) the FCA.

(7) Paragraph 64 applies where the Bank has made a property transfer instrument in accordance with this paragraph.

Transfer of ownership: reverse property transfer

72 (1) This paragraph applies where the Bank has made a property transfer instrument in accordance with paragraph 71(2) ("the original instrument").

(2) The Bank may make one or more reverse property transfer instruments in respect of property, rights and liabilities of the transferee under the original instrument.

(3) A reverse property transfer instrument is a property transfer instrument which—

(a) provides for transfer to the transferor under the original instrument;

(b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities which are, could be or could have been transferred.

(4) The Bank must not make a reverse property transfer instrument unless—

(a) the transferee under the original instrument is—

(i) the Bank,

(ii) a company wholly owned by the Bank or the Treasury, or

(iii) a nominee of the Treasury, or

(b) the reverse property transfer instrument is made with the written consent of the transferee under the original instrument.

(5) Paragraphs 17 and 19 do not apply to a reverse property transfer instrument made in accordance with this paragraph.

(6) Before making a reverse property transfer instrument in accordance with this paragraph, the Bank must consult—

(a) if the CCP is a PRA-authorised person, the PRA, and
(b) the FCA.

(7) Paragraph 64 applies where the Bank has made a reverse property transfer instrument in accordance with this paragraph.

Bridge central counterparty: supplemental property transfer powers

73 (1) This paragraph applies where the Bank has made a share transfer instrument in accordance with paragraph 29(3) ("the original instrument") providing for the transfer of securities issued by a CCP ("the CCP") to a bridge central counterparty.

(2) The Bank may make one or more property transfer instruments in relation to the CCP ("bridge central counterparty supplemental property transfer instruments").

(3) A bridge central counterparty supplemental property transfer instrument is an instrument which—
(a) provides for property, rights or liabilities of the CCP to be transferred (whether accruing or arising before or after the original instrument);
(b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the CCP (whether the transfer has been or is to be effected by the instrument or otherwise).

(4) Paragraphs 17 and 19 do not apply to a bridge central counterparty supplemental property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Schedule).

(5) Before making a bridge central counterparty supplemental property transfer instrument the Bank must consult—
(a) if the CCP is a PRA-authorised person, the PRA,
(b) the FCA, and
(c) the Treasury.

(6) The possibility of making a bridge central counterparty supplemental property transfer instrument in reliance on sub-paragraph (2) is without prejudice to the possibility of making a property transfer instrument in accordance with paragraph 29(3) (and not in reliance on sub-paragraph (2) above).

(7) Paragraph 64 applies where the Bank has made a bridge central counterparty supplemental property transfer instrument.

Bridge central counterparty: supplemental reverse property transfer powers

74 (1) This paragraph applies where the Bank has made a bridge central counterparty supplemental property transfer instrument in accordance with paragraph 73 ("the original instrument").

(2) The Bank may make one or more reverse property transfer instruments ("bridge central counterparty supplemental reverse property transfer instruments") in respect of property, rights or liabilities of the transferee under the original instrument.

(3) A bridge central counterparty supplemental reverse property transfer instrument is an instrument which—

(a) provides for transfer to the transferor under the original instrument;

(b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities which are, could be or could have been transferred under paragraph (a) (whether the transfer has been or is to be effected by that instrument or otherwise).

(4) Paragraphs 17 and 19 do not apply to a bridge central counterparty supplemental reverse property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Schedule).

(5) The Bank must not make a bridge central counterparty supplemental reverse property transfer instrument unless—

(a) the transferee under the original instrument is—

(i) a company wholly owned by the Bank of England,

(ii) a company wholly owned by the Treasury, or

(iii) a nominee of the Treasury, or

(b) it is made with the written consent of the transferee under the original instrument.

(6) Before making a bridge central counterparty supplemental reverse property transfer instrument the Bank must consult—

(a) if the CCP is a PRA-authorised person, the PRA,

(b) the FCA, and

(c) the Treasury.

(7) Paragraph 64 applies where the Bank has made a bridge central counterparty supplemental property transfer instrument.

Restriction of partial transfers

75 (1) In this Schedule, "partial property transfer" means a property transfer instrument which provides for the transfer of some, but not all of the property, rights and liabilities of a CCP.

(2) The Treasury may by regulations—

(a) restrict the making of partial property transfers;

(b) impose conditions on the making of partial property transfers;

(c) require partial property transfers to include specified provision or provision to a specified effect;

(d) provide for a partial property transfer to be void or voidable, or for other consequences (including automatic transfer of other property, rights or liabilities) to arise, if or in so far as the partial property transfer is made or purported to be made in contravention of a provision of the regulations.

(3) Regulations under this paragraph may apply to partial property transfers generally or only to partial property transfers—

(a) of a specified kind, or

(b) made or applying in specified circumstances.

(4) Provision under sub-paragraph (2) may, in particular, refer to particular classes of liabilities.

(5) Regulations under this paragraph are subject to the affirmative procedure.

Power to protect certain interests

76 (1) In this paragraph—

(a) "security interests" means arrangements under which one person acquires, by way of security, an actual or contingent interest in the property of another,

(b) "title transfer collateral arrangements" are arrangements under which Person 1 transfers assets to Person 2 on terms providing for Person 2 to transfer assets if specified obligations are discharged,

(c) "set-off arrangements" are arrangements under which two or more debts, claims or obligations can be set off against each other,

(d) "netting arrangements" are arrangements under which a number of claims or obligations can be converted into a net claim or obligation and include, in particular, "close-out" netting arrangements, under which actual or theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set off against each other or to be converted into a net debt, and

(e) "protected arrangements" means security interests, title transfer collateral arrangements, set-off arrangements and netting arrangements.

(2) The Treasury may by regulations —

(a) restrict the making of partial property transfers in cases that involve, or where they might affect, protected arrangements;

(b) impose conditions on the making of partial property transfers in cases that involve, or where they might affect, protected arrangements;

(c) require partial property transfers to include specified provision, or provision to a specified effect, in respect of or for purposes connected with protected arrangements;

(d) provide for a partial property transfer to be void or voidable, or for other consequences (including automatic transfer of other property, rights or liabilities) to arise, if or in so far as the partial property transfer is made or purported to be made in contravention of a provision of the regulations.

(3) Regulations under this paragraph may apply to protected arrangements generally or only to arrangements—

(a) of a specified kind, or

(b) made or applying in specified circumstances.

(4) Regulations under this paragraph may include provision for determining which arrangements are to be, or not to be, treated as protected arrangements; in particular, regulations may provide for arrangements to be classified not according to their description by the parties but according to one or more indications of how they are treated, or are intended to be treated, in commercial practice.

(5) In this paragraph "arrangements" includes arrangements which—

(a) are formed wholly or partly by one or more contracts or trusts;

(b) arise under or are wholly or partly governed by the law of a country or territory outside the United Kingdom;

(c) wholly or partly arise automatically as a matter of law;

(d) involve any number of parties;

(e) operate partly by reference to other arrangements between other parties.

(6) Regulations under this paragraph are subject to the affirmative procedure.

Creation of liabilities

77 (1) The provision that may be made by a property transfer instrument in reliance on paragraph 54(1)(b), 67(3)(b), 68(3)(b), 69(3)(b), 70(4)(c), 71(3)(b), 72(3)(b), 73(3)(b), or 74(3)(b) includes provision for the creation of liabilities.

(2) The provision may be framed by reference to an agreement which has been or is to be entered into, or anything else which has been or is to be done, by any person (including a person other than the person making the instrument).

Regulations for safeguarding certain financial arrangements: write-down instruments

78 (1) In this paragraph "protected arrangements" means security interests, title transfer collateral arrangements, set-off arrangements and netting arrangements.

(2) In sub-paragraph (1)—

(a) "security interests" means arrangements under which one person acquires, by way of security, an actual or contingent interest in the property of another,

(b) "title transfer collateral arrangements" are arrangements under which Person 1 transfers assets to Person 2 on terms providing for Person 2 to transfer assets if specified obligations are discharged,

(c) "set-off arrangements" are arrangements under which two or more debts, claims or obligations can be set off against each other, and

(d) "netting arrangements" are arrangements under which a number of claims or obligations can be converted into a net claim or obligation and include, in particular, "close-out" netting arrangements, under which actual or theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set off against each other or to be converted into a net debt.

(3) The Treasury may by regulations —

(a) restrict the making of a write-down instrument in cases that involve, or where they might affect, protected arrangements;

(b) impose conditions on the making of write-down instruments in cases that involve, or where they might affect, protected arrangements;

(c) require write-down instruments to include specified provision, or provision to a specified effect, in respect of or for purposes connected with protected arrangements;

(d) provide for a write-down instrument to be void or voidable, or for other consequences to arise, if or in so far as the write-down instrument is made or purported to be made in contravention of a provision of the regulations;

(e) specify principles to which the Bank is to be required to have regard in making a write-down instrument—

(i) that involves protected arrangements, or

(ii) where the making of the instrument might affect protected arrangements.

(4) Regulations under this paragraph may apply to protected arrangements generally or only to arrangements—

(a) of a specified kind, or

(b) made or applying in specified circumstances.

(5) Regulations under this paragraph may include provision for determining which arrangements are to be, or not to be, treated as protected arrangements; in particular, regulations may provide for arrangements to be classified not according to their description by the parties but according to one or more indications of how they are treated, or are intended to be treated, in commercial practice.

(6) In this paragraph "arrangements" includes arrangements which—

(a) are formed wholly or partly by one or more contracts or trusts;

(b) arise under or are wholly or partly governed by the law of a country or territory outside the United Kingdom;

(c) wholly or partly arise automatically as a matter of law;

(d) involve any number of parties;

(e) operate partly by reference to other arrangements between other parties.

(7) Regulations under this paragraph are subject to the affirmative procedure.

Resolution instruments: effect and supplementary matters

79 (1) In this Schedule "resolution instrument" means—

(a) a cash call instrument;

(b) a tear-up instrument;

(c) a variation instrument;

(d) a write-down instrument;

(e) an instrument of control.

(2) A resolution instrument must be made in writing.

(3) A resolution instrument in respect of a CCP ceases to have effect on whichever of the following occurs first—

(a) such date as may be specified in the instrument,

(b) the making of a share transfer instrument or a property transfer instrument in relation to the CCP, or

(c) any of the conditions under paragraph 17 ceasing to be met in relation to the CCP.

(4) The Bank may at any time amend a resolution instrument to specify or amend a date for the purposes of sub-paragraph (3)(a).

(5) Before amending a resolution instrument in accordance with sub-paragraph (4) the Bank must consult the Treasury.

(6) Provision made in a resolution instrument takes effect despite any restriction arising by virtue of contract or legislation or in any other way.

(7) A resolution instrument may provide for anything (including legal proceedings) that relates to anything affected by the instrument and is in the process of being done immediately before the instrument takes effect to be continued from the time the instrument takes effect.

(8) A resolution instrument may modify references (express or implied) in an instrument or document.

(9) A resolution instrument may require or permit any person to provide information and assistance to the Bank or another person, for the purposes of or in connection with provision made or to be made in that or another resolution instrument.

(10) A resolution instrument—

(a) may include supplemental, incidental, consequential or transitional provision,

(b) may make provision generally or only for specified purposes, cases or circumstances,

(c) may make different provision for different purposes, cases or circumstances, and

(d) may make provision for exemptions.

(11) A resolution instrument ceasing to have effect does not affect the validity of anything previously done in accordance with it.

Write-down instruments: supplementary

80 (1) A write-down instrument may permit or require the execution, issue or delivery of an instrument.

(2) A write-down instrument may provide for any provision in the instrument to have effect irrespective of—

(a) whether an instrument has been produced, delivered, transferred or otherwise dealt with;

(b) registration.

(3) A write-down instrument may provide for the effect of an instrument executed, issued or delivered in accordance with the instrument.

(4) A write-down instrument may—

(a) entitle a person to be registered in respect of a security;

(b) require a person to effect registration.

Resolution instruments: procedure

81 (1) As soon as is reasonably practicable after making a resolution instrument in respect of a CCP, the Bank must send a copy of the instrument to—

(a) the CCP,

(b) the Treasury,

(c) if the CCP is a PRA-authorised person, the PRA,

(d) the FCA, and

(e) any other person specified in the code of practice under paragraph 16.

(2) As soon as is reasonably practicable after making a resolution instrument the Bank must publish a copy—

(a) on the Bank's website,

(b) in at least one other medium chosen by the Bank to maximise the likelihood of the instrument coming to the attention of persons likely to be affected, and

(c) if securities of the CCP have been admitted to trading on a regulated market (within the meaning of section 103(1) of FSMA 2000), by means of a regulatory information service (within the meaning of section 313D of that Act),

and arrange for the publication of a copy on the website of the CCP in respect of which the instrument was made.

(3) Where the Treasury receive a copy of a resolution instrument under sub-paragraph (1) they must lay a copy before Parliament.

Supplemental resolution instruments

82 (1) This paragraph applies where the Bank has made a resolution instrument ("the original instrument") with respect to a CCP.

(2) The Bank may make, with respect to the CCP, one or more resolution instruments designated by the Bank as supplemental resolution instruments.

(3) Paragraphs 17, 22 and 79(3)(c) do not apply to a supplemental resolution instrument (but it is to be treated in the same way as a resolution instrument for all other purposes, including for the purposes of the application of a power under this Schedule).

(4) Before making a supplemental resolution instrument, the Bank must consult—

(a) if the CCP is a PRA-authorised person, the PRA,

(b) the FCA, and

(c) the Treasury.

(5) The possibility of making a supplemental resolution instrument in reliance on sub-paragraph (2) is without prejudice to the possibility of making a new resolution instrument in accordance with paragraphs 31(1), 32(1), 33(1), 34(1) and 38(1) (and not in reliance on sub-paragraph (2) above).

Directors and senior managers

83 (1) A resolution instrument may enable the Bank—

(a) to remove a director or senior manager of a specified CCP;

(b) to vary the service contract of a director or senior manager of a specified CCP;

(c) to terminate the service contract of a director or senior manager of a specified CCP;

(d) to appoint a director or a senior manager of a specified CCP.

(2) Sub-paragraph (1) also applies to a director or senior manager of a relevant CCP group company of the specified CCP.

(3) A "relevant CCP group company" is a CCP group company incorporated in, or formed under the law of any part of, the United Kingdom.

(4) Appointments under sub-paragraph (1)(d) are to be on terms and conditions agreed with the Bank.

Termination rights etc

84 (1) In this paragraph—

"resolution measure" means—

(a) the making by the Bank of a stabilisation instrument in relation to a CCP,

(b) where an instrument of control under paragraph 38 is in place in relation to a CCP, the exercise by the Bank of any relevant rules of the CCP,

(c) a measure taken by a CCP as a result of directions given under paragraph 2,

(d) the removal by a CCP of a director or senior manager as a result of a requirement imposed under paragraph 5,

(e) the appointment of a temporary manager in relation to a CCP under paragraph 6,

(f) a restriction or prohibition on payments under paragraph 13 or 102,

(g) the recognition by the Bank of third-country resolution action (or part of such action) in accordance with Part 7 of this Schedule, or

(h) the exercise by the Bank of a stabilisation power by virtue of paragraph 146(3);

"default event provision" means a Type 1 or Type 2 default event provision (see sub-paragraphs (2) and (3));

"relevant rules", in relation to a CCP, mean rules ensuring that the requirements under paragraph 29A or 36 of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (S.I. 2001/995) are met;

"stabilisation instrument" means—

(a) a share transfer instrument,

(b) a property transfer instrument, or

(c) a resolution instrument.

(2) A Type 1 default event provision is a provision of a contract or other agreement that has the effect that if a specified event occurs or situation arises—

(a) the agreement is terminated, modified or replaced,

(b) rights or duties under the agreement are terminated, modified or replaced,

(c) a right accrues to terminate, modify or replace the agreement,

(d) a right accrues to terminate, modify or replace rights or duties under the agreement,

(e) a sum becomes payable or ceases to be payable,

(f) delivery of anything becomes due or ceases to be due,

(g) a right to claim a payment or delivery accrues, changes or lapses,

(h) any other right accrues, changes or lapses,

(i) a right to accelerate, close out, set-off or net obligations accrues, changes or lapses, or

(j) an interest is created, changes or lapses.

(3) A Type 2 default event provision is a provision of a contract or other agreement that has the effect that a provision of the contract or agreement—

(a) takes effect only if a specified event occurs or does not occur,

(b) takes effect only if a specified situation arises or does not arise,

(c) has effect only for so long as a specified event does not occur,

(d) has effect only while a specified situation lasts,
(e) applies differently if a specified event occurs,
(f) applies differently if a specified situation arises, or
(g) applies differently while a specified situation lasts.

(4) For the purposes of sub-paragraphs (2) and (3) it is the effect of a provision that matters, not how it is described (nor, for example, whether it is presented in a positive or a negative form).

(5) Subject to sub-paragraph (7), sub-paragraph (6) applies where—
(a) a contract or agreement is entered into by a CCP, and
(b) the substantive obligations provided for in the contract or agreement (including payment and delivery obligations and provision of collateral) continue to be performed.

(6) The following are to be disregarded in determining whether a default event provision applies—
(a) a resolution measure, and
(b) the occurrence of any event directly linked to the application of such a measure.

(7) A stabilisation instrument may provide for sub-paragraph (6)—
(a) not to apply in relation to a contract or other agreement, or
(b) to apply in relation to a contract or other agreement only to the extent specified by the Bank in the instrument.

(8) Provision may be made under sub-paragraph (7) only if the Bank considers that such provision would advance one or more of the special resolution objectives.

(9) A stabilisation instrument may provide for sub-paragraph (10) or (11) to apply (but need not apply either) in circumstances where sub-paragraph (6) would not apply.

(10) If this sub-paragraph applies, the stabilisation instrument is to be disregarded in determining whether a default event provision applies.

(11) If this sub-paragraph applies, the stabilisation instrument is to be disregarded in determining whether a default event provision applies except so far as the instrument provides otherwise.

(12) In sub-paragraphs (9), (10) and (11) a reference to a stabilisation instrument is a reference to—
(a) the making of the instrument,
(b) anything that is done by the instrument or is to be, or may be, done under or by virtue of the instrument, and
(c) any action or decision taken or made under this or another enactment in so far as it resulted in, or was connected to, the making of the instrument.

(13) Provision under sub-paragraph (9) may apply sub-paragraph (10) or (11)—
(a) generally or only for specified purposes, cases or circumstances, or
(b) differently for different purposes, cases or circumstances.

(14) A thing is not done by virtue of a stabilisation instrument for the purposes of sub-paragraph (12)(b) merely by virtue of being done under a contract or other agreement rights or obligations under which have been affected by the instrument.

Deferment

85 (1) The Treasury may by regulations make provision for and in connection with the suspension or waiver of provisions made under a resolution instrument.

(2) The following are examples of provision that may be made by regulations under this paragraph—

(a) provision specifying matters to which the Bank must have regard before suspending or waiving provisions under a resolution instrument;

(b) provision specifying the procedure for suspending or waiving such provisions;

(c) provision specifying the maximum time period for which a suspension under the regulations may take effect;

(d) provision for review of any suspension or waiver of provisions under a resolution instrument.

(3) Regulations under this paragraph are subject to the negative procedure.

Recovery of expenses

86 (1) The Bank may, in making a resolution instrument, share transfer instrument or property transfer instrument in relation to a CCP, direct that CCP to pay the Bank a specified fee to cover expenses reasonably incurred by the Bank in connection with exercising that option.

(2) The Treasury may direct a CCP in relation to which the Bank has made a resolution instrument, share transfer instrument or property transfer instrument to pay the Treasury a specified fee to cover expenses reasonably incurred by the Treasury in connection with the exercise by the Bank of that power in relation to the CCP.

Compensation scheme

87 (1) The Treasury may by regulations make provision for protecting the financial interests of relevant persons in connection with the making of a stabilisation instrument in respect of a CCP.

(2) For the purposes of sub-paragraph (1) regulations may make provision establishing a scheme, which may for example include provision—

(a) for determining whether relevant persons should be paid compensation or providing for relevant persons to be paid compensation;

(b) for paying any compensation (including payments in instalment or subject to terms and conditions);

(c) under which specified relevant persons become entitled to the proceeds of disposal of things transferred under a share transfer instrument or property transfer instrument.

(3) In making regulations under this paragraph the Treasury must have regard (among other matters) to the desirability of ensuring that any person who is a relevant person before the making of a stabilisation instrument does not receive less favourable treatment than they would have received had—

(a) the CCP entered insolvency immediately before the stabilisation instrument was made, and

(b) all the relevant rules of the CCP been applied in the period leading up to the insolvency.

(4) The regulations may provide for the amount of compensation payable to relevant persons to be determined by a person appointed in accordance with the regulations (an "independent valuer").

(5) The regulations may make such further provision about independent valuers as the Treasury consider to be appropriate, including (among other things)—

(a) provision about appointment and tenure,

(b) provision for remuneration of independent valuers and their staff,

(c) provision conferring functions on independent valuers (including conferring a discretion),

(d) provision specifying principles to be applied by independent valuers to determine the amount of compensation,

(e) provision about the procedure to be followed by independent valuers,

(f) provision about the liability of independent valuers, and

(g) provision about appeals against decisions by independent valuers (including conferring jurisdiction on a court or tribunal).

(6) The regulations may provide for compensation or other payments to be made by—

(a) the Treasury, or

(b) any other specified persons.

(7) In this paragraph—

references to "insolvency" include a reference to—

(a) liquidation,

(b) administration,

(c) receivership,

(d) a composition with creditors, and

(e) a scheme of arrangement;

"relevant person", in relation to a CCP, means—

(a) clearing members of the CCP;

(b) creditors of the CCP;

(c) shareholders of the CCP;

(d) clients within the meaning of Article 2 of EMIR where they have a contractual relationship as principal with the CCP.

(8) Regulations under this paragraph are subject to the affirmative procedure.

Instruments: notification of members and creditors

88 (1) This paragraph applies where the Bank has applied one or more of the stabilisation options in respect of a CCP.

(2) Except where securities issued by the CCP have been admitted to trading on a regulated market (within the meaning given in section 103(1) of FSMA 2000), the Bank must send a copy of any property transfer instrument, share transfer instrument or resolution instrument made in respect of the CCP to each of the following persons who are known to the Bank—

(a) the CCP's shareholders or, if the CCP is an unincorporated association, its members, and
(b) creditors of the CCP.

General continuity obligation: property transfers

89 (1) In this paragraph—
(a) "residual CCP" means a CCP all or part of whose business has been transferred under a property transfer instrument in accordance with paragraph 27(2), 29(3), 66(2) or 73(2),
(b) "group company" means anything which is, or was immediately before the transfer, a group undertaking in relation to a residual CCP,
(c) "group undertaking" has the meaning given by section 1161(5) of the Companies Act 2006,
(d) "the transferred business" means the part of the CCP's business that has been transferred, and
(e) "transferee" means a commercial purchaser or bridge central counterparty to whom all or part of the transferred business has been transferred.

(2) In this paragraph a reference to insolvency includes a reference to liquidation, administration, receivership, composition with creditors and a scheme of arrangement.

(3) The residual CCP and each group company must provide such services and facilities as are required to enable a transferee to operate the transferred business, or part of it, effectively.

(4) The duty under sub-paragraph (3) (the "continuity obligation") may be enforced as if created by contract between the residual CCP or group company and the transferee.

(5) The continuity obligation continues to apply despite the residual CCP or group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(1) of the Insolvency (Northern Ireland) Order 1989.

(6) The duty to provide services and facilities in pursuance of the continuity obligation is subject to a right to receive reasonable consideration.

(7) But if the services and facilities provided in pursuance of the continuity obligation were provided to the CCP whose business has been transferred, under an agreement with that CCP, before the property transfer instrument providing for the transfer was made, they are to continue for the duration of that agreement to be provided on the terms set out in that agreement (and sub-paragraph (6) does not apply).

(8) The continuity obligation is not limited to the provision of services or facilities directly to a transferee.

(9) The Bank may, with the consent of the Treasury, by notice to the residual CCP or a group company state that in the Bank's opinion—
(a) specified activities are required to be undertaken in accordance with the continuity obligation;
(b) activities are required to be undertaken in accordance with the continuity obligation on specified terms.

(10) A notice under sub-paragraph (9) is to be determinative of the nature and extent of the continuity obligation as from the time when the notice is given.

Special continuity obligations: property transfers

90 (1) Expressions in this paragraph have the same meaning as in paragraph 89.

(2) The Bank may—

(a) cancel a contract or other arrangement between the residual CCP and a group company or a third party (whether or not rights or obligations under it have been transferred to a transferee);

(b) modify the terms of a contract or other arrangement between the residual CCP and a group company or a third party (whether or not rights or obligations under it have been transferred to a transferee);

(c) add or substitute a transferee as a party to a contract or other arrangement between the residual CCP and a group company or a third party;

(d) confer and impose rights and obligations on a group company or third party and a transferee, which must have effect as if created by contract between them;

(e) confer and impose rights and obligations on the residual CCP and a transferee which must have effect as if created by contract between them.

(3) In modifying or setting terms under sub-paragraph (2) the Bank must aim, so far as is reasonably practicable, to preserve or include—

(a) provision for reasonable consideration, and

(b) any other provision that would be expected in arrangements concluded between parties dealing at arm's length.

(4) The power under sub-paragraph (2)—

(a) may be exercised only in so far as the Bank thinks it necessary to ensure the provision of such services and facilities as are required to enable the transferee to operate the transferred business, or part of it, effectively,

(b) may be exercised only with the consent of the Treasury, and

(c) must be exercised by way of provision in a property transfer instrument.

(5) An obligation imposed on the residual CCP or a group company under sub-paragraph (2)(d) or (e) continues to apply despite the residual CCP or group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(1) of the Insolvency (Northern Ireland) Order 1989.

Continuity obligations: onward property transfers

91 (1) In this paragraph—

(a) "onward transfer" means a transfer of property, rights or liabilities (whether or not under a power in this Schedule) from—

(i) a person who is a transferee under a property transfer instrument under paragraph 29(3) (an "original transferee"), or

(ii) a CCP, securities issued by which were earlier transferred by a share transfer instrument under paragraph 29(3) or 30(2), and

(b) the person to whom the onward transfer is made is referred to as an "onward transferee".

(2) The Bank may—

(a) provide for an obligation under paragraph 89 to apply in respect of an onward transferee;

(b) extend paragraph 90 so as to permit action to be taken under paragraph 90(2) for the purpose of enabling an onward transferee to operate the transferred business, or part of it, effectively.

(3) Sub-paragraph (2) may be relied on to impose obligations on—

(a) an original transferee (where the original transfer was a property transfer),

(b) a residual CCP within the meaning of paragraph 89 (where the original transfer was a property transfer),

(c) the CCP (where the original transfer was a share transfer),

(d) anything which is or was a group undertaking (within the meaning of section 1161(5) of the Companies Act 2006) of anything within paragraphs (a) to (c), or

(e) any combination of the above.

(4) Sub-paragraph (2) may be used to impose obligations—

(a) in addition to obligations under or by virtue of paragraph 89 or 90, or

(b) replacing obligations under or by virtue of either of those paragraphs to a specified extent.

(5) A power under sub-paragraph (2) is exercisable by giving a notice to each person—

(a) on whom a continuity obligation is to be imposed under the power, or

(b) who is expected to benefit from a continuity obligation under the power.

(6) Paragraphs 89(3) to (10) and 90(3) and (4) apply to an obligation as applied under sub-paragraph (2)—

(a) construing "transferred business" as the business transferred by means of the onward transfer, and

(b) with any other necessary modification.

(7) The Bank may act under or by virtue of sub-paragraph (2) only with the consent of the Treasury.

General continuity obligation: share transfers

92 (1) In this paragraph and paragraph 93—

(a) "transferred CCP" means a CCP all or part of the ownership of which has been transferred in accordance with paragraph 27(2), 29(3), or 30(2),

(b) "former group company" means anything which was a group undertaking in relation to the transferred CCP immediately before the transfer (whether or not it is also a group undertaking in relation to the transferred CCP immediately after the transfer),

(c) "group undertaking" has the meaning given by section 1161(5) of the Companies Act 2006.

(2) In this paragraph a reference to insolvency includes a reference to liquidation, administration, receivership, composition with creditors and a scheme of arrangement.

(3) Each former group company must provide such services and facilities as are required to enable the transferred CCP to operate effectively.

(4) The duty under sub-paragraph (3) (the "continuity obligation") may be enforced as if created by contract between the transferred CCP and the former group company.

(5) The continuity obligation continues to apply despite the former group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(1) of the Insolvency (Northern Ireland) Order 1989.

(6) The duty to provide services and facilities in pursuance of the continuity obligation is subject to a right to receive reasonable consideration.

(7) But if the services and facilities provided in pursuance of the continuity obligation were provided to the transferred CCP, under an agreement with that CCP, before the share transfer instrument providing for the transfer was made, they are to continue for the duration of that agreement to be provided on the terms set out in that agreement (and sub-paragraph (6) does not apply).

(8) The continuity obligation is not limited to the provision of services or facilities directly to the transferred CCP.

(9) The Bank may by notice to a former group company state that in the Bank's opinion—

(a) specified activities are required to be undertaken in accordance with the continuity obligation;

(b) activities are required to be undertaken in accordance with the continuity obligation on specified terms.

(10) A notice under sub-paragraph (9) is to be determinative of the nature and extent of the continuity obligation as from the time when the notice is given.

(11) The Bank may act under or by virtue of sub-paragraph (9) only with the consent of the Treasury.

Special continuity obligations: share transfers

93 (1) Expressions in this paragraph have the same meaning as in paragraph 92.

(2) The Bank may—

(a) cancel a contract or other arrangement between the transferred CCP and a former group company or a third party;

(b) modify the terms of a contract or other arrangement between the transferred CCP and a former group company or a third party;

(c) confer and impose rights and obligations on a former group company or a third party and the transferred CCP, which has effect as if created by contract between them.

(3) In modifying or setting terms under sub-paragraph (2) the Bank must aim, so far as is reasonably practicable, to preserve or include—

(a) a provision for reasonable consideration, and

(b) any other provision that would be expected in arrangements concluded between parties dealing at arm's length.

(4) The power under sub-paragraph (2)—

(a) may be exercised only in so far as the Bank thinks it necessary to ensure the provision of such services and facilities as are required to enable the transferred CCP to operate effectively,

(b) may be exercised by the Bank only with the consent of the Treasury, and

(c) must be exercised by way of provision in a share transfer instrument.

(5) An obligation imposed on the transferred CCP or a former group company under sub-paragraph (2)(b) or (c) continues to apply despite the transferred CCP or former group company entering insolvency, and may not be disclaimed by a liquidator under section 178(2) of the Insolvency Act 1986 or Article 152(1) of the Insolvency (Northern Ireland) Order 1989.

Continuity obligations: onward share transfers

94 (1) In this paragraph "onward transfer" means a transfer (whether or not under a power in this Schedule) of securities issued by a CCP where—

(a) securities issued by the CCP were earlier transferred by a share transfer instrument under paragraph 29(3) or 30(2), or

(b) the CCP was the transferee under a property transfer instrument under paragraph 29(3).

(2) The Bank may—

(a) provide for an obligation under paragraph 92 to apply in respect of the CCP after the onward transfer;

(b) extend paragraph 93 so as to permit action to be taken under paragraph 93(2) to enable the CCP to operate effectively after the onward transfer.

(3) Sub-paragraph (2) may be relied on to impose obligations on—

(a) the CCP,

(b) anything which is or was a group undertaking (within the meaning of section 1161(5) of the Companies Act 2006) of the CCP,

(c) anything which is or was a group undertaking of the residual CCP (in a case to which sub-paragraph (1)(b) applies), or

(d) any combination of the above.

(4) Sub-paragraph (2) may be used to impose obligations—

(a) in addition to obligations under or by virtue of paragraph 92 or 93, or

(b) replacing obligations under or by virtue of either of those paragraphs to a specified extent.

(5) A power under sub-paragraph (2) is exercisable by giving a notice to each person—

(a) on whom a continuity obligation is to be imposed under the power, or

(b) who is expected to benefit from a continuity obligation under the power.

(6) Paragraphs 92(4) to (10) and 94(3) and (4) apply to an obligation as applied under sub-paragraph (2) with any necessary modification.

(7) The Bank may act under or by virtue of sub-paragraph (2) only with the consent of the Treasury.

Continuity obligations: consideration and terms

95 (1) The Treasury may by regulations specify matters which are to be or not to be considered in determining—

(a) what amounts to reasonable consideration for the purpose of paragraphs 89 to 94;

(b) what provisions to include in accordance with paragraph 90(3)(b) or 93(3)(b).

(2) The Bank may give guarantees or indemnities in respect of consideration for services or facilities provided or to be provided in pursuance of a continuity obligation.

(3) Regulations under this paragraph are subject to the negative procedure.

Continuity obligations: termination

96 (1) The Bank may by notice terminate an obligation arising under paragraph 89 or 92.

(2) The power under sub-paragraph (1) is exercisable by giving a notice to each person—

(a) on whom the obligation is imposed, or

(b) who has benefited or might have expected to benefit from the obligation.

(3) A reference in sub-paragraph (1) to obligations under a paragraph includes a reference to obligations under that paragraph as applied under paragraph 91 or 94.

Suspension of obligations

97 (1) Where the Bank is exercising a stabilisation power in respect of a CCP (a "CCP under resolution") the Bank may suspend obligations to make a payment, or delivery, under a contract where one of the parties to the contract is the CCP under resolution.

(2) A suspension imposed under sub-paragraph (1) does not apply to—

(a) payments of eligible claims, or

(b) payments or deliveries to excluded persons (see paragraph 100).

(3) A suspension imposed under sub-paragraph (1)—

(a) begins when the instrument providing for the suspension is first published,

(b) must end no later than midnight at the end of the first business day following the day on which the instrument providing for the suspension is published, and

(c) subject to sub-paragraph (2), suspends all obligations to make a payment or delivery under the contract in question, whether the obligation concerned is that of the CCP under resolution or of any other party to the contract.

(4) Where a payment or delivery under the contract concerned first fell due within the period of the suspension, that payment or delivery is treated as being due immediately on the expiry of the suspension.

(5) The power under sub-paragraph (1) must be exercised by way of provision in a share transfer instrument, property transfer instrument, resolution instrument or third-country instrument.

(6) The Bank must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in sub-paragraph (1).

(7) In this paragraph, "eligible claim" means a claim in respect of which compensation is payable under the Financial Services Compensation Scheme.

Restriction of security interests

98 (1) Where the Bank is exercising a stabilisation power in respect of a CCP (a "CCP under resolution") the Bank may suspend the rights of a secured creditor of the CCP to enforce any security interest the creditor has in relation to any assets of the CCP.

(2) A suspension under sub-paragraph (1)—

(a) begins when the instrument providing for the suspension is first published, and

(b) must end no later than midnight at the end of the first business day following the day on which that instrument is published.

(3) But the Bank may not suspend the rights of an excluded person to enforce any security interest that person may have in relation to any asset of the CCP under resolution which has been pledged or provided to the excluded person in question as collateral or as cover for margin.

(4) The power under sub-paragraph (1) must be exercised by way of provision in a share transfer instrument, property transfer instrument, resolution instrument or third-country instrument.

(5) Where the power in sub-paragraph (1) is being exercised in a partial property transfer, the Bank must ensure that any restrictions on the enforcement of security interests which it imposes under that sub-paragraph are applied consistently for all CCP group companies in respect of which the Bank is exercising a stabilisation power.

(6) The Bank must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in sub-paragraph (1).

(7) For the purposes of this paragraph, a "security interest" means an interest or right held for the purpose of securing the payment of money or the performance of any other obligation.

Suspension of termination rights

99 (1) The Bank may suspend the termination right of any party to a qualifying contract (other than a party who is an excluded person).

(2) A contract is a "qualifying contract" for the purpose of this paragraph if—

(a) one of the parties to the contract is a CCP in respect of which the Bank is exercising a stabilisation power (a "CCP under resolution") and all the obligations under the contract to make a payment, make delivery or provide collateral continue to be performed, or

(b) one of the parties to the contract is a subsidiary of a CCP under resolution and the condition in sub-paragraph (3) is met.

(3) The condition is that—

(a) the obligations of the subsidiary are guaranteed or otherwise supported by the CCP under resolution,

(b) the termination rights under the contract are triggered by the insolvency or the financial condition of the CCP under resolution, and

(c) if a property transfer instrument has been made in relation to the CCP under resolution—

(i) all the assets and liabilities relating to the contract have been or are being transferred to, or assumed by, a single transferee, or

(ii) the Bank is providing adequate protection for the performance of the obligations of the subsidiary under the contract in any other way.

(4) The Bank must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in sub-paragraph (1).

(5) The power under sub-paragraph (1) must be exercised by way of provision in a share transfer instrument, property transfer instrument, resolution instrument or third-country instrument.

(6) A suspension imposed under sub-paragraph (1)—

(a) begins when the instrument providing for the suspension is first published, and

(b) must end no later than midnight at the end of the first business day following the day on which that instrument is published.

(7) A person may exercise a termination right under a contract before the expiry of the suspension if that person is given notice by the Bank that the rights and liabilities of the CCP under resolution covered by the contract are not—

(a) to be transferred to another undertaking through the exercise of a stabilisation power, or

(b) to be made subject to a share transfer instrument, property transfer instrument, resolution instrument or third-country instrument.

(8) If—

(a) no notice has been given by the Bank under sub-paragraph (7), and

(b) a termination right has been triggered otherwise than through the exercise of a stabilisation power or the imposition of a suspension under sub-paragraph (1) (or the occurrence of an event directly linked to the exercise of a stabilisation power),

a person may, on the expiry of the suspension, exercise the termination right in accordance with the terms of the contract.

(9) But, where the rights and liabilities of the CCP under resolution or the subsidiary under the contract have been transferred to another undertaking, sub-paragraph (8) applies only if the event giving rise to the termination right has been triggered by that undertaking.

(10) For the purposes of this paragraph, "termination right" means—

(a) a right to terminate a contract,

(b) a right to accelerate, close out, set-off or net obligations, or any similar provision that suspends, modifies or extinguishes an obligation of a party to the contract, or

(c) a provision that prevents an obligation from arising under the contract.

Suspension: general provision

100 For the purposes of paragraphs 97 to 99—

"business day" means any day other than a Saturday, a Sunday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom;

"excluded person" means—

(a) a person who has been declared to be, or who is an operator of, a designated system under regulation 4 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979),

(b) a CCP,

(c) a third-country central counterparty (within the meaning given by section 285 of FSMA 2000), or

(d) a central bank.

Stay on terminating membership

101 (1) This paragraph applies where the Bank has made a resolution instrument, share transfer instrument or a property transfer instrument in relation to a CCP.

(2) A clearing member of the CCP may not at any time during the relevant period terminate their membership of the CCP.

(3) The "relevant period" for the purposes of sub-paragraph (2) is the period of 48 hours beginning with the time the instrument in question comes into force.

(4) A resolution instrument, share transfer instrument or property transfer instrument in relation to a CCP may provide for sub-paragraph (2)—

(a) not to apply in relation to clearing members of the CCP, or

(b) to apply in relation to clearing members of the CCP only to the extent specified by the Bank in the instrument.

(5) Provision may be made under sub-paragraph (4) only if the Bank considers that such provision would advance one or more of the special resolution objectives.

Restriction on remuneration

102 (1) The Bank may restrict or prohibit for a specified period discretionary payments to specified employees or specified shareholders of a CCP.

(2) The power under sub-paragraph (1) must be exercised by way of provision in a share transfer instrument, property transfer instrument or resolution instrument.

(3) The specified period for the purposes of sub-paragraph (1) must not exceed 5 years (but this is subject to sub-paragraph (4)).

(4) A provision under sub-paragraph (1) restricting or prohibiting discretionary payments in relation to a CCP ceases to have effect if—

(a) any of the conditions under paragraph 17 cease to be met in relation to the CCP, and

(b) the Bank is satisfied that following the exercise of any of the stabilisation powers in relation to the CCP, the CCP has sufficient resources to pay compensation and repay any public funds in connection with the exercise of those powers.

(5) In this paragraph—

"discretionary payments" has the meaning given in paragraph 13;

"specified" means specified in the instrument under sub-paragraph (2).

Pensions

103 (1) This paragraph applies to—

(a) share transfer instruments, and

(b) property transfer instruments.

(2) An instrument may make provision—

(a) about the consequences of a transfer for a pension scheme;

(b) about property, rights and liabilities of any pension scheme of the CCP.

(3) In particular, an instrument may—

(a) modify any rights and liabilities,

(b) apportion rights and liabilities, or

(c) transfer property of, or accrued rights in, one pension scheme to another (with or without consent).

(4) Provision by virtue of this paragraph may (but need not) amend the terms of a pension scheme.

(5) A share or property transfer instrument may make provision in reliance on this paragraph only with the consent of the Treasury.

(6) In this paragraph—

(a) "pension scheme" includes any arrangement for the payment of pension, allowances and gratuities, and

(b) a reference to a pension scheme of a CCP is a reference to a scheme in respect of which the CCP, or a CCP group company, is or was an employer.

Disputes

104 (1) This paragraph applies to—

(a) share transfer instruments,

(b) property transfer instruments,

(c) resolution instruments, and

(d) third-country instruments.

(2) An instrument may include provision for disputes to be determined in a specified manner.

(3) Provision by virtue of sub-paragraph (2) may, in particular—

(a) confer jurisdiction on a court or tribunal;

(b) confer discretion on a specified person.

Tax

105 (1) The Treasury may by regulations make provision about the fiscal consequences of the exercise of a stabilisation power.

(2) Regulations may relate to—

(a) capital gains tax,
(b) corporation tax,
(c) income tax,
(d) inheritance tax,
(e) stamp duty,
(f) stamp duty land tax, or
(g) stamp duty reserve tax.

(3) Regulations may apply to—

(a) anything done in connection with an instrument,
(b) things transferred or otherwise affected by virtue of an instrument,
(c) a transferor or transferee under an instrument, and
(d) persons otherwise affected by an instrument.

(4) Regulations may—

(a) modify or disapply an enactment;
(b) provide for an action to have or not have specified consequences;
(c) provide for specified classes of property (including securities), rights or liabilities to be treated, or not treated, in a specified way;
(d) withdraw or restrict a relief;
(e) extend, restrict or otherwise modify a charge to tax;
(f) provide for matters to be determined by the Treasury in accordance with provision made by or in accordance with the regulations.

(5) Regulations may make provision for the fiscal consequences of the exercise of a stabilisation power in respect of things done—

(a) during the period of three months before the date on which the stabilisation power is exercised, or
(b) on or after that date.

(6) In relation to the exercise of a supplemental, onward, bridge or subsequent instrument under paragraph 49, 50, 52, 66, 67, 69, 71, 73 or 82, in sub-paragraph (5)(a) above "the stabilisation power" is a reference to the first stabilisation power in connection with which the supplemental, onward, bridge or subsequent instrument is made.

(7) The Treasury may by regulations amend sub-paragraph (2) so as to—

(a) add an entry, or
(b) remove an entry.

(8) Regulations under this paragraph are subject to the affirmative procedure.

Stay or sist of legal proceedings

106 (1) This paragraph applies where—

(a) the Bank has exercised a stabilisation power in relation to a CCP or a CCP group company, and

(b) the CCP or CCP group company is a party to legal proceedings before a court in the United Kingdom.

(2) The Bank may apply to that court for a stay or sist of proceedings where the Bank reasonably considers that a stay or sist of those proceedings is necessary for an effective application of the stabilisation options or the stabilisation powers.

Insolvency proceedings

107 (1) This paragraph applies to a CCP if—

(a) a stabilisation power has been exercised in respect of the CCP, or

(b) the conditions in paragraph 17 are met in relation to the CCP.

(2) Insolvency proceedings may not be commenced in relation to the CCP except by, or with the consent of, the Bank.

(3) For the purposes of sub-paragraph (2), the commencement of insolvency proceedings means—

(a) making an application for an administration order,

(b) presenting a petition for winding up,

(c) proposing a resolution for voluntary winding up, or

(d) appointing an administrator.

Recognition of transferee company

108 (1) The Bank may provide for a company to which the business of a CCP is transferred in accordance with paragraph 29(3) to be treated as a CCP for the purposes of FSMA 2000—

(a) for a specified period, or

(b) until a specified event occurs.

(2) The provision may have effect—

(a) for a period specified in the instrument, or

(b) until the occurrence of an event specified or described in the instrument.

(3) The power under this paragraph—

(a) may be exercised only with the consent of the Treasury, and

(b) must be exercised by way of provision in a property transfer instrument.

International obligation notice: general

109 (1) The Bank may not exercise a stabilisation power in respect of a CCP if the Treasury notify the Bank that the exercise would be likely to contravene an international obligation of the United Kingdom.

(2) A notice under sub-paragraph (1)—

(a) must be in writing, and

(b) may be withdrawn (generally, partially or conditionally).

(3) If the Treasury give a notice under sub-paragraph (1) the Bank must consider other exercises of the stabilisation powers with a view to—

(a) pursuing the special resolution objectives, and

(b) avoiding the objections on which the Treasury's notice was based.

(4) The Treasury may by notice to the Bank disapply sub-paragraph (3) in respect of a CCP and a notice may be revoked by further notice.

International obligation notice: bridge central counterparty

110 (1) This paragraph applies where the Bank has transferred all or part of a CCP's business to a bridge central counterparty.

(2) The Bank must comply with any notice of the Treasury requiring the Bank, for the purpose of ensuring compliance by the United Kingdom with its international obligations—

(a) to take specified action under this Schedule in respect of the bridge central counterparty, or

(b) not to take specified action under this Schedule in respect of the bridge central counterparty.

(3) A notice under sub-paragraph (2)—

(a) must be in writing, and

(b) may be withdrawn (generally, partially or conditionally).

(4) A notice may include requirements about timing.

Public funds: general

111 (1) The Bank may not exercise a stabilisation power in respect of a CCP without the Treasury's consent if the exercise of that power would be likely to have implications for public funds.

(2) In sub-paragraph (1)—

(a) "public funds" means the Consolidated Fund and any other account or source of money which cannot be drawn or spent other than by, or with the authority of, the Treasury, and

(b) action has implications for public funds if it would or might involve or lead to a need for the application of public funds.

(3) The Treasury may by regulations specify considerations which are to be, or not to be, taken into account in determining whether action has implications for public funds for the purpose of sub-paragraph (1).

(4) If the Treasury refuse consent under sub-paragraph (1), the Bank must consider other exercises of the stabilisation powers with a view to—

(a) pursuing the special resolution objectives, and

(b) avoiding the objections on which the Treasury's refusal was based.

(5) The Treasury may by notice to the Bank disapply sub-paragraph (4) in respect of a CCP; and a notice may be revoked by further notice.

(6) Regulations under this paragraph are subject to the negative procedure.

Public funds: bridge central counterparty

112 (1) This paragraph applies where the Bank has transferred all or part of a CCP's business to a bridge central counterparty.

(2) The Bank may not take action in respect of the bridge central counterparty without the Treasury's consent if the action would be likely to have implications for public funds.

(3) Paragraph 111(2) and (3) have effect for the purposes of this paragraph.

Private sector purchaser: report

113 (1) This paragraph applies where the Bank sells all or part of a CCP's business to a commercial purchaser.

(2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments and property transfer instruments under paragraph 27(2).

(3) The report must comply with any requirements as to content specified by the Treasury.

(4) The report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer instrument made under paragraph 27(2).

Bridge central counterparty: report

114 (1) Where the Bank transfers all or part of a CCP's business to a bridge central counterparty, the Bank must report to the Chancellor of the Exchequer about the activities of the bridge central counterparty.

(2) The first report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer to the bridge central counterparty.

(3) A report must be made as soon as is reasonably practicable after the end of each subsequent year.

(4) The Chancellor of the Exchequer must lay a copy of each report under sub-paragraph (2) or (3) before Parliament.

(5) The Bank must comply with any request of the Treasury for a report dealing with specified matters in relation to a bridge central counterparty.

(6) A request under sub-paragraph (5) may include provision about—

(a) the content of the report;

(b) timing.

Resolution instruments: report

115 (1) This paragraph applies where the Bank makes one or more resolution instruments in respect of a CCP.

(2) The Bank must, on request by the Treasury, report to the Chancellor of the Exchequer about—

(a) the exercise of the power to make the resolution instrument, and

(b) any other matters in relation to the CCP that the Treasury may specify.

(3) In relation to the matter specified in sub-paragraph (2)(a), the report must comply with any requirements that the Treasury may specify.

(4) The Chancellor of the Exchequer must lay a copy of each report under sub-paragraph (2) before Parliament.

Transfer of ownership: report

116 (1) This paragraph applies where the Bank makes one or more share transfer instruments in respect of a CCP under paragraph 30(2).

(2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments under that paragraph.

(3) The report must comply with any requirements as to content specified by the Treasury.

(4) The report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer instrument made under paragraph 30(2).

Sale to commercial purchaser, transfer to bridge central counterparty and transfer of ownership: conditions for group companies

117 (1) The Bank may exercise a stabilisation power in respect of a CCP group company in accordance with paragraph 27(2), 29(3) or 30(2) if each of the following conditions is met.

(2) Condition 1 is that the Bank is satisfied that the general conditions for the exercise of a stabilisation power set out in paragraph 17 are met in respect of a CCP in the same group.

(3) Condition 2 (which does not apply in a financial assistance case) is that the Bank is satisfied that the exercise of the power in respect of the CCP group company is necessary, having regard to the public interest in—

(a) the stability of the UK financial system, and

(b) the maintenance of public confidence in the stability of that system.

(4) Condition 3 (which applies only in a financial assistance case) is that—

(a) the Treasury have recommended the Bank to exercise a stabilisation power on the grounds that it is necessary to protect the public interest, and

(b) in the Bank's opinion, exercise of the power in respect of the CCP group company is an appropriate way to provide that protection.

(5) Condition 4 is that the CCP group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.

(6) Before determining whether Condition 2 or 3 (as appropriate) is met, the Bank must consult—

(a) the Treasury,

(b) if the CCP is a PRA-authorised person, the PRA, and

(c) the FCA.

(7) In exercising a stabilisation power in reliance on this paragraph the Bank must have regard to the need to minimise the effect of the exercise of the power on other undertakings in the same group.

(8) In this paragraph "financial assistance case" means a case in which the Treasury notify the Bank that they have provided financial assistance in respect of a CCP in the same group for the purpose of resolving or reducing a serious threat to the stability of the UK financial system.

Paragraph 117: supplemental

118 (1) In paragraph 117 references to CCPs includes references to CCP group companies.

(2) Where the Bank exercises a stabilisation power in respect of a CCP group company in reliance on paragraph 117, the provisions relating to the stabilisation powers contained in this Schedule (except paragraphs 17 and 19) and any other enactment apply (with any necessary modifications) as if the CCP group company were a CCP.

PART 6

INFORMATION, INVESTIGATION AND ENFORCEMENT

Information

119 (1) This paragraph applies only to information and documents reasonably required in connection with the exercise by the Bank of functions conferred by or under this Schedule.

(2) The Bank may, by notice in writing given to a CCP or CCP group company, require the CCP or CCP group company—

(a) to provide specified information or information of a specified description, or

(b) to produce specified documents or documents of a specified description.

(3) The information or documents must be provided or produced—

(a) before the end of such reasonable period as may be specified, and

(b) at such place as may be specified.

(4) An officer who has written authorisation from the Bank to do so may require a CCP or CCP group company without delay—

(a) to provide the officer with specified information or information of a specified description, or

(b) to produce to the officer specified documents or documents of a specified description.

(5) The Bank may require any information provided under this paragraph to be provided in such form as it may reasonably require.

(6) The Bank may require—

(a) any information provided, whether in a document or otherwise, to be verified in such manner, or

(b) any document produced to be authenticated in such manner,

as it may reasonably require.

(7) The powers conferred by sub-paragraphs (2) and (4) may also be exercised by the Bank to impose requirements on a person who is connected with a CCP.

(8) "Officer" means an officer of the Bank, and includes a member of the Bank's staff or an agent of the Bank.

(9) "Specified" means—

(a) in sub-paragraphs (2) and (3), specified in the notice, and

(b) in sub-paragraph (4), specified in the authorisation.

(10) For the purposes of this paragraph, a person is connected with a CCP if that person is or has at any relevant time been—

(a) a member of that CCP's group,

(b) a controller of that CCP (within the meaning of section 422 of FSMA 2000), or

(c) in relation to that CCP, a person mentioned in Part 1 of Schedule 15 to FSMA 2000 (reading references in that Part to the authorised person as references to the CCP).

Reports by skilled persons

120 (1) This paragraph applies where the Bank has required or could require a person to whom sub-paragraph (2) applies ("the person concerned") to provide information or produce documents with respect to any matter ("the matter concerned") under paragraph 119.

(2) This sub-paragraph applies to—

(a) a CCP,

(b) a member of a CCP's group, or

(c) a person who has at any relevant time been a person falling within paragraph (a) or (b),

who is, or was at the relevant time, carrying on a business.

(3) The Bank may either—

(a) by notice in writing given to the person concerned, require that person to provide the Bank with a report on the matter concerned, or

(b) itself appoint a person to provide the Bank with a report on the matter concerned.

(4) When acting under sub-paragraph (3)(a), the Bank may require the report to be in such form as may be specified in the notice.

(5) The Bank must give notice of an appointment under sub-paragraph (3)(b) to the person concerned.

(6) The person appointed to make a report—

(a) must be a person appearing to the Bank to have the skills necessary to make a report on the matter concerned, and

(b) where the appointment is to be made by the person concerned, must be a person nominated or approved by the Bank.

(7) It is the duty of—

(a) the person concerned, and

(b) any person who is providing (or who has at any time provided) services to the person concerned in relation to the matter concerned,

to give the person appointed to prepare a report all such assistance as the appointed person may reasonably require.

(8) The obligation imposed by sub-paragraph (7) is enforceable, on the application of the Bank, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

(9) The Bank may, in relation to an appointment under sub-paragraph (3)(b), require a CCP to pay to the Bank a fee to cover the expenses incurred by the Bank in relation to the appointment.

Appointment of persons to carry out general investigations

121 (1) This paragraph applies only for the purposes of the functions of the Bank conferred by or under this Schedule.

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

(a) the nature, conduct or state of the business of a CCP,

(b) a particular aspect of that business, or

(c) the ownership or control of a CCP.

(3) If a person appointed under sub-paragraph (2) thinks it necessary for the purposes of the investigation, that person may also investigate the business of a person who is or has at any relevant time been a member of a group of which the CCP under investigation is part.

(4) A person appointed under sub-paragraph (2) who decides to investigate the business of any person under sub-paragraph (3) must give that person written notice of that decision.

(5) In this paragraph, "business" includes any part of a business.

Appointment of person to carry out investigations in particular cases

122 (1) This paragraph applies if it appears to the Bank that there are circumstances suggesting that a person may have failed to comply with any relevant requirement.

(2) The Bank may appoint one or more competent persons to conduct an investigation on its behalf.

(3) In this paragraph "relevant requirement" means a requirement imposed by or under this Schedule.

Investigations etc in support of foreign resolution authorities

123 (1) On receiving a request to which sub-paragraph (3) applies from a foreign resolution authority, the Bank may—

(a) exercise the power conferred by paragraph 119, or

(b) appoint one or more competent persons to investigate any matter.

(2) Accordingly, for the purposes of sub-paragraph (1)(a), paragraph 119 has effect as if it also referred to information and documents reasonably required by the Bank to meet such a request.

(3) This sub-paragraph applies to a request if the request is made by a foreign resolution authority in connection with the exercise by that authority of functions in relation to third-country resolution action (within the meaning of paragraph 145) corresponding to the stabilisation powers of the Bank under this Schedule.

(4) An investigator appointed under sub-paragraph (1)(b) has the same powers as an investigator appointed under paragraph 122.

(5) In deciding whether or not to exercise its investigative power, the Bank may take into account in particular—

(a) whether, in the territory of the foreign resolution authority concerned, corresponding assistance would be given to the Bank,

(b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom,

(c) the seriousness of the case and its importance to persons in the United Kingdom, and

(d) whether it is otherwise appropriate in the public interest to give the assistance sought.

(6) The Bank may decide that it will not exercise its investigative power unless the foreign resolution authority undertakes to make such contribution towards the cost of its exercise as the Bank considers appropriate.

(7) "Foreign resolution authority" means an authority, in a country or territory outside the United Kingdom, which exercises functions referred to in sub-paragraph (3).

(8) "Investigative power" means one of the powers mentioned in sub-paragraph (1).

Investigations: general

124 (1) This paragraph applies if the Bank appoints one or more competent persons ("investigators") under paragraph 121 or 122 to conduct an investigation on its behalf.

(2) The Bank must give written notice of the appointment of an investigator to the person who is the subject of the investigation ("the person under investigation").

(3) A notice under sub-paragraph (2) must—

(a) specify the provisions under which, and as a result of which, the investigator was appointed, and

(b) state the reason for the investigator's appointment.

(4) Nothing prevents the Bank from appointing a person who is a member of its staff as an investigator.

(5) An investigator must make a report of the investigation to the Bank.

(6) The Bank may, by a direction to an investigator, control—

(a) the scope of the investigation,

(b) the period during which the investigation is to be conducted,
(c) the conduct of the investigation, and
(d) the reporting of the investigation.

(7) A direction may, in particular—
(a) confine the investigation to particular matters;
(b) extend the investigation to additional matters;
(c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction;
(d) require the investigator to make such interim reports as are so specified.

(8) If there is a change in the scope or conduct of the investigation and, in the opinion of the Bank, the person under investigation is likely to be significantly prejudiced by not being made aware of it, that person must be given written notice of the change.

(9) If the appointment is under paragraph 122, sub-paragraphs (2) and (8) do not apply if the Bank believes that the notice required by the sub-paragraph in question would be likely to result in the investigation being frustrated.

Powers of persons appointed under paragraph 121

125 (1) This paragraph applies to an investigator appointed under paragraph 121 to conduct an investigation on behalf of the Bank.

(2) The investigator may require the person who is the subject of the investigation ("the person under investigation") or any person connected with the person under investigation—
(a) to attend before the investigator at a specified time and place and answer questions, or
(b) otherwise to provide such information as the investigator may require for the purposes of the investigation.

(3) The investigator may also require any person to produce at a specified time and place any specified documents or documents of a specified description.

(4) A requirement under sub-paragraph (2) or (3) may be imposed only so far as the investigator reasonably considers the question, provision of information or production of the document to be relevant to the purposes of the investigation.

(5) For the purposes of this paragraph, a person ("B") is connected with the person under investigation ("A") if B is or has at any relevant time been—
(a) a member of A's group;
(b) a controller of A;
(c) in relation to A, a person mentioned in Part 1 or 2 of Schedule 15 to FSMA 2000 (reading references in those Parts to the authorised person or the person under investigation as references to A).

(6) In this paragraph—
"controller" has the meaning given in section 422 of FSMA 2000;
"specified" means specified in a notice in writing.

Powers of persons appointed as a result of paragraph 122

126 (1) This paragraph applies to an investigator appointed under paragraph 122 to conduct an investigation on behalf of the Bank.

(2) The investigator has—

(a) the powers conferred by paragraph 125 on an investigator appointed under paragraph 121, and

(b) the powers conferred by sub-paragraphs (3) and (4).

(3) The investigator may require the person who is the subject of the investigation ("the person under investigation") to give the investigator all assistance in connection with the investigation which that person is reasonably able to give.

(4) The investigator may require a person who is neither the person under investigation nor a person connected with the person under investigation—

(a) to attend before the investigator at a specified time and place and answer questions, or

(b) otherwise to provide such information as the investigator may require for the purposes of the investigation.

(5) A requirement may only be imposed under sub-paragraph (4) if the investigator is satisfied that the requirement is necessary or expedient for the purposes of the investigation.

(6) Paragraph 125(5) and (6) applies for the purposes of this paragraph.

Admissibility of statements made to investigators

127 (1) A statement made to an investigator appointed under paragraph 121 or 122 by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirement governing the admissibility of evidence in the circumstances in question.

(2) But in criminal proceedings in which that person is charged with an offence to which this sub-paragraph applies—

(a) no evidence relating to the statement may be adduced, and

(b) no question relating to it may be asked—

by or on behalf of the prosecution, or the Bank (as the case may be), unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Sub-paragraph (2) applies to any offence other than one under—

(a) paragraph 132,

(b) section 398 of FSMA 2000 (misleading FCA or PRA: residual cases),

(c) section 5 of the Perjury Act 1911 (false statements made otherwise than on oath),

(d) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath), or

(e) Article 10 of the Perjury (Northern Ireland) Order 1979 (false declarations etc).

(4) "Information requirement" means a requirement imposed by an investigator under paragraph 125, 126 or 128.

Information and documents: supplemental provision

128 (1) If the Bank has power under this Schedule to require a person to produce a document but if it appears that the document is in the possession of a third person, that power may be exercised in relation to the third person.

(2) If a document is produced in response to a requirement imposed under this Schedule, the person to whom it is produced may—

(a) take copies or extracts from the document, or

(b) require the person producing the document, or any relevant person to provide an explanation of the document.

(3) A document so produced may be retained for so long as the person to whom it is produced considers that it is necessary to retain it (rather than copies of it) for the purposes for which the document was requested.

(4) If the person to whom a document is so produced has reasonable grounds for believing—

(a) that the document may have to be produced for the purposes of any legal proceedings, and

(b) that it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

(5) If a person who is required under this Schedule to produce a document fails to do so, the Bank or an investigator may require that person to state, to the best of that person's knowledge and belief, where the document is.

(6) A lawyer may be required under this Schedule to furnish the name and address of the lawyer's client.

(7) No person may be required under this Schedule to disclose information or produce a document in respect of which the person ("A") owes an obligation of confidence unless—

(a) A is the person under investigation or a member of that person's group,

(b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person's group,

(c) the person to whom the obligation of confidence is owed consents to the disclosure or production, or

(d) the imposing on A of a requirement with respect to such information or document has been specifically authorised by the Bank.

(8) If a person claims a lien on a document, its production under this Schedule does not affect the lien.

(9) In this paragraph—

"controller" has the meaning given by section 422 of FSMA 2000;

"investigator" means a person appointed under paragraph 121 or 122;

"relevant person", in relation to a person who is required to produce a document, means a person who—

(a) has been or is or is proposed to be a director or controller of that person,

(b) has been or is an auditor of that person,

(c) has been or is an actuary, accountant or lawyer appointed or instructed by that person, or

(d) has been or is an employee of that person.

Protected items

129 (1) A person may not be required under this Schedule to produce, disclose or permit the inspection of protected items.

(2) "Protected items" means—

(a) communications between a professional legal adviser and that adviser's client or any person representing such a client which fall within sub-paragraph (3),

(b) communications between a professional legal adviser, that adviser's client or any person representing such a client and any other person which fall within sub-paragraph (3) (as a result of paragraph (b) of that sub-paragraph), and

(c) items which—

(i) are enclosed with, or referred to in, such communications,

(ii) fall within sub-paragraph (3), and

(iii) are in the possession of a person entitled to be in possession of them.

(3) A communication or item falls within this sub-paragraph 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.

Entry of premises under warrant

130 (1) A justice of the peace may issue a warrant under this paragraph if satisfied on information on oath given by or on behalf of the Secretary of State, the Bank or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.

(2) The first set of conditions is—

(a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it, and

(b) that on the premises specified in the warrant—

(i) there are documents which have been required, or

(ii) there is information which has been required.

(3) The second set of conditions is—

(a) that the premises specified in the warrant are premises of a CCP or a member of the same group as a CCP,

(b) that there are on the premises documents or information in relation to which an information requirement could be imposed, and

(c) that if such a requirement were to be imposed—

(i) it would not be complied with, or

(ii) the documents or information to which it related would be removed, tampered with or destroyed.

(4) The third set of conditions is—

(a) that an offence mentioned in paragraph 132 has been (or is being) committed by any person,

(b) that there are on the premises specified in the warrant documents or information relevant to whether that offence has been (or is being) committed,

(c) that an information requirement could be imposed in relation to those documents or that information, and

(d) that if such a requirement were to be imposed—

(i) it would not be complied with, or

(ii) the documents or information to which it related would be removed, tampered with or destroyed.

(5) A warrant under this paragraph authorises a constable—

(a) to enter the premises specified in the warrant,

(b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this paragraph was issued ("the relevant kind") or to take, in relation to any such documents or information, any such steps which may appear to be necessary for preserving them or preventing interference with them,

(c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind,

(d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found, and

(e) to use such force as may be reasonably necessary.

(6) A warrant under this paragraph may be executed by any constable.

(7) The warrant may authorise persons to accompany any constable who is executing it.

(8) The powers in sub-paragraph (5) may be exercised by a person authorised by the warrant to accompany a constable; but that person may exercise those powers only in the company of, and under the supervision of, a constable.

(9) In England and Wales, sections 15(5) to (8) and 16(3) to (12) of the Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards) apply to warrants issued under this paragraph.

(10) In Northern Ireland, Articles 17(5) to (8) and 18(3) to (12) of the Police and Criminal Evidence (Northern Ireland) Order 1989 apply to warrants issued under this paragraph.

(11) In the application of this paragraph to Northern Ireland the reference to a justice of the peace is a reference to a lay magistrate.

(12) In the application of this paragraph to Scotland—

(a) for the reference to a justice of the peace substitute references to a justice of the peace or a sheriff, and

(b) for the references to information on oath substitute references to evidence on oath.

(13) "Investigator" means an investigator appointed under paragraph 121 or 122.

(14) "Information requirement" means a requirement imposed—

(a) by the Bank under paragraph 119 or 128, or

(b) by an investigator under paragraph 125, 126 or 128.

Retention of documents obtained under paragraph 130

131 (1) Any document of which possession is taken under paragraph 130 ("a seized document") may be retained for so long as it is necessary to retain it (rather than copies of it) in the circumstances.

(2) A person claiming to be the owner of a seized document may apply to a magistrates' court, or in Scotland the sheriff, for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.

(3) If on an application under sub-paragraph (2) the court, or in Scotland the sheriff, cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.

(4) An order under sub-paragraph (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.

(5) Any right to bring proceedings (as described in sub-paragraph (4)) may only be exercised within 6 months of the date of the order made under sub-paragraph (2) or (3).

Offences etc

132 (1) If a person other than the investigator ("the defaulter") fails to comply with a requirement imposed on the defaulter under paragraph 125, 126 or 128, the person imposing the requirement may certify that fact in writing to the court.

(2) If the court is satisfied that the defaulter has failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and, in the case of a body corporate, any director or other officer) as if that person were in contempt.

(3) "Officer", in relation to a limited liability partnership, means a member of the limited liability partnership.

(4) A person who knows or suspects that an investigation is being or is likely to be conducted under paragraph 121, 122 or 123 is guilty of an offence if—

(a) that person falsifies, conceals, destroys or otherwise disposes of a document which that person knows or suspects is or would be relevant to such an investigation, or

(b) that person causes or permits the falsification, concealment, destruction or disposal of such a document,

unless that person shows that that person had no intention of concealing facts disclosed by the document from the investigator.

(5) A person who, in purported compliance with a requirement imposed on that person by any relevant requirement—

(a) provides information which that person knows to be false or misleading in a material particular, or

(b) recklessly provides information which is false or misleading in a material particular,

is guilty of an offence.

(6) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under paragraph 130 is guilty of an offence.

(7) A person guilty of an offence under sub-paragraph (4), (5) or (6) is liable, on summary conviction—

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

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

(8) In this paragraph—

"court" means—

(a) the High Court,

(b) in Scotland, the Court of Session;

"relevant requirement" has the meaning given in paragraph 122.

Prosecution of offences under paragraph 132

133 (1) Proceedings for an offence under paragraph 132 may be instituted—

(a) in England and Wales, only by the Bank or by or with the consent of the Director of Public Prosecutions, and

(b) in Northern Ireland, only by the Bank or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(2) In exercising its power to institute proceedings for an offence under paragraph 132, the Bank must comply with any conditions or restrictions imposed in writing by the Treasury.

(3) Conditions or restrictions may be imposed under sub-paragraph (2) in relation to proceedings generally, or such proceedings or categories of proceedings as the Treasury may direct.

Offences under paragraph 132 by bodies corporate etc

134 (1) If an offence under paragraph 132 committed by a body corporate is shown—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on the part of an officer,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, sub-paragraph (1) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a director of the body.

(3) If an offence under paragraph 132 committed by a partnership is shown—

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to any neglect on the part of a partner,

the partner as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) In sub-paragraph (3) "partner" includes a person purporting to act as partner.

(5) "Officer" in relation to a body corporate means—

(a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, and

(b) an individual who is a controller of the body (and for these purposes, "controller" has the meaning given in section 422 of FSMA 2000).

(6) If an offence under paragraph 132 committed by an unincorporated association (other than a partnership) is shown—

(a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or

(b) to be attributable to any neglect on the part of such an officer or member,

the officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

Injunctions to prevent failure to comply with relevant requirement

135 (1) If, on the application of the Bank, the court is satisfied that there is a reasonable likelihood that any person will contravene a relevant requirement, the court may make an order restraining, or in Scotland an interdict prohibiting, the contravention.

(2) The jurisdiction conferred by this paragraph is exercisable—

(a) in England and Wales, and Northern Ireland, by the High Court, and

(b) in Scotland, by the Court of Session.

(3) In this paragraph "relevant requirement" has the meaning given in paragraph 122.

Regulatory sanctions

136 (1) If the Bank considers that a person has failed to comply with a relevant requirement imposed on the person, it may do one or more of the following—

(a) publish a statement to that effect;

(b) impose on that person a penalty, in respect of the failure, of such amount as it considers appropriate;

(c) with a view to ensuring that the failure ceases or is not repeated or the consequences of the failure are mitigated, direct that person to refrain from any conduct;

(d) prohibit that person from holding an office or position involving responsibility for taking decisions about the management of—

(i) a named CCP,

(ii) a CCP of a specified description, or

(iii) any CCP.

(2) A prohibition under sub-paragraph (1)(d)may apply—

(a) for a specified period,

(b) until further notice, or

(c) permanently.

(3) If the Bank considers that a failure by a person to comply with a relevant requirement occurred with the consent or connivance of, or was attributable to any neglect on the part of, an officer of that person, it may do one or more of the following—

(a) publish a statement to that effect;

(b) impose on that officer a penalty, in respect of the failure, of such amount as it considers appropriate;

(c) with a view to ensuring that the failure ceases or is not repeated or the consequences of the failure are mitigated, direct that person to refrain from any conduct specified in the direction.

(4) A penalty under this paragraph—

(a) must be paid to the Bank, and

(b) may be enforced by the Bank as a debt.

(5) In this paragraph "relevant requirement" has the meaning given in paragraph 122.

Determination of sanctions

137 When determining the type of sanction, and level of any penalty, to be imposed on a person under paragraph 136, the Bank must take into account all relevant circumstances, including where appropriate—

(a) the gravity and the duration of the failure,

(b) the degree of responsibility of the person,

(c) the financial strength of the person,

(d) the amount of profits gained or losses avoided by the person,

(e) the losses for third parties caused by the failure,

(f) the level of co-operation of the person with the Bank,

(g) previous failures by the person, and

(h) any potential systemic consequences of the failure.

Procedure: warning notice

138 (1) If the Bank proposes to impose a sanction on a person under paragraph 136(1) or (3) it must give that person a warning notice.

(2) Section 387 of FSMA 2000 applies in relation to a warning notice given under sub-paragraph (1) and to the Bank as it applies in relation to a warning notice given under that Act and to the regulator which gave that notice, subject to sub-paragraphs (3) and (4).

(3) In complying with section 387(1)(a) of that Act, a warning notice must in particular—

(a) if it is about a proposal to publish a statement, set out the terms of the statement,

(b) if it is about a proposal to impose a penalty, specify the amount of the penalty,

(c) if it is about a proposal to direct a person to refrain from certain conduct, specify the conduct, and

(d) if it is about a proposal to impose a prohibition on holding an office or other position, specify the extent of the prohibition.

(4) For the purposes of sub-paragraph (2), section 387 of that Act has effect as if subsections (1A) and (3A) were omitted.

Procedure: decision notice

139 (1) If the Bank decides to impose a sanction on a person under paragraph 136(1) or (3) it must without delay give that person a decision notice.

(2) If the decision is to publish a statement, the decision notice must set out the terms of the statement.

(3) If the decision is to impose a penalty, the decision notice must specify the amount of the penalty.

(4) If the decision is to refrain from certain conduct, the decision notice must specify the conduct.

(5) If the decision is to impose a prohibition on holding an office or other position, the decision notice must specify the extent of the prohibition.

(6) Section 388 of FSMA 2000 applies in relation to a decision notice given under sub-paragraph (1) and the Bank as it applies in relation to a decision notice given under that Act and the regulator which gave that notice, subject to sub-paragraph (7).

(7) Section 388 of that Act has effect for the purposes of sub-paragraph (6) as if—

(a) in subsection (1)(e)(i) for "this Act" there were substituted "paragraph 141 of Schedule 11 to the Financial Services and Markets Act 2023", and

(b) subsections (1A) and (2) were omitted.

Procedure: general

140 (1) Sections 389, 390 and 392 to 394 of FSMA 2000 apply in relation to a warning notice given under paragraph 138, a decision notice given under paragraph 139 and the Bank as they apply in relation to a warning notice or decision notice given under that Act and the regulator which gave that notice, subject to sub-paragraphs (2) to (4).

(2) Section 389 of that Act has effect as if subsection (2) were omitted.

(3) Section 390 has effect as if—

(a) in subsection (2A), in paragraph (a), for "133(6)(b)" there were substituted "133(5)(b)",

(b) in that paragraph, for "133(6)" there were substituted "133(5)",

(c) for subsection (4) there were substituted—

"(4) A final notice about a direction under paragraph 136(1)(c) or (3)(c) of Schedule 11 to the Financial Services and Markets Act 2023 or a prohibition under paragraph 136(1)(d) of that Schedule must—

(a) specify the conduct to which the direction relates or the extent of the prohibition, and

(b) give details of the date on which the direction or prohibition has effect."

(4) Section 392 has effect as if for paragraphs (a) and (b) there were substituted—

"(a) a warning notice given under paragraph 138 of Schedule 11 to the Financial Services and Markets Act 2023;

(b) a decision notice given under paragraph 139 of Schedule 11 to the Financial Services and Markets Act 2023."

Appeals

141 (1) If the Bank decides to impose a sanction on a person under paragraph 136, the person may appeal to the Upper Tribunal.

(2) The Bank may not impose a sanction while an appeal under this paragraph could be brought or is pending.

Injunctions: failure to comply with certain paragraph 136 sanctions

142 (1) If, on the application of the Bank, the court is satisfied—

(a) that there is a reasonable likelihood that there will be a compliance failure, or

(b) that there has been a compliance failure and there is a reasonable likelihood that it will continue or be repeated,

the court may make an order restraining the conduct constituting the failure.

(2) If, on the application of the Bank, the court is satisfied—

(a) that there has been a compliance failure, and

(b) that there are steps which could be taken for remedying the failure,

the court may make an order requiring anyone who appears to have been knowingly concerned in the failure to take such steps as the court may direct to remedy it.

(3) If, on the application of the Bank, the court is satisfied—

(a) that there may have been a compliance failure by any person, or

(b) that a person may have been knowingly concerned in a compliance failure,

the court may make an order restraining that person from dealing with any assets which it is satisfied the person is reasonably likely to deal with.

(4) "Compliance failure" means—

(a) a failure to comply with a direction under paragraph 136(1)(c) or (3)(c), or

(b) a breach of a prohibition imposed under paragraph 136(1)(d).

(5) The jurisdiction conferred by this paragraph is exercisable—

(a) in England and Wales and Northern Ireland, by the High Court, and

(b) in Scotland, by the Court of Session.

(6) In this paragraph—

(a) references to an order restraining anything are, in Scotland, to be read as references to an interdict prohibiting that thing,

(b) references to an order requiring steps to be taken are, in Scotland, to be read as references to an order for specific performance under section 45 of the Court of Session Act 1988,

(c) references to remedying a failure include mitigating its effect, and

(d) references to dealing with assets include disposing of them.

Publication

143 (1) In the case of a warning notice under paragraph 138—

(a) neither the Bank nor a person to whom it is given or copied may publish the notice,

(b) a person to whom the notice is given or copied may not publish any details concerning the notice unless the Bank has published those details, and

(c) after consulting the persons to whom the notice is given or copied, the Bank may publish such information about the matter to which the notice relates as it considers appropriate.

(2) A person to whom a decision notice under paragraph 139 is given or copied may not publish the notice or any details concerning it unless the Bank has published the notice or those details.

(3) A notice of discontinuance must state that, if the person to whom the notice is given consents, the Bank may publish such information as it considers appropriate about the matter to which the discontinued proceedings related.

(4) A copy of a notice of discontinuance must be accompanied by a statement that, if the person to whom the notice is copied consents, the Bank may publish such information as it considers appropriate about the matter to which the discontinued proceedings related, so far as relevant to that person.

(5) Subject to sub-paragraph (8), where the Bank gives a decision notice it may publish such information about the matter to which the notice relates as it considers appropriate.

(6) Where the Bank publishes information under sub-paragraph (5) and the person to whom the decision notice is given refers the matter to the Upper Tribunal, the Bank must, without undue delay, publish on its website information about the status of the appeal and its outcome.

(7) Subject to sub-paragraph (8), where the Bank gives a final notice—

(a) it must, without undue delay, publish details of any sanction to which the notice relates on its website, and

(b) it may publish such other information about the matter to which the notice relates as it considers appropriate.

(8) Information about a matter to which a decision notice or a final notice relates must be published anonymously where—

(a) the sanction is imposed (or proposed to be imposed) on an individual and following an obligatory prior assessment publication of personal data is found to be disproportionate, or

(b) were it not published anonymously, publication would—

(i) jeopardise the stability of financial markets or an ongoing criminal investigation, or

(ii) cause, in so far as it can be determined, disproportionate damage to the persons involved.

(9) Where sub-paragraph (8) applies, the person publishing the information may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction is imposed.

(10) Where the Bank publishes information in accordance with sub-paragraphs (6) to (9), it must ensure the information remains on its website for at least five years, unless the information is personal data and the data protection legislation requires the information to be retained for a different period.

(11) In this paragraph—

"the data protection legislation" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

"notice of discontinuance" and "final notice" have the same meaning as in sections 389 and 390 of FSMA 2000 (which are applied (with modifications) by paragraph 140).

Co-operation

144 In connection with the exercise of its powers to impose sanctions under paragraph 136, the Bank must take such steps as it considers appropriate to co-operate with—

(a) the FCA, and

(b) any person who exercises functions outside the United Kingdom equivalent to those exercisable by the Bank under this Schedule.

PART 7

THIRD-COUNTRY RESOLUTION ACTIONS

Third-country resolution actions

145 (1) This paragraph applies where the Bank is notified of third-country resolution action in respect of a third-country central counterparty.

(2) The Bank must make an instrument which—

(a) recognises the action,

(b) refuses to recognise the action, or

(c) recognises part of the action and refuses to recognise the remainder.

An instrument within paragraph (a), (b) or (c) is a "third-country instrument" (as is an instrument under paragraph 146).

(3) The Bank may only make a decision under sub-paragraph (2) with the approval of the Treasury.

(4) Recognition of the action (or a part of it) may be refused only if the Bank and the Treasury are satisfied that one or more of the following conditions are satisfied—

(a) recognition would have an adverse effect on financial stability in the United Kingdom;

(b) under the third-country resolution action creditors (including in particular clearing members) located or payable in the United Kingdom would not, by reason of being located or payable in the United Kingdom, receive the same treatment as creditors who are located or payable in the country concerned and have similar legal rights;

(c) recognition of, and taking action in support of, the third-country resolution action (or the part) would have material fiscal implications for the United Kingdom;

(d) recognition would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention).

(5) The recognition of a third-country resolution action (or any part of it) is without prejudice to any normal insolvency proceedings.

(6) In this paragraph—

"third-country central counterparty" has the meaning given by section 285 of FSMA 2000;

"third-country resolution action" means action under the law of a country or territory outside the United Kingdom to manage the failure or likely failure of a third-country central counterparty—

(a) the anticipated results of which are, in relation to a third-country central counterparty, broadly comparable to results which could have been anticipated from the exercise of a stabilisation option in relation to an entity in the United Kingdom corresponding to the third-country central counterparty, and

(b) the objectives of which are broadly comparable, in relation to the country or territory concerned, to the special resolution objectives in paragraph 15 as they apply in relation to the United Kingdom.

Effects of recognition on third-country resolution action

146 (1) This paragraph applies where an instrument under paragraph 145 recognises any third-country resolution action (or a part of it).

(2) The third-country resolution action (or part) produces the same legal effects in any part of the United Kingdom as it would have produced had it been made (with due authority) under the law of that part of the United Kingdom.

(3) For the purposes of supporting, or giving full effect to, the third-county resolution action (or the part), the Bank may exercise, in relation to a third-country central counterparty, one or more of the stabilisation options, or one or more of the stabilisation powers, available to the Bank in relation to a similar entity in the United Kingdom.

(4) But, for the purposes of exercising a power by virtue of sub-paragraph (3), provision which could otherwise be made under this Schedule in a share transfer instrument, property transfer instrument or resolution instrument may instead be made in—

(a) the instrument made under paragraph 145 recognising the third-country resolution action (or part), or

(b) a further instrument made by the Bank under this paragraph.

An instrument under paragraph (b) is a "third-country instrument" (as is an instrument under paragraph 145(2)(a), (b) or (c)).

(5) This Schedule (other than this paragraph) applies in relation to the exercise of any power by virtue of sub-paragraph (3), subject to sub-paragraphs (6) and (7) and any other necessary modifications.

(6) Paragraph 15 (special resolution objectives) has effect as if after sub-paragraph (7) there were inserted—

"(7A) Objective 6 is to support third-country resolution action with a view to promoting objectives which, in relation to the country or territory concerned, correspond to Objectives 1 to 5 in relation to the United Kingdom."

(7) Paragraphs 17 to 19 do not apply.

(8) Paragraph 145(6) applies for the purposes of this paragraph.

Third-country instruments: supplementary provision

147 (1) Paragraph 47 (incidental provision) applies to a third-country instrument as it applies to a share transfer instrument.

(2) Paragraph 48 (procedure: instruments) applies to a third-country instrument as it applies to a share transfer instrument, except that references in that paragraph to the CCP are to be read as references to the third-country central counterparty to which the third-country instrument relates.

(3) Paragraph 109 (international obligation notice: general) applies in relation to the making of a third-country instrument under paragraph 145 or 146 as it applies in relation to the exercise of a stabilisation power, except that—

(a) for the purposes of paragraph 109(3), paragraph 15 is to be read subject to the modification in paragraph 146(6), and

(b) in sub-paragraph (4), the reference to a CCP is to be read as a reference to a third-country central counterparty in respect of which a third-country instrument is made.

(4) Paragraph 110 (international obligation notice: bridge central counterparty) applies where the Bank has, by virtue of paragraph 146, transferred all or part of the business of a third-country central counterparty to a bridge central counterparty as it applies where the Bank has transferred all or part of the business of a CCP to a bridge central counterparty.

(5) Paragraph 145(6) applies for the purposes of this paragraph.

PART 8

GENERAL

Information

148 (1) The Bank may disclose information that it thinks relevant to the financial stability of—

(a) individual CCPs, or

(b) one or more aspects of the UK financial system.

(2) Information about the business or other affairs of a specified or identifiable person may be disclosed under sub-paragraph (1) only to—

(a) the Treasury;

(b) the FCA;

(c) the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of FSMA 2000);

(d) the Payment Systems Regulator (established under section 40 of the Financial Services (Banking Reform) Act 2013);

(e) an authority in a country or territory outside the United Kingdom which exercises functions similar to those of the Treasury, the Bank, the PRA or the FCA in relation to financial stability.

(3) Except as provided by sub-paragraph (4), the disclosure of information under this paragraph does not breach—

(a) any obligation of confidence owed by the person making the disclosure, or

(b) any other restriction on the disclosure of information (however imposed).

(4) This paragraph does not authorise a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the duties imposed by this paragraph).

(5) In this paragraph "the data protection legislation" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

Restrictions on disclosure of confidential information

149 (1) Sections 348, 349, 352 and 353 of FSMA 2000 (disclosure of information) apply for the purposes of this Schedule with the following modifications.

(2) Section 348 of that Act has effect as if —

(a) in subsection (2)(b), after "Act" there were inserted "or of the Bank of England under Schedule 11 to the Financial Services and Markets Act 2023",

(b) in subsection (3)(a), at the end there were inserted "or the Financial Services and Markets Act 2023",

(c) in subsection (5)—

(i) after paragraph (c) there were inserted—

"(ca) a person appointed to make a report under paragraph 120 of Schedule 11 to the Financial Services and Markets Act 2023 (reports by skilled persons);

(cb) a person appointed to act as a temporary manager under paragraph 6 of Schedule 11 to the Financial Services and Markets Act 2023,"

(ii) in paragraph (e) for "to (c)" there were substituted "to (cb)", and

(d) after subsection (6)(b) there were inserted—

"(c) a competent person appointed by the Bank of England under Part 6 of Schedule 11 to the Financial Services and Markets Act 2023."

(3) Section 349 of that Act has effect as if, in subsection (2)(c), for "or the PRA" there were substituted "the PRA or the Bank of England".

(4) Section 353 of that Act has effect as if in subsection (1)—

(a) in paragraph (a)—

(i) after "under this Act" there were inserted "or the Financial Services and Markets Act 2023", and

(ii) for "it" there were substituted "those Acts";

(b) in paragraph (b) after "to the" there were inserted "Bank of England, the".

Remedies on judicial review

150 (1) Where an application is made for judicial review of a decision of the Bank to exercise the stabilisation powers in relation to a CCP or CCP group company ("relevant proceedings")—

(a) a ruling by the court that the decision is unlawful does not affect a relevant transfer or a relevant provision in a stabilisation instrument made by the Bank pursuant to that decision, and

(b) the court may not quash any provision in a stabilisation instrument made by the Bank if that provision makes a relevant transfer or a relevant provision.

(2) For the purposes of sub-paragraph (1)—

(a) "stabilisation instrument" means—

(i) a share transfer instrument,

(ii) a property transfer instrument, or

(iii) a resolution instrument;

(b) a "relevant provision" in a stabilisation instrument means—

(i) in relation to a tear-up instrument, provision under paragraph 31(2),

(ii) in relation to a cash call instrument, provision under paragraph 32(2),

(iii) in relation to a variation instrument, provision under paragraph 33(2),

(iv) in relation to a write-down instrument, provision under paragraph 34(2) or 35, and

(v) in relation to an instrument of control, provision under paragraph 38(2);

(c) a transfer is a "relevant transfer" if it transfers to any person—

(i) property, rights or liabilities of the CCP or CCP group company, or of a bridge central counterparty, or

(ii) securities issued by the CCP, or CCP group company, or of a bridge central counterparty.

(3) Sub-paragraph (1) does not affect the power of the court, subject to section 244 of the Banking Act 2009 (immunity), to award damages as a remedy in relevant proceedings.

Giving of notices, documents etc under this Schedule

151 Regulations under section 414 of FSMA 2000 (service of notices), and subsection (4) of that section, apply in relation to any notice, direction or document of any kind required to be given under any provision of this Schedule (however that requirement is expressed) as if those provisions were provisions of that Act.

"Financial assistance"

152 (1) In this Schedule "financial assistance" includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent).

(2) The Treasury may by regulations provide that a specified activity or transaction, or class of activity or transaction, is to be or not to be treated as financial assistance for a specified purpose of this Schedule; and sub-paragraph (1) is subject to this sub-paragraph.

(3) Regulations under this paragraph are subject to the negative procedure.

Modifications to the law

153 (1) The Treasury may by regulations modify the law for the purpose of enabling the powers under this Schedule to be used effectively, having regard to the special resolution objectives.

(2) Regulations may be made—

(a) for the general purpose of the exercise of powers under this Schedule,

(b) to facilitate a particular proposed or possible use of a power, or

(c) in connection with a particular exercise of a power.

(3) Regulations under sub-paragraph (2)(c) may make provision which has retrospective effect in so far as the Treasury consider it necessary or desirable for giving effect to the particular exercise of a power under this Schedule in connection with which the regulations are made (but in relying on this sub-paragraph the Treasury must have regard to the fact that it is in the public interest to avoid retrospective legislation).

(4) In sub-paragraph (1) "modify the law" means—

(a) disapply or modify the effect of a provision of an enactment (other than a provision made by or under this Act),

(b) disapply or modify the effect of a rule of law not set out in legislation, or

(c) amend any provision of an instrument or regulations made in the exercise of a stabilisation power.

(5) Specific powers under this Schedule are without prejudice to the generality of this paragraph.

(6) Regulations under this paragraph are—

(a) subject to the affirmative procedure, or

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

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

(8) Regulations contained in a statutory instrument laid before Parliament under sub-paragraph (7) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.

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

(a) Parliament is dissolved or prorogued, or

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

(10) If regulations cease to have effect as a result of sub-paragraph (8), that does not—

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

(b) prevent the making of new regulations.

Interpretation

154 In this Schedule—

"Bank" means the Bank of England;

"bridge central counterparty" has the meaning given by paragraph 29(1);

"cash call instrument" has the meaning given by paragraph 32;

"CCP" means a recognised central counterparty (see paragraph 155);

"CCP group company" has the meaning given by paragraph 156;

"central counterparty" means a body corporate or an unincorporated association which interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;

"clearing member" has the meaning given in Article 2 of EMIR and, unless otherwise provided, includes an interoperable CCP;

"clearing" and "clearing services", in relation to a CCP, have the meaning given by section 313 of FSMA 2000;

"critical clearing services" means clearing services the withdrawal of which the Bank considers may threaten the stability of the UK financial system;

"director" includes, in relation to a CCP which has no board of directors, a member of the equivalent management body responsible for the management of the CCP concerned;

"EMIR" means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

"employee" includes the holder of an office;

"extraordinary public financial support" means financial assistance that is provided by the Treasury or the Bank in order to preserve or restore the viability, liquidity or solvency of a CCP, a CCP group company or a group which includes a CCP, other than—

(a) ordinary market assistance offered by the Bank on its usual terms, or

(b) a liquidity facility which is provided—

(i) to a CCP that is facing temporary liquidity problems but is solvent, and

(ii) by the Bank on its own initiative and on its own terms;

"financial assistance" has the meaning given by paragraph 152;

"group" has the meaning given by section 474 of the Companies Act 2006;

"instrument of control" has the meaning given by paragraph 38;

"interoperable CCP" means a CCP with which an interoperability arrangement (within the meaning of Article 2 of EMIR) has been established;

"parent" means a parent undertaking within the meaning given by section 1162 of the Companies Act 2006;

"partial property transfer" has the meaning given by paragraph 75(1);

"PRA-authorised person" has the meaning given by section 2B(5) of FSMA 2000;

"recognition requirements" means the requirements resulting from section 286 of FSMA 2000;

"resolution instrument" has the meaning given by paragraph 79;

"securities" has the meaning given by paragraph 40;

"service contract" has the meaning given by section 227 of the Companies Act 2006;

"senior manager", in relation to a CCP, means a person who—

(a) exercises executive functions within that CCP, and

(b) is responsible, and directly accountable to the directors, for the day to day management of that CCP;

"special resolution objectives" means the objectives set out in paragraph 15;

"stabilisation instrument" has the meaning given by paragraph 84;

"stabilisation options" means the options described in paragraph 1(3);

"stabilisation powers" means the powers described in paragraph 1(4);

"subsidiary" means a subsidiary undertaking within the meaning given by section 1162 of the Companies Act 2006.

"tear-up instrument" has the meaning given by paragraph 31;

"third-country instrument" has the meaning given by paragraph 145;

"third-country resolution action" has the meaning given by paragraph 145;

"transfer date"—

(a) in relation to a share transfer instrument, means the date on or at which a share transfer instrument (or the relevant part of it) takes effect, or

(b) in relation to a property transfer instrument, means the date on or at which a property transfer instrument (or the relevant part of it) takes effect;

"UK financial system" has the meaning given by section 1I of FSMA 2000;

"variation instrument" has the meaning given by paragraph 33;

"write-down instrument" has the meaning given by paragraph 34.

Recognised central counterparty

155 (1) In this Schedule "recognised central counterparty" has the meaning given by section 285 of FSMA 2000.

(2) But "recognised central counterparty" does not include a recognised clearing house (within the meaning of section 285 of FSMA 2000) which is also—

(a) a bank,

(b) a building society (within the meaning of section 119 of the Building Societies Act 1986),

(c) a credit union (within the meaning of section 31 of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985), or

(d) an investment firm.

(3) Where a stabilisation power is exercised in respect of a recognised central counterparty, the body does not cease to be a recognised central counterparty for the purposes of this Schedule if the recognition order under Part 18 of FSMA 2000 is later revoked.

Interpretation: "CCP group company", etc

156 (1) In this Schedule "CCP group company" means an undertaking—

(a) which is (or, but for the exercise of a stabilisation power, would be) in the same group as a CCP, and

(b) in respect of which any conditions specified in regulations made by the Treasury are met.

(2) Regulations under this paragraph may require the Bank to consult specified persons before determining whether the conditions are met.

(3) Regulations under this paragraph are subject to the affirmative procedure.

(4) Undertakings are in the same group for the purposes of paragraph 117 and this paragraph if they are group undertakings in respect of each other.

(5) Expressions defined in the Companies Act 2006 have the same meaning in paragraph 117 and this paragraph as in that Act.

PART 9

TREASURY SUPPORT FOR CCPS

Consolidated Fund

157 (1) There is to be paid out of money provided by Parliament expenditure incurred—

(a) by the Treasury, or by the Secretary of State with the consent of the Treasury, in respect of, or in connection with giving, financial assistance to or in respect of a CCP (other than in respect of loans made in accordance with paragraph 158), or

(b) by the Treasury in respect of financial assistance to the Bank in connection with this Schedule.

(2) For the purpose of sub-paragraph (1)(a) expenditure is incurred in respect of financial assistance in respect of CCPs if it is incurred in respect of an activity, transaction or arrangement, or class of activity, transaction or arrangement, which is expected to facilitate any part of the business of one or more CCPs; and for that purpose it does not matter—

(a) whether or not that is the sole or principal expected effect of the activity, transaction or arrangement, or

(b) whether the sole or principal motive for the activity, transaction or arrangement is—

(i) its effect on CCPs,

(ii) its effect on the economy as a whole,

(iii) its effect on a particular industry or sector of the economy, or

(iv) its effect on clearing members of CCPs.

(3) In this paragraph "financial assistance" has the meaning given by paragraph 152 (and regulations under that paragraph may restrict or expand the effect of sub-paragraph (2))

(4) Expenditure which could be paid out of money provided by Parliament under sub-paragraph (1) may be charged on and paid out of the Consolidated Fund if the

Treasury are satisfied that the need for the expenditure is too urgent to permit arrangements to be made for the provision of money by Parliament.

(5) Where money is paid in reliance on sub-paragraph (4) the Treasury must as soon as is reasonably practicable lay a report before Parliament specifying the amount paid (but not the identity of the CCP or other institution to or in respect of which it is paid).

(6) If the Treasury think it necessary on public interest grounds, they may delay or dispense with a report under sub-paragraph (5).

National Loans Fund

158 (1) Where the Treasury propose to make a loan to or in respect of a CCP, they may arrange for money to be paid out of the National Loans Fund.

(2) The Treasury may make arrangements under sub-paragraph (1) only where they think it necessary to make the loan urgently in order to protect the stability of the UK financial system

(3) The Treasury may determine—

(a) the rate of interest on a loan, and

(b) other terms and conditions.

(4) Sums received by the Treasury in respect of loans by virtue of this paragraph must be paid into the National Loans Fund.

(5) Neither section 16 of the Banking (Special Provisions) Act 2008 (finance) nor any other enactment restricts the breadth of application of this paragraph.

(6) Where money is paid in reliance on sub-paragraph (1) the Treasury must as soon as is reasonably practicable lay a report before Parliament specifying the amount paid (but not the identity of the CCP or other institution to or in respect of which it is paid).

(7) If the Treasury think it necessary on public interest grounds, they may delay or dispense with a report under sub-paragraph (6).

PART 10

CONSEQUENTIAL ETC PROVISION

Bank of England Act 1998

159 In section 7D of the Bank of England Act 1998 (examination by Comptroller and Auditor General), in subsection (10)—

(a) in the definition of "resolution functions" after paragraph (b) insert—

"(ba) Schedule 11 to the Financial Services and Markets Act 2023,";

(b) for the definition of "stabilisation powers" substitute—

""stabilisation powers" means a stabilisation power within the meaning given by section 1(4) of the Banking Act 2009 or paragraph 1(4) of Schedule 11 to the Financial Services and Markets Act 2023."

Financial Services and Markets Act 2000

160 (1) FSMA 2000 is amended as follows.

(2) In section 77 (discontinuance and suspension of listing), in subsection (3A), after "2009" insert "or paragraph 44 or 65 of Schedule 11 to the Financial Services and Markets Act 2023".

(3) In section 78 (discontinuance or suspension: procedure)—

(a) in subsection (10)(a), after "2009," insert "or paragraph 44 or 65 of Schedule 11 to the Financial Services and Markets Act 2023";

(b) in subsection (14), after "2009" insert "or paragraph 44 or 65 of Schedule 11 to the Financial Services and Markets Act 2023".

(4) In section 133 (proceedings before Tribunal: general provision), in subsection (1)(c) for "or the Banking Act 2009" substitute ", the Banking Act 2009 or the Financial Services and Markets Act 2023".

(5) In section 133B (offences), in subsection (1)(c) for "or the Banking Act 2009" substitute ", the Banking Act 2009 or the Financial Services and Markets Act 2023".

Companies Act 2006

161 (1) The Companies Act 2006 is amended as follows.

(2) In Part 2 of Schedule 2 (specified descriptions of disclosures for the purposes of section 948), in paragraph 49(c) for "or the Banking Act 2009" substitute ", the Banking Act 2009 or the Financial Services and Markets Act 2023".

(3) In Part 2 of Schedule 11A (specified descriptions of disclosures for the purposes of section 1224A), in paragraph 71(c) for "or the Banking Act 2009" substitute ", the Banking Act 2009 or the Financial Services and Markets Act 2023".

Banking Act 2009

162 (1) The Banking Act 2009 is amended as follows.

(2) In section 1 (overview), in the table in subsection (6), omit the entry relating to sections 89B to 89G.

(3) In section 2 (interpretation: bank), omit subsection (9).

(4) In section 39A (banks which are recognised central counterparties)—

(a) for "Sections 89C to 89E" substitute "Paragraphs 59, 60 and 108 of Schedule 11 to the Financial Services and Markets Act 2023";

(b) for "section 89G(2)" substitute "paragraph 155(2) of Schedule 11 to that Act".

(5) In section 75 (power to change law), in subsection (5) omit paragraph (cb).

(6) Omit sections 89B to 89G and the cross-heading preceding section 89B.

(7) In section 259 (statutory instruments), in Part 1 of the Table, omit the entry relating to section 89F.

(8) In section 261 (index), in the Table, omit the following entries—

(a) "PRA-authorised person", and

(b) "recognised central counterparty".

Financial Services Act 2012

163 (1) The Financial Services Act 2012 is amended as follows.

(2) In section 57A (duty of Bank to provide information required by Treasury)—

(a) in subsection (2) after "credit union" insert ", recognised central counterparty";

(b) in subsection (5) after "credit union" insert ", recognised central counterparty";

(c) in subsection (5)(b), after "2009" insert "or in Schedule 11 to the Financial Services and Markets Act 2023";

(d) in subsection (7), after the definition of "public funds" insert—

""recognised central counterparty" has the meaning given by section 285 of FSMA 2000,"

(3) In section 58 (duty of Bank to notify Treasury of possible need for public funds)—

(a) in subsection (4) after "2009" insert "or under Schedule 11 to the Financial Services and Markets Act 2023";

(b) in subsection (5)—

(i) in the opening words, after "Scheme" insert "or any scheme established under paragraph 87 of Schedule 11 to the Financial Services and Markets Act 2023";

(ii) in the closing words, after "Scheme" insert "or any scheme established under paragraph 87 of Schedule 11 to the Financial Services and Markets Act 2023".

(4) In section 61 (Treasury power of direction), in subsection (2)(b)—

(a) after "2009" insert "or paragraph 1(4) of Schedule 11 to the Financial Services and Markets Act 2023";

(b) for "that Act" substitute "the Banking Act 2009".

(5) Omit section 102.

Financial Services (Banking Reform) Act 2013

164 (1) The Financial Services (Banking Reform) Act 2013 is amended as follows.

(2) In Schedule 2 omit paragraph 9.

(3) In Schedule 10 omit paragraph 7.

Modified application of corporate law to CCPs in resolution

165 (1) The Treasury may by regulations provide for a relevant enactment to apply for the purposes of this Schedule with or without modifications.

(2) In this paragraph "relevant enactment" means any provision made by or under—

(a) the Company Directors Disqualification Act 1986;

(b) the Insolvency Act 1986;

(c) FSMA 2000;

(d) the Companies Act 2006;
(e) the Banking Act 2009;
(f) the Bank Recovery and Resolution (No.2) Order 2014 (S.I. 2014/3348);
(g) the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));
(h) the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)).

(3) Regulations under this paragraph are subject to the affirmative procedure.

SCHEDULE 12

Section 58

WRITE-DOWN ORDERS

PART 1

WRITE-DOWN ORDERS: MAIN PROVISIONS

1 (1) Part 24 of FSMA 2000 (insolvency) is amended as follows.

(2) In section 360 (application of Part 2 of 1986 Act or Part 3 of 1989 Order (administration) to insurers), at the end insert—

"(4) Subsection (5) applies where, by virtue of an order under this section, a person may be appointed as administrator of an insurer.

(5) While a write-down order under section 377A has effect in relation to an insurer, a person may not be appointed as administrator of the insurer without the consent of the PRA."

(3) Omit section 377 (reducing the value of contracts instead of winding up).

(4) Before section 378 (treatment of assets on winding up) insert—

"**377A Write-down orders**

(1) A "write-down order" is an order of the court directing that the value of one or more of an insurer's liabilities is reduced on such terms as may be specified in the order.

(2) The court may make a write-down order in relation to an insurer if it is satisfied that—
(a) the insurer is, or is likely to become, unable to pay its debts (within the meaning given to that expression by section 123 of the 1986 Act or Article 103 of the 1989 Order), and
(b) making the order is reasonably likely to lead to a better outcome for the insurer's policyholders and other creditors (taken as a whole) than not making the order.

(3) A write-down order—
(a) takes effect on the later of—
(i) the date specified in the order, and

(ii) the date on which the appointment of a person to act as the manager of the order first takes effect (see section 377G(7));

(b) ceases to have effect in accordance with section 377H;

(c) may be revoked or varied in accordance with section 377I.

(4) A write-down order may not be made in relation to an insurer—

(a) which is in administration (within the meaning of Schedule B1 to the 1986 Act or Schedule B1 to the 1989 Order), or

(b) which is in liquidation by virtue of—

(i) a resolution for voluntary winding up, or

(ii) a winding-up order under section 125 of the 1986 Act or Article 105 of the 1989 Order.

(5) A write-down order may not reduce the value of an excluded liability (within the meaning given by section 377B).

(6) A liability, to the extent of its reduction by a write-down order under this section, is to be treated as extinguished unless and until revived by section 377H or 377I.

(7) In this section, "creditor" includes a contingent or prospective creditor.

377B Excluded liabilities

(1) Each of the following is an "excluded liability"—

(a) a liability with an original maturity of less than 7 days;

(b) an amount payable in respect of goods delivered, or a service provided, on or after the date on which the write-down order is made;

(c) an amount in respect of remuneration or expenses of a person appointed under section 377G to act as the manager of the write-down order (including amounts incurred before, as well as after, the person's appointment in connection with the order or the application for the order);

(d) an amount secured on property of any kind, other than an amount secured by a charge which, as created, was a floating charge;

(e) an amount payable in respect of wages or salary arising under a contract of employment;

(f) a contribution or other sum payable in respect of an occupational pension scheme;

(g) an amount payable in respect of redundancy payments;

(h) an amount payable under a contract or other instrument involving financial services.

(2) In this section—

"contract or other instrument involving financial services" has the meaning given by Schedule ZA2 to the 1986 Act, but does not include an agreement which is, or forms part of, an arrangement involving the issue of a capital market investment (see paragraph 6 of that Schedule);

"floating charge" has the meaning given by section 251 of the 1986 Act or paragraph (1) of Article 5 of the 1989 Order;

"redundancy payment" means—

(a) a redundancy payment under Part 11 of the Employment Rights Act 1996 or Part 12 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)), or

(b) a payment made to a person who agrees to the termination of their employment in circumstances where they would have been entitled to a redundancy payment under that Part if dismissed;

"wages or salary" includes—

(a) a sum payable in respect of a period of holiday;

(b) a sum payable in respect of a period of absence through illness or other good cause;

(c) a sum payable in lieu of holiday.

377C Application for a write-down order

(1) An application to the court for a write-down order in relation to an insurer may be made only by—

(a) the Treasury;

(b) the PRA;

(c) the insurer;

(d) a shareholder of the insurer;

(e) a policyholder or other creditor (including a contingent or prospective creditor) of the insurer.

(2) An application for a write-down order may not be withdrawn without the permission of the court.

(3) A person other than the PRA or the Treasury—

(a) must obtain the consent of the PRA before making an application for a write-down order;

(b) must notify the PRA before seeking the court's permission to withdraw an application for a write-down order.

(4) Consent under subsection (3)—

(a) must be in writing, and

(b) must be filed with the court with the relevant application.

(5) The PRA must consult the FCA before—

(a) making an application for a write-down order, or

(b) giving or refusing consent for a person to make an application for a write-down order.

377D Powers of the FCA and PRA to participate in proceedings

(1) This section applies if an application is made to the court for a write-down order.

(2) The FCA and the PRA are entitled to be heard—

(a) at any hearing relating to the application, and

(b) if an order is made, at any hearing relating to the order.

(3) Any notice or other document required to be sent to a creditor of the insurer—

(a) in relation to the application, or

(b) if an order is made, in relation to the order,

must also be sent to the FCA and the PRA.

377E Powers of the court

On an application for a write-down order, the court may—

(a) if, on hearing the application, it is satisfied of the matters in section 377A(2), make a write-down order in the terms sought, or in such other terms as the court thinks appropriate;

(b) dismiss the application;

(c) adjourn the hearing conditionally or unconditionally;

(d) make any other order which the court thinks appropriate.

377F Duty to notify creditors

(1) This section applies where a write-down order is made in relation to an insurer.

(2) As soon as reasonably practicable after the order is made, the insurer must notify the FCA, the PRA and each affected person that the order has been made.

(3) An "affected person" is a person of a description specified in rules made by the PRA for the purposes of this section.

(4) Notification under this section—

(a) must include such other information as may be specified in rules made by the PRA for the purposes of this section, and

(b) must be given in such form and manner as may be specified in rules made by the PRA for the purposes of this section.

(5) Failure to notify an affected person in accordance with this section, or rules made by the PRA for the purposes of this section, does not affect the validity of the write-down order in relation to that person or any other person.

377G The manager

(1) The court may by order appoint one or more eligible persons to act as the manager of a write-down order ("the manager").

(2) An order under subsection (1) may—

(a) be made at the same time as the write-down order or at a later date (but see section 377A(3)(a));

(b) appoint a person in addition to or instead of a person who is for the time being appointed;

(c) give such directions about the carrying out of the person's functions as the manager as the court thinks appropriate.

(3) The court may by order terminate the appointment of a person who is for the time being appointed to act as the manager of a write-down order.

(4) Sections 377C and 377D apply to an application to the court for an order under subsection (1) or (3) as they apply to an application for a write-down order but—

(a) if the application is for the appointment of a person in addition to, or instead of, a person for the time being appointed, section 377C(1) applies as if the persons mentioned included a person for the time being appointed;

(b) section 377C(2) does not apply.

(5) The court may appoint a person to act as the manager of a write-down order only if—

(a) the PRA has provided the court with a statement that the person is suitably qualified, and

(b) the person has provided the court with a statement that the person consents so to act.

(6) Where it is proposed that more than one person should act as the manager, the statement under subsection (5)(b) must specify—

(a) which of the functions of the manager (if any) are to be exercised by the persons acting jointly, and

(b) which of the functions of the manager (if any) are to be exercised by any or all of the persons.

(7) The appointment of a person to act as the manager—

(a) takes effect at the time specified in the order by which the person is appointed, and

(b) ceases to have effect at the time specified in the order by which the person's appointment is terminated (whether by being replaced by another person or otherwise).

(8) Schedule 19A makes further provision about the manager of a write-down order.

377H Write-down order ceasing to have effect

(1) A reduction in the value of a liability of an insurer under a write-down order ceases to have effect—

(a) on such date as may be specified in the order (and different dates may be specified in relation to different liabilities or liabilities of different types), or

(b) if earlier, or if no such date is specified, the date on which a termination event happens (or, if more than one termination event happens, the earliest of those dates).

(2) In the following table—

(a) the first column specifies each event which is a termination event for the purposes of this section, and

(b) the second column specifies, in relation to each termination event, the date on which the event happens for the purposes of this section.

Event	*Date event happens*
The write-down order being— (a) revoked, or (b) varied so as to remove the liability in question from its scope, by an order under section 377I	(a) The date specified in the order under section 377I as the date on which the revocation or variation is to take effect, or (b) if no date is specified, the date on which the order under section 377I is made
The insurer ceasing to have permission under Part 4A to carry out contracts of insurance	The date on which the withdrawal of permission takes effect
The transfer of the liability in question pursuant to an insurance business transfer scheme which has effect in accordance with an order under section 111(1)	The date on which the transfer takes effect
The making of a winding-up order against the insurer	The date on which the order is made
The voluntary winding up of the insurer	The date on which the liquidator is appointed
The coming into force of a voluntary arrangement (under Part 1 of the 1986 Act or Part 2 of the 1989 Order) in relation to the insurer	The date on which the voluntary arrangement comes into force
The insurer entering administration	The date on which the appointment of an administrator takes effect.

(3) Where a write-down order is varied, this section applies as if references to the write-down order were to the order as varied.

377I Variation or revocation of a write-down order

(1) The court may, by order—

(a) revoke a write-down order, or

(b) vary (or further vary) a write-down order.

(2) Section 377A(2)(b) applies to the making of an order under this section as it applies to the making of the write-down order.

(3) In varying (or further varying) a write-down order the court may, in particular—

(a) remove one or more of the insurer's liabilities from the scope of the order (but removing all such liabilities from the scope of the order takes effect as a termination of the order);

(b) bring one or more of the insurer's liabilities within the scope of the order (on such terms as the court may specify);

(c) further reduce the value of one or more of the insurer's liabilities;

(d) increase the value of one or more of the insurer's liabilities to any amount less than the value the liability had before the write-down order took effect;

(e) vary any term specified in the order, including the period for which a reduction in the value of a liability has effect;

(f) make any other order that the court thinks appropriate.

(4) Sections 377C to 377F apply to an application for an order under this section as they apply to an application for a write-down order but with the following modifications—

(a) section 377C(1) applies as if the list of persons entitled to make an application included—

(i) the FCA;

(ii) the scheme manager of the Financial Services Compensation Scheme (see section 212(1));

(iii) a person appointed under section 377G to act as the manager of the write-down order;

(b) if the person making the application is the scheme manager of the Financial Services Compensation Scheme, section 377C(3) does not apply.

(5) The scheme manager of the Financial Services Compensation Scheme must consult the FCA and the PRA before making an application to vary or revoke a write-down order.

(6) Where a provisional liquidator of the insurer has been appointed under section 135 of the 1986 Act or Article 115 of the 1989 Order, a person appointed to act as the manager of a write-down order must obtain the consent of the provisional liquidator before making an application for an order under this section.

377J Further provision about write-down orders

In Schedule 19B—

(a) Part 1 makes provision about the enforcement of a liability of an insurer while a write-down order has effect;

(b) Part 2 makes provision about the disposal of an insurer's assets and the making of certain payments by an insurer while a write-down order has effect;

(c) Part 3 makes provision about the treatment of an insurer's liabilities for the purposes of certain provisions relating to insolvency while a write-down order has effect;

(d) Part 4 makes provision about interest payable in respect of liabilities reduced under a write-down order or prevented from being enforced while a write-down order has effect."

PART 2

THE MANAGER OF A WRITE-DOWN ORDER

2 After Schedule 19 to FSMA 2000 (competition information), insert—

"SCHEDULE 19A

Section 377G

THE MANAGER OF A WRITE-DOWN ORDER

Application of Schedule

1 (1) This Schedule applies where—

(a) a write-down order has been made under section 377A in relation to an insurer, and

(b) one or more persons have been appointed under section 377G to act as the manager of the order.

(2) Where only one person acts as the manager, a reference in this Schedule to "the manager" is to that person.

(3) Where two or more persons act jointly as the manager—

(a) a reference in this Schedule to the manager is a reference to those persons acting jointly;

(b) where an offence of omission is committed by the manager, each of the persons appointed to act jointly—

(i) commits the offence, and

(ii) may be proceeded against and punished individually.

(4) Where persons act jointly in respect of only some of the functions of the manager, sub-paragraph (3) applies only in relation to those functions.

(5) Where two or more persons act concurrently as the manager, a reference in this Schedule to the manager is a reference to any of the persons appointed (or any combination of them).

(6) In this Schedule, "creditor" includes a contingent or prospective creditor.

Status of the manager

2 The manager is an officer of the court.

Monitoring the insurer's affairs

3 (1) The manager must monitor the insurer's affairs for the purpose of forming a view as to whether—

(a) it remains the case that the write-down order is reasonably likely to lead to a better outcome for the insurer's policyholders and other creditors (taken as a whole) than if the write-down order were not in effect, or

(b) that will remain the case, or once again be the case, if the directors of the insurer were to take certain action or refrain from taking certain action.

(2) If the manager forms the view mentioned in sub-paragraph (1)(b), the manager may make such recommendations to the directors of the insurer as the manager thinks appropriate.

(3) In forming a view mentioned in sub-paragraph (1), the manager is entitled to rely on information provided by the insurer, unless the manager has reason to doubt its accuracy.

(4) If directed to do so by the FCA or the PRA, the manager must provide a report to that regulator on such matters relating to the insurer's affairs, and at such intervals, as that regulator may specify.

Application by manager to revoke or vary a write-down order

4 (1) This paragraph applies if the manager forms the view that it is in the interests of the insurer's policyholders and other creditors (taken as a whole) for the write-down order to be—

(a) revoked, or

(b) varied in one or more respects.

(2) The manager must apply to the court for such orders (whether under section 377I or otherwise) as the manager thinks likely to achieve the best outcome for the insurer's policyholders and other creditors (taken as a whole).

(3) In forming the view mentioned in sub-paragraph (1), the manager may have regard, among other things—

(a) to whether recommendations under paragraph 3(2) have been made (and if so, whether they have been acted upon);

(b) to whether recommendations, or further recommendations, under paragraph 3(2) could be made (and if so, the likelihood that they will be acted upon).

Provision of information and assistance to the manager

5 (1) The manager may require a relevant person to provide such information or assistance as the manager may reasonably require for the purpose of carrying out the manager's functions.

(2) Each of the following is a "relevant person" for these purposes—

(a) a director of the insurer, or of a body corporate in the same group as the insurer;

(b) an employee of the insurer, or of a body corporate in the same group as the insurer;

(c) a person providing a service to the insurer, or to a body corporate in the same group as the insurer;

(d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c).

(3) A relevant person must comply with a requirement under this paragraph to provide information as soon as is practicable.

(4) The obligation imposed by sub-paragraph (3) is enforceable, on the application of the manager—

(a) by an injunction, or

(b) in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

Application by manager for directions

6 The manager may apply to the court for directions about the carrying out of the manager's functions.

Challenges to the manager's actions

7 (1) Any of the following persons may apply to the court on the ground that an act, omission or decision of the manager has unfairly harmed the interests of the applicant—

(a) a director of the insurer;

(b) a shareholder of the insurer;

(c) a policyholder or other creditor of the insurer;

(d) any other person affected by the write-down order.

(2) Any of the following persons may apply to the court on the ground that an act, omission or decision of the manager is not in the interests of the insurer's policyholders and other creditors (taken as a whole)—

(a) the FCA;

(b) the PRA;

(c) the scheme manager of the Financial Services Compensation Scheme (see section 212(1));

(d) a provisional liquidator of the insurer.

(3) Before making an application under sub-paragraph (2)—

(a) the FCA must consult the PRA;

(b) the PRA must consult the FCA;

(c) the scheme manager of the Financial Services Compensation Scheme must notify the FCA and the PRA.

(4) On an application under this paragraph the court may—

(a) confirm, reverse or modify any act or decision of the manager,

(b) give the manager directions, or

(c) make such other order as the court thinks appropriate (but may not, under this paragraph, order the manager to pay any compensation).

(5) Where an application under this paragraph relates to a failure by the manager to apply to the court for the variation or termination of the write-down order, the court may treat the application as an application for an order under section 377I made by a person entitled to apply for an order under that section."

PART 3

FURTHER PROVISION ABOUT WRITE-DOWN ORDERS

3 After Schedule 19A to FSMA 2000 (the manager of a write-down order), inserted by Part 2 of this Schedule, insert—

"SCHEDULE 19B — Section 377J

FURTHER PROVISION ABOUT WRITE-DOWN ORDERS

PART 1

RESTRICTIONS ON ENFORCEMENT

Application of this Part of this Schedule

1 (1) This Part of this Schedule applies in relation to an insurer—

(a) during the period—

(i) beginning with the date on which an application is made for a write-down order in relation to the insurer, and

(ii) ending with the date on which the order is made or the application is withdrawn or dismissed;

(b) during the period—

(i) beginning with the date on which a write-down order is made in relation to the insurer, and

(ii) ending with the last day of the period of six months beginning with the day on which the write-down order takes effect (see section 377A(3)(a));

(c) during such further period as the court may order.

(2) This Part of this Schedule ceases to apply—

(a) where the court orders that it should cease to apply (and in accordance with the terms of the order), or

(b) where the write-down order ceases to have effect (because, in accordance with section 377H, each reduction in the value of a liability of the insurer ceases to have effect).

(3) The court—

(a) may make an order under sub-paragraph (1)(c) or (2)(a) only on an application by a person mentioned in sub-paragraph (4);

(b) may not specify in an order under sub-paragraph (1)(c) a period longer than six months (but may make one or more further such orders).

(4) The persons are—

(a) a person entitled to make an application for a write-down order in relation to the insurer (see section 377C(1));

(b) a person appointed under section 377G to act as the manager of the write-down order;

(c) a provisional liquidator of the insurer;
(d) the FCA.

(5) Before making an application for an order under this Part of this Schedule—
(a) a person other than the PRA or the Treasury must consult the PRA;
(b) the PRA must consult the FCA.

Moratorium on proceedings

2 (1) Where this Part of this Schedule applies in relation to an insurer, except with the permission of the court—
(a) no step may be taken to enforce security over the insurer's property;
(b) no step may be taken to repossess goods in the insurer's possession under a hire-purchase agreement;
(c) a landlord may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the insurer;
(d) in Scotland, a landlord may not exercise a right of irritancy in relation to premises let to the insurer;
(e) no legal process (including legal proceedings, execution, distress or diligence) may be instituted, carried out or continued against the insurer or its property.

(2) Where the court gives permission for something to be done that would otherwise be prevented by this paragraph, it may impose a condition on, or a requirement in connection with, the permission.

(3) In this paragraph, "landlord" includes a person to whom rent is payable.

Exceptions

3 (1) This Part of this Schedule does not apply in relation to—
(a) arrangements entered into after the date on which this Part of this Schedule first applied in relation to the insurer;
(b) employment tribunal proceedings or any legal process arising out of such proceedings;
(c) proceedings, not within paragraph (b), involving a claim between an employer and a worker.

(2) Nothing in this Part of this Schedule—
(a) prevents the FCA or the PRA from exercising a function it has in relation to the insurer or any other person;
(b) prevents a consumer from taking steps to enforce a money award or direction under section 229 or 404B.

(3) Nothing in this Part of this Schedule affects the operation of—
(a) Part 7 of the Companies Act 1989 (financial markets and insolvency);
(b) the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469);

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

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

(4) The Treasury may by regulations amend sub-paragraph (3).

(5) In this paragraph—

"agency worker" has the meaning given by section 13(2) of the Employment Relations Act 1999;

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions;

"employer"—

(a) in relation to an agency worker, has the meaning given by section 13(2) of the Employment Relations Act 1999;

(b) otherwise, has the meaning given by section 230(4) of the Employment Rights Act 1996;

"worker" means an individual who is—

(a) a worker within the meaning of section 230(3) of the Employment Rights Act 1996, or

(b) an agency worker.

PART 2

DEALING WITH ASSETS ETC

Application of this Part of this Schedule

4 This Part of this Schedule applies while a write-down order has effect in relation to one or more liabilities of an insurer.

Dealing with assets

5 The insurer may not dispose of, or otherwise deal with, any of its assets (whether in the United Kingdom or elsewhere) except—

(a) in the ordinary way of the insurer's business, or

(b) with the consent of the PRA.

Paying variable remuneration

6 The insurer may not pay variable remuneration that is not regulated by a collective bargaining agreement, except with the consent of the PRA.

Distributions

7 The insurer may not make a distribution, within the meaning of Part 23 of the Companies Act 2006, except with the consent of the PRA.

PART 3

TREATMENT OF WRITTEN-DOWN LIABILITIES FOR CERTAIN PURPOSES

Application of this Part of this Schedule

8 (1) This Part of this Schedule applies in relation to a liability of an insurer while the value of the liability is reduced under a write-down order.

(2) Where the write-down order is varied, this Part of this Schedule applies as if references to the write-down order were to the order as varied.

Relevant insolvency provisions

9 (1) In determining the value of the liability for the purposes of a relevant insolvency provision, no account is to be taken of the contingent or prospective value of the liability, or interest on the liability, arising from any expectation that the write-down order will be varied, further varied or cease to have effect (whether in relation to the liability or generally).

(2) The relevant insolvency provisions are—

(a) section 123 of the 1986 Act or Article 103 of the 1989 Order, or any statutory provision which applies that section or that Article;

(b) Article 11 of Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency 2);

(c) PRA rules applicable to non-directive insurers, within the meaning given by the Rulebook made by the PRA under this Act (as that Rulebook has effect from time to time).

(3) The Treasury may by regulations amend sub-paragraph (2).

Reinsurance contracts

10 (1) This paragraph applies where—

(a) the liability is a liability under a contract of insurance the insurer carries out as principal ("contract A"), and

(b) the insurer enters into a reinsurance contract under which contract A, or any liability under contract A, is reinsured ("contract B").

(2) In determining the value of the liability for the purposes of contract B, no account is to be taken of the reduction in value of the liability under the write-down order.

PART 4

INTEREST

11 (1) This Part of this Schedule applies where—

(a) the value of a liability of an insurer is reduced under a write-down order,

(b) while the write-down order has effect in relation to the liability, an amount of the liability is due and payable (or would be due and payable but for the write-down order), and

(c) the amount remains due and payable after the reduction ceases to have effect.

(2) The amount carries statutory interest, within the meaning of the Late Payment of Commercial Debts (Interest) Act 1998, for the period—

(a) beginning with the date on which the write-down order took effect or, if later, the date on which the amount became due and payable (or would have become due and payable but for the write-down order), and

(b) ending with the day on which the amount is paid.

(3) Where a write-down order is varied, this section applies as if references to the write-down order were to the order as varied."

PART 4

WRITE-DOWN ORDERS: FINANCIAL SERVICES COMPENSATION SCHEME

4 Part 15 of FSMA 2000 (the Financial Services Compensation Scheme) is amended as follows.

5 After section 217 (insurers in financial difficulties) insert—

"**217ZA Insurers subject to write-down orders**

(1) The compensation scheme must include provision requiring the scheme manager to take specified measures for safeguarding policyholders affected by write-down orders.

(2) A person ("P") is a policyholder affected by a write-down order if—

(a) P is a policyholder of an insurer in respect of whom a write-down order has effect, and

(b) the value of any thing to which P is (or may become) entitled, in P's capacity as a policyholder of the insurer, is reduced under the write-down order.

(3) Measures specified by virtue of subsection (1) must, in particular, require financial assistance to be given to insurers subject to write-down orders for the purpose mentioned in subsection (4).

(4) The purpose is to enable payments to be made to affected policyholders in respect of the reduction in value of their entitlements (or contingent entitlements), as mentioned in subsection (2)(b).

(5) Financial assistance given under this section—

(a) must not be used for any purpose other than the purpose mentioned in subsection (4);

(b) is not to be taken into account, to any extent, in valuing the assets of the insurer for any purpose.

(6) Measures taken by the scheme manager by virtue of this section are in addition to any measures the scheme manager may take under powers provided by virtue of section 217(1).

(7) In this section and section 217ZB—

"insurer" means a relevant person who has permission to carry out contracts of insurance;

"write-down order" means an order under section 377A (as it has effect in accordance with section 377H).

217ZB Recovery of financial assistance under section 217ZA

(1) The compensation scheme may make provision giving the scheme manager a right of recovery in respect of financial assistance given to an insurer by virtue of section 217ZA.

(2) Any right of recovery the scheme manager has in respect of financial assistance given to an insurer by virtue of subsection (1) must not be exercised against a policyholder of the insurer.

(3) Subsection (4) applies where, by virtue of subsection (1), the scheme manager has a right of recovery in respect of financial assistance given to an insurer.

(4) In valuing the insurer's liabilities for the purposes of a relevant insolvency provision, no account is to be taken of any expectation that the right will be exercised.

(5) In subsection (4), "relevant insolvency provision" has the same meaning as in paragraph 9 of Schedule 19B (treatment of written-down liabilities for purposes of relevant insolvency provisions)."

6 In section 219 (scheme manager's power to require information), in subsection (1A), after paragraph (b) insert—

"(ba) on a person (P) who is an insurer who has been given financial assistance under section 217ZA,".

7 After section 220 (scheme manager's power to inspect information held by liquidator etc), insert—

"**220A Power to inspect information held by write-down manager**

(1) For the purpose of assisting the scheme manager to discharge its functions under section 217ZA or 217ZB in relation to an insurer, a person to whom

this section applies must permit a person authorised by the scheme manager to inspect relevant documents.

(2) This section applies to a person appointed under section 377G to act as the manager of a write-down order which has effect in relation to the insurer.

(3) A person inspecting a document under this section may take copies of, or extracts from, the document."

PART 5

CONSEQUENTIAL AMENDMENTS

FSMA 2000

8 FSMA 2000 is amended as follows.

9 (1) Section 348 (restrictions on disclosure of confidential information by FCA, PRA etc) is amended as follows.

(2) After subsection (2) insert—

"(2A) Where the primary recipient is a person appointed under section 377G to act as the manager of a write-down order, subsection (2)(b) has effect as if the reference to the discharge of functions of the FCA, PRA or Secretary of State were to the functions of that person."

(3) In subsection (5), after paragraph (d) insert—

"(da) a person appointed under section 377G to act as the manager of a write-down order;".

10 In section 429 (Parliamentary control of statutory instruments), in subsection (2B), after paragraph (c) insert—

"(d) provision made under paragraph 3(4) or 9(3) of Schedule 19B;".

11 In Schedule 1ZB (the PRA), in paragraph 33(2) (exemption from liability in damages), for "and 284" insert ", 284 and 377G".

Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

12 In Part 1 of Schedule 1 to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188) (disclosure of confidential information whether or not subject to retained EU law restrictions), at the end of the table insert—

"A person appointed under section 377G of the Act to act as the manager of a write-down order	That person's functions in relation to the write-down order".

SCHEDULE 13

Section 58

INSURERS IN FINANCIAL DIFFICULTIES: ENFORCEMENT OF CONTRACTS

PART 1

NEW SCHEDULE 19C TO FSMA 2000

1 (1) Part 24 of FSMA 2000 (insolvency) is amended as follows.

(2) After section 377J (further provision about write-down orders), inserted by Part 1 of Schedule 12 to this Act, insert—

"**377K Insurers in financial difficulties: enforcement of contracts**

Schedule 19C makes provision about the enforcement of certain contracts to which an insurer is a party while the insurer is in financial difficulties (within the meaning given by the Schedule)."

(3) After Schedule 19B (further provision about write-down orders), inserted by Part 3 of Schedule 12 to this Act, insert—

"SCHEDULE 19C

Section 377K

INSURERS IN FINANCIAL DIFFICULTIES: ENFORCEMENT OF CONTRACTS

PART 1

INTRODUCTORY

Application of this Schedule

1 This Schedule applies in relation to an insurer while the insurer is in financial difficulties.

"Financial difficulties"

2 (1) An insurer is in "financial difficulties" for the purposes of this Schedule if—

(a) Part 1 of Schedule 19B (write-down orders: restrictions on enforcement) has effect in relation to the insurer (see paragraph 1(1) and (2) of that Schedule);

(b) the insurer is in administration, within the meaning of Schedule B1 to the 1986 Act or Schedule B1 to the 1989 Order, or awaiting administration;

(c) a petition for the winding up of the insurer has been presented and has not been withdrawn or determined.

(2) For the purposes of sub-paragraph (1)(b), an insurer is awaiting administration while an application for an administration order in respect of the insurer has been made to the court and—

(a) the application has not yet been granted or dismissed, or

(b) the application has been granted but the administration order has not yet taken effect.

(3) For the purposes of this Schedule, an insurer "enters into financial difficulties"—

(a) in a case to which sub-paragraph (1)(a) applies, on the date on which Part 1 of Schedule 19B first has effect in relation to the insurer;

(b) in a case to which sub-paragraph (1)(b) applies, on the date on which the application for the administration order is made to the court;

(c) in a case to which sub-paragraph (1)(c) applies, on the date on which the winding-up petition is presented.

PART 2

POLICYHOLDER SURRENDER RIGHTS

Restriction on policyholder surrender rights

3 (1) Where this Schedule applies in relation to an insurer, the total value of a policyholder's rights under a relevant contract of insurance which the policyholder may surrender in a relevant period must not exceed the surrender limit for that period.

(2) For these purposes—

"relevant contract of insurance" means a contract of long-term insurance which is not a contract in respect of which the following conditions are met—

(a) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;

(b) the contract has no surrender value, or the consideration consists of a single premium and the surrender value does not exceed that premium;

(c) the contract makes no provision for its conversion or extension in a manner which would result in it ceasing to comply with either of the above conditions;

"relevant period" means—

(a) the period of 12 months beginning with the date on which the insurer entered into financial difficulties, and

(b) each subsequent period of 12 months;

"surrender limit", in relation to a relevant contract of insurance and relevant period, is an amount equal to 5% of the total surrender value of the contract on the day on which the relevant period began.

Switching rights

4 (1) This paragraph applies where the value of a right under a relevant contract of insurance is wholly or partly determined by reference to property of any description.

(2) The reference in paragraph 3(1) to the surrender of rights by a policyholder includes the exercise by the policyholder of a contractual right to change the property by reference to which the value of a right is (wholly or partly) determined.

Consent to exceed surrender limit

5 (1) Paragraph 3(1) does not apply if, or to the extent that, consent for the surrender of an amount that would exceed the surrender limit for the relevant period has been given by—

(a) the court,

(b) a relevant office-holder, or

(c) where there is no relevant office-holder, the insurer.

(2) For these purposes, "relevant office-holder" means—

(a) a provisional liquidator of the insurer;

(b) an administrator of the insurer;

(c) a person appointed to act as the manager of a write-down order that has effect in relation to the insurer.

(3) The court, a relevant office-holder or the insurer (as the case may be) may give consent under sub-paragraph (1) only if satisfied that not doing so would cause the policyholder hardship.

(4) Where a provisional liquidator of an insurer has been appointed, the manager of a write-down order that has effect in relation to the insurer must obtain the consent of the provisional liquidator before giving consent under sub-paragraph (1).

(5) As soon as reasonably practicable after giving consent under sub-paragraph (1), a relevant office-holder or the insurer must notify the PRA.

PART 3

TERMINATION ETC OF RELEVANT CONTRACTS

Relevant contracts

6 (1) For the purposes of this Part of this Schedule, a contract to which an insurer is a party is a "relevant contract" if it is—

(a) a contract for the supply of goods or services to the insurer,

(b) a financial contract, or

(c) a reinsurance contract under which contracts of insurance the insurer carries out as principal are reinsured.

(2) "Financial contract" means—

(a) a contract for the provision of financial services consisting of—

(i) lending (including the factoring and financing of commercial transactions),

(ii) financial leasing, or

(iii) providing guarantees or commitments;

(b) a securities contract, including—

(i) a contract for the purchase, sale or loan of a security or group or index of securities;

(ii) an option on a security or group or index of securities;

(iii) a repurchase or reverse repurchase transaction on any such security, group or index;

(c) a commodities contract, including—

(i) a contract for the purchase, sale or loan of a commodity or group or index of commodities for future delivery;

(ii) an option on a commodity or group or index of commodities;

(iii) a repurchase or reverse repurchase transaction on any such commodity, group or index;

(d) a futures or forwards contract, including a contract (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;

(e) a swap agreement, including—

(i) a swap or option relating to interest rates, spot or other foreign exchange agreements, currency, an equity index or equity, a debt index or debt, commodity indexes or commodities, weather, emissions or inflation;

(ii) a total return, credit spread or credit swap;

(iii) any agreement or transaction similar to an agreement that is referred to in sub-paragraph (i) or (ii) and is the subject of recurrent dealing in the swaps or derivatives markets.

(3) But a master agreement for any contract or agreement referred to in sub-paragraph (2) is not a relevant contract for the purposes of this Part of this Schedule.

(4) For the purposes of sub-paragraph (2), "commodities" includes—

(a) units recognised for compliance with the requirements of EU Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading,

(b) allowances under paragraph 5 of Schedule 2 to the Climate Change Act 2008 relating to a trading scheme dealt with under Part 1 of that Schedule (schemes limiting activities relating to emissions of greenhouse gas), and

(c) renewables obligation certificates issued—

(i) by the Gas and Electricity Markets Authority under an order made under section 32B of the Electricity Act 1989, or

(ii) by the Northern Ireland Authority for Utility Regulation under the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) and pursuant to an order made under Articles 52 to 55F of that Order.

Restriction on termination etc

7 (1) Where this Schedule applies in relation to an insurer, a provision of a relevant contract, entered into by the insurer before the insurer first enters into financial difficulties, ceases to have effect if, and to the extent that, under the provision—

(a) the contract would terminate, a supply would cease, or any other thing would occur, because the insurer is in financial difficulties, or

(b) another party to the contract would be entitled to terminate the contract, cease a supply, or do any other thing, because the insurer is in financial difficulties.

(2) Where—

(a) under a provision of a relevant contract, another party to the contract is entitled to terminate the contract, cease a supply, or do any other thing because of an event occurring before the insurer was in financial difficulties, and

(b) the entitlement arises before the insurer was in financial difficulties,

the entitlement may not be exercised while the insurer is in financial difficulties.

(3) A supplier of goods or services to an insurer must not—

(a) make it a condition of a supply of goods or services, while the insurer is in financial difficulties, that any outstanding charges in respect of a supply made to the insurer before the insurer is in financial difficulties are paid, or

(b) do anything which has that effect.

Consent to terminate relevant contracts

8 (1) Sub-paragraph (2) applies where—

(a) a provision of a relevant contract ceases to have effect under paragraph 7(1), or

(b) an entitlement under a provision of a relevant contract is not exercisable under paragraph 7(2).

(2) A party to the contract (other than the insurer) may terminate the contract, or do another thing in relation to the contract, if consent to terminate the contract or do that other thing (as the case may be) has been given by—

(a) the court,

(b) a relevant office holder, or

(c) where there is no relevant office-holder, the insurer.

(3) For these purposes, "relevant office-holder" means an administrator or provisional liquidator of the insurer (but does not include a person appointed to act as the manager of a write-down order that has effect in relation to the insurer).

(4) The court, a relevant office-holder or the insurer (as the case may be) may give consent under sub-paragraph (2) only if satisfied that not doing so would cause hardship to any person.

(5) As soon as reasonably practicable after giving consent under sub-paragraph (2), a relevant office-holder or the insurer must notify the PRA.

PART 4

EXCLUSIONS AND DISAPPLICATION OF THIS SCHEDULE

Exclusions

9 (1) Nothing in this Schedule affects the operation of—

(a) Part 7 of the Companies Act 1989 (financial markets and insolvency);

(b) the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469);

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

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

(2) Nothing in this Schedule affects any protected arrangements within the meaning of section 48P of the Banking Act 2009.

Disapplication of this Schedule by the court

10 (1) The court may order that this Schedule, or a specified provision of this Schedule—

(a) does not apply (insofar as it would otherwise) in relation to one or more contracts to which the insurer is a party, or

(b) applies with specified modifications in relation to one or more such contracts.

(2) An order under this paragraph—

(a) must specify the contracts to which it applies;

(b) may specify all of the contracts to which the insurer is a party (and to which one or more provisions of this Schedule would otherwise apply).

(3) For the purposes of an order under this paragraph—

"contract" includes a contract of insurance;

"specified" means specified or described in the order.

(4) The court may make an order under this paragraph only if satisfied that one or more of the following grounds is made out—

(a) not making the order would be likely to cause hardship to any person (other than the insurer);

(b) where the insurer is in financial difficulties by virtue of paragraph 2(1)(a) (write-down order), making the order is reasonably likely to lead to a better outcome for the insurer's policyholders and other creditors (taken as a whole) than not making the order;

(c) where the insurer is in financial difficulties by virtue of paragraph 2(1)(b) (administration), making the order is reasonably likely to promote the purpose of administration.

(5) The "purpose of administration" means—

(a) where the insurer is in, or is awaiting, administration under Part 2 of the 1986 Act (as modified, in relation to insurers, by the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2010 (S.I. 2010/3023)), an objective specified in paragraph 3 or 3A of Schedule B1 to the 1986 Act;

(b) where the insurer is in, or is awaiting, administration under Part 3 of the 1989 Order (as modified, in relation to insurers, by the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) (Northern Ireland) Order 2007 (S.I. 2007/846)), an objective specified in paragraph 4 of Schedule B1 to the 1989 Order.

Procedure

11 (1) An order under paragraph 10 may be made on the court's own motion or on an application by—

(a) where the insurer is in financial difficulties by virtue of paragraph 2(1)(a) (write-down order), a person mentioned in paragraph 1(4) of Schedule 19B;

(b) where the insurer is in financial difficulties by virtue of paragraph 2(1)(b) (administration), a person mentioned in sub-paragraph (2);

(c) where the insurer is in financial difficulties by virtue of paragraph 2(1)(c) (winding up), a person entitled to petition for the winding up of the insurer;

(d) a provisional liquidator of the insurer;

(e) the FCA.

(2) For the purposes of sub-paragraph (1)(b), the persons are—

(a) where an administrator has been appointed, the administrator;

(b) where the insurer is in, or is awaiting, administration under Part 2 of the 1986 Act, a person mentioned in paragraph 12(1) of Schedule B1 to that Act;

(c) where the insurer is in, or is awaiting, administration under Part 3 of the 1989 Order, a person mentioned in paragraph 13(1) of Schedule B1 to that Order.

(3) Before making an application for an order under paragraph 10—

(a) a person other than a person mentioned in sub-paragraph (4) must obtain the consent of the PRA;

(b) a person mentioned in sub-paragraph (4) must consult the PRA.

(4) The persons mentioned in this sub-paragraph are—

(a) the FCA;

(b) an administrator of the insurer;

(c) a provisional liquidator of the insurer;

(d) a person appointed to act as the manager of the write-down order by virtue of which the insurer is in financial difficulties for the purposes of this Schedule.

(5) Consent under sub-paragraph (3)(a)—

(a) must be in writing, and

(b) must be filed with the court with the relevant application.

(6) The PRA must consult the FCA before giving or refusing consent under sub-paragraph (3)(a).

PART 5

POWERS TO AMEND THIS SCHEDULE

12 The Treasury may by regulations amend this Schedule so as to—

(a) vary or omit any of paragraphs (a), (b) and (c) of paragraph 2(1);

(b) change the percentage figure specified in the definition of "surrender limit" in paragraph 3(2);

(c) amend paragraph 6 (meaning of "relevant contract");

(d) amend paragraph 9 (exclusions from the operation of this Schedule)."

PART 2

CONSEQUENTIAL AMENDMENTS

2 In section 429 of FSMA 2000 (Parliamentary control of statutory instruments), in subsection (2B), at the end insert—

"(e) provision made under paragraph 12 of Schedule 19C."

SCHEDULE 14

Section 73

CREDIT UNIONS

Introductory

1 The Credit Unions Act 1979 is amended as follows.

Specified financial activities

2 (1) Section 1 (registration) is amended as follows.

(2) After subsection (2) insert—

"(2A) The objects of a credit union are—

(a) each of the mandatory objects specified in subsection (3), or

(b) each of those mandatory objects together with the optional object specified in subsection (3ZZA)."

(3) In subsection (3), in the words before paragraph (a), before "objects" insert "mandatory".

(4) After subsection (3) insert—

"(3ZZA) The optional object of a credit union is to carry on one or more of the financial activities specified in section 1ZA(1) for the benefit of the members of the society."

(5) In subsection (3ZA), for "subsection (3)" substitute "subsections (3) and (3ZZA)".

3 After section 1 insert—

"**1ZA Specified financial activities**

(1) The financial activities specified for the purposes of the optional object of a credit union (see section 1(3ZZA)) are—

(a) entering into conditional sale agreements, as the seller;

(b) entering into hire purchase agreements, as the person from whom goods are bailed or (in Scotland) hired;

(c) insurance distribution activities.

(2) The Treasury may by regulations specify requirements or restrictions in relation to the carrying on by a credit union of a financial activity specified in subsection (1).

1ZB Power to specify further financial activities

(1) The Treasury may by regulations—

(a) amend section 1ZA so as to specify further financial activities for the purposes of the optional object of a credit union;

(b) make such amendments of this Act, or any other enactment, as appear to them to be appropriate in consequence of any provision made under paragraph (a).

(2) Amendments made by regulations under subsection (1) may, in particular, provide that a credit union may carry on a financial activity specified in the regulations if the credit union has the optional object specified in section 1(3ZZA).

(3) Regulations under section 1ZA(2) made in relation to a financial activity specified in regulations under subsection (1) may, in particular, make provision about fees or other charges payable in respect of the activity or activities that are ancillary to the activity.

(4) Before making regulations under this section, the Treasury must consult such persons as appear to them to be appropriate.

(5) A statutory instrument containing (whether alone or with other provision) regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

4 In section 2 (supplementary and transitional provisions as to registration), in subsection (3)—

(a) for "those" substitute "the mandatory objects";

(b) after "section 1(3) above" insert "(whether or not the society also has the optional object specified in section 1(3ZZA) above)".

Shares

5 In section 7 (shares), in subsection (5)—

(a) at the beginning insert "Subsection (5A) applies";

(b) the words from "made a loan" to "secured loan" become paragraph (a);

(c) at the end of that paragraph insert ", or

(b) entered into an agreement mentioned in section 11E(1) with a member, which is treated by virtue of section 11F(2) as a secured agreement.";

(d) the words from "the member" to the end become subsection (5A).

Ancillary services

6 (1) Section 9A (power to charge for ancillary services) is amended as follows.

(2) In subsection (2), in the words before paragraph (a), for "the activity of accepting a deposit or making a loan" substitute "an activity mentioned in subsection (3)".

(3) After subsection (2) insert—

"(3) The activities mentioned in this subsection are—

(a) accepting a deposit;

(b) making a loan;

(c) entering into a conditional sale agreement, as the seller;

(d) entering into a hire purchase agreement, as the person from whom goods are bailed or (in Scotland) hired."

Loans

7 (1) Section 11 (loans) is amended as follows.

(2) In subsection (1)—

(a) omit "to a member";

(b) at the end insert ", to—

(a) a member, or

(b) another credit union (whether or not a member)."

(3) After subsection (1) insert—

"(1ZA) Where a loan is made under subsection (1)(b) to a credit union that is not a member of the lending credit union, the maximum period within which the loan must be repaid is six months."

(4) After subsection (7) insert—

"(8) An order under subsection (5) may make different provision in relation to—

(a) loans made to a member;

(b) loans made to a credit union that is not a member of the lending credit union."

Conditional sale and hire purchase agreements

8 Before section 12 (power to hold land for limited purposes) insert—

"**11E Conditional sale and hire purchase agreements**

(1) If the objects of a credit union include the optional object specified in section 1(3ZZA) it may (subject to such terms, including as to security, as its rules may provide)—

(a) enter into a conditional sale agreement, as the seller, with a member of the credit union, or

(b) enter into a hire purchase agreement, as the person from whom goods are bailed or (in Scotland) hired, with a member of the credit union.

(2) A credit union may only enter into an agreement mentioned in subsection (1) with a corporate member if—

(a) the credit union's rules provide that it may do so, and

(b) entering into the agreement would not result in the aggregate of the outstanding balances under all such agreements made by the credit union with corporate members exceeding 10% of the aggregate of the outstanding balances under all such agreements made by the credit union with members, or such higher percentage as may be specified in regulations made by the Treasury.

(3) Subsection (4) applies where—

(a) an agreement mentioned in subsection (1) is entered into by a credit union with a member, and

(b) the agreement is not a secured agreement within the meaning of section 11F.

(4) The terms of the agreement must include provision as to whether, for the duration of the agreement, the member is permitted to withdraw shares where the member's paid-up shareholding in the credit union is, or following the withdrawal would be, less than the member's total liability (including contingent liability) to the credit union.

(5) Any interest charged under an agreement mentioned in subsection (1)—

(a) must not exceed the rate specified in subsection (7), and

(b) must be inclusive of all administrative and other expenses incurred in connection with the making of the agreement.

(6) The rate specified in this subsection is 3% per month on the sum outstanding under the agreement.

(7) The Treasury may by regulations amend subsection (7) to substitute a different rate for the rate that is for the time being specified.

11F Agreements to be treated as secured

(1) This section applies where—

(a) a credit union enters into an agreement mentioned in section 11E(1) with a member of the credit union, and

(b) at the time the agreement is entered into, the member's paid-up shareholding in the credit union is equal to or greater than the member's total liability (including contingent liability) to the credit union.

(2) On the application of the member to the credit union, the agreement is to be treated for the purposes of this Act as a secured agreement."

Insurance distribution activities

9 After section 11F (inserted by paragraph 8) insert—

"**11G Insurance distribution activities**

If the objects of a credit union include the optional object specified in section 1(3ZZA), it may (subject to such terms as the rules of the credit union may provide)—

(a) carry on an insurance distribution activity which constitutes or involves the provision of a service to a member, and

(b) charge such fee as it considers appropriate for providing the service."

Minor and consequential amendments

10 In section 12 (power to hold land for limited purposes), in subsection (3)—

(a) the words from "making loans" to the end become paragraph (a);

(b) at the end of that paragraph insert ", or

(b) entering into agreements mentioned in section 11E(1) with members on the security of an interest in land and of enforcing any such security."

11 In section 23A (power to make provision corresponding to provision applying to building societies), omit subsection (5).

12 In section 29 (orders and regulations), in subsection (2) for "section" substitute "sections 1ZB(5) and".

13 (1) Section 31 (interpretation, etc.) is amended as follows.

(2) In subsection (1), at the appropriate places insert—

""conditional sale agreement" means an agreement for the sale of goods under which—

(a) the purchase price or part of it is payable by instalments, and

(b) the property in the goods is to remain with the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;";

""enactment" includes—

(a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;

(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;

(c) an enactment contained in, or in an instrument made under, Northern Ireland legislation within the meaning of the Interpretation Act 1978;

(d) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;";

""hire purchase agreement" means an agreement—

(a) which is not a conditional sale agreement,

(b) under which goods are bailed or (in Scotland) hired to a person ("P") in return for periodical payments by P, and

(c) the property in the goods will pass to P if the terms of the agreement are complied with and one or more of the following occurs—

(i) the exercise by P of an option to purchase the goods;

(ii) the doing by any party to the agreement of any other act specified in the agreement;

(iii) the happening of any event specified in the agreement;".

(3) After subsection (1A) insert—

"(1B) In this Act, "insurance distribution activity" means any of the following activities—

(a) dealing in rights under a contract of insurance as agent;

(b) arranging deals in rights under a contract of insurance;

(c) assisting in the administration and performance of a contract of insurance;

(d) advising on buying or selling rights under a contract of insurance;

(e) agreeing to do any of the activities specified in paragraphs (a) to (d).

(1C) Subsection (1B) must be read with—

(a) section 22 of the 2000 Act;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act."

(4) In subsection (4)—

(a) in the words before paragraph (a), omit "(which are replaced by, or are inconsistent with, provisions of the 2000 Act)";

(b) omit paragraph (b);

(c) omit paragraph (d).

14 In Schedule 1 (matters to be provided for in rules of credit union), in paragraph 9, after "members", in both places, insert "or other credit unions".

Transitional provision

15 The amendments made by paragraphs 7(3) and 14 do not apply in relation to a loan made by a credit union to another credit union before the earliest date on which either of those amendments comes into force (whether or not any amount of the loan remains outstanding on or after that date).

16 The amendment made by paragraph 13(4)(b) does not apply in relation to a year of account of a credit union beginning before the date on which that amendment comes in force (and accordingly, sections 77 and 78 of the Co-operative and Community Benefit Societies Act 2014 do not apply in relation to any such year of account).