HM Treasury

Post Legislative Scrutiny:

The Financial Services Act 2012, The Financial Services (Banking Reform) Act 2013 and The Bank of England and Financial Services Act 2016

CP 582

December 2021

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Presented to Parliament by
the Economic Secretary to the Treasury
by Command of Her Majesty

December 2021

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ISBN 978-1-5286-3114-3

E02703233

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by HH Associates Ltd. on behalf of the Controller of Her Majesty's Stationery Office

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Preface

This memorandum provides a preliminary assessment of the Financial Services Act 2012 ("the 2012 Act"), the Financial Services (Banking Reform) Act 2013 ("the 2013 Act") and the Bank of England and Financial Services Act 2016 ("the 2016 Act") and has been prepared by HM Treasury for submission to the Treasury Select Committee. It is published as part of the process set out in the document *Post Legislative Scrutiny – The Government's Approach (Cm 7320).*[1]

These three financial services Acts were passed in quick succession, covering similar policy areas and with Acts building on one another. The preliminary assessments have therefore been combined into a single memorandum to give a more comprehensive view of the Acts.

[1] 'Post-legislative Scrutiny –The Government's Approach', Office of the Leader of the House of Commons, March 2008.

Chapter 1

The Financial Services Act 2012: Introduction

1.1 Chapters 1 to 11 of this memorandum provide a preliminary assessment of the Financial Services Act 2012 and have been prepared by HM Treasury for submission to the Treasury Select Committee. The memorandum is published as part of the process set out in the document *Post Legislative Scrutiny – The Government's Approach (Cm 7320).*[2]

1.2 The financial crisis of 2007-08 revealed serious flaws in the UK's system of regulation, particularly relating to the allocation and co-ordination of responsibilities across the 'tripartite' institutions – HM Treasury, the Bank of England and the Financial Services Authority (FSA). The Bank of England had inadequate tools to meet its financial stability objective; the FSA's responsibilities were too broad to allow for sufficient focus on the stability of firms; and no part of the framework had responsibility for monitoring the crucial link between firm stability and the stability of the financial system as a whole. On 16 June 2010, the government announced, in the Chancellor's Mansion House speech, reform of the UK regulatory framework to correct the failings that became apparent through the financial crisis.

1.3 The Financial Services Act 2012 (hereafter 'the 2012 Act') received Royal Assent on 19 December 2012. It put in place a new framework for financial regulation in the United Kingdom, made the Bank of England ("the Bank") responsible for protecting and enhancing the stability of the financial system of UK, and provided for an independent conduct of business regulator, the Financial Conduct Authority (FCA).

1.4 The 2012 Act introduced four key institutional changes, it:

- established the Financial Policy Committee (FPC) with responsibility for macro-prudential regulation
- established the Prudential Regulation Authority (PRA) with responsibility for micro-prudential regulation as an operationally independent subsidiary of the Bank
- established the FCA as an independent conduct of business regulator

[2] 'Post-legislative Scrutiny –The Government's Approach', Office of the Leader of the House of Commons, March 2008.

- gave the Bank responsibility for the regulation of recognised clearing houses (which, when taken with existing legislation, made the Bank responsible for the regulation of systemically important clearing, payment and settlement infrastructure)

1.5 A key aim of the reforms was to establish the FCA as a focused conduct of business regulator for financial services, with a more focused set of objectives than the FSA, including a new competition mandate. The government also took the opportunity to make improvements to the accountability arrangements which applied to the FCA, including introducing National Audit Office (NAO) audit and new duties and powers for the regulators as well as HM Treasury initiated reviews into regulatory failure.

Chapter 2

2012 Act Part 1: Amendments to the Bank of England Act 1998

Objectives

2.1 The 2012 Act replaced the 'tripartite' system of financial regulation with a new system, putting the Bank at the centre, with a number of new responsibilities and powers. Part 1 of the 2012 Act makes the necessary amendments to the Bank of England Act 1998 ("the BoE Act") to put these changes in place. Sections 1, 2 and 4 and schedule 1 of the 2012 Act amend sections 1, 2A and 13 of the BoE Act, and introduce a new Part 1A and schedule 2A to the BoE Act, to establish the Bank's financial stability objective and requirement to determine, publish and regularly review a 'financial stability strategy', and give the Bank responsibility for macro- prudential regulation through the establishment of the FPC. Section 4 also gives the FPC a key role in safeguarding the UK's financial stability with responsibility for identifying, monitoring, and taking actions to remove or reduce systemic risks to the UK financial system. The decision to create a macro-prudential authority followed a recommendation made by the Turner Review, 'A Regulatory Response to the Global Banking Crisis',[3] published in March 2009.

2.2 In recognition of the Bank's expanded responsibilities under the 2012 Act, section 3 of Part 1 amends section 3 of the BoE Act, to create a new sub- committee of the Court of Directors of the Bank (hereafter 'the Court') to be known as the 'Oversight Committee', comprising non-executive directors (NEDs) of the Bank. The purpose of this committee was to keep the Bank's performance in relation to its objectives, the duties of the FPC, and the Bank's overall strategy under review, among other things. The Oversight Committee was also required to monitor the extent to which the objectives of the Bank in relation to its financial management, as set by the Court, are met, and to keep under review the internal financial controls of the Bank. The procedures followed by the FPC and Monetary Policy Committee (MPC), were also to be kept under review by the committee.

2.3 In terms of operation, the Oversight Committee could be

[3] A Regulatory Response to the Global Banking Crisis', Financial Services Authority, 2009

directed to discharge additional functions by the Court. According to the legislation, 'one or two members' of the Oversight Committee may also attend any meeting of the FPC and MPC but may not speak unless invited to do so by the chair of that meeting.

2.4 Section 4 sets out the FPC's powers of directions and recommendations, including how the regulators must comply with them and the FPC's duty to explain and review the use of its powers. It also sets out the requirement for the FPC to publish its meeting records and biannual Financial Stability Reports, through which the Committee would be held to account. It also sets out a requirement for HM Treasury to publish a record of a meeting between the Governor and the Chancellor which should take place as soon as practicable after the publication of each Financial Stability Report.

2.5 Section 4 also grants HM Treasury powers of recommendation to the FPC, including the requirement that HM Treasury makes recommendations, at least once per calendar year, to the Committee on matters that the Committee should regard as relevant to its understanding of the Bank's financial stability objective and its responsibility in relation to the achievement of that objective. Section 4 also requires HM Treasury to specify the economic policy of Her Majesty's government to the Committee at least once per calendar year, gives HM Treasury the ability to prescribe macroprudential measures, and sets out the requirement of the FPC to respond to any recommendations made to it by HM Treasury.

2.6 Section 5 introduces schedule 2 to the 2012 Act, which amends the provisions of the BoE Act which relate to the MPC and the Court and section 244 of the Banking Act 2009 (immunity), making further changes to the governance of the Bank. These relate to the terms of office of members of the Court: the Governor of the Bank will now serve a single term of eight years rather than up to two terms of five years, whilst NEDs – members of the Court who are not bank executives – will now serve a (renewable) term of up to four years rather than three. Additionally, the section restricts appointment as Deputy Governor to a period of five years (renewable once), rather than three as previously. Neither the Governor nor Deputy Governor(s) may chair the Court.

2.7 Schedule 2 also sets out that the Governor and Deputy Governor(s) were to work exclusively for the Bank. Officers or employees of the Bank are also disqualified for appointment to the Court, other than the person appointed by the Chancellor to be a member of the FPC. Schedule 2 ensures that the inability or unfitness of the Deputy Governor for prudential regulation to discharge the functions of being chief executive of the PRA can

be taken into account in considering their ability or fitness to be that Deputy Governor.

2.8 On membership of the Court, the Chancellor can extend the term of appointment of a member appointed by the Chancellor to the MPC for up to six months. Similar provision is made for members of the FPC who are appointed by the Chancellor in the BoE Act. However, a member who has been appointed to the FPC by the Chancellor is prevented by schedule 2 from being appointed by the Chancellor to the MPC. If any member of the MPC who was appointed by the Chancellor resigns, the Bank must send a copy of their notice of resignation to HM Treasury.

2.9 In terms of accountability, where an enactment expressly confers functions or imposes duties on the Court, the Court may not delegate those functions. The Bank is also required to publish a record of each meeting of the Court within six weeks of the meeting. This should contain a summary of the Court's deliberations and, outline any decisions taken including decisions to take no further action. Schedule 2 also makes clear that the Bank has immunity from liability in damages (save in specified cases) in relation to the exercise or purported exercise of its regulatory functions, including those relating to recognised clearing houses.

2.10 Further provisions were also made for the MPC, relating to the governance of the MPC by the Oversight Committee. Schedule 2 provides the Oversight Committee with the power to review the terms and conditions on which a person holds office as a member of the MPC. The Oversight Committee is also able to remove a member (with the Governor's consent), provided a set of existing conditions is satisfied. Previously, these responsibilities were held by a sub-committee of the Bank.

Implementation

2.11 Part 1 of the 2012 Act came into force in full on 1 April 2013, the day on which the new institutional architecture came into operation.

2.12 The Oversight Committee first met under section 3 on 10 April 2013. The membership of the Oversight Committee consisted of the NEDs of the Bank, as set out in the 2012 Act. Section 3 of the 2012 Act requires the Bank to publish reports on performance reviews commissioned by the Oversight Committee. On 14 November 2014 the Oversight Committee published a report on the role of Bank officials in relation to conduct issues in the foreign exchange market.

2.13 The Oversight Committee has since been abolished by the Bank of England and Financial Services Act 2016, please see paragraph 21.5 for further details.

2.14 As required under section 4, the Court of the Bank published its first Financial Stability Strategy on 1 October 2013.[4]

2.15 The FPC first met as a statutory body under section 4 on 18 June 2013. The membership of the FPC is established by section 9B(1) of part 1A of the BoE Act and consists of the Governor and Deputy Governors, the Chief Executive of the FCA, one member appointed by the Governor in consultation with the Chancellor, four members appointed by the Chancellor and a representative of HM Treasury[5]. On 1 April 2013 the Chancellor appointed the four members set out in part 1A section 9B(1)(e) of the BoE Act. The process of appointing these members was made according to schedule 2A to the BoE Act, with two members initially being appointed for periods of shorter than 2 years so as to ensure that appointments expire at different times.

2.16 Section 5 introduces schedule 2 which made changes to the terms of office for members of the Court, including the Governor. Mark Carney was the first Governor of the Bank to be covered by these new rules.

2.17 Minor amendments to the definition of regulated person, in relation to the PRA, used in the 2012 Act were made by the Financial Services Act 2021.

Secondary legislation

2.18 Commencement orders are described in Annex B. Separately, HM Treasury has prescribed the FPC powers of direction over a number of macroprudential measures. This and other relevant secondary legislation is set out below.

2.19 HM Treasury made The Capital Requirements (Capital Buffers and Macroprudential Measures) Regulations 2014 (2014/894) under its powers in section 2(2) of the European Communities Act 1972. The Capital Requirements (Capital Buffers and Macroprudential Measures) Regulations 2014 (2014/894) introduced provisions on capital buffers and required the FPC to assess and set certain policies relating to the countercyclical capital buffer.

2.20 HM Treasury made The Capital Requirements (Capital Buffers and Macroprudential Measures) (Amendment) Regulations 2015 (2015/19) under its powers in section 2(2) of the European Communities Act 1972. The Capital Requirements (Capital

[4] 'Annual Report and Accounts', Bank of England, 2017

[5] Membership of the FPC was later amended in the Bank of England and Financial Services Act 2016, please see Chapter 21.

Buffers and Macroprudential Measures) (Amendment) Regulations 2015 (2015/19):

- required the FPC to create a methodology for giving systemic risk buffer institutions a systemic buffer rate

2.21 Subsequently the Capital Requirements (Amendment) (EU Exit) Regulations 2018 (2018/1401) and the Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020 (2020/1406):

- made changes to address deficiencies in retained EU law in relation to capital requirements arising from the withdrawal of the United Kingdom (UK) from the EU

- required the FPC set a framework for the Other Systemically Important Institutions buffer, rather than the Systemic Risk Buffer (this change was also carried over to the Bank of England Act 1998 (Macro-prudential Measures) (No.2) Order 2015 (2015/905) mentioned below).

2.22 HM Treasury made The Bank of England Act 1998 (Macro-prudential Measures) Order 2013 (2013/644) under its powers in section 9I(2) and 9L of the BoE Act. The Bank of England Act 1998 (Macro-prudential Measures) Order 2013 (2013/644):

- allowed the FPC to specify an increased level of risk weight that UK banks and investment firms which are PRA-authorised should apply to residential property exposures, commercial property exposures or financial sector exposures, based upon a buffer guide set by the FPC.

2.23 HM Treasury made The Bank of England Act 1998 (Macro-prudential Measures) (No.2) Order 2015 (2015/905) under its powers in section 9I(2) and 9L of the BoE Act. The Bank of England Act 1998 (Macro-prudential Measures) (No.2) Order 2015 (2015/905):

- enabled the FPC to specify a minimum leverage ratio

- enabled the FPC to specify a 'systemic risk buffer (SRB)' institution additional leverage ratio

- enabled the FPC to specify a globally systemic important institution (G-SII) additional leverage ratio

- enabled the FPC to specify a countercyclical leverage ratio buffer for UK banks and UK investment firms

2.24 HM Treasury made The Bank of England Act 1998 (Macro-prudential Measures) Order 2015 (2015/909) under its powers in section 9I(2) and 9L of the BoE Act. The Bank of England Act 1998 (Macro-prudential Measures) Order 2015 (2015/909):

enabled the FPC to specify a proportion of relevant mortgage contracts entered into after the date of the direction that can exceed a maximum loan-to-value specified by the FPC. This measure would apply to all relevant regulated persons

- enabled the FPC to specify a proportion of relevant mortgage contracts entered into after the date of the direction that can exceed a maximum debt-to-income ratio specified by the FPC. This measure would apply to all relevant regulated persons

2.25 HM Treasury made The Bank of England Act 1998 (Macro-prudential Measures) Order 2016 (2016/1240) under its powers in section 9I(2) and 9L of the BoE Act. The Bank of England Act 1998 (Macro-prudential Measures) Order 2016 (2016/1240):

- enabled the FPC to require relevant regulated persons to ensure that, in relation to relevant buy-to-let mortgage contracts which are entered into after the date of the direction, no more than a specified proportion have a loan-to-value percentage greater than a specified maximum loan-to-value percentage

- enabled the FPC to require relevant regulated persons to ensure that, in relation to relevant buy-to-let mortgage contracts which are entered into after the date of the direction, no more than a specified proportion have an interest coverage ratio less than a specified minimum interest coverage ratio

2.26 HM Treasury made the Bank of England Act 1998 (Macro-prudential Measures) (Amendment) Order 2021 under its powers in section 9I(2) and 9L of the BoE Act. The Bank of England Act 1998 (Macro-prudential Measures) (Amendment) Order 2021:

- amends the other four macro-prudential orders cited above in paragraphs 2.22 to 2.25, to ensure they reflect changes introduced by the Financial Services Act 2021

Legal issues and other reviews

2.27 There are no legal issues to report with Part 1. No other assessments of Part 1 have been conducted.

Preliminary Assessment

2.28 The Oversight Committee, established by section 3, achieved the required objective of keeping under review the Bank's performance on its objectives, FPC duties and strategy. However,

overall, the Oversight Committee was not effective in the form that was designated by the 2012 legislation. The Committee was abolished in 2016 as it was deemed an unnecessary extra layer of governance. At this point, oversight functions were instead assigned to the entire Court, through amendments to the legislation made by the 2016 Act, to enable it to operate more like a unitary board. Responsibility for commissioning reviews and monitoring the Bank's response to any recommendations now falls to the entire Court, including its executive members, rather than a sub-committee of non-executives. We believe the legislation as amended delivered its objectives.

2.29 Section 4 requires that HM Treasury: (i) specify the economic policy of Her Majesty's government to the FPC at least once per year; and (ii) make recommendations, at least once per calendar year, to the FPC on matters the Committee should regard as relevant to its understanding of and responsibilities in relation to the achievement of the Bank's Financial stability objective through the format of a 'remit and recommendations letter' from the Chancellor to the Governor. HM Treasury first met these requirements in April 2013. This fulfilled the requirement for HM Treasury to supply this information to the FPC within 30 days of the 2012 Act coming into force

2.30 The FPC responded to this letter and the recommendations, as required, on 23 June 2013. Since this letter the Chancellor has written to the FPC at least once per calendar year to fulfil these requirements, with the Committee responding accordingly through a 'response to the remit and recommendations' letter.

2.31 The FPC has used its powers of recommendations and directions, set out in section 4 since inception, including recommending to HM Treasury that it exercise its statutory power to prescribe a number of macroprudential measures to the FPC, such as enabling the FPC to direct the PRA and FCA to require regulated lenders to place limits on residential mortgage lending in September 2014. HM Treasury has prescribed a number of macroprudential measures to the Committee via secondary legislation (see above). As required by legislation, the FPC has written statements of policy following the prescription of each set of macroprudential measures from HM Treasury. The FPC has also enacted its powers of direction, for example using its powers of direction to implement a UK leverage ratio in 2015.

2.32 As part of its accountability framework detailed in section 4 of the 2012 Act, the FPC first published a Financial Stability Report as a statutory body in June 2013, and twice yearly since then. It also published its first Meeting Record in July 2013, which it has published following every Policy Meeting since.

2.33 HM Treasury first published a record of the post-Financial

Stability Report Chancellor-Governor meeting in June 2016 and has continued to publish a record of that meeting after each Financial Stability Report publication since, as required under section 4. The FPC's Financial Stability Reports and Meetings Records have also been used to record, explain and review the Committee's use of its powers of direction and recommendation.

2.34 The updated terms for executive and non-executive roles on the Court, set out in schedule 2, introduced by section 5, have been reflected in the subsequent recruitment rounds, run by HM Treasury. Changes to terms for the length of appointment for Bank executives has been enacted and the Court is stable, retaining knowledge and experience over time but refreshed regularly, and Court minutes are published regularly. Under section 5, the Court is responsible for managing the strategy of the Bank, other than the formulation of monetary policy, and setting the organisation's strategy and budget and taking key decisions on resourcing and appointments. The Bank publishes a document that sets out how the Court determines the objectives and strategy of the Bank, other than the responsibilities that are reserved to the policy committees, and ensures the effective discharge of the Bank's functions and the most efficient use of its resources.[6] HM Treasury receives quarterly reports on the Bank's budget and any potential risks to public funds.

[6] 'Governance of the Bank including Matters Reserved to Court', Bank of England, 2019

Chapter 3

2012 Act Part 2: Amendments to FSMA 2000

Introduction

3.1 The foundation of the UK's financial services regulatory framework is the Financial Services and Markets Act 2000 (FSMA). FSMA established the overall model for financial services regulation, including establishing the FSA as an operationally independent regulator. Part 2 and schedules 3-16 of the 2012 Act made the necessary amendments to FSMA to put in place the new institutional arrangements described below
– including:

- setting the responsibilities of the new regulators (the FCA and PRA), how they were to discharge their functions and cooperate to achieve and maintain their statutory objectives
- setting the governance structures of the FCA and PRA and the regulatory principles to which they were to have regard
- giving the FCA, PRA and the Bank a range of powers to exercise the functions assigned to them by the 2012 Act, including transferring existing powers from the FSA

3.2 In addition to establishing this new regulatory structure, the 2012 Act made a number of other amendments to FSMA. It:

- implemented the recommendations of the Wheatley Review
- provided powers to transfer consumer credit regulation from the Office of Fair Trading (OFT) to the FCA
- made technical changes to the UK official listings regime and regime for recognised investment exchanges and clearing houses
- gave the regulators new rulemaking powers not previously held by the FSA, including new FCA powers concerning product interventions and the withdrawal of financial promotions; in relation to parent undertakings; and new powers for information gathering and investigations
- made changes to the accountability mechanisms for the

Financial Services Compensation Scheme (FSCS), and the regulatory regime for the Financial Ombudsman Service (FOS)

- made changes to the functions and governance of the Money Advice Service
- put in place a new consumer redress framework
- made further changes to the existing regime, including: arrangements for appeals to the upper tribunal; arrangements for the publication of warning notices marking the start of formal enforcement proceedings; the Part 7 Control of Business Transfers regime; and the power for HM Treasury to direct the regulators not to take a proposed action if it appears to HM Treasury that it would be incompatible with the UK's EU obligations

3.3 The objectives, implementation, and preliminary assessment of the key policy changes made by Part 2, along with any secondary legislation, legal issues or other reviews, are set out below. A detailed description of the individual provisions in Part 2 is set out in Annex A.

Creation of FCA & PRA, transfer of functions from FSA to FCA, PRA and Bank

Objectives

3.4 Prior to the institutional reforms introduced by the 2012 Act, the allocation of regulatory responsibilities was known as the 'tripartite' system of regulation. The financial crisis of 2007-08 revealed serious flaws in this approach to regulation, with perhaps the most significant failing being that no single institution had responsibility, authority or powers to oversee the financial system as a whole. The Bank had nominal responsibility for financial stability but lacked the tools to achieve this; HM Treasury had no clear responsibility for dealing with a crisis which had significant implications for public funds; and all responsibility for financial regulation was in the hands of a single regulator – the FSA – with a remit too broad to ensure clear and effective focus on prudential and conduct regulation.

3.5 The 2012 Act dismantled the tripartite system and created a new architecture for financial regulation. The 2012 Act abolished the FSA and replaced it with two new regulators. The PRA was established to ensure that firms that manage complex risks are effectively regulated. The new FCA was created to protect consumers, promote competition, and protect and enhance integrity in markets. In addition, the FPC was set up with macro-prudential responsibility for protecting and enhancing financial stability.

3.6 This regulatory framework, known as the 'twin peaks' system, was introduced after the financial crisis. Central to its design is the creation of regulators with a much clearer focus on conduct and prudential regulation.

3.7 The FCA was created with a focus on conduct to achieve better outcomes for consumers. Its statutory objectives placed consumer protection, competition and market integrity on an equal footing. To ensure effective conduct regulation, the FCA was given a wide range of enforcement powers – criminal, civil and regulatory – to protect consumers and to take action against firms and individuals that do not meet its requirements.

3.8 The PRA was given two primary objectives by Parliament: a general objective to promote the safety and soundness of the firms it regulates, focusing on the adverse effects that they can have on the stability of the UK financial system; and an objective specific to insurance firms, to contribute to ensuring that policyholders are appropriately protected.

3.9 Responsibility for the regulation of recognised clearing houses, including Central Counterparties (CCPs) and Central Securities Depositories (CSDs) was transferred to the Bank. This, taken with the Bank's responsibilities under other legislation, ensured the Bank's responsibility for the supervision of systemically important clearing, payment and settlement infrastructure.

3.10 Section 6 of the 2012 Act inserted new Part 1A into FSMA, which provided for the establishment of the new regulators, with further provisions in Part 2 enacting the transfer of functions. Please see the remainder of this Part and Annex A for further details.

Implementation

3.11 The FPC, PRA and FCA began operating on 1 April 2013, the day on which the new institutional architecture came into operation, with some provisions commenced on 24 January 2013 for specified purposes, to allow the relevant institutions to prepare.[7]These included provisions which allow HM Treasury to make subordinate legislation, orders and regulations, and give the FCA and the PRA powers to make rules and guidance, codes of practice and statements of policy.[8]

3.12 In preparation for the split on 1 April 2013 ('legal cutover') the FSA was restructured internally on 1 April 2012 into a 'twin peaks' model. Supervision resources were re-aligned, and processes changed to enable the separate structures to take forward their own supervisory priorities in an independent but

[7] 'Annual Report 2012/13', Financial Services Authority, 2013

[8] Some provisions came into effect in February 2013 and March 2013, please see Annex B for further details

coordinated manner.

3.13 This 'twin peaks' structure enabled the FSA to test, improve and implement the design of the PRA and FCA supervision priorities, and to test the coordination arrangements needed when the new regulatory architecture came into effect. The FSA also communicated with firms to explain what the changes would mean for them. Operating under this internal twin peaks framework allowed firms to become familiar with some of the differences involved in dealing with two independent regulators and to consider changes to the way in which they manage their regulatory relationships.

3.14 During this time (from September 2012), the FSA also consulted on changes to regulatory rules and guidance on behalf of the FCA and the PRA. Together with changes to the regulators' requirements, these changes delivered the new FCA and PRA Handbooks.

3.15 As part of the move to Twin Peaks within the FSA, staff were allocated to the prudential and conduct business units, taking account of their skills and experience and also their preferences. This resulted in some internal moves ahead of legal cutover. Staff for the prudential business unit then transferred to the PRA, so no additional external recruitment was required when the PRA was created, beyond that needed to cover normal staff turnover.

3.16 The PRA was set up as a subsidiary of the Bank, as a separate company, owned wholly by the Bank (one nominal share). Staff were not direct employees of the PRA – 1099 staff were transferred over from the FSA to the Bank and formed the core of the PRA's staff. The process of de-subsidiarisation happened later (February 2017), for which there were further internal governance changes to unwind the PRA's legal position.

Secondary legislation

3.17 Commencement orders associated with this section are set out in Annex B.

3.18 The Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 (2013/556) set out which regulated activities are PRA-regulated activities, which means that anyone who wishes to carry on any of these activities in the UK will need to be authorised by the PRA (unless they are otherwise exempt under FSMA). The Order provides that accepting deposits, effecting or carrying out a contract of insurance as principal, managing the underwriting capacity of a Lloyd's syndicate as a managing agent and the arranging, by the Society of Lloyd's, of deals in contracts of insurance at Lloyds, are all PRA-regulated activities. The Order also sets out the criteria which the PRA will apply when considering whether it should designate individual firms dealing in investments as principal for PRA regulation.

3.19 The Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013 (2013/555) amended Schedule 6 to FSMA to set out the threshold conditions (the minimum requirements) that financial services firms must meet to become authorised under FSMA by the PRA or FCA.

3.20 New schedules 1ZA and 1ZB to FSMA required the regulators to pay receipts of enforcement fines to the Exchequer, net enforcement costs. The Payment to Treasury of Penalties (Enforcement Costs) Order 2013 (2013/418) specifies enforcement functions which are relevant for the deduction of enforcement costs from payments made to the Exchequer. The Order also allows the FSA, FCA and the Bank to net off against FSMA penalties those enforcement costs incurred under the various 'standalone' regulatory regimes which those regulators operate - such as the Money Laundering Regulations 2007.

Section 27 of the 2012 Act inserted new Part 12A to FSMA, which strengthened the regulatory framework by providing that the FCA or PRA can take action in relation to a parent undertaking, which is not itself regulated, but which controls and exerts influence over an authorised person. These powers may only be exercised in relation to parent undertakings if the parent undertaking is a financial institution of a prescribed kind. The Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 2013 (2013/165) sets out which financial institutions are 'prescribed financial institutions' under Part 12A of FSMA.

3.21 Schedule 13 to the 2012 Act conferred on the PRA and FCA the FSA's existing powers in relation to auditors and actuaries: to make rules requiring the appointment of an auditor or actuary; to impose duties on auditors and actuaries; and to require authorised persons to produce periodic financial reports, and to have them reported on by an auditor or actuary. The 2012 Act also gave the PRA enforcement powers over auditors and actuaries, which were only exercisable if an order made by Treasury provided for the relevant provisions to have effect. The Financial Services and Markets Act 2000 (Regulation of Auditors and Actuaries) (PRA Specified Powers) Order 2015 (2015/61) gave effect to the enforcement powers of the PRA over the auditors and actuaries.

3.22 Consequential and transitional provisions were made under section 115, 118 and 119 of the 2012 Act to provide for functions and responsibilities of the FSA undertaken before commencement of the new regulatory system, including those relating to complaints made before the 1 April 2013, to be treated as if undertaken by the new regulators.

Legal issues and other reviews

3.23 There are no legal issues to report with this section. In 2011 the International Monetary Fund (IMF) published the United Kingdom: Financial Stability Assessment[9] which acknowledged the plan by the UK government to dismantle the tripartite system and implement the new regulatory structures. In 2016, the IMF published the United Kingdom: Financial Sector Assessment Program – Financial System Stability Analysis,[10] which judged that the new regulators had 'an appropriate foundation for their mandate, powers, independence and ability to direct firms to address weaknesses'.

Preliminary Assessment

3.24 The dismantling of the tripartite approach was intended to address the flaws in the UK's system of regulation revealed by the 2007-2008 financial crisis. The resulting creation of the PRA and the FCA was intended to make the split of responsibilities for prudential and conduct issues clearer and more effective.

3.25 The PRA was established as the micro-prudential regulator of firms which manage significant balance sheet risk as a core part of their business – banks, insurers and the larger, more complex investment firms. A strong micro-prudential focus on the safety and soundness of these firms, combined with a new macroprudential focus brought by the FPC of the Bank, would mean the UK's system of regulation would be much better equipped to prevent the build-up of prudential risk which has the potential to destabilise the financial sector and the wider economy.

3.26 The FCA was created to focus on conduct of business regulation, with the mandate to secure the appropriate degree of protection for consumers, to protect and enhance the integrity of the UK financial system and to promote competition. The FCA was also made responsible for the prudential regulation of firms not within the remit of the PRA.

3.27 The active regulatory reform agenda undertaken by the PRA and FCA to address the failings of the financial crisis, and the progress that has been made to deliver a safer and fairer financial system, demonstrate that the legislation has achieved a more effective focus on prudential and conduct matters in line with the core policy objective behind the creation of the new regulatory architecture.

3.28 Ensuring the UK has a safe, stable and fair financial system is an

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[9] 'United Kingdom: Financial System Stability Assessment', International Monetary Fund, 2011

[10] 'United Kingdom: Financial Sector Assessment Program – Financial System Stability Assessment', International Monetary Fund,2016

ongoing challenge for UK authorities, including for the PRA and FCA. However, the creation of the new regulatory architecture has achieved the core policy objective behind the 2012 Act's institutional reforms: a clearer regulatory focus on prudential and conduct risks. Combined with the UK's post-financial crisis framework for macroprudential regulation, the UK should now be much better equipped to prevent the build-up of prudential risk which has the potential to destabilise the economy, and to address the problems with conduct and culture which led to excessive risk taking and to poor outcomes for UK consumers.

3.29 The UK regulators established in the aftermath of the financial crisis have also played a leading role in driving forward regulatory reform at the EU and global levels. The PRA has made a significant contribution to the Basel committee work on post-financial crisis banking reforms. Working alongside HM Treasury, the PRA has made a similar contribution to the development of the EU's post-crisis prudential reforms, including the Capital Requirements Directive for banks and the Solvency II Directive for insurance business.

3.30 Similarly, the FCA participated in the development of post-crisis financial services policy and legislation to support the EU's regulatory framework for financial services across both prudential and conduct issues. Prior to the UK's exit from the EU, it did this through involvement in the work of the European Supervisory Authorities (ESAs) to develop both technical advice and technical standards, and its engagement with regulatory counterparts at the EU institutions, including through relevant EU its working groups.

3.31 The FCA continues to contribute to international engagement and global standard setting – for example, through its membership of the International Organisation of Securities Commissions (IOSCO), and its various Committees. FCA officials currently chair and vice chair two IOSCO committees (Market Intermediaries, and Investment Management), and chair IOSCO's Task Force on Financial Benchmarks.

The Wheatley Review

Objectives

3.32 In the wake of the alleged misconduct relating to London Inter-Bank Offered Rate (LIBOR) and other benchmarks, the government commissioned an independent review in July 2012, led by Martin Wheatley – then managing director of the FSA and Chief Executive-designate of the FCA. The Review was tasked with formulating policy recommendations with a view to reforming the framework for setting and governing LIBOR, as well as determining the adequacy and scope of sanctions to appropriately tackle LIBOR abuse. The government published a Discussion Paper in August 2012 to consult on the Review's initial thinking on these issues.[11]

3.33 The Review published its final report on 28 September 2012[12] which included a 'ten-point plan' for comprehensive reform of LIBOR. These included recommendations for the government, the LIBOR administrator, the banks and regulators. The recommendations that required UK government actions were:

- the administration of and submission to LIBOR becoming regulated activities
- the creation of controlled functions for both of these activities under FSMA Approved Persons regime
- giving powers to the FSA to prosecute manipulation or attempted manipulation of LIBOR
- legislating to provide the FSA with an express "reserve" power to compel LIBOR submissions, if deemed necessary

3.34 The government accepted all recommendations of the Wheatley Review in a Written Ministerial Statement by HM Treasury on 17 October 2012.[13]To implement recommendations that required primary legislation, the government tabled amendments to the Financial Services Bill 2012 to amend FSMA.

3.35 Section 7 of the 2012 Act inserted several amendments into FSMA to allow the inclusion of benchmark-related activities as "regulated" activities. Section 7 introduced a definition of "benchmark" to section 22 of FSMA, on the basis of the definition proposed in the Wheatley Review. A "benchmark" is an index, rate or price that is determined from time to time by reference to the state of the market, made available to the public, and used to references for purposes of determining the

[11] 'The Wheatley Review of LIBOR: initial discussion paper', The Wheatley Review, 2012

[12] 'The Wheatley Review of LIBOR: final report', The Wheatley Review, 2012

[13] 'Written Ministerial Statements, Wednesday 17 October 2012', Parliamentary Record, 2012

interest payable, the value of investments and/or the performance of investments.

3.36 Section 7 of the 2012 Act amended section 22 of FSMA to provide that HM Treasury may specify, by way of an Order, what activities concerning benchmarks can be "regulated" activities for the purpose of FSMA. New Parts 2A and 2B of schedule 2 to FSMA include activities related to setting and administering benchmarks (i.e. LIBOR) within the scope of FSMA regulation.

3.37 Section 24 of the 2012 Act inserted a new section (137F) into FSMA, which enabled the FCA to make rules requiring authorised persons to contribute to the setting of a specific benchmark, e.g. LIBOR. The FCA may make rules to require authorised persons to provide information of a specified kind to a benchmark setting process. The FCA rules may refer to the Codes issued in relation to the administration of the benchmark.

3.38 More generally, section 24 of the 2012 Act inserted a new section (137A) into FSMA which provided for the FCA to issue general rules applying to authorised persons. The rules may relate to the carrying on of regulated activities. Section 11 of the 2012 Act introduced a new Part 4A into FSMA. Part 4A governs the way in which a person can obtain permission to carry on regulated activities. This new part included a new section (55L), to permit the FCA to impose or vary requirements on an authorised person.

3.39 Before being replaced by the SM&CR through the 2013 Act, the Approved Persons regime under FSMA applied to individuals who had significant influence over the conduct of a firm's affairs in relation to a regulated activity. As the 2012 Act amended FSMA to include benchmark-related activities within the FSMA scope, new controlled functions were subsequently created for the administration of and submitting to LIBOR. Under the new SM&CR of the 2013 Act, these controlled functions in relation to benchmarks were designated as a "Senior Management Function" in the FCA Handbook.

3.40 Part 7 of the 2012 Act also made amendments to FSMA to enable the FCA to prosecute manipulation or attempted manipulation of LIBOR. Details of these amendments are set out in Chapter 8: Offences relating to financial services in this memorandum.

Implementation

3.41 The provisions noted above which implemented recommendations of the Wheatley Review came into force in

full on 1 April 2013, the day on which the new institutional architecture came into operation, with some provisions commenced on 24 January 2013 for specified purposes, to allow the relevant institutions to prepare.

3.42 To implement section 7 of the 2012 Act, the government needed to amend the Financial Services and Markets Act (Regulated Activities) Order 2001 (2001/544) ('the Principal Order') under section 22 of FSMA through secondary legislation to include submitting to and administering LIBOR as regulated activities. The government also needed to make an Order under the sections 93 and 115 of the 2012 Act to create new criminal offence and specify LIBOR as the relevant benchmark to which the offence would apply.

3.43 In November 2012, the government launched a public consultation on the two pieces of secondary legislation prior to the Financial Services Bill receiving Royal Assent[14]. The government considered that it was necessary to take swift action to reform LIBOR.

The consultation also sought views to bring additional benchmarks within the scope of regulation and to extend the list of benchmarks for which the new criminal offence would apply. Following public responses, the government decided not to include additional benchmarks within the scope at the time.

3.44 Following the consultation, the government introduced the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (2013/655) and Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013 (2013/637), described below.

3.45 Subsequently, on 2 April 2013 the FCA "Benchmarks Instrument 2013" came into force. These rules initially applied to LIBOR only. The Financial Services Markets Act 2000 (Regulated Activities) (Amendment) Order 2015 (2015/369) extended the regulation of benchmarks in the UK to include seven additional major UK-based financial benchmarks in the fixed income, commodity and currency markets, implementing recommendations of the Fair and Effective Markets Review. From 1 April 2015, the FCA started applying regulatory requirements to these seven additional major UK-based financial benchmarks.[15]

3.46 The UK regulatory regime for eight benchmarks (including LIBOR) was replaced by the EU Benchmarks Regulation (BMR)[16] from 1 January 2018. The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (2018/135) (which

[14] 'Implementing the Wheatley Review: draft secondary legislation', HM Treasury, 2012

[15] 'Fair and Effective Markets Review: Final Report', Bank of England, 2015

[16] 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

implemented aspects of the EU BMR in the UK), provided for the dual operation of the pre-and post-EU BMR regulatory regimes for benchmarks. This significantly widened the scope of benchmark regulation. At the end of the EU Exit Transition Period, the EU BMR formed part of retained EU law and continues to apply in the UK. Under the BMR, the FCA is the competent authority supervising the provision of, contributing to and usage of benchmarks in the UK.

Secondary legislation

3.47 The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (2013/655) amends the Principal Order. It also made consequential amendments to FSMA to ensure that the consumer objective of the FCA covered consumers affected by manipulation of benchmarks.

3.48 Articles 4 to 6 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (2013/655) inserted a new article and a new schedule into the Principal Order to specify the new regulated activities and to set out the specified benchmarks. Providing information in relation to a specific benchmark and administering a specified benchmark were the two new regulated activities. LIBOR is the specified benchmark. Articles 7 to 10 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (2013/655) set out provisions for the transitional and interim permission for persons undertaking the regulated activities in relation to specified benchmarks.

3.49 The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (2013/655) came into force on 2 April 2013.

3.50 The Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013 (2013/637) was made under sections 93 and 115 of the 2012 Act to create new criminal offences. Details of this Order are set out in Chapter 8: Offences relating to financial services in this memorandum.

3.51 The Financial Services Markets Act 2000 (Regulated Activities) (Amendment) Order 2015 (2015/369) extended the regulation of benchmarks in the UK to include seven additional major UK-based financial benchmarks in the fixed income, commodity and currency markets, implementing recommendations of the Fair and Effective Markets Review.

Legal issues and other reviews

3.52 There are no legal issues to report with section 7, section 11 and section 24 (new section 137F of FSMA) of the 2012 Act. However, these sections were amended by the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (2018/135), which implemented aspects of the EU BMR in the UK and provided for the dual operation of the pre-and post-EU BMR regulatory regimes for benchmarks.

3.53 The Parliamentary Treasury Select Committee (TSC) published its report on LIBOR in August 2012.[17]The report recommended the Wheatley Review to consider how authorities should respond to signs of dysfunction in the setting of LIBOR. The then Chairman of the TSC commented that LIBOR manipulation had done 'great damage' to the UK's reputation and that public trust in banks was at 'an all-time low'. He called for urgent improvements in the way banks were regulated.

3.54 The report criticised the FSA for its box-ticking regulatory approach and called for a risk-based, judgement-led regulatory approach.

3.55 The FSA's internal audit report on LIBOR in March 2013 concluded that the FSA was 'too narrowly focused' in its handling of LIBOR related information during January 2007 to May 2009, due to the FSA's focus on dealing with financial crisis and the fact that contributing to and administering of LIBOR were not "regulated activities".

3.56 In June 2013 the Parliamentary Commission on Banking Standards issued a report on 'Changing Banking for Good'.[18] Amongst other things, this report criticised the 'patchy scope' of the Approved Persons Regime under FSMA which left individuals involved in the LIBOR scandal beyond effective enforcement. It called for establishing a Senior Persons Regime to replace the Approved Persons Regime.

Preliminary Assessment

3.57 The Wheatley Review concluded that market self-regulation for LIBOR had failed and that the framework around LIBOR needed comprehensive reform to tackle LIBOR abuse. At the time there were at least $300 trillion worth of financial contracts referencing LIBOR globally, according to HM Treasury's impact assessment accompanying its amendments to the Financial Services Bill in October 2012.

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[17] 'Fixing LIBOR: some preliminary findings', Treasury Select Committee, 2012.

[18] 'Changing banking for good', Parliamentary Commission on Banking Standards, 2013.

3.58 Primary and secondary legislation was considered necessary by the government to set up a new, robust regulatory framework to enhance the governance and oversight of LIBOR in order to restore market integrity and public confidence.

3.59 In the impact assessment accompanying The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (2013/655), HM Treasury considered that the impact of the legislation was restricted to 23 firms that were contributing to LIBOR and the administrator of LIBOR. It estimated the 23 firms would face £44 million one-off costs and £5.8 million annual costs from regulatory compliance and regulatory fees. The administrator of LIBOR was estimated to face £1.9 million one-off costs and £300,000 annual costs. The costs of supervision by the FCA were estimated at around £400,000 per annum. These costs were to be met through regulatory fees paid by the relevant authorised firms.

3.60 To exercise its new powers as introduced by section 7, section 11 and section 24 of the 2012 Act and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (2013/655), the FSA published a consultation on its regulatory approach to the setting of benchmarks in December 2012. Following consultation, the FCA published Policy Statement PS13/6[19]and Benchmark Instrument 2013 to amend its handbook to set out rules and guidance, including:

- organisational and governance requirements for benchmark administrators to corroborate submissions and monitor any suspicious activity
- requirements for benchmark submitters to have appropriate systems and controls and to manage conflicts of interest
- requirements for FCA approved persons in relation to administering and submitting to benchmarks

3.61 The FCA rules entered into force on 2 April 2013, setting up a new regulatory framework for benchmarks, initially only for LIBOR. HM Treasury extended this framework in April 2015 via The Financial Services Markets Act 2000 (Regulated Activities) (Amendment) Order 2015 (2015/369) to include seven additional major UK-based financial benchmarks in the fixed income, commodity and currency markets, implementing recommendations of the Fair and Effective Markets Review[20].

3.62 In July 2017, the FCA published a consultation on the way in which it could use its compulsion powers for LIBOR contribution. The FCA compulsion power is permitted under section 11 (via

[19] 'PS13/6 The regulation and supervision of benchmarks', Financial Services Authority, 2013

[20] 'Fair and Effective Markets Review: Final Report', Bank of England, 2015

the insertion of new section 55L of FSMA) through the FCA's own initiative or under section 24 (via the insertion of new section 137A of FSMA) and section 24 (via the insertion of new section 137F of FSMA) by making a rule. Since the consultation, the FCA announced on 24 November 2017 that it had secured agreement from 20 LIBOR panel banks to continue to submit to LIBOR until the end of 2021. In March 2018, the FCA published a Policy Statement PS18/5 which set out the approach, criteria and methodology that would apply if the use of compulsion was to become necessary. The FCA said in this Policy Statement that it was its intention that, at the end of 2021, it would no longer be necessary for the FCA to compel submissions.

3.63 An FCA occasional paper in July 2017 found that UK Benchmarks Regulation had a positive effect on the quality of the underlying market, measured by market liquidity. The paper does not represent the position of the FCA.

3.64 The UK regulatory regime for eight benchmarks (including LIBOR) was replaced by the EU Benchmarks Regulation (BMR) from 1 January 2018. The EU legislation significantly widens the scope of benchmark regulation across the EU. Under the BMR, the FCA is the competent authority supervising the provision of, contributing to and usage of benchmarks in the UK.

3.65 Following the end of the Transition Period, the EU Regulation forms part of retained EU law and therefore continues to apply in the UK. In order to ensure that the regime continued to work effectively after the end of the Transition Period, the BMR was amended via the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657).[21] The UK also introduced further amendments through the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 and the Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020.[22]

3.66 The Financial Services Act 2021 amended the Benchmarks Regulation to provide the FCA with enhanced powers to assist the wind-down of a critical benchmark, such as LIBOR. The FCA will exercise these powers to facilitate the orderly wind-down of the LIBOR benchmark at the end of 2021.

3.67 On 8 September 2021, the Government introduced the Critical Benchmarks (References and Administrators' Liability) Act. The Act aims to provide legal certainty as to how contractual references to LIBOR or other critical benchmarks should be treated where the FCA exercises certain powers under the

[21] The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations (2019/657).

[22] The Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019; and TheFinancial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020.

Financial Services Act 2021 to wind them down.

3.68 A preliminary assessment of relevant provisions under sections 7,11 and 24 of the 2012 Act and the amendments made by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (2013/655) is that they successfully implemented a new and robust regime for LIBOR and other benchmarks in the UK, before the EU BMR replaced the domestic regime. Under the 2012 Act, HM Treasury was able to successfully define "benchmarks" and benchmark-related activities for regulation by the FCA.

Transfer of consumer credit regulation from the OFT to the FCA

Objectives

3.69 In March 2013, the government made the decision to transfer regulation of the consumer credit market from the OFT to the FCA. The objectives of this decision were to ensure that regulation:

- was flexible enough to keep pace with this fast-growing and innovative market
- had the powers and resources to protect consumers from actual – and potential – detriment
- put a proportionate and manageable regulatory burden on business
- delivered a well-functioning consumer credit market, which ensures that consumers have access to the credit they need and supports the sustainable growth of the UK economy

3.70 In order to achieve this, section 7 of the 2012 Act extended the scope of regulation, by expanding HM Treasury's powers to specify which activities are regulated activities. Specifically, section 7 amended section 22 and schedule 2 to FSMA to allow activities relating to contracts for loans or other forms of credit, contracts for hire of goods to a person other than a body corporate, and activities relating to information about a person's financial standing to be specified by order as a regulated activity under FSMA.

Implementation

3.71 Section 7 came into force on 24 January 2013, expanding the scope of HM Treasury's powers under section 22 of FSMA to specify regulated activities under FSMA. The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (2013/1881), and the Financial Services Act 2012 (Consumer Credit) Order 2013 (2013/1882) described

below, made the necessary changes to transfer consumer credit to the FCA, coming into force on 1 April 2014.

3.72 The transfer of consumer credit from the OFT to the FCA, which took place on 1 April 2014, effectively doubled the number of firms the FCA regulates, affecting approximately 35,000 consumer credit firms. To support the transfer, staff were moved to the FCA from the OFT, which was closed.

Secondary legislation

3.73 Commencement orders are described in Annex B, all other secondary legislation and guidance are set out below.

3.74 HM Treasury made the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (2013/1881) under its expanded powers in section 22 of FSMA. The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (2013/1881):

- amended the Principal Order to set out which consumer credit activities would become regulated activities
- enabled the FCA to make rules related to consumer credit activity
- made amendments to FSMA, the Consumer Credit Act 1974 (CCA), and related secondary legislation
- repealed provisions of the CCA that could easily be replicated by rules made by the FCA

3.75 For the purpose of the FCA making rules, this Order came into force on 26 July 2013. To the extent that other parts of the Order were not already in force, the Order came into force on 1 April 2014.

3.76 In addition to the above secondary legislation, HM Treasury made the Financial Services and Markets Act 2000 (Consumer Credit) (Designated Activities) Order 2013 (2014/344) under its powers in section 23 of FSMA (contravention of the general prohibition), which were expanded by Schedule 9 of the 2012 Act. The Financial Services and Markets Act 2000 (Consumer Credit) (Designated Activities) Order 2013 (2014/344) made it a criminal offence to undertake debt-collecting and entering into (or exercising rights under) a regulated consumer credit agreement without the appropriate permission, except where the activity relates to an agreement secured on land.

3.77 Finally, the Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2015/853 made further provision in connection with the transfer of consumer credit regulation from the OFT to FCA.

3.78 On 6 March 2013, the FSA published a consultation paper[23] setting out proposals for the FCA's consumer credit regime. Following this, on 3 October 2013, the FCA published a further consultation paper[24] setting out its detailed proposals for the new consumer credit regime, as well as its proposed handbook rules. On 28 February 2014, the FCA published a policy statement,[25] which contained final rules that came into force on 1 April 2014, as well as transitional provisions.

Legal issues and other reviews

3.79 There are no legal issues to report with sections 7, 10, 107 or 108 (please see paragraphs 10.1 to 10.3).

3.80 As stated, the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (2013/1881) repealed certain provisions of the CCA that could easily be replicated by rules made by the FCA. Other provisions remained in the CCA.

3.81 HM Treasury placed a statutory duty under Part 5 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 (2014/366) on the FCA to review the residual provisions by 1 April 2019 and report to HM Treasury on whether the repeal of remaining CCA provisions would adversely affect the appropriate degree of protection for consumers, including consideration of which CCA provisions could be replaced by FCA rules or guidance.

3.82 The FCA concluded this review in March 2019[26] and the government is considering the recommendations of this report.

Preliminary Assessment

3.83 The transfer of regulation has been broadly welcomed by both industry and consumer groups and has proved effective in meeting the objectives set out in the joint HM Treasury and Department for Business, Innovation & Skills consultation as well as the FSA's consultation (CP13/7)[27].

3.84 Over the period of time that the FCA has had regulatory responsibility for the consumer credit market, it has instigated a series of measures designed to protect consumers. Noteworthy examples of these include:

- the introduction of a cap on the cost of high-cost short-term credit (known more commonly as "payday" loans) in

[23] 'FSA CP13/7: Consumer credit regulation - our proposed regime', Financial Conduct Authority, 2013

[24] 'CP13/10: Detailed proposals for the FCA regime for consumer credit', Financial Conduct Authority, 2013

[25] 'PS14/3: Final rules for consumer credit firms', Financial Conduct Authority, 2014

[26] 'Review of retained provisions of the Consumer Credit Act: Final report', Financial Conduct Authority, 2019

[27] 'FSA CP13/7: High-level proposals for an FCA regime for consumer credit', Financial Services Authority, 2013

January 2015 which has provided over £150m in savings for 760,000 consumers each year[28]

- undertaking a comprehensive review of the credit card market from 2014- 2016, leading to interventions to help consumers in persistent debt
- its high-cost credit review, resulting in measures designed to protect some of the most vulnerable consumers of financial services. The review has led to interventions for home-collected credit, catalogue credit and store cards, regulated buy now pay later offers (BNPL), and pricing interventions for both overdrafts and rent-to-own (RTO)
- carrying out supervisory work in respect of firms in different sectors of the credit market resulting in the issuing of a number of 'Dear CEO letters' and Portfolio Strategy letters to firms, for example in relation to complaints handling and high-cost lending. A number of section 166 Skilled Persons Reports have also been required and some firms have undertaken consumer remediation exercises.

3.85 While the transfer of regulation has been effective, concerns have been raised about the complexity presented by the current status of the regulatory regime where much of the CCA remains in statute. The FCA reviewed the retained provisions of the CCA, and HM Treasury is considering whether further reform of the market is necessary and desirable.

Official listings

Objectives

3.86 Sections 16 to 21 of the 2012 Act make amendments to the UK listing regime, as set out in Part 6 of FSMA. 'Listing' means being included in the FCA's Official List – the list of securities, such as shares and bonds, issued by companies which have been admitted to the Official List by the FCA in accordance with Part 6. In February 2011, the government determined that the UK Listing Authority (UKLA)[29], which, at that time, administered the UK listing regime, should remain part of the newly founded FCA,[30] and this technical change was enacted in the 2012 Act. However, the 2012 Act also made a number of technical improvements to the UK listing regime. The intention of these provisions was to strengthen the regime whilst maintaining its reputation as a leading centre for capital raising, and without

[28] 'FS17/2: High-cost credit - Including review of the high-cost short-term credit price cap', Financial Conduct Authority, 2017

[29] Since early 2017, the FCA has been phasing out to the term UK Listing Authority (UKLA) to refer to the FCA's primary market functions. It was found stakeholders were confused by it and sometimes believed it might refer to a separate body. Historic documents may still use the term UKLA.

[30] 'A new approach to financial regulation: building a stronger system', HM Treasury, 2011

compromising the ability of UK businesses to obtain the financing they need. Further detail on these technical improvements is set out below.

3.87 Following the transfer of responsibility from the FSA to the FCA by section 16 of the 2012 Act, section 77 of FSMA provided that the FCA may discontinue or suspend a listing of securities where there are special circumstances which preclude normal dealings with them. Section 78 of FSMA contained the procedure the FCA must follow to do so on its own initiative. Similarly, issuers of securities were also enabled to apply to the FCA for their listing to be discontinued or suspended; section 78A of FSMA contains the procedure for the FCA to follow in this situation. The procedure under section 78A was deemed too onerous in practice as it required the FCA to issue a formal written notice, which meant the FCA could not respond quickly to a request. Section 17 of the 2012 Act therefore amends the requirement on the FCA in section 78A of FSMA to notify the issuer - whether in writing or otherwise – rather than to issue a formal written notice.

3.88 Under section 88 of FSMA, the FCA was empowered to make listing rules requiring issuers to work with sponsors - firms approved by the FCA to advise issuers on their obligations under the listing regime and to provide the FCA with important reassurances regarding certain transactions - for certain purposes. Section 18 of the 2012 Act extends the provisions, which can be made by FCA Rules in relation to the approval of sponsors. In addition, section 18 replaces section 89 of FSMA – which enabled the then FSA to issue a public censure where the sponsor had been found to have contravened a requirement imposed by then FSA rules – with new sections 88A, 88B, 88C, 88D, 88E and 88F. These sections confer on the FCA new supervisory and disciplinary powers in relation to sponsors.

3.89 Section 19 inserted a new section 89P into Part 6 of FSMA, which enabled the FCA to make rules which may require issuers of financial instruments to use 'primary information providers' for the purpose of disseminating information to the market. Primary information providers, which must be approved by the FCA to act in this capacity, act as regulatory information services and disseminate the full text of regulatory announcements required by FCA Rules on behalf of issuers by passing these announcements to news vendors. In addition, section 19 introduces further new sections (89Q to 89V) to FSMA which confer on the FCA new supervisory and disciplinary powers in relation to primary information providers. These powers are similar in scope to those introduced by section 18 of the 2012 Act in relation to sponsors.

3.90 Section 91 of FSMA specifies the types of penalties which may be imposed by the FCA in relation to a breach of Part 6 of FSMA rules. Section 20 of the 2012 Act extended the period in which the FCA can take action against a person for a breach of these rules from two to three years. The intention of this amendment was to achieve consistency with section 66 of FSMA, which deals with penalties imposed on approved persons.

3.91 Section 21 of the 2012 Act repeals section 95 of FSMA. This is because the powers conferred by section 95 of FSMA are no longer needed, as other provisions inserted into FSMA by section 24 of the 2012 Act will apply instead.

Implementation

3.92 Sections 16 to 21 of the 2012 Act came into force in full on 1 April 2013, the day on which the new institutional architecture came into operation.

3.93 Sections 17 and 18 of the 2012 Act come into force on 19 March 2013 for the purpose of making rules. Related to section 17 of the 2012 Act, the FCA added a new guidance provision to LR5.3 - LR5.3.8G - on 1 April 2013. This new guidance provision set out the information which the FCA will include in a notification to the issuer if the issuer requests the FCA to suspend or cancel the listing of its securities under LR5.3.1R and the FCA agrees to do so. Additionally, on this date, the FCA introduced amendments to Chapter 8 of the Listing Rules in relation to sponsors related to the provisions introduced by section 18 of the 2012 Act.

3.94 On 31 January 2014, the FCA introduced new Chapters 1C and 8 into the Disclosure Rules and Transparency Rules sourcebook which are concerned with the new provisions inserted by section 19 of the 2012 Act.

Secondary legislation

3.95 There is no secondary legislation associated to this section, apart from commencement orders set out in Annex B.

Legal issues and other reviews

3.96 There are no legal issues to report with sections 16 to 21 of the 2012 Act. No other assessments of these sections have been conducted.

Preliminary Assessment

3.97 The amendments to FSMA introduced by sections 16 to 21 of the 2012 Act have not been subject to significant comment

from industry.

3.98 Prior to the introduction of section 17 of the 2012 Act, the FCA were required to send issuers a written notice of the action they were intending to take (i.e. to cancel or suspend a security). This involved generating and posting a letter. Following the application of section 17, the FCA are only required to send the issuer a written confirmation once a security has been suspended or removed. While the impact of this change on each individual case has been minimal, the FCA have processed hundreds of suspensions and cancellations since 2013. Collectively, this means the removal of the advance notice requirement will have resulted in an estimated total saving of many weeks' work.

3.99 The FCA introduced several new rules into Listing Rule 8 in response to being granted additional statutory powers to supervise and discipline sponsors by section 18 of the 2012 Act. Action the FCA have taken utilising these powers has included:

- fining two sponsors for breach of certain provisions of Listing Rule 8
- imposing limitations on the services provided by sponsors, at the sponsor's request in relation to five firms
- suspending sponsors at their request on five occasions where these firms have been unable to meet the sponsor approval criteria

3.100 Prior to the introduction of the 2012 Act, the FCA's ability to supervise and discipline sponsors was limited. The amendments introduced by section 18 of the 2012 Act greatly improved the FCA's ability to intervene in the supervision of sponsors, and to reach desirable supervisory outcomes quickly.

3.101 The FCA introduced several rules in relation to primary information providers in response to being granted the power to do so by section 19 of the 2012 Act. These rules are set out in Disclosure and Transparency Rules Chapter 1 C and Disclosure and Transparency Rules Chapter 8. Section 19 of the 2012 Act gave the FCA the power to require issuers to use primary information providers for the purposes of disseminating regulated information. Initially, the FCA did not use this power, because separate FCA Rules required issuers to entrust a Regulatory Information Service (RIS) with the disclosure of regulated information to the market. Following EU Withdrawal, DTR 6.3.3R was updated so that issuers must now use a primary information provider for this purpose. It was felt appropriate to make this change on the basis that the vast majority of issuers used a primary information provider in any event. To date, the FCA have not needed to utilise their supervisory and disciplinary powers to relation to primary information providers granted by

section 19 of the 2012 Act. However, as with the powers introduced by section 18 of the 2012 Act, these powers improve the FCA's ability to supervise and discipline primary information providers.

3.102 Section 20 of the 2012 Act extended the period in which the FCA can take enforcement action against a person for a breach of Part 6 of FSMA rules from two to three years. A number of the FCA's actions under section 91, brought in respect of misconduct that occurred after the limitation period was extended from two to three years, have benefited from that extension in that the relevant warning notices were issued more than two years after the applicable limitation clocks commenced

Recognised investment exchanges and clearing houses

Objectives

3.103 To reflect the new regulatory structure resulting from the division of the responsibilities and powers of the FSA, sections 28 to 35 amended part 18 of FSMA 2000 (Recognised Investment Exchanges and Clearing Houses). Part 18 of FSMA set out the regime under which 'recognised clearing houses' and 'recognised investment exchanges' (together 'recognised bodies') are regulated.

3.104 Through this division of responsibilities and powers, the FCA became responsible for the regulation of recognised investment exchanges and the Bank became responsible for the regulation of recognised clearing houses. When taken with the Bank's existing responsibilities, this made the Bank responsible for the regulation of systemically important clearing, payment and settlement infrastructure. The Bank's financial stability objective (as amended by section 2) applies to its making functions under Part 18.

3.105 Section 29 applies schedule 17A, which simply transfers specific responsibilities and powers the FSA could previously exercise to the Bank, rather than introducing new powers. Section 33 provides for an enforcement regime for the Bank which mirrors provisions in Part 14 of FSMA 2000 (which would have been exercisable by the FSA).

3.106 Section 34 omits Chapters 2 (competition scrutiny) and 3 (exclusion from the Competition Act 1998) of Part 18 after the introduction of other provisions made the Chapters redundant.

3.107 Sections 28 to 32 also make several technical changes to the regimes for recognised bodies, in order to make them more efficient and responsive:

- Section 28 grants HM Treasury the power to amend subsections by order, to expand or narrow the activities for which a recognised body has exemption from general prohibition. This underpins the regimes with which recognised bodies need to comply

- Section 30 permits HM Treasury to confer a power for the Bank to make rules on matters specified by HM Treasury, enabling more prescriptive requirements to be imposed if necessary

- Section 31 grants an additional power to the Bank to direct recognised clearing houses in certain circumstances, for instance, to enhance the financial resilience of a clearing house

- Section 32 introduces a simplified procedure for exercising the power of direction and the revocation of recognition, allowing for a more flexible procedure in order that the Bank can act appropriately, for example, to address a threat to financial stability

Implementation

3.108 Sections 29, 30 and 33 came into force in full on 1 April 2013, the day on which the new institutional architecture came into operation, with some provisions commenced on 24 January 2013 for specified purposes, to allow the relevant institutions to prepare.

3.109 The entirety of sections 28, 31, 32 and 34 came into force on 1 April 2013, the day on which the new institutional architecture came into operation.

3.110 Section 30 grants the power to HM Treasury to be able to confer power to the regulators to make rules. This has been used in the context of the FCA's responsibilities for recognised investment exchanges in line with Markets in Financial Instruments Directive II (MIFID II) requirements: the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (2017/701) inserted into the Recognition Requirement Regulations (RRRs) the power for the FCA to make rules for the purposes of the RRRs generally.

3.111 However, this power has not been used to confer powers to the Bank to make rules for Central Counterparties (CCPs) and Central Securities Depositories (CSDs). This is primarily because such a conferred power (i.e. a rule-making power conferred by the section 30 power) would allow the Bank to make rules for the purpose of the recognition requirements. The introduction of the European Market Infrastructure Regulation (EMIR), Markets in Financial Instruments Regulation (MiFIR), Central Securities Depositories Regulation (CSDR), and a revision of

Markets in Financial Instruments Directive (MiFID II), introduced a series of regulatory reforms which cover the regulation of CCPs and CSDs, and reduced the scope for UK-specific requirements, given they have had primacy over UK law.

3.112 EMIR came into force on 16 August 2012 and its full technical standards came into effect on 15 March 2013. It applies to recognised clearing houses, in the form of CCPs, by obligating them to perform and report in a certain way. Under EMIR, the European Securities and Markets Authority (ESMA) recognises third country CCPs, whilst domestic authorities have powers for a variety of other functions.

3.113 CSDR came into force on 17 September 2014, although several provisions are yet to apply. CSDR introduced new measures for the authorisation and supervision of CSDs, which are another sub-set of recognised clearing houses under FSMA. As with EMIR, the European Commission and ESMA carry out some functions in relation to CSDR, but other functions are delegated to the Bank and FCA as appropriate.

3.114 MiFID II and MiFIR came into application on 3 January 2018. They set requirements for firms who provide financial services or carry out investment activities, as well as the trading venues (including recognised investment exchanges) where financial instruments are traded. At the end of the transition period on 1 January 2021, MiFID II and MIFIR became retained EU law. The UK fixed deficiencies in retained EU law arising from EU exit through the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (UK SI 2018/1403) and subsequent amending statutory instruments. The implementation of MiFID II is contained in or under FSMA 2000, the Data Reporting Services Regulations 2017 and regulators rules.

3.115 Upon leaving the EU, the powers granted through these regulations were transferred, where appropriate, to UK institutions and regulators. Therefore, in light of the new context, the government continues to consider whether it is necessary to confer any additional responsibilities to the regulators.

3.116 This legislation has also impacted on the use of section 28 (the power for HM Treasury to amend subsections of section 285 of FSMA by order, for example to expand or narrow the activities for which a recognised body had exemption from the general prohibition). However, this remains an important power as it underpins the regimes with which recognised clearing houses need to comply.

3.117 Section 31, the additional power for the Bank to direct CCPs in certain situations, has not been used to date, as the Bank has

used other powers or supervisory suasion. However, this tool remains an important tool for the Bank in having the necessary powers to meet their financial stability objective.

3.118 Section 32 amends the procedure to follow before using the powers of direction in section 31 and section 296 of FMSA, and consequently has also not been used to date.

Secondary legislation

3.119 Section 286(4F) of the Financial Services and Markets Act 2000 provides that HM Treasury could make regulations to confer power on the appropriate regulator to make rules for the purposes of the RRRs. HM Treasury did so via the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (2017/701).

3.120 Commencement orders associated to this section are set out in Annex B.

Legal issues and other reviews

3.121 There are no legal issues to report with these sections. No other assessments of these sections have been conducted.

Preliminary Assessment

3.122 Where powers of the FSA have been transferred to the Bank and/or FCA, particularly to the regulation of recognised bodies, this has not been subject to significant comment. These powers are necessary to ensure the Bank can comply with both regulations and statutory requirements.

3.123 As explained in the implementation section, some powers introduced for the Bank have not been used to date, in part due to the introduction of a series of EU legislation. This has not been subject to significant comment.

Temporary product intervention powers

Objectives

3.124 Through the 2012 Act, the government set out to strengthen the powers of the FCA as a conduct of business regulator, which has as one of its core purposes protecting consumers and enhancing consumers' confidence in financial services. In particular, under the amendments made by section 24 of the Act, the FCA was given product intervention powers (to enable it to ban products or restrict features of them) and a power to direct a firm to withdraw financial promotions which breach or are likely to breach financial promotion rules.

Implementation

3.125 The provisions in section 24 came into force in full on 1 April 2013, the day on which the new institutional architecture came into operation, with some provisions commenced on 24 January 2013 for specified purposes, to allow the relevant institutions to prepare.

Secondary legislation

3.126 There is no further secondary legislation associated to this section, aside from that set out in Annex B.

Legal issues and other reviews

3.127 There are no legal issues to report with these sections. No other assessments of these sections have been conducted.

Preliminary Assessment

3.128 The temporary product intervention provisions introduced by section 24 gave the FCA greater powers to intervene in markets. The FCA was empowered to act in an expeditious manner (i.e. without the need for consultation or cost benefit analysis) under certain conditions. The powers are time-limited to 12 months. The FCA has had recourse to these powers, commonly referred to as 'temporary product intervention' powers: in relation to the retail distribution of contingent convertible securities (2014) and promotion of speculative mini-bonds to retail consumers (2019).

FSCS and FOS

Objectives

3.129 The 2012 Act created the FCA and PRA in place of the FSA. It also set out provisions for the relationship the two newly created regulators would have with the Financial Ombudsman Service (FOS) and the Financial Services Compensation Scheme (FSCS).

3.130 Section 38 of the 2012 Act introduced schedule 10, which amends Parts 15 (FSCS) and 15A (Power to require FSCS manager to act in relation to other schemes) of FSMA to reflect the new regulatory structure, including providing powers to the PRA and FCA to make rules in relation to the FSCS. Schedule 10 also includes duties on the FSCS to cooperate with the regulators, requires the FSCS to prepare an annual plan, and requires the FSCS to submit its accounts to the National Audit Office.

3.131 Section 39 of the 2012 Act introduced schedule 11, which made amendments to Part 16 of FSMA (The Ombudsman Scheme) to reflect the new regulatory regime. It set out provisions concerning the relationship between the FOS, FCA and PRA. It also strengthened the accountability mechanisms relating to the FOS to make it accountable to Parliament and the public.

Implementation

3.132 Section 38 and 39 came into force in full on 1 April 2013, the day on which the new institutional architecture came into operation, with some provisions commenced on 24 January 2013 and 19 March 2013 for specified purposes, to allow the relevant institutions to prepare.

Secondary legislation

3.133 Commencement orders associated with this section are set out in Annex B.

3.134 As set out above, section 38 of and schedule 10 to the 2012 Act amends Parts 15 and 15A of FSMA, including providing powers to the PRA and FCA to make rules in relation to the FSCS. The Financial Services and Markets Act 2000 (Financial Services Compensation Scheme) Order 2013 (2013/598) allocates rule-making responsibilities between the PRA and FCA, broadly reflecting the overall split of their regulatory responsibilities. The PRA is given responsibility for compensation rules for deposit takers and insurers, and the FCA for all other types of financial activity.

Legal issues and other reviews

3.135 There are no legal issues to report with these sections. No other

assessments of these sections have been conducted.

Preliminary assessment

3.136 Section 38 makes a series of changes to the legislation which establishes the relationship between the FSCS, as the compensation scheme of last resort, and the PRA and FCA, as the regulatory and supervisory authorities with responsibility for the financial services industry. These changes were made as a consequence of the replacement of the FSA by the PRA and FCA. They therefore largely reflect the transfer of the FSA's responsibilities with regard to the FSCS from the FSA to the PRA and FCA. The PRA and FCA continue to exercise these responsibilities with regard to the FSCS, including setting the rules within which the FSCS operates through the Depositor Protection and Policyholder Protection parts of the PRA Rules and the COMP (Compensation) and FEES (Fees Manual) parts of the FCA rules. Some specific changes introduced by section 38 are noted below.

3.137 The provisions introduced by section 38 include a requirement that each regulator and the FSCS take such steps as they consider appropriate to co- operate with each other in the exercise of their functions. To that end, the regulators and the FSCS are required by the provisions introduced in section 38 to prepare and maintain a memorandum describing how that regulator and the FSCS will co-operate. Both the PRA and the FSCS[31] and the FCA and the FSCS[32] have established such memoranda.

3.138 The provisions in section 38 also require the FSCS to prepare an annual plan[33] and an annual report[34] each financial year. These plans and reports are published online.

3.139 In addition, the provisions introduced by section 38 require that the FSCS must send a copy of its annual accounts to the Comptroller and Auditor General and HM Treasury as soon as is reasonably practical. HM Treasury must lay the copy of the certified accounts and report before Parliament. HM Treasury has undertaken this function as required by the provisions introduced by section 38.

3.140 Section 39 makes a series of changes to place new obligations on the FOS. This included placing a duty on the FOS to publish reports of determinations (unless in the ombudsman's opinion it would be inappropriate). This was in order to increase the

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31 'Memorandum of Understanding between the Bank of England and the Financial Services Compensation Scheme Ltd.', Bank ofEngland and Financial Services Compensation Scheme, 2019

32 'Memorandum of Understanding between the Financial Conduct Authority and the Financial Services Compensation Scheme',Financial Conduct Authority and Financial Services Compensation Scheme, 2014

33 'Plan and Budget 2020/21', Financial Services Compensation Scheme, 2020

34 'Financial Services Compensation Scheme Annual Report and Accounts 2018/19', Financial Services Compensation Scheme

transparency of the FOS's decision making. The FOS has complied with this requirement and has an online database[35] which holds all the final decisions that the FOS has published since 1 April 2013.

3.141 The provisions in section 39 also require the FOS to disclose information to the FCA in circumstances where it considers the information might be of assistance to the FCA in advancing one of more of its operational objectives. HM Treasury has seen evidence that the FOS shares a wide range of information with the FCA that assists the FCA in advancing its operational objectives, including about firms not complying with decisions, concerns about firms' conduct, trends in the types of complaints the FOS is receiving, and other relevant information.

3.142 The provisions in section 39 also required the FOS and the FCA to each take such steps as considered appropriate to co-operate with the other in the exercise of their functions, including preparing and maintaining a Memorandum of Understanding describing how they will co-operate.[36]

3.143 In addition, the provisions in section 39 require that the FOS must send a copy of its annual accounts to be audited by the National Audit Office, which carries out the functions of the Comptroller and Auditor General. HM Treasury must lay the copy of the certified accounts and report from the National Audit Office before Parliament. This was to enhance the accountability of the FOS and ensure that Parliament is in a position to properly consider the efficiency, effectiveness and economy with which it carries out its functions. The FOS and HM Treasury have undertaken these functions as required by section 38.

[35] 'Ombudsman decisions', Financial Ombudsman Service, 2020

[36] 'Memorandum of Understanding between the Financial Conduct Authority (the FCA0 and the scheme operator, the FinancialOmbudsman Service Limited', Financial Conduct Authority, 2015

Information gathering and investigations

Objectives

3.144 Section 41 of the 2012 Act introduced Schedule 12, which transferred the FSA's information-gathering powers to the FCA and the PRA and strengthened those powers, notably by granting a power for the FCA and the PRA to directly appoint a skilled person to produce a report into an authorised person and to recoup its costs from the authorised person and by granting a power to collect and update information.

Implementation

3.145 Section 41 of the 2012 Act introduced schedule 12 which made amendments to Part 11 of FSMA (Information gathering and investigations). Schedule 12 also made amendments to Part 23 of FSMA (Public record, disclosure of information and co-operation.

Secondary legislation

3.146 Commencement orders associated to this section are described in Annex B.

Legal issues and other reviews

3.147 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

3.148 Skilled persons reports have continued to be used by the regulators to obtain information, analysis, expert advice and recommendations or assurance about a firm from an independent expert. Skilled persons reports can be used to support either the enforcement or supervisory functions of the FCA or PRA, as set out in the FCA handbook and PRA Supervisory Statement SS7/14.[37]

3.149 The power introduced for the regulator to directly appoint a skilled person has been used by the regulators (for instance, twice by the FCA[38] and two times by the PRA[39] for 2020/21).

3.150 The FCA and PRA have not yet used the additional power to use a skilled person to collect and update information. However, this tool may be used in the future.

[37] 'SUP 5.3 Policy on the use of skilled persons', Financial Conduct Authority, 2020.

[38] 'Financial Conduct Authority Annual Report and Accounts 2018/19', Financial Conduct Authority, 2019

[39] Prudential Regulation Authority Annual Report 2019, The Bank of England, 2019

Consumer redress framework

Objectives

3.151 Section 43 established a regime under which the FCA can be alerted to matters in UK financial services markets that significantly damage (or appear to damage) the interests of consumers. The FCA must respond within 90 days. In particular, section 234C enables designated consumer bodies to make a super-complaint to the FCA. Section 234D enables regulated persons and the Financial Ombudsman Service to refer cases to the FCA where there may have been a failure by a regulated person to comply with applicable requirements, and on the condition that if a complaint were made under the ombudsman scheme, that the FOS would be likely to determine the complaint in favour of the complainant.

Implementation

3.152 Section 43 came into force in full on 1 April 2013, the day on which the new institutional architecture came into operation, with some provisions commenced on 24 January 2013 for specified purposes, to allow the relevant institutions to prepare.

Secondary legislation

3.153 Commencement orders associated with this section are described in Annex B.

3.154 The Financial Services and Markets Act 2000 (Designated Consumer Bodies) Order 2013 (2013/3191) designated consumer bodies that may bring 'super- complaints' the FCA on behalf of consumers. Such complaints benefit from a 'fast track' procedure, under which the FCA must publish a response within ninety days, stating how it proposes to deal with the complaint and the reason for its proposals.

Legal issues and other reviews

3.155 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

3.156 The provisions in section 43 gave the FCA stronger powers in relation to competition or matters which adversely affect the interests of consumers. It also enabled bodies which represent the interests of consumers to make a complaint to the FCA about features of UK financial markets which appear to be significantly damaging the interests of consumers.

3.157 Super-complaints should be referred to the FCA through a designated mailbox. No referrals have been made via this mailbox under this section. Although the FCA has been involved in two super complaints (loyalty pricing and push payments), these were made under the jurisdiction of the Competition and Markets Authority (CMA) under the Enterprise Act 2002, and the Payment Systems Regulator (PSR) under the 2013 Act respectively, who took the lead in those instances.

Consumer Financial Education Body

Objectives

3.158 Section 45 of the 2012 Act introduces schedule 15, which makes amendments to schedule 1A to FSMA, titled 'Further provision about the Consumer Financial Education Body'. In 2012, this body was the Money Advice Service (MAS).

3.159 MAS was established by the Financial Services Act 2010, as a consolidated part of the FSA[40]. MAS was an arms-length body accountable to HM Treasury, but with the FSA holding statutory responsibility for approving MAS's budget and business plan, and for appointment or removal of its Board. In establishing MAS, the government's objective was to enhance:

- the understanding and knowledge of members of the public of financial matters
- the ability of members of the public to manage their own financial affairs

3.160 The main purpose of section 45 was to reflect changes in the regulatory structures, with the FCA taking on the responsibilities and functions of the FSA in relation to MAS. Section 45 and schedule 15 also make a number of further changes to schedule 1A of FSMA to improve joint working between the FCA and MAS. It introduced provisions to:

- ensure better cooperation and information sharing between the FCA and MAS, by requiring both to agree a new memorandum of understanding (MoU) on how they would achieve this, and requiring MAS to disclose information it held that, in its opinion, would or might be of assistance to the FCA in advancing one or more of the FCA's operational objectives
- create more regular accountability structures for MAS by giving HM Treasury the ability to require MAS to comply with a provision of the Companies Act 2006 about accounts and

[40] The Financial Services Act 2010 amended FSMA, inserting schedule 1A (further provision about the consumer financial educationbody

their audit which would not otherwise apply to it; and ensuring that MAS' annual reports and accounts would be sent to HM Treasury, examined by the Comptroller and Auditor General and laid by HM Treasury in Parliament

Implementation

3.161 Section 45 came into force in full on 1 April 2013 when the new institutional architecture came into operation, with some provisions commenced on 24 January 2013 for specified purposes, to allow the relevant institutions to prepare.

Secondary legislation

3.162 No other secondary legislation is associated to this section, apart from commencement orders set out in Annex B.

Legal issues and other reviews

3.163 There are no legal issues to report with section 45.

3.164 Following the legislation, there was further focus on the effectiveness of MAS. The TSC conducted an inquiry into MAS over 2012-2013, publishing a report in December 2013. This report highlighted a range of areas for improvements and concluded that the FCA needed additional statutory powers to hold MAS to account.[41]The report called for the government to commission an independent review, to consider whether MAS should continue to exist as a statutory organisation.

3.165 The independent review, undertaken by Christine Farnish in March 2015, concluded that MAS needed to deliver better value for consumers and that its accountability structures should be strengthened.[42]The government's response welcomed the recommendations, and committed to formalise and increase the regularity of its meetings with MAS, and require bi-annual progress reports. In the longer term, the government committed to publish the conclusions of its analysis on MAS's future by the end of 2015.[43]

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[41] 'Money Advice Service Seventh Report of Session 2013–14', Treasury Select Committee, 2013.

[42] Review of the Money Advice Service, Christine Farnish, 2015.

[43] The government's response to the independent review of the Money Advice Service, HM Treasury, 2015.

Preliminary Assessment

3.166 Whilst the amendment to MAS's governance and accountability structures in 2012 was a positive step, the independent review highlighted that more comprehensive changes were needed to improve MAS's effectiveness and its accountability structure.[44]In response, the government undertook a thorough assessment of the future of MAS, including extensive consultation between 2015 and 2016.[45]

3.167 The consultation process looked widely at the structure of, and services provided by MAS, The Pensions Advisory Service (TPAS) and Pension Wise. It concluded that a single financial guidance body (SFGB) would provide a more effective service and should be established in legislation with specific statutory objectives as an arm's-length body, a clear accountability structure, and an independent board.

3.168 Consequently, the government passed the Financial Guidance and Claims Act in May 2018 to replace MAS, TPAS and Pension Wise with the SFGB, a non- departmental public body sponsored by the Department for Work and Pensions and accountable to Parliament. The SFGB's objectives are:

- to improve the ability of members of the public to make informed financial decisions
- to support the provision of information, guidance and advice in areas where it is lacking
- secure that information, guidance and advice is provided to members of the public in the clearest and most cost-effective way
- to ensure that information, guidance and advice is available to those most in need of it
- work closely with the devolved authorities

3.169 The SFGB's accountability structures are laid out in law, requiring the body to prepare a statement of accounts in respect of each financial year to be examined and certified by the Comptroller and Auditor General and laid before Parliament, and to inform Parliament of its activities through an annual report. The organisation was set up as the SFGB in October 2018 and then renamed the Money and Pensions Service (MAPS) in April 2019.

3.170 Whilst the original policy objectives to (a) update the governance of MAS, with the FCA taking on the responsibility

[44] Review of the Money Advice Service, Christine Farnish, 2015.

[45] Public financial guidance: consultation, HM Treasury, 2015; 'Public financial guidance review: proposal for consultation, HMTreasury, 2016; Public financial guidance review: consultation on a single body, HM Treasury, 2016

from the FSA; and (b) improve the joint working between the regulator and MAS were narrowly achieved by the 2012 Act, it did not adequately address the wider and deeper issues surrounding the effectiveness and accountability structures of MAS. The government have thoroughly reviewed these issues, and effectively addressed them by establishing a successor body to MAS (MAPS), to simplify the financial guidance landscape, offer more holistic support to consumers and have greater accountability to government.

Chapter 4
2012 Act Part 3: Mutual Societies

Objectives

4.1 The FSA exercised two distinct sets of functions in relation to mutual societies. First, it exercised functions under the legislation which governs the establishment and operation of mutual societies; for example, under the Building Societies Act 1986, the FSA registered building societies. Second, under FSMA, the FSA regulated those mutual societies that undertake regulated activities such as accepting deposits and entering into a regulated mortgage contract as a lender. Part 3, sections 50 to 54, have the objective of ensuring that functions in relation to mutual societies could be transferred from the FSA to the FCA and/or the PRA to ensure that the new system of financial services regulators could continue to exercise these two distinct functions in relation to mutual societies.

4.2 To achieve these objectives, sections 50 to 54 make the following provisions to update the regulation of mutual societies to reflect the new regulatory structure:

- sections 50 to 51 give HM Treasury the power to make regulations transferring functions of the FSA with regard to mutual societies to the FCA and/or the PRA, and functions of a Northern Ireland department or the Registrar of Credit Unions for Northern Ireland (the registration function for mutual societies in Northern Ireland) to the FCA and/or PRA
- section 52 gives HM Treasury the power to apply/disapply sections of FSMA which relate to functions transferred from the FSA under section 50 and section 51(3)
- orders made under section 50 may include provisions transferring property held in connection with the function transferred. Section 53 allows HM Treasury to issue certificates as conclusive evidence of the transfer of such property
- section 54 repeals provisions in Part 21 of FSMA, which enable transfers of functions to the FSA in the implementation of FSMA and so are no longer needed

4.3 Separately, section 50 (4) has the objective of transferring the registration function for mutual societies in Northern Ireland

to the PRA/FCA, to ensure that mutuals in Northern Ireland were registered through the same process as those in the rest of the United Kingdom.

4.4 Sections 55 to 57 make a number of further changes to the legislation governing, and the regulation of, mutual societies. They:

- amend the section 9B of the Building Societies Act 1986 to allow the creation of floating charges, which are securities over an undefined set of assets – for example, a building society's mortgage book – that fluctuate in the course of business, in connection with participation in a payment or securities settlement system. This has the objective of providing for a level playing field between banks and building societies in connection with participation in payment or securities settlement systems
- create an additional power for the PRA or FCA to direct a building society to transfer its business to a company that is a subsidiary of a mutual, under the modified procedure created under The Mutual Societies (Transfers) Order 2009, S.I. 2009/529. This power is introduced as a pre-emptive measure, as a tool in the supervision of a building society under particular circumstances

Implementation

4.5 The sections relating to mutual societies came into force as of 1 April 2013, the day on which the new institutional architecture came into operation.

4.6 The Financial Services Act 2012 (Mutual Societies) Order 2018 (2018/323) transfers the registration function for Industrial and Provident Societies, and credit unions from the Department for the Economy Northern Ireland to the FCA. Friendly societies and building societies were already operating under UK wide legislation for which the FCA was the registering authority. This ensured that mutuals in Northern Ireland were registered through the same process as those in the rest of the United Kingdom.

4.7 Section 55, the provision to allow building societies to create floating charges in connection with participation in a payment or securities settlement system, was brought into force on 1 April 2013. This section was subsequently omitted by paragraph 4, schedule 9 to the Financial Services (Banking Reform) Act 2013. When commenced, this new provision repealed section 9B of the Building Societies Act (which section 55 of the 2012 Act had amended) and allowed building societies to create floating charges. The relevant provision in the 2013 Act was commenced by The Financial Services (Banking Reform) Act 2013 (Commencement No 8 and Consequential Provisions)

Order 2015 (2015/428).

4.8 The additional power for the PRA/FCA to direct the transfer of a building society's business provided for by section 56 has not been used by the PRA/FCA to date, as the particular circumstances where its use would be warranted have not arisen.

Secondary legislation

4.9 Commencement orders associated with this section are described in Annex B.

4.10 For the sections relating to mutual societies, the Financial Services Act 2012 (Mutual Societies) Order 2013 (2013/496) allocates the FSA's powers to the FCA and PRA as outlined in the objectives section above. This SI was made on 5 March 2013 and came into force as of 1 April 2013.

4.11 The Financial Services Act (Mutual Societies) Order 2018 (2018/323) transfers the registration function for mutuals from the Department for the Economy in Northern Ireland to the FCA as outlined in the implementation section above. This SI was made on 6 March 2018 and came into force as of 6 April 2018.

Legal issues and other reviews

4.12 There are no legal issues to report with these sections. No other assessments of these sections have been conducted.

Preliminary Assessment

4.13 Sections 50 to 54 (with the exception of section 50 (4)) transfer the powers of the FSA to the PRA and/or FCA where appropriate, and made consequential provision. This distribution of powers between the PRA and FCA, particular to the regulation and registration of mutual societies, has not been subject to significant comment.

4.14 Section 50 (4) transfers the registration function for mutual societies in Northern Ireland from the Department for the Economy in Northern Ireland to the FCA. When this change was implemented in 2018, concern was raised by the mutuals sector in Northern Ireland about the changes in fees chargeable to mutual societies in Northern Ireland following the transfer to the FCA. The FCA consulted on fees for mutual societies in November 2018, and subsequently implemented changes to the fees charged to mutuals resulting in the removal of the period fee relating to the registration function. The FCA also removed the fees for public documents made available under the mutuals legislation.

4.15 Section 55 amends section 9B of the Building Societies Act

(1986) to allow the creation of floating charges, in connection with participation in a payment or securities settlement system. The 2013 Act subsequently provides for greater freedom for building societies in creating floating charges, repealing section 9B of the Building Societies Act 1986 entirely and removing any restrictions on the creation of floating charges.

4.16 The additional power for the PRA or FCA to direct the transfer of a building society's business provided for by section 56 has not been used by the PRA/FCA to date, as the particular circumstances where its use would be warranted have not arisen. However, the PRA consider this power to be an important tool in the supervision of building societies, under particular circumstances.

Chapter 5

2012 Act Part 4: Collaboration between Treasury, Bank, FCA or PRA

Objectives

5.1 Part 4, sections 58 to 67, of the 2012 Act contains a range of measures to increase cross-authority cooperation in the event of a financial crisis.

5.2 Section 58 requires the Bank to notify HM Treasury when a material risk to public funds arises. The Bank is required to do so through a 'Public Funds Notification'. Section 59 sets out that where the Bank has given a Public Funds Notification, and the risk giving rise to that notification has substantial changed or ceased, the Bank must notify HM Treasury.

5.3 Sections 60 to 63 give HM Treasury powers of direction over the Bank in certain circumstances and specifies the conditions under which these powers of direction can be used. The provisions also place a duty on HM Treasury, the Bank and the PRA to work together on their functions so far as they relate to the stability of the UK financial system and affect the public interest (section 64).

5.4 Section 65 ensures that a Memorandum of Understanding (MoU) is prepared between the Bank, PRA and HM Treasury on coordination of crisis management arrangements.

5.5 Section 66 ensures that a separate Memorandum of Understanding (MoU) is prepared between HM Treasury, the Bank, the FCA and the PRA on coordination of functions in relation to membership and involvement with the European Supervisory Authorities, EU institutions and other international organisations. The MoU must also make provision for there to be a committee for these purposes, which must include representatives of the UK authorities and be chaired by a representative of HM Treasury.

Implementation

5.6 Sections 58 to 63 and sections 65 and 66[46] came into force in full on 1 April 2013, the day on which the new institutional architecture came into operation. Section 64 commenced on 24 January 2013 for specified purposes, to allow the relevant institutions time to prepare.

5.7 The MoU on Crisis Management between HM Treasury on the one hand, and the Bank, including in its capacity as the PRA outlined in section 65 has been published in accordance with the provisions of the 2012 Act[47].

5.8 The MoU on international organisations between HM Treasury, the Bank, the FCA and the PRA in section 66 has been published in accordance with the provisions of the 2012 Act[48].

Secondary legislation

5.9 There is no further secondary legislation associated with this section aside from that set out in Annex B.

Legal issues and other reviews

5.10 There are no legal issues to report with these sections. No other assessments of these sections have been conducted.

Preliminary Assessment

5.11 The overall intention of the provisions in sections 58 to 65 of the 2012 Act was to establish a framework for coordination of financial crisis management between HM Treasury and the Bank. The authorities continue to act in accordance with these provisions in their respective roles.

5.12 For example, there is cross-authority understanding between the Bank and HM Treasury on the role of a Public Funds Notification. This understanding is expressed in the MoU on crisis management, which the authorities have established as required by the provisions in the 2012 Act and which is updated as necessary.

5.13 The overall intention of the provision in section 66 of the 2012 Act was to increase cross-authority coordination in international engagement, particularly with the European Supervisory Authorities and EU institutions, by ensuring the UK authorities agreed consistent objectives in relation to matters of common interest and exercise their relevant functions in a way that is likely to advance those objectives.

5.14 An international coordination committee was established by the

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[46] Sections 65 and 66 came fully into force on 1 April 2013 but were in force from 24 January 2013 for the purpose of preparationof each memorandum

[47] 'Memorandum of Understanding on resolution planning and financial crisis management', HM Treasury, 2017

[48] 'Memorandum of Understanding: International Organisations', Bank of England, 2013

MoU to meet this purpose, and first met in 2014. The committee has met quarterly, in a single meeting format until November 2017 and since then through two sets of meetings covering EU and non-EU issues respectively, reflecting the UK's then changing relationship with the European Union.

5.15 The MoU was last reviewed in 2017 with agreement that no changes were necessary at that time. In 2018 HM Treasury deferred subsequent reviews until after the UK had left the EU to enable the MoU to be revised in light of the UK's changing international relationships. HM Treasury is reviewing the MoU, including the Annex of relevant international organisations, to reflect the UK's departure from the EU.

Chapter 6

2012 Act Part 5: Inquiries and investigations

Objectives

6.1 Part 5 of the 2012 Act sets out provisions that require the regulators to conduct investigations on possible regulatory failures (sections 73 to 82). It also gives HM Treasury the power to arrange independent inquiries into regulatory failures (sections 68 to 72) or to direct the regulators to undertake an investigation (section 77).

6.2 Sections 68 to 72 largely replicate pre-existing provisions in sections 14 to 18 of FSMA (which were replaced by Section 6 of the 2012 Act), making changes to reflect new regulatory structures. They provide that inquiries may be arranged by HM Treasury where events have occurred which caused or risked serious harm in relation to collective investment schemes, regulated activities, listed securities or their issuer, recognised clearing houses, central securities depositories or recognised or regulated payment systems, and where those events may not have occurred but for a serious failure in the legislative regime for regulation or its operation.

6.3 Sections 73 to 83 of the 2012 Act put in place a statutory basis for investigations, as distinct from the inquiries mentioned in paragraph 6.2 above.

6.4 Under sections 73 to 83, provisions are made for the FCA and PRA to investigate possible regulatory failure and report to HM Treasury on the results of the investigation (section 73 and 74). A further provision is made to enable HM Treasury to require the FCA or PRA to carry out an investigation and produce a report if HM Treasury consider that it is in the public interest to do so and it does not appear to HM Treasury that the regulator has undertaken or is undertaking such an investigation (section 77). Sections 75 to 76 and 78 to 83 make provisions for the circumstances in which investigations can or must be carried out, and for how investigations must be conducted and reported on – including requiring the regulators to produce a report, to be made available to Parliament, with the objective of providing greater accountability to Parliament and the public in cases of possible regulatory failure and, where appropriate, holding the regulator to account.

Implementation

6.5 Sections 68 to 83 were brought into force in full on 1 April 2013, the day on which the new institutional architecture came into operation, with some provisions commenced on 24 January 2013 for specified purposes, to allow the relevant institutions to prepare.

6.6 To date, two investigations have been launched using powers under Part 5: the Independent Review of the Co-operative Bank plc (Co-Op) and the Investigation into London Capital & Finance plc (LCF). In both cases, the investigation was launched following a Treasury direction under Section 77.

6.7 Powers under sections 68 to 72 to undertake independent inquiries have not been used, as the circumstances in which an inquiry would be warranted have not yet arisen.

6.8 Part 5 was amended by the 2013 Act to extend requirements for inquiries and investigations into regulatory failure to the PSR (section 76A).

Secondary legislation

6.9 No other secondary legislation is associated to this section, aside from commencement orders set out in Annex B.

Legal issues and other reviews

6.10 There are no legal issues to report with these sections.

Preliminary Assessment

6.11 Part 5 of the 2012 Act (sections 68 to 83) sets out the framework under which inquiries and investigations are arranged. This assessment focuses its evaluation on sections 73 to 83, as, as set out above, sections 68 to 72 have never been used as the circumstances in which an inquiry under these sections would be warranted have not arisen.

6.12 Prior to the 2012 Act, there was a limited statutory basis under which inquiries could take place, which, as set out above, made provision only for major inquiries. There was no statutory basis for investigations into possible regulatory failure to be arranged, either by the regulator or at HM Treasury's direction. Voluntary (non-statutory) independent reviews could however be arranged by the regulator and these remain in use today. Examples include the independent lessons learned reviews commissioned by the FCA's Board into the redress scheme for Interest Rate Hedging Products and the handling of the Connaught Income Fund Series 1 and connected companies.[49]

[49] 'Independent reviews of Interest Rate Hedging Products and the Connaught Income Fund Series 1', Financial Conduct Authority,2019

6.13 Part 5, sections 73 to 83, introduced a statutory system for the ordering and conducting of investigations. Specifically, under section 73/74, and section 77, two mechanisms were introduced to ensure that cases of possible regulatory failure were investigated.

6.14 Sections 73 and 74 introduced a duty on the FCA or PRA respectively to launch an investigation where it determines that:

- events have occurred in relation to a regulated person that had or could have had a significant adverse effect or indicated a significant failure to secure appropriate protection; and
- those events would not have occurred, or the adverse effect might have been reduced, but for a serious failure in either the regulatory system established by FSMA 2000 so far as it relates to the functions of the FCA or PRA or its operation

6.15 The focus of a section 73 or 74 investigation is therefore on failures of the regulatory system itself or the way it has operated.

6.16 Section 77 is broader in that HM Treasury can require the FCA or PRA to conduct an investigation into "relevant events" where:

- HM Treasury considers there to be a public interest in investigating 'relevant events'
- it does not appear to HM Treasury that the regulator is undertaking or is going to undertake an investigation.

6.17 "Relevant events" are defined broadly to include events in relation to regulated activities, a collective investment scheme, listed securities or their issuers, or a regulated payment system.

6.18 A section 77 investigation can therefore consider regulatory failures, as can a section 73 or section 74 investigation, but it is not limited to this: wider issues can also be considered. HM Treasury can only make a direction under section 77 if it does not appear to HM Treasury that the regulator is undertaking or has undertaken an investigation into the relevant events.

6.19 There are further differences in the circumstances under which investigations can be launched under sections 73/74 and 77. Under sections 73 and 74, an investigation can only be instigated in cases of possible regulatory failure. In contrast, section 77 gives an option for HM Treasury to direct the regulator to initiate an investigation where HM Treasury deems that it is in the public interest. In this sense, section 77 acts as a

backstop in borderline cases where it is not clear that the trigger for conducting an investigation under section 73 or 74 has been met.[50] By enabling HM Treasury to direct a regulator to launch an investigation, section 77 ensures that the government has the ability to trigger an investigation where it is in the public interest to do so. The 'public interest' test applicable under section 77 is ultimately a judgement for ministers to make. This element of judgement means that a section 77 investigation can be launched where the evidence has not yet been gathered to establish whether regulatory failure has occurred, which in practice means an investigation can be launched more readily in response to unfolding events.

6.20 As set out above, to date, two investigations have been launched using powers under Part 5: the investigation in Co-Op and the investigation into LCF. In both cases, the investigation was launched following HM Treasury's direction under section 77.

6.21 In March 2018, HM Treasury directed the PRA under section 77 to investigate the prudential regulation of the Co-op during the period 2008-2013. At the time the direction was made, the PRA was unable to conclude that the test in section 74 had been met. In particular, the PRA did not at that stage have evidence that there had been a serious failure in the regulatory system. The PRA did, however, feel that there was substantial public interest in understanding the causes of the Co-Op's financial position, and consequently wrote to the Director General – Financial Services to invite HM Treasury to direct the PRA to commission an investigation under section 77. Following this, the investigation concluded, with a report published and laid before Parliament in March 2019.[51]

6.22 In May 2019, HM Treasury directed the FCA under section 77 to investigate events and circumstances surrounding the failure and placing into administration of London Capital & Finance plc (LCF). At the time the matter was considered by the FCA Board, which was unable to conclude that the conditions for a review under section 73 were yet met. This, together with the recognition that, in the circumstances, an investigation under section 77 may be better suited resulted in a letter from the FCA Chair to the Economic Secretary to invite HM Treasury to direct the FCA to commission an investigation under section 77. This direction was issued on 22 May 2019, and the investigation's final report was published by HM Treasury on 17 December 2020.).

[50] 'Parliamentary Debates, Public Bill Committee, Financial Services Bill', House of Commons, 2012

[51] 'Independent Review of the Prudential Supervision of The Co-operative Bank Plc', Mark Zelmer, 2019

6.23 The fact that both the Co-operative Bank and LCF investigations were launched under section 77 suggests that section 77 is performing the function it was created to do, in providing that investigations can be carried out where it is not clear that the trigger for conducting an investigation under section 73 or 74 has been met. No investigations have been carried out under sections 73 or 74. However, the FCA has conducted voluntary (i.e. non statutory) investigations, where no statutory duty has arisen, as described in paragraph 6.12 above.

6.24 Strengthening the statutory basis for investigations through Part 5 of the 2012 Act has achieved its principal goal of improving the accountability of the regulators in a variety of ways: by creating a duty on the regulator to launch an investigation if certain tests are met, by requiring the investigation to be carried out by an independent person, and by requiring investigations to conclude and report within a set timeframe.

Chapter 7

2012 Act Part 6: Investigation of complaints against regulators

Objectives

7.1 Sections 84 to 88 placed a legislative duty on the FCA, the PRA, and the Bank to put in place a scheme for the prompt, independent investigation of complaints made against them in respect of their relevant functions, as set out in section 85. The objective was to create a single complaints commissioner, that would cover the FCA, PRA and the Bank and closely resemble the system in place under the old Financial Services Complaints Commissioner.

7.2 Section 87 deals with the operation of the complaints scheme. Section 88 confers on the investigator and persons appointed by the investigator immunity from liability in damages except where they act in bad faith or where damages are sought under the Human Rights Act 1998.

Implementation

7.3 The provisions in section 88 came into force in full on 1 April 2013, the day on which the new institutional architecture came into operation, with the remaining sections 84 to 87 commenced on 24 January 2013 for specified purposes, to allow the relevant institutions to prepare.

7.4 A number of amendments[52] have been made to section 85, which sets out the relevant functions in relation to the complaints scheme, to reflect changes to the functions undertaken by the regulators since the 2012 Act received Royal Assent. For example:

- the Financial Guidance and Claims Act 2018 and associated SIs amended the relevant functions of the FCA under Part 6 to include its 'standards review functions', which were new functions to be carried out by the single financial guidance body created by the 2018 Act

[52] Amendments to section 85 have been made by the Financial Services (Banking Reform) Act 2013, Bank of England and Financial Services Act 2016, Financial Guidance and Claims Act 2018 and associated SIs; Central Securities Depositories Regulations 2017(2017/1064), Digital Economy Act 2017; Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013(2013/1388); Financial Regulators Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (2018/1115

- the Central Securities Depositories Regulations 2017 (2017/1064) amended the relevant functions of the Bank under Part 6 to include the Bank's functions under part 18 of FSMA in relation to recognised CSDs, a new type of recognised body created by those Regulations

7.5 Section 87 was amended by the Small Business, Enterprise and Employment Act 2015, which inserted a reporting duty for the Independent Complaints Commissioner effective as of 1 October 2015.

Secondary legislation

7.6 Commencement orders associated to this section are set out in Annex B.

7.7 Section 85 of the 2012 Act provided HM Treasury with the power to specify relevant functions of the FCA, PRA and Bank in relation to the complaints scheme. The Financial Services Act 2012 (Relevant Functions in relation to Complaints Scheme) Order 2014 (2014/1195) provides that certain functions of the FCA under the Regulated Covered Bonds Regulations 2008, Payment Services Regulations 2009, Electronic Money Regulations 2011 and Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 are 'relevant functions'.

7.8 Transitional provisions were made under section 115 and 119 of the 2012 Act to provide for functions and responsibilities of the FSA undertaken before commencement of the new regulatory system, including those relating to complaints about actions that occurred prior to 1 April 2013, to be treated as if undertaken by the new regulators.

Legal issues and other reviews

7.9 There are no legal issues to report with these sections. No other assessments of these sections have been conducted.

Preliminary Assessment

7.10 As stipulated in the provisions in section 84, the regulators have made arrangements for the investigation of complaints arising in connection with the exercise of their relevant functions (as set out in section 85). This has included the appointing of an independent Financial Regulators Complaints Commissioner, responsible for the conduct of investigations in accordance with the complaints scheme. This was to give consumers and those regulated the opportunity to hold the regulator accountable for its actions and closely followed the requirement for a complaints scheme that previously existed for the FSA.

7.11 The regulators have complied with these recommendations[53] and have established a complaints scheme (following consultation, as required by section 86), which allows them to make ex gratia compensation payments to complainants.

7.12 Section 87 stipulated requirements for the operation of the complaints scheme. This included giving the Complaints Commissioner the power to recommend the payment of compensation by the regulators and to require the regulators to publish their response to any recommendation that the Complaints Commissioner makes which reports that the complaint is well-founded or criticises the regulator.

7.13 Section 87 also stipulated that the Complaints Scheme must provide for

a) the Complaints Commissioner to prepare and publish an annual report on its investigation under the scheme;

b) each of the regulators to prepare and publish a response to any recommendation or criticisms relating to the report and c) for HM Treasury to lay these documents before Parliament. The Office of the Complaints Commissioner, the regulators and HM Treasury have undertaken these functions as required by section 87.[54]

[53] 'Complaints against the regulators', Bank of England and Financial Conduct Authority, 2016

[54] 'Annual Reports', The Financial Regulators Complaints Commissioner, 2021

Chapter 8

2012 Act Part 7: Offences relating to financial services

Objectives

8.1 Part 7 (sections 89 to 95) of the 2012 Act superseded the previous provision on misleading statements and practices in section 397 of FSMA. Part 7 created new criminal offences in relation to making false or misleading statements and creating false or misleading impressions (section 89-91). These largely restated provisions previously contained in section 397 of FSMA (as well as making new provision for statements and impressions in relation to specified benchmarks).

8.2 Sections 89 and 90 created criminal offences relating to the making of false or misleading statements or dishonestly concealing material facts (section 89) relating to engaging in a course of action creating a misleading impression (section 90). Both sections relate to inducing another person to do something or refrain from doing something in relation to a relevant investment or agreement.

8.3 Section 91 implemented the recommendation by the Wheatley Review to enable the FCA to prosecute manipulation or attempted manipulation of LIBOR. It created a new criminal offence relating to making of a false or misleading statement in the course of arrangements for the setting of a relevant benchmark, or creating a false or misleading impression which may affect the setting of a relevant benchmark. The person making the statement or creating the impression must know the statement or impression is false or misleading, or be reckless to that effect. The person must intend to create that impression, however the motive of the person is immaterial for this offence (for example, there is no requirement that the person be acting with the intention of inducing a person to engage in market activity or with the intention of making a gain or avoiding a loss).

8.4 Section 92 sets out the penalties for a conviction of an offence under Part 7.

8.5 Section 93 provided HM Treasury with a power to specify the definitions of ‘relevant agreement’, ‘relevant benchmark’ and ‘relevant investment’, thus defining the scope of offences under Part 7. Section 94 sets out the Parliamentary procedures for Statutory Instruments made under section 93.

8.6 Section 95 makes a consequential repeal to section 397 of FSMA, which is superseded by this Part.

Implementation

8.7 Sections 89 to 92 and 95 came into force in full on 1 April 2013, the day on which the new institutional architecture came into operation, with provisions under sections 93 and 94 commenced on 24 January 2013 for specified purposes, to allow the relevant institutions to prepare.

Secondary legislation

8.8 Section 93 provides HM Treasury powers to set out the meaning of the definitions, e.g. "relevant agreement", "relevant benchmark" and "relevant investment", for purpose of Part 7 of the 2012 Act. The Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013 (2013/637) set out these definitions.

8.9 Sections 89 to 93 were subsequently amended by the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (2016/680), which updated the 2012 Act in line with subsequent EU legislation

8.10 The Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013 (2013/637) entered into force on 1 April 2013.

8.11 The Financial Services Markets Act 2000 (Regulated Activities) (Amendment) Order 2015 (2015/369) extended the regulation of benchmarks in the UK to include seven additional major UK-based financial benchmarks in the fixed income, commodity and currency markets, implementing recommendations of the Fair and Effective Markets Review. This included extending the scope of the offence of manipulating a benchmark in the 2012 Act to cover these additional seven benchmarks.

Legal issues and other reviews

8.12 There are no legal issues to report with these sections.

8.13 In its report on LIBOR published in August 2012,[1] the TSC 'urged' the Wheatley Review to widen the definition of criminal offence in section 397 of FSMA to include manipulation or attempted manipulation of LIBOR and other survey rates. It recommended the government consider, following the Wheatley Review, clarifying the scope of the FSA's powers to initiate criminal investigations in relation to serious fraud committed in financial markets.

8.14 In 2015, The Fair and Effective Markets Review, a review assessing structural developments in Fixed Income, Currency and

Commodities (FICC) markets, recommended lengthening the maximum sentence for criminal market abuse from seven to ten years' imprisonment. This was legislated for in the Financial Services Act 2021

8.15 In 2019, HM Treasury and the Home Office published the Economic Crime Plan, setting out how the UK's public and private sectors would work together to confront economic crime through seven strategic priorities and 52 actions.[55] One of the priority areas was to ensure 'the powers, procedures and tools of law enforcement, the justice system and the private sector are as effective as possible', under which HM Treasury and the FCA committed to reviewing the criminal market abuse regime. The offences under sections 89 to 95 of the 2012 Act are part of that criminal market abuse regime and the review is ongoing.

Preliminary Assessment

8.16 Under sections 89 to 95 of the 2012 Act the FCA can bring criminal prosecutions for certain types of misconduct in financial markets.

8.17 Part 7 of the 2012 Act allowed the FCA to start exercising its relevant powers from 1 April 2013, for misconduct which took place after that date. Prior to April 2013, the FSA imposed three fines on firms under the FSA high-level principles for misconduct relating to benchmarks. Between April 2013 and May 2015, the FCA imposed 12 fines on firms following attempted manipulation of LIBOR, gold and foreign exchange benchmarks before 2013. Between March 2014 and November 2018, the FCA also took enforcement action against 13 individuals for misconduct regarding benchmarks which took place before 2013. These FCA enforcement actions related to breaches of FCA principles and fitness and propriety standards.

8.18 Subject to the conclusions of the ongoing review under the Economic Crime Plan, a preliminary assessment of the sections 89 to 95 of the 2012 Act indicates that the legislation can allow regulators to take action for the specific misconduct detailed in the legislation, which includes but is not limited to benchmarks[56].

[55] Economic Crime Plan 2019 to 2022, HM Treasury and the Home Office, July 2019

[56] 'Fixing LIBOR: some preliminary findings', Treasury Select Committee, 2012

Chapter 9

2012 Act Part 8: Amendments to the Banking Act 2009

Objectives

9.1 Part 8 of the 2012 Act made amendments to the Banking Act 2009 reflecting the new regulatory structure, as well as other technical amendments to the mechanisms introduced by the Banking Act 2009.

9.2 Sections 96 to 103 of the 2012 Act amended the Banking Act 2009 to apply the Special Resolution Regime (SRR) to systemically important investment firms, Banking Group Companies (BGCs) and Central Counterparties (CCPs) and to set out technical amendments to the SRR.

9.3 Sections 104 and 105 made a number of technical amendments to Part 5 of the Banking Act 2009 to improve the regulatory regime for payment systems. Part 5 of the Banking Act 2009 regards the Bank's regulation of payment systems which have been specified by HM Treasury as 'recognised payment systems'. This regulation is undertaken within the context of the Bank pursuing its financial stability objective. HM Treasury specifies such payment systems by making a recognition order. Such technical amendments included:

- allowing HM Treasury to amend a recognition order for a payment system without issuing a new order
- allowing the Court on application by the Bank to make orders to prevent or to remedy compliance failures by the operator of a recognised payment system
- imposing certain requirements on the Bank in relation to its functions under the Banking Act 2009, for example reporting to HM Treasury once a year
- allowing HM Treasury to direct the Bank, with respect to the Bank's powers under Part 5 of the Banking Act 2009, to ensure compliance with any EU obligations or other international obligations

9.4 Section 106 made a number of amendments to the Banking Act 2009 to reflect the transfer of responsibilities from the FSA to the FCA and PRA. Schedule 17 to the 2012 Act made further amendments.

Implementation

9.5 Sections 97 and 103 to 106 came into force for all purposes on 1 April 2013, the day on which the new regulatory architecture came into operation. Sections 100 to 102 came into force for the purpose of making an order or regulations on 5 June 2014. The remaining sections 96(1), (2), (5) and (6), 98 and 99 came into force on 1 January 2015 for all purposes. Sections 96(3) and 96(4) were never commenced as they were overtaken by legislative changes made as part of the 2014 transposition of the EU Bank Recovery and Resolution Directive (BRRD).

Secondary legislation

9.6 Four statutory instruments were laid together in relation to the SRR. The SRR was established by the Banking Act 2009 to give UK authorities a framework and tools for dealing with failing UK banks and building societies. Collectively, these instruments underpin the extension of the SRR to CCPs, investment firms and banking group companies.

9.7 A consultation on the statutory instruments was published on 26 September 2013.[57] The consultation response document was published on 9 June 2014.

9.8 The Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014 (2014/1832) narrows the scope of the definition of 'investment firm' to investment firms of a type that is required under the EU Capital Requirements Directive to hold initial capital of €730,000, so that investment firms of a type required to hold initial capital of €125,000 are not subject to the SRR. It came into force on 1 August 2014.

9.9 The Banking Act 2009 (Banking Group Companies) Order 2014 (2014/1831) specifies conditions which must be met by an undertaking in the same group as a bank if it is to be a 'banking group company' for the purposes of the SRR. The 2012 Act enables the Bank to exercise a stabilisation power to transfer the whole or part of a BGC to a commercial purchaser or a bridge bank. The Order also amends the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 (2009/322) to restrict partial transfers of property rights and liabilities of banking groups companies as a safeguard for transferors and third parties. It came into force on 1 August 2014.

9.10 The Banking Act 2009 (Restriction of Partial Property Transfers) (Recognised Central Counterparties) Order 2014 (2014/1828) made provision regarding the application of the SRR provided for in Part 1 of the Banking Act 2009 to recognised central counterparties (RCCPs), in particular by placing restrictions on

[57] 'Secondary legislation for Non-Bank resolution regimes', HM Treasury, 2014

the making of partial property transfers in respect of RCCPs. It came into force on 1 August 2014.

9.11 The Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) (Amendment) Regulations (2014/1830) made amendment to the Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009 to apply third party compensation arrangements for partial property transfers to transfers made in respect of investment firms. They came into force on 1 August 2014.

Legal issues and other reviews

9.12 There are no legal issues to report with these sections. No other assessments of these sections have been conducted.

Preliminary Assessment

9.13 The overall intention of the provisions in sections 96 to 103 of the 2012 Act was to extend the SRR, initially established by the Banking Act 2009 for banks and building societies, to certain investment firms, recognised CCPs and other undertakings in the same group as a failing entity (banking groups companies).

9.14 In line with this policy, the government laid an updated version of the '*Banking Act 2009: Special Resolution Regime Code of Practice*'[58] before Parliament on 12 March 2015. The code of practice supports the legal framework of the SRR and provides guidance as to how, and in what circumstances, the authorities will use the special resolution tools. The revised version included guidance on the application of the SRR to investment firms, BGCs and CCPs, in line with the 2012 Act amendments to the SRR. The revised version of the code also reflected changes to the SRR as a result of the implementation in 2014 of the BRRD.

9.15 The Bank has also reflected this extension of the SRR within its Statements of Policy. 'The Bank of England's approach to resolution' (The Purple Book) sets out the Bank's approach to resolving banks, BGCs, building societies, CCPs and certain investment firms. The Purple Book was most recently updated in October 2017[59].

9.16 While the government and Bank guidance has been revised to reflect the updated policy and legislation, the powers provided for through the extension of the SRR to BGCs, certain investment firms and CCPs have, to date, never been used. The Bank last exercised special resolution powers under the Banking Act 2009, for any type of firm, when Southsea Mortgage and

[58] 'Banking Act 2009: special resolution regime code of practice', HM Treasury, 2017

[59] 'The Bank of England's approach to resolution', Bank of England, 2017

Investment Company was placed into the bank insolvency procedure in June 2011.

Chapter 10

2012 Act Part 9: Miscellaneous

Consumer Credit

Objectives

10.1 Part 9 of the 2012 Act contains two discrete elements relating to consumer credit. The intent of section 107 was to give HM Treasury a secondary legislation making power to make further provision about regulation of consumer credit. The provisions set the scope of what HM Treasury may use the order to achieve. Section 108 provides for the OFT (the regulator for consumer credit at the time) to suspend consumer credit licences.

Implementation

10.2 The FCA took over responsibility for regulating consumer credit on 1 April 2014, as a result of the changes implemented by secondary legislation made under section 107. Section 108 came into force two months after the 2012 Act was passed in February 2013.

Secondary legislation

10.3 The Financial Services Act 2012 (Consumer Credit) Order 2013 (2013/1882) was made under section 107. It made provision in connection with the transfer of responsibility for the regulation of consumer credit from the OFT to the FCA, and ensured that parts of the Consumer Credit Act 1974 (CCA) that were not repealed by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (2013/1881) could be effectively enforced by the FCA. The Order also ensured that local weights and measures authorities and, in Northern Ireland, the Department of Enterprise, Trade and Investment could continue to take effective investigatory and enforcement action in relation to suspected offences under FSMA in relation to regulated credit activities.

Legal issues and other reviews

10.4 Please see Chapter 3, paragraphs 3.69 to 3.72 for further details.

10.5 An amendment was made to section 107 by section 37 of the Financial Services Act 2021. The purpose of that amendment was to enable HM Treasury to create a proportionate regulatory regime for currently-exempt, interest-free Buy-Now-

Pay-Later agreements repayable in under 12 months and in 12 or fewer payments when they are brought into regulation. This followed the government's announcement on 2 February 2021 that it would bring such agreements into the scope of FCA regulation. The amendment by section 37 of the Financial Services Act 2021 was necessary as the power in section 107 was only available in relation to activities for which a licence from the OFT was required under the previous regime, or those which were subject to a limited set of exemptions.

10.6 Section 37 of the Financial Services Act 2021 modifies the power in section 107 to extend it, and gives HM Treasury a power to exclude provisions of the Consumer Credit Act 1974 from applying to activities which currently fall within the relevant exemptions in the Regulated Activities Order, including interest-free agreements repayable in under 12 months and in 12 or fewer payments, either when they are brought within the scope of regulation or at any point thereafter.

Preliminary Assessment

10.7 Please see Chapter 3, paragraphs 3.73 to 3.78 for further details.

Payment of receipts and enforcement fines

Objectives

10.8 Sections 109 and 110 made changes to the arrangements for the payment of receipts of enforcement fines by the FCA and the Bank. Under the previous model which applied to the FSA, the receipts of fines were retained by the FSA and (while not directly used to fund its activities) were used to reduce the fees levied by the FSA on organisations it authorised, recognised, registered, or listed. Section 109, which applies to the FCA, and Section 110, which applies to the Bank, require the regulators to pay the receipts of fines to the Exchequer instead. Provision was made for the deduction of enforcement costs from the payments made to the Exchequer, which deductions, if made by the FCA, were required by FSMA to be remitted by the FCA to the industry. Section 109, while it has not been repealed, has been superseded, in respect of financial years from 1 April 2013, by paragraphs 20 to 22 of Schedule 1ZA to FSMA. Section 109 was therefore operative only in respect of the 2012/13 financial year. Further, while section 110 continues to apply to the Bank, paragraphs 28 to 30 of Schedule 1ZB to FSMA apply to penalties levied by the PRA

Implementation

10.9 Section 109 came into force on the day on which the Act

received Royal Assent, 19 December 2012, while section 110 came into force in full on 1 April 2013, the day on which the new institutional architecture came into operation, with some provisions commenced on 24 January 2013 for specified purposes, to allow the relevant institutions to prepare.

Secondary legislation

10.10 Commencement orders associated with this section are set out in Annex B.

Legal issues and other reviews

10.11 There are no legal issues to report with these sections. No other assessments of these sections have been conducted.

Preliminary Assessment

10.12 HM Treasury and regulators have carried out their responsibilities under these directions.

Amendments of the Companies Act 1989

Objectives

10.13 Section 111 made amendments to the Companies Act 1989 to replace references to the 'Authority' with 'the appropriate regulator'.

Implementation

10.14 Section 111 came into force on 1 April 2013 when the new regulatory architecture came into operation.

Secondary legislation

10.15 There is no further secondary legislation associated with section 111 aside from that set out in Annex B.

Legal issues and other reviews

10.16 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

10.17 The changes made by section 111 enact the changes to the regulatory architecture, assessed in Part 2, paragraphs 3.4 to 3.31.

Amendments to the Uncertificated Securities Regulations 2001

Objectives

10.18 The Bank was made responsible for the regulation of systemically important clearing, payment and settlement infrastructure, as part of the wider reforms to the regulatory architecture under the 2012 Act, described in Part 2, paragraphs 3.4 to 3.31. Specifically, section 112 amended the Companies Act 2006 to enable the Bank to assume the FSA's functions in relation to the USRs as referred to below.

10.19 The Companies Act 2006 confers powers on HM Treasury to make regulations concerning procedures for the regulation of an operator of a relevant system. A "relevant system" in this context refers to a computer-based system that electronically registers and transfers securities. The Uncertificated Securities Regulations 2001, S.I. 2001/3755 (the "USRs") were made under this power and HM Treasury had previously exercised its power under the USRs to delegate certain functions to the FSA. To achieve the transfer of functions from the FSA to the Bank, minor amendments were needed to the enabling power in section 785 of the Companies Act 2006.

10.20 Section 112 inserted a new subsection (7) into section 785 to enable provision to be made in the USRs for the purposes of conferring functions directly onto the Bank, and to ensure that the Bank could be given the power to make guidance or issue codes of practice or rules in relation to any provision made by the regulations.

10.21 It also inserted a new subsection (8) to enable provision to be made in the USRs to confer immunity from liability in damages in specific cases (for example, in cases in which action is taken in the interest of addressing a threat to financial stability).

Implementation

10.22 Section 112 commenced on 24 January 2013 for specified purposes and came into force in full on 1 April 2013, the day on which the new institutional architecture came into operation.

Secondary legislation

10.23 There is no further secondary legislation associated to this section, aside from commencement orders set out in Annex B.

Legal issues and other reviews

10.24 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

10.25 The powers inserted in section 785 of the Companies Act 2006 by section 112 of the 2012 Act have not been exercised because the powers over 'relevant systems' are broadly covered by the Bank's regulatory powers as central securities depository (CSD) supervisor under the Central Securities Depository Regulation (CSDR). Nevertheless, the USRs may be amended or extended (for example, to other entities in the future that are not CSDs), should the corporate framework for securities issuance in the UK change. They should therefore be kept in place for the purposes of flexibility of treatment as appropriate.

10.26 No concerns have ever been raised regarding the existence of these powers.

National Savings and Investments

Objectives

10.27 Section 113 allowed National Savings and Investments Director of Savings to provide services to other public bodies for an agreed payment.

Implementation

10.28 Section 113 came into force two months after the 2012 Act received Royal Assent.

Secondary legislation

10.29 There is no further secondary legislation associated with section 113 aside from that set out in Annex B.

Legal issues and other reviews

10.30 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

10.31 National Savings and Investment, through Government Payment Services, has used this power to provide services to other government departments. This has included services for the Tax-Free Childcare scheme with HMRC, and the Help to Save scheme with DWP and HMRC. NS&I formerly provided services for the Home Office Payment Processing Service.

Chapter 11

2012 Act Part 10: General

Objectives

11.1 Part 10 made other amendments and clarifications to the 2012 Act, including:

- section 114 and schedules 18 and 19 made minor and consequential amendments to reflect the new regulatory framework
- section 115 gave general orders that any power of HM Treasury or the Secretary of State to make orders under the 2012 Act is exercisable by statutory instrument
- section 116 set out the process for laying statutory instruments under the 2012 Act
- section 117 clarified that references to the Bank are distinct from the Bank's activities as part of the PRA
- section 118 gave HM Treasury or the Secretary of State power to amend, repeal, revoke or modify legislation as necessary under provisions of the 2012 Act
- section 119 and schedules 20 and 21 gave HM Treasury powers to make transitional provisions in connection with the 2012 Act as necessary, and to give instructions that provisions made by the FSA should be treated as fully in force under the FCA, PRA or Bank under the new regulatory framework
- section 120 set out that any expenditure incurred by a Minister of the Crown or government department should be paid by funds provided by Parliament, with the exception of expenditure to be met from the National Loans Fund
- section 121 confirmed the 2012 Act applies to England, Wales, Scotland and Northern Ireland
- section 122 confirmed the dates at which a number of minor provisions come into force – please see individual provisions for commencement dates

Implementation

11.2 Minor amendments under section 114 of the 2012 Act to FSMA 2000 were brought into force as of 24 January 2013 and 1 April 2013.

11.3 Sections 115 to 118, and 120 to 122 came into force on the day on which the 2012 Act received Royal Assent. Section 119 was partly in force as of the date of the 2012 Act receiving Royal Assent. For provisions not in force at that point, the remaining provisions within section 119 came into force as of 24 January 2013.

Secondary legislation

11.4 The Financial Services Act 2012 (Transitional Provisions) (Miscellaneous Provisions) Order 2013 (2013/442, made under sections 115(2) and section 119(3), (4) and (5)) makes transitional arrangements to ensure a smooth transition to the new regulatory architecture. It provides that some decisions and activities undertaken by the FSA are treated as if they had been undertaken by the new regulators. For example, any permissions to undertake a regulated activity granted by the FSA will be treated as if the relevant new regulator had granted the permission. This ensures that authorised persons do not have to apply for, and be given, new permissions to carry on regulated activities, avoiding a significant burden for both firms and the regulators.

11.5 The Financial Services Act (Consequential Amendments and Transitional Provisions) Order 2013 (2013/472, made under section 115(2), 118 and 119(3)) makes consequential and transitional arrangements in connection with the 2012 Act. It transfers various functions of the FSA to the PRA and the Bank and provides for the FSA to be renamed as the FCA. It also amends a large amount of related legislation.

11.6 The Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013 (2013/161, made under section 115(2) and section 119(3), (4) and (5)) made transitional arrangements to ensure a smooth transition to the new regulatory architecture. It provided that some functions that needed to be carried out by the FCA, the PRA and the Bank before the commencement of the relevant provisions of the 2012 Act in full could be undertaken. For example, rules that came into force on 1 April 2013 needed to be made, and published, in advance of that date so that persons subject to the new regulatory regime could prepare appropriately.

11.7 These came into force as of 1 April 2013, with the exception of modifications to section 85 by the Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013 (2013/161) which came into force as

of 20 February 2013.

Legal issues and other reviews

11.8 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

11.9 The changes made in this Part support the changes made in Parts 1 to 9 of the 2012 Act, preliminary assessments of which can be found earlier in the memorandum.

Chapter 12

The Financial Services (Banking Reform) Act 2013: Introduction

12.1 Chapters 12 to 19 of this memorandum provide a preliminary assessment of the Financial Services (Banking Reform) Act 2013 and have been prepared by HM Treasury for submission to the TSC. This memorandum is published as part of the process set out in the document *Post Legislative Scrutiny – The Government's Approach (Cm 7320)*[60].

12.2 The Financial Services (Banking Reform) Act 2013 (hereafter 'the 2013 Act') implemented the reforms suggested by the Independent Commission on Banking (ICB) and the Parliamentary Commission on Banking Standards (PCBS), which aimed to make the UK banking system stronger and safer. Among other things, these reforms aimed to end the perception that a number of large banking institutions had become 'too big to fail', which fuelled reckless misbehaviour leading up to the financial crisis. This perception created an anti-competitive subsidy to large banks, which in the wake of the financial crisis the UK government and G20 partners agreed to remove in the interest of global financial stability.

12.3 In 2010, the government established the ICB to consider reforms to the banking sector to promote financial stability and competition, and investigate how to ensure that the UK remained a world leading financial centre whilst avoiding exposing taxpayers to risk should those global banks fail.

12.4 The ICB published its final report on 12 September 2011[61]. It recommended structural reform of the banking industry, together with measures designed to increase the capacity of banks to absorb losses. Within these overall recommendations, the ICB outlined a number of specific objectives;

- Financial stability: The ICB set out that the key objectives should be to make banks better able to absorb losses, to make it easier and less costly to sort out banks that still get into trouble and to curb incentives for excessive risk-taking. To achieve these objectives, the ICB recommended the ring-fencing of vital banking services, to keep retail banking services used by households and SMEs separate from wholesale and investment banking activities. The ICB

[60] 'Post-legislative Scrutiny –The Government's Approach', Office of the Leader of the House of Commons, March 2008

[61] 'Final Report: Recommendations', Independent Commission on Banking, 2011

suggested that this action would insulate retail banking from volatility in the financial system and, by removing the implicit government guarantees of support it would remove the incentive for banks to take excessive risks. In addition, the ICB recommended increased loss-absorbency requirements to complement the ring-fencing of banking activities, helping to achieve the objective to make it easier and less costly to resolve banks in financial difficulty

- Competition: The ICB recommended six key objectives around competition, including improving prospects for a strong and effective challenger to come out of the Lloyds divestiture to mitigate barriers to: entry and anti-competitive prudential requirements; improve switching; enhance transparency; secure pro-competitive financial regulation; and refer a possible future market investigation to the competition authorities

12.5 The government accepted the recommendations above on both financial stability and competition and expressed its intention to complete the legislation to introduce the reforms by the end of the Parliamentary session in May 2015, with reforms implemented by the beginning of 2019. [62]Alongside the ICB recommendations, the TSC also proposed enhancing the regulatory framework for payment systems, achieved in the 2013 Act through the creation of the Payment Systems Regulator (PSR).

12.6 The Parliamentary Commission on Banking Standards (PCBS) was appointed by both Houses of Parliament in July 2012[63] following the investigations into the LIBOR rate-setting process, to consider and report on: the professional standards and culture of the UK banking sector; lessons to be learned about corporate governance, transparency and conflicts of interest, and their implications for regulation and for government policy; and to make recommendations for legislative and other regulatory action.

12.7 The PCBS published 5 reports over 2012-2013:

- The first report, 'First Report of Session 2012-2013', was published on 21 December 2012 and focused on structural change in the UK banking sector to secure a greater degree of organisational separation between retail banking and investment banking.[64] Specifically, this report considered the case for and against structural separation proposed by the earlier Independent Commission on Banking, which had recommended ring-fencing and made a number of

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[62] 'The Government response to the Independent Commission on Banking', HM Treasury and Department for Business, Innovationand Skills, 2011

[63] 'Changing banking for good', Parliamentary Commission on Banking Standards, 2013.

[64] 'Changing banking for good', Parliamentary Commission on Banking Standards, 2013

recommendations as part of the process of pre-legislative scrutiny of the draft Financial Services (Banking Reform) Bill

- The second report, titled 'Banking reform: towards the right structure' was published on 11 March 2013. [65]This report considered the government's response to the PCBS's first report and assessed the Financial Services (Banking Reform) Bill, which had been presented by government on 4 February 2013, against the recommendations made in the first report. Finally, the second report proposed amendments on legislative recommendations which had not been reflected in the Bill

- The third report, 'Proprietary trading', was published on 15 March 2013 and looked at a topic that had come to its attention during evidence gathering for the preceding two reports[66]. In the first report, the PCBS had concluded that further evidence was required on the impact of proprietary trading prior to the PCBS making substantive recommendations. The PCBS investigated both prudential and cultural concerns with proprietary trading, particularly in the context of the PCBS's interest in overall culture and standards in the banking sector

- The fourth report, 'An accident waiting to happen': the failure of HBOS', [67]published 5 April 2013, looked at the failure of HBOS, which the PCBS decided to review as a detailed case study of banking failure to identify lessons as part of their wider work on banking standards and culture

- The fifth and final report, 'Changing banking for good', was published on 19 June 2013. The overall recommendations reached by the Commission covered key themes including: individual responsibility; reform of governance; better functioning and more diverse banking markets to empower consumers; reinforcing regulatory responsibility; and specifying the responsibility of the government, of future governments and Parliaments[68]

12.8 The PCBS's final report followed four key themes:

- Strengthening individual accountability: The Commission noted a lack of personal responsibility, particularly amongst senior banking staff. The commission made recommendations around sanctions, standards of behaviour, remuneration and incentives to behave in an

[65] 'Banking reform: towards the right structure', Parliamentary Commission on Banking Standards, 2013

[66] 'Proprietary Trading', Parliamentary Commission on Banking Standards, 2013

[67] An accident waiting to happen': The failure of HBOS', Parliamentary Commission on Banking Standards, 2013.

[68] 'Changing banking for good: Report of the Parliamentary Commission on Banking Standards', Parliamentary Commission onBanking Standards, 2013

ethical, responsible and sustainable manner

- Reforming corporate governance: The Commission highlighted a lack of effective control and oversight of risks through weaknesses in corporate governance and proposed to address this through resourcing for non-executives and strengthening of auditing and compliance functions

- Securing better outcomes for consumers through enhanced competition: As with the ICB report (12.4, above) the Commission recognised the importance of competition and noted that a well-functioning and competitive market protects against poor standards. As such, its recommendations focused on positive interventions to support competitive pressures such as enabling consumers to more easily switch banks in order to access the most appropriate products

- Enhancing financial stability: At both systemic and institutional level, the Commission made recommendations in terms of the publicly owned stakes in two major banking groups and recommendations as to the objectives and organisation of the regulators created by the 2012 Act

12.9 The government published its response[69] to the recommendations of the final report, which looked at all four themes described above. The government accepted all of the principal recommendations made by the PCBS in their final report and committed to implement major recommendations on strengthening individual accountability, corporate governance and supporting competition in the banking sector. The 2013 Act introduced the Senior Managers and Certification Regime (SM&CR) in response to recommendations regarding individual accountability, which is outlined further in Chapter 16. To support competition in the banking sector, the government also introduced a secondary competition objective for the PRA through section 50 of the 2013 Act, outlined in paragraphs 19.15 to 19.20 and created the Payment Systems Regulator (Chapter 17) to look at account portability and ease of consumers switching between accounts. In terms of corporate governance, the government committed to asking the regulators to implement the Commission's key recommendations through rule-based regulation.

[69] 'The Government's response to the Parliamentary Commission on Banking Standards', HM Treasury and the Department forBusiness Innovation and Skills, 2013

Chapter 13

2013 Act Part 1: Ring-fencing

Objectives

13.1 Part 1 (sections 1 to 12) and schedule 1 of the 2013 Act put in place structural reforms to the banking sector, known as 'ring-fencing'. The ICB made recommendations, which the government accepted, that retail banking should be separated from wholesale or investment banking, and that this should be achieved by ring-fencing, or separating, retail banking within a banking group in order to isolate banking activities where continuous provision of service is vital to the economy and to the customers of a bank. They also recommended that measures should be taken to ensure the economic independence of the retail bank from the wider banking group, and its independent governance.

13.2 Part 1 of the 2013 Act makes amendments to FSMA, making provision for the separation of the banking activities on which households and small businesses depend (in the 2013 Act "core activities") from wholesale or investment banking activities for certain banks, putting core activities 'inside the ring-fence', in order to reduce the structural complexity of these banks (making them easier to resolve in a crisis).

13.3 Part 1 of the 2013 Act also made provision to ensure the independence of ring-fenced banks from other parts of the group, including providing regulators - the FCA and PRA, with the consent of HM Treasury - the power to compel banks to separate their activities if they do not do so voluntarily (referred to as the 'electrification' of the ring-fence).

13.4 Additionally, Section 17 of the 2013 Act conferred powers on the Bank to utilise 'bail-in' as a stabilisation option in the event of financial difficulty. This is discussed in more detail in Chapter 15.

Implementation

13.5 During the passage of the 2013 Act, the government set out that banks holding 'core deposits' above a certain threshold of £25 billion would be required to ring-fence their core activities from 1 January 2019. Provisions which ensure Ring-Fenced Banks (RFBs) are not liable for the pensions liabilities of other members of the banking group are due to come into force as of 1 January 2026, in order to provide banks with more time to

restructure complex pension liabilities, historically provided within the group.

13.6 While some ring-fencing requirements were set out on the face of the 2013 Act, the 2013 Act also gave HM Treasury the power to make secondary legislation specifying further detail of the specific ring-fencing provisions, and required the PRA and FCA to develop rules setting out how banks should implement ring-fencing.

13.7 Under these powers, HM Treasury passed The Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 (2014/1960) and The Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014 (2014/2080) in July 2014 which provided further details on which activities were considered the 'core activities' to be kept inside the RFB, in addition to which activities RFBs were excluded from partaking in.

13.8 Further secondary legislation, The Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2016 (2016/1032), made in October 2016, and The Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) (Amendment) Order 2018 (2018/897), made in July 2018, made additional amendments to the SIs above.

13.9 A separate piece of secondary legislation, the Financial Services and Markets Act 2000 (Banking Reform) (Pensions) Regulations 2015 (2015/547) was also made in March 2015 which detailed how RFBs should restructure to ensure they are not liable for the pension liabilities of other members of the banking group.

13.10 The PRA published consultation papers 25/16[70] and 37/15[71] on 7 July 2016 and 15 October 2015 respectively. Following consultation, the PRA published a supervisory statement (8/16)[72] in December 2017 on ring-fenced bodies to be read in conjunction with the PRA rulebook.

13.11 There are currently 7 UK banking groups, comprised of 15 individual ring- fenced banks operating as subsidiaries within those groups, which hold deposits above the 'core deposits' threshold of £25 billion. As of 1 January 2019, all of these banks had undertaken the necessary restructuring to comply with ring-fencing requirements.

13.12 The power for HM Treasury to establish a framework setting out primary loss absorbency capacity (PLAC) requirements, granted under the 2013 Act, was proposed to be made through

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[70] 'The implementation of ring-fencing: reporting and residual matters', Bank of England, 2016.

[71] 'The implementation of ring-fencing: prudential requirements, intragroup arrangements & use of Financial MarketInfrastructures', Bank of England, 2015

[72] 'Ring-fenced bodies (RFBs)', Bank of England, 2017

secondary legislation in the form of the Banking Reform (Loss Absorbency Requirements Order). The government consulted on its proposal and draft legislation in July 2013 and published its response in December 2013. However, the power to set PLAC requirements was not used, as it was superseded by the UK implementation of the EU Bank Recovery and Resolution Directive 2014/59/EU (BRRD) in 2014.

Secondary legislation

13.13 In addition to commencement orders set out in Annex C, the following secondary legislation has been made in relation Part 1 of the 2013 Act:

13.14 The Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 (2014/1960) was introduced to define the circumstances when accepting a deposit is not a core activity as defined by section 142B of FSMA, so that the deposits in question may be held by banks which are not ring-fenced bodies and to exempt certain banks from the definition of 'ring-fenced body' under section 142A of FSMA. This SI came into force on 1 January 2015.

13.15 Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014 (2014/2080) defined the activities that may not be carried out by ring-fenced bodies and was made on 23 July 2014. It came into force for the purposes of defining the types of institutions which ring- fenced bodies are prohibited from having exposures to, subject to exceptions set out in the Order, on 1 January 2015, and for all other purposes on 1 January 2019.

13.16 The Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2016 (2016/1032) made technical amendments to the two SIs above to address a number of technical issues which had become apparent. These issues had the potential to undermine the effectiveness of the ring-fencing regime unless addressed, which necessitated this Order to make amendments.

13.17 The Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) (Amendment) Order 2018 (2018/897) made changes to align the requirements between the UK's ring-fencing legislation and the financial sanctions regimes that would otherwise conflict. This ensured that banking groups could maintain accounts held by sanctioned account holders in their existing locations whilst still complying with ring-fencing legislation. The Order came into force as of 31 October 2018.

13.18 The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (2019/632) addressed deficiencies in the Financial Services and Markets Act (FSMA) 2000 and related subordinate legislation, including ring-fencing legislation, arising from the withdrawal of the United Kingdom from the European Union. Certain provisions came into force on 23 March 2019 to allow preparations to be made for EU exit; remaining provisions came into force at the end of the transition period.

13.19 HM Treasury consulted on the development of a Statutory Instrument to set out PLAC requirements through a new section 142Y of FSMA 2000 in July 2013. The SI was entitled The Banking Reform (Loss Absorbency Requirements) Order but was never made. The government stated in July 2014 that it did not intend to lay this draft legislation before Parliament. The proposed reforms relating to PLAC, as envisaged by the 2013 Act, were superseded by the Bank Recovery and Resolution (No.2) Order 2014 (2014/3348) which introduced the minimum requirement for own funds and eligible liabilities (MREL), implementing the EU BRRD. The No. 2 Order came into force on 10 January 2015, with the exception of Part 9. Part 9 covered minimum requirements for own funds and eligible liabilities (MREL) and came into force on 1 January 2016.

Legal issues and other reviews

13.20 There are no legal issues to report with sections 1 to 12.

13.21 Members of the PCBS published a statement in 2014 assessing how the government was progressing with the implementation of the ICB's recommendations.[73] This report was published prior to the passing of all secondary legislation required for the implementation of the ring-fencing regime. One of the key conclusions in this report was that whilst primary legislation had already passed, secondary legislation and the requirements to be set by regulators were vital in determining the effectiveness of the overall ring-fencing regime. The PCBS considered early secondary legislation proposals to be in in line with the ICB's recommendations.

13.22 On 3 June 2016, the then chair of the TSC and previously a member of the PCBS, Andrew Tyrie, wrote to the second permanent secretary of HM Treasury, Charles Roxburgh, regarding the proposed changes to secondary legislation to be made in the 2016 amendment order (2016/1032). In his letter, Andrew Tyrie queried some of the proposed amendments, expressing concern that the changes may increase the risk that banks will attempt to 'game' the ring-fence. HM Treasury responded on 12 July 2016, by reiterating the PRA's powers to

[73] 'Statement by former Members of the Parliamentary Commission on Banking Standards', Parliamentary Commission on BankingStandards, 2014

'electrify the fence', acting as a powerful disincentive to any attempts to 'game' the regime. He also highlighted the PRA's obligation to report to parliament on the use of any exceptions permitted in legislation; therefore, providing a greater level of transparency to the regime.

13.23 Section 8 of the 2013 Act details requirements for a statutory review of ring- fencing legislation to be undertaken. Legislation requires that a review is completed by an independent panel appointed by HM Treasury. During the passing of the bill the PCBS recommended that this review is completed by an independent body, stating the report should provide an overall assessment on whether there was a need for a move to complete separation across the banking sector as whole if ring-fencing legislation/ regulation did not achieve the intended objectives. The review, which has now commenced, will provide an assessment on whether ring-fencing is achieving the objectives set out in legislation. The review's terms of reference were published by HM Treasury on 2 February 2021.

13.24 Section 9 of the 2013 Act also requires the PRA to conduct a review of the prevalence and risk associated with proprietary trading, with an independent review of the PRA's report being conducted by a panel appointed by HM Treasury. Whilst the proprietary trading review does not directly focus on ring-fencing legislation, the PCBS believed that strong restrictions should be placed on ring-fenced banks' ability to engage in propriety trading. However, they did not believe that there was sufficient evidence to support a complete ban at the time. The PCBS recommended that the PRA conduct this review to provide an assessment of proprietary trading and report once ringfencing had been implemented.

Preliminary Assessment

13.25 As of 1 January 2019, all firms in scope of the ring-fencing regime successfully separated core retail services for household and small business from trading activities. The PRA oversaw this process through the court approved 'ring-fencing transfer scheme', allowing for the transfer of assets and liabilities to different entities within the banking group, some of which were newly authorised.

13.26 The PRA undertook a programme of activities to review the implementation of ring-fenced banks' new structures and processes. As part of this process three new banking entities were authorised and new board members/ senior staff were approved in order to create separate governance structures within ring-fenced banking groups (RFBs). This process was necessary to ensure the banks had full boards in place for their RFBs and other entities in their groups.

13.27 In the lead up to 1 January 2019, RFBs reviewed and amended contracts with service providers to ensure that the services required by the RFB to maintain core deposit taking activities cannot be disrupted as a result of actions taken by the overall banking group. In addition, a number of changes to bank sort codes were made to allow ring-fenced banks to join UK and international payments systems as direct members.

13.28 The PRA is required to report annually on the usage of exceptions used by RFBs, as permitted by legislation, to ensure these exceptions are being used for the original intended purposes and not to 'game the system'. The PRA's 2019 annual report[74] highlighted the use of exceptions and usage was judged to be consistent with intended outcomes. Therefore, the PRA has not used any enforcement powers since implementation.

13.29 The statutory review of ring-fencing legislation will provide a comprehensive assessment of the operation of the ring-fencing legislation. On 21 December 2020, HM Treasury appointed Keith Skeoch as chair of the independent review panel. The remaining panel members were announced on 2 February 2021, when HM Treasury also published the Terms of Reference for the review. The independent panel will additionally conduct the separate statutory review of the PRA's report on firms' proprietary trading, and is expected to conclude both reviews within 12 months. As required, HM Treasury consulted with the chair of the TSC before the panel was appointed. The final reports of the independent panel will provide an overall recommendation on ring-fencing (if any) to the PRA and HM Treasury about the design and application of legislation and ring-fencing rules, and any recommendations relating to firms' proprietary trading. Following completion, both reports will be officially published by HM Treasury. Whilst the implementation of ring-fencing has been consistent with legislation and regulations, the relevant report produced by the independent panel will provide a detailed overview of the effectiveness of the legislation in achieving the intended objectives.

13.30 On the power granted under the 2013 Act for HM Treasury to establish a framework setting out PLAC requirements, the secondary legislation proposed to set out this framework was never introduced. PLAC was superseded by MREL, introduced through the UK implementation of the BRRD.

13.31 It has therefore not been possible to assess the effectiveness of the PLAC legislation introduced by the 2013 Act, as it was never implemented.

[74] 'Annual Report 1 March 2018 – 28 February 2019', Bank of England and Prudential Regulation Authority, 2019

Chapter 14

2013 Act Part 2: Depositor Preference and the FSCS

Objectives

14.1 The government announced plans to introduce depositor preference in the June 2012 White Paper on '*Banking Reform: Delivering Stability and Supporting a Sustainable Economy*'.[75] In addition, proposals to make changes to the governance of the FSCS were made in the October 2012 government response to the White Paper 'Sound Banking: Delivering Reform'.[76] Part 2 (sections 13 to 16) of the 2013 Act therefore makes amendments to the Insolvency Act 1986, the Bankruptcy (Scotland) Act 1985 and FSMA to put in place these changes.

14.2 Section 13 amended the Insolvency Act 1986 and the Bankruptcy (Scotland) Act 1985 to make deposits eligible for protection under the FSCS preferred debts in insolvency by providing that deposits protected by the FSCS were made 'super-preferred'. This means that a new class was created in the creditor hierarchy where protected deposits rank above other unsecured creditors. If a single eligible depositor has a very large deposit, only the part of that deposit which is covered by the FSCS will be super-preferred. The remainder of the deposit will rank below so-called 'ordinary preferential debts' (such as deposits protected up to the FSCS limit) but above other non-preferred unsecured debts. Preferring FSCS-protected deposits was intended to help the authorities to ensure that in the event of deposit-taker failure, ineligible depositors or those deposits above the FSCS protected amount will rank below protected depositors in the insolvency, giving those creditors greater incentive to curb excessive risk taking by deposit-takers.

14.3 Section 14 amended FSMA to place obligations on the FSCS to have regard to the need to ensure efficiency and effectiveness when discharging its functions, as well as to have regard to the need to minimise public expenditure attributable to loans made or other financial assistance provided.

14.4 Section 15 amended FSMA to require the FSCS to share

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75 'Banking reform: delivering stability and supporting a sustainable economy', HM Treasury and Department for BusinessInnovation and Skills, 2012

76 'Sound banking: delivering reform', HM Treasury, 2012

specified information with HM Treasury if requested in writing, reflecting the fact that although the FSCS is operationally independent it is ultimately accountable to HM Treasury. This has enabled HM Treasury to fulfil its duties under the Government Resources and Accounts Act 2000.

14.5 Section 16 amended FSMA to make changes to FSCS governance arrangements, providing that the FSCS must have a chief executive officer (CEO), who should also be its accounting officer to Parliament. Furthermore, the regulators (PRA and FCA) were given the power to appoint, and if necessary, to remove the CEO, subject to HM Treasury approval. This reflects the fact the FSCS is operationally independent from the UK regulators, although accountable to them and ultimately to HM Treasury and Parliament.

Implementation

14.6 Section 13 provisions, giving FSCS-protected deposits preferred status in the creditor hierarchy, came into force on 31 December 2014.

14.7 Sections 14 and 15, which set out what the FSCS must have regard to in discharging its functions and requiring the FSCS to share information when requested by HM Treasury respectively, came into force on 1 March 2014.

14.8 Section 16, requiring that the FSCS must have a CEO who is also its accounting officer, came into force on April 2014. This included providing the PRA and FCA with the power to appoint and remove the CEO. These decisions are subject to HM Treasury approval.

Secondary legislation

14.9 Commencement orders associated with this section are set out in Annex B.

14.10 Section 16 of the 2013 Act requires the approval of HM Treasury to be given before a chief executive may be appointed to the scheme manager of the FSCS. The Financial Services (Banking Reform) Act 2013 (Transitional Provision) Order 2014 (2014/378) (commenced 1/04/2014) makes transitional provision such that the requirement under section 16 was deemed to have been satisfied in relation to the existing chief executive at the point section 16 came into force.

Legal issues and other reviews

14.11 There are no legal issues to report with these sections. No other assessments of these sections have been conducted.

Preliminary Assessment

14.12 The ICB recommended introducing depositor preference, under which all deposits covered by the FSCS would be moved above other unsecured creditors and above floating charge holders in the creditor hierarchy. This would mean that in an insolvency situation, protected deposits would be paid out ahead of other unsecured creditors.

14.13 The 2013 Act therefore amended the *Insolvency Act 1986* and related Scottish legislation to provide that deposits that are eligible for protection under the FSCS are preferential debts. This means that, in the event of a deposit-taker's insolvency, these depositors rank ahead of the claims of other unsecured creditors.

14.14 To date, no bank or building society has entered insolvency since the introduction of depositor preference. However, if a bank or building society were to enter insolvency then the changes made in the 2013 Act would apply, and FSCS-protected deposits would have a preferred ranking in the insolvency creditor hierarchy. Since the change was introduced, though, some credit unions have defaulted and the FSCS has submitted claims in the insolvencies that have benefitted from this preference.

14.15 In addition, the changes made through the 2013 Act to the governance of the FSCS, including regarding the appointment by the regulators of the CEO of the FSCS, continue to be important. However, some aspects will need to be revisited in light of the ONS's decision to reclassify the FSCS as a public financial corporation. The Government intends to take this forward in due course.

Chapter 15

2013 Act Part 3: Bail-in stabilisation option

Objectives

15.1 Part 3 (section 17) and schedule 2 established bail-in as a new stabilisation tool under Part 1 of the Banking Act 2009, available to the Bank in its role as the resolution authority under the UK's special resolution regime (SRR) for failing banks, building societies, and investment firms. The bail-in tool can be used to support the resolution of a failing or likely to fail bank, investment firm, or building society, where the relevant authorities judge that it is necessary, having regard to the public interest in the advancement of one or more of the special resolution objectives, and judges that the firm entering insolvency would not meet the special resolution objectives to the same extent. It allows the Bank to write down the value of a failing firm's debt and equity liabilities, and convert eligible debt liabilities into equity, in order to absorb losses and recapitalise a firm.

15.2 This was an important component in the government's reforms to tackle the "too big to fail" problem and help ensure that UK taxpayers are not in future required to shoulder the burden of failing banks. Its introduction follows international standards set out by the Financial Stability Board (FSB), and also follows recommendations from the ICB and the PCBS that bail-in powers should be introduced to enable the authorities to impose losses on a failing bank's creditors.

Implementation

15.3 Part 3 came into force on 1 March 2014 for the purpose of making rules, orders or regulations and on 31 December 2014 to the extent that their provisions were not already in force.

15.4 The government set out during the passage of the 2013 Act that the bail-in powers introduced through the 2013 Act were designed to align with the design of the bail-in tool introduced through the EU's Bank Recovery and Resolution Directive (BRRD), meaning that it would not have to adapt a radically different bail-in regime once BRRD was agreed.

15.5 On 1 January 2015, following the commencement of these provisions in the 2013 Act, the government amended the provisions in the 2013 Act to reflect the final provisions in BRRD

through secondary legislation (described below).

15.6 To date, the Bank has not used the bail-in option to support the resolution of a firm.

Secondary legislation

15.7 As noted above, the bail-in tool came into force through commencement orders made on 19 February 2014 and 26 November 2014 respectively – for full details please see Annex C.

15.8 In addition, the Bank Recovery and Resolution Order 2014 (2014/3329), made on 17 December 2014 and in force on 1 January 2015, made significant amendments to the bail-in provisions introduced by the 2013 Act to reflect the final provisions of the BRRD.

15.9 The Building Societies (Bail-In) Order 2014 (2014/3344) adapted the bail in tool introduced by the 2013 Act as it applies to building societies. To bail in a building society, the Bank may convert the building society into a company, or transfer all its property, rights and liabilities to a company. The Bank may also cancel shares and membership rights of the building society, and convert shares of the building society into deposits of the successor company. The effect of bailing in a building society in this manner would mean the society is demutualised. The resulting entity - the successor bank - would then be bailed in in the same way as a bank under the bail-in stabilisation option. When using the bail-in tool, the Bank must ensure that the shares of the institution are severely diluted or cancelled. For a building society, its shares are in the form of member deposits. In a bail-in, the value of the deposit will not be affected as part of the demutualisation but may be affected by bail-in in accordance with the creditor hierarchy in the same way as a bank (subject to the exclusion for deposits covered by the FSCS).

15.10 The Banking Act 2009 (Mandatory Compensation Arrangements Following Bail-in) Regulations 2014 (2014/3330) makes provision for compensation orders, to ensure that no pre-resolution shareholder or creditor is worse off as a result of the application of the bail-in tool than they would have been had the relevant entity gone into insolvency.

Legal issues and other reviews

15.11 There are no legal issues to report with this section. No other assessments of this section have been conducted.

15.12 The 2016 International Monetary Fund (IMF) United Kingdom Financial Sector Assessment Program (FSAP) report noted that the UK's bank resolution regime was robust and that work to

implement policies ensuring firms can be resolved is advanced.[77] This report included an acknowledgement that the UK has introduced a broad range of stabilisation options, including bail-in, to preserve financial stability while minimising risks to public funds.

15.13 In addition, the latest G20 FSB review of resolution regimes identified no gaps in the UK's policy toolkit for bank resolution.[78] In particular, the FSB review noted that the UK has introduced bail-in powers to write down and convert liabilities in accordance with the FSB's Key Attributes of Effective Resolution Regimes.

Preliminary Assessment

15.14 The purpose of Part 3 of the 2013 Act was to introduce the bail-in stabilisation option, which gives the Bank the power, as the UK's resolution authority, to write down or convert the eligible liabilities of a failing or likely to fail bank, building society, or investment firm in order to absorb losses and support recapitalisation.

15.15 The bail-in stabilisation power is an important component of the UK's resolution regime and is the stabilisation option that is most likely to be appropriate for larger and more complex financial institutions and groups. The Bank indicated in its Statement of Policy in June 2018 on its approach to setting a minimum requirement for own funds and eligible liabilities (MREL) that it is likely to make use of a bail-in strategy for institutions and groups with balance sheets above £25 billion, and will also consider whether bail-in is appropriate for smaller institutions, in particular those with balance sheets greater than around £15 billion.[79]

15.16 The introduction of a bail-in power is also a key requirement of international standards on resolution regimes, in particular the FSB's Key Attributes for Effective Resolution Regimes. As mentioned above, the latest FSB review of the UK's resolution regime identified no gaps in the UK's policy toolkit for bank resolution and noted that the UK has introduced the bail-in option as a stabilisation tool for the resolution authority. The introduction of bail-in powers was also noted in the 2016 IMF FSAP report on the UK.

15.17 To date, the Bank has not used the bail-in option to support the resolution of a firm as circumstances have not arisen where the statutory conditions for use of the power would be met.

[77] 'United Kingdom Financial Sector Assessment Program Financial System Stability Assessment', International Monetary Fund,2016

[78] 'Ten years on – taking stock of post-crisis resolution reforms', Financial Stability Board, 2017

[79] 'The Bank of England's approach to setting a minimum requirement for own funds and eligible liabilities (MREL)', Bank ofEngland, 2018

Chapter 16

2013 Act Part 4: Conduct of persons working in financial services sector

Objectives

16.1 The PCBS published its final report on 19 June 2013[80] which, alongside wider recommendations, recommended the creation of an enhanced regime for senior managers, as well as stronger punishments for those senior managers who had engaged in reckless misconduct that caused a bank to fail. The government accepted this recommendation and committed to the creation of a new regime to replace the existing Approved Persons Regime, operated by the FCA and PRA.

16.2 Part 4 (sections 18 to 38) and schedule 3 of the 2013 Act amended existing provisions in FSMA, and inserted new sections into FSMA, to replace the previous Approved Persons Regime with the SM&CR in response to this recommendation. The new SM&CR focuses on improving senior accountability within firms, as well as ensuring those employees who pose a risk to firms or consumers are certified as fit and proper. It also applies conduct rules to all employees.

16.3 Section 59 of FSMA provided that the FCA and PRA must approve the appointment of individuals who are to perform certain roles in financial services firms where the role has been specified as a "controlled function" in their rules. Section 18 of the 2013 act amended section 59 to ensure that, in relation to a relevant authorised person, a controlled function is designated as a Senior Management Function (SMF) in the FCA's rules if it meets the definition in new section 59ZA. 'Relevant authorised persons' was defined in new section 71A of FSMA (inserted by section 33 of the 2013 Act) and was limited to PRA regulated investment firms and deposit taking institutions such as banks and building societies. Section 59 was also amended to provide that the PRA may specify a description as a controlled function in relation to the carrying on of a regulated activity by a relevant authorised person only if it is satisfied that the function is a SMF. New section 59ZA of FSMA was added to define a SMF. These amendments provide the basis of the Senior Manager element of the SM&CR.

[80] 'Changing banking for good: Report of the Parliamentary Commission on Banking Standards', Parliamentary Commission onBanking Standards, 2013

16.4 Section 19 inserted new section 59ZA into FSMA to provide the definition of 'senior management functions' referred to above.

16.5 Section 60 of FSMA, sets out the process for making applications for approval to perform a controlled function, including an SMF. Section 20 of the 2013 Act amends section 60 to provide that any application for someone to perform a designated SMF in relation to a relevant authorised person must be accompanied by a statement of responsibilities for that person, which sets out the aspects of the business that person will be responsible for managing.

16.6 Section 21 inserted new section 60A into FSMA, requiring any relevant authorised person to be satisfied that anyone they put forward to the regulator for approval to carry out a 'controlled function' is 'fit and proper' before they make the application. It also set out the considerations to which the authorised person must have regard in making that determination.

16.7 Section 22 amended section 61 of FSMA, which provides for the circumstances in which a regulator may grant an application for approval of an individual for a controlled function, including an SMF, to include the personal characteristics of candidates which should be considered as a factor when the FCA or the PRA are making an approval decision.

16.8 Section 23 amended section 61 of FSMA. As explained above, section 61 provides for the circumstances in which a regulator may grant an application for approval of an individual for a controlled function. Section 23 inserted new subsection (1) which provided that, if a regulator receives an application for an individual to perform a designated SMF, they may only grant approval in two cases:

- The existing FSMA test which applies to applications: the regulator can grant approval if it is satisfied the individual is fit and proper

- A new test: the regulator can grant approval if it is satisfied that the candidate will be fit and proper if the application is granted subject to conditions. This test would only apply in relation to applications to perform SMFs in a relevant authorised person.

16.9 Section 23 also inserted new subsections into section 61, which provided that the regulators may grant approval for the performance of an SMF in relation to a relevant authorised person conditionally or subject to time limits, but that the regulator may only exercise the new powers where it is desirable to do so to advance an appropriate regulatory objective.

16.10 Section 24 inserted new section 62A into FSMA, which provided

that a relevant authorised person must give the appropriate regulator a revised statement of responsibilities if there is a significant change in the responsibilities of someone approved to perform an SMF. This section also provided that the regulators can require the firm to provide such information in a form, and verify that information, in a way which the regulator directs.

16.11 Section 25 amended section 63 of FSMA to require relevant authorised persons to consider at least once a year for each of the people who have been approved by the regulator whether any grounds have arisen which might cause the regulator to withdraw that approval, and notify the regulator if this is the case.

Section 26 inserted new sections 63ZA, 63ZB and 63ZC into FSMA. New section 63ZA of FSMA related to an approved person where their approval has been granted subject to conditions, and it enabled the relevant authorised person that made the application for approval to apply to the appropriate regulator to make changes to these approvals by varying, adding or removing the conditions. Subsections 4 to 8 set out a 3-month period within which the regulators must grant the application or give a warning notice if they propose to refuse it. It also set out that the regulators may refuse an application if desirable to advance their regulatory objectives and applied procedural provisions.

16.12 New section 63ZB of FSMA allowed a regulator to vary an approval for the performance of an SMF in relation to a relevant authorised person where it considers this is desirable in order to advance its operational objectives (in the case of the FCA), and any of its objectives (in the case of the PRA). The subsections within this provided that the FCA may vary an approval it, or the PRA, has given and that the PRA may vary an approval it gave itself, or an approval given by the FCA in relation to a PRA-authorised person. The variations included are adding, varying or removing a condition, or applying a time limit to one.

16.13 Section 27 inserted new sections 63ZD and 63ZE into FSMA. New section 63ZC of FSMA set out the procedure a regulator must follow when varying an approval under section 63ZB of FSMA. This includes the date such variations will take effect, the written notice the regulator must give, and stipulates that they must let the interested parties know about their right to refer the matter to the Tribunal.

16.14 New section 63ZD of FSMA required both regulators to prepare and issue a policy statement about how they will use the power to give conditional or time-limited approval for performance of an SMF, and how they will vary such approvals after they have been given.

16.15 New section 63ZE of FSMA set out the procedure to be followed before issuing a statement of policy. This section required the regulators to consult each other before publishing a statement of policy. However, the FCA need only consult the PRA where the policy relates to FCA designated SMFs in PRA authorised firms. It also required the regulators to publish a draft statement of policy accompanied by a notice inviting representations within a specific time. The issuing regulator must have regard to any representations made and it must also publish a general account of the representations and its response to them alongside any statement of policy. If a regulator proposes to alter or replace an existing statement it must also follow the procedural requirements set out in this section.

16.16 Section 28 amended to sections 63A (performance of a controlled function without approval) and 66 of FSMA to extend the limitation periods for imposing sanctions for misconduct from three years to six years after the regulator knew of the contravention. The existing three-year limitation periods are retained for action in respect of contraventions occurring before that date.

16.17 Section 29 inserted new sections 63E and 63F into FSMA, which established the certification regime in FSMA for relevant authorised persons. Under new section 63E the regulator may specify in its rules functions which are subject to the new certification requirements but may only do so for "significant harm functions" (that is functions which may give rise to significant harm either to the firm or to its customers). New section 63F set out the rules for firms certifying individuals carrying out significant harm functions as fit and proper. The firm must consider whether they have the qualifications, training, level of competence and personal characteristics required by rules made by the regulators in relation to the function in question. The certificate is valid for 12 months.

16.18 Section 30 repealed section 64 and 65 of FSMA, and inserted new sections 64A and 64B into FSMA established the Conduct Rules element of the SM&CR. Section 64A gave the FCA the power to make rules about the conduct of approved persons and anyone employed as a relevant authorised person, at whatever level. Subsections within this also gave the PRA a power to make rules about the conduct of those persons within a PRA-authorised firm. Subsection 6 ensured that the definition of "employee" was broad enough to capture someone who, although they are formally employed by some other person, are in practice in a position equivalent to an employee e.g. (depending on the precise arrangements) sub-contractors, employees of sub-contractors or employees of a company in the same group as the firm which is responsible for employing the

staff who work for group companies. Section 64B required relevant authorised persons to notify all their staff of any rules which the regulators have made under section 64A of FSMA which relate to them, and to ensure that the persons concerned understand how the rules apply to them. It also provided that if a relevant authorised person knows or suspects that an approved person or certified employee has failed to comply with any conduct rules, the authorised person must notify the regulator of that fact.

16.19 Section 31 inserts new section 64C into FSMA, which required relevant authorised persons to inform the regulator if they issue a formal written warning to any of their employees, suspend or dismiss them, or take any clawback action in relation to remuneration for any reason specified in rules made a regulator made a regulator for these purposes.

16.20 Section 32 amended section 66 of FSMA and inserted new sections 66A and 66B. Section 66A provided that the FCA may take enforcement action against a person if any of conditions A, B and C apply. Condition A relates to compliance with conduct rules, provided that an individual is an approved person or an employee of a relevant authorised person. Condition B relates to an approved person or an employee of a relevant authorised person if they were knowingly concerned in a breach of a relevant requirement, and condition C relates to senior managers if a contravention by the relevant authorised person occurs in a part of the business for which they are responsible. Condition C was subject to subsection 6, which provided that a senior manager will not be guilty of misconduct if they satisfied the FCA that they had taken such steps as a person in their position could reasonably be expected to take to avoid the contravention occurring (or continuing). This provision was referred to as the reverse burden. Section 66B made equivalent provisions allowing the PRA to take enforcement action against a person if the same conditions apply.

16.21 Section 33 inserted new section 71A into FSMA which defined "relevant authorised person".

16.22 Section 34 amended section 347 of FSMA to require the FCA to record whether an approved person is a senior manager, whether the senior manager has been sent any final notice, and any published information about the matter to which the final notice relates.

16.23 Section 35 and schedule 3 made various minor and consequential amendments to FSMA and the 2012 Act which are necessary in connection with sections 21 to 33. These included ensuring that the regulators may not modify or waive rules of conduct made under section 64A in relation to a particular person and ensuring that the

issuing of a policy about the grant and variation of conditional approvals by the PRA or the FCA is treated as a legislative function which must be done through their governing bodies.

16.24 Section 36 created a new criminal offence of taking a decision that results in the failure of certain types of financial institution - a UK incorporated bank or building society or a UK investment firm that is regulated by the PRA. Subsection (1)(a) provided that only those individuals who are senior managers can commit the offence. The conduct for which an individual can be prosecuted is taking (or agreeing to) a decision on behalf of a relevant financial institution, or failing to prevent a decision being taken on behalf of the institution, where the decision leads to the failure of the firm or another relevant financial institution in the same group. The 2013 Act provided that in either case the person concerned must be aware that the decision may cause the failure. The legislation also provided that the individual's behaviour in taking the decision in question must be far below that which could reasonably be expected of a person in the individual's position. Subsection 4 set the maximum penalties for the offence at 7 years imprisonment or an unlimited fine (or both).

16.25 Section 37 subsection 7 defined "senior manager" for the purpose of the offence, limiting it to individuals performing a function which has been designated as an SMF. Subsections 9 and 10 of this section defined when a relevant financial institution is to be regarded as having failed for the purposes of the offence.

16.26 Finally, section 38 set out who may bring proceedings for the offence.

Implementation

16.27 The FCA and PRA consulted on the details of this new regime in July 2014 and announced the final rules under the SM&CR in March 2015.[81] These were intended to provide further information needed by firms as they progressed towards the new regime, including setting out the preparations needed for the different elements of the regime.

16.28 The SM&CR came into effect for banks, building societies and PRA regulated investment firms in March 2016.

[81] 'Strengthening accountability in banking: Final rules (including feedback on CP14/31 and CP15/5) and consultation on extendingthe Certification Regime to wholesale market activities', Financial Conduct Authority, 2015

Secondary legislation

16.29 All Commencement Orders related to this section are set out in Annex C.

16.30 The Financial Services (Banking Reform) Act 2013 (Transitional and Savings Provisions) Order 2015 (2015/492), which was made on 4 March 2015 and came into force on 26 March 2015, made transitional provisions in connection with Part 4 of the 2013 Act. These included provisions to ensure that persons who are approved to perform current controlled functions can be approved to perform new controlled functions (without an application having to be made to perform those new functions) which correspond to their actual duties, and which are consistent with the current controlled functions which they are approved to perform.

16.31 Subsequently, amendments were made to this statutory instrument by the Financial Services (Banking Reform) Act 2013 (Transitional and Savings Provisions) (Amendment) Order 2015 (2015/1660) which was made on 8 September 2015 and came into force as of 1 October 2015. This made amendments to extend its scope to include certain overseas banks or investment firms which became 'relevant authorised persons' for the purposes of FSMA and insurers to which the EU Solvency II Directive does not apply.

16.32 Part 4 made amendments to sections 66 and 67 of FSMA, which set out the disciplinary powers and processes applying in relation to individuals in the financial services sector, and inserted new sections 66A and 66B to FSMA defining misconduct for the purposes of regulatory action. These powers and processes are also applied (with modifications) by legislation regulating aspects of financial services or related activities which are not within the scope of FSMA. The Financial Services (Banking Reform) Act 2013 (Consequential Amendments) Order 2016 (2016/163) makes consequential amendments to that legislation. The Financial Services (Banking Reform) Act 2013 (Consequential Amendments) (No 2) Order 2016 (2016/1023) makes further amendments to secondary legislation consequential to the amendments to section 66 of FSMA and insertion of new sections 66A and 66B to FSMA.

16.33 The Financial Services and Markets Act 2000 (Misconduct and Appropriate Regulator) Order 2015 (2015/1864) amends section 66A of FSMA, as inserted by the 2013 Act, to confer additional disciplinary powers on the FCA where there is a breach by a firm of the Alternative Investment Fund Managers Regulations 2013. It also amends section 204A of FSMA, as inserted by the 2012 Act, to ensure that existing disciplinary powers in FSMA can be used be either the FCA or PRA in relation to new requirements inserted into Part 5 of FSMA by the 2013 Act. Without these

amendments the requirements could only be enforced by the FCA, even if it had no interest in the particular contravention.

16.34 Part 4 of the 2013 Act gave HM Treasury the power to extend the reforms under Part 5 of FSMA, as amended by Part 4 under the 2013 Act, to cover UK branches of foreign banks and investment firms by statutory instrument. The Financial Services and Markets Act 2000 (Relevant Authorised Persons) Order 2015 (2015/1865) (9/11/2015) made certain foreign credit institutions and investment firms that have a branch in the UK into relevant authorised persons for the purposes of certain provisions under Part 5 of FSMA.

Legal issues and other reviews

16.35 There are no legal issues to report with these sections.

16.36 In 2014 the Parliamentary Commission on Banking Standards issued a statement, summarising their views on the government's response to their report published the year before.[82]

16.37 In September 2016 the FCA published a review of the implementation of the SM&CR by the relevant firms, noting that firms had made good progress in implementing the regime as well as the issues in implementing the regime.[83]

16.38 The FCA subsequently carried out a stock take of the SM&CR in the Banking Sector in 2019.[84] The PRA also conducted an evaluation of the SM&CR, to assess how it is delivering against its original objectives, which was published in December 2020[85].

Preliminary Assessment

16.39 The 2013 Act introduced the SM&CR for banks, building societies, credit unions and PRA regulated investment firms. These firms implemented the regime in 2016 as planned.

16.40 The government also decided to make further, mainly technical, changes to the SM&CR through the later Bank of England and Financial Services Act 2016, and to extend the regime to insurers and all FCA solo regulated firms. The aim of these changes was to create a consistent regulatory regime across the sector and to improve the function of the regime.

16.41 Since the regime's introduction, there have been multiple cases brought by the FCA and/or PRA but, to date, there has only been one case brought by the FCA and PRA in relation to conduct occurring after the regime's introduction. This followed

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[82] 'Statement by former Members of the Parliamentary Commission on Banking Standards', Parliamentary Commission on BankingStandards, 2014

[83] 'Senior Managers and Certification Regime: supervisory review', Financial Conduct Authority, 2016

[84] 'Senior Managers and Certification Regime Banking Stocktake Report', Financial Conduct Authority, 2019

[85] https://www.bankofengland.co.uk/prudential-regulation/publication/2020/evaluation-of-the-senior-managers-and-certification-regime

an investigation by the regulators which found a senior individual had breached the requirement to act with due skill, care and diligence (Individual Conduct Rule 2). The FCA and PRA jointly fined the senior individual and introduced special requirements at the relevant firm.

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Chapter 17

2013 Act Part 5: Regulation of payment systems

Objectives

17.1 In July 2011 the TSC published *'The future of cheques'*.[86] This recommended that HM Treasury bring the Payments Council formally within the system for financial regulation. The Payments Council was an organisation of financial institutions in the United Kingdom, which set the strategy for UK payment mechanisms from 2007 until 2015.

17.2 The government accepted the TSC's recommendations and, in July 2012, issued a consultation, '*Setting the strategy for UK payments'*,[87] setting out options for improving the way that payments strategy is made in the UK.

17.3 In March 2013 the government published a further consultation, *'Opening up UK payments'*,[88] which proposed a new, competition-focused, utility-style regulator for retail payment systems in the UK. This was motivated by concerns around whether the existing market for UK payment systems promoted competition, innovation and adequately served consumers. In response to HM Treasury's consultation, the Office of Fair Trading (OFT) gathered evidence on competition and innovation in payment systems in the UK. It published a report '*UK Payment systems – How regulation of UK payments systems could enhance competition and innovation'*.

17.4 Following this, in December 2013 the government introduced legislation through the 2013 Act to require the FCA to establish a new regulator for payment systems in the UK - the Payment Systems Regulator ('PSR'). The Final Report of the Parliamentary Commission on Banking Standards also welcomed the government's commitment to bring payment systems into regulation.

17.5 The Impact Assessment for the 2013 Act in relation to payment systems stated that the main policy objectives were "to ensure that the operation of the payment systems is not a barrier to competition in the provision of payment services, and in the wider UK financial services market"…and that… "by tackling anti-competitive elements in this market, it will also ensure that

[86] 'The future of cheques', Treasury Select Committee, 2011

[87] 'Setting the strategy for UK payments', HM Treasury, 2012

[88] 'Opening up UK payments', HM Treasury, 2013

decisions about the operation and development of UK payment systems are made with the views of all stakeholders, including end-users, being properly taken into account, and that adequate investment is made to act on the results of these decisions. The intended effect is that the UK has reliable, efficient and innovative payments networks, that support competition in UK financial services."

17.6 Part 5 and schedules 4 and 5 of the Act therefore establishes a regulatory regime for payment systems in the United Kingdom. It creates the PSR, an independent subsidiary of the FCA, with statutory objectives, referred to in the Act as 'payment systems objectives', of: ensuring that payment systems are operated and developed in a way that considers and promotes the interests of service-users; promoting effective competition in the markets for payment systems and markets for services provided by payment systems, in the interests of service-users; and, promoting the development of, and innovation in, payment systems in the interests of service-users.

17.7 The 2013 Act contains provisions on the governance of the new regulator, how it is funded and its regulatory powers. The latter include the power to give directions to participants in regulated payment systems and impose requirements on the operators of regulated payment systems. It also includes a power to require owners to dispose of their interests in payment system operators. This power was extended to cover owners' interests in infrastructure providers by section 14 Small Business, Enterprise and Employment Act 2015. The Act also confers upon the PSR certain competition functions relating to participation in payment systems, which it can exercise concurrently with the Competition and Markets Authority (CMA). Both the CMA and PSR are required by the Act and other legislation to consult each other before exercising any of their concurrent competition functions.

17.8 A duty to coordinate relevant functions with other existing financial regulators is set out in the 2013 Act. In support of this, the PSR, the Bank, FCA and PRA are required to prepare, maintain and annually review a Memorandum of Understanding (MOU). The MOU describes the role of each regulator in relation to areas of common regulatory interest and how the regulators intend to comply with the duty to coordinate. The 2013 Act gives the Bank, the PRA and the FCA the ability to require the PSR to refrain from proposed action should this conflict with the advancement of their own objectives.

17.9 To facilitate the operation of the new regulator, the 2013 Act defines what constitutes a payment system, and the entities considered to be participants of a payments system. It also sets out the process by which HM Treasury designates a payment

system, to bring a system within scope of regulation by the PSR. Such systems are referred to, under the 2013 Act, as regulated payment systems.

Implementation

17.10 Part 5 of the 2013 Act came into force on a number of different dates, through commencement orders listed in full in Annex C. Namely:

- sections 39 to 58 on 1st March 2014
- section 59 on 1st April 2014
- section 60(1), (2), (3) and (7) on 1st April 2014
- section 60 (so far as it was not already in force) on 1st April 2015
- section 61 (partially) on 1st November 2014
- section 61 (so far as it was not already in force) on 1st April 2015
- section 62 on 1st April 2015
- sections 63 to 66 on 1st April 2014
- section 67(2) (partially) on 1st November 2014
- section 67(3), (4) and (5) on 1st April 2014
- section 67 (so far as it was not already in force) on 1st April 2015
- sections 68 to 110 on 1st March 2014

17.11 The 2013 Act required the FCA to establish the PSR as a corporate body and to take such steps as are necessary to ensure the PSR is, at all times, capable of exercising its functions. In March 2014, the FCA issued a Call for Inputs to gather views on the UK payments industry, in particular on issues of competition, access, governance, ownership and innovation. The evidence generated by this exercise aimed to inform the PSR consultation on the regulatory framework. Following the Call for Inputs launch, the PSR was incorporated and its board appointed on 1 April 2014.

17.12 The government launched a consultation on the designation of payment systems for the PSR in October 2014. Following this, the government announced at Autumn Statement 2014 that it intended to designate eight systems as regulated payment systems.

17.13 In December 2014, the PSR consulted on a new regulatory framework for payment systems in the UK that were to be designated by HM Treasury. The regulator also held a stakeholder event to allow the payments industry to hear the PSR’s proposals for the regulated UK payment systems industry.

17.14 At Budget 2015, the government confirmed its commitment to designate Bacs, CHAPS, Faster Payments, Cheque & Credit Clearing, LINK, Northern Ireland Cheque Clearing, Visa and MasterCard for regulation by the PSR. These designation orders were made on 19 March 2015 and came into force on 1 April 2015. The designation order for Cheque and Credit Clearing was amended in 2017, to include cheque image clearing.

17.15 The MOU between the other financial regulators and the PSR in relation to payment systems was first published on 26 March 2015. The PSR became fully operational on 1 April 2015 at which point responsibility for the economic regulation of regulated payment systems fell to the PSR.

17.16 An MOU between the CMA and the PSR setting out working arrangements in relation to their concurrent competition powers was published on 22 December 2015.

Secondary legislation

17.17 The Financial Services (Banking Reform) Act 2013 (Designated Representative Bodies) Order 2016 (2016/202) gives five bodies the status of designated 'super-complainants' for the PSR. If, and when, any of these bodies makes a complaint to the PSR relating to the UK market for services provided by payment systems, section 69 of the Financial Services (Banking Reform) Act 2013 requires the PSR to publish a response to the complaint. This is aimed at bringing instances of market failure or misconduct in the payment system sector to the attention of the PSR, and for it to take action, if necessary. This SI was made on 22 February 2016 and came into force as of 1 April 2016.

17.18 The five bodies were: The National Association of Citizens Advice Bureau, Consumers' Association, the General Consumer Council for Northern Ireland, National Federation of Self Employed and Small Businesses, and Age UK.

17.19 To assist the PSR in its work with other authorities and regulators, section 92 of the 2013 Act and the Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014 (2014/882) enable the PSR to disclose relevant, confidential information to specified persons, for the purpose of the PSR and other bodies discharging their public and statutory functions (subject to single market restrictions). These Regulations were made on 1 April 2014 and came into force as of 28 April 2014.

17.20 The Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) (Amendment) Regulations 2017 (2017/456) added the Comptroller and Auditor General and the National Audit Office (NAO) to the list of persons to whom and by whom confidential information may be disclosed, subject to any restrictions on disclosure provided for in EU law. These

Regulations were made on 21 March 2017 and came into force as of 12 April 2017.

17.21 The 2013 Act requires the PSR to pay to HM Treasury the amounts it receives in penalties under section 73 (Penalties), after deducting enforcement costs. The Payment to Treasury of Penalties (Enforcement Costs of the Payment Systems Regulator) Order 2015 (2015/487) supplements the definition of enforcement costs to cover enforcement under the 2013 Act, the Competition Act 1998, the Enterprise Act 2002 and the Payment Services Regulations 2009.

17.22 The Public Record, Disclosure of Information and Cooperation (Financial Services) (Amendment) (EU Exit) Regulations 2019 (2019/681) amends the Financial Services (Banking Reform) Act 2013, together with related subordinate legislation: The Disclosure Regulations and the Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014. Amendments include minor changes which remove or amend specific references to EU member states, bodies and instruments. These Regulations were made on 26 March 2019. Certain provisions came into force on the day after the SI was made to allow HM Treasury and the regulators to prepare for EU exit, the remaining provisions came into force at the end of the transition period.

Legal issues and other reviews

17.23 There are no legal issues to report with these sections.

17.24 The TSC conducted an inquiry into the work of the PSR over 2018-2019.[89] The inquiry, now concluded, covered written evidence, written correspondence and two oral evidence sessions. It did not focus on whether the legislation set out in the 2013 Act was successful in creating the PSR. Instead, the inquiry covered the PSR's day-to-day work.

17.25 The Committee looked into: payments industry decisions (for example LINK's 2018 ATM interchange fee decisions), their impact and the PSR's assessment of such decisions; the PSR's work with the CMA on competition issues in the sector; topics such as Authorised Push Payment scams and how the PSR is tackling such issues; the UK's exit from the EU; and, wider industry developments like the New Payments Architecture.

17.26 Oral sessions during the inquiry did touch on aspects of the legislation underpinning the PSR. For example, there was discussion on the PSR's powers in relation to the ATM market.

17.27 The committee explored situations where the regulator may want to take a different approach to other key regulators in

[89] 'The work of the Payment Systems Regulator inquiry', Treasury Select Committee, 2017-19

the sector (e.g. the FCA and Bank). The PSR explained that the legislation provides the FCA, the PRA, and the Bank with the ability to require the PSR to refrain from proposed action should this conflict with the advancement of their own objectives This means that the PSR must work closely with these other regulators, as set out in the MOU between them.

17.28 Finally, these sessions also raised the fact that the PSR had spent a portion of its Budget on external fees on consultancy services to support its work. The committee commented on whether this meant that the PSR did not have the requisite skills in house. The PSR confirmed that it has a range of expertise, including economists, payment specialists, lawyers, policy makers and communications specialists and that it brings this expertise together to deliver a whole range of projects. However, on occasion, it needs additional specialist input and so draws in consultancy support as and when needed in a cost- effective way.

17.29 In light of rapid technology developments, HM Treasury is currently leading a Payments Landscape Review, and published a Call for Evidence on 28 July 2020 as the first stage in the review. This sets out the government's aims for payments in the UK, makes a high-level assessment of how well the present system is delivering against the government's aims and asks questions about the opportunities, gaps and risks that need to be addressed in order to ensure that the UK maintains its status as a country at the cutting edge of payments technology.

Preliminary Assessment

17.30 The March 2013 publication '*Opening up UK payments*'[90] set out the government's aim to create an environment where payment system end- users (i.e. those who use, or are likely to use, services provided by payment systems, including consumers) and the wider economy fully benefit from payment systems. This meant having UK payment systems that, amongst other things: facilitated competition by permitting open access; were stable, reliable and efficient; and, operated for the benefit of end users.

17.31 The government subsequently, through Part 5 of the 2013 Act, created a new regulatory regime for UK payment systems to help ensure that its aims for payment systems were met. This was primarily delivered through setting up a new, dedicated economic regulator for payment systems – the PSR.

17.32 The PSR has subsequently been able to use the statutory powers conferred upon it under the 2013 Act to further its objectives. For example, since it became operational, the PSR

[90] 'Opening up UK payments', HM Treasury, 2013

has issued a number of General and Specific Directions in respect of payment systems which include rules on access to payment systems, governance and stakeholder engagement.

17.33 Procedures set out in the 2013 Act allowed the Consumers' Association Which? to raise the issue of Authorised Push Payment (APP) scams with the PSR in 2016. The PSR subsequently worked with industry to implement a Contingent Reimbursement Model (CRM) Code to increase consumer protection and reduce the number and impact of APP scams. The Code was implemented in 2019. In addition, the PSR directed the six largest banking groups to implement Confirmation of Payee (CoP) to help prevent APP scams and accidentally misdirected payments.

17.34 Additionally, the PSR has undertaken a number of market reviews as allowed for in the 2013 Act. Market reviews are one of the principal ways in which the PSR investigates the market for payment systems, or the markets for services provided by payment systems, to see how well they are working for service users. This is in line with its payment systems objectives. Reviews have covered indirect access to payment systems, payment systems infrastructure and latterly, card-acquiring services. The infrastructure review proposed changes in the ownership of the main retail interbank infrastructure provider (VocaLink) and required competitive procurement of future system infrastructure, thereby increasing competition in the payments sector.

17.35 As catered for in the 2013 Act, the PSR is also currently pursuing enforcement action in relation to a suspected infringement under competition law and suspected compliance failures in relation to payment sector-specific regulations. In relation to the competition law investigation, which is still ongoing, the PSR has issued its provisional decision against five firms for cartel behaviour in the public prepaid cards sector and has settled the case with three of them.

17.36 The PSR has also acquired a number of other important statutory functions in relation to payment systems. Such functions were not originally conferred by the Financial Services (Banking Reform) Act 2013, but the PSR's creation has meant it can undertake such functions which are consistent with its payment systems objectives. Two notable examples include, ensuring compliance with requirements under the Interchange Fee Regulation (as amended by the Interchange Fee (Amendment) (EU Exit) Regulations 2019) (the 'UK IFR') and under Part 8 of the Payment Services Regulations 2017 (2017/752). Part 8 of the Payment Services Regulations 2017 (2017/752) implements the revised Payment Services Directive

('PSD2') into UK law.

17.37 The UK IFR caps interchange fees on consumer debit and credit card transactions where the point of sale ('merchant'), acquirer, and card issuer are all within the UK. It caps the fees that merchants pay to card issuers (for example banks or building societies) and introduced a number of rules aimed mainly at improving transparency in the provision of fee information to merchants offering card payments. Part 8 of the Payment Services Regulations 2017 (2017/752) contains provisions relating to access to non-interbank payment systems, indirect access to interbank payment systems, and access to payment account services by non- bank payment service providers.

17.38 The PSR's actions have served to increase competition and innovation in the markets for payment systems and services provided by payment systems. For example, over 30 direct participants joined the main interbank payment systems in the last three years alone. Moreover, 2018 saw the first non-bank payment service provider join an interbank payment systems (TransferWise, now Wise).

17.39 Similarly, the number of indirect access providers to payment systems has increased between 2015 and 2019, with new specialist providers in the market.

17.40 Finally, the 2013 Act has allowed the PSR to respond to incidents in payment systems, in conjunction with the other regulators. For example, after Visa's
6-hour outage in Summer 2018, both the Bank and PSR took action in response to the incident. The PSR issued a specific direction requiring Visa to ensure that Visa's participants, stakeholders and service-users receive enough information in the event of any future major incident, and that crisis management incidents are rehearsed each year.

17.41 Overall, a preliminary assessment of Part 5 of the 2013 Act is that it has successfully implemented a new regime for payment systems regulation. Under the 2013 Act, HM Treasury has been able to successfully define and designate payment systems for regulation by the PSR, including the eight systems it initially committed to designate at Budget 2015.

Chapter 18

2013 Act Part 6: SAR for operators of certain infrastructure systems

Objectives

18.1 Part 6 (sections 111 to 128) and schedules 6 and 7 of the 2013 Act provides HM Treasury with the legislative power to create a Special Administration Regime (SAR) for certain Financial Market Infrastructure (FMI) firms (operators of systemically important inter-bank payment systems and securities settlement systems), which would apply to such firms in the event of their insolvency or threatened insolvency, in order to support UK financial stability. This FMI SAR specifically excluded recognised Central Counterparties (CCPs) as these are already subject to the special resolution regime in the UK.

18.2 HM Treasury consulted on whether to establish a SAR for payment systems and securities settlement systems in April 2013.

18.3 A SAR is a modified insolvency regime that provides an administrator with special objectives, such as the continuity of critical services, that take priority over the objectives in a normal administration. Without such a regime, if an FMI firm were to become insolvent, an administrator or liquidator using the existing insolvency objectives would not necessarily prioritise the continuation of critical or systemically important payment and securities settlement services. A SAR for FMI firms was therefore introduced to mitigate the risk of such disruption occurring due to the insolvency of an FMI firm.

18.4 Under the 2013 Act, the first two objectives of the FMI SAR are to ensure that the relevant payment or securities settlement system continues to operate as an efficient and effective system, and that any protected activities continue to be carried on in the event that the firm becomes insolvent.

18.5 The FMI administrator's third objective is to ensure that it becomes unnecessary for the FMI administration order to remain in force for those purposes by either:

- rescuing the business as a going concern; or
- transferring as much of the business as is necessary to

one or more different firms

Implementation

18.6 The provisions contained within sections 111 to 128 came into force for England and Wales on 13 July 2018, with the exception of section 121(1) covering conduct of administration, which came into force on 1 March 2014.

18.7 HM Treasury consulted on draft secondary legislation under the 2013 Act, the FMI SAR Rules, in November 2016.[91] Following consultation, HM Treasury introduced The Financial Market Infrastructure Administration (England and Wales) Rules 2018, which came into force on 4 August 2018.

18.8 Service providers, where designated by HM Treasury by order under section 112(4), are also within the scope of the SAR (section 112 (2)(c)). HM Treasury exercised this power on 16 July 2018, with an order to designate VocaLink under section 112(4). This came into force on 9 August 2018.

Secondary legislation

18.9 The Financial Market Infrastructure Administration (England and Wales) Rules 2018 (2018/833) introduced the FMI SAR rules, giving effect to the establishment of a new special administration regime for operators of certain financial market infrastructure systems and restricting the powers of persons other than the Bank in relation to the insolvency of infrastructure firms. These Rules set out the procedure for FMI administration under Part 6 of the 2013 Act. They were made on 10 July 2018 and came into force on 4 August 2018.

18.10 These FMI administration rules apply to England and Wales, where all of the companies currently within the scope of this proposal are registered. Rules for Scotland and Northern Ireland have not yet been made.

18.11 As set out above, the Financial Market Infrastructure Administration (Designation of VocaLink) Order 2018 (2018/858), designated VocaLink Limited as an infrastructure company, as defined in section 112 of the 2013 Act, in connection with the services it provides to the operators of Faster Payments Service, Bacs and LINK.

Legal issues and other reviews

18.12 There are no legal issues to report with these sections. No other assessments of these sections have been conducted.

Preliminary Assessment

18.13 The FMI SAR came into force in the UK on August 2018. It plays

[91] 'Rules on ensuring the effective functioning of a financial market infrastructure special administration regime', HM Treasury,2018

an important part in aiming to mitigate the risk of disruption occurring due to the insolvency of an FMI company by providing an administrator with special objectives, such as the continuity of critical services.

18.14 To date, the FMI Special Administration Regime has not been employed, as no firm within scope of the regime has become insolvent.

Chapter 19

2013 Act Part 7: Miscellaneous

19.1 Part 7 of the 2013 Act contains a number of provisions: Competition (sections 129 and 130), Consumers (sections 131 and 132), Parent Undertakings (section 133), Meetings with auditors (section 134), Fees to meet Treasury expenditure (section 135), Parliamentary control of statutory instruments under FSMA 2000 (section 136), accounts of the Bank and its wholly owned subsidiaries (section 137), Building Societies (section 138), Claims management services (sections 139 and 140) and Minor amendments (section 141).

FCA Competition Powers

Objectives

19.2 In August 2013, the FCA wrote to the Chancellor, to request that the competition objective given to the FCA by the 2012 Act be supported by giving competition law powers to the FCA contained in Part 1 of the Competition Act 1998 and Part 4 of the Enterprise Act 2002. The FCA requested that this addition to the FCA's suite of powers be implemented in April 2015 in order to allow time to build the necessary expertise.

19.3 Section 129 and schedule 8 to the 2013 Act introduced competition powers for the FCA, aimed to ensure that the FCA has powers to address restrictions and distortions in competition so far as they arise in the context of financial sector activities. The FCA exercises these powers concurrently with the CMA, to support the FCA's competition objective introduced by the 2012 Act. These competition powers were provided to the FCA to bring it in line with other sector regulators, and further strengthen its ability to ensure competitive financial services markets that deliver good consumer outcomes.

19.4 Part 1 of schedule 8 made amendments to FSMA. Part 2 of schedule 8 made amendments to other legislation: Company Directors Disqualification Act 1986; Competition Act 1998; Enterprise Act 2002; and Enterprise and Regulatory Reform Act 2013.

Implementation

19.5 The FCA's competition powers in relation to the provision of financial services came into effect as of 1 April 2015. If a question arises as to whether the FCA has jurisdiction, HM

Treasury decides. The FCA state that they 'seek to exercise our functions transparently and fairly, and parties are able to challenge our procedural and substantive decisions' in their official guidance, updated in April 2018.[92]

Secondary legislation

19.6 Aside from the commencement order set out in Annex C, there is no further secondary legislation associated with this section.

Legal issues and other reviews

19.7 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

19.8 Examples contained in the FCA's annual competition report[93] demonstrate that these powers have been effective tools for tackling competition concerns in specific cases.

19.9 The FCA's first formal decisions using competition enforcement powers were undertaken in February 2019. A formal investigation under the Competition Act 1998 that found that three asset management firms breached competition law by sharing strategic information on a bilateral basis, during one initial public offering (IPO) and one placing, shortly before the share prices were set. The Competition Act 1998 prohibits 'agreements between businesses that prevent, restrict, or distort competition to an appreciable extent in the UK'. The FCA fined two of the firms, while the third was given immunity under the competition leniency programme.

19.10 The legislation states that 'Before the CMA or the FCA first exercises any of the concurrent functions in relation to any matter, it must consult the other' and that 'neither the CMA nor the FCA may exercise any of the concurrent functions in relation to any matter if any of those functions have been exercised in relation to that matter by the other'.

19.11 Both regulators have demonstrated effective institutional coordination required to carry out these concurrent competition powers as required by the legislation. The CMA set up and chairs the UK Competition Network (UKCN), which brings together sectoral regulators, including the FCA, to meet the objective of more consistent and effective use of competition powers across all sectors. A 'Memorandum of Understanding'[94] between the FCA and the CMA was agreed in December 2015 and updated in April 2018 and July 2019, setting out more practical detail on

92 'FG15/8: The FCA's concurrent competition enforcement powers for the provision of financial services', Financial ConductAuthority, 2018

93 'Competition Annual Report 2018/19', Financial Conduct Authority, 2019

94 'Memorandum of understanding between the Competition and Markets Authority and the Financial Conduct Authority –concurrent competition powers', Competition and Markets Authority and Financial Conduct Authority, 2019

how the CMA and the FCA work together within the framework of competition law. Further details on this framework can be found in the CMA's Annual report on concurrency.[95]

19.12 In 2019, the FCA worked closely with the CMA on its response to the Citizens' Advice super-complaint on so-called 'loyalty penalties' across mobile, broadband, home insurance, mortgages and savings. In December 2018, the CMA published a series of recommendations in response to the super-complaint. This included some specific to the FCA, for the cash savings, insurance and mortgages markets.

19.13 The legislation states that the FCA is to have the function of keeping under review the market for financial services. The FCA is taking forward several market-specific recommendations through their existing market studies (carried out under FSMA) and ongoing work in these areas. For example, the FCA's final report on General insurance pricing practices was published in September 2020[96] and, following a consultation, the FCA adopted new rules in May 2021 to address harm in home and motor insurance markets[97].Likewise, as outlined in the FCA's Perimeter Report,[98] its Asset Management Market Study identified serious competition concerns with investment consultancy and fiduciary management in addition to competition concerns in the asset management sector itself. The FCA introduced remedies to address its concerns in relation to asset management but referred the investment consultancy and fiduciary management sectors to the CMA for a detailed investigation as they are not regulated by the FCA. Following its market investigation, the CMA recommended that investment consultancy services should be brought within the FCA supervisory remit, and HM Treasury plans to consult to bring these services into the FCA's perimeter.

19.14 These cases demonstrate that the cross-regulatory coordination required of both regulators, as set out in the legislation, has allowed for the effective practical implementation of these competition powers.

[95] Promoting competition in services we rely on- The Annual Concurrency report 2021' Competition and Markets Authority, 2021

[96] 'General insurance pricing practices: interim report', Financial Conduct Authority, 2019

[97] General insurance pricing practices market study Feedback to CP20/19 and final rules, Financial Conduct Authority, 2021

[98] 'Perimeter report 2018/19', Financial Conduct Authority, 2019

Secondary competition objective for the PRA

Objectives

19.15 Section 130 gave the PRA a secondary competition objective. Improving competition in financial services, particularly retail banking, was identified as a public policy priority in a number of post-financial crisis reviews, including the ICB in 2011 and subsequently the PPCBS in 2013. These reports emphasised the importance of reducing barriers to entry and expansion in the banking and insurance sectors, identifying opportunities for delivering a proportionate regime, while also considering the sustainability of firms' business models.

Implementation

19.16 Section 130, which established the Secondary Competition Objective of the PRA, came into force in March 2014. The Secondary Competition Objective required the PRA to consider the potential impact on competition while exercising its primary safety and soundness objective. The Bank's first report,[99] in 2016, found that there are numerous instances where competition considerations have influenced policy outcomes.

Secondary legislation

19.17 There is no further secondary legislation associated with this section aside from that set out in Annex C.

Legal issues and other reviews

19.18 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

19.19 As outlined in the PRA's 2019 annual report,[100] various cases have demonstrated that the PRA has been able to fulfil the objective of the legislation: to act in a way which, as a secondary objective, facilitates effective competition in the markets for services provided by PRA-authorised persons in carrying out regulated activities, while ensuring safety and soundness in line with its primary objective.

19.20 For example, the FPC's recommendation on loan to income (LTI) ratios in mortgage lending sought to limit firms' high LTI mortgages to no more than 15 per cent of total business. However, the PRA identified that setting a *'de minimis'* threshold to exclude firms extending fewer than 300 loans each year would help to ensure that niche, typically small, lenders

[99] 'Evaluating the PRA's approach to its Secondary Competition Objective', Independent Evaluation Office, 2016

[100] 'Annual Report 1 March 2018 – 28 February 2019', Bank of England and Prudential Regulation Authority, 2019

would not be disproportionately affected. As a result a macroprudential policy was implemented in a manner that was consistent with both their primary and secondary objectives, including mitigating potentially adverse effects on small firms specialising in high LTI lending.

Payday loans

Objectives

19.21 Section 131 of the 2013 Act placed a duty on the FCA to use its pre-existing powers in section 137C of FSMA to introduce a cap on the costs of high cost short-term credit (HCSTC, commonly known as 'payday loans'). It gave the FCA responsibility for designing and implementing the cap by no later than 2 January 2015, before which it must consult HM Treasury.

19.22 The objective of the legislation was to restrict the charges, fees, and interest that can be levied on a payday loan, thereby securing an appropriate degree of protection against excessive charges for consumers who may otherwise have few options for accessing credit and to protect them against spiralling costs in the event that they are unable to make the repayments.

Implementation

19.23 The government believed that the design and level of the cap should not itself be enshrined in primary legislation, but that the independent and expert regulator with flexible rule-making powers was best placed to design these details and ensure the cap remained effective. The 2013 Act therefore placed a duty on the FCA to design and implement the cap, including a statutory duty to consult with HM Treasury before it was implemented.

19.24 Following consultation CP14/10[101], the FCA published its final rules detailing the design of the cap in November 2014, ahead of it coming into force on 2 January 2015[102]. These rules can be found in Chapter 5A of CONC,[103] the FCA's consumer credit rulebook.

19.25 To ensure consumers were thoroughly protected, in 2015, the government legislated to give additional powers to the FCA to allow it to take action against credit firms, including payday lenders, which direct all or most of their activity to the UK and establish themselves in another European Economic Area state for the purpose of evading FCA regulation (including the cap), using the flexibility provided under the EU Electronic Commerce Directive. The Electronic Commerce Directive (Financial Services and Markets) (Amendment) Order 2015 (2015/852) was made on 23 March 2015 under powers contained in the European Communities Act 1972 and FSMA and came into force on 24 March 2015.

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[101] 'CP14/10: Proposals for a price cap on high-cost short-term credit', Financial Conduct Authority, 2014

[102] 'PS14/16: Detailed rules for the price cap on high-cost short-term credit - Including feedback on CP14/10 and final rules',Financial Conduct Authority, 2014

[103] 'Chapter 5A: Cost cap for high-cost short-term credit', Financial Conduct Authority, 2015

Secondary legislation

19.26 There is no further secondary legislation associated with this section aside from that set out in Annex C.

Legal issues and other reviews

19.27 There are no legal issues to report with this section. No other assessments of this section have been conducted.

19.28 In November 2016, the FCA published a Call for Input[104] to inform their review of the high cost credit market. On 31 July 2017, the FCA published Feedback Statement FS17/2[105] setting out its response to the Call for Input.

19.29 Following the review, the FCA has committed to maintain the payday cap at the current level but intends to keep this under review.

Preliminary assessment

19.30 The cap has been welcomed by consumer groups and Parliamentarians. For instance, at a TSC hearing in July 2018[106], representatives from Citizens Advice claimed that there are no credible voices that will argue that the payday loan cap has been anything but a success and that it has been broadly effective in achieving the objectives it set out to accomplish.

19.31 According to the FCA's review of the price cap in 2017 (FS17/2), the reforms undertaken have led to cheaper loans, better affordability assessments, and fewer customers experiencing debt problems with payday loans. FS17/2 also indicates that the payday cap has led to savings of approximately £150 million for the 760,000 individuals using payday loans each year. In addition to this, debt charities have also indicated that consumers are coming to them for advice earlier and with lower debts, suggesting that underlying problems are being addressed sooner.

19.32 The FCA also found no evidence that consumers who have been unable to get HCSTC products since the cap have generally had negative consequences as a result. The majority (63%) of consumers turned down for HCSTC products since the introduction of the cap believe that they were better off as a result. The July 2018 TSC hearing also heard from representatives from other high-cost credit industries who agreed that there was no evidence that failing to get a HCSTC loan has led to increased uptake of other forms of high cost credit and, moreover, the TSC saw no corroborating evidence that the cap has resulted in an increase in the use of illegal

[104] 'Call for Input: High-cost credit and review of the high-cost short-term credit price cap', Financial Conduct Authority, 2016

[105] 'FS17/2: High-cost credit and review of the high-cost short-term credit price cap', Financial Conduct Authority, July 2017

[106] 'Helping over-indebted households', Treasury Select Committee, 26 July 2018

money lending.

19.33 Criticisms of the cap have not focused on the design of the cap itself but rather on whether sufficient affordable credit alternatives exist or why further caps have not been implemented across the consumer credit market as a whole.

19.34 The FCA's high-cost credit review has looked at alternatives to high-cost credit. In July 2019, the FCA published a report setting out the work it has done to improve both the availability of lower cost credit and consumers' awareness of credit and non-credit alternatives together with its ongoing activities in this area.[107]

19.35 Also, as part of the high cost credit review, the FCA considered whether using its power to cap the cost of credit would be an appropriate and proportionate intervention for other high-cost credit products. Following the review, and based on the evidence it received, the FCA decided that a price cap on rent-to-own products would be an appropriate remedy to protect consumers.[108] This price cap came into force on 1 April 2019, taking effect for most products on 1st July 2019. The FCA estimate that the price cap could deliver net consumer benefits of between £19.6m and £22.7m a year. The FCA commenced a review of the impact of this price cap in April 2020 and published its evaluation on 2 December 2020[109]. That evaluation found that the price cap has been effective, with the FCA estimating it had led to an average fall in prices of 19% for the two largest firms that were in the market when the FCA intervened.

19.36 The FCA's work has also demonstrated that the causes of harm differ significantly across different high-cost credit products, and as such the FCA has introduced measures addressing the specific causes of harm in each sector and based on the evidence available. This targeted and proportionate approach helps to avoid unintended consequences for the availability of credit.

[107] 'Alternatives to High-cost Credit Report', Financial Conduct Authority, 2019

[108] 'PS19/6: Rent-to-own price cap – feedback on CP18/35 and final rules', Financial Conduct Authority, 2019

[109] Evaluation Paper 20/1: An evaluation of our rent-to-own price cap: Financial Conduct Authority, December 2019

FCA Consumer Panel

Objectives

19.37 Section 132 made amendments to FSMA (section 1Q) so that the FCA's Consumer Panel may make its views on any matter which it is considering, which it believes may be relevant to the PRA, known to that regulator.

19.38 This followed the Panel raising concerns that there existed a gap in terms of accountability, as the PRA did not have to consider representations from an independent group that represented the interest of consumers, but could consider issues that could strongly affect them, such as mortgage interest caps.[110] The amendments to FSMA ensure that the PRA may benefit from the expertise of the FCA Consumer Panel even though it is not under an obligation to consult the Panel. This section also enables the PRA to reimburse the FCA in respect of FCA expenditure relating to the FCA Consumer Panel, if the expenditure in question relates to communications between the FCA Consumer Panel and the PRA.

Implementation

19.39 Section 132 on the FCA Consumer Panel came into force on 1 March 2014.

Secondary Legislation

19.40 There is no further secondary legislation associated with this section aside from that set out in Annex C.

Legal issues and other reviews

19.41 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

19.42 As required by section 132, the FCA Consumer Panel has since communicated with the PRA to provide expertise on various issues, not limited to, but including corporate governance, depositor protection and Board diversity. An example of the Consumer Panel acting on the provisions included in section 132 is the Consumer Panel providing comment on the memorandum of understanding (MoU) between the FCA and PRA.[111]

19.43 In addition, the Chief Executive of the PRA is invited to attend a Consumer Panel meeting once a year, for a general discussion.

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[110] 'Prudential regulator must be accountable to consumers says Consumer Panel', Financial Services Consumer Panel, 2012

[111] 'Financial Services Consumer Panel's comments on the draft Memorandum of Understanding (MoU) between the FinancialConduct Authority (FCA) and Prudential Regulation Authority (PRA)', Financial Services Consumer Panel, 2012

Parent Undertakings

Objectives

19.44 Section 133, parent undertakings, came fully into force on 1 January 2019, giving powers to the relevant regulators to (i) make rules applicable to the parents of ring-fenced bodies for the purpose of upholding the ring-fencing regime, (ii) make rules applicable to parent undertakings for the purpose of facilitating resolution and (iii) to allow regulators to impose penalties or issue censure for contravention of those rules. Powers under section 133 for the FCA and PRA to make rules in relation to parent undertakings for the purposes of facilitating resolution commenced on 31 December 2014. Powers for the FCA and PRA to make rules applying to parent undertakings of ring-fenced bodies commenced on 21 April 2016.

19.45 Section 133 allows the PRA and FCA to make rules applying to any company incorporated in the UK which is a parent undertaking of a ring-fenced body, extending to include any holding companies. In order to achieve the policy intent of ring-fencing, the regulators can require parent undertakings incorporated in the UK to adhere to specific rules. Similar provisions exist for qualifying parent undertakings, such as those for UK investment firms or investment exchanges.

19.46 Section 133 also amends FSMA to ensure that regulators have sufficient powers to impose penalties on qualifying parent undertakings if they have breached rules set by the regulators to uphold the group ring-fencing purposes. These group ring-fencing purposes are designed to ensure that ring-fenced bodies are not adversely affected by other members of the group, that ring-fenced bodies may make decisions independent of and without need to draw on resources from the rest of the group and that in the event of insolvency elsewhere in the group, a ring-fenced body would be able to continue with core activities.

19.47 Section 133 also amends FSMA to allow the regulators to make rules in relation to qualifying parent undertakings, as defined in section 192B of FSMA, requiring those parent undertakings to make any arrangements if they consider that those arrangements might facilitate the exercise of the resolution powers in Parts 1 to 3 of the Banking Act 2009.

19.48 The PRA and FCA already had powers to require regulated entities to take actions that would facilitate the resolution of a firm in event of its failure. However, this amendment permitted the appropriate regulator to impose rules not only on regulated entities, but on qualifying parent undertakings. This equipped regulators to require actions to facilitate resolution in circumstances where the regulated entity is not in a position of control, and therefore cannot itself deliver the desired result.

19.49 This rule-making power aimed to increase certainty for firms by introducing uniform arrangements in a transparent and consistent manner across a certain class of qualifying parent undertakings.

19.50 Section 133 also amends FSMA to extend regulators' powers to impose penalties or issue statements of censure to cover the circumstances where these rules have been contravened by those parent undertakings.

Implementation

19.51 Section 133 2(b), parent undertakings, was implemented in full as of 1 January 2019. Powers for the FCA and PRA to make rules in relation to parent undertakings for the purposes of facilitating resolution commenced on 31 December 2014 – simultaneously extending the regulators' powers to impose penalties or issue censure to cover contravention of rules made under those powers. Powers for the FCA and PRA to make rules applying to parent undertakings of ring-fenced bodies commenced on 21 April 2016. The extension of the regulators powers to impose penalties or issue censures to cover contravention of those rules commenced on 1 January 2019. The PRA made rules using these powers in the PRA Rulebook: CRR Firms and Non-Authorised Persons: Ring-fenced Bodies Instrument 2016 on 4 July 2016 which came into effect on 1 January 2019.

Secondary legislation

19.52 There is no further secondary legislation associated with this section aside from that set out in Annex C.

Legal issues and other reviews

19.53 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

19.54 The rules made by the PRA using powers granted to them in section 133 of the 2013 Act came into force on 1 January 2019. Amendments to the PRA rulebook were required to ensure banking groups separated ring-fenced bodies from other banking subsidiaries within the group. In their annual report, the PRA stated that all in-scope banks had completed the necessary restructuring in order to comply with ring-fencing regulation.

Meetings with Auditors

Objectives

19.55 Section 134 requires each of the regulators to meet with the auditors of UK banks and UK investment firms which are regulated by the PRA (but not insurers or credit unions), and which are, in the opinion of the PRA, important to the financial stability of the United Kingdom. Supervisor meetings with auditors are important to overcome potential problems unique to the banking sector, such as an auditor encountering a problem with a bank's accounts but being reluctant to publish a qualification for fear of causing a collapse of confidence and a run on the bank.[112]

19.56 Several stakeholders, including the House of Lords Economic Affairs Committee, identified the lack of dialogue prior to the financial crisis between auditors and bank supervisors as problematic and called for it to be made a statutory obligation.

19.57 The PCBS final report on banking reform, '*Changing Banking for Good*',[113] recommended this measure to address this issue, which the government accepted.

Implementation

19.58 Section 134, meetings with auditors, came into force on 1 March 2014.

Secondary legislation

19.59 There is no further secondary legislation associated with this section aside from that set out in Annex C.

Legal issues and other reviews

19.60 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

19.61 Regulators make arrangements to meet at least annually with the auditors of firms falling within scope of these requirements, as set out in the PRA Code of Practice (LSS7/13).

19.62 In 2020/21, the FCA held 31meetings with external auditors in total relating to 31 separate firms.

19.63 The PRA Annual Report for the year to 28 February 2021 states that 35 firms (2019/20: 33) fell within the scope of section 339B of FSMA during the reporting period, and the PRA conducted 62 meetings (2019/20: 44) with the auditors of these firms. At

112 'Auditors: Market concentration and their role', Select Committee on Economic Affairs, 2011

113 'Changing banking for good: Report of the Parliamentary Commission on Banking Standards', Parliamentary Commission onBanking Standards, 2013

least one meeting with the auditor of each such firm was held during the reporting period.

Fees

Objectives

19.64 Section 135 inserts section 410A into FSMA to give HM Treasury powers to direct the FCA, PRA and the Bank to impose fees on certain persons to meet expenses incurred by HM Treasury and to require the regulators to pay monies received to HM Treasury. Funds accrued through these fees are used to contribute towards expenses incurred by UK membership of international organisations.

19.65 The regulations ensure that a person would only be required to pay fees to one regulator, determined by their jurisdiction. These expenses must relate to the United Kingdom's membership of international organisations and must represent a contribution to the resources of the organisation and must, in HM Treasury's opinion, be attributable to the functions of the organisation which relate to financial stability or financial services. Regulators are able to recover expenses incurred in the administration of such fees directly from HM Treasury. In order to direct regulators in this way, this section sets out that HM Treasury must consult with regulators, provide the direction in writing to the regulator, and lay a copy of the direction before Parliament.

Implementation

19.66 Section 135 came into force on 1 March 2014.

Secondary legislation

19.67 There is no further secondary legislation associated with this section aside from that set out in Annex C.

Legal issues and other reviews

19.68 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

19.69 This legislation was introduced to raise fees to meet HM Treasury expenditure relating to international organisations. However, such expenditure has not arisen and therefore HM Treasury has not needed to require regulators to collect fees.

Amendment of section 429 of FSMA 2000

Objectives

19.70 Section 136 amended section 429 of FSMA 2000 to provide for the parliamentary procedure applicable to statutory instruments made under new sections 71A, 142W (subsection (2)), and new section 410A (subsection (4)). It also provided that orders under section 410A are subject to draft affirmative resolution procedure, apart from regulations which only contain provision made under section 410A(2) (prescribing of international organisations), which will be subject to negative resolution procedure.

Implementation

19.71 Section 136 came into force on 1 March 2014. Certain parts were repealed in 2018 by the Bank of England and Financial Services Act 2016.

Secondary legislation

19.72 Section 136 was brought into force through the commencement order in Annex C. It was subsequently repealed by the Bank of England and Financial Services Act 2016 (Commencement No 5 and Transitional Provisions) Order 2018/990, which was made on 10 September 2018.

Legal issues and other reviews

19.73 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

19.74 This section sets out the parliamentary procedures for SIs under the 2013 Act. As no legal challenges have been raised the government are content that this has worked as intended.

Accounts of the Bank of England and its wholly owned subsidiaries

Objectives

19.75 Section 137 makes amendments to the BoE Act 1998 in relation to the requirements placed upon its directors. As the Bank was established by Royal Charter in 1694 it is not subject to the Companies Act 2006.

19.76 However, by virtue of the BoE Act 1998 the Bank must adhere to the same requirements as directors of banking companies, unless the Bank considers it appropriate to disregard the requirement, bearing in mind the Bank's functions. This section

makes amendments to that exception, meaning the Bank can only disregard a requirement if the Bank deems it necessary to do so in order to fulfil its financial stability objective.

19.77 Similar provision is also made for wholly-owned subsidiaries, or ‘qualifying companies’, of the Bank (other than the PRA or a bridge bank), to enable the Bank to exclude the application of any relevant Companies Act 2006 requirements where it considers necessary to do so having regard to the financial stability objective. This section also requires the Bank to consult HM Treasury prior to giving direction on an exception and enables HM Treasury to require the Bank to publish information about the accounts of a qualifying company.

Implementation

19.78 Section 137 came into force on 1 March 2014.

Secondary legislation

19.79 There is no further secondary legislation associated with this section aside from that set out in Annex C.

Legal issues and other reviews

19.80 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

19.81 This section formalised in legislation the approach to accounting disclosures the Bank had already adopted, that is to disregard a reporting requirement only where the Bank deems it necessary to do so having regard to the Bank’s financial stability objective.

Building societies

Objectives

19.82 Section 138, and the associated schedule 9, brought in a package of reforms that were intended to create a level playing field for building societies with banks, without diluting their mutual status. This was aimed at delivering the competition aims of banking reform and delivering on a government commitment to promote mutuals. There were seven specific reforms included in the package.

19.83 These reforms removed the requirements for building societies to provide new members with a hard copy of their Summary Financial Statement and for building society directors to disclose information in their Annual Business Statement about society officers who are not directors.

19.84 The reforms also allowed building societies to change their

financial year end date to any day in the year, and to use electronic communication as their default method of providing documents to members rather than paper.

19.85 The reforms also repealed section 9B of the Building Societies Act 1986, removing restrictions on building societies creating floating charges, a common type of security used when borrowing.

19.86 The remaining reforms changed the classification of small business deposits, made it easier for building societies to meet their funding limit, as set by the Building Societies Act 1986, and allowed owners of deferred shares (types of capital instruments issued by building societies), who have held those deferred shares for less than two years, to be eligible to receive shares as a substitute in the event of a building society's demutualisation. In addition, the amendment also tidied up wording in section 100(8) of the Building Societies Act 1986, which sets out distributions and share rights on a transfer of a society's business.

Implementation

19.87 Section 138, building societies, and the associated schedule 9 (apart from paragraph 4 of schedule 9) were brought into force on 18 February 2014. Paragraph 4 of schedule 9 was brought into force on 26 March 2015 by the commencement order in Annex B.

Secondary legislation

19.88 The consequential provisions Order associated with section 138, set out in Annex B, was amended by The Building Societies (Floating Charges and Other Provisions) Order 2016 (2016/679) which was made on 27 June 2016 and came into force on 28 June 2016. This SI applied companies' insolvency legislation on receivership to building societies with all necessary modifications. Most of the amendments are made in consequence of enabling the appointment of a receiver, but not an administrative receiver, of a building society's property which is subject to a floating charge.

Legal issues and other reviews

19.89 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

19.90 The majority of the reforms included in section 138 (and the associated schedule 9) of the 2013 Act have not been subject to significant comment.

19.91 The use of floating charges by building societies allowed for by schedule 9(4), which repealed section 9B of the Building

Societies Act 1986, has been limited.

19.92 When implementing schedule 9(4), removing the prohibition on building societies creating floating charges, consideration was given to whether these charges should be registered, with particular concern given to this question in Scotland due to differences in the Scottish legal system. A reliable register of charges is traditionally seen as a way to facilitate borrowing because it ensures that creditors, both secured and unsecured, know whether the entity's assets would be available to pay its debts should it become insolvent.

19.93 A policy decision was taken not to implement a register for floating charges created by building societies in line with building societies' previous arrangements for fixed charges, and the requirements in place for co- operative and community benefit societies who are not required to register such charges. There have been no reported issues as a result of charges not being registered.

Claims management regulator

Objectives

19.94 Sections 139 and 140 amended the Compensation Act 2006 to allow the Claims Management Regulator (CMR), a unit of the Ministry of Justice, the power to impose penalties on claims management companies; amended the Compensation Act 2006 and the Legal Services Act 2007 to allow the costs associated with extending the jurisdiction of the Office for Legal Complaints (OLC) to deal with complaints about claims management companies to be recovered from the claims management industry.

Implementation

19.95 Sections 139 and 140 came into force on 21 March 2014, allowing the CMR to impose penalties on claims management companies from this date.

19.96 Following a 2016 independent review led by Carol Brady,[114] it was decided that due to a lack of sufficient resources and powers to regulate the market it was preferable for the functions carried out by the Claims Management Regulator to be transferred to the FCA, who would be well-placed to deliver a step change in the regulation of the sector. The Financial Guidance and Claims Act 2018 enabled this transfer by making claims management activity a Regulated Activity under section 22 of FSMA. The 2013 Act also enabled the transfer of claims

[114] 'Independent review of claims management regulation', Carol Brady, 2016

management company (CMC) complaints handling from the Legal Ombudsman to the FOS.

19.97 In April 2018, the government launched a consultation document that invited interested parties to comment on the details associated with claims management secondary legislation.[115] The consultation responses showed broad agreement with the government's proposals.

19.98 The Financial Guidance and Claims Act 2018 transferred responsibility to the FCA and FOS, whilst repealing sections 139 and 140 of the 2013 Act. These changes took effect as of 1 April 2019.

Secondary Legislation

19.99 Sections 139 and 140 were repealed in England and Wales as of 1 April 2019 by the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018 (2018/1253), made on 28 November 2018.

Legal issues and other reviews

19.100 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

19.101 Whilst the powers conferred by the 2013 Act were a step in the right direction, the 2016 Independent review of claims management regulation noted that incremental reforms and improvements to the CMR's regulatory powers were not sufficient to address the scale of CMC misconduct. It was concluded that the CMR did not have enough resources to use the powers conferred in sections 139 to 140, alongside their other regulatory powers, to regulate CMCs effectively.

19.102 Consequently, at Budget 2016 the government announced its intention to transfer CMC regulation to the FCA. This transfer was intended to enable the application of the FCA's Senior Managers Regime to CMCs, allow for the creation of more detailed conduct rules to address issues that were causing consumer detriment, and effectively facilitate tougher regulation.

19.103 The Financial Guidance and Claims Act 2018 transferred responsibility for CMC regulation to the FCA, as of 1 April 2019. The FCA is responsible for the regulation of CMCs in six sectors: personal injury, financial products and services, employment, criminal injuries compensation, industrial injuries disablement benefit and housing disrepair. The FCA is

[115] 'Claims management regulation: consultation on secondary regulations', HM Treasury, 2018

able to leverage its broader suite of authorisation, supervision and enforcement powers to regulate CMC conduct. Customers can now seek redress for CMC misconduct through the FOS.

19.104 The FCA is currently carrying out the final stages of a process of re-authorisation, whereby all CMCs had to re-apply for permission to operate in the sectors regulated by the FCA. Once this process of re-authorisation is completed, HM Treasury will be able to assess whether the current model for CMC regulation is operating effectively.

Minor and technical amendments and final provisions

19.105 Section 141 introduces schedule 10, which made a number of minor and technical amendments. Sections 142 to 148 makes provision for the extent of the 2013 Act, the procedures for secondary legislation under the 2013 Act, and provides HM Treasury a power to make consequential amendments.

Chapter 20

The Bank of England and Financial Services Act 2016: Introduction

20.1 Chapters 20 to 23 of this memorandum provide a preliminary assessment of the Bank of England and Financial Services Act 2016 and have been prepared by HM Treasury for submission to the TSC. This memorandum is published as part of the process set out in the document *Post Legislative Scrutiny – The Government's Approach (Cm 7320)*[116].

20.2 The Bank of England and Financial Services Act 2016 (hereafter 'the 2016 Act') is the final Act which will be considered as part of this memorandum. The 2016 Act is comprised of three Parts. Part 1 amends the governance and accountability arrangements at the Bank, Part 2 covers a number of areas, including: reforms to SM&CR; making changes to the funding arrangements for combatting illegal money lending; introducing a new and competitive framework for insurance linked securities; information sharing between the Bank and HM Treasury for the purposes of crisis management and resolution planning; and amendments to pensions guidance, advice and charges. Part 3 made technical changes to the issuance of commercial banknotes in Scotland and Northern Ireland.

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[116] 'Post-legislative Scrutiny –The Government's Approach', Office of the Leader of the House of Commons, March 2008

Chapter 21

2016 Act Part 1: Bank of England

Objectives

21.1 The reforms implemented as part of the 2012 Act (see section 2.1 onwards) replaced the 'tripartite' system of financial regulation with a new regulatory architecture and gave the Bank a number of new responsibilities and powers. The 2012 Act gave the Bank responsibility for macro-prudential regulation through the establishment of the FPC. The FPC has a key role in safeguarding the UK's financial stability by identifying, monitoring and taking action to address systemic risks to the UK financial system. The 2012 Act also established the PRA as a subsidiary of the Bank. The PRA has specific responsibility for ensuring effective micro-prudential regulation of all deposit takers, insurers and large investment firms.

21.2 Two years into the operation of the new system, the government and the Bank identified opportunities to further simplify and strengthen the governance of the Bank and the PRA. In particular, to go further in maximising the synergies between micro-prudential supervision and macro- prudential policy, it was proposed to bring the PRA within the Bank, ending its status as a subsidiary, and creating a new committee of the Bank to be known as the Prudential Regulation Committee ('PRC').

21.3 Part 1 of the 2016 Act implements reforms to the governance of the Bank and PRA. This includes recommendations of the independent Warsh Review into the Bank's practices on transparency, particularly in relation to the work of the MPC.[117]

21.4 Sections 1 to 8 of the 2016 Act built on the changes made in the 2012 Act, making further reforms to the governance of the Bank. The Bank's governance model is generally determined by statute. The governing body, the Court, is responsible for managing the affairs of the Bank, other than the formulation of monetary policy, and is accountable for setting the organisation's strategy and budget and taking key decisions on resourcing and appointments.

[117] 'Transparency and the Bank of England's Monetary Policy Committee', Kevin Warsh, 2014

21.5 Sections 1 to 8 made changes to the membership of the Court, adding an additional Deputy Governor for Markets and Banking. It abolished the Bank's statutory Oversight Committee, which was deemed to be an unnecessary extra layer of governance, instead assigning oversight functions to the Court, to enable the Court to operate more like a unitary board. This meant that responsibility for commissioning reviews and monitoring the Bank's response to any recommendations will fall to the entire Court, rather than a sub- committee.

21.6 The Court manages the affairs of the Bank other than the formulation of monetary policy, while specific policy responsibilities are reserved to the policy committees. The Court's responsibilities are set out in the BoE Act as amended in the 2016 Act. They include determining the Bank's objectives (including objectives for its financial management) and strategy and, in determining the Bank's objectives and strategy, ensuring the effective discharge of the Bank's functions and the most efficient use of its resources. The Bank also has a statutory objective to "protect and enhance the stability of the financial system of the United Kingdom" and the Court is responsible for the Bank's strategy in relation to that objective. The Court also keeps under review (the 'oversight functions'), among other things, the Bank's performance in relation to its objectives, the exercise of the Bank's statutory functions and the processes of the policy committees, whose meetings the members of Court are entitled to attend as observers.

21.7 Section 6 also made the FPC a committee of the Bank, when it was previously a sub-committee of the Court. This was to align its status with other policy committees and simplify the Bank's governance structure. Section 6 also expanded the membership of the FPC, adding the Deputy Governor for Markets and Banking to the Committee alongside increasing the number of members appointed by the Chancellor of the Exchequer from four to five. In addition, Part 1 of the 2016 Act also made changes to the operation of the MPC by implementing recommendations from the Warsh Review. This includes requiring the Bank to publish the minutes of MPC meetings "as soon as reasonably practicable" and reducing the number of MPC meetings from once a month to eight times in a year.

21.8 Sections 9 to 11 aimed to strengthen the Bank's accountability to the public and Parliament:

- Section 9 makes provisions for the Comptroller and Auditor General of the NAO to be consulted on audits of the Bank.
- Section 10 applies where HM Treasury give an indemnity or guarantee to the Bank in respect of an activity or series of activities undertaken by the Bank. It implements changes to enable oversight by HM Treasury for activities that represent

a risk to public funds. For example, it allows HM Treasury to require the Bank to prepare financial reports in relation to activities for which HM Treasury has provided an indemnity or guarantee.

- Section 11 allows the Comptroller and Auditor General of the NAO to conduct examinations into how effectively the Bank or a company under the Bank has operated in order to discharge its functions, including stabilisation powers. Section 11 also permits HM Treasury to appoint an independent person to conduct a review of how the Bank has used its resources in discharging its functions as the PRA, and sets out how documents and information may be obtained or shared as part of that review.

21.9 Sections 12 to 15 and schedule 1 to the 2016 Act transferred the PRA's functions to the Bank – ending the PRA's status as a subsidiary of the Bank, and creating the PRC, a committee of the Bank that exercises the Bank's functions as the PRA. In doing this, the PRA's objectives remained unchanged, and the 2016 Act contains safeguards to ensure that the Bank's functions as PRA must be operated independently from the Bank's resolution functions, to comply with EU legislation and the Basel Core Principles on Supervision.

21.10 Section 13 creates the requirement for the government to issue remit letters to the PRA, highlighting those aspects of government economic policy most relevant to the regulators' duties (announced in the government's 2015 Productivity Plan), by requiring HM Treasury to make in writing at least once in each Parliament recommendations to the PRC about aspects of the government's economic policy which the PRC should have regard to. Part 2, section 19 of the 2016 Act makes similar provisions for HM Treasury to issue 'remit' letters to the FCA.

21.11 Section 16 introduces schedule 2, which makes consequential amendments to other legislation arising from the amendments made by Part 1 of the 2016 Act. Section 17 introduces schedule 3, which makes saving and transitional provisions relating to Part 1 of the 2016 Act.

Implementation

21.12 As provided for under section 1, the first Deputy Governor for Markets and Banking was appointed to the Court on 13 July 2016. The Deputy Governor for Markets and Banking attended their first FPC policy meeting as a full member on 25 July 2016.[118] On 1 September 2016, the Chancellor appointed a fifth external member[119] to the committee under section 9B(1)(e) of the BoE Act 1998, with the member's term starting 1 October

[118] 'Record of the Financial Policy Committee Meeting 25 July 2016', Bank of England, 2016

[119] 'Professor Anil Kashyap appointed to the Financial Policy Committee', HM Treasury, 2016

2016.

21.13 Sections 1, 2, 4, 6 to 9 and 11, relating to the governance of the Bank, and reforms to the relationship between the Bank and the NAO, and sections relating to examinations and reviews, were commenced on 6 July 2016.

21.14 In line with the changes made under section 3, the Bank's Oversight Committee met for the final time on 25 May 2016, with the Court of the Bank taking on its oversight functions following the adoption of the 2016 Act.[120] The Court met for the first time in this expanded capacity on 13 July 2016.

21.15 Following the implementation of the recommendations in the Warsh review, under section 8 the MPC moved from meeting monthly to eight times per year. The first meeting of the MPC occurred on 6 June 1997; meetings moved to the revised arrangements from the end of 2016 onwards. The first meeting outside of the monthly cycle occurred on 3 November 2016, after missing a meeting in October.

21.16 Under section 10, HM Treasury requires the Bank to prepare accounts of the companies carrying on activities indemnified by HM Treasury; the audited financial statements of the Bank of England Asset Purchase Facility Fund are provided on an annual basis. No other reports on Bank activities indemnified by HM Treasury have been requested under section 10. The accounts of BEAPPFF – the Bank's indemnified subsidiary – are audited by the NAO. In 2018 HM Treasury and Bank agreed a memorandum of understanding which sets out the way in which the capital framework is to operate, and which operations are to be backed by capital and which would otherwise be dealt with by way of a Treasury indemnity.

21.17 Section 11 provides the Comptroller and Auditor General of the NAO the ability to conduct investigations into how effectively the Bank has discharged its functions. To date the NAO has carried out three reviews under section 11: 'Progress delivering the 'One Mission, One Bank' strategy', published on 28 June 2017; and 'Managing the Bank of England's central services', published on 19 December 2018, and 'The production and distribution of cash', published on 18 September 2020.

21.18 Reforms to the PRA and creation of the PRC, made under sections 12 to 15, were commenced on 1 March 2017, to allow for an orderly transition of the balance sheet of the subsidiary PRA Limited onto that of the Bank by coinciding with the Bank's normal financial year end.

21.19 The PRA has operated as part of the Bank rather than being a

[120] 'Annual Report and Accounts 1 March 2016-28 February 2017', Bank of England, 2017

subsidiary since March 2017.[121]The Prudential Regulation Committee (PRC), which has responsibility within the Bank for exercising the Bank's functions as the PRA, provides regular reports on its activities to the Court.

21.20 Remit letters to the FCA[122] and PRC[123] were first issued by HM Treasury at Spring Budget 2017 on 8 March 2017 and issued again on 4 November 2019.[124] Remit letters were issued under the current Parliament on 23 March 2021.

Secondary legislation

21.21 The Bank of England and Financial Services (Consequential Amendments) Regulations 2017 (2017/80) made consequential amendments to references to the Bank and PRA in legislation, to reflect the change in status of the PRA. This SI came into force as of 1 March 2017.

21.22 Commencement orders associated to this section are outlined in Annex D.

Legal issues and other reviews

21.23 There are no legal issues to report for Part 1.

21.24 As set out above, the NAO has carried out three reviews under section 11: 'Progress delivering the 'One Mission, One Bank' strategy',125 published on 28 June 2017; 'Managing the Bank of England's central services', published on 19 December 2018; and 'The production and distribution of cash', published on 18 September 2020.

21.25 The NAO's review into progress delivering the 'One Mission, One Bank' strategy concluded that the Bank had developed a well thought out strategy, with responsibilities clearly outlined. The NAO did note that in order to deliver the more challenging aspects of the strategy longer term sustained effort would be required. The Bank welcomed the 'timely and thorough review' and acknowledged that achieving cultural change would take time which the Bank would continue to focus on as part of the new Vision 2020 strategic plan.[126]

21.26 The NAO report on the Bank's central services,[127] 'Managing the Bank of England's central services', which was submitted to the Public Accounts Committee, concluded that "Central Services needs reform, as the Bank has recognised over the past year. However, it is fair to describe the Bank as a relatively

[121] 'Annual Report and Accounts 1 March 2017-28 February 2018', Bank of England, 2018.

[122] 'Recommendations for the Financial Conduct Authority', HM Treasury, 2017

[123] 'Recommendations for the Prudential Regulation Committee', HM Treasury, 2017

[124] 'Recommendations for the Financial Conduct Authority', HM Treasury, 2019; 'Recommendations for the Prudential RegulationCommittee', HM Treasury, 2019

[125] 'Progress delivering the 'One Mission, One Bank' strategy', National Audit Office, 2017

[126] 'Bank of England welcomes NAO's report on its 'One Bank' strategy', Bank of England, 2017

[127] 'Managing the Bank of England's Central Services', National Audit Office, 2018

conservative institution. For a leading central bank this is appropriate in many ways, but it can make the adoption of modern practices in administration and management and letting go of those that appear to have outlived their usefulness, more challenging. It also noted that the Bank is moving in the right direction. But it needs to step through the changes needed firmly and expeditiously, bringing its people with it, if it is to deliver value for money from its Central Services. Change will require investment, time, sustained leadership and support from across the Bank. It will need to bear down on its existing costs as much as possible if it is to find the headroom needed for investment and live within its self-imposed spending cap".

21.27 The Bank said[128] that it acknowledges the NAO's conclusion that some systems and processes need to be modernised and this will be addressed by the transformation programmes underway. The Bank accepts the NAO's advice that it could undertake more regular benchmarking against other organisations and will take that forward.

21.28 The NAO report on 'The production and distribution of cash', which was submitted to the Public Accounts Committee, concluded that "The Mint and the Bank share similar objectives for the production of coins and notes but deliver against those objectives in very different ways. Both have been successful in maintaining public confidence in cash against the threat of counterfeiting. However, both have accumulated significant stocks of coins and notes in the face of very different patterns of demand. With the use of cash in transactions in rapid decline, and with the recent renewal of coins and note types now almost complete, the Mint and the Bank need to align their production operations much more closely to likely future needs if they are to demonstrate value for money".

Preliminary Assessment

21.29 Section 2 sets out updated terms of office for Court Executives roles. These have been reflected in the subsequent recruitment rounds, run by HM Treasury. As set out under section 3 the Oversight Committee was abolished, and the relevant functions were taken on by the Court. As required by section 4, the remuneration of the Governor and Deputy Governors of the Bank is now determined by a sub-committee of the Court made up of 3 or more non-executive directors.

21.30 Changes to the MPC suggested by the Warsh review for immediate publication of minutes, provided for under section 8, were successfully adopted by the Bank before the 2016 Act

[128] 'Bank of England press statement on NAO report', Bank of England, 2018

received Royal Assent in May 2016.13 Since the 6 August 2015, the minutes, Inflation Report (since renamed the Monetary Policy Report) and monetary policy decision have all usually been published alongside each other on the day of the decision. The only times the minutes were not published at the same time as the decision were for the special, off-schedule, MPC meetings on 10 March 2020 and 19 March 2020 in response to the Covid-19 pandemic. The minutes for these meetings were published on 13 March 2020 and 26 March 2020 respectively. The MPC has also changed the frequency of its meetings to 8 times a year. However, insufficient time has passed for the publication of transcripts of MPC meetings, which require a delay of 8 years as standard. However, this adopted recommendation of the review does not feature in the legislation.

21.31 Immediate publication of MPC minutes aimed to "further the Bank's objective of communicating its policy judgements effectively".[129]This allowed MPC members to discuss their votes following the MPC decision, through subsequent speeches and media engagement.[130] Moreover, the MPC Minutes have revealed greater discussion where there have been dissenting votes, and greater openness regarding different views in the media. MPC members have been open about their voting record when appearing in front of the TSC. The immediate publication of Minutes alongside the decision has brought forward the decision-making process to allow sufficient time to draft the minutes.

21.32 The Warsh Review recommended a lower frequency of meetings to bring the MPC in line with the European Central Bank (ECB) and the US Federal Reserve (FED). Moreover, the Review recognised that economic conditions may not change significantly over a four-week period to warrant a change in policy stance. As such, there has been no suggestion that a reduced frequency of meeting impairs the efficient conduct of monetary policy.

21.33 With regards to the changes to accountability arrangements made by sections 9 and 11:

- The Comptroller and Auditor General has been consulted on auditor appointments by the Bank and consulted on audit plans in line with the section 9 of the 2016 Act. This is set out in section 7ZA of the BoE Act 1998, introduced by the 2016 Act. The Comptroller and Auditor General was consulted in December 2017 on the most recent appointment by the Bank of its external auditor (KPMG) and

[129] 'Transparency and the Bank of England's Monetary Policy Committee', Kevin Warsh, 2014.

[130] 'Written evidence submitted by Michael Saunders', Bank of England, 2018

confirmed that they were content, and KPMG have consulted on subsequent audit plans. The Comptroller has attended all meetings of the Bank's Audit Committee since section 9 came into force. A senior NAO official has attended the audit element of the Bank's Audit and Risk Committee on behalf of the Comptroller and Auditor General.

- The Comptroller and Auditor General has conducted three reviews under section 11.

21.34 HM Treasury and Bank agree that de-subsidiarisation of the PRA, provided for under section 12, has enabled the Bank and the PRA to work together more cohesively and has achieved the objectives of the One Bank strategy. Overall, we believe Part 1 of the 2016 Act delivered its objectives.

Chapter 22

2016 Act Part 2: Financial Services

22.1 Part 2 of the 2016 Act includes a number of discrete provisions, relating to: reforms to the FCA and PRA (sections 18 to 20), Senior Managers and Certification Regime (SM&CR) (sections 21 to 26), Consumer credit (sections 27 and 28), Illegal money lending (section 29), Implementation of the Fourth EU Money Laundering Directive (4MLD) (section 30), Transformer vehicles (section 31), Pensions guidance, advice and charges (sections 32 to 35), Crisis management and resolution planning (section 36), and FSMA 2000 consequential amendments providing a correction to National Savings Regulations (section 37). These are described in more detail below.

Reforms to the FCA and PRA

Objectives

22.2 Sections 18-20 of the 2016 Act made a number of amendments to the governance and regulatory principles of the FCA and PRA:

- the amendments to schedule 1ZA to FSMA under section 18 required that the term of office of the person appointed by HM Treasury to the role of FCA Chief Executive may not start until the person has appeared before the Treasury Committee, or three months have passed since the date of the government's announcement. This was added after interest from MPs and members of the Committee on the process of appointment to the role during the passage of the Bill and was to ensure the accountability of the FCA to Parliament, by allowing the Committee to scrutinise the government's choice. This requirement does not apply to persons appointed to Chief Executive on an acting basis.
- in the 2015 Productivity Plan, the government announced the intention to issue new remit letters to the PRA and FCA, enabling HM Treasury to highlight those aspects of government economic policy most relevant to the regulators' duties. Section 19 amends FSMA to require HM Treasury to make in writing, at least once in each Parliament,

recommendations to the FCA about aspects of government economic policy which the FCA should have regard to. The requirement for HM Treasury to make recommendations to the PRC was covered in Part 1, section 13 of the 2016 Act.

section 20 amends the regulatory principles which apply to the FCA and the PRA under section 3B of FSMA to clarify that the regulators must have regard to the differences between different kinds of business organisation adopted by financial services firms (such as mutual societies) in exercising their general functions. This was in response to concerns raised by mutuals that regulators did not give sufficient consideration to mutuality as proposals were being developed, and that certain regulatory changes had had a disproportionate or inappropriate impact on mutuals, which was believed to have been realised only after implementation.

Implementation

22.3 Sections 18 to 20, reforms to the FCA and PRA, came into force as of 6 July 2016.

22.4 With regard to section 18, Andrew Bailey was the Chief Executive of the FCA at the point the legislation was brought into force. HM Treasury announced the appointment of Andrew Bailey on 26 January 2016, and he began in post on 1 July 2016. The TSC took evidence from Andrew Bailey on 20 July 2016, publishing a report on 21 July 2016 endorsing the appointment. The TSC held a pre-commencement hearing for Andrew Bailey's successor, Nikhil Rathi, on 22 July 2020 and published a report on 24 July 2020 endorsing his appointment.

22.5 On 20 July 2020, HM Treasury wrote to the TSC to confirm that, in line with a previous commitment made during the passage of the 2016 Act, they intended to legislate as part of the upcoming Financial Services Bill to put the term of the FCA Chief Executive (CEO) on a statutory footing so that future appointees would be subject to a five year, once renewable term. This would bring the FCA CEO's term in line with other comparable public appointments, such as Deputy Governors of the Bank. This commitment was legislated for in the Financial Services Act 2021, which received Royal Assent on 29 April 2021. Although this legislation was not introduced in time for the appointment of Nikhil Rathi, the letter to the TSC did confirm that the appointment was made on the same basis of a five year, once renewable term to ensure consistency with the planned legislation.

22.6 With regard to section 19, the first remit letters to the FCA and PRC for the 2015-2017 Parliament were issued by HM Treasury

alongside Spring Budget 2017 on 8 March 2017.[131] Remit letters were issued during the current Parliament on 23 March 2021

22.7 Under section 20, the PRA supervises a large number of building societies, credit unions and friendly societies. The diversity of firm structures, sizes and business models are considered thoroughly as part of the Bank's supervisory assessment framework in order to apply the principles of proportionality and deliver against its secondary competition objectives to facilitate effective competition. For example, in October 2019 the PRA consulted on proposed changes to capital requirements that apply to credit unions to reduce complexity, provide a greater degree of flexibility, and remove barriers to growth. New rules were made following the consultation in March 2020.

Secondary legislation

22.8 No other secondary legislation is associated to this section, aside from commencement orders set out in Annex D.

Legal issues and other reviews

22.9 There are no legal issues to report with these sections. No other assessments of these sections have been conducted.

Preliminary Assessment

22.10 In line with the requirements of section 19, letters of recommendation have been issued to the FCA and PRC once in each Parliament since the 2016 Act entered into force.

Conduct of persons working in financial services sector

Objectives

22.11 Section 21 and schedule 4 of the 2016 Act expands the SM&CR to the remaining firms authorised under FSMA that were not included in the first tranche of the SM&CR. This replaced the existing Approved Persons Regime for these firms.

22.12 Sections 22 to 25 of the 2016 Act make various other amendments to improve the functioning of the SM&CR:

- section 22 gives the regulators and HM Treasury powers to make transitional provisions when new controlled functions

131 'Recommendations for the Financial Conduct Authority', HM Treasury, 2017; 'Recommendations for the Prudential RegulationCommittee', HM Treasury, 2017

are introduced, or existing functions changed

- section 23 makes a number of amendments to improve the administration of the SM&CR, including: allowing variations of time limits on senior manager approvals; and ensuring that the PRA is able to bring disciplinary procedures for failure to comply with the requirement for information to be provided to it on any change in the responsibilities of senior managers
- section 24 removes the obligation to report all breaches or suspected breaches of rules of conduct to the regulators. However, the reporting requirement in section 64C of FSMA described in paragraph 16.19 of this document has been retained
- section 24 and 25 provides for the PRA and FCA to be able to make Rules of Conduct applying to a director who has not been approved to perform an SMF

22.13 Section 15 of the 2016 Act also replaces the 'reverse burden of proof' under the SM&CR introduced in the 2013 Act with a 'duty of responsibility' (the reverse burden is described in paragraph 16.20 of this memorandum). Under the duty of responsibility, there is misconduct if the senior manager did not take such steps as a person in the senior manager's position could reasonably be expected to take to avoid the contravention occurring (or continuing).

22.14 Section 26 extends the circumstances referenced in paragraph 16.20 of this document, so that it included cases where a building society goes into the insolvency or administration procedure, or an investment bank is put into one of the insolvency procedures provided for in the Investment Bank Special Administration Regulations 2011.

Implementation

22.15 Sections 21 to 26 of the 2016 Act were implemented for insurance firms as of December 2018 and for nearly all other FCA solo-regulated firms as of December 2019. Section 21 was extended to the remainder of solo- regulated firms in December 2020.

22.16 Certain provisions in section 25 came into force as of 10 May 2016. The provisions in sections 22-24, 26-29 and the remaining provisions in section 25 came into force as of 6 July 2016, applying both to those firms already subject to the SM&CR, and the new firms the SM&CR was extended to.

22.17 In order to bridge the gap between the SM&CR coming into force for banking sector firms on 7 March 2016, and the provisions in sections 21 to 26 of the 2016 Act coming into force, the government amended the commencement order for

the SM&CR provisions in the 2013 Act in December 2015 through the Financial Services (Banking Reform) Act 2013 (Commencement No. 9) (Amendment) Order 2015, so that certain provisions in the 2013 Act did not come into force on 7 March 2016, and were then amended by sections 21 to 26 of the 2016 Act.

Secondary legislation

22.18 Aside from that set out in Annex D, no further secondary legislation has been made under this section.

Legal issues and other reviews

22.19 There are no legal issues to report with these sections.

22.20 The FCA conducted an in-depth stock take into the implementation of the SM&CR for authorised deposit taking firms in 2019[132]. The PRA conducted an evaluation of the SM&CR, to assess how it is delivering against its original objectives, which was published in December 2020[133].

Preliminary Assessment

22.21 The SM&CR has now been implemented by insurers.

22.22 The Senior Managers and conduct rules elements of the regime commenced for most other FCA solo regulated firms in December 2019.

22.23 The Bank of England and Financial Services Act 2016 (Commencement No.6 and Transitional Provisions) (Amendment) Regulations 2020 delayed the Certification provisions for these firms to March 2021 to allow firms more time to implement the regime whilst managing pressures related to Covid- 19.

22.24 Section 26 expanded the scope for prosecutions made under section 36 of the 2013 Act. No prosecutions have yet been made.

Consumer credit

Objectives

22.25 On 1 April 2014, the government transferred responsibility for consumer credit regulation from the Office of Fair Trading to the FCA and brought the regulation of consumer credit activities into the framework established by FSMA. Sections 27 and 28 of the 2016 Act make technical amendments to FSMA concerning the application of provisions relating to the

[132] 'Senior Managers and Certification Regime Banking Stocktake Report', Financial Conduct Authority, 2019

[133] https://www.bankofengland.co.uk/prudential-regulation/publication/2020/evaluation-of-the-senior-managers-and-certification-regime

enforceability of credit agreements, to better reflect the original policy intent at the transfer:

- section 27 sought to clarify that the categories of persons who may enforce an agreement where its administration, or debt collecting under it, involves carrying on a designated credit-related regulated activity, includes appointed representatives, exempt persons or exempt professional firms in respect of the relevant activity
- section 28 is intended to make the consumer credit regime more proportionate for lenders, by narrowing the circumstances in which a regulated credit agreement or regulated consumer hire agreement becomes unenforceable when made through certain third parties.

Implementation

22.26 Sections 27 and 28 came into force on 6 July 2016, as a result of the Bank of England and Financial Services Act 2016 (Commencement No 3) Regulations 2016.

Secondary legislation

22.27 Aside from commencement orders set out in Annex D, no secondary legislation has been made under sections 27 and 28.

Legal issues and other reviews

22.28 Please see chapter 3, paragraphs 3.79 to 3.82 for further details.

Preliminary Assessment

22.29 Please see chapter 3, paragraphs 3.83 to 3.85 for further details.

Illegal money lending

Objectives

22.30 In December 2015, the Chancellor announced the intention to collect a levy from firms to fund the activity of Illegal Money Lending teams. At the time, these teams comprised local Trading Standards Officers based in Birmingham City Council, Cardiff City Council, and Trading Standards Scotland. The teams operate at the community level, and work alongside the FCA in policing the regulatory perimeter to specifically target loan sharks and provide advice and support to the victims of illegal lenders. In introducing a levy on firms, the government intended to put the funding of the Illegal Money Lending teams on a new, stable footing, having previously been funded by the Department of Business, Innovation and Skills (BEIS).

22.31 Section 29 achieves this through giving HM Treasury a power to

provide financial assistance to bodies for the purpose of taking action against illegal money lending. It also gives the FCA a power to levy consumer credit firms in order to fund this financial assistance. In practice, this means that the FCA collects the levy, and then transfers the amounts collected to HM Treasury. Funds are then disbursed by HM Treasury to the Illegal Money Lending Teams.

Implementation

22.32 Section 29 came into force on 6 July 2016, including the requirement on the FCA to make rules to enable it to collect the levy to fund HM Treasury's costs in tackling illegal money lending, which consist of funding the Illegal Money Lending Teams. The FCA consulted on these rules in 2016, and most of the rules came into force on 24 February 2017. The remaining rules came into force on 3 July 2017 – these rules are found in chapter 13 of its Fees Manual.[134]

22.33 The FCA rules place an obligation on firms to pay the Illegal Money Lending levy and sets out how the levy will be calculated.

22.34 The FCA began collecting the levy, and HM Treasury started funding the Illegal Money Lending Teams, from 1 April 2017. In the financial year 2020/21 HM Treasury informed the FCA that the annual cost of the Illegal Money Lending Teams would be £6.2m, recovered through the FCA levy on consumer credit firms.[135] Consumer credit firms bear the responsibility of paying the levy as it is the consumer credit market which benefits from effective policing of the perimeter.[136]

22.35 Each year, HM Treasury determines the amount of funding that the teams will need for the following year and instructs the FCA on the amount that it should levy. The FCA then calculates how the levy should be apportioned across consumer credit feepayers. The levy is imposed as a flat fee for consumer credit firms with limited permissions, generally meaning those firms for which consumer credit activity is secondary to their main business. For full permission firms, for which consumer credit activity is generally a core part of their business, the levy is imposed as a flat fee plus a variable amount based on those firms' levels of income from consumer credit activity.[137] This structure ensures that the burdens are proportionate for firms, according to how much firms benefit from their participation in the consumer credit market.

[134] 'Fees Manual', Financial Conduct Authority, 2019

[135] 'FCA regulated fees and levies 2020/21: Including feedback on CP20/06 and 'made rules'', Financial Conduct Authority, 2020

[136] 'FCA regulated fees and levies 2020/21: Including feedback on CP20/06 and 'made rules'', Financial Conduct Authority, 2020

[137] 'FCA regulated fees and levies 2020/21: Including feedback on CP20/06 and 'made rules'', Financial Conduct Authority, 2019

22.36 As of 31 March 2021, the FCA had collected a total of £23.6m from firms to fund the Illegal Money Lending Teams.

Secondary legislation

22.37 Aside from that set out in Annex D, no further secondary legislation has been made under this section.

Legal issues and other reviews

22.38 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

22.39 Section 29 was implemented to ensure that the regulatory perimeter for consumer credit remained effectively policed. This has been achieved through ensuring that the Illegal Money Lending Teams, as a result of the levy, have continued to receive the funding needed to investigate and prosecute illegal money lenders operating in local communities. In addition, the Teams have continued to undertake valuable work in educating communities about the dangers of localised illegal money lenders, as well as improving financial capability. The funding for the Teams is now on a stable, long-term footing.

22.40 Since the levy was implemented, HM Treasury has also started funding the Police Service of Northern Ireland and the Consumer Council of Northern Ireland, to ensure that the regulatory perimeter is enforced in each nation of the UK. In Wales, funding has transferred from Cardiff City Council to Vale of Glamorgan Council.

Money laundering and terrorist financing

Objectives

22.41 Section 30, money laundering and terrorist financing, concerns requirements for the transposition of the Fourth Money Laundering Directive (4MLD). 4MLD introduced requirements for enhanced customer due diligence on all Politically Exposed Persons (PEPs), regardless of whether they held a UK or non-UK prominent public function. Subsection 30(1) of the 2016 Act was designed to ensure that when transposing the 4MLD into UK legislation, reasonable regard was given to the risk-sensitive spirit of the Directive and did not result in the stigmatisation of PEPs as being involved in criminal activity. Subsections 30(2) and (3) of the 2016 Act amended FSMA to require that the FCA issues guidance to regulated entities on the definition of PEPs. The purpose of the FCA guidance was to recognise that not all PEPs pose a high risk of money laundering, for example, PEPs from countries with high anti-corruption standards (such as the

UK) and their families should generally be treated as lower risk.

Implementation

22.42 The provision around money laundering and terrorist financing in the 2016 Act has not been commenced as the FCA guidance on the application of

enhanced customer due diligence on PEPs was introduced via regulation 48 (Duties of the FCA: guidance on politically exposed persons) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs), which imposed duties on the FCA to provide guidance on how financial services firms should treat PEPs.

22.43 The FCA published the guidance on PEPs in July 2017, clarifying that PEPs entrusted with prominent public functions in the UK should be treated as a low risk of money laundering and terrorist financing, unless a firm assesses that other risk factors not linked to their position as a PEP mean they pose a higher risk. Regulation 36 of the MLRs states that the duties under the 2016 Act in relation to the treatment of PEPs and the FCA issuing guidance do not apply if the duties are satisfied as a result of provisions in the MLRs.

22.44 The MLRs set out the high-level requirements on regulated firms – including financial services firms – to combat money laundering. The MLRs have previously transposed EU requirements which are themselves derived from the international standards on anti-money laundering set by the Financial Action Task Force (FATF). The Regulations require regulated firms to subject PEPs, close associates and family members of PEPs to enhanced anti-money laundering scrutiny. This is because international standards issued by the FATF recognise that a PEP may pose a risk of money laundering as they may be able to abuse their position. However, these international standards also recognise that not all PEPs pose a high risk of money laundering. PEPs from

countries with high anti-corruption standards such as the UK should be treated as lower risk. The FCA's guidance on the treatment of PEPs is clear that UK PEPs and their family members should be treated as lower risk. Ministers keep this area under review, to ensure that UK PEPs and their families are not unduly deprived of access to financial services solely because of this PEP status.

Secondary legislation

22.45 The duties under section 30, money laundering and terrorist financing, to issue guidance in connection with PEPs and

comply with the spirit of the Directive were satisfied under regulation 48 and 36 of the MLRs.

22.46 Aside from that set out in Annex D, no further secondary legislation is associated with this section.

Legal issues and other reviews

22.47 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

22.48 The 2016 Act was not used as the vehicle to achieve the policy intent because the legislation transposing 4MLD, the MLRs, included regulations to satisfy the requirements in the 2016 Act, including regulation 48 – Duties of the FCA: guidance on politically exposed persons. This followed discussions with both the FCA and the FOS, which decided that the FOS would be the appropriate body for handling such complaints. As such, the MLRs amended FSMA to state that these complaints could be considered by the FOS.

22.49 The MLRs also included regulation 36 to ensure that the duties in the 2016 Act did not apply if they were otherwise satisfied as a result of provisions in

the MLRs or guidance issued by the FCA under requirements of the MLRs. The policy intent of section 30 of the 2016 Act was to effectively transpose the PEPs provisions in 4MLD, on a risk-sensitive basis.

Insurance linked securities

Objectives

22.50 The government announced at March Budget 2015 that it would implement a new and competitive framework for Insurance Linked Securities (ILS) business. ILS involve the securitisation and sale of insurance risk to capital market investors, who then hold a financial obligation against a pre-agreed loss event.

22.51 'Transformer vehicles' are companies and other undertakings used, particularly by insurers and reinsurers, to transform one form of financial risk into another. Transformer vehicles are used in the distribution of ILS.

22.52 This instrument, together with the Risk Transformation (Tax) Regulations 2017 were intended to provide a tax and regulatory regime which would allow the United Kingdom to become an attractive domicile for ILS Special Purpose

Vehicles.

22.53 This was intended to allow the UK to become a leading market for insurance risk transformation and make a major contribution to the growth and development of global insurance risk transformation. Previously, the UK did not have a fit-for-purpose corporate and regulatory framework to compete in the ILS market.

22.54 Increased ILS business in the UK would result in a growth of the London insurance market, as well as providing highly specialist jobs. An increase in ILS business would also bring significant clustering value as ILS deals are complex to structure, involving the work of City law firms, insurance brokers and insurance management firms.

22.55 Section 31 inserts a section into FSMA to enable HM Treasury to make regulations facilitating and regulating such vehicles.

Implementation

22.56 The power for HM Treasury to make regulations under section 31, transformer vehicles, came into force on the day that the 2016 Act received Royal Assent, 4 May 2016.

Secondary legislation

22.57 HM Treasury published a consultation on draft legislation under section 31 in November 2016. Following consultation, the Risk Transformation Regulations 2017 (2017/1212) were made and came into force in December 2017. These regulations facilitate a regulatory regime for Transformer Vehicles, and ILS, in the UK, supervised by the FCA and PRA, which is designed to attract ILS business to the UK. In addition, it creates a new form of regulated activity under FSMA for ILS and enables the creation of a new form of body corporate called a 'protected cell company' to act as a special purpose vehicle in ILS transactions.

22.58 The PRA and FCA consulted on their approach to the authorisation and supervision of ILS in November 2016 and on draft rule changes necessary to incorporate the new regime in January 2017, publishing the feedback and approach in November 2017 and final rules shortly after the Risk Transformation Regulations 2017 (2017/1212) came into force in December 2017.

Legal issues and other reviews

22.59 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

22.60 Since the implementation of this regulatory framework there have been six separate ILS vehicles authorised in the UK.

Pensions Guidance

Objectives

22.61 In 2015, government announced that it would introduce a secondary market in annuities. This would allow consumers who had already purchased annuities to sell their annuity in exchange for a lump sum. Prior to the introduction of pension freedoms in April 2015, consumers had been strongly encouraged through tax rules (2011 to 15) or been required (pre- 2011) to use their defined contribution (DC) pension savings to purchase an annuity. Post-freedoms, consumers have greater flexibility in how they use their DC savings. The secondary market in annuities was intended to extend the pension freedoms to those who had already purchased an annuity with their DC pension savings.

22.62 To support the introduction of a secondary market in annuities:

- section 32 extends the definition of pensions guidance within FSMA to include the provision of guidance to individuals to help them make decisions about selling their annuity. This change would have enabled Pension Wise (now part of the Money and Pensions Service) to offer guidance in relation to the exchange or transfer of an annuity.
- section 33 introduces a requirement for the FCA to make rules to require that any consumer wishing to sell their annuity received appropriate advice.

22.63 Section 34 makes a technical amendment to sections 48 to 51 of the Pension Schemes Act 2015 to allow 'appointed representatives' of financial advisers (a class of persons exempt from direct regulation by the FCA or PRA pursuant to section 39 of FSMA) to advise on the conversion and transfer of safeguarded benefits to flexible benefits.

22.64 Safeguarded benefits are features of certain pensions, such as defined benefit pensions, and pensions with Guaranteed Annuity Rates. The section also amends the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (2001/1217) to the same end. An appointed representative is a firm or individual that can undertake certain regulated activities without being authorised on the basis that another, authorised, firm or individual (its 'principal') has

accepted responsibility for those activities.

22.65 At the time this policy was introduced, appointed representatives made up two thirds of the financial advice market; this change aimed to put the eligibility of appointed representatives to advise on these transactions beyond doubt). This change also aimed to ensure that appointed representatives were not excluded from a growing advice market.

22.66 Following the introduction of Pension Freedoms in April 2015, some individuals faced early exit charges at a level which presented a real barrier to accessing their pension flexibly under the Pension Freedoms. In some cases, consumers were facing early exit charges of more than 10% of their pension pot. Consequently, section 35 of the 2016 Act amends FSMA to place a duty on the FCA to make rules to cap early exit charges. Section 35 defined early exit charges, and gave HM Treasury a power to specify charges that are not to be treated as early exit charges

Implementation

22.67 DWP received Law Officers' consent to commence the section 32 powers as soon as possible after Royal Assent. The regulations required under section 32 came into force on 15 June 2016.

22.68 Section 33 covering annuity payments came into force as of 6 July 2016. In 2015, the government consulted on the creation of a secondary market in annuities and responded to that consultation in December 2015. The FCA consulted on rules and guidance in April 2016.

22.69 However, the government announced in October 2016 that it had cancelled plans to create a market for secondary annuities on the grounds that creating the conditions to allow a competitive market to emerge could not be balanced with sufficient consumer protections. Consequently, these provisions have not been implemented.

22.70 Section 34, allowing appointed representatives of financial advisers to advise on the conversion and transfer of safeguarded benefits to flexible benefits, came into force on 6 July 2016.

22.71 Section 35, which placed a duty on the FCA to make rules to cap early exit pension charges, came into force as of 6 July 2016.

22.72 The FCA subsequently consulted on draft rules on 26 May 2016 (CP16/15)[138] and published final rules in a policy statement on

[138] Capping early exit pensions charges', Financial Conduct Authority, 2016.

15 November 2016 (PS16/24),[139] which applied from 31 March 2017. These rules impose a 1% cap on early exit charges for existing personal and stakeholder pensions, and

0% for new contracts. In 2017, HM Treasury estimated that the 1% cap introduced by the FCA would lead to savings for consumers of £42.6m between 2017 and 2020. DWP introduced similar regulations in 2017 for trust-based pensions (the Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2017).

Secondary legislation

22.73 Section 32 provides a regulation making power for a Secretary of State, in this instance for the Department of Work and Pensions. The Financial Services and Markets Act 2000 (Pensions Guidance) Regulations 2016 were laid in parliament on 23 May 2016 and came into force on 15 June 2016. These regulations allowed Pension Wise, the impartial guidance service introduced by government, to provide guidance on the sale of their annuity through the proposed – but never introduced – secondary market in annuities.

22.74 Section 33 places a requirement on the FCA to make general rules regarding advice about the sale of an annuity. On 21 April 2016, the FCA published a consultation with proposed rules and guidance on the secondary annuity market (CP16/12).[140] However, as the government decided not to pursue the introduction of a secondary market in annuities, the FCA subsequently withdrew the consultation paper and did not issue a subsequent policy statement.

22.75 No secondary legislation or regulator rules have been made under section 34.

22.76 Under section 35, the Financial Services and Markets Act 2000 (Early Exit Pension Charges) Regulations 2016 (2016/1079) were made on 8 November 2016 to clarify the definition of early exit charges. These came into force as of 31 March 2017. The FCA published final rules in November 2016, which also entered into force with effect from 31 March 2017.

Legal issues and other reviews

22.77 There are no legal issues to report with these sections.

22.78 As sections 32 and 33 were introduced to support a secondary market in annuities which the government decided not to take forward, no reviews of these sections have been carried out. Section 32 was subsequently repealed by the Financial

139 Capping early exit pension charges: Feedback on CP16/15 and final rules', Financial Conduct Authority, 2016

140 Secondary Annuity Market – proposed rules and guidance', Financial Conduct Authority, 2016

Guidance and Claims Act 2018.

22.79 There have been no reviews of section 35. The rules made by the FCA under section 35 placed a 1% cap on early exit charges for pensions in existence before 31 March 2017 and a 0% cap for new contracts. Any exit fees in excess of these caps are therefore not permitted under FCA rules. Any consumer who faces charges above these caps is eligible to raise a complaint to the firm in the first instance and then, if dissatisfied with the outcome, via the FOS.

Preliminary Assessment

22.80 Sections 32 and 33 were introduced in order to support the policy of an introduction of a secondary market in annuities. As this market was never introduced, it is not possible to assess the effectiveness of these sections.

22.81 Prior to April 2015, appointed representatives were able to give advice on pension transfers. Section 34 was introduced to enable them to do so again following the introduction of pension freedoms, and the introduction of a new regulated activity of advising on conversion or transfer of pension benefits. The new regulated activity is specified in article 53E of the Regulated Activities Order.

22.82 At the time, appointed representatives comprised about two thirds of the advice market as part of networks or as self-employed advisers for vertically integrated firms. The change made by section 34 meant that the pension transfer advice market was not limited to firms that were directly authorised by the FCA. This would have limited access to pension transfer advice for consumers following the introduction of the pension freedoms.

Crisis management and resolution planning

Objectives

22.83 Section 36, crisis management and resolution planning, made amendments to the 2012 Act to ensure that HM Treasury can obtain information from the Bank both on firms' resolution plans and on scenarios where a Public Funds Notification might be required.

22.84 These amendments gave HM Treasury the power to require the Bank to provide it with specific information that HM Treasury considers material to understanding the implications for public funds as assessed by the Bank of a financial institution failing.

22.85 In addition, the amendments imposed a duty on the Bank to give HM Treasury information on the resolution plans it

prepares relating to certain banks and other financial institutions. The Bank must give HM Treasury, with sufficient notice, the resolution plan itself, an assessment of the systemic risk of the failure of the firm in question and the implications for public funds of the Bank's proposals for resolving it.

Implementation

22.86 Section 36, crisis management and resolution planning, came into force on 6 July 2016.

22.87 To discharge their obligations under the 2012 Act (as amended by the 2016 Act), the Bank and HM Treasury have updated the existing MOU on resolution planning and financial crisis management. The updated MOU was published in April 2017.[141]

Secondary legislation

22.88 No other secondary legislation is associated to this section, aside from commencement orders set out in Annex D.

Legal issues and other reviews

22.89 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

22.90 As noted above, in order to implement the amendments made to the 2012 Act by the 2016 Act, the Bank and HM Treasury updated the existing MOU on resolution planning and financial crisis management.

22.91 Under the MOU, for firms subject to resolution powers, the Bank shares with , HM Treasury a variety of products, including, among others, a copy of the draft resolution plan, the Bank's assessment of the systemic risk of the firm failing and the implications for public funds of the draft resolution plan – as set out in the draft resolvability assessment – and, on a proportionate basis, any analysis considered by the Bank to be material to the Bank's assessment of the implications for public funds of the draft or final resolution plan.

Consequential Amendments

Objectives

22.92 Section 37 reverses the revocation of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals)

[141] 'Memorandum of Understanding on resolution planning and financial crisis management', HM Treasury, 2017

Order 2001 by the National Savings Regulations 2015 with retrospective effect, so that the Order will be treated as never having been revoked.

Implementation

22.93 Section 37 came into force on the day that the 2016 Act was passed, 4 May 2016.

Secondary legislation

22.94 No other secondary legislation is associated to this section, aside from commencement orders set out in Annex D.

Legal issues and other reviews

22.95 There are no legal issues to report with this section. No other assessments of this section have been conducted.

Preliminary Assessment

22.96 This reversal corrects an error in the National Savings Regulations 2015 which revoked the entirety of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, rather than revoking a specific section. Section 37 ensures that the Order is amended as originally intended.

Chapter 23

2016 Act Part 3: Miscellaneous and general

Objectives

23.1 Part 3 established section 38, banknotes in Scotland and Northern Ireland, which makes technical changes to the Scottish and Northern Irish banknotes issuance regime to facilitate group restructuring through secondary legislation. These changes were made to allow banks to comply with ring-fencing requirements.

23.2 Sections 39 to 42 provide HM Treasury with the power to make consequential amendments to the 2016 Act, set out the extent of the 2016 Act, and commence sections 31, 37 and 39 to 42 of the 2016 Act on the day the Act receives Royal Assent.

Implementation

23.3 Section 38, banknotes in Scotland and Northern Ireland, came into force on 6 July 2016. The power to amend banknote issuance rights through secondary legislation was made in February 2018 to transfer the existing legal authority for The Royal Bank of Scotland plc (RBS) to issue commercial banknotes in Scotland from the current legal entity (renamed NatWest Markets plc) to a different legal entity (Adam & Company plc, to be renamed the Royal Bank of Scotland plc), all within the same banking group.

23.4 The change was necessary to enable banknotes to be issued from the banking group's Scottish ring-fenced bank following the structural changes to implement the government's policy of ring-fencing, whereby from 1 January 2019, the largest UK banks were required to separate core retail banking from investment banking.

23.5 The power to amend banknote issuance rights through secondary legislation was further exercised in June 2020, when the Northern Irish Banknote (Designation of Authorised Bank) Regulations 2020 (2020/658) were made. Ulster Bank Plc was a direct subsidiary of NatWest and both were within the NatWest Group (formerly RBS Group). NatWest Group changed its legal structures, with Ulster Bank Plc becoming part of the NatWest legal entity, surrendering Ulster Bank's banking licence. This structural change concluded on 3 May 2021.

23.6 For banknotes to continue to be issued under the Ulster Bank

brand it was necessary to transfer the existing legal authority to issue commercial banknotes in Northern Ireland to NatWest. Banknote issuance rights were transferred on 30 November 2020, ahead of the structural change concluding.

Secondary legislation

23.7 The Scottish Banknote (Designation of Authorised Bank) Regulations 2018 (2018/169) were made on 7 February 2018 and came into force on 8 February 2018 for the purposes described in paragraphs 23.3 and 23.4.

The Bank of England and Financial Services Act 2016 (Commencement No 4 and Saving Provision) Regulations 2017 (2017/43) makes savings provisions for the legislation governing PRA accounts that was repealed by the 2016 Act, for accounts covering the accounting period ending 28 February 2017.

23.8 The Bank of England and Financial Services Act 2016 (Commencement No 5 and Transitional Provisions) Regulations 2018 (2018/990) makes transitional provisions under the 2016 Act.

23.9 The Northern Irish Banknote (Designation of Authorised Bank) Regulations 2020 (2020/658) were made on 30th June 2020 and came into force on 1 July 2020 for the purpose described in paragraph 23.5.

23.10 No other secondary legislation is associated with this section, aside from commencement orders set out in Annex D.

Legal issues and other reviews

23.11 This part made general amendments as outlined in paragraph 23.2 and did not make policy changes. As such, there has been no legal challenge or any reports which may provide assessment.

Preliminary Assessment

23.12 As above, there is no preliminary assessment given for this part as no policy change was introduced.

Chapter 24

Annex A - Detailed description of provisions in Part 2 of 2012 Act

Section 6 - The new regulators

24.1 Section 6 established the new regulators, the PRA and FCA, and specified the regulators' objectives, duties and powers and their relationship to HM Treasury. Section 6 replaced Part 1 of FSMA relating to the FSA with a new Part 1A to FSMA, and introduced schedule 3, which inserted new schedules 1ZA & 1ZB into FSMA, replacing schedule 1 to FSMA.

The FCA

24.2 New Part 1A to FSMA, Chapter 1, established the FCA. It set out how the FCA must discharge its general functions: making rules, preparing and issuing codes, giving general guidance, and determining general policy and principles by reference to which it performs particular functions under the 2012 Act.

The FCA's general duties

24.3 It set out and defined the objectives and duties of the FCA when discharging its general functions. In particular, in discharging its general functions, the FCA must, so far as is reasonably possible, act in a way which is compatible with its strategic objective: 'ensuring that relevant markets function well', and advances one or more of its operational objectives:

- the consumer protection objective: 'securing an appropriate degree of protection for consumers';
- the integrity objective: 'protecting and enhancing the integrity of the UK financial system';
- the competition objective: 'promoting effective competition in the interests of consumers'.

24.4 In discharging its general functions, the FCA must also have regard to the regulatory principles which apply to the FCA and PRA:

- the need to use the resources of each regulator in the most efficient and economic way;
- 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;

- the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term;
- the general principle that consumers should take responsibility for their decisions;
- the responsibilities of the senior management of persons subject to requirements imposed by or under this Act, including those affecting consumers, in relation to compliance with those requirements;
- the desirability where appropriate of each regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under this Act;
- the desirability in appropriate cases of each regulator publishing information relating to persons on whom requirements are imposed by or under this Act, or requiring such persons to publish information, as a means of contributing to the advancement by each regulator of its objectives;
- the principle that the regulators should exercise their functions as transparently as possible.

24.5 Alongside this, the FCA must also have regard to the importance of taking action to minimise the extent to which it is possible for certain types of business to be used for a purpose connected with financial crime. The legislation further defines these objectives and principles.

24.6 The legislation conferred a power on HM Treasury to amend certain definitions relating to the FCA's objectives and duties, for example HM Treasury could amend the definition of 'consumer' to add a new category of person, to ensure that the FCA could rely on its 'consumer protection' objective to protect consumers of a new regulated produce of service.

24.7 The legislation also required that the general guidance given by the FCA must include guidance on how it intends to advance its discharging of its general functions in relation to different categories of authorised persons or regulated activity. For example, the FCA must give guidance as to how it proposes to regulate authorised persons who accept deposits differently from authorised persons who effect or carry on contracts of insurance. Before giving or altering such guidance the FCA must consult with the PRA.

Supervision, monitoring and enforcement

24.8 The FCA was given a duty to maintain arrangements for supervising authorised persons and to determine whether people who are not authorised persons are complying with certain regulatory requirements.

Arrangements for consulting practitioners and consumers

24.9 The FCA was given a duty to make and maintain effective arrangements for consulting practitioners and consumers on the extent to which its general policies and practices are consistent with its general duties. As part of this, to ensure the input of relevant viewpoints, the FCA was required to make provisions for the establishment and maintenance of various statutory panels, such as the FCA Practitioner Panel.

Reviews

24.10 The legislation enabled HM Treasury to appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the FCA has used its resources in discharging its functions.

Further provision relating to the FCA - New schedule 1ZA to FSMA

24.11 New schedule 1ZA to FSMA made further provision about the FCA. Part 1 of new schedule 1ZA set out requirements for the FCA's constitution and imposed certain obligations on the FCA such as the constitution of its governing body (i.e. Board).

24.12 Part 2 dealt with the status of the FCA and, for example, stated that in relation to any of its functions the FCA is not to be regarded as acting on behalf of the Crown and its members, officers and staff are not to be regarded as Crown servants.

24.13 Part 3 makes provision in relation to penalties and fees, for example that in determining its policy with regard to the level of penalties to impose under powers in the 2012 Act, the FCA may take no account of its expenses or anticipated expenses. Part 4 of new schedule 1ZA gives the FCA, and those who work for it, limited immunity from liability in damages and makes other miscellaneous provisions.

The PRA

24.14 New Part 2A to FSMA, Chapter 2, established the PRA. It set out how the PRA must discharge its general functions: making rules, preparing and issuing codes, giving general guidance, and determining general policy and principles by reference to which it performs particular functions under the 2012 Act.

The PRA's general duties

24.15 New Part 2A to FSMA set out and defined the objectives and duties of the PRA when discharging its general functions. In particular, in discharging its general functions, the PRA must, so far as is reasonably possible, act in a way which advances its general objective: 'promoting the safety and soundness of PRA-authorised persons'. That objective should be advanced by:

- seeking to ensure that the business of PRA-authorised persons is carried on in a way which avoids any adverse effect on the stability of the UK financial system;
- seeking to minimise the adverse effect that the failure of a PRA-authorised person could be expected to have on the stability of the UK financial system.

24.16 As well as this, when discharging functions in relation to PRA-authorised person who are insurers or reinsurers, the PRA must seek to advance its insurance objective: 'contributing to the securing of an appropriate degree of protection for those who are or may become policyholders'.

24.17 The PRA must determine its strategy in relation to these objectives, periodically review and, if necessary, revise that strategy

24.18 The legislation gave HM Treasury the power to specific additional activities in relation to activities which become PRA-regulated activities in the future.

24.19 The legislation also requires that in discharging its general functions, the PRA must have regard to the regulatory principles which apply to the FCA and PRA, set out in paragraph 24.4 above.

Supervision

24.20 The PRA was given a duty to maintain arrangements for supervising PRA- authorised persons.

Arrangements for consulting practitioners

24.21 The PRA must make and maintain effective arrangements for consulting PRA- authorised persons on the extent to which its general policies and practices are consistent with its general duties. As part of this, the PRA must establish and maintain the 'PRA Practitioner Panel'.

Reviews

24.22 The legislation enabled HM Treasury to appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the PRA has used its resources in discharging its functions.

Further provision relating to the PRA - New schedule 1ZB to FSMA

24.23 New schedule 1ZB to FSMA made further provision about the PRA, similar to provisions in new Schule 1ZA to FSMA for the FCA (set out in paragraph 24.11 above). Part 1 of new schedule 1ZA set out requirements for the PRA's constitution and imposed certain obligations on the PRA such as the constitution of its governing body (i.e. Board). Part 2 dealt with the status of the PRA. Part 3 made provision in relation to penalties and fees, and Part gives the PRA and those who work for it limited immunity from liability in damages and makes other miscellaneous provision.

Further provisions relating to the FCA and PRA

Corporate Governance

24.24 The legislation set out that in managing their affairs, both regulators must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

The relationship between the PRA and FCA

24.25 The legislation placed a duty on the regulators to coordinate the exercise of their respective functions under FSMA for three purposes:

- to ensure each regulator consults with the other regulator in connection with any proposed exercise of a function in a way that may have a material adverse effect on the advancement by the other regulator of any of its objectives (specifically operational in regard to the FCA);
- to ensure where appropriate each regulator obtains information from the other regulator in connection with the exercise of its functions in relation
- to matters of common regulator interest in cases where the other regulator may be expected to have relevant information or expertise;
- to ensure that where either regulator exercises functions in relation to matters of common regulator interest, both regulators comply with their respective duties and with the general regulatory principles.

24.26 The legislation required that the FCA and PRA must prepare and maintain a memorandum setting out their roles in relation to matters of common regulatory interest and how they will exercise this function. It also gives HM Treasury the power to specify by order matters which are primarily or solely the responsibility of one regulator.

Power of the PRA to restrain proposed action by the FCA

24.27 In circumstances where the FCA proposes to exercise a regulatory power which impacts on the PRA, the legislation makes provision for the PRA to direct the FCA not to exercise the power or not to exercise a power in a particular way, where it feels that such a direction would be desirable to advance the PRA's general or insurance objectives.

24.28 Prior to giving such direction, the PRA must consult with the FCA, publish the direction, and laid before Parliament unless the PRA and HM Treasury decide that it would be against the public interest to do so. However, the decision not to lay before Parliament should be kept under review and the direction published if and when the PRA decides it is no longer against the public interest to do so.

Directions relating to consolidated supervision

24.29 Where one of the regulators, but not the other, is the competent authority under certain EU directives for the purposes of consolidated supervision of some or all members of group, that regulator may direct the other regulator if it considers necessary to do so for effective consolidated supervision. The legislation sets out the relevant EU directives, and what the regulator can or cannot do through such a direction.

Cooperation with the Bank of England

24.30 The legislation requires each regulator to take such steps as it considers appropriate to cooperate with the Bank in connection with the Bank's pursuit of its Financial Stability Objective, and its duty notify HM Treasury of a possible need for public funds.

Arrangements for provision of services

24.31 The legislation provides that the regulators may enter into arrangements with each other, the Bank and a number of other bodies for the provision of services by one regulator to another.

The Consumer Financial Education Body

24.32 The legislation provides for the consumer financial education body continues to have the consumer financial education function originally established by the FSA. Further information on the consumer financial education body is set out in paragraphs 3.158 to 3.170.

Section 7 to 9 – Regulated activities

24.33 Section 7 expanded the scope of the power conferred by section 22 of FSMA on HM Treasury to specify by order what activities are 'regulated' activities. This allowed for HM Treasury to specify

as a regulated activity an activity which is carried on by way of business and which relates to information about a person's financial standing, the setting of a specified benchmark, loans and other forms of credit, and contracts for hire of goods.

24.34 In addition, section 7 gave HM Treasury the power to specify that consumer credit activities which were regulated by the Office of Fair Trading (OFT) under the Consumer Credit Act 1974 would become regulated activities for the purpose of FSMA.

24.35 Section 8 replaced paragraph 26 of schedule 2 to FSMA, amending the Parliamentary procedure for secondary legislation made under section 22 of FSMA. It provides that an order made under section 22 which contains a statement by HM Treasury that in their opinion the effect of the proposed order would be to expand the scope of regulation must be laid before Parliament in draft and approved by each House of Parliament before being made, unless the order contains a statement by HM Treasury as to its urgency, whereupon the order may be laid before Parliament after being made but ceases to have effect unless approved by each House of Parliament within 28 sitting days. Paragraph 26 of FSMA previously provided for the 28- day procedure to apply to all such orders, even where there is no urgency.

24.36 Section 9 provided for HM Treasury to specify which activities are to be regulated by the PRA with its prudential responsibilities.

Section 10 - Appointed representatives

24.37 As part of creating a proportionate regime for the regulation of consumer credit, section 10 made a minor amendment to FSMA to allow authorised firms that only have permissions for specified types of credit related activities considered to be lower risk to become or remain appointed representatives for non-credit related and credit-regulated activities.

Section 11 - Permission to carry on regulated activities

24.38 Section 11 replaced Part 4 of FSMA (Permission to carry on regulated activities) with a new Part 4A, reflecting the new regulatory structures. The section details the processes of the FCA and PRA when giving permission for individuals and entities to conduct regulated activities as well as the requirements which the regulators can impose on authorized persons conducting regulated activities. The regulators also have discretion to consider whether it is necessary to exercise their powers in support of an overseas regulator.

Section 12 - EEA passporting and treaty rights

24.39 Section 12 introduced schedule 4, which made amendments to provisions in FSMA concerning EEA passporting rights, Treaty rights, EEA and Treaty firms and powers of intervention in relation to incoming firms to reflect the new regulatory structure.

Section 13 to 15 - Approved persons and prohibitions

24.40 Sections 13 to 15 and schedule 5 amended the sections of FSMA that contain the provisions for the FSA to impose prohibition orders and for the approved persons regime to reflect the new regulatory structure.

Section 16 to 21 - Official listings

24.41 Sections 16 to 21 made amendments to the UK listing regime, as set out in Part 6 of FSMA (official listing). In February 2011, the government determined the UK Listing Authority (UKLA)[142] which administers the UK listing regime should remain part of the newly founded FCA. Section 16 of the 2012 Act amends Part 6 of FSMA to designate the FCA as the competent authority for the purpose of the UK listing regime.

24.42 At the time FSMA was enacted, it was unclear whether the FSA would undertake, on a permanent basis, some or all of the functions as the competent authority under Part 6 of FSMA. Therefore, Part 6 of FSMA was drafted as a self-contained Part, with schedule 7 to FSMA making modifications to Part 6 setting out where the FSA would be considered the competent authority. Additionally, schedule 8 to FSMA gave HM Treasury a power to confer some or all the functions under Part 6 to another body. Section 16 omitted schedules 7 and 8 to FSMA as they were no longer necessary.

24.43 Sections 17 to 21 are addressed in Chapter 3.

Section 22 - Control of business transfers

24.44 Section 22 and schedule 6 made various changes to Part 7 of FSMA (control of business transfers).

24.45 Part 7 of FSMA provided a court process which enables insurance business, banking business or reclaim fund business to be transferred from one authorised entity to another without requiring the approval of all those who may be affected by the transfer (e.g. the consent of all relevant policyholders or account holders). It is mandatory to use Part 7 of FSMA for an insurance business transfer; for the other types of transfer Part 7 is optional or, alternatively, other processes (such as a Private Act)

[142] Since early 2017, the FCA has been phasing out to the term UK Listing Authority (UKLA) to refer to the FCA's primary marketfunctions. It was found stakeholders were confused by it and sometimes believed it might refer to a separate body. Historic documents may still use the term UKLA

may be used.

24.46 Section 22(2) introduced schedule 6, which makes a number of amendments to Part 7 of FSMA, and schedule 12 to FSMA to reflect the new regulatory structure.

Section 23 - Appeals to the upper tribunal

24.47 Section 23 made amendments to Part 9 of FSMA (hearings and appeals) to allow regulated firms to appeal PRA or FCA decisions to the Upper Tribunal. Section 23 makes a distinction between disciplinary matters and other measures, such as supervisory action taken in pursuit of wider public policy aims such as consumer protection. For the former, if the Tribunal choose not to uphold the decision of the regulator, the Tribunal may direct the FCA or the PRA how to give effect to the Tribunal's determinations as to the action which should be taken. For the latter, if the Tribunal chooses not to uphold the decision of either regulator, it is not able to substitute its own determination of the action which should be taken and is limited to referring the matter back to the regulator with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal on certain limited matters.

24.48 The objective was to determine an appropriate balance between the rights of those affected by supervisory decisions and upholding the principle of judgement-based regulation (i.e. that the regulators are best placed to determine the nature of regulatory action). The FCA, the PRA and the Bank are best placed to form a view as to the precise nature of supervisory action taken in pursuance of wider public policy aims.

Section 24 - Rules and guidance

24.49 Section 24 replaced part 10 of FSMA (Rules and guidance) with a new Part 9A, which re-enacts Part 10 with amendments to reflect the new regulatory structure. The new Part 9A is made up of five chapters:

- Chapter 1 sets out the general rule-making powers of the FCA and PRA, including general rules applying to authorized persons. The powers of the FCA to prohibit or restrict authorized persons from exposing consumers to specific products are set by this Chapter. Chapter 1 also states that prior to preparing rules regarding recovery plans regulators must consult both HM Treasury and the Bank. Finally, Chapter 1 sets out the circumstances where the FCA can direct a firm to withdraw a financial promotion and recourse firms can take to challenge this direction.

- Chapter 2 deals with the waiver or modification of rules,

including the conditions which must apply for each regulator to give a direction waiving or modifying rules. The FCA and PRA must consult each other prior to making any rules and publish a cost-benefit analysis alongside an explanation of how the rules comply with their statutory objectives, except in cases of specific exemptions. The restrictions on when and how the FCA can make temporary product intervention rules are also set out.

- Chapter 3 made provision for the FCA to issue guidance, including specifying when it will be required to consult the PRA on any draft guidance prior to publication, and that it must notify HM Treasury if it wishes to issue new general guidance, or to amend or revoke existing general guidance.
- Chapter 4 made provision for competition scrutiny requiring regulators to respond to (but not necessarily accept) any advice provided by the Office of Fair Trading (OFT) or the Competition Commission within ninety days; If either the OFT or Competition Commission remained concerned that the actions of the regulators may have negatively impacted competition, they could refer their concerns to HM Treasury who could, if necessary, require the regulator to take a specific course of action.
- Chapter 5 made provision for consequential amendments by conferring on HM Treasury and the Secretary of State a power to make orders to amend legislation which makes reference to the rules of either regulator, or to guidance issued by the FCA, where the regulator has altered or revoked its rules or guidance.

Section 24 - Short selling

24.50 Section 25 amended Part 8A of FSMA (short selling) to reflect the new regulatory structure.

Section 26 - Control over authorized persons

24.51 Section 26 amends Part 12 of FSMA (control over authorised persons) to reflect the new regulatory structures. Part 12 of FSMA makes provision in respect of acquisitions, increases or reductions of control over certain types of firm such as credit institutions, investment firms and insurance undertakings. Control refers to the minimum number of shares, voting power or the ability to exercise significant person that a person holds of an authorised person.

Section 27 - Powers of regulators in relation to parent undertakings.

24.52 Section 27 inserted a new Part 12A to FSMA, which conferred powers on the regulators in relation to parent undertakings. It allows the FCA and PRA to impose requirements on unregulated

undertakings that would influence and exert control over authorized persons in order to prevent circumstances in which unregulated undertakings and persons could directly influence people operating in authorized undertakings.

Section 28 to 35 – Recognised investment exchanges and clearing houses

24.53 To reflect the new regulatory structure resulting from the division of the responsibilities and powers of the FSA, sections 28 to 35 amend part 18 of FSMA (recognised investment exchanges and clearing houses). Part 18 of FSMA sets out the regime under which 'recognised clearing houses' and 'recognised investment exchanges' (together 'recognised bodies') are regulated.

24.54 Through this division of responsibilities and powers, the FCA became responsible for the regulation of recognised investment exchanges and the Bank became responsible for the regulation of recognised clearing houses. When taken with the Bank's existing responsibilities, this made the Bank responsible for the regulation of systemically important clearing, payment and settlement infrastructure. The Bank's financial stability objective (as amended by section 2) applies to its making functions under Part 18 of FSMA.

24.55 Section 29 inserts schedule 17A, as set out in schedule 7, into FSMA, which simply transfers specific responsibilities and powers the FSA could previously exercise to the Bank, rather than introducing new powers. Section 33 provides for an enforcement regime for the Bank which mirrors provisions in Part 14 of FSMA (disciplinary measures) (which would have been exercisable by the FSA).

24.56 Section 34 omits Chapters 2 (competition scrutiny) and 3 (exclusion from the Competition Act 1998) of Part 18 after the introduction of other provisions made the Chapters redundant.

24.57 Sections 28 to 32 also make several technical changes to the regimes for recognised bodies, in order to make the regimes more efficient and responsive:

- Section 28 granted HM Treasury the power to amend subsections by order, to expand or narrow the activities for which a recognised body has exemption from general prohibition. This underpins the regimes with which recognised bodies need to comply
- Section 30 permitted HM Treasury to confer a power for the FCA and Bank to make rules on matters specified by HM Treasury, enabling more prescriptive requirements to be imposed if necessary
- Section 31 granted an additional power to the Bank to direct recognised central counterparties in certain

circumstances, for instance, to enhance the financial resilience of a clearing house

- Section 32 introduced a simplified procedure for exercising the power of direction and the revocation of recognition relating to recognised bodies, allowing for a more flexible procedure in order that the Bank can act appropriately, for example, to address a threat to financial stability

Section 36 - Suspension and removal of financial instruments from trading

24.58 Section 36 amended Part 18 of FSMA (suspension and removal of financial instruments from trading) reflect the new regulatory structure.

Section 37 - Discipline and enforcement

24.59 Section 37 introduced schedule 9, which made various amendments to the provisions in FSMA which relate to disciplinary and enforcement measures to reflect the new regulatory structure. It also gave the FCA and PRA powers of disclosure to publish details of warning notices issued in relation to disciplinary action. The objective was to allow the FCA and PRA to take disciplinary action against a person that acts in contravention with a requirement imposed by the regulator.

Section 38 - Financial Services Compensation Scheme

24.60 Section 38 and schedule 10 amended Parts 15 and 15A of FSMA (the Financial Services Compensation Scheme and other schemes). To reflect the new regulatory structure, including powers to the PRA and FCA to make rules in relation to the FSCS. Schedule 10 also includes duties on the FSCS to cooperate with the regulators, strengthens the accountability mechanism for the FSCS, requiring the FSCS to prepare an annual plan, and to submit its accounts to the NAO.

Section 39 - Financial Ombudsman Service

24.61 Section 39 introduced schedule 11 which amended Part 16 of FSMA (the Ombudsman Scheme), to reflect the new regulatory structure.

24.62 Schedule 11 introduced a requirement for the FOS to disclose information to the FCA in circumstances where it considers that the information might be of assistance to the FCA in advancing one or more of its operational objectives and a duty on the FCA to have regard to this information. This section of the 2012 Act also placed a duty on the FOS to publish reports of determinations (i.e. final ombudsman decisions) and clarifies some rules for complainants and firms with regards to the FOS.

Section 40 - Lloyds of London

24.63 Section 40 amended part 19 of FSMA (Lloyd’s), imposing duties

and powers on the PRA and FCA in relation to Lloyd's of London which were previously imposed on the FSA. This includes a requirement for the PRA and FCA to remain informed about the way that the Council of Lloyd's supervises and regulates the Lloyd's market, and how regulated activity is carried out in the marketplace. This section also outlines the necessary consultation between the PRA and FCA before either exercises powers of direction over the Lloyd's Council.

Section 41 - Information, investigations, disclosure etc.

24.64 Section 41 introduced schedule 12, which made various amendments to FSMA transferring the FSA's information-gathering powers to the FCA and the PRA and strengthened those powers, notably by granting a power for the FCA and the PRA to directly appoint a skilled person to produce a report into an authorised person and to recoup its costs from the authorised person.

Section 42 - Auditors and actuaries

24.65 Section 42 introduced schedule 13 which amended part 22 of FSMA (auditors and actuaries) to reflect the new regulatory structure. Part 22 of FSMA makes provision for information sharing between regulators, auditors and actuaries. The amendments made by this section reflect the transfer of the FSA's functions to the PRA and FCA, enabling the PRA and FCA to make and enforce rules requiring the appointment of an auditor or actuary to entities that they regulate, and to enable the same regulators to disqualify an auditor or actuary from working for an entity that they regulate.

Section 43 - Consumer protection and competition

24.66 Section 43 inserted a new Part 16A into FSMA which makes provision for complaints and references which may be made to the FCA in relation to competition or matters which adversely affect the interests of consumers. These provisions established the regime under which the FCA can be alerted to competition issues, or matters that adversely affect the interests of consumers, and then be held accountable for its response. In particular, section 234C enables designated consumer bodies to make a super- complaint to the FCA. Section 234D enables regulated persons and the Financial Ombudsman Service to make references to the FCA. The introduction of a super-complaints process in financial services legislation reflects the process in existence under the Enterprise Act 2002.

Section 44 - Insolvency

24.67 Section 44 introduced schedule 14 which amended Part 24 of FSMA (insolvency) to reflect new regulatory structures.

Section 45 – The Consumer Financial Education Body

24.68 Section 45 introduced schedule 15 which made amendments to schedule 1A to FSMA (further provision about the consumer financial education body). The Consumer Financial Education Body (CFEB) later known as the Money Advice Service (MAS), was set up in 2012 as a consolidated part of the FSA. Section 25 replaced the role of the FSA with the FCA, reflecting new regulatory structures.

24.69 Section 45 also aimed to ensure better cooperation and information sharing between the FCA and the CFEB by requiring that these bodies agree a new memorandum on how they will achieve this and to create more regular accountability structures for CFEB. It did this by giving HM Treasury the ability to require CFEB to comply with any provision of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, and by ensuring that CFEBs annual reports and accounts are sent to HM Treasury, examined by the Comptroller and Auditor General and laid by HM Treasury in Parliament.

Section 46 - Members of the professions

24.70 Section 46 introduced schedule 16 which made amendments to Part 20 of FSMA (provision of financial services by members of the professions) to reflect the transfer of the FSA's responsibilities under the designated professional bodies regime to the FCA. Schedule 16 also made an addition (paragraph 10A) to Part 20 of FSMA, which provided that the FCA does not have to produce an estimate of its costs or benefits as part of the analysis required under Part 20 of FSMA where, in the opinion of the FCA, it would not be reasonable or practicable to do so.

Section 47 - International obligations

24.71 Section 47 amends section 410 FSMA (international obligations) to reflect the different responsibilities shared between the FCA, PRA and Bank.

Section 48 to 49 - Interpretation of FSMA and Parliamentary procedure for SIs

24.72 Section 48 amends section 417 of FSMA (definitions) to reflect the new regulatory structure. It also clarifies definitions for parent and subsidiary undertaking and qualifying EU provisions.

24.73 Section 49 makes amendments sections 429 of FSMA (parliamentary control of statutory instruments), make provision for the Parliamentary control of statutory instruments made under powers created by the 2012 Act.

Chapter 25

Annex B - 2012 Act Commencement Orders

Section	Commencement Order(s)	SI Number	Purpose	Date of Commencement
Part 1, section 1	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 1 for specified purposes	19 February 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 1 in so far as not already in force	1 April 2013
Part 1, sections 2 to 3	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 2 to 3	1 April 2013
Part 1, section 4	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 4 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 4 in so far as not already in force	1 April 2013
Part 1, section 5	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 5 for specified purposes	19 February 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 5 for in so far as not already in force	1 April 2013
Part 2, section 6	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 6 for specified purposes	24 January 2013, 19 February 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 6 in so far as not already in force	1 April 2013
Part 2, section 7	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 7	24 January 2013

Part 2, sections 8 to 9	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced sections 8 to 9	24 January 2013
Part 2, section 10	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 10	1 April 2013
Part 2, section 11	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 11 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 11 in so far as not already in force	1 April 2013
Part 2, section 12	The Financial Services Act (Commencement No 1) Order 2013	2013/113	Commenced section 12 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 12 in so far as not already in force	1 April 2013
Part 2, section 13	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 13	1 April 2013
Part 2, section 14	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 14 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 14 in so far as not already in force	1 April 2013
	Omitted by virtue of the Financial Services (Banking Reform) Act 2013 as of 7 March 2016			
Part 2, section 15	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 15 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 15 in so far as not already in force	1 April 2013
Part 2, section 16	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 16 for specified purposes	24 January 2013
	The Financial Services Act 2012	2013/423	Commenced section 16 in so far as not already in force	1 April 2013

	(Commencement No 2) Order 2013			
Part 2, section 17	The Financial Services Act 2012 (Commencement No 3) Order 2013	2013/651	Commenced section 17 for specified purposes	19 March 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 17 in so far as not already in force	1 April 2013
Part 2, section 18	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 18 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 3) Order 2013	2013/651	Commenced section 18 for specified purposes	19 March 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 18 in so far as not already in force	1 April 2013
Part 2, section 19	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 19 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 19 in so far as not already in force	1 April 2013
Part 2, sections 20 to 23	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced sections 20 to 23	1 April 2013
Part 2, section 24	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 24 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 24 in so far as not already in force	1 April 2013
Part 2, sections 25 to 26	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced sections 25 and 26	1 April 2013
Part 2, section 27	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 27 for specified purposes	24 January 2013

	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 27 in so far as not already in force	1 April 2013
Part 2, section 28	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 28	1 April 2013
Part 2, section 29	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 29 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 29 in so far as not already in force	1 April 2013
Part 2, section 30	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 30 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 30 in so far as not already in force	1 April 2013
Part 2, sections 31 and 32	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced sections 31 and 32	1 April 2013
Part 2, section 33	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 33 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 33 in so far as not already in force	1 April 2013
Part 2, section 34	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 34	1 April 2013
Part 2, section 35	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 35 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 35 in so far as not already in force	1 April 2013
Part 2, section 36	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 36	1 April 2013

Part 2, section 37	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 37 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 37 in so far as not already in force	1 April 2013
Part 2, section 38	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 38 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 38 in so far as not already in force	1 April 2013
Part 2, section 39	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 39 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 3) Order 2013	2013/651	Commenced section 39 for specified purposes	19 March 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 39 in so far as not already in force	1 April 2013
Part 2, section 40	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 40 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 40 in so far as not already in force	1 April 2013
Part 2, section 41	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 41 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 41 in so far as not already in force	1 April 2013
Part 2, section 42	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 42 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 42 in so far as not already in force	1 April 2013

Part 2, section 43	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 43 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 43 in so far as not already in force	1 April 2013
Part 2, section 44	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 44	1 April 2013
Part 2, section 45	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 45 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 45 in so far as not already in force	1 April 2013
Part 2, sections 46 and 47	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced sections 46 and 47	1 April 2013
Part 2, section 48	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced sections 48(1)(a) to (c), (e) to (i), (k) to (m), (o) to (t)	1 April 2013
	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced sections 48(1)(d)(j)(n)(2)(3)	24 January 2013
Part 2, section 49	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 49	24 January 2013
Part 3, sections 50 to 52	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced sections 50 to 52	24 January 2013
Part 3, sections 53 to 56	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/423	Commenced sections 53 to 56	1 April 2013
Part 3, section 57	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 57	24 January 2013
Part 4, sections 58 to 63	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced sections 58 to 63	1 April 2013

Part 4, section 64	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 64	24 January 2013
Part 4, section 65	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 65 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 65 in so far as not already in force	1 April 2013
Part 4, section 66	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 66 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 66 in so far as not already in force	1 April 2013
Part 4, section 67	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 67	24 January 2013
Part 5, sections 68 to 79	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced sections 68 to 79	1 April 2013
Part 5, section 80	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 80 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 80 in so far as not already in force	1 April 2013
Part 5, sections 81 to 82	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced sections 81 to 82	1 April 2013
Part 5, section 83	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 83	24 January 2013
Part 6, section 84	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 84 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 84 in so far as not already in force	1 April 2013

Part 6, section 85	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 85 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 85 in so far as not already in force	1 April 2013
Part 6, section 86	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 86 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 86 in so far as not already in force	1 April 2013
Part 6, section 87	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 87 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 87 in so far as not already in force	1 April 2013
Part 6, section 88	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 88	1 April 2013
Part 7, sections 89 to 92	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced sections 89 to 92	1 April 2013
Part 7, sections 93 to 94	The Financial Services Act 2012 (Commencemen t No 1) Order 2013	2013/113	Commenced sections 93 to 94	24 January 2013
Part 7, section 95	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 95	1 April 2013
Part 8, section 96	The Financial Services Act 2012 (Commencement No 6) Order 2014	2014/3323	Commenced section 96(1)(2)(5)(6)	1 January 2015
Part 8 Section 96	*Sections 96(3) and 96(4) were not commenced as they were overtaken by other legislation.*			
Part 8, section 97	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 97	1 April 2013
Part 8, sections 98 and 99	The Financial Services Act 2012	2014/3323	Commenced sections 98 and 99	1 January 2015

	(Commencement No 6) Order 2014			
Part 8, section 100	The Financial Services Act 2012 (Commencement No 4) Order 2014	2014/1447	Commenced section 100(1)(6)(7) for specified purposes Commenced section 100(5) for specified purposes	5 June 2014
	The Financial Services Act 2012 (Commencement No 5) Order 2014	2014/1847	Commenced section 100 (1) (5) to (7) in so far as not already in force Commenced section 100(2) to (4)	1 August 2014
Part 8, section 101	The Financial Services Act 2012 (Commencement No 4) Order 2014	2014/1447	Commenced section 101(1), (7) to (9) for specified purposes Commenced section 101 (5) for specified purposes	5 June 2014
	The Financial Services Act 2012 (Commencement No 5) Order 2014	2014/1847	Commenced section 101 (1), (5), (7) to (9) in so far as not already in force Commenced section 101(2) to (4), (6), (10)	1 August 2014
Part 8, section 102	The Financial Services Act 2012 (Commencement No 4) Order 2014	2014/1447	Commenced section 102(1) for specified purposes Commenced section 102(6) for specified purposes	5 June 2014
	The Financial Services Act 2012 (Commencement No 5) Order 2014	2014/1847	Commenced section (1) and (6) in so far as not already in force Commenced section 102(2) to (5), (7), (8)	1 August 2014
Part 8, sections 103 to 106	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced sections 103 to 106	1 April 2013
Part 9, section 107	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 107	1 April 2013

	Omitted in part by the Consumer Rights Act 2015, which omitted text in 107(2)(g) as of 1 October 2015			
Part 9, section 108	*Commenced at the end of the period of 2 months, beginning with the day on which the Act was passed, 19 December 2012*			
Part 9, section 109	*Commenced via passage of the Act, 19 December 2012*			
Part 9, section 110	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 110 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 110 in so far as not already in force	1 April 2013
Part 9, section 111	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 111	1 April 2013
Part 9, section 112	Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 112 for specified purposes	24 January 2013
	The Financial Services Act (Commencement No 2) Order 2013	2013/423	Commenced section 112 in so far as not already in force	1 April 2013
Part 9, section 113	*Commenced at the end of the period of 2 months, beginning with the day on which the Act was passed, 19 December 2012*			
Part 10, section 113	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 114 for specified purposes	24 January 2013
	The Financial Services Act 2012 (Commencement No 2) Order 2013	2013/423	Commenced section 114 in so far as not already in force	1 April 2013
Part 10, section 115 – 118	*Commenced via passage of the Act, 19 December 2012*			
Part 10s section 119	*Commenced for specific purposes via passage of the Act, 19 December 2012*			
	The Financial Services Act 2012 (Commencement No 1) Order 2013	2013/113	Commenced section 119 in so far as not already in force	24 January 2013
Part 10s sections 120-123	*Commenced via passage of the Act, 19 December 2012*			

Chapter 26

Annex C - 2013 Act Commencement Orders

Section	Commencement Order(s)	SI Number	Purpose	Date of Commencement
Part 1, section 1 to 3	The Financial Services (Banking Reform) Act 2013 (Commencement No 12) Order 2018	2018/1306	Commenced sections 1 to 3 of Part 1	1 January 2019
Part 1, section 4	The Financial Services (Banking Reform) Act 2013 (Commencement No 1) Order 2014	2014/377	Commenced section 4 for specified purposes	In force as of 1 March 2014
	The Financial Services (Banking Reform) Act 2013 (Commencement No 10) Order 2016	2016/512	Commenced section 4 for specified purposes	In force as of 21 April 2016
	The Financial Services (Banking Reform) Act 2013 (Commencement No 12) Order 2018	2018/1306	Commenced section 4 of Part 1 in so far as not already in place	In force as of 1 January 2019
Part 1, section 5	The Financial Services (Banking Reform) Act 2013 (Commencement No 12) Order 2018	2018/1306	Commenced section 5 of Part 1	In force as of 1 January 2019
Part 1, section 6	The Financial Services (Banking Reform) Act 2013 (Commencement No 1) Order 2014	2014/377	Commenced section 6 of Part 1	In force as of 1 March 2014
Part 1, section 7 to 12	The Financial Services (Banking Reform) Act 2013 (Commencement No 12) Order 2014	2018/1306	Commenced sections 7 to 12 of Part 1	In force as of 1 January 2019
Part 2, section 13	The Financial Services (Banking Reform) Act 2013 (Commencement No 7) Order 2014	2016/627	Commenced section 13 of Part 2	31 December 2014
Part 2, section 14 to 16	The Financial Services (Banking Reform) Act 2013 (Commencement No 1) Order 2014	2014/377	Commenced sections 14 to 16 of Part 2	Section 14 and 15 commenced as of 1 March 2014, Section 16 commenced as of 1 April 2014
Part 3, section 17	The Financial Services (Banking Reform) Act 2013 (Commencement No 1) Order 2014	2014/377	Commenced section 17 of Part 3 for specified purposes	1 March 2014

	The Financial Services (Banking Reform) Act 2013 (Commencement No 7) Order 2014	2014/3160	Commenced section 17 of Part 3 in so far as not already in force	31 December 2014
Part 4, section 18	The Financial Services (Banking Reform) Act 2013 (Commencement No 5) Order 2014	2014/1819	Commenced section 18 of Part 4 for specified purposes	25 July 2014
	The Financial Services (Banking Reform) Act 2013 (Commencement No 9) Order 2015	2015/490	Commenced section 18 of Part 4 in so far as not already in force	7 March 2016
Part 4, section 19	The Financial Services (Banking Reform) Act 2013 (Commencement No 5) Order 2014	2014/1819	Commenced section 19 of Part 4	25 July 2014
Part 4, section 20	The Financial Services (Banking Reform) Act 2013 (Commencement No 5) Order 2014	2014/1819	Commenced section 20 of Part 4 for specified purposes	25 July 2014
	The Financial Services (Banking Reform) Act 2013 (Commencement No 9) Order 2015	2015/490	Commenced section 20 of Part 4 in so far as not already in force	7 March 2016
Part 4, section 21 to 26	The Financial Services (Banking Reform) Act 2013 (Commencement No 9) Order 2015	2015/490	Commenced sections 21 to 26 of Part 4	7 March 2016
Part 4, section 27 and 28	The Financial Services (Banking Reform) Act 2013 (Commencement No 5) Order 2014	2014/1819	Commenced sections 27 and 28 of Part 4	25 July 2014
Part 4, section 29	The Financial Services (Banking Reform) Act 2013 (Commencement No 5) Order 2014	2014/1819	Commenced section 29 for specified purposes	25 July 2014
	The Financial Services (Banking Reform) Act 2013 (Commencement No 9) Order 2015	2015/490	Commenced section 29 for specified purposes	7 March 2016
	The Financial Services (Banking Reform) Act 2013 (Commencement No 9) Order 2015	2015/490	Commenced section 29 in so far as not already in force	7 March 2017
Part 4, section 30	The Financial Services (Banking Reform) Act 2013 (Commencement No 5) Order 2014	2014/1819	Commenced section 30 for specified purposes	25 July 2014
	The Financial Services (Banking Reform) Act 2013 (Commencement No 9) Order 2015	2015/490	Commenced section 30 for specified purposes	7 March 2016

	The Financial Services (Banking Reform) Act 2013 (Commencement No 9) Order 2015	2015/490	Commenced section 30 in so far as not already in force	7 March 2017
Part 4, section 31	The Financial Services (Banking Reform) Act 2013 (Commencement No 5) Order 2014	2014/1819	Commenced section 31 for specified purposes	25 July 2014
	The Financial Services (Banking Reform) Act 2013 (Commencement No 9) Order 2015	2015/490	Commenced section 31 in so far as not already in force	7 March 2016
Part 4, section 32	The Financial Services (Banking Reform) Act 2013 (Commencement No 9) Order 2015 (as amended by the Financial Services (Banking Reform Act 2013 (Commencement No 9) (Amendment) Order 2015	2015/490 (as amended by 2015/2055)	Commenced section 32(1) (Amended above)	7 March 2016
	The Financial Services (Banking Reform) Act 2013 (Commencement No 11) Order 2016	2016/568	Commenced section 32(2)	10 May 2016
	The Financial Services (Banking Reform) Act 2013 (Commencement No 9) Order 2015 (as amended by the Financial Services (Banking Reform Act 2013 (Commencement No 9) (Amendment) Order 2015	2015/490 (as amended by 2015/2055)	Commenced section 32(1) (Amended above)	7 March 2017
Part 4, section 33	The Financial Services (Banking Reform) Act 2013 (Commencement No 5) Order 2014	2014/1819	Commenced section 33 of Part 4	25 July 2014
Part 4, section 34	The Financial Services (Banking Reform) Act 2013 (Commencement No 9) Order 2015	2015/490	Commenced section 34 of Part 4	7 March 2016
Part 4, section 35	The Financial Services (Banking Reform) Act 2013 (Commencement No 5) Order 2014	2014/1819	Commenced section 35 of Part 4 for specified purposes	25 July 2014
	The Financial Services (Banking Reform) Act 2013 (Commencement No 9) Order 2015	2015/490	Commenced section of Part 4 in so far as not already in force	7 March 2016

Part 4, section 36 to 38	The Financial Services (Banking Reform) Act 2013 (Commencement No 9) Order 2015	2015/490	Commenced section 36 to 38 of Part 4	7 March 2016
Part 5, section 39 to 58	The Financial Services (Banking Reform) Act 2013 (Commencement No 1) Order 2014	2014/377	Commenced sections 39 to 58 of Part 5	1 March 2014
Part 5, section 59	The Financial Services (Banking Reform) Act 2013 (Commencement No 4) Order 2014	2014/823	Commenced section 59 of Part 5	1 April 2014
Part 5, section 60	The Financial Services (Banking Reform) Act 2013 (Commencement No 4) Order 2014	2014/823	Commenced section 60(1)(2)(3)(7) of Part 5	1 April 2014
	The Financial Services (Banking Reform) Act 2013 (Commencement No 6) Order 2014	2014/2458	Commenced section 60(4) to (6) of Part 5	1 April 2015
Part 5, section 61	The Financial Services (Banking Reform) (Commencement No 6) Order 2014	2014/2458	Commenced section 61 of Part 5 for specified purpose	1 November 2014
	The Financial Services (Banking Reform) (Commencement No 6) Order 2014	2014/2458	Commenced section 61 of Part 5 in so far as not already in force	1 April 2015
Part 5, section 62	The Financial Services (Banking Reform) Act 2013 (Commencement No 6) Order 2014	2014/2458	Commenced section 62 of Part 5	1 April 2015
Part 5, sections 63 to 66	The Financial Services (Banking Reform) Act 2013 (Commencement No 4) Order 2014	2014/823	Commenced sections 63 to 66	1 April 2014
Part 5, section 67	The Financial Services (Banking Reform) Act 2013 (Commencement No 6) Order 2014	2014/2458	Commenced section 67(1)	1 April 2015
	The Financial Services (Banking Reform) Act 2013 (Commencement No 6) Order 2014	2014/2458	Commenced section 67(2) for specified purposes	1 November 2014
	The Financial Services (Banking Reform) Act 2013 (Commencement No 6) Order 2014	2014/2458	Commenced section 67(2) in so far as not already in force	1 April 2015
	The Financial Services (Banking Reform) Act 2013 (Commencement No 4) Order 2014	2014/823	Commenced section 67(3)(4)(5)	1 April 2014

Part 5, sections 68 to 110	The Financial Services (Banking Reform) Act 2013 (Commencement No 1) Order 2014	2014/377	Commenced sections 68 to 110	1 March 2014
Part 6, section 111 to 120	The Financial Services (Banking Reform) Act 2013 (Commencement No 1) (England and Wales) Order 2018	2018/848	Commenced sections 111 to 120	13 July 2018
Part 6, section 121	The Financial Services (Banking Reform) Act 2013 (Commencement No 1) Order 2014	2014/377	Commenced section 121(1)(3) for specified purposes	1 March 2014
	The Financial Services (Banking Reform) Act 2013 (Commencement No 1) (England and Wales) Order 2018	2018/848	Commenced section 121(1)(3) in so far as not already in force	13 July 2018
	The Financial Services (Banking Reform) Act 2013 (Commencement No 1) (England and Wales) Order 2018	2018/848	Commenced section 121(2)	13 July 2018
Part 6, sections 122 to 127	The Financial Services (Banking Reform) Act 2013 (Commencement No 1) (England and Wales) Order 2018	2018/848	Commenced sections 122 to 127	13 July 2018
Part 6, section 128	*Section 128 is a Prospective piece of legislation applying the Part to Northern Ireland. There is currently no secondary legislation attached to this section.*			
Part 7, section 129	The Financial Services (Banking Reform) Act 2013 (Commencement No 6) Order 2014	2014/2458	Commenced section 129 for specified purposes	1 November 2014
	The Financial Services (Banking Reform) Act 2013 (Commencement No 6) Order 2014	2014/2458	Commenced section 129 in so far as not already in force	1 April 2015
Part 7, section 130	The Financial Services (Banking Reform) Act 2013 (Commencement No 1) Order 2014	2014/377	Commenced section 130	1 March 2014
Part 7, section 131	*Section 131 was commenced by section 148(2) of the 2013 Act, on 18 February 2014*			
Part 7, section 132	The Financial Services (Banking Reform) Act 2013 (Commencement No 1) Order 2014	2014/377	Commenced section 132	1 March 2014
Part 7, section 133	The Financial Services (Banking Reform) Act 2013 (Commencement No 7) Order 2014	2014/3160	Commenced section 133(1) for specified purposes	31 December 2014

	The Financial Services (Banking Reform) Act 2013 (Commencement No 10) Order 2016	2016/512	Commenced section 133(1) for specified purposes	21 April 2016
	The Financial Services (Banking Reform) Act 2013 (Commencement No 12) Order 2018	2018/1306	Commenced section 133(1) in so far as not already in force	1 January 2019
	The Financial Services (Banking Reform) Act 2013 (Commencement No 7) Order 2014	2014/3160	Commenced section 133(2)(a)	31 December 2014
	The Financial Services (Banking Reform) Act 2013 (Commencement No 10) Order 2016	2016/512	Commenced section 133(2)(b)	21 April 2016
Part 7, section 134 to 137	The Financial Services (Banking Reform) Act 2013 (Commencement No 1) Order 2014	2014/377	Commenced sections 134 to 137	1 March 2014
Part 7, section 138	*Section 138 was commenced by section 148(2) of the 2013 Act, on 18 February 2014*			
Part 7, section 138 (relating to schedule 9, paragraph 4)	The Financial Services (Banking Reform) Act 2013 (Commencement No 8) and Consequential Provisions Order 2015	2015/428	Commenced ability to create floating charges, paragraph 4 of schedule 9 under section 138	26 March 2015
Part 7, sections 139 and 140 (1 to 3)	Financial Services (Banking Reform) Act 2013 (Commencement No 2) Order 2014	2014/772	Commenced section 139 and 140	21 March 2014
Part 7, section 140 (4 to 6)	Financial Services (Banking Reform) Act 2013 (Commencement No 3) Order 2014	2014/785	Commenced section 140 (4 to 6)	21 March 2014
Part 7, section 141	The Financial Services (Banking Reform) Act 2013 (Commencement No 1) Order 2014	2014/377	Commenced section 141 for specified purposes	1 March 2014
	The Financial Services (Banking Reform) Act 2013 (Commencement No 1) Order 2014	2014/377	Commenced section 141 for specified purposes	1 April 2014

Part 8, sections 142 to 148	*Sections 142-148 were commenced by section 148(1) of the 2013 Act, on 18 December 2013*

Chapter 27

Annex D - 2016 Act Commencement Orders

Section	Commencement Order(s)	SI Number	Purpose	Date of Commencement
Part 1, section 1 to 17	The Bank of England and Financial Services Act 2016 (Commencement No 3) Regulations 2016	2016/627	Commenced sections 1 to 11, sections 16 and 17 of Part 1	Commenced 6 July 2016
	The Bank of England and Financial Services Act 2016 (Commencement No 4 and Saving Provision) Regulations 2017	2017/43	Commenced section 1(3) and section 11 in so far as they were not already in force by the commencement order above. Commenced section 12 to 15 of Part 1 Commenced sections 16 and 17 of Part 1 in so far as they were not already in force by the commencement order above	Commenced on 1 March 2017
Part 2, section 18 to 20	The Bank of England and Financial Services Act 2016 (Commencement No 3) Regulations 2016	2016/627	Commenced sections 18 to 20 of Part 2	Commenced 6 July 2016
Part 2, section 21	The Bank of England and Financial Services Act 2016 (Commencement No 5 and Transitional Provisions) 2018	2018/990	Commenced section 21 of Part 2 for specified purposes	Commenced in part 13 September 2018, specified purposes fully in force as of 10 December 2018
	The Bank of England and Financial Services Act 2016	2019/1136	Commenced section 21 of Part 2 in so far as not already in force	Commenced 18 July for specified purposes, fully in

	(Commencement No 6 and Transitional Provisions) 2019			force as of 9 August 2019
Part 2, section 22 to 24	The Bank of England and Financial Services Act 2016 (Commencement No 3) Regulations 2016	2016/627	Commenced sections 22 to 24 of Part 2	Commenced 6 July 2016
Part 2, section 25	The Bank of England and Financial Services Act 2016 (Commencement No 1) Regulations 2016	2016/569	Commenced section 25(1)(2)(e)(f)(g)(3)(e)(f)(g) of Part 2	Commenced 10 May 2016
	The Bank of England and Financial Services Act 2016 (Commencement No 3) Regulations 2016	2016/627	Commenced section 25(2) (a to d)(h)(3)(a) to (d)(h)	Commenced 6 July 2016
Part 2, section 26 to 29	The Bank of England and Financial Services Act 2016 (Commencement No 3) Regulations 2016	2016/627	Commenced sections 26 to 29 of Part 2	Commenced 6 July 2016
Part 2, section 30	*Commenced via the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (2017/692).*			
Part 2, section 31	*Commenced via passage of the Act, 4 May 2016*			
Part 2, section 32	The Bank of England and Financial Services Act 2016 (Commencement No 2) Regulations 2016	2016/579	Commenced section 32 of Part 2	Commenced 13 May 2016
Part 2 section 33 to 36	The Bank of England and Financial Services Act 2016 (Commencement No 3) Regulations 2016	2016/627	Commenced sections 33 to 36 of Part 2	Commenced 6 July 2016
Part 2, section 37	*Commenced via passage of the Act, 4 May 2016*			

Part 3, section 38	The Bank of England and Financial Services Act 2016 (Commencement No 3) Regulations 2016	2016/627	Commenced section 38 of Part 3	Commenced 6 July 2016
Part 3, section 39 to 42	*Commenced via passage of the Act, 4 May 2016*			

Chapter 28

Annex E - Post-Legislative Scrutiny Glossary

4MLD	Fourth Money Laundering Directive
APP	Authorised Push Payment
BEIS	Department for Business, Energy and Industrial Strategy
BGCs	Banking Group Companies
BNPL	Buy Now Pay Later
BRRD	Bank Resolution and Recovery Directive
BoE	Bank of England (or 'the Bank')
CC	Complaints Commissioner
CCA	Consumer Credit Act 1974
CCPs	Central Counterparties
CEO	Chief Executive Officer
CFEB	Consumer Financial Education Body
CMA	Competition and Markets Authority
CMC	Claims Management Company
CMR	Claims Management Regulator
CSDs	Central Securities Depositories
CSDR	Central Securities Depositories Regulations
DC	Defined Contribution (pensions)
DWP	Department for Work and Pensions
ECB	European Central Bank
EEA	European Economic Area
EMIR	European Market infrastructure Regulations
ESA	European Supervisory Authorities
EU	European Union
FAMR	Financial Advice Market Review
FATF	Financial Action Task Force
FCA	Financial Conduct Authority
FED	US Federal Reserve
FMI	Financial Market Infrastructure
FOS	Financial Ombudsman Service
FPC	Financial Policy Committee
FSA	Financial Services Authority
FSB	Financial Stability Board
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act (2000)
FX	Forex
GFIN	Global Financial Innovation Network

G-SII	Globally Systemically Important Institutions
HCSTC	High-Cost Short Term Credit
HM Treasury	Her Majesty’s Treasury
ICB	Independent Commission on Banking Standards
ILS	Insurance Linked Securities
IMF	International Monetary Fund
IOSCO	International Organisation of Securities Commissions
IPO	Initial Public Offering
IRB	Internal Ratings Board
LCF	London Capital and Finance
LIBOR	London Inter-Bank Offered Rate
LTI	Loan To Income
MAPS	Money and Pensions Service
MAS	Money Advice Service
MiFID II	Markets in Financial Instruments Direction II
MiFIR	Markets in Financial Instruments Regulation
MLRs	Money Laundering Regulations 2017
MOU	Memorandum of Understanding
MPC	Monetary Policy Committee
MREL	Minimum Requirement for own funds and Eligible Liabilities
NAO	National Audit Office
NEDs	Non-Executive Directors (of the Bank of England)
OFT	Office of Fair Trading
OLC	Office for Legal Complaints
PCBS	Parliamentary Commission on Banking Standards
PEPs	Politically Exposed Persons
PLAC	Primary Loss Absorbing Capacity
PSR	Payment Systems Regulator
PRA	Prudential Regulation Authority
PRC	Prudential Regulation Committee
RBS	Royal Bank of Scotland
RCCPs	Recognised Central Counterparties
RDR	Retail Distribution Review
RFBs	Ring Fenced Banks
RIS	Regulatory Information Service
RRR	Recognition Requirement Regulators
RTO	Rent To Own
SA	Standardised Approach
SAR	Special Administration Regime
SFGB	Single Financial Guidance Body
SFS	Summary Financial Statement
SI	Statutory Instrument
SM&CR	Senior Managers and Certification Regime
SMF	Senior Managers Function
SRB	Systemic Risk Buffer
SRR	Special Resolution Regime

TPAS	The Pensions Advisory Service
TSC	Treasury Select Committee
UKLA	United Kingdom Listing Authority
USRs	Uncertificated Securities Regulations

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E02703233
ISBN 978-1-5286-3114-3