

Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023

Keeling Schedule

This Keeling Schedule has been prepared by HM Treasury for illustrative purposes only and to assist the reader with the interpretation of the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023 (the “Order”). It shows the modifications proposed to be made to the provisions of the Financial Services and Markets Act 2000 which are to be applied, in respect of registered persons, by Article 10 of, and the Schedule to, the Order. It does not show amendments proposed to be made to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005. This Keeling Schedule is accurate as at the date on which it is published but will not be subsequently updated.

While care has been taken in the preparation of this document, it may not be full and complete in every respect and it is not a formal legal document. As such, no reliance should be placed upon it.

A draft of the Order will be available to view at www.legislation.gov.uk.

Key:

Omitted text is struck through and presented in red.

Inserted or substituted text is underlined, in bold, and presented in blue.

55L Imposition of requirements by FCA

~~(1) Where a person has applied (whether to the FCA or the PRA) for a Part 4A permission or the variation of a Part 4A permission, the FCA may impose on a that person such requirements, taking effect on or after the giving or variation of the permission, as the FCA considers appropriate.~~

~~(2) The FCA may exercise its power under subsection (3) in relation to an authorised person with a Part 4A permission (whether given by it or by the PRA) (“A”) if it appears to the FCA that—~~

~~(a) A is failing, or is likely to fail, to satisfy the threshold conditions for which the FCA is responsible,~~

~~(b) A has failed, during a period of at least 12 months, to carry on a regulated activity to which the Part 4A permission relates, or~~

~~(c) it is desirable to exercise the power in order to advance one or more of the FCA’s operational objectives.~~

(2) The FCA may exercise its power under subsection (3) in relation to a registered person if it appears to the FCA that—

(a) it is desirable to exercise the power in order to advance one or more of the FCA’s operational objectives; or

(b) it is desirable to exercise the power in order to advance the protection of persons who receive, have received or may receive invitations or inducements to engage in investment activity in relation to qualifying cryptoassets.

(3) The FCA's power under this subsection is a power—

- (a) to impose a new requirement,
- (b) to vary a requirement imposed by the FCA under this section, or
- (c) to cancel such a requirement.

(4) The FCA's power under subsection (3) is referred to in this Part as its own-initiative requirement power.

(5) The FCA may, on the application of ~~an authorised person with a Part 4A permission~~ a registered person—

- (a) impose a new requirement,
- (b) vary a requirement imposed by the FCA under this section, or
- (c) cancel such a requirement.

~~(6) The FCA may refuse an application under subsection (5) if it appears to it that it is desirable to do so in order to advance any of its operational objectives.~~

(6) The FCA may refuse an application under subsection (5) if -

(a) it appears to it that it is desirable to do so in order to advance any of its operational objectives; or

(b) it appears to it that it is desirable to do so in order to advance the protection of persons who receive, have received or may receive invitations or inducements to engage in investment activity in relation to qualifying cryptoassets.

~~(7) The FCA must consult the PRA before imposing or varying a requirement which relates to—~~

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

~~(b) a person who is a member of a group which includes a PRA-
authorised person.~~

(7) “Engage in investment activity” has the same meaning as in section 21.

55P Prohibitions and restrictions

(1) This section applies if—

~~(a) on a person being given a Part 4A permission, either regulator imposes an assets
requirement on that person,~~

(b) an assets requirement is imposed on ~~an authorised person~~ a registered person, or

- (c) an assets requirement previously imposed on such a person is varied.
- (2) A person on whom an assets requirement is imposed is referred to in this section as “A”.
- (3) The “appropriate regulator” is the regulator which imposed the requirement.
- (4) “Assets requirement” means a requirement under section 55L ~~or 55M~~—
- (a) prohibiting the disposal of, or other dealing with, any of A's assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings, or
 - (b) that all or any of A's assets, or all or any assets belonging to consumers but held by A or to A's order, must be transferred to and held by a trustee approved by the appropriate regulator.
- (5) If the appropriate regulator—
- (a) imposes a requirement of the kind mentioned in subsection (4)(a), and
 - (b) gives notice of the requirement to any institution with whom A keeps an account,
- the notice has the effects mentioned in subsection (6).
- (6) Those effects are that—
- (a) the institution does not act in breach of any contract with A if, having been instructed by A (or on A's behalf) to transfer any sum or otherwise make any payment out of A's account, it refuses to do so in the reasonably held belief that complying with the instruction would be incompatible with the requirement, and
 - (b) if the institution complies with such an instruction, it is liable to pay to the appropriate regulator an amount equal to the amount transferred from, or otherwise paid out of, A's account in contravention of the requirement.
- (7) If the appropriate regulator imposes a requirement of the kind mentioned in subsection (4)(b), no assets held by a person as trustee in accordance with the requirement may, while the requirement is in force, be released or dealt with except with the consent of the appropriate regulator.
- (8) If, while a requirement of the kind mentioned in subsection (4)(b) is in force, A creates a charge over any assets of A held in accordance with the requirement, the charge is (to the extent that it confers security over the assets) void against the liquidator and any of A's creditors.
- (9) Assets held by a person as trustee (“T”) are to be taken to be held by T in accordance with any requirement mentioned in subsection (4)(b) only if—
- (a) A has given T written notice that those assets are to be held by T in accordance with the requirement, or
 - (b) they are assets into which assets to which paragraph (a) applies have been transposed by T on the instructions of A.
- (10) A person who contravenes subsection (7) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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

(12) Subsections (7) and (9) do not affect any equitable interest or remedy in favour of a person who is a beneficiary of a trust as a result of a requirement of the kind mentioned in subsection (4)(b).

55Q Exercise of power in support of overseas regulator

(1) Either UK regulator's own-initiative powers may be exercised in respect of ~~an authorised~~ **a registered** person at the request of, or for the purpose of assisting, an overseas regulator of a prescribed kind.

[...]

(3) subsection (1) does not affect any duty of one UK regulator to consult or obtain the consent of the other UK regulator in relation to the exercise of its own-initiative powers.

[...]

(5) In deciding whether or not to exercise its own-initiative powers in response to a request, the UK regulator may take into account in particular—

(a) whether in the country or territory of the overseas regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;

(b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;

(c) the seriousness of the case and its importance to persons in the United Kingdom;

(d) whether it is otherwise appropriate in the public interest to give the assistance sought.

(6) The UK regulator may decide not to exercise its own-initiative powers, in response to a request, unless the overseas regulator concerned undertakes to make such contribution towards the cost of their exercise as the UK regulator considers appropriate.

[...]

(8) In subsections (5) and (6) “request” means a request of a kind mentioned in subsection (1).

(9) In this section—

(a) “UK regulator” means the FCA or the PRA;

(b) “overseas regulator” means a regulator outside the United Kingdom;

(c) “own-initiative powers”, in relation to the FCA or the PRA, means its own-initiative variation power and its own-initiative requirement power.

55R Persons connected with an applicant

(1) In considering—

~~(a) an application for a Part 4A permission,~~

~~(b) whether to vary or cancel a Part 4A permission,~~

(c) whether to impose or vary a requirement under this Part, or

(d) whether to give any consent required by any provision of this Part,

the regulator concerned may have regard to any person appearing to it to be, or likely to be, in a relationship with the ~~applicant or a person given permission~~ registered person which is relevant.

55Y Exercise of own-initiative power: procedure

(1) This section applies to an exercise of either regulator's own-initiative variation power or own-initiative requirement power in relation to ~~an authorised person~~ a registered person ("A").

(2) A variation of a permission or the imposition or variation of a requirement takes effect—

(a) immediately, if the notice given under subsection (4) states that that is the case,

(b) on such date as may be specified in the notice, or

(c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(3) A variation of a permission, or the imposition or variation of a requirement, may be expressed to take effect immediately (or on a specified date) only if the regulator concerned, having regard to the ground on which it is exercising its own-initiative variation power or own-initiative requirement power, reasonably considers that it is necessary for the variation, or the imposition or variation of the requirement, to take effect immediately (or on that date).

(4) If either regulator proposes to vary a Part 4A permission or to impose or vary a requirement, or varies a Part 4A permission or imposes or varies a requirement, with immediate effect, it must give A written notice.

(5) The notice must—

(a) give details of the variation of the permission or the requirement or its variation,

(b) state the regulator's reasons for the variation of the permission or the imposition or variation of the requirement,

(c) inform A that A may make representations to the regulator within such period as may be specified in the notice (whether or not A has referred the matter to the Tribunal),

(d) inform A of when the variation of the permission or the imposition or variation of the requirement takes effect, and

(e) inform A of A's right to refer the matter to the Tribunal.

- (6) The regulator may extend the period allowed under the notice for making representations.
- (7) If, having considered any representations made by A, the regulator decides—
- (a) to vary the permission, or impose or vary the requirement, in the way proposed, or
 - (b) if the permission has been varied or the requirement imposed or varied, not to rescind the variation of the permission or the imposition or variation of the requirement,

it must give A written notice.

- (8) If, having considered any representations made by A, the regulator decides—
- (a) not to vary the permission, or impose or vary the requirement, in the way proposed,
 - (b) to vary the permission or requirement in a different way, or impose a different requirement, or
 - (c) to rescind a variation or requirement which has effect,

it must give A written notice.

- (9) A notice under subsection (7) must inform A of A's right to refer the matter to the Tribunal.
- (10) A notice under subsection (8)(b) must comply with subsection (5).
- (11) If a notice informs A of A's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (12) For the purposes of subsection (2)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

5523 Right to refer matters to the Tribunal

- (1) An applicant who is aggrieved by the determination of an application made under this Part may refer the matter to the Tribunal.
- (2) ~~An authorised person~~ [A registered person](#) who is aggrieved by the exercise by either regulator of its own-initiative variation power or its own-initiative requirement power may refer the matter to the Tribunal.

~~(3) Where there is a review under section 55XA(3) of a determination within section 55XA(1), subsection (1) applies only in relation to the determination made on the review.~~

137R Financial promotion rules

[\(1\) The FCA may make rules applying to registered persons about the communication by them of invitations or inducements to engage in investment activity relating to qualifying cryptoassets where the rules are the same as, or substantially equivalent to, rules which would apply to an authorised person communicating an invitation or inducement to engage in investment activity relating to qualifying cryptoassets.](#)

(2) Rules under this section may, in particular, make provision about the form and content of communications.

~~(1) The FCA may make rules applying to authorised persons about the communication by them, or their approval of the communication by others, of invitations or inducements—~~

~~(a) to engage in investment activity,~~

~~(aa) to engage in claims management activity, or~~

~~(b) to participate in a collective investment scheme.~~

~~(2) Rules under this section may, in particular, make provision about the form and content of communications.~~

~~(3) Subsection (1) applies only to communications which—~~

~~(a) if made by a person other than an authorised person, without the approval of an authorised person, would contravene section 21(1), and~~

~~(b) may be made by an authorised person without contravening section 238(1).~~

~~(4) But subsection (3) does not prevent the FCA from making rules under subsection (1) in relation to a communication that would not contravene section 21(1) if made by a person other than an authorised person, without the approval of an authorised person, if the conditions set out in subsection (5) are satisfied.~~

~~(5) Those conditions are—~~

~~(a) that the communication would not contravene subsection (1) of section 21 because it is a communication to which that subsection does not apply as a result of an order under subsection (5) of that section,~~

~~(b) that the FCA considers that any of the listed requirements apply to the communication, and~~

~~(c) that the FCA considers that the rules are necessary to secure that the communication satisfies such of the listed requirements as the FCA considers apply to the communication.~~

~~(5A) In subsection (5) "the listed requirements" means—~~

~~(a) requirements under the law of any part of the United Kingdom that appear to the FCA to correspond to requirements of—~~

~~(i) Articles 24 (general principles and information to clients) and 25 (assessment of suitability and appropriateness and reporting to clients) of the markets in financial instruments directive,~~

~~(ii) Commission Delegated Directive (EU) 2017/593 of 7 April 2016, so far as adopted under those Articles,~~

~~(iii) Article 77 of the UCITS directive,~~

~~(iv) Articles 10 and 11 of the mortgages directive,~~

~~(v) Article 17 of the insurance distribution directive, or~~

~~(vi) Article 44a of the recovery and resolution directive (as defined in paragraph(c)),
and~~

~~(b) requirements of any retained direct EU legislation originally made under Article 24(13)
or 25(8) of the markets in financial instruments directive.~~

~~(c) In paragraph (a)(vi), "recovery and resolution directive" means Directive 2014/59/EU of
the European Parliament and of the Council of 15 May 2014 establishing a framework for the
recovery and resolution of credit institutions and investment firms, as it had effect
immediately before IP completion day.~~

(6) "Engage in investment activity" and "engage in claims management activity" have the same meaning as in section 21.

~~(7) The Treasury may by order impose limitations on the power to make rules under this section.~~

(7) Rules made under this section may apply to registered persons such other rules made under this Act as would apply to an authorised person in relation to the communication of an invitation or inducement to engage in investment activity in relation to qualifying cryptoassets.

(8) Section 138I (consultation) does not apply to rules made under this section.

137S Financial promotion rules: directions given by FCA

(1) The FCA may give a direction under this section if—

~~(a) an authorised person has made, or proposes to make, a communication or has approved,
or proposes to approve, another person's communication, and~~

(a) a registered person has made, or proposes to make, a communication, and

(b) the FCA considers that there has been, or is likely to be, a contravention of financial promotion rules in respect of the communication ~~or approval~~.

(2) A direction under this section may require the ~~authorised person~~ registered person —

(a) to withdraw the communication ~~or approval~~;

(b) to refrain from making the communication ~~or giving the approval~~ (whether or not it has previously been made ~~or given~~);

(c) to publish details of the direction;

(d) to do anything else specified in the direction in relation to the communication ~~or approval~~.

(3) A requirement in a direction under this section to refrain from making ~~or approving~~ a communication includes a requirement to refrain from making ~~or approving~~ another communication where—

- (a) the other communication is in all material respects the same as, or substantially the same as, the communication to which the direction relates, and
 - (b) in all the circumstances a reasonable person would think that another direction would be given under this section in relation to the other communication.
- (4) The requirements contained in a direction under this section have effect as follows—
 - (a) a requirement to publish details of the direction has effect at such time (if any) as the FCA gives a notice under subsection (8)(a);
 - (b) any other requirement takes effect immediately.
- (5) If the FCA gives a direction under this section to ~~an authorised person~~ a registered person—
 - (a) it must give written notice to the ~~authorised person, and~~ registered person.
 - ~~(b) if the direction relates to the approval by the authorised person of another person's communication, it must also give written notice to that other person.~~
- (6) The notice must—
 - (a) give details of the direction,
 - (b) inform the person to whom the notice is given that the direction takes effect immediately,
 - (c) state the FCA's reasons for giving the direction, and
 - (d) inform the person to whom the notice is given that the person may make representations to the FCA within such period as may be specified in the notice (which may be extended by the FCA).
- (7) The FCA may amend the direction if, having considered any representations made by a person to whom notice is given under subsection (5), it considers it appropriate to do so.
- (8) If, having considered any such representations, the FCA decides not to revoke the direction—
 - (a) the FCA must give separate written notice to the ~~persons mentioned in subsection (5)(a)~~ or (b) registered person, and
 - (b) ~~any~~ such person may refer the matter to the Tribunal.
- (9) A notice under subsection (8)(a) must—
 - (a) give details of the direction and of any amendment of it,
 - (b) state the FCA's reasons for deciding not to revoke the direction and, if relevant, for amending it,
 - (c) inform the person to whom the notice is given of the person's right to refer the matter to the Tribunal, and
 - (d) give an indication of the procedure on such a reference.

(10) If, having considered any representations made by a person to whom notice is given under subsection (5), the FCA decides to revoke the direction, it must give separate written notice to ~~those persons~~ that person.

(11) After the period for making representations in relation to a direction given under this section has ended, the FCA may publish such information about the direction as it considers appropriate (even if the direction is revoked).

~~(12) Nothing in this section requires a notice to be given to a person mentioned in subsection (5)(b) if the FCA considers it impracticable to do so.~~

138A Modification or waiver of rules

(1) Either regulator may, on the application or with the consent of a person who is subject to rules made by that regulator, direct that all or any of those rules—

- (a) are not to apply to that person, or
- (b) are to apply to that person with such modifications as may be specified in the direction.

~~(2) Subsection (1) does not apply to—~~

- ~~(za) rules made by either regulator under section 64A (rules of conduct);~~
- ~~(a) rules made by either regulator under section 137O (threshold condition code);~~
- ~~(b) rules made by the FCA under section 247 (trust scheme rules), section 248 (scheme particulars rules), section 261I (contractual scheme rules) or section 261J (contractual scheme particulars rules).~~

(3) An application must be made in such manner as the regulator may direct.

(4) A regulator may not give a direction unless it is satisfied that—

- (a) compliance by the person with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made, and

~~(b) the direction would not adversely affect the advancement of any of the regulator's objectives.~~

(b) the direction would not adversely affect-

(i) the securing of an appropriate degree of protection for persons who receive, have received or may receive invitations or inducements to engage in investment activity in relation to qualifying cryptoassets, and

(ii) the advancement of any of the regulator's objectives.

(5) In subsection (4)(b) “*objectives*”, in relation to the FCA, means operational objectives.

(6) A direction may be given subject to conditions.

(7) The regulator may—

- (a) revoke a direction, or
- (b) vary it on the application, or with the consent, of the person to whom it relates.

(8) “*Direction*” means a direction under this section.

138B Publication of directions under section 138A

(1) Subject to subsection (2), a direction must be published by the regulator concerned in the way appearing to the regulator to be best calculated for bringing it to the attention of—

- (a) persons likely to be affected by it, and
- (b) persons who are, in the opinion of the regulator, likely to make an application for a similar direction.

(2) Subsection (1) does not apply if the regulator is satisfied that it is inappropriate or unnecessary to publish the direction.

(3) In deciding whether it is satisfied as mentioned in subsection (2), the regulator must—

- (a) consider whether the publication of the direction would be detrimental to the stability of the UK financial system,
- (b) take into account whether the direction relates to a rule contravention of which is actionable in accordance with section 138D,
- (c) consider whether publication of the direction would prejudice, to an unreasonable degree, the commercial interests of the person concerned or any other member of the person's immediate group, and
- (d) consider whether its publication would be contrary to an international obligation of the United Kingdom.

(4) The FCA must consult the PRA before publishing or deciding not to publish a direction which relates to—

- (a) a PRA-authorized person, or
- (b) ~~an authorised person~~ a registered person who has as a member of its immediate group a PRA-authorized person.

(5) For the purposes of paragraphs (c) and (d) of subsection (3), the regulator must consider whether it would be possible to publish the direction without either of the consequences mentioned in those paragraphs by publishing it without disclosing the identity of the person concerned.

(6) “*Direction*” means a direction under section 138A.

138D Actions for damages

(1) A rule made by the PRA may provide that contravention of the rule is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) A contravention by ~~an authorised person~~ a registered person of a rule made by the FCA is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(3) If rules made by the FCA so provide, subsection (2) does not apply to a contravention of a specified provision of the rules.

(4) In prescribed cases, a contravention of a rule which by virtue of subsection ~~(1) or~~ (2) would be actionable at the suit of a private person is actionable at the suit of a person who is not a private person, subject to the defences and other incidents applying to actions for breach of statutory duty.

~~(5) In subsections (1), (2) and (3) "rule" does not include—~~

~~(za) rules under section 64A (rules of conduct);~~

~~(a) Part 6 rules;~~

~~(b) rules under section 137O (threshold condition code);~~

~~(c) rules under section 192J (provision of information by parent undertakings);~~

~~(d) a rule requiring an authorised person to have or maintain financial resources.~~

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

139A Power of the FCA to give guidance

(1) The FCA may give guidance consisting of such information and advice as it considers appropriate—

(a) with respect to the operation of specified parts of this Act and of any rules made by the FCA;

(b) with respect to any other matter relating to functions of the FCA;

(c) with respect to any other matters about which it appears to the FCA to be desirable to give information or advice.

(2) The FCA may give financial or other assistance to persons giving information or advice of a kind which the FCA could give under this section.

(3) Subsection (5) applies where the FCA proposes to give guidance to FCA-regulated persons generally, or to a class of FCA-regulated persons, in relation to rules to which those persons are subject.

~~(4) Subsection (5) also applies in relation to guidance which the FCA proposes to give to persons generally, or to a class of person, in relation to its functions under the short selling regulation or the market abuse regulation, any retained EU direct legislation originally made under the market abuse regulation or any subordinate legislation (within the meaning of the Interpretation Act 1978) made on or after IP completion day under the market abuse regulation.~~

~~(5) Where this subsection applies, subsections (1), (2)(e) and (3) of section 138I (consultation) apply to the proposed guidance as they apply to proposed rules, unless the FCA considers that the delay in complying with those provisions would be prejudicial to the interests of consumers.~~

(5) Where this subsection applies, the FCA must, unless it considers that the delay in complying with this subsection would be prejudicial to the interests of persons who receive, have received or may receive invitations or inducements communicated by registered persons to engage in investment activity in relation to qualifying cryptoassets—

(a) publish a draft of the proposed guidance in the way appearing to the FCA to be best calculated to bring it to the attention of the public;

(b) publish a notice that representations about the proposals may be made to the FCA within a specified time; and

(c) before making the proposed guidance, have regard to any representations made to it in accordance with paragraph (b).

(6) The FCA may—

(a) publish its guidance,

(b) offer copies of its published guidance for sale at a reasonable price, and

(c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

(7) In this Chapter, references to guidance given by the FCA include references to any recommendations made by the FCA to FCA-regulated persons generally, or to any class of FCA-regulated person.

(8) “Consumers” has the meaning given in section 1G.

(9) “FCA-regulated person” means—

(a) an authorised person, or

(b) any person who is otherwise subject to rules made by the FCA.

165 Regulators' power to require information: ~~authorised persons~~ registered persons etc

(1) Either regulator may, by notice in writing given to ~~an authorised person~~ a registered person, require him—

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description.

(2) The information or documents must be provided or produced—

(a) before the end of such reasonable period as may be specified; and

(b) at such place as may be specified.

(3) An officer who has written authorisation from the [regulator] to do so may require ~~an authorised person~~ a registered person without delay—

(a) to provide the officer with specified information or information of a specified description;
or

(b) to produce to him specified documents or documents of a specified description.

(4) This section applies only to —

(a) information and documents reasonably required in connection with the exercise by either regulator of functions conferred on it by or under this Act, ~~and~~

~~(b) in relation to the exercise by the PRA of the powers conferred by subsections (1) and (3), information and documents reasonably required by the Bank of England in connection with the exercise by the Bank of its functions in pursuance of its financial stability objective.~~

(5) The regulator in question may require any information provided under this section to be provided in such form as it may reasonably require.

(6) The regulator in question may require—

(a) any information provided, whether in a document or otherwise, to be verified in such manner, or

(b) any document produced to be authenticated in such manner,

as it may reasonably require.

(7) The powers conferred by subsections (1) and (3) may also be exercised—

(a) by either regulator, to impose requirements on a person who is connected with ~~an authorised person~~ a registered person;

~~(b) by the FCA, to impose requirements on an operator, trustee or depositary of a scheme recognised under section 271A or 272 who is not an authorised person;~~

~~(c) by the FCA, to impose requirements on a recognised investment exchange;~~

~~(d) by the FCA, to impose requirements on a person who is connected with a recognised investment exchange;~~

~~(da) by the FCA, to impose requirements on a person who provides, or has provided, a service to an FCA investment firm or to a relevant parent undertaking of such a firm;~~

~~(e) by either regulator, to impose requirements on a person who provides any service to an insurance undertaking, reinsurance undertaking or third-country insurance undertaking.~~

(8) “~~Authorised person~~ Registered person” includes a person who was at any time ~~an authorised person~~ a registered person but who has ceased to be ~~an authorised person~~ a registered person.

~~(8A) “Financial stability objective” means the objective set out in section 2A of the Bank of England Act 1998.~~

(9) "Officer" means an officer of the regulator exercising the power and includes a member of that regulator's staff or an agent of that regulator.

(10) "Specified" means –

- (a) in subsections (1) and (2), specified in the notice; and
- (b) in subsection (3), specified in the authorisation.

(11) For the purposes of this section, a person is connected with another person ("A") if he is or has at any relevant time been–

- (a) a member of A's group;
- (b) a controller of A;
- (c) any other member of a partnership of which A is a member; **or**
- (d) in relation to A, a person mentioned in Part I of Schedule 15 (reading references in that Part to the authorised person as references to A); ~~or~~
- ~~(e) involved in the administration of any trust arrangement relating to a funeral plan contract entered into or carried out by A.~~

~~(12) In subsection (7)(b), the reference to a scheme that is recognised includes a scheme a part of which is recognised.~~

~~(13) In this section, "funeral plan contract" has the same meaning as in article 59(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.~~

166 Reports by skilled persons

(1) This section applies where either regulator has required or could require a person to whom subsection (2) applies ("the person concerned") to provide information or produce documents with respect to any matter ("the matter concerned").

(2) This subsection applies to—

- (a) ~~an authorised person~~ **a registered person** ("A"),
- (b) any other member of A's group,
- (c) a partnership of which A is a member, or
- (d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c),

who is, or was at the relevant time, carrying on a business.

(3) The regulator mentioned in subsection (1) may either—

- (a) by notice in writing given to the person concerned, require the person concerned to provide the regulator with a report on the matter concerned, or

(b) itself appoint a person to provide the regulator with a report on the matter concerned.

(4) When acting under subsection (3)(a), the regulator may require the report to be in such form as may be specified in the notice.

(5) The regulator must give notice of an appointment under subsection (3)(b) to the person concerned.

(6) The person appointed to make a report—

(a) must be a person appearing to the regulator to have the skills necessary to make a report on the matter concerned, and

(b) where the appointment is to be made by the person concerned, must be a person nominated or approved by the regulator.

(7) It is the duty of—

(a) the person concerned, and

(b) any person who is providing (or who has at any time provided) services to the person concerned in relation to the matter concerned,

to give the person appointed to prepare a report all such assistance as the appointed person may reasonably require.

(8) The obligation imposed by subsection (7) is enforceable, on the application of the regulator in question, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

(9) A regulator may make rules providing for expenses incurred by it in relation to an appointment under subsection (3)(b) to be payable as a fee by the person concerned.

~~(10) The powers conferred by this section may also be exercised by the FCA in relation to a person to whom subsection (11), (12) or (13) applies, (and references to the person concerned are to be read accordingly).~~

~~(11) This subsection applies to—~~

~~(a) a recognised investment exchange (“A”),~~

~~(b) any other member of A's group,~~

~~(c) a partnership of which A is a member, or~~

~~(d) a person who has at any time been a person falling within paragraph (a), (b) or (c),~~

~~who is, or was at the relevant time, carrying on a business.~~

~~(12) This subsection applies to a person who provides, or has provided, a service to an FCA investment firm or to a relevant parent undertaking of such a firm.~~

~~(13) This subsection applies to a person who is or has at any relevant time been involved in the administration of any trust arrangement relating to a funeral plan contract entered into or carried out by an authorised person.~~

~~(14) In this section, "funeral plan contract" has the same meaning as in article 59(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.~~

167 Appointment of persons to carry out general investigations.

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

- (a) the nature, conduct or state of the business of ~~a person to whom subsection (1A) applies or an appointed representative~~ a registered person;
- (b) a particular aspect of that business; or
- (c) the ownership or control of a ~~person to whom subsection (1A) applies~~ registered person.

~~(1A) This subsection applies to the following persons—~~

- ~~(a) a recognised investment exchange;~~
- ~~(b) an authorised person;~~
- ~~(c) a relevant parent undertaking of an FCA investment firm;~~
- ~~(d) a person who provides a service to an FCA investment firm or to a relevant parent undertaking of such a firm.~~

(2) If a person appointed under subsection (1) thinks it necessary for the purposes of his investigation, he may also investigate the business of a person who is or has at any relevant time been—

- (a) a member of the group of which the person under investigation ("A") is part; or
- (b) a partnership of which A is a member. ~~;~~ ~~or~~
- ~~(c) where A is an insurance undertaking, reinsurance undertaking or third-country insurance undertaking, a person who provides services to A.~~

(3) If a person appointed under subsection (1) decides to investigate the business of any person under subsection (2) he must give that person written notice of his decision.

[...]

(4A) The power conferred by this section may be exercised in relation to a person who has at any time been ~~an authorised person or a person described in subsection (1A)(c) or (d)~~ a registered person but only in relation to—

- (a) business carried on at any time when the person was ~~an authorised person or a person described in subsection (1A)(c) or (d)~~ a registered person, or
- (b) the ownership or control of the person at such a time.

~~(4B) The power conferred by this section may be exercised in relation to a person who has at any time been an appointed representative but only in relation to business carried on at any time when the person was an appointed representative.~~

(5) “Business” includes any part of a business ~~even if it does not consist of carrying on regulated activities.~~

(5A) “Investigating authority” means—

~~(a) in relation to a recognised investment exchange, the Secretary of State or the FCA;~~

(b) in relation to ~~an authorised person or former authorised person, the FCA or the PRA~~ a registered person, or a former registered person, the FCA.

~~(c) in relation to an appointed representative or former appointed representative, the FCA or the PRA;~~

~~(d) in relation to a person who is, or has at any time been, a person described in subsection (1A)(c) or (d) who is not an authorised person, the FCA.~~

~~(6) References in subsection (1) to a recognised investment exchange do not include references to an overseas investment exchange (as defined by section 313(1)).~~

176 Entry of premises under warrant

(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, either regulator or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.

(2) The first set of conditions is—

(a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it; and

(b) that on the premises specified in the warrant—

(i) there are documents which have been required; or

(ii) there is information which has been required.

(3) The second set of conditions is—

(a) that the premises specified in the warrant are premises of a person to whom subsection (3A) applies;

(b) that there are on the premises documents or information in relation to which an information requirement could be imposed; and

(c) that if such a requirement were to be imposed—

(i) it would not be complied with; or

(ii) the documents or information to which it related would be removed, tampered with or destroyed.

(3A) This subsection applies to the following persons—

(a) ~~an authorised person~~ a registered person.

~~(b) an appointed representative;~~

~~(c) a relevant parent undertaking of an FCA investment firm;~~

~~(d) a person who provides a service to an FCA investment firm or to a relevant parent undertaking of such a firm.~~

(4) The third set of conditions is—

(a) that an offence mentioned in section 168 for which the maximum sentence on conviction on indictment is two years or more has been (or is being) committed by any person;

(b) that there are on the premises specified in the warrant documents or information relevant to whether that offence has been (or is being) committed;

(c) that an information requirement could be imposed in relation to those documents or information; and

(d) that if such a requirement were to be imposed—

(i) it would not be complied with; or

(ii) the documents or information to which it related would be removed, tampered with or destroyed.

(5) A warrant under this section shall authorise a constable—

(a) to enter the premises specified in the warrant;

(b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this section was issued (“the relevant kind”) or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them;

(c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;

(d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and

(e) to use such force as may be reasonably necessary.

(5A) A warrant under this section may be executed by any constable.

(5B) The warrant may authorise persons to accompany any constable who is executing it.

(5C) The powers in subsection (5) may be exercised by a person authorised by the warrant to accompany a constable; but that person may exercise those powers only in the company of, and under the supervision of, a constable.

(6) In England and Wales, sections 15(5) to (8) and section 16(3) to (12) of the Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards) apply to warrants issued under this section.

(7) In Northern Ireland, Articles 17(5) to (8) and 18(3) to (12) of the Police and Criminal Evidence (Northern Ireland) Order 1989 apply to warrants issued under this section.

(9) In the application of this section to Scotland—

(a) for the references to a justice of the peace substitute references to a justice of the peace or a sheriff; and

(b) for the references to information on oath substitute references to evidence on oath.

(10) “Investigator” means a person appointed under section 167 or 168(3) or (5).

(11) “Information requirement” means a requirement imposed—

(a) by a regulator under section 87C, 87J, 165, 165A, 169A or 175; or

(b) by an investigator under section 171, 172, 173 or 175.

205 Public censure

If the appropriate regulator considers that ~~an authorised person~~ [a registered person](#) has contravened a relevant requirement imposed on the person, it may publish a statement to that effect.

206 Financial penalties

(1) If the appropriate regulator considers that ~~an authorised person~~ **a registered person** has contravened a relevant requirement imposed on the person it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.

[...]

(3) A penalty under this section is payable to the regulator that imposed the penalty.

207 Proposal to take disciplinary measures

(1) If a regulator proposes—

(a) to publish a statement in respect of ~~an authorised person~~ **a registered person** (under section 205),

(b) to impose a penalty on ~~an authorised person~~ **a registered person** (under section 206), ~~or~~

~~(c) to suspend a permission of an authorised person or impose a restriction in relation to the carrying on of a regulated activity by an authorised person (under section 206A);~~

it must give the ~~authorised person~~ **registered person** a warning notice.

(2) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(3) A warning notice about a proposal to impose a penalty, must state the amount of the penalty.

~~(4) A warning notice about a proposal to suspend a permission or impose a restriction must state the period for which the suspension or restriction is to have effect.~~

208 Decision notice

(1) If a regulator decides—

(a) to publish a statement under section 205 (whether or not in the terms proposed),

(b) to impose a penalty under section 206 (whether or not of the amount proposed), ~~or~~

~~(c) to suspend a permission or impose a restriction under section 206A (whether or not in the manner proposed);~~

it must without delay give the ~~authorised person~~ **registered person** concerned a decision notice.

(2) In the case of a statement, the decision notice must set out the terms of the statement.

(3) In the case of a penalty, the decision notice must state the amount of the penalty.

~~(3A) In the case of a suspension or restriction, the decision notice must state the period for which the suspension or restriction is to have effect.~~

(4) If a regulator decides to—

- (a) publish a statement in respect of ~~an authorised person~~ a registered person under section 205,
 - (b) impose a penalty on ~~an authorised person~~ a registered person under section 206, ~~or~~
~~(c) suspend a permission of an authorised person, or impose a restriction in relation to the carrying on of a regulated activity by an authorised person, under section 206A,~~
- the ~~authorised person~~ registered person may refer the matter to the Tribunal.

209 Publication

After a statement under section 205 is published, the regulator concerned must send a copy of it to the ~~authorised person~~ registered person and to any person on whom a copy of the decision notice was given under section 393(4).

384 Power of FCA or PRA to require restitution

(1) The ~~appropriate regulator~~ FCA may exercise the power in subsection (5) if it is satisfied that ~~an authorised person or recognised investment exchange~~ a registered person (“the person concerned”) has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and—

- (a) that profits have accrued to him as a result of the contravention; or
- (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The FCA may exercise the power in subsection (5) if it is satisfied that—

- (a) a person (“the person concerned”) has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation; and
- (b) the condition mentioned in subsection (3) is fulfilled.

(3) The condition is—

- (a) that profits have accrued to the person concerned as a result of the contravention of Article 14 or 15 of the market abuse regulation; or
- (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention of Article 14 or 15 of the market abuse regulation

[...]

(5) The power referred to in subsections (1) and (2) is a power to require the person concerned, in accordance with such arrangements as the regulator exercising the power (“the regulator concerned”) considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the regulator concerned to be just having regard—

- (a) in a case within paragraph (a) of subsection (1) or (3), to the profits appearing to the regulator concerned to have accrued;

(b) in a case within paragraph (b) of subsection (1) or (3), to the extent of the loss or other adverse effect;

(c) in a case within paragraphs (a) and (b) of subsection (1) or (3), to the profits appearing to the regulator concerned to have accrued and to the extent of the loss or other adverse effect.

(6) “Appropriate person” means a person appearing to the regulator concerned to be someone—

(a) to whom the profits mentioned in paragraph (a) of subsection (1) or (3) are attributable;
or

(b) who has suffered the loss or adverse effect mentioned in paragraph (b) of subsection (1) or (3).

(7) “Relevant requirement” means—

(a) a requirement imposed by or under this Act or by a qualifying provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order;

(b) a requirement which is imposed by or under any other Act and whose contravention constitutes an offence mentioned in section 402(1);

~~(c) a requirement imposed by the Alternative Investment Fund Managers Regulations 2013;
or~~

(d) a requirement which is imposed by Part 7 of the Financial Services Act 2012 (offences relating to financial services) and whose contravention constitutes an offence under that Part.

[...]

~~(9) The PRA is the “appropriate regulator” in the case of a contravention of—~~

~~(a) a requirement that is imposed by the PRA under any provision of this Act,~~

~~(b) a requirement under section 56(6) where the authorised person concerned is a PRA-
authorised person and the prohibition order concerned is made by the PRA, or~~

~~(c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-
authorised person and the approval concerned falls to be given by the PRA.~~

~~(10) In the case of a contravention of a requirement that is imposed by a qualifying provision, “the
appropriate regulator” is whichever of the PRA or the FCA (or both) is specified by the Treasury by
order in relation to the qualifying provision for the purposes of this section.~~

~~(11) In the case of a contravention of a requirement where the contravention constitutes an offence
under this Act, the “appropriate regulator” is the regulator which has power to prosecute the offence
(see section 401).~~

~~(12) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.~~

~~(13) The Treasury may by order amend the definition of “appropriate regulator”.~~