HM TREASURY

A new approach to financial regulation:

the blueprint for reform

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A new approach to financial regulation: the blueprint for reform

Presented to Parliament by
the Chancellor of the Exchequer
by Command of Her Majesty

June 2011

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Foreword

Over the past few years, a clear consensus has emerged that the shortcomings of the 'tripartite' model of financial regulation were a significant factor in the UK's failure to predict, or adequately respond to, the financial crisis that started in 2007. The objective now is to learn from what went wrong and put these mistakes right, in order that Britain can be the home of stable *and* competitive financial services. So the Government is committed to introducing a new approach to financial regulation – one which is based on clarity of focus and responsibility, and which places the judgement of expert supervisors at the heart of regulation.

A year ago, almost to the day, I launched a programme for radical reform of financial services regulation in my first Mansion House speech. Since then, the Treasury has been working with the Bank of England and the Financial Services Authority to make these reforms a reality. We have had the benefit of an immensely constructive contribution from financial and professional services firms, trade associations, consumer groups and other stakeholders. This white paper – which includes the core of a draft Bill – is an important milestone in this process.

Responsibility for financial stability – both at the macro-level of the financial system as a whole, and the micro-level of individual firms – will rest within the Bank of England, in a new macro-prudential body, the Financial Policy Committee, and a new micro-prudential supervisor, the Prudential Regulation Authority. Responsibility for conduct of business will sit with the new Financial Conduct Authority, with the mandate and tools to be a proactive force for enabling the right outcomes for consumers and market participants, including through the promotion of competition. And responsibility for the overall regulatory framework, and the protection of the public finances remains with the Treasury, and the Chancellor of the Exchequer.

Creating these centres of regulatory excellence will enable each part of the framework to focus on what it knows best. Sitting within the Bank of England, the Financial Policy Committee will make judgements about risks to the overall stability of the financial system, and offer advice, recommendations, or binding directions to ensure that these risks are dealt with. Also within the Bank of England, the Prudential Regulation Authority will make judgements about the safety and soundness of individual firms, and will take supervisory and regulatory action to ensure that firms take necessary steps. And the Financial Conduct Authority will make judgements about risks to consumer protection, competition and market integrity and have new powers to take action. This clarity of focus will mean that accountability – to Parliament, the Government, and to the wider public – is clear.

We have come a long way in a year; the detail set out in the draft Bill and white paper is testament to this. The Treasury has listened to stakeholders, and sought to respond positively wherever possible. I promised Parliament the opportunity for pre-legislative scrutiny of the Bill, which will lead to further refinements. But there is more to be done. The Bank and the FSA will continue with their programmes of operational preparation for the new framework. The Treasury will continue to lead the process of legislative development. And together, the authorities will continue to play a proactive leadership role in the development of financial regulation at the international level, and particularly in the European Union and G20. I look forward, with the continued help and input of stakeholders, to building a world-leading regulatory system to match the UK's world-leading financial sector.

Rt. Hon. George Osborne MP, Chancellor of the Exchequer

1 Introduction

Financial sector reform

1.1 Since coming into office in May last year, the Government has made financial sector reform one of its top priorities. Financial services is one of the key sectors of the UK economy. As an employer and contributor of tax revenues, as an exporter of UK services to the rest of the world, and as a vital part of the economic infrastructure, a healthy financial sector is an important driver of growth in the UK.

1.2 With this unique role of the financial sector, however, comes the potential for significant risks. As the financial crisis that started in 2007 showed, when things go wrong in the financial sector, the impact on the rest of the economy can be severe. Despite part-nationalising two of the largest banks in the world, and extending tens of billions of pounds of direct and indirect financial assistance to the sector, the Government at the time was unable to prevent shocks in the financial sector from spilling over into the wider economy. This lead to the worst recession in living memory. Weaknesses in the banking system remain a headwind on growth.

1.3 This crisis, and the resultant impact on the economy – globally as well as in the UK – was caused both by failures in the financial sector, and by failures in regulation of the financial sector. Financial institutions did not manage their business prudently and, in particular, did not understand the risks inherent in the business they were conducting. Regulators and supervisors failed to provide the robust scrutiny and challenge that banks and other financial institutions needed to ensure that risks building up on their balance sheets were manageable – not only at the level of individual firms, but across the system as a whole. A number of firms have become so large, interconnected and complex that their failure posed a serious threat to the financial system – and the regulatory system lacked the tools to deal with this 'too big to fail' problem.

1.4 The financial crisis exposed the inherent weaknesses in the 'tripartite' system of regulation in the UK. Perhaps the most significant failing is that no single institution had responsibility, authority or powers to oversee the financial system as a whole. Before the crisis, the Bank of England had nominal responsibility for financial stability but lacked the tools to put this into effect; the Treasury, meanwhile, had no clear responsibility for dealing with a crisis which put billions of pounds of public funds at risk. All responsibility for financial regulation was in the hands of a single, monolithic regulator, the Financial Services Authority, and there was clearly, in the run-up to the financial crisis, too much reliance on 'tick-box' compliance.

1.5 To tackle these issues, the Government has announced, and is delivering, a number of targeted policy responses:

- the Government has announced a radical reform of the UK regulatory framework to correct the failings that became apparent through the financial crisis;
- an interim Financial Policy Committee has been established to begin monitoring systemic risk and advise the Government on potential macro-prudential tools;
- the FSA and Bank of England have begun the process of splitting out prudential from conduct of business regulation, within the FSA, as a precursor to the establishment of the new regulatory structure;

- the Government has established an Independent Commission on Banking to consider what steps should be taken to deal with systemically important banks, alongside the question of whether and how competition in the banking sector should be improved;
- the Government has introduced a levy to encourage banks to move to less risky funding profiles, and to ensure that banks make a fair contribution in respect of the potential risks they pose to the UK financial system and wider economy; and
- agreement has been reached with the largest UK banks on lending and remuneration.

1.6 Good progress continues to be made in all of these areas. The Independent Commission has published its interim report, containing a number of its preliminary conclusions. The Commission's proposed solution has three main elements:

- that the most systemically important banks hold additional capital to the Basel III minimum, to make them better at absorbing losses and less likely to fail;
- 'bail-in' instead of bail-out – so that private investors, not taxpayers, bear the losses if things do go wrong; and
- putting a ring-fence around high street banking to make it safer and to make it easier to allow a bank to fail without disrupting crucial banking services.

1.7 The Independent Commission is still consulting on its proposals. As announced by the Chancellor in the Mansion House speech on 15 June, the Government endorses their approach. The Government will await the Commission's complete report before taking final decisions. Reforms taken forward will need to meet the following principles:

- banks – whether retail banks or investment banks – must be allowed to fail safely without affecting vital banking services;
- any bank that fails must be resolvable without imposing costs on the taxpayer.
- any reforms must be applicable across our whole banking industry, with all its diversity; and
- proposals must be consistent with EU law and the UK's international treaty obligations.

1.8 The Government also supports the Commission's view of the importance of competition as the best driver of good consumer outcomes; this white paper puts forward the Government's detailed proposals for increasing the profile of competition issues in the regulatory system.

1.9 The Government is also taking steps to divest assets that had to be acquired during the financial crisis. Following extensive work to consider options for returning Northern Rock to the private sector, and on the advice of UK Financial Investments (the arm's length body set up to manage the Government's shareholdings in financial institutions) the Chancellor has announced the launch of a sales process for Northern Rock. The sales process will be open to all interested bidders – including mutual organisations – and will be open and transparent, and compliant with obligations under State aid rules. While this launch does not mean that other options for returning Northern Rock to the private sector have been definitively ruled out, it does reflect the Government's view at this time that a sales process is likely to generate the best outcome for the taxpayer.

The international context

1.10 Alongside these important steps being taken in the UK, the Government recognises that European and international reform will be equally significant. This is why the Government has engaged proactively with European and international partners on global strengthening of the regulatory regime, while ensuring that the interests of the UK and London as a uniquely global financial centre are protected.

1.11 The Government has secured positive results for the UK across a range of issues. On the Alternative Investment Fund Managers directive (AIFM), for example, the Government succeeded late last year in negotiating agreement to ensure that managers of hedge funds and private equity providers will be regulated in an internationally consistent and non-discriminatory way, with third country fund managers able to qualify for a passport into the EU. This was a very important outcome for the UK in signalling that the EU remains open to global trade and the free movement of capital.

1.12 But a number of challenges remain. The ongoing negotiations on the new European capital requirements legislation are particularly important at this time. As noted in the recent IMF Article IV report into the UK economy, it is important that the legislation should implement the latest Basel agreements in full, while retaining discretion for national authorities to go beyond agreed minimum standards. This will be a vitally important ingredient in enabling macro-prudential regulation at the national level. The Government, the Bank and the FSA are engaging in Europe and with international partners on this and other crucial issues.

A new approach to financial regulation

1.13 The Government's primary objective in reforming financial regulation in the UK is to fundamentally strengthen the system by promoting the role of judgement and expertise. New regulatory bodies will be created, each with clarity of responsibility, a focused remit, appropriate tools and the flexibility to use them as they see fit. Tick-box compliance with rules has been shown to be of limited use as a model of supervision. Regulators must be empowered to look beyond compliance, to supervise proactively, and to challenge.

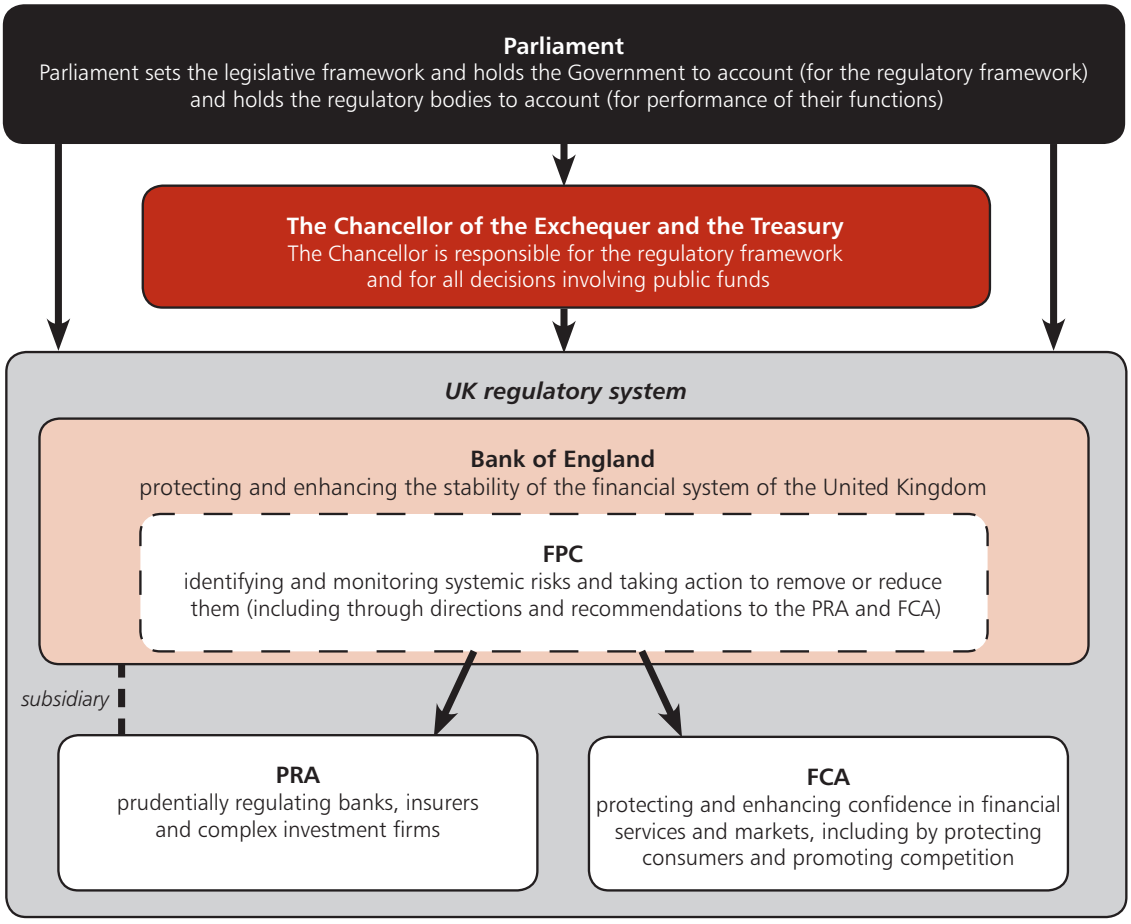
1.14 This is why the Government has pushed ahead with its plans to reform the UK system by:

- establishing a macro-prudential regulator, the Financial Policy Committee (FPC) within the Bank of England to monitor and respond to systemic risks;
- transferring responsibility for prudential regulation to a focused new regulator, the Prudential Regulation Authority (PRA), established as a subsidiary of the Bank of England; and
- creating a focused new conduct of business regulator, the Financial Conduct Authority (FCA), to ensure that business across financial services and markets is conducted in a way that advances the interests of all users and participants.

1.15 This is an ambitious programme of reform. The Government recognises that it must work closely with all stakeholders to make sure that it gets it right. That is why it has engaged in a detailed process of consultation and policy development, working with the Bank of England and the FSA, with direct input from industry and consumer stakeholders. More than 350 formal responses have been received across the two consultations published to date. A summary of responses to the February consultation, *A new approach to financial regulation: building a stronger system*, is set out in Annex B to this document; all responses, except contributions where confidentiality has been requested, are published on the Treasury's website.

1.16 The result of this engagement, across each round of consultation, has been a progressive refinement of the Government's proposals, with more detail provided as policy development has progressed, key concerns responded to where they have arisen, and technical issues addressed as they have emerged. Throughout this iterative process of policy development, the Government has remained focused on its core objective: to create a new system of regulation in which regulators, within their spheres of expertise and focus, are not only able, but are required, to exercise the judgements needed to ensure that the financial sector is stable and efficient, and thus able to fulfil its role in supporting the economy.

Figure 1.A: Roles and accountabilities in the new system



Source: HM Treasury

1.17 This latest consultation document and white paper, which includes a draft Bill and explanatory notes, will be subject to detailed pre-legislative scrutiny (PLS). The draft Bill contains the core provisions needed to give effect to the reform proposals (a number of matters, including many technical and consequential provisions, have yet to be drafted). The publication of these provisions will provide Parliament with an opportunity to consider the Government's reform policy and draft legislation, and to hear directly from the stakeholders who have already made such a positive contribution to policy development. Alongside this Parliamentary scrutiny of the draft Bill, the Government will also carry out its own consultation on a number of questions, both general and specific; details of how to respond are set out in Annex A.

1.18 The Government has chosen to amend the Financial Services and Markets Act 2000 (FSMA) to give effect to the reform programme, rather than to repeal the Act and redraft and re-enact it

in full. This approach, which has been widely supported by consultation respondents, will minimise the extent to which regulated firms and other users of FSMA have to deal with legislative change. It should also allow more focused Parliamentary and stakeholder scrutiny of the key changes to the regulatory regime.

1.19 Indeed, the Government remains committed to implementing these reforms as quickly as possible, recognising the need to minimise regulatory uncertainty for firms. It is also important that the new UK regulators be established as quickly as possible so that they can get to work not only on their core regulatory and supervisory responsibilities, but also with the crucial business of engaging with the new European Supervisory Authorities and other international bodies, to deliver outcomes that support the interests of effective regulation of UK financial services and markets. However, as this process enters the Parliamentary stages the timetable for implementation will naturally be dependent on the progress of the Bill through Parliamentary stages.

1.20 The PLS process is expected to take twelve sitting weeks in Parliament. The exact start date is subject to Parliament's establishment of a scrutiny committee, and consequential timing issues. However, the Government expects PLS to start shortly after the publication of this document, and to therefore be well under way before the summer recess. In order further to support the effective scrutiny of the draft Bill during PLS, the Government will publish a 'consolidated' version of FSMA, which will show the changes and additions that the draft Bill would make to FSMA if enacted as published. The Government plans to publish this document as soon as possible.

1.21 Depending on the precise duration of PLS, and the period after the scrutiny committee has reported while the Government considers its recommendations, the Government expects to introduce the Bill before the end of 2011. The precise timetable for passage will depend on Parliamentary scheduling considerations.

1.22 Alongside the development and passage of legislation, operational implementation of the reform will clearly be crucial. The Government is pleased to note that the FSA, working closely with the Bank, formally launched its internal transition programme on 4 April, dividing itself internally into prudential and conduct business units as a precursor to the legislation coming into force. This process will continue to progress over the next 18 months.

1.23 On 19 May, the Bank and FSA published *The Bank of England, Prudential Regulation Authority: Our approach to banking supervision*, setting out the approach the PRA will take to banking supervision and regulation. Further documents covering the PRA's insurance responsibilities and the FCA will follow later this month.

1.24 And the Chancellor, working closely with the Governor of the Bank of England, has appointed an interim FPC to carry out, so far as possible, the functions of the FPC in advance of legislation being published. One of the interim FPC's key responsibilities will be to advise the Government on the macro-prudential toolkit, and the Government is expecting to receive regular updates from the interim committee on its developing thinking. The first formal meeting of the interim FPC is taking place on 16 June, followed by the publication of the Bank's Financial Stability Report (FSR) on 24 June.

Summary of policy proposals

Financial Policy Committee

1.25 The Government has identified the lack of a single, focused body with responsibility for protecting the stability of the financial system as a whole as one of the main shortcomings of the regulatory system before the financial crisis. The vast majority of consultation respondents have agreed that this issue is a priority for the regulatory reform programme. The new FPC will

therefore be established to fill this gap, ensuring that a single body, situated within the Bank of England, has the expertise to monitor the financial system and identify risks to its stability; the authority to make recommendations and offer advice to institutions responsible for day-to-day oversight and policy; and the power to intervene to ensure appropriate action is taken where needed to ensure stability.

1.26 The main features of the FPC have been fixed for some time. It will be a committee of the Court of the Bank of England, with the Governor (as Chair) and three Deputy Governors of the Bank, two Bank executive directors, the Chief Executive of the FCA, four external members, and a non-voting Treasury representative. The FPC's role will be to contribute to the Bank's Financial Stability objective by identifying and monitoring systemic risks and taking action to address them. Crucially, following debate during consultation on the interaction between financial stability and economic growth, and responding to stakeholders' concerns, the Government has decided that the FPC will be required to take economic growth into account in pursuing financial stability, recognising that stability will generally be an important enabler of growth. The Treasury will also be able to provide the FPC with a remit to complement its statutory objective.

1.27 The Government is committed to a creating an open, accountable and effective FPC. It will be required to publish two Financial Stability Reports each year and publish a record of its meetings. The Government also recognises that significant new powers are being handed to the Bank of England and ensuring appropriate accountability is therefore vital; it looks forward to the recommendations emerging from the Treasury Select Committee's inquiry into the governance and accountability of the Bank of England.

1.28 The FPC will have a number of functions. It will be responsible for periodic monitoring of risks to financial stability, meeting at least quarterly, and will take over responsibility for the Bank's twice-yearly financial stability reports. Where it has identified risks, it will be able to offer advice and recommendations to bodies with responsibilities in relation to oversight of the financial system – not only the new regulators, but also the Treasury, and other relevant bodies such as the Financial Reporting Council. It will have formal powers of direction over the PRA and FCA, where such powers have been granted by the Treasury in the form of a specific macro-prudential tool. Transparency will be an important part of the exercise of the FPC's functions. In addition to its financial stability reports, the FPC will publish accounts of its meetings, which will include its recommendations and directions, subject to financial stability and other public interest considerations. One of the key responsibilities of the interim FPC, established earlier this year, will be to undertake analysis of potential macro-prudential tools that could be used by the FPC and report to the Treasury with its recommendations for the permanent FPC's toolkit. The FPC will provide the Treasury with an update on its work towards the end of the year, in time for the Bill's introduction, and again in the first half of 2012.

1.29 In summary, the FPC will be a powerful new authority sitting at the apex of the regulatory architecture, taking a system-wide view of developing risks to stability and responding accordingly. The creation of the FPC will therefore be a keystone of the Government's programme for strengthening the financial stability framework.

1.30 Alongside the new FPC, the Bank of England will have other financial stability functions. Most significantly, will be a clear responsibility for dealing with crisis situations, building on its responsibility for operating the special resolution regime for banks. A new crisis management memorandum of understanding (MOU) will spell out the responsibilities of the Bank and the Treasury. The Chancellor will ultimately remain responsible for all decisions involving public funds, and the Bank of England will provide the Chancellor with timely information needed to support this responsibility.

Prudential Regulation Authority

1.31 To complement the creation of the FPC within the Bank of England, the PRA will be established, as a subsidiary of the Bank, to conduct prudential regulation of firms which manage significant balance sheet risk as a core part of their business – banks, insurers and the larger, more complex investment firms.

1.32 Locating the PRA within the Bank of England group is a reflection of the important role it will play in protecting financial stability. Its core objective will be to promote the safety and soundness of the firms it regulates. However, following the results of the February consultation, in which many respondents argued that the PRA's remit should more closely reflect the different types of firms it regulates, the Government has added a specific statutory insurance objective to the PRA's legislative framework.

1.33 This framework, including governance arrangements, regulatory and supervisory functions and powers, arrangements for enforcement and appeals, is covered in detail in the draft legislative provisions published in this white paper. The draft legislation takes the framework established by FSMA as a starting point, and makes the additions and amendments needed to establish the PRA (and, in the field of conduct regulation, the FCA) as a specialist, judgement-led regulator.

1.34 However, legislative change – while clearly a necessary part of the reform programme – should not be viewed as the only, or even the most important, component. Just as significant will be the change of regulatory culture and operations that will accompany the establishment of the PRA within the Bank group. As described in the recent launch document, the PRA's approach will combine regulatory policy – relating to both firm resilience (e.g. capital, liquidity and leverage) and to resolution of firms when they fail – with the application of that policy through effective and, where necessary, intensive supervision.

1.35 The PRA's approach to supervision will be judgement-led. The nature and intensity of supervision will depend on the risks posed by each firm; while every firm will be subject to a baseline level of supervision to promote and support their soundness and resilience, supervisory effort and resource will focus particularly on 'big picture' issues with potential systemic impact.

1.36 Supervision will also seek to go beyond monitoring 'tick box' compliance with rules. Firms will be expected to approach compliance in a manner that responds to the purpose and intent of the rules, and supervisors will be seeking to understand and challenge whether the risks that rules and policies are intended to address are being effectively mitigated by firms.

1.37 Supervision will be undertaken by senior, expert teams, whose role will be to make forward-looking judgements about these issues, and where necessary, decide on the appropriate intervention. In carrying out this function, the PRA's supervisors will coordinate with other authorities – the FCA, of course, but also those in other jurisdictions where the most complex, multinational firms operate.

1.38 Establishing the PRA as part of the Bank group – with its statutory objective for financial stability, delivered through a variety of functions, including its central role in the banking system, and its responsibilities for operating the special resolution regime for banks – will be an important part of delivering the necessary change in the operations and culture of the PRA.

Financial Conduct Authority

1.39 The creation of the PRA will not only result in the establishment of an expert authority able to focus on the safety and soundness of PRA-authorised persons. By enabling the separation of responsibility for prudential and conduct of business regulation for systemic firms, it will also allow the creation of the FCA as an authority with the remit and capability to specialise in protecting consumers and promoting confidence in financial services and markets.

1.40 The FCA will fulfil this role for all consumers of financial services, from retail savers to the largest institutional investors. Respondents to both consultations argued that key market regulation functions – such as the regulation of listing – should be retained within the FCA. As an integrated conduct regulator, covering retail, wholesale and market conduct, it will require a statutory remit which encompasses the breadth of its responsibilities, while capturing the focus it will bring to its work. As described in the February consultation, this will be achieved through a combination of a strategic objective expressed in terms of promoting confidence in the UK financial system, underpinned by operational objectives relating to consumer protection, promoting choice and efficiency, and market integrity.

1.41 The discipline imposed by competitive markets is a significant driver of good conduct by firms. Therefore, the FCA will have a strong new role in promoting competition. In addition to its operational objective to promote efficiency and choice in markets for financial services, the FCA will be under a statutory duty to exercise its general functions in a way which promotes competition so far as is compatible with its strategic and operational objectives. Its primary tools will be regulatory – the FCA will use its general rule-making and supervisory toolkit to promote transparency in the provision of services, removing barriers to entry, or take other action in pursuit of its competition duty. But it will also have a specific new competition power to require the Office of Fair Trading to consider whether structural barriers or other features of the market are creating competitive inefficiencies in specific markets. At a time when there is greater focus than ever on the role of competition in UK financial services, a credible and proportionate strengthening of the role of the regulatory system in promoting competition is a key element of the Government's reform programme.

1.42 As with the PRA, the operational and cultural changes arising from the creation of a specialist authority will be a vital part of achieving the objectives of the reform. In particular, the FCA will take a more proactive approach to dealing with the conduct of financial firms, and will have a lower risk threshold for potential consumer detriment. The FCA will take a cross-cutting, 'issues-based' approach to supervision, to make sure that it identifies and deals with potential sources of consumer detriment early and effectively, using transparency and disclosure to promote better consumer outcomes. The FSA will be publishing further details of the FCA's operational approach later this month.

1.43 In addition to this change of approach, the Government is legislating to provide the FCA with a range of new tools to support its role as a strong regulator focused on protecting consumers. These include a new power to intervene to impose requirements on (or even to ban) products; the ability to disclose the commencement of formal enforcement action against a firm; and a strengthening of the FCA's ability to tackle misleading financial advertisements. The Government recognises that these are significant new powers and in a number of areas, it is responding positively to issues raised by consultation respondents; for example, the product intervention power will not, generally, be exercisable in relation to the FCA's market integrity objective in order to minimise unintended consequences for certainty in UK financial markets.

1.44 Finally, the Government is also taking steps to ensure that the elements of the system which provide safeguards for consumers when things go wrong are strengthened. In particular, the Government will clarify the respective roles of, and improve coordination between, the FCA and the Financial Ombudsman Service (FOS), the alternative dispute resolution body that helps consumers resolve complaints against financial services firms. The February consultation proposed a number of changes – such as a duty to ensure effective flows of information – which appear in the draft Bill published in this document; these measures will support the FCA in taking action early to prevent serious consumer detriment in the first place. But the Government intends to take action to ensure that, if and when there is need for large-scale consumer redress, that there is a clear process in place to ensure that the issue is gripped and tackled by the regulator as quickly and efficiently as possible. To aid this, the Government proposes to provide

a range of organisations, including the FOS and consumer groups, with the ability to raise to the FCA's attention issues causing significant detriment, and to require the FCA to consider taking appropriate action, such as requiring firms to put in place a consumer redress scheme using recently expanded powers under section 404 of FSMA.

Coordination

1.45 The design of each component within the new regulatory system, as described above, is clearly vitally important. But one of the clearest messages to come out of consultation has been the need for each authority to coordinate effectively with the others, in order to minimise unnecessary or avoidable burdens on firms, and to ensure that issues are not missed because they fall between the regulatory cracks. This applies not only to the PRA and FCA (although that will clearly be the most important interface), but also to the interaction between the FCA, as markets regulator, and the Bank of England, which will be taking on responsibility for the regulation of systemically important market infrastructure.

1.46 The importance of coordination was emphasised strongly following the consultation published in July 2010. The Government responded by publishing significant detail in the February consultation, not only on general coordination mechanisms, but also on how specific regulatory processes – such as authorisation of firms, 'passporting' of branches into the UK, approval of persons carrying out significant influence functions, and the making of rules – would operate. This level of detail allowed firms and other stakeholders to understand how the new system will work in practice in relation to core processes, and was very much welcomed by respondents.

1.47 Building on this, the draft legislation included in this document contains detailed provisions covering all of the core regulatory processes, demonstrating how the policy proposals set out in the February consultation will translate into legislation, and allowing the provisions to be further strengthened through stakeholder input into PLS and further consultation. In a number of important respects, the draft legislative provisions reflect the input of stakeholders. For example, the Government's proposals on authorisation reflect the strong preference expressed by respondents for a single regulator to lead the process of providing permissions to firms. In this way, the Government is demonstrating its continuing commitment to ensuring the framework will support effective coordination.

Structure of this document

1.48 This document is structured into three main parts. The first, which includes this introduction, and the following chapter, which presents a detailed overview of developments following the February consultation, focus primarily on key policy issues. The second part of the document – Chapters 3 and 4 – provides the technical and legal detail in the form of draft legislation and explanatory notes. Finally, the annexes summarise the consultation responses from February and the issues being consulted on in this document. The annexes also include the latest consultation-stage impact assessment.

1.49 Taken together, this material represents another big step forward in the programme of regulatory reform. The Government looks forward to further engagement with stakeholders through consultation, and Parliamentary pre-legislative scrutiny.

2 Policy overview

Introduction

2.1 This chapter presents the results of the February consultation and outlines the Government's response for each of the main policy areas covered in that document:

- the Bank of England and Financial Policy Committee (FPC);
- the Prudential Regulation Authority (PRA);
- the Financial Conduct Authority (FCA);
- regulatory processes and coordination;
- compensation, dispute resolution and financial education; and
- European and international issues.

2.2 The main elements of each policy area, while being introduced in this chapter, are primarily covered in draft legislative provisions. Therefore, this chapter should be read in conjunction with Chapter 3, which contains the draft Bill, and Chapter 4, which contains the draft explanatory notes. As proposed in previous consultations, the draft Bill contains primarily amending provisions – an approach strongly supported by respondents. Most clauses therefore amend existing legislation (primarily the Financial Services and Markets Act 2000 (FSMA), but also the Bank of England Act 1998) either by way of inserting new sections or textually amending existing sections. Where entire parts or sections are being inserted into the legislation (for example, in provisions setting out the establishment, objectives and governance of the new bodies), these can easily be read as standalone provisions. Where clauses are amending current provisions, they need to be read in conjunction with the legislation being amended. The Government will publish a 'consolidated' version of FSMA shortly, detailing the effects on the Act that the draft Bill would have. This will facilitate both pre-legislative scrutiny and further consultation.

2.3 In other areas, generally where the policy is still open or developing, draft legislative provisions have not been included. For such areas, the Government's latest policy position, including any emerging proposals and questions for further consideration, are presented in this chapter. The Government expects these issues to be considered through the process of pre-legislative scrutiny, but will of course also engage in full, formal consultation on such outstanding issues where appropriate. A full list of consultation questions, and details of how to respond, are provided at Annex A.

Bank of England and Financial Policy Committee

2.4 Respondents to the February consultation were strongly supportive of the Government's intention to create an FPC within the Bank of England with responsibility for macro-prudential regulation. Many respondents agreed with the Government's assessment that the lack of systemic oversight and effective tools was one of the most serious flaws in the previous regulatory arrangements and welcomed the creation of the FPC to address this gap.

2.5 Draft legislation pertaining to the establishment of the FPC and the other changes being implemented to the Bank's legislative framework can be found in Part 1 (Amendments of Bank of England Act 1998), Schedule 1 (Bank of England Financial Policy Committee) and Schedule 2 (Further amendments of Bank of England Act 1998) of the draft Bill.

The Financial Policy Committee

Objectives

2.6 Clause 3 (financial stability strategy and Financial Policy Committee) of the draft Bill inserts new Part 1A (comprising new sections 9A to 9W) into the Bank of England Act 1998. As set out in clause 3, new section 9A (financial stability strategy), Court will set the Bank's overall financial stability strategy, which the FPC will have to take into account. Court will be required to publish the strategy and review it at least every three years.

2.7 Clause 2 amends the Bank's existing financial stability objective to reflect the Bank's enhanced role in financial stability. Clause 3, new section 9C (objectives of the Financial Policy Committee) provides that the FPC's overall objective, as a committee of the Bank's Court of Directors, will be to contribute to the achievement by the Bank of its revised objective to protect and enhance stability. The FPC will seek to achieve this via the identification of, monitoring of, and taking of action to remove or reduce systemic risks with a view to protecting and enhancing the resilience of the UK financial system.

2.8 The February consultation also made clear that the FPC's objective will be balanced by the condition that its actions should not have a significant adverse impact on the ability of the financial sector to contribute to the UK economy in the medium or long term. This met with support from respondents, though some felt that this requirement could be framed in stronger or more positive terms. The Government believes that the draft provisions contained in new section 9C provide for an appropriate interaction between financial stability and economic growth in the FPC's objective, recognising that stability is an important prerequisite for sustainable growth.

2.9 Consultation responses were also supportive of the Government's intention to legislate to require the FPC to have regard to specific factors: proportionality, openness and international law. These are set out in clause 3 of the draft Bill, which inserts new section 9E (other general duties).

2.10 Respondents also welcomed the greater oversight role created by giving the Treasury a power to provide the FPC with guidance in the form of a remit. The February consultation stated the Government's intention that:

"...the Treasury should be able to provide the FPC with guidance in the form of a remit, alongside its statutory objectives, to help shape its pursuit of financial stability."

2.11 As described above, the FPC's statutory objectives will be set out comprehensively in primary legislation. This means that unlike the Treasury's remit for the MPC, where the role of the Treasury is to complete the objective by defining a specific inflation target, the Treasury's remit for the FPC will take the form of recommendations around how the FPC should in general interpret and pursue its objective. As set out in clause 3 of the draft Bill, new section 9D (recommendations by Treasury) the remit will also provide an opportunity for the Treasury to suggest other factors the FPC might consider in the exercise of its functions. For example, the Treasury may wish to use the remit to bring recent academic research or experiences of other macro-prudential bodies to the FPC's attention.

2.12 The Treasury will renew the FPC's remit annually. The FPC will be required to respond to the Treasury's recommendations, setting out to what extent the committee agrees with the remit

and what action it intends to take in response to them. The remit-setting power set out above will provide continuing input from the Treasury into the framework for the FPC's work and will allow the Treasury to indicate where the FPC might develop or tweak its focus in response to developments in macro-prudential regulation and thinking. At the same time, the remit is designed to safeguard the FPC's independence from political influence by building in the ability for the FPC to reject any recommendations with which it does not agree. Both the remit and the FPC's response will be published and laid before Parliament, enhancing the transparency and accountability around the FPC.

Functions

2.13 The February consultation proposed that the FPC would have access to the following levers:

- public pronouncements and warnings;
- influencing macro-prudential policy in Europe and internationally;
- making recommendations to bodies other than the PRA and the FCA, including perimeter recommendations to the Treasury;
- the ability to make recommendations to the PRA and FCA, supported where appropriate by a comply-or-explain mechanism; and
- the power to direct the two regulators where explicitly provided for by macro-prudential tools set out by the Treasury in secondary legislation and subject to Parliamentary approval via the affirmative procedure.

2.14 The proposals for the FPC's levers and powers were widely welcomed, including the proposal that the levers should not be used in a specific order. New sections 9G to 9P of the Bank of England Act 1998 (inserted by clause 3 of the draft Bill) deal with the FPC's levers and their implementation.

Potential macro-prudential tools

2.15 The consensus of respondents was that the range of potential tools described was sensible, appropriate and comprehensive in scope and flexibility. However, many respondents felt that it was difficult to assess the effectiveness and impact of these tools without more detail about how they would work in practice. Many respondents highlighted the novel and untested nature of macro-prudential tools and emphasised that the FPC should undertake in-depth analysis of the tools before they are used.

2.16 The Government acknowledges the novel nature of macro-prudential tools. As set out in more detail below, one of the key responsibilities of the interim FPC, established earlier this year, will be to undertake analysis of potential macro-prudential tools that could be used by the FPC and report to the Treasury with its recommendations for the permanent FPC's toolkit. The FPC will provide the Treasury with an update on its thinking in time for the Bill's introduction towards the end of the year and again after its Q1 2012 meeting (which should coincide with the Bill's Committee-stage consideration in the House of Commons).

2.17 The Government is also working on the forthcoming new European capital requirements legislation. The Bank of England and FSA are also full engaged with this issue. As noted by the IMF, if national authorities such as the FPC are to be able to effectively enforce macro-prudential regulation, discretion in the use of macro-prudential tools will be essential. This will allow regulators to address systemic risk occurring in their own jurisdiction through the use of appropriate policy tools.

Membership and governance

2.18 A number of respondents to the February consultation supported the Treasury Select Committee's (TSC) view that the membership of the FPC may be too heavily weighted towards the Bank. Some suggested that the number of external members should be increased, the number of Bank members reduced or both. The Government will gather views on this issue over the period of pre-legislative scrutiny.

2.19 Respondents welcomed the Government's statements in the February consultation on the importance of ensuring that external members of the FPC have recent and relevant financial sector experience, including expertise in non-bank areas such as insurance. Some were concerned that the breadth of experience of the members of the interim FPC could, in these respects, be broader. The Government and the Bank of England are committed to ensuring an appropriate balance and breadth of expertise for both the interim FPC and the permanent body and will make all efforts to ensure this is the case.

2.20 Clause 3, new section 9B (Financial Policy Committee) provides for the membership of the FPC.

Transparency and accountability

2.21 The Government is committed to creating an open, accountable and effective FPC. New sections 9Q, 9R and 9S of the Bank of England Act 1998, inserted by clause 3 of the draft Bill, deal with these matters. New section 9S will require the FPC to publish two Financial Stability Reports (FSR) each year that will set out the FPC's assessment of the outlook for the stability and resilience of the financial sector and will include a summary of the FPC's activities and an assessment of the effectiveness of its actions in the period since its previous report.

2.22 The FPC will also be required to publish a record of each meeting within six weeks, as described in new section 9Q.

2.23 Under new section 9R, the FPC will be able to exclude confidential or market sensitive information from the FSR or meeting records, if it believes that it would be against the public interest to publish. In the case of information omitted from the meeting records, the FPC will be required to keep this under review and publish any omitted information once it is no longer sensitive.

2.24 Respondents were very positive about these proposals and felt they would ensure that the FPC is transparent and accountable.

Box 2.A: Consultation question

1 Do you have any specific views on the proposals for the FPC as described above and in Chapters 3 and 4?

Interim FPC

2.25 On 17 February 2011 the Government and the Bank of England announced the establishment of the FPC on an interim basis, to commence work on macro-prudential issues in advance of the legislation being enacted.

2.26 The FPC has held a number of informal, preparatory and scoping meetings since its establishment. It will hold its first formal meeting on 16 June 2011. Future formal meetings are expected to be held at least quarterly.

2.27 The FPC will undertake, as far as possible before formal legal powers are created, the permanent body's macro-prudential role, in addition to vital preparatory work and analysis into potential macro-prudential tools. The FPC will:

- identify and monitor systemic risks to stability the financial system, focusing particularly on risks to the resilience of the financial system, and unsustainable levels of financial sector leverage, credit growth and debt;
- provide advice to appropriate authorities on emerging risks to the financial system, and possible means of addressing these risks;
- provide analysis and advice to HM Treasury on potential macro-prudential instruments; and
- produce the six-monthly FSR, setting out the risks it has identified and any action that has been taken or recommended to address them.

2.28 As set out above, the FPC will provide HMT with an update on its analysis of potential macro-prudential tools towards the end of the year, in time for the Bill's introduction.

Bank of England governance and accountability

2.29 Significant new powers are being handed to the Bank of England and many respondents raised the issue of this concentration of responsibilities within the Bank. On 7 March, the TSC announced that it would launch an inquiry into the accountability of the Bank of England. The TSC has commenced hearings, and is currently taking evidence. The Chancellor of the Exchequer and Governor of the Bank of England will also be providing evidence to the Committee's inquiry.

2.30 The Government notes the responses received during consultation, and welcomes the TSC's inquiry as an important contribution to this issue. The Government will consider the TSC's findings in detail, as well as the conclusions reached during pre-legislative scrutiny and further consultation, before setting out further specific proposals on Bank governance.

Changes to terms of appointment of Bank non-executive directors and external MPC members

2.31 The draft Bill contains clauses that introduce additional flexibility to the appointments of key external members of the Bank and its committees. Paragraph 1 of Schedule 2 amends the Bank of England Act 1998 to enable greater continuity by increasing the maximum term of non-executive directors of Bank's Court to four years and creates extra flexibility by allowing those terms to be shorter if necessary. Paragraph 2 of the same Schedule contains amendments which allow the Chancellor to extend the term of MPC members by six months, if he believes it appropriate to do so. An identical mechanism is created for the FPC in paragraph 3 of new Schedule 2A to the Bank of England Act. This additional flexibility will allow changes in membership to be more easily managed without the need for the committees to operate with gaps in their external membership. This might be used, for example, if a member's term is due to finish at a point where it would be inappropriate to recruit for their replacement. Schedule 2 of the draft Bill (Further amendments of Bank of England Act 1998) provides more details.

Systemically important infrastructure

2.32 Respondents to the February consultation supported the transfer of the regulation of systemically important infrastructure to the Bank of England. The Government therefore confirms its intention to transfer the responsibility for regulating settlement systems and recognised clearing houses (RCHs) to the Bank of England, alongside its existing responsibility for the regulation of recognised payment systems under Part 5 of the Banking Act 2009.

2.33 While responsibility for regulating RCHs will be transferred to the Bank, they will continue to be regulated under Part 18 of FSMA (and, in due course, under a directly applicable EU regulation on derivative transactions, central counterparties and trade repositories known as "EMIR" which is currently under negotiation). Consultation respondents supported this legislative continuity. Recognised investment exchanges (RIEs) will also continue to be regulated under Part 18, by the FCA. Institutions which provide both exchange services and central counterparty clearing services will be regulated by the Bank with respect to their activities as RCHs, and separately regulated as RIEs by the FCA.

2.34 Clauses 25 to 30 of the draft Bill together with Schedule 7 to the Bill make provision relating to both RCHs and RIEs. Schedule 6 makes further provision in relation to the exercise of functions under Part 18 by the Bank of England. The clauses and Schedules make provision for the allocation of responsibilities described above. Schedule 6 also makes detailed provision for co-operation between the regulators (including, where appropriate, the PRA). Coordination mechanisms between the Bank and the FCA were identified by respondents as being particularly important to ensuring the effective regulation of systemic infrastructure.

2.35 In addition to the allocation of responsibilities for regulation of RCHs to the Bank, these provisions also make a number of technical changes to Part 18 (as it applies both to RCHs and RIEs – see below). The Government considers that these improvements will ensure that the Part 18 regime can be made more efficient and responsive to the more complex and challenging environment which both clearing houses and the regulators now face. The draft Bill therefore includes the following measures:

- 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 quickly, for example, to address a threat to financial stability (clause 27);
- allowing the Bank to impose financial penalties or issue a public censure in relation to contraventions of regulatory requirements by RCHs, such decisions will be referable to the Upper Tribunal (clause 28);
- allowing the Treasury to confer, in recognition requirements regulations made under Part 18 of FSMA, a power for the Bank to make rules on matters specified by the Treasury (clause 26);
- allowing the Bank to require an RCH to appoint a skilled person to prepare a report on any matter in relation to which the Bank could require an RCH to provide information (paragraph 12 of new Schedule 17A inserted by Schedule 6 which applies the provision with respect to the FCA's powers over RIEs made in paragraph 4 of Schedule 11 to the draft Bill);
- allowing the Bank to appoint persons to carry out general investigations into the business or ownership of an RCH, a power which is currently only exercisable in relation to RIEs (paragraph 13 of new Schedule 17A inserted by Schedule 6); and
- removing the special competition regime in Chapter 2 and Chapter 3 of Part 18 (clause 29).

2.36 The Government is likely to address any further substantive issues in relation to the regulation of RCHs and RIEs, arising from developing proposals for the EU regulation of derivative transactions, central counterparties and trade repositories, using section 2 of the European Communities Act 1972.

2.37 Settlement systems will continue to be regulated under regulations made under the Companies Act 2006. The Government confirms its intention to make the changes to settlement

system regulation set out in paragraphs 2.126 and 2.127 of the February consultation. The draft Bill therefore includes (in clause 66) the following measures:

- allowing the Treasury to confer a power on the Bank of England to issue codes of practice or to make rules on matters specified in the Uncertificated Securities Regulations 2001 (USR);
- allowing the Treasury to confer immunity from liability in damages in cases prescribed in the USR; and
- allowing the Treasury, in the regulations to designate the Bank of England as the regulator of settlement systems.

2.38 The Government is also considering how best to ensure the effective and appropriate regulation of the UK settlement system (CREST) which is regulated as a settlement system under the USR and currently as an RCH under Part 18 although it is not a central counterparty. Requirements applying in the future under EMIR will not therefore apply and work is underway to identify the appropriate future framework.

2.39 Recognised payment systems are already regulated by the Bank of England. The Government confirms its intention to make the changes to the provisions of the Banking Act 2009, as set out in the February consultation. In addition, the Government will also legislate to ensure that the Bank can apply to the court for an order for the purposes of preventing a compliance failure (including a failure to comply with a direction given by the Bank) or remedying that failure. The draft Bill therefore includes (in clause 63) the following measures:

- allowing the Treasury to amend a recognition order for a payment system without issuing a new order;
- clarifying that the Bank can give directions to operators of recognised payment systems to resolve or reduce a threat to financial stability (as well as for payment system oversight purposes generally in the interests of promoting financial stability) and conferring immunity from liability in damages on operators of such systems automatically (rather than in an order made by the Treasury) when a direction is specified as having been given for the purposes of resolving or reducing a threat to the stability of the UK financial system; and
- allowing the court on application by the Bank of England to make orders to prevent or to remedy compliance failures by the operator of a recognised payment system.

2.40 As set out in the February consultation, the Treasury's powers to order inquiries into possible regulatory failure (section 14 of FSMA) are being carried forward in respect of the PRA and FCA. The draft legislation (clause 46) therefore establishes that the Treasury's inquiries power will also apply to the Bank's regulation of systemically important market infrastructure under FSMA and the Banking Act 2009 (recognised payment systems).

Box 2.B: Consultation question

2 Do you have any specific views on the proposals for the Bank of England's regulation of RCHs, settlement and payment systems as described above and in Chapters 3 and 4?

Coordination of crisis management

2.41 Very few respondents commented on the arrangements for managing crises in the financial system described in the February consultation. Those who did comment stressed in

desirability of further clarity on how the Treasury and the Bank group will coordinate their activities in order to resolve a threat to financial stability effectively.

2.42 The fundamental responsibilities of the authorities in a crisis are clear. The Bank of England will be responsible for identifying potential crises, developing contingency plans, and implementing them where necessary, including through the special resolution regime. The Chancellor of the Exchequer will be responsible for all decisions in a crisis involving public funds or liabilities. The Government recognises the need for further detail on the proposals around crisis management. The draft Bill sets out in detail how the legislative mechanisms described in the February consultation will work:

- new section 9T of the Bank of England Act 1998 (inserted by clause 3 of the draft Bill) establishes the statutory six-monthly update meeting between the Governor and Chancellor on financial stability matters;
- clause 42 places a duty on the Governor to inform the Chancellor of possible calls on public funds; and
- clause 43 requires the Bank group and the Treasury to prepare a MOU on how they will coordinate and manage a crisis situation.

2.43 The Treasury will publish a draft of this crisis management MOU during pre-legislative scrutiny of the draft Bill, in order to allow the scrutiny committee to consider its detailed content alongside draft legislative provisions. A key element of this will be setting out how the information flows between the Treasury and the Bank group will operate to ensure that the Chancellor is able to make the right decisions, choosing from a full set of options, when public funds are at risk.

Minor and technical changes to the SRR

2.44 The Government is proposing to make five minor changes (clauses 59 to 62) to the special resolution regime (SRR) established by the Banking Act 2009. These adjustments are intended to enhance the transparency of the regime and make technical improvements:

- to require that reports about the operation of a bridge bank or a bank in temporary public ownership must include financial information that gives a true and fair view of the state of affairs of the firm;
- to require the Bank to make a report to the Chancellor of the Exchequer about the exercise of the private sector purchaser tool, to be laid before Parliament;
- to remove an area of legal uncertainty by specifying that a property transfer instrument or order may modify terms of a trust only to the extent necessary or expedient to ensure that a transfer is effective;
- to allow property to be transferred back from a private sector purchaser (PSP), with the PSP's agreement. This power might be used, for example, to remedy the situation where property is inadvertently transferred contrary to the commercial agreement of the parties involved in the resolution; and
- to enable the Treasury to direct a person appointed as a bank administrator to comply with such measures as are necessary for the purposes of assisting the UK in obtaining the approval of the European Commission for any State aid provided in connection with a resolution under the Act.

Box 2.C: Consultation questions

3 Do you have any comments on:

- the proposed crisis management arrangements; and
- the proposals for minor and technical changes to the Special Resolution Regime as described above and in Chapters 3 and 4?

The Prudential Regulation Authority (PRA)

2.45 Clause 5 of the draft Bill inserts new Part 1A into FSMA, replacing sections 1 to 18. Part 1A deals with the new regulators; Chapter 2 (new sections 2A to 2M) contains specific provision for the new PRA.

The PRA's objective

2.46 Respondents to the February consultation were supportive in principle of the PRA's strategic and operational objectives as proposed in the February consultation. However, some suggested that the strategic emphasis on financial stability could lead to a lack of focus on 'non-systemic' firms; respondents from the insurance sector noted in particular that the specific regulatory requirements of insurance business might not be reflected in the generic financial stability approach proposed in the February consultation.

2.47 The Government has considered these views and recognises that there is a strong argument that the distinct nature of insurance business ought to be recognised in the regulatory framework, including in PRA's objectives. In response, the Government is therefore bringing forward revised objectives for the PRA. New section 2B of FSMA (the PRA's general objective) restates the PRA's responsibility for financial stability in terms of the safety and soundness of individual firms in a financial stability context. New section 2C (insurance objective) makes clear the specific responsibilities that the PRA will face in relation to insurers. Finally, new section 2D (power to provide for additional objectives) allows the Treasury to provide for additional specific objectives in future, should that be necessary as a result of a future widening of the responsibilities of the PRA.

2.48 Two further additions have been made to the PRA objective. First, FSMA new section 2H (guidance about objectives) provides that the PRA must issue guidance setting out how it will interpret its objective in relation to different types of firms or regulated activity. And finally, new section 2F (limit on effect of section 2B to 2D) is included to make explicitly clear that the new regime will not be operated on a 'zero-failure' basis.

2.49 In summary, this new set of objectives retains the strong emphasis on financial stability, while allowing for a flexible approach allowing the PRA to focus on the specific needs of particular types of firms, and giving the authorities appropriate tools to provide clarity to regulated firms on how they will implement their objectives.

Principles of regulation

2.50 Respondents supported the proposed principles of regulation for the PRA and FCA. Some consumer groups suggested that to enable effective consumer protection, the PRA should be required to have regard to the FCA's objectives. Others suggested that there should be references to the promotion of competition, choice, and diversity. There was also a range of views expressed by industry respondents about additional principles that could be included, with a general emphasis on recognising the importance of financial services to the UK and the competiveness of the UK financial services industry.

2.51 The Government intends to retain the regulatory principles as described in the February consultation. Within new Part 1A of FSMA, inserted by clause 5 of the draft Bill, new sections 2G (duty to have regard to regulatory principles) and 3B (regulatory principles to be applied by both regulators) make provision for these principles. While clearly recognising the importance of the financial services industry to the UK economy, the Government is of the view that financial stability, supported by a rigorous and effective regulatory framework, provides a strong platform for the financial services industry's sustainable growth and success. As such, specific statutory principles relating to the competitiveness of the sector are not, in the Government's view, required in the regulatory system.

2.52 There are, however, two areas where the Government is responding positively to the feedback from consultation. First, in the area of competition, the Government intends to legislate to ensure that the existing competition scrutiny regime (through which the impact of regulatory practices and provisions upon competition in financial services is monitored by the competition authorities) is updated and made more effective. The scrutiny regime will apply to both the PRA and FCA. This regime is described in new sections 140A to 140H, inserted by clause 21 of the draft Bill.

2.53 Second, in recognition of the arguments put forward by mutual respondents in support of a 'diversity' have regard, the Government will legislate to require the authorities to consider and consult on the impact of proposed rules on mutual societies. New section 138L of FSMA (consultation: mutual societies), inserted by clause 21 of the draft Bill, makes provision in this respect, applicable to both the PRA and FCA.

Scope

2.54 The majority of respondents agreed with the Government's proposals for the scope of firms that will be prudentially regulated by the PRA. Some concerns were raised by respondents about the risk that insurance regulation would have a lower priority than the regulation of deposit-takers in the PRA. As already noted above, the PRA's objectives will now make explicit reference to the responsibilities of the PRA with respect to insurers. To further confirm the equal priority to be given to insurance regulation within the PRA, and to set out the different supervisory approaches which the PRA will be taking, the Bank of England and the FSA has published a paper detailing the approach to be taken to banking supervision (which was published on 19 May and is available on the FSA website), the other for insurance supervision, which will be published on 20 June.

2.55 Additionally, the Government has considered how to achieve the necessary balance in insurance regulation between policyholder expectation of future returns and balance sheet soundness with respect to 'with-profits' insurance business. Respondents to the consultation were clear that they wanted regulation of 'policyholder reasonable expectations' (PRE) to be carried out by the PRA. The Government agrees, and FSMA new section 3F (with-profits insurance policies), inserted by clause 5 of the draft Bill, therefore provides for the PRA to have sole responsibility for securing an appropriate degree of protection for the reasonable expectations of policyholders as to their returns under with-profits policies.

2.56 However, the Government recognises that this is a complex area and it is important to ensure that these provisions reflect the significant expertise that the FCA will have in consumer protection matters. The PRA will therefore need to consult the FCA on matters relevant to achieving an appropriate balance between the interests of policyholders and the prudential position of the firm, and the FCA will need to provide advice. The Government is considering further whether explicit legislative provision is necessary to ensure efficient and effective consultation, or whether current provisions (such as the coordination MOU) are sufficient.

2.57 Respondents also generally agreed that the PRA should supervise systemically important investment firms, although some raised the question of how the 'boundary' between FCA and PRA prudential supervision for firms dealing in investment as principal would operate. The Government recognises the importance of ensuring that the boundary between PRA and FCA supervision is clear and well understood by regulated firms, and expects the PRA and FCA to develop arrangements to ensure that firms on either side of this boundary are subject to consistent and effective prudential supervision by both authorities.

2.58 The Government has considered further whether it would be possible to define the scope of PRA supervision of investment firms on the face of the draft Bill, and has concluded that it would not be feasible to do so with sufficient precision and flexibility. Therefore, the Government intends to proceed with the proposal that the PRA should have the power to designate firms for prudential supervision, subject to a range of procedural safeguards.

2.59 Draft provision for the procedures allowing for the designation of firms are contained in clause 6 of the draft Bill, which inserts new section 22A (designation of activities requiring prudential regulation by the PRA) into FSMA. By conferring functions on the PRA under this clause (determining what are to be treated as "PRA-regulated activities"), the Treasury will be able to empower the PRA to develop its own designation criteria to determine which firms will be within its remit. This delivers the arrangements signalled in the February consultation and the Bank and FSA document on the PRA's approach to banking supervision, published on 19 May (available on the FSA website).

Lloyd's of London (Lloyd's)

2.60 Only a small number of respondents commented on the Government's proposals for the future regulation of Lloyd's. Those who commented supported the proposals to make the PRA the lead regulator for Lloyd's as a whole and to make the PRA the prudential regulator of the Society of Lloyd's and Lloyd's managing agents. A number of respondents suggested that the PRA should also be the prudential regulator of Lloyd's members' agents reflecting their role in the way business is conducted in Lloyd's.

2.61 The Government confirms its intention to legislate to make the arrangements for Lloyd's set out in the February consultation. The Society of Lloyd's and Lloyd's managing agents will be dual-regulated firms; Lloyd's members' agents and Lloyd's brokers will be FCA-regulated firms. Detailed provisions in the draft Bill can be found in clause 35, which make amendments to FSMA Part 19. Further provision as to the allocation of regulatory responsibility in relation to Lloyd's will be included in the order to be made by the Treasury under new section 22A (designation of activities requiring prudential regulation by the PRA). These will ensure that the regulatory arrangements are adapted to the unique way in which Lloyd's operates by allowing the PRA to regulate the prudential aspects of the Lloyd's operations although Lloyd's names (who actually effect and carry out contracts of insurance) are not authorised persons. These provisions will also ensure that the PRA's statutory objectives can be applied in relation to Lloyd's.

Box 2.D: Consultation question

4 Do you have any comments on the objectives and scope of the PRA, as described above and in Chapters 3 and 4?

Judgement-led regulation

2.62 Most respondents welcomed in principle the move to 'judgement-led' regulation. A number commented that with the increased emphasis on supervisory discretion, the quality of

PRA staff will be particularly important, while others noted that judgement-led decision-making must be rigorously evidence-based. The Government agrees with these views.

2.63 Regarding the proposed prompt intervention framework (PIF), some respondents raised the possibility that such an approach, with objective and publicised 'demarcated stages', could reinforce a downward trajectory for a firm by signalling to the market that a firm is in distress. A number of respondents suggested that there should be further consultation and engagement with industry before any such framework is introduced. The Bank of England and FSA have published further detail about the PIF in the PRA banking launch document, explaining the intention that processes will be put in place to support early identification of risks to a firm's viability and ensuring that firms take appropriate remedial action to reduce the probability of failure. The PIF will also assist the authorities in flagging actions that will be required to prepare for the failure and resolution of a firm.

2.64 In the February consultation, the Government noted that it was considering whether references of supervisory decisions (those for which a statutory notice is required to be given) should be heard by the Upper Tribunal on limited grounds (i.e. those which could be raised on a judicial review) rather than the 'full merits' review currently provided for in relation to FSA supervisory decisions. This proposal was intended to underscore the role and specialist expertise of the PRA (and, in relation to its specific areas of expertise, the FCA) in exercising judgement in carrying out its regulatory and supervisory role – particularly, in balancing competing public and private interests, and in the consideration of technical issues).

2.65 Many respondents argued against such a narrowing of the grounds of appeal. While remaining committed to the proposed judgement-led approach, the Government recognises the importance of the safeguard that independent review of supervisory decisions by the Tribunal provides. Therefore, the Government proposes to leave the Tribunal's scope of review of supervisory decisions unchanged.

2.66 Instead, the Government will promote judgement-led decision-making by limiting the course of action available to the Tribunal in the event it chooses not to uphold the relevant regulator's decision. With the exception of disciplinary matters and those involving specific third-party rights, the Tribunal will not be able to substitute its opinion for that of the regulator as to the regulatory action which should be taken by the regulator. The Tribunal will instead be required to remit the decision back to the regulator with such directions as it considers appropriate in relation to a range of findings. For example, in relation to a decision by the PRA to vary a person's permission to carry on regulated activities, the Tribunal will not be able to reach its own view on the variation which should be made by the PRA. Instead, in the event the Tribunal were not to uphold the PRA's decision, the Tribunal will be required to remit the matter to the PRA with a direction to reconsider the matter and reach a decision in light of the findings of the Tribunal.

2.67 These arrangements, covered in clause 20 of the draft Bill, provide for an appropriate balancing between ensuring that those affected by supervisory decisions have appropriate rights of challenge, while recognising that the regulators are best placed to determine the nature of the regulatory action which should be taken. The same arrangements will also apply to the FCA.

Governance

2.68 As with the previous consultation, respondents to the February consultation endorsed the Government's proposal to locate the PRA in the Bank of England group, and were generally supportive of the proposed governance framework. Some respondents noted the importance of ensuring that the board will provide an appropriate level of challenge to the PRA executive. Respondents from the insurance sector were keen that there should be insurance expertise represented on the PRA board.

2.69 The Government agrees that the PRA board must provide a robust challenge to the executive. The legislative requirement for a non-executive majority on the board will help, but it is also essential that the board has the right balance of expertise, and the Government expects that the Bank will ensure that this is the case. In the draft Bill, FSMA new Schedule 1ZB (Part 1 in particular) contains detailed provisions on governance and other arrangements relating to the establishment of the PRA. These are consistent with the proposal brought forward in previous rounds of consultation.

Accountability

2.70 The PRA will be legally responsible and accountable for its regulatory decision-making. Respondents were generally satisfied that the proposals include suitable mechanisms for calling the PRA to account, which broadly mirror the existing provisions for the FSA.

PRA complaints scheme

2.71 Some respondents queried why the provisions for complaints about the PRA are different to those for the FCA, and were concerned that the procedures would be less transparent. The PRA's complaints scheme will allow the external complaints handling to be managed by the Bank of England. The complaints scheme deals with operational matters (rather than regulatory judgements), and for the scheme to be run by the Bank is consistent with the PRA's position within the Bank of England group (and the role of the Bank of England on non-supervisory matters related to the PRA). The Government expects that the complaints scheme run by the Bank of England will be suitably transparent and robust. Detailed provision on complaints is contained within Part 2 of FSMA new Schedule 1ZB.

Remit of the National Audit Office (NAO)

2.72 A number of respondents sought confirmation that the NAO will be able to initiate value for money (VFM) studies of the PRA. The Government confirms that it will. Section 6 of the National Audit Act 1983 provides that the NAO can undertake a VFM study of any body whose accounts are required to be examined and certified by, or are open to the inspection of, the Comptroller and Auditor General.

Investigations and reporting duty

2.73 The Government confirms its intention that the PRA (and FCA) will be under a duty to make a report where there may have been regulatory failure, and that the trigger will be set out in legislation. For the PRA, provision is made in clause 52 of the draft Bill, which specifies that there will be two limbs to the statutory trigger:

- where public funds have been provided to or in respect of certain persons and where this may not have occurred but for regulatory failure; or
- where serious damage has been caused to the values underpinning the PRA's objectives and this might not have occurred but for regulatory failure.

2.74 Responsibility for determining whether the trigger has been met will lie with the PRA; however, the Treasury will have the ability to direct the PRA to carry out such a report, should it believe the trigger to have been met or consider that a report is in the public interest.

Consultation

2.75 Almost all respondents agreed with the Government's proposal that there should be no significant reductions to the existing FSMA requirements to consult on rules. The Government has given further consideration to this question, particularly whether it is necessary to carry out a cost benefit analysis of rules originating from Europe, where there may be little or no discretion

as to implementation. On balance, the Government believes that it will remain important for the regulators to conduct their own assessment of the costs and benefits of proposed rules; partly in order to keep track of the cumulative impact of regulation on UK firms.

2.76 The draft legislation therefore replicates the existing FSMA consultation requirements for rules, and makes no exception for rules originating from Europe. However, recognising that in many cases it may not be feasible to provide an accurate quantitative estimate of possible costs and benefits, the draft Bill will require the PRA to prepare an 'analysis' of costs and benefits of proposed rules (rather than an 'estimate', as currently drafted in FSMA), although the PRA should nonetheless strive to provide to prepare estimates where it is proportionate to do so. Provision for this consultation procedure and other elements of rule-making (for both the PRA and FCA) are to be found in clause 21 of the draft Bill, which replaces Part 10 of FSMA with new Part 9A. FSMA new section 138K deals with consultation arrangements by the PRA (and similar provision with respect to the FCA is made in new section 138J).

2.77 Respondents also welcomed the fact that the PRA would be required to put in place arrangements for engaging with practitioners. However, many industry respondents argued that it would be more effective simply to retain the existing Practitioner Panel. The Government proposes that the PRA should have some flexibility in deciding what kind of arrangements it wants to establish for engaging with industry. Therefore, while FSMA new section 2J (inserted by clause 5 of the draft Bill) places the PRA under a statutory duty to put in place arrangements for engaging with practitioners, it does not specify in detail what those arrangements must be. The new section does, however, provide that whichever arrangements are put in place should be made transparent. The Government will continue to consider these arrangements in the light of further consultation and PLS.

2.78 Many bodies representing consumers also argued that the Consumer Panel should be retained for the PRA. On balance, the Government does not believe that this would be appropriate for the PRA. The PRA will be taking decisions on prudential matters, and where its decisions will have adverse effect on FCA objectives, it will be required to consult the FCA. The PRA will consult the FCA both to take advantage of its expertise in consumer issues, and to ensure that it is not undermining the FCA's objective. The FCA will be required to maintain a Consumer Panel as the FSA currently does.

Box 2.E: Consultation question

5 Do you have any comments on the detailed arrangements for the PRA described above and in Chapters 3 and 4?

Financial Conduct Authority

2.79 Respondents welcomed the additional detail provided in the February consultation on the FCA, including the confirmation of its name and the clarification of what was meant by 'consumer champion'. A number of respondents reiterated that the FCA should not be a 'junior partner' to the PRA. The Government confirms that this will not be the case.

The FCA's objectives

2.80 There was broad support for the FCA's strategic and operational objectives. Draft legislation setting out the FCA's objectives can be found in FSMA new Part 1A (new sections 1A to 1F) as inserted by clause 5.

2.81 As set out in the previous consultation, the FCA will have a single strategic objective of protecting and enhancing confidence in the UK financial system. The Government believes that

it is important to have a single overarching strategic objective that encapsulates all the FCA's responsibilities. The strategic objective is set out in new section 1B(2).

2.82 The strategic objective will be complemented by three operational objectives, which will describe how the FCA will go about protecting and enhancing confidence. The operational objectives remain:

- securing an appropriate degree of protection for consumers (new section 1C);
- protecting and enhancing the integrity of the UK financial system (new section 1D); and
- promoting efficiency and choice in the market for certain types of services (new section 1E).

2.83 Respondents were supportive of these operational objectives; some asked for more detail on how the objectives would be practically applied to deliver better consumer outcomes. The FSA will publish a document on the FCA in June, which will provide greater detail on the FCA's regulatory approach.

Competition

2.84 The February consultation also proposed a competition duty for the FCA, requiring it, where appropriate, to discharge its general functions in a way which promotes competition. Provision for this duty is made in FSMA new section 1B(4). Many respondents supported this new focus on competition, particularly in combination with the efficiency and choice operational objective. However, a number expressed a preference for the FCA's remit to be defined purely in terms of a primary competition objective, including the Treasury Select Committee report "Competition and choice in retail banking" published on 2 April 2011, and the interim report of the Independent Commission on Banking of 11 April 2011.

2.85 The Government agrees that the FCA needs to play a significant role in promoting competition in financial services, supported by the right objectives and tools. Paragraph 2.111 describes in more detail how the Government envisages the FCA will use its regulatory tools, such as rule-making, for competition purposes, and also sets out the new competition power proposed for the FCA as part of the reforms. The Government has considered carefully whether the FCA should have a primary competition objective, akin to the model used by regulators in other sectors. The Government's view is that the new competition duty provides the right mandate for the regulator- it means that, in discharging its general functions the FCA must promote competition unless this would be incompatible with its strategic and operational objectives. Where the FCA has available a choice of options for the purposes of achieving its aim, the FCA must choose the option which promotes competition unless this would be incompatible with its objectives.

2.86 The Government believes that this will place consideration of competition at the core of the FCA's operational model and its institutional culture, while recognising the importance of consumer protection and market integrity considerations and ensuring compliance with requirements placed on the FCA as a competent authority under various EU directives. The FSA's forthcoming paper on FCA strategy will set out in more detail how the new approach to competition will be operationalised. The Government retains an open mind as to how they should secure the promotion of efficient markets and protection of consumers and will continue to consider the FCA's objectives as part of this phase of pre-legislative scrutiny.

The regulatory principles

2.87 There was general support for the regulatory principles proposed in the February consultation, as discussed in the PRA section above.

2.88 With respect to the FCA specifically, the disclosure and transparency principles were welcomed by consumer groups, both in terms of how the FCA would apply them to the regulated community and how it would apply to its own conduct. Industry respondents were broadly in favour of greater disclosure and transparency on the part of the regulator, but somewhat less supportive where these principles might involve the FCA publishing information relating to firms and their conduct.

2.89 The principle on consumer responsibility also attracted broad support from industry, but consumer groups argued that it should be qualified to reflect, for example, the existing information asymmetries between providers and consumers. The Government acknowledges these concerns and is returning a number of specific factors which the FCA must take into account in interpreting its consumer protection objective (specifically under FSMA new section 1C(2)).

Consumer credit

2.90 The Government's consultation on transferring responsibility for consumer credit regulation from the Office of Fair Trading to the FCA closed on 22 March. A summary of consultation responses will be published before the summer and the Government's response will follow later in the year.

Box 2.F: Consultation question

6 Do you have any views on the FCA's objectives – including its competition remit – as set out above and in Chapters 3 and 4?

A new approach to conduct regulation

2.91 Respondents to the February consultation agreed that the transition to the FCA provides a key opportunity to review and renew the approach taken to conduct regulation.

2.92 As outlined in the February consultation, at the heart of the Government's proposals will be a more proactive approach to conduct regulation, with a clear focus on consumer outcomes. The Government welcomes the significant progress recently made by the FSA towards a more pre-emptive and intrusive model of conduct regulation, and looks forward to the publication of the FSA's launch document for the FCA in June.

2.93 Many industry respondents were in favour of a more differentiated, sector-specific approach to conduct regulation. While there was general support for more issues-based supervision, respondents noted that this approach may give rise to challenges for the FCA, for example in terms of maintaining a constructive relationship with firms or ensuring consistency of supervisory decisions.

2.94 As described in more detail below, the Government will design the FCA's new tools so as to ensure that they are used appropriately, while also ensuring that general arrangements for industry engagement are robust and, where necessary, strengthened.

Product intervention power

2.95 The majority of respondents supported the proposal to give the FCA a new product intervention power. Consumer groups in particular strongly welcomed this power as an important addition to the FCA's consumer protection toolkit, noting that the FCA must have flexibility to intervene quickly and decisively where it considers that a product or product feature is likely to result in significant consumer detriment.

2.96 Industry respondents tended to agree with the power in principle, but questioned how it would work in practice and what safeguards there would be. Some raised issues in relation to the potential impact of poorly targeted interventions on choice, competition, competitiveness, innovation, and financial inclusion.

2.97 The Government's remains committed to ensuring that the FCA has the appropriate tools to take decisive action in support of retail customers and is therefore taking forward the new product intervention power. It is described in new sections 137C and 137D of FSMA, contained in clause 19 of the draft Bill, which substitutes new Part 9A for Part 10 of FSMA. New section 138O enables the FCA to make temporary product intervention rules without prior cost-benefit analysis or consultation valid for up to 12 months.

2.98 However, the Government recognises that this power could have a significant impact on firms, consumers and the market more generally, and must be appropriately safeguarded. In particular, new section 138P requires the FCA to consult on and publish a statement of policy governing the circumstances in which it may make temporary product intervention rules. This requirement was strongly supported by respondents to the February consultation as providing industry with a degree of certainty over the power's use and codifying the need for proportionality. Furthermore, the new sub-sections 138C(5) and 138C(6) provide that the FCA cannot immediately "renew" any temporary product intervention rules when they expire, ensuring that if the FCA does wish to apply such rules beyond a 12 month period it must do so following the general rule-making procedure, involving cost-benefit analysis and consultation.

2.99 While the Government believes that the provisions set out above provide a powerful and necessary tool for the FCA, it also expects that the new power will only be used where it is appropriate and proportionate, and where it will provide clarity to consumers and firms. More generally, the Government agrees with respondents that product intervention is a complement to and not a substitute for regulation of the sales process. These considerations will be codified by the application of the regulatory principles, including the proportionality principle and the principles of consumer and senior management responsibility.

2.100 2.92 The Government noted in the February consultation that the new product intervention power is unlikely to be appropriate in relation to the protection of professional or wholesale customers. This position was strongly supported by respondents. Building on these responses, the Government has further decided to make explicit in legislation that the FCA may not use its new product intervention power to advance the market integrity objective, by linking the new power to the consumer protection and efficiency and choice operational objectives (see new sub-sections 137C(1) and 138O(1)).

2.101 However, the Government recognises that there may be circumstances in which it may be necessary to make product intervention rules for market integrity reasons. Therefore, new sub-section 137C(1)(b) provides the Treasury with an order-making power to extend the power to cover the FCA's integrity objective, subject to the affirmative procedure in Parliament. In line with its general powers, the FPC will be able to advise the Treasury on the exercise of this order-making power.

New financial promotions power

2.102 The Government set out in the February consultation that greater regulatory transparency and disclosure will be essential components of the new regulatory regime under the FCA. This will be delivered through a change in behaviour on the part of the regulator, building on the work already undertaken by the FSA to make greater use of its existing tools and bolstered further by the new regulatory principles of transparency and disclosure to which both regulators must have regard in the discharge of their general functions. This change in approach will be complemented by two new powers: first, a power enabling the FCA to take credible and

effective action in relation to misleading financial promotions; and second, a power allowing it to disclose the fact that enforcement action against a firm or individual has commenced.

2.103 There was widespread support for the new financial promotions power among consultation respondents. The Government therefore continues to believe that this new power, which will enable the FCA to take swift regulatory action to prevent consumers from being misled and to publish the fact that it has done so, will be an important addition to the FCA's toolkit. The new power to give directions in relation to financial promotions rules is described in new section 137P inserted into FSMA by clause 19 of the draft Bill.

2.104 Respondents expressed a range of views expressed on whether the FCA should be under a duty to publish directions made under the new power. The Government maintains that the FCA should have a duty to publish, as this will increase the visibility of the regulator's activities, provide firms with greater clarity as to good and bad practice, and engender better practice across the industry.

2.105 However, the Government recognises that publication may cause reputational damage to firms, and that a number of safeguards should therefore be put in place. The FCA will be required to alert a firm to its proposed course of action, and to allow for and consider representations by the firm before publishing any details of its action. In addition, there will be some discretion over the content of any publication, with the FCA required, after it has considered a firm's representations, to publish only such information about a direction as it considers appropriate. For example, publication may make note of an 'informal resolution' where a firm cooperates with the FCA's direction; and may include a fair summary of the firm's representations where it contests the FCA's direction.

Early publication of disciplinary action

2.106 As set out in the February consultation, the Government believes that a new power enabling the regulators to disclose the fact that a warning notice in relation to proposed disciplinary action has been issued will support the shift towards a more open and transparent regulatory approach. The new power will be made available to both the PRA and the FCA, but the Government envisages that this power will mainly be used by the FCA to support its strong enforcement function and contribute to the strategy of credible deterrence. The power is provided for in Schedule 8 to the draft Bill, paragraph 24, which amends section 391 of FSMA.

2.107 The proposal to give the regulators the power (but not the duty) to disclose the fact that a warning notice has been issued generated a negative response from industry but a very positive response from consumer groups, who welcomed the proposal and the presumption towards disclosure and stressed how this would put consumers' interests first.

2.108 While some industry respondents were in favour, particularly provided the right safeguards are put in place, the majority were opposed. This opposition was primarily based on the significant reputational damage that could be caused to firms; some noted the potential for this to undermine consumer confidence in financial services generally, with unintended adverse consequences for consumer protection. The Government notes the concerns raised, and has taken them in to account in designing the power. It also expects the FCA to consider these issues in setting its policy as regards the exercise of the power. Nevertheless, the Government remains committed to taking forward this power as part of its wider commitment to transparency as a regulatory tool. Transparency will not only be beneficial in itself, but will also provide further impetus to effect key behavioural changes, as consumers will be alerted earlier to proposed disciplinary action and firms will have a clearer sense of what is expected of them and what is deemed unacceptable behaviour. The Government believes that the concerns raised by some respondents that the power could have a negative impact on the enforcement process by creating perverse incentives are overstated.

2.109 The power will be subject to safeguards. As it is not expressed in terms of a duty, the regulator has the opportunity to consider each case on its merits.

2.110 The regulator must also consult the person to whom the notice is given before making any disclosure. The Government noted in the February consultation that there will be an expectation that the regulator discloses the fact that a warning notice has been issued. However, in making a decision on whether or not to disclose, the regulator must consider a number of factors set out in statute, including whether publication of the information would be unfair to the person to whom the warning notice relates. The Government considers that these are adequate safeguards, and has decided not to require any further procedural steps to ensure that the right balance is struck between procedural safeguards and usability of the new power.

Box 2.G: Consultation question

7 Do you have any views on the proactive regulatory approach of the FCA, detailed above and in Chapters 3 and 4?

Box 2.H: Consumer redress

Access to fair and effective redress is an important protection for consumers. The FCA's new approach to conduct regulation, including new powers to allow early intervention, will help reduce the occurrence of the types of mass detriment seen over the past decade. The FCA will be supported in its early identification of such issues by the Government's proposal, set out in the February consultation, that the Financial Ombudsman Service (FOS) will be placed under a duty to share relevant information with the FCA, which the FCA will be required to consider in fulfilling its consumer protection objective.

But no regulatory regime can prevent all conduct failings, and attempting to design one that could would lead to consumer detriment from disproportionate regulatory burdens, and the loss of competitive products and services. However, where things do go wrong, consumers are entitled to expect that firms will take their complaints seriously. The FOS therefore has an important role to play in providing a dispute resolution mechanism in relation to individual complaints which have not been resolved between the consumer and the firm.

The Government believes that there should be a clear, transparent and fair process, led by the regulator, for dealing with situations where conduct risks have crystallised and are causing mass consumer detriment. The FOS should be able to focus on processing individual complaints on a case-by-case basis rather than having to lead the way on mass issues. The Government wants to ensure that consumers and firms know that such issues have been identified and are being dealt with thoroughly and promptly by the regulator. It wants to provide greater certainty that there will be a fair and consistent outcome for consumers, both those who have made a complaint and those unaware that they have suffered detriment.

Under this proposal, the FCA would ultimately be responsible for determining which issues fall under the wider definition and for making this decision public. In many cases, the FCA would make these decisions based on evidence already available to it and do so as early as possible. But the Government is considering giving other parties a clear, statutory role in this process by enabling them formally to bring issues to the FCA's attention. For example, the

FOS, with its evidence base of complaints, would be well-placed to raise an issue to the FCA, as would consumer groups which also see and gather evidence of consumer detriment. The FSA's advisory Panels could also play a role.

Under this approach, once an issue has been raised by one of these designated parties, the FCA could be required to state publicly whether the issue is causing mass detriment, along with its rationale for reaching this judgement; at the same time, where appropriate, the FCA would set out what action it intends to take to address the issue. This statement would have to be made within a set period of time. Where relevant, the FCA should discuss and agree with the FOS the process for handling individual complaints within this period.

These are new proposals, at a relatively early stage of development, and are therefore not covered in the draft Bill. Instead, the Government would welcome responses to the consultation questions below. It will consider these responses, as well as any recommendations from pre-legislative scrutiny, and if appropriate, bring forward legislative provisions when the Bill is introduced.

Consultation questions

8 What are your views on the proposal to allow nominated parties to refer to the FCA issues that may be causing mass detriment?

9 What are your views on the proposal to require the FCA to set out its decision on whether a particular issue or product may be causing mass detriment and preferred course of action, and in the case of referrals from nominated parties, to do so within a set period of time?

Competition

Competition powers

2.111 The Government is committed to ensuring that, as part of the institutional reform of financial services regulation, competition in financial services is given the prominence it deserves. The Government is clear that FCA needs to have the right objectives and tools at its disposal to fulfil the significant role in competition we expect it to play. Through the new efficiency and choice objective and the formal duty to promote competition (discussed above), the Government is giving the FCA a formal and wide-ranging competition mandate which will place competition concerns at the heart of the new conduct regime. To fulfil this mandate, the FCA will need a strong toolkit. The most important element of the FCA's toolkit will be its new and existing rule-making and firm-specific powers, which will, when exercised under its new competition mandate, enable it to take significant action in pursuit of competition. Such action will include key areas highlighted by the TSC and ICB – for example, the promotion of switching and increased transparency. The FSA's forthcoming strategy document on the FCA will set out more detail on the FCA's proposed approach to competition.

2.112 The Government has considered whether the FCA should have any new powers in relation to general competition law that would help it to fulfil its mandate, while at the same time respecting the role and expertise of the competition authorities in this field. The Government has considered a number of options, as noted in the February consultation:

- a limited form of concurrency, for example powers to make a market investigation reference (MIR) to the Competition Commission; and
- conferring powers to trigger the super-complaint process on an appropriate body.

2.113 There was some support for the FCA to have fully concurrent powers among consumer groups and some industry respondents. However many industry respondents were concerned that the proposal for limited concurrency would lead to confusion, duplication or increased burdens. Some industry respondents highlighted the differences between financial services and other sectors where concurrency is in operation, and expressed scepticism about the economic regulator model. There was, however, some support from industry that an appropriate body should be able to trigger the super-complaints process.

2.114 The Government has considered the responses carefully, and has decided not to pursue either of the options highlighted in the last round of consultation as it did not consider that these delivered the desired outcomes. Instead, the Government is now taking forward an alternative proposal that will significantly add to the FCA's toolkit while respecting the roles and expertise of the competition authorities.

2.115 The Government therefore proposes that the FCA should have the power to initiate an enhanced referral to the OFT where it has identified a possible competition issue that may benefit from technical competition expertise or require recourse to powers under competition law that sit with the competition authorities. Such a referral may, for example, be made where the FCA considers that there may be structural features in a market, that there are potentially business practices that can foster or enable collusive behaviour, or where the FCA would simply welcome additional and perhaps technical competition expertise. The OFT will then have a statutory duty to respond to a referral made under this power within 90 days. This power is provided for by new section 354D of FSMA inserted by clause 37.

Competition scrutiny

2.116 The Government is clear that consideration of competition must be a central feature of the new regulatory regime, and will therefore retain a regime for scrutiny of the regulation of financial services by the competition authorities. This will apply to both the PRA and FCA. In relation to the FSA, such a regime is currently provided for in Part X Chapter III of FSMA. However, the coming in to force of the Enterprise Act 2002 (EA02) means that aspects of the current FSMA regime are duplicative or indeed inconsistent with how scrutiny works in relation to other sectors. Therefore, the Government considers there is clearly a case for reconsidering the design of the scrutiny regime, whilst retaining some of the positive features of FSMA.

2.117 The Government is therefore proposing a model, provided for in new sections 140A to 140H FSMA, which draws on elements of both FSMA and EA02:

- under EA02, the OFT has powers to conduct market studies, which may consider the impact of regulation on the market. The OFT also has powers to give advice to public authorities, including regulators, when the market is found not to be working well- this can cover the effect (or potential effect) of regulatory provisions made. This will mean that the OFT can rely on its existing powers to give advice to the regulators, with no statutory obligation for the regulators to respond - and the Government expects this to suffice in most circumstances. This will be the first tier;
- if, however, the OFT identifies an issue with the regulatory regime of one or both regulators that it believes may have or contribute to the effect of preventing, restricting or distorting competition, it will be able to make a recommendation to which PRA or FCA will then be bound to respond (but not comply). This will constitute the second tier;
- the second tier, will be complemented by statutory OFT information gathering powers modelled on current FSMA s161, and by a backstop Treasury power of direction to be used as an absolute last resort and if the competition authorities did not consider the response of a regulator to its recommendations adequate; and

- analogous provision will be made for advice given by the Competition Commission to the regulators as part of a report made in response to a market investigation reference under the EA02.

2.118 The Government has also reviewed s164 of FSMA, which provides for the limited disapplication of parts of the Competition Act 1998 to agreements/practices which are encouraged by the regulatory provisions of the FSA. This provision did not exempt regulated firms from the equivalent provisions in European competition law and so was of very limited effect. The Government therefore proposes to repeal section 164 of FSMA.

2.119 The coming in to force of the Modernisation Regulation (EC Regulation 1/2003), which empower the OFT and national courts to take action to enforce EU law on competition, means that the disapplication section 164 will no longer be generally effective, given much of UK Competition law is based on EU law. The Government therefore proposes to repeal section 164 of FSMA.

Box 2.I: Consultation question

10 Do you have any comments on the competition proposals for the FCA set out above and in Chapters 3 and 4?

Wholesale and markets regulation

Recognised investment exchanges

2.120 There was general support from respondents for the proposals to retain Part 18 of FSMA The Government therefore confirms its intention to retain the Part 18 regime for recognised investment exchanges (RIEs) (and, as already discussed under the discussion of the Bank of England's and systemic infrastructure, recognised clearing houses (RCHs)). Clauses 25 to 30 and Schedule 7 make the changes to Part 18 of FSMA. Other market-focused provisions in the draft Bill ensure that the FSA's function with respect to matters such as short-selling and market abuse are transferred to the FCA.

2.121 A number of respondents queried whether the proposed technical changes to the recognised investment exchange regime are needed. However, the Government considers that these improvements will ensure that the powers available under the Part 18 regime can be used more efficiently and that the FCA (and the Bank in relation to RCHs) can act more responsively to the more complex and challenging environment which both exchanges and the regulators now face. The draft Bill therefore includes the following measures:

- a simplified procedure for exercising the power of direction (section 296) and revoking recognition (section 297) which will allow the FCA to act faster to address, for example, compliance failures by an RIE (clause 27);
- allowing the FCA to impose financial penalties or to issue public censures in relation to contraventions of regulatory requirements (a decision to impose such a sanction may be referred to the Upper Tribunal) (clause 28);
- allowing the Treasury to confer, in recognition requirements regulations made under Part 18 of FSMA, a power for the FCA to make rules on matters specified by the Treasury (clause 26);
- allowing the FCA to require an RIE to appoint a skilled person to prepare a report on any matter in relation to which the FCA could require an RIE to provide information (paragraph 4 of Schedule 11); and

- removing the special competition regime in Chapter 2 and Chapter 3 of Part 18 (clause 29).

Listing

2.122 Respondents were also strongly supportive of the Government's decision to retain the listing function (which the FSA performs as the UK Listing Authority (UKLA)) as part of the FCA, although some respondents expressed concerned about integrating the UKLA fully into the FCA and applying the general FCA objectives to listing. The Government confirms its intention to confer the listing function (and other functions in Part 6 of FSMA) on the FCA, to bring these functions more fully under the general FSMA legislative framework. This will ensure that the FCA can act as an effective conduct regulator dealing with all aspects of market integrity and investor protection. Clauses 13 to 19 make the changes to Part 6 of FSMA and the listing regime.

2.123 There were mixed views on the proposed technical improvements to listing and primary market regulation; however, most of the Government's proposals were supported overall. However, there was concern from a number of respondents about the proposal to allow the FCA to require 'skilled person' reports from listed issuers. This was not thought an appropriate part of the listing regime and was considered potentially burdensome rather than deregulatory. The Government appreciates these concerns but considers that the package of technical improvements to Part 6 will strengthen the listing regime and maintain London's reputation as a leading centre for capital raising and primary markets without compromising the ability of UK businesses to obtain the financing they need. The Bill therefore includes the following measures:

- allowing the FCA to discontinue or suspend a listing at the request of an issuer without following the a statutory notice procedure (clause 14);
- extending powers to impose sanctions on sponsors in relation to certain contraventions subject to the normal procedural mechanisms in FSMA and the right to refer the matter to the Tribunal (clause 15);
- increasing the limitation period for imposing penalties for breaches of Part 6 rules from two to three years (clause 16);
- allowing the FCA to require an issuer or other person subject to Part 6 rules to appoint a skilled person to prepare a report in respect of a matter on which the UKLA could require information to be provided (clause 18);
- allowing the FCA to make and enforce requirements on persons approved as primary information providers (clause 19); and
- removing the provisions which allow UKLA Part 6 functions to be transferred to another authority (clause 13).

Box 2.J: Consultation question

11 Do you have any views on the proposals for markets regulation by the FCA, described above and in Chapters 3 and 4?

Governance and accountability

2.124 As stated in the February consultation, the Government is committed to establishing a governance and accountability framework for the FCA that replicates the arrangements for the FSA where appropriate, and strengthens them where possible. The proposals outlined in the last consultation received widespread support from respondents.

2.125 Respondents welcomed the proposals concerning the FCA's governing body:

- a board, with a majority of non-executives to be appointed by the Treasury;
- two non-executives to be appointed jointly by the Treasury and the Department for Business, Innovation and Skills; and
- a Chair and Chief Executive appointed by the Treasury.

2.126 The new Schedule 1ZA will be substituted for Part 1 of FSMA by Schedule 3 to the Bill, and paragraphs 2 to 7 of the new Schedule describe the governing body and its processes and procedures.

2.127 The proposals relating to the FCA's engagement with industry and consumers through panels were particularly welcomed. These are to be found in clause 5 of the draft Bill, which inserts new part 1A into FSMA, covering the existing Practitioner and Consumer panels, the placing on a statutory footing of the Smaller Business Practitioner Panel, and the creation of a new markets practitioner panel.

2.128 The proposals relating to FCA accountability were equally welcomed, particularly those relating to NAO audit. Legislative provision is to be found primarily in Parts 1 and 2 of new Schedule 1ZA:

- paragraph 11 of Schedule 1ZA provides for the requirement to produce an annual report;
- paragraphs 12 and 13 of Schedule 1ZA provide for the requirement to hold and report on an annual public meeting;
- paragraph 14 of Schedule 1ZA provides for audit of the FCA by the National Audit Office (which will enable the NAO to launch value for money (VFM) investigations in to the FCA) ;
- paragraphs 15 of Schedule 1ZA onwards describe the requirements around the complaints scheme; and
- new sections 1N and 1O make provision for reviews by an independent person of the economy, efficiency and effectiveness with which the FCA has used its resources in discharging its functions.

2.129 Respondents also made a number of other suggestions on how the FCA might be made more transparent. These included publication of Board and Panel agendas and minutes; regular public Board meetings; consultation on the business plan and annual report, a statutory requirement to engage directly with consumers, and general improvements to the regulator engagement and communication with both firms and consumers, including its website. The Government notes these points, and while it is not taking these proposals forward by statutory means, has drawn them to the attention of the FSA for consideration on an operational basis.

Investigations and reporting duty

2.130 As noted above in discussion of the PRA, the Government is taking forward the proposals made in the February consultation to place both new regulators under a duty to investigate and make a report to the Treasury on possible regulatory failure. This proposal was welcomed by respondents.

2.131 Clause 46 of the draft Bill provides for the triggers in relation to the FCA. The clause sets out that the FCA must carry out an investigation where two triggers have been met:

- that, in the assessment of the FCA, there has been an adverse impact on any of the its objectives; and
- that regulatory failure has been a possible contributing factor.

2.132 As with the PRA, the Treasury will be able to direct the FCA to carry out such an inquiry where its assessment (but not that of the FCA) is that those triggers have been met; or where an investigation is in the public interest.

Box 2.K: Consultation question

12 Do you have any comments on the governance, accountability and transparency arrangements proposed for the FCA, as described above and in Chapters 3 and 4?

Coordination and regulatory processes

2.133 As described in detail in the February consultation, the new system will require effective coordination mechanisms to ensure both that regulatory processes operate efficiently, and that both regulators are able to deliver their objectives. Many respondents affirmed the importance of effective coordination between the authorities and welcomed the emphasis placed on this issue in the last consultation.

Operational delivery of effective coordination

2.134 Many industry respondents argued that the Government should use the legislation to specify certain operational arrangements for the PRA and FCA. In particular, industry respondents expressed the view that the legislation should require that the regulators establish some form of 'single point of contact', 'common gateway' or 'shared services' for regulatory processes in order to minimise duplication and burdens to firms. This might include, for example, a single system for regulatory returns (comparable to the FSA's GABRIEL system[1]), which would be used by both the PRA and FCA to gather regulatory information from dual-regulated firms.

2.135 The Government does not, however, believe that it would be appropriate to set out operational matters for the PRA and FCA in primary legislation. The legislation will establish clear objectives for the PRA and FCA as separate regulators: they will be distinct and dedicated 'centres of excellence', each focused on delivering its own objectives. The Government expects that, over time, the regulators will develop their own regulatory culture and approach to engagement with firms. For some processes, there may be scope for sharing services, and the legislation will not prevent this. But it will be for the regulators themselves to put in place systems that enable them to deliver their objectives and duties, and they will be held to account by Parliament for doing so effectively.

2.136 The Bank and FSA will be publishing a document later this year setting out more fully their plans to deliver this operational coordination. To attempt to do so in legislation would be inflexible and unnecessarily prescriptive, removing from the framework the capacity for the regulators to learn, develop and improve.

2.137 The Government continues to recognise, however, that effective coordination will be essential to the operation of the new regulatory system. The remainder of this section therefore describes, building on the proposals included in the February consultation, the general

[1] GABRIEL (GAthering Better Regulatory Information ELectronically) is the FSA's online regulatory reporting system for the collection, validation and storage of regulatory data.

provisions that will be included in the legislation to ensure that this cooperation is built into the system at the appropriate level.

The general coordination mechanisms

2.138 Overall, respondents to the February consultation supported the general coordination mechanisms proposed, including the duty to coordinate, the statutory MOU, and the cross-membership of boards.

The duty to coordinate and MOU

2.139 Respondents to the February consultation welcomed the statutory duty to coordinate. In particular, respondents emphasised the importance of effective coordination in avoiding unnecessary burdens for firms. The Government agrees that a key purpose of the general duty to coordinate is to drive a culture that minimises unnecessary overlap, duplication, and regulatory burden. The duty to coordinate – provided for in FSMA new section 3D (Duty of FCA and PRA to ensure co-ordinated exercise of functions), inserted by clause 5 of the draft Bill – therefore includes a specific reference to the need to use the resources of each regulator in the most efficient and economic way, and 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.

2.140 The duty to coordinate will be supported by a requirement in legislation – provided for in FSMA new section 3E (memorandum of understanding) that the PRA and FCA should agree and publish a MOU setting out how they will deliver the duty. Respondents welcomed the statutory requirement for the MOU, and made a range of suggestions for areas that it should be required to cover, including areas of regulatory overlap, enforcement, Lloyd's, fees and levies, and engagement with Europe. The Government agrees on the importance of clarity in these areas, and they are therefore included in the Bill in the indicative list of issues to be covered in the MOU.

2.141 Moreover, the Government believes that Parliament should have the opportunity to consider the overall framework for coordination, and has therefore asked the Bank and FSA to produce a draft version of the MOU in time for the introduction of the Bill to Parliament.

Enhancing accountability for effective cooperation and coordination

2.142 Some respondents suggested that the regulators should engage with industry when developing the detailed arrangements and writing the MOU, and a number also argued that the MOU should be subject to annual consultation. Other respondents suggested that it would be important to ensure that the regulators could be held to account for the effectiveness of their coordination on an ongoing basis.

2.143 The Government agrees that the PRA and FCA will need to monitor how well coordination is working in order to inform the annual review of the MOU, and that this should include engagement with regulated firms, consumer groups and others. The Government also believes that it will be important for the regulators to account to Parliament for how well they are coordinating their activities.

2.144 The FCA's annual general meeting and the PRA's annual review process already provide opportunities for dual-regulated firms to make representations about the effectiveness of coordination. However, in light of responses, the Government believes that it is appropriate to strengthen this further. The draft legislation therefore includes a new requirement that the PRA and FCA must include in their annual reports an account of how they have coordinated during the year (see paragraph 10 of FSMA new Schedule 1ZB and paragraph 19 of new Schedule 1ZB, both inserted by Schedule 3 of the draft Bill).

2.145 This will give stakeholders the opportunity to comment specifically on the MOU and effectiveness of coordination over the reporting period, and will provide Parliament with an opportunity to scrutinise the effectiveness of arrangements put in place by the regulators.

Managing the risk of disorderly failure

2.146 Respondents expressed a range of views for and against the proposal that the PRA should have the ability to intervene to prevent the FCA from taking actions where it considers that these may lead to the disorderly failure of a firm, or wider financial instability. There was general agreement that there should be a high threshold for use of the veto; this is detailed in new section 3H, inserted by clause 5. Most respondents agreed that it will be important for there to be transparency around the use of the veto.

2.147 The Government will legislate so that the PRA veto may be exercised where the PRA is of the opinion that the exercise of the power in the manner proposed may (a) threaten the stability of the UK financial system, or (b) result in the failure of a PRA-authorised person in a way that would adversely affect the UK financial system. Condition (a) refers to the PRA's assessment of the risk to financial stability as a whole. It is likely that the PRA will consult the FPC in making this assessment. Condition (b) allows the PRA to veto the action if the failure of the firm would be disorderly, resulting in wider negative effects – even if those wider effects do not threaten financial stability.

2.148 The veto can be used in all circumstances where the FCA has discretion as to how to act with respect to PRA-authorised persons, provided that the PRA judges that the legal test for using the veto has been met. For example, it could be used in a circumstance where the FCA wished to exercise its discretion to impose a penalty on a firm of such a magnitude that it could lead to the firm's sudden and disorderly failure in a way that could destabilise the financial system as a whole.

2.149 However, the PRA will not be able to use the veto to prevent the FCA from doing something that it is legally required to do. For example, it could not be used to prevent the FCA from giving a firm written notice of an OIVoP where it has a legal obligation to do so. Nor will the veto prevent the FCA from taking action where such action is required by EU or international law.

Box 2.L: Consultation question

13 Do you have any comments on the general coordination arrangements for the PRA and FCA described above and in Chapters 3 and 4?

Specific regulatory processes

2.150 Respondents were broadly supportive of the proposed regulatory processes and provided useful detailed feedback. There was broad recognition that while the legislative framework is crucial, much will also depend on the PRA and FCA's operational delivery of regulation.

Authorisation

2.151 In the February consultation, the Government put forward two options for authorisation. Respondents overwhelmingly preferred the Government's proposed 'alternative approach', in which one of the regulators has responsibility for processing applications and seeking consent from the other where appropriate. Respondents argued that this model would be more efficient than the proposal that firms would be required to apply separately to each regulator. A number of respondents highlighted the importance of an efficient authorisation process for UK competitiveness.

2.152 The Government agrees that the process for authorisation must be as efficient as possible, while delivering a clear role for each regulator, and transparency and certainty for applicants. New Part 4A, inserted by clause 8 of the draft Bill, therefore provides for a version of the authorisation process preferred by the majority of consultation respondents. Under this proposal, the authority that would be responsible for prudential regulation of the applicant (the PRA for dual-regulated firms, and the FCA for all others) will manage the application process and ultimately grant permission. For dual-regulated firms, the PRA will be required to gain the consent of the FCA prior to granting permission, and the Government expects that the FCA will be fully involved in the authorisation process in these instances (e.g. the FCA may wish to gather information from and ask questions of the applicants).

2.153 The arrangements for exempting appointed representatives from the need to receive authorisation will be carried over into the new regime, primarily under the FCA (although this does not appear in the draft Bill). The FCA will also take on the FSA's powers in relation to the provision of financial services by members of the professions (as provided for by schedule 12 of the draft Bill).

Variation and removal of permissions

2.154 Respondents generally agreed with the proposals for the Own Initiative Variation of Permission (OIVoP) and Voluntary Variation of Permission (VVoP) powers. These are provided for by new sections 55H-J, inserted by clause 7 of the draft Bill.

2.155 A number of respondents suggested that further consideration should be given to the question of how the exercise of the OIVoP by one regulator could impact on the other. For example one respondent suggested that where a firm is prudentially supervised by the FCA but subject to group supervision by the PRA, the FCA should be required to consult the PRA on the proposed action so that any potential for contagion is considered. Similarly, other respondents argued that there should be a mechanism to address a scenario where withdrawal of permission by the PRA affects the FCA's ability to achieve its objectives.

2.156 The Government agrees that it will be important for the PRA and FCA to consult each other before exercising the OIVoP powers in a way which could affect the other. There are therefore specific requirements for such consultation in the draft clauses, which are also supported by the general duty to coordinate. The statutory MOU will also set out further information about use of the OIVoP.

2.157 Recognising that in practice a regulator may make decisions on authorisation of a new firm and approval of persons conducting controlled functions in that new firm at the same time, the Government proposes to align the timetables for these processes. New subsection (3A) of section 61 inserted by paragraph 5 of Schedule 5 to the Bill requires the regulators to determine applications for approval made by persons also applying for Part 4A permission to the same timetable as the authorisation application (as set out at new section 55V as inserted by clause 8 of the draft Bill). This does not apply to applications for approval not made by authorised persons."

Approved persons

2.158 Respondents suggested that further work was needed to refine the proposed process for approval of persons undertaking controlled functions in regulated firms. In particular, respondents argued that further consideration should be given to designation of Significant Influence Functions (SIFs).

2.159 The February consultation proposed that the PRA would lead on designation and approvals of all controlled functions connected to the prudential soundness of a regulated firm, including the Chief Executive Officer (CEO), consulting the FCA where it had an interest in a

particular function, but having the final say on the approval decision. A number of respondents argued that it is not practical to designate the CEO function as primarily a 'prudential' or 'conduct' function. Respondents identified a number of other SIFs, such as compliance oversight, which would prove similarly difficult to designate. Some consumer groups were concerned that having the PRA lead on approval of SIFs may result in the downgrading of the consideration of consumer issues.

2.160 The Government agrees with many of the points raised by respondents, and has therefore brought forward an alternative proposal, provided for by new sections 59, 59A, 63 and 64 of FSMA 2000, inserted by clause 11 of the draft Bill. While the Government agrees with respondents that it would not be desirable to designate Significant Influence Functions as solely 'prudential' or 'conduct' functions, and that it is important that the FCA has a say in granting applications for and regulating approved persons, given the caseload of applications for approval of individuals compared with authorisation of firms, the Government remains of the view that one authority should have a deciding say in the application process. The Government proposes in the draft Bill that:

- the PRA should have primary responsibility for designating SIFs, but where the PRA has not designated a SIF and the FCA would like to, it will be able to do so;
- the FCA will be able to make and enforce its own codes on all approved persons, and will ultimately be able to remove approval from individuals for egregious conduct or consumer protection breaches; and
- the authorities will be required to consult each other to minimise the risk that the codes that they make overlap or duplicate.

Passporting

2.161 Respondents supported the proposals in relation to passporting in the February consultation, and the Government has therefore retained its proposals for outward passporting (which are set out in clause 9 and Schedule 4 of the draft Bill). For firms passporting out from the UK, the relevant prudential authority will be responsible for issuing all relevant notices.

2.162 However, it is clear that the PRA needs to have oversight of the entire financial system in the UK, including the parts made up of branches passporting in from other countries. In order to achieve this, it is essential that the PRA is able to develop close working relationships with overseas regulators supervising large firms branching into the UK. This will also assist the PRA in building a strong reputation within Europe, especially within the new European Supervisory Authorities.

2.163 Therefore, notifications from overseas regulators in relation to the Banking Consolidation Directive, the Reinsurance Directive, the Consolidated Life Assurance Directives or the First, Second or Third Non-Life Insurance Directives will go to the PRA, in order to mirror its responsibilities on a domestic basis. Notifications in relation to all other directives will go to the FCA. This is not provided for on the face of the Bill, reflecting the fact that the allocation of responsibility for prudential regulation will be made under secondary legislation (under a power made under the new section 22A FSMA).

Mutuals

2.164 Respondents generally welcomed the additional requirement on the regulators to include analysis on the impact of rules on mutually-owned institutions within cost benefit analyses. Some felt that this should be more granular and should become a requirement for a number of types of institution, including small firms, or should include an analysis of the appropriateness of the proposed rule.

2.165 While acknowledging the points raised by respondents, the Government confirms that the additional requirement will only exist for mutual organisations as indicated in clause 21 of the draft Bill (inserting new section 138L into FSMA).

2.166 There was also support for the proposed transfer of the responsibility for registration of Industrial and Provident Societies outside of the financial regulatory system, and the Government welcomes this.

Amendments to the Building Societies Act

2.167 The February consultation proposed to make a small number of minor amendments to legislation affecting building societies, including allowing building societies to grant floating charges in favour of payment and settlement systems, and widening the range of mutually owned institutions to which the regulator can direct that a building society transfers its business without a full member vote if the regulator considers a merger expedient in order to protect the investments of shareholders or depositors. Respondents were in favour of the measures proposed to amend building societies legislation and the Government intends to take these forward as part of the Bill.

Rule-making and rule waivers

2.168 Respondents broadly welcomed the rule-making proposals, as detailed in clause 21 of the draft Bill, adding new sections 137A-Q and 138A-Q. However, a number of respondents argued that further measures should be put in place to ensure consistency of rules between the FCA and the PRA. Some respondents highlighted the potential for conflicts between rules made by the two regulators, and others noted that in the existing FSA rulebook there are a range of rules that relate to both prudential and conduct matters.

2.169 The Government agrees that it is essential to avoid a position where firms are put at risk of breaching one regulator's rules by complying with the other's rules. The regulators will be required to consult each other before making rules, and part of the purpose of this is to ensure that such conflicts do not arise. The duty to coordinate also specifically requires that the regulators should consult each other to avoid impairing the other's ability to achieve its objective.

2.170 However, the Government does not believe that it would be appropriate to require the regulators to put in place a 'joint rulebook', as some respondents have proposed. As with the proposals for a 'single point of contact', it is important that the authorities have autonomy to focus on and deliver their objectives, and it would not be appropriate to specify these operational matters in legislation. The regulators will have clear objectives and duties, and it will be for the regulators themselves to determine how these will be best delivered.

Supervision of financial groups

2.171 The authority responsible for consolidated group supervision will be informed by the relevant EU Directives. Where 'solo' prudential supervision of firms within the same group is split across the two authorities, there will be a power of direction for use by the authority responsible for consolidated supervision, as indicated by new sections 3K-3N of FSMA, inserted by clause 5 of the draft Bill. Respondents broadly welcomed this proposed approach to group supervision, highlighting the general need for effective coordination between the two authorities. There were also a number of comments that the power of direction should only be available in exceptional circumstances. The Government agrees and expects coordination and cooperation between the two authorities to be the primary means of achieving effective and efficient group supervision. This will be covered in the MOU between the PRA and the FCA.

Unregulated holding companies

2.172 As set out in the February consultation it is intended that the PRA and FCA will be granted a power to impose requirements on particular parent undertakings of certain UK authorised persons; this will be for parent undertakings which are not themselves regulated.

2.173 While there was some support for the power of direction, other respondents argued that elements of this power already apply through other processes such as the continued assessment of threshold conditions and the approved persons regime, and noted the risk that the interests of non-banking business might become subordinated in a group. Overall, respondents asked for more details about the power, including possible circumstances in which it might be used.

2.174 The aim of this power is to ensure the regulatory framework for the supervision of financial groups is applied as intended, so that the same level of oversight and supervisory powers can be applied irrespective of the legal structure of the group, as provided for in clause 24, inserting new Part 12A (power of direction in relation to parent undertakings) of FSMA. This power is designed to support regulatory powers in relation to authorised persons and to improve the effectiveness of the existing regulatory system, and is not intended to address issues or concerns that the regulator may have in relation to the unregulated parent undertaking on its own. The Government is therefore not seeking to empower the regulator to regulate or control the parent undertaking for its own sake.

2.175 The Government considers that this power should only be used by the regulators on relatively rare occasions where their powers in relation to authorised persons are not effective. It is not envisaged as a 'day-to-day' regulatory tool. The scope of power will only be exercisable in relation to parent undertakings which are financial institutions of a kind specified by HM Treasury. The purpose of limiting the power to 'financial institutions' is to ensure that neither the PRA nor the FCA have powers of direction in relation to parent undertakings whose main business is not related to financial services.

2.176 The trigger for the use of the power will be that the regulator considers that the acts of the parent undertaking are having a material adverse effect on the regulation of authorised persons in pursuance of its objectives.

2.177 In addition, the regulator will be under a duty to consider its powers in relation to the authorised persons in the group. Therefore, before exercising the power of direction, the regulator must consider the effectiveness of its powers in relation to any of the authorised persons in the group, not solely the direct subsidiaries of the 'target' parent. Where tools available at the level of the authorised person would be effective, the power of direction should not be relied upon.

2.178 As discussed in the last consultation, safeguards for the parent undertaking will include the application of the proportionality regulatory principle, a right of appeal to the Upper Tribunal, the right to make representations, and the issue of a statement of policy by each regulator as to how it will use the power. The PRA and FCA must consult each other before exercising these powers in relation to a dual-authorised person.

2.179 Examples of how the power might be used include:

- during severe stress, the different priorities and responsibilities of the board of a parent undertaking relative to the regulated company boards can be exposed. If the unregulated holding company disagrees with the regulatory assessment of the actions that need to be taken in a stress situation then the FSA does not have legal powers to require action at the level of the parent undertaking. This could mean a number of potential recovery options are unduly dismissed. For example, it may be

appropriate for the parent undertaking to provide additional capital or liquidity to improve the position of the regulated entity; or

- a further example may be shared services. The regulated entity may be reliant on services (e.g. IT services) provided by an unregulated sister company. It may be appropriate, in terms of ensuring the soundness of the regulated entity, that it is able to continue to serve its customers. To achieve this, the regulator may need to require the holding company to take action in relation to the service provider (its subsidiary).

Change of control

2.180 As detailed in the February consultation, the relevant prudential regulator will be responsible for considering change of control applications, in consultation with its counterpart where the alternative authority has an interest. Respondents generally agreed with this approach, although a couple were concerned about the possible complexities in relation to group applications. Further detail can be found in clause 23, amending Part 12 of FSMA.

Part VII transfers

2.181 The Government intends to continue with the approach outlined in the February consultation. The PRA will be primarily responsible for the process, as the appropriate prudential regulator, although this will be carried out in consultation with the FCA. Both the PRA and the FCA will be able to apply to the court for an independent actuary's report, as currently set out in section 113 of FSMA. This approach was supported by respondents.

Investigations

2.182 The FSA has powers to carry out investigations into firms and individuals for enforcement and other purposes, including powers to require information and to obtain access to premises. The Government is legislating to provide the PRA and FCA with equivalent powers (further detail can be found in schedule 11 of the draft Bill, which makes amendments to parts 11 and 23 of FSMA).

2.183 In addition, the Government is making three changes to assist with investigations:

- to provide that where a regulator or investigator has obtained documents under information-gathering powers set out in Part 11 of FSMA, they may retain the originals for as long as necessary for the purpose for which they were requested, or until any legal proceeding are concluded (Schedule 11 paragraph 12(3));
- to place on a statutory footing in a uniform way across the United Kingdom the provisions relating to the execution of warrants and the powers exercisable by those accompanying the constable in the execution of the warrant, for example FCA or PRA staff who accompany a constable in entering and searching premises under a warrant (Schedule 11 paragraph 13(3)); and
- to provide for original documents seized under a warrant to be retained as long as may be necessary, but for the owner to be able to apply for a court order requiring their return (Schedule 11 paragraph 14). This replaces the three month limit set out in section 176(8) (which is extended if criminal proceedings are commenced within that period), and aligns the retention period with that which applies under section 22 of the Police and Criminal Evidence Act 1984 to documents and information seized under warrants issued under that Act.

Enforcement

2.184 The Government set out in the February consultation that despite the move towards a more preventative, proactive approach to conduct regulation and greater reliance on earlier intervention, credible and effective enforcement action will remain a key focus for the FCA. The Government therefore expects a continuation of the FSA's credible deterrence strategy under the FCA, and is clear that the regulator must have the right tools to do so- including the new power to disclose the fact that a warning notice in relation to a disciplinary measure has been issued, as provided by the amendments to section 391 which are set out in paragraph 24 of Schedule 8 to the Bill.

2.185 As set out in the recent publication on the PRA's supervisory approach to banking supervision, the PRA will take a forward-looking approach to prudential issues, requiring remedial action to be taken in advance of problems emerging (for example through restrictions on a firm's business activities imposed via variations in a firm's permission to undertake regulated activities). While the PRA will have the same powers as the FCA to impose penalties on authorised persons, it is expected that under the PRA's approach disciplinary actions will be relatively rare.

2.186 Schedule 8 of the draft Bill makes certain amendments to the disciplinary and other related powers in FSMA. The Government believes that the arrangements relating to enforcement action currently set out in FSMA have worked well to date and Schedule 8 therefore makes minor amendments to the arrangements.

2.187 The Government is clear that procedural safeguards are an important component of an effective enforcement regime and the new provisions retain safeguards such as the requirement on the regulators to consider representations before issuing warning notices. However, the Government considers that the minimum period of 28 days for these representations (specified in section 387(2)) is currently too long. The Government believes that this period is not required in many cases, for example in straightforward cases or where the person has admitted their contravention or does not respond at all, and that the existence of the requirement slows down the enforcement process unnecessarily. The Government therefore proposes to reduce the minimum period to 14 days – this is provided for in paragraph 20(3) of Schedule 8 to the Bill. Respondents should note, however, that the relevant authority will continue to have the discretion to specify a longer period on an individual basis, should this be considered appropriate. The current provision under section 387(3) is to be preserved which will enable the relevant regulator to extent the period specified in a warning notice.

2.188 Additionally, new section 391(6) inserted by paragraph 24(6) of Schedule 8 to the draft Bill provides a safeguard with respect to this power, in stipulating that neither authority would be able to publish information under this section (including information about a warning notice) where it would undermine consumer interests or financial stability.

2.189 In considering other changes to the enforcement arrangements and decision-making processes, such as the disclosure of warning notices and the powers available to the Upper Tribunal, the Government is drawing an important distinction between action taken in relation to breaches of rules or other compliance failings ("disciplinary action"), and decisions that involve supervisory assessments, for example as to the fitness of a person to carry on a regulated activity. In the case of disciplinary action, the Government considers that greater disclosure of information about the action could have beneficial impact, for example, in terms of strengthening the dissuasive effect of disciplinary actions and in improving the transparency of the process. Accordingly, these types of decisions will therefore be within the scope of the new power to disclose information about the fact that a warning notice in relation to certain measures has been issued as provided by the amendments to section 391 which are set out in paragraph 24 of Schedule 8 to the Bill. By contrast, the Government does not consider that

notices relating to supervisory judgements for example, concerning the fitness and propriety of a person to carry on a regulated activity, should be subject to disclosure.

Information gateways and information sharing

2.190 The passage of information between authorities is subject to conditions relating to the purpose of disclosure and, in some cases, the identity of the person to whom the information is disclosed. These conditions are often referred to as 'information gateways'.

2.191 Part 23 of FSMA establishes gateways allowing information to pass between the FSA and other authorities. These gateways are supplemented by a number of others, such as the gateway to the Pensions Regulator, which is established in the Pensions Act 2005. In general, the FSA's existing gateways will be carried over for the PRA and FCA without change. The Government will bring forward consequential legislative provisions to give effect to this (these and other 'consequentials' are not included in the draft Bill published with this white paper).

2.192 The February consultation made a range of proposals for enhanced information sharing between the PRA, the rest of the Bank of England group, and the FCA. These enhancements are reflected in Schedule 11 of the draft Bill, which includes amendments to FSMA part 24, dealing with information sharing arrangements. In addition, as described below the Government is also proposing a widening of the information gateway that allows information to be passed from Her Majesty's Revenue and Customs (HMRC) to the regulators.

Information sharing with HMRC

2.193 Currently, HMRC may only disclose information to the FSA for certain limited types of investigation being conducted by the FSA. However, HMRC has a range of information which could be of use to the regulators for a range of purposes including:

- to assist with investigations of all types that the regulators conduct;
- for authorisation and approval purposes. HMRC may hold information demonstrating a person's integrity which would impact on the regulators' consideration of applications for authorisation as a regulated firm, or where an individual holds a position in a regulated firm for which the FSA's prior approval is required; and
- to inform the regulators' decision to undertake further supervisory work with a firm, or across a group or sector of firms.

2.194 The Government believes that it would be advantageous if HMRC were able to share information that it holds for all of these purposes, thereby enabling more effective regulation of the financial services industry. The Government therefore intends to establish a wider gateway from HMRC to the PRA and FCA, which will enable information to be passed for the purposes of all of the regulators' public functions. The restrictions of the Data Protection Act will apply, requiring that any disclosure should be relevant, necessary and proportionate to the purpose. Criminal sanctions will continue to apply to any wrongful disclosure.

2.195 This widening will be applied only to information passed from HMRC to the new regulators. The gateway for information passed from the FSA to HMRC will be carried over unchanged to the PRA and FCA, as widening it is not currently possible under European law.

Box 2.M: Consultation question

14 Do you have any views on the detail of specific regulatory processes involving the PRA and FCA, as described above and in Chapters 3 and 4?

Compensation, dispute resolution and financial education

2.196 The vast majority of respondents welcomed the Government's intention to retain the Financial Services Compensation Scheme (FSCS), the Financial Ombudsman Service (FOS) and the Money Advice Service (MAS) (previously known as the consumer financial education body) as operationally independent bodies which carry out important functions which underpin confidence in the financial system and, in the case of the FSCS, financial stability.

Financial Services Compensation Scheme

2.197 The February consultation described the Government's proposals that responsibility for the FSCS should be jointly exercised by the PRA (for deposit-taking and insurance business) and the FCA (for all other types of financial activity covered by the scheme, including intermediation) while retaining the FSCS as a single scheme. The majority of respondents supported the proposed operating model, noting in particular that retaining a single scheme would ensure a continued single point of access for consumers. A small number of respondents noted that the joint model could be complicated to operate and lead to a lack of consistency between rules made by different regulators. However, most respondents welcomed the proposed coordination mechanisms as an effective safeguard against these issues.

2.198 A number of respondents also noted that developments arising from ongoing discussion in Europe on guarantee and compensation schemes, and the FSA's review of the FSCS funding model, will be significant. The Government recognises that such initiatives may well need to be factored into proposals for the FSCS as and when their outcomes become clear.

2.199 FSCS provisions relating to the operating model of the FSCS and coordination mechanisms are contained primarily in Schedule 9 of the draft Bill, which contains relevant amendments to FSMA Part 15. The requirement for the regulators to coordinate how they will carry out responsibilities in relation to the FSCS is covered by draft clause 5 which inserts new section 3E into FSMA.

Financial Ombudsman Service

2.200 The February consultation reaffirmed the Government's commitment to retaining an independent alternative dispute resolution body in the shape of the FOS, which was generally supported by respondents. The Government also proposed a number of changes to legislation governing the FOS, to make the respective roles of the regulator and the ombudsman service clear and distinct but also impose greater clarity around how the FCA and FOS cooperate and share information.

2.201 A wide range of views was expressed on these proposals and the FOS in general. Consumer groups tended to support the proposals but there were mixed views from industry respondents and legal practitioners: some supported the proposals but the majority felt that, while the proposals are targeted to address the right issues and are in general helpful, they do not go far enough.

2.202 There was general support for the proposed mechanisms for improving coordination between the FOS and the FCA, e.g. through a statutory MOU. There was also support for the duty on the FOS to share information with the FCA and a reciprocal duty on the FCA to consider and act on this information as appropriate, as this would support the FCA in taking early and

proactive action before issues crystallise to cause widespread detriment. There was also, on balance, support for the proposal to increase transparency of the FOS by clarifying the FOS's ability to publish individual determinations. These provisions are covered in Schedule 10 of the draft Bill, which makes the necessary amendments and additions to FSMA Part 16.

2.203 In light of views expressed by respondents on how issues which have caused large-scale detriment are dealt with, the Government has developed new proposals to put in place a more transparent and accountable process, in which the regulator takes the lead role. More detail is set out above at Box 2.H.

Box 2.N: Consultation question

15 Do you have any comments on the proposals for the FSCS and FOS set out above and in Chapters 3 and 4?

Accountability of the FSCS, FOS and MAS

2.204 There was almost universal support from respondents for the proposed arrangements for strengthened accountability for these bodies, including requiring annual plans to be published and making these bodies subject to NAO audit. These measures are covered in Schedules 9 and 10 of the draft Bill.

European and international coordination

2.205 Respondents warmly welcomed the Government's focus on European and international issues and strongly supported the Government's stated desire to see the UK continue to play a key role in the development and implementation of international financial regulation. Consultation responses strongly endorsed the Government's emphasis on the need for the UK to have a single, coherent and consistent strategy to deliver sound reform which complements changes proposed to the UK framework.

2.206 Respondents strongly supported the establishment of a statutory memorandum of understanding (MOU) between the Treasury, Bank, PRA and FCA to coordinate the UK's overall approach to international coordination. Some responses felt that although a MOU will be essential to ensure effective coordination, it may not be enough to deliver the Government's ambitious aspirations. Some respondents suggested the creation of an international committee, with representatives from each of the relevant authorities, to coordinate the UK's involvement in EU and international negotiations. Others proposed the creation of an international secretariat, staffed by a combination of the authorities, as a single point of contact for international matters. The MOU on crisis management is covered by clause 44 of the draft Bill.

3 Draft Bill

3.1 This chapter contains the draft Bill.

Draft Financial Services Bill

CONTENTS

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OF A

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TO

Amend the Bank of England Act 1998, the Financial Services and Markets Act 2000 and the Banking Act 2009, and to make other provision about financial services and markets.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

AMENDMENTS OF BANK OF ENGLAND ACT 1998

1 Deputy Governors

(1) In section 1 of the Bank of England Act 1998 (court of directors), for subsections (2) and (2A) substitute—

"(2) The court shall consist of the following members appointed by Her Majesty—

(a) a Governor,
(b) a Deputy Governor for financial stability,
(c) a Deputy Governor for monetary policy,
(d) a Deputy Governor for prudential regulation, and
(e) not more than 9 directors."

(2) In section 13 of that Act (Monetary Policy Committee), in subsection (2), for paragraph (a) substitute—

"(a) the Governor of the Bank,
(aa) the Deputy Governor for financial stability,
(ab) the Deputy Governor for monetary policy,".

2 The Bank's financial stability objective

(1) Section 2A of the Bank of England Act 1998 (Financial Stability Objective) is amended as follows.

(2) In subsection (1)—

(a) for "contribute to protecting and enhancing" substitute "protect and enhance", and

(b) for "systems" substitute "system".

(3) In subsection (2), for "and the Financial Services Authority)" substitute ", the Financial Conduct Authority and the Prudential Regulation Authority)".

(4) Omit subsection (3) (which is superseded by the amendments made by section 3 of this Act).

3 Financial stability strategy and Financial Policy Committee

(1) After Part 1 of the Bank of England Act 1998 insert—

"PART 1A

FINANCIAL STABILITY

Financial stability strategy of the Bank

9A Financial stability strategy

(1) The court of directors must—

(a) determine the Bank's strategy in relation to the Financial Stability Objective (its "financial stability strategy"), and

(b) from time to time review, and if necessary revise, the strategy.

(2) Before determining or revising the Bank's financial stability strategy, the court of directors must consult about a draft of the strategy or of the revisions—

(a) the Financial Policy Committee, and

(b) the Treasury.

(3) The Financial Policy Committee may at any time make recommendations to the court of directors as to the provisions of the Bank's financial stability strategy.

(4) The court of directors must determine the financial stability strategy of the Bank within 6 months of the coming into force of this section.

(5) The court of directors must carry out and complete a review of the Bank's financial stability strategy before the end of each relevant period.

(6) The relevant period is 3 years beginning with the date on which the previous review was completed, except that in the case of the first review the relevant period is the period of 3 years beginning with the the date on which the strategy was determined under subsection (4).

(7) The Bank must publish its financial stability strategy.

(8) If the financial stability strategy is revised, the Bank must publish the revised strategy.

(9) Publication under subsection (7) or (8) is to be in such manner as the Bank thinks fit.

Financial Policy Committee of the Bank

9B Financial Policy Committee

(1) There is to be a sub-committee of the court of directors of the Bank (the "Financial Policy Committee") consisting of—

(a) the Governor of the Bank,

(b) the Deputy Governors of the Bank,

(c) the Chief Executive of the FCA,

(d) 2 members appointed by the Governor of the Bank after consultation with the Chancellor of the Exchequer,

(e) 4 members appointed by the Chancellor of the Exchequer, and

(f) a representative of the Treasury.

(2) Of the 2 members appointed under subsection (1)(d)—

(a) one is to be a person who has executive responsibility within the Bank for the analysis of threats to financial stability, and

(b) the other is to be a person who has executive responsibility within the Bank for the analysis of markets or market operations.

(3) Before appointing a person under subsection (1)(e), the Chancellor of the Exchequer must—

(a) be satisfied that the person has knowledge or experience which is likely to be relevant to the Committee's functions, and

(b) consider whether the person has any financial or other interests that could substantially affect the functions as member that it would be proper for the person to discharge.

(4) The court of directors must keep the procedures followed by the Committee under review.

(5) The court's function under subsection (4) is to stand delegated to the sub-committee constituted by section 3.

(6) Schedule 2A has effect with respect to the Committee.

9C Objectives of the Financial Policy Committee

(1) The Financial Policy Committee is to exercise its functions with a view to contributing to the achievement by the Bank of the Financial Stability Objective.

(2) The responsibility of the Committee in relation to the achievement of that objective relates primarily to the identification of, monitoring of, and taking of action to remove or reduce, systemic risks with a view to protecting and enhancing the resilience of the UK financial system.

(3) Those systemic risks include, in particular—

(a) systemic risks attributable to structural features of financial markets or to the distribution of risk within the financial sector, and

(b) unsustainable levels of leverage, debt or credit growth.

(4) Subsections (1) and (2) do not require or authorise the Committee to exercise its functions in a way that would in its opinion be likely to have a significant adverse effect on the capacity of the financial sector to contribute to the growth of the UK economy in the medium or long term.

(5) In this Part "systemic risk" means a risk to the stability of the UK financial system as a whole or to a significant part of that system.

(6) In subsection (3)(b)—

"credit growth" means the growth in lending by the financial sector to individuals in the United Kingdom and businesses carried on in the United Kingdom;

"debt" means debt owed to the financial sector by individuals in the United Kingdom and businesses carried on in the United Kingdom;

"leverage" means the leverage of the financial sector in the United Kingdom.

9D Recommendations by Treasury

(1) The Treasury may at any time by notice in writing to the Financial Policy Committee make recommendations to the Committee about—

(a) matters that the Committee should regard as relevant to the Committee's understanding of the Bank's Financial Stability Objective;

(b) the responsibility of the Committee in relation to the achievement of that objective;

(c) matters to which the Committee should have regard in exercising its functions.

(2) The Treasury must make recommendations under subsection (1)(a) or (b) ("recommendations about the objective")—

(a) before the end of the period of 30 days beginning with the day on which this section comes into force, and

(b) at least once in every calendar year following that in which the first recommendations about the objective were made.

(3) The Committee must notify the Treasury—

(a) whether or how far it accepts any recommendations made to it under subsection (1), and

(b) what action (if any) it proposes to take in response to them.

(4) Notification under subsection (3) must be given or confirmed in writing.

(5) The Treasury must—

(a) publish in such manner as they think fit any notice given under subsection (1) or notification received under subsection (3), and

(b) lay a copy of it before Parliament.

9E Other general duties

(1) In the exercise of its functions, other than its functions under section 9A(2) or (3), the Committee must have regard to the Bank's financial stability strategy.

(2) In working with the FCA or the PRA or exercising functions in relation to either of them, the Committee must, so far as it is possible to do so while contributing to the achievement by the Bank of the Financial Stability Objective, seek to avoid exercising the Committee's functions in a way that would prejudice—

(a) the advancing by the FCA of any of its operational objectives, or

(b) the advancing by the PRA of its objectives.

(3) In the exercise of its functions, the Committee must also have regard to—

(a) 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;

(b) the contribution to the achievement by the Bank of the Financial Stability Objective that the Committee can make by disclosing its views about possible systemic risks or disclosing other information about possible systemic risks;

(c) the international obligations of the United Kingdom, particularly where relevant to the exercise of the powers of the Committee in relation to the FCA or the PRA.

9F Functions of the Financial Policy Committee

(1) The functions of the Financial Policy Committee are—

(a) monitoring the stability of the UK financial system with a view to identifying and assessing systemic risks;

(b) giving directions under section 9G;

(c) making recommendations under sections 9M to 9P;

(d) preparing financial stability reports under section 9S.

(2) The court of directors may, with the consent of the Treasury, arrange for specified functions of the Bank to be discharged by the Financial Policy Committee.

Directions by Financial Policy Committee

9G Directions to FCA or PRA requiring macro-prudential measures

(1) The Financial Policy Committee may give a direction to the FCA or the PRA ("the regulator") requiring the regulator to exercise its functions so as to ensure the implementation, by or in relation to a specified class of regulated persons, of a macro-prudential measure described in the direction.

(2) "Regulated person" means—

(a) in relation to the FCA—

(i) an authorised person within the meaning of FSMA 2000,

(ii) a recognised investment exchange within the meaning of that Act, or

(iii) an EEA market operator as defined by section 312D of that Act;

(b) in relation to the PRA, a PRA-authorised person within the meaning of that Act.

(3) "Macro-prudential measure" is to be read in accordance with section 9K.

(4) The direction may relate to all regulated persons or to regulated persons of a specified description, but may not relate to a specified regulated person.

(5) The direction—

(a) may refer to the opinion of the regulator or require or authorise the exercise of a discretion by the regulator;

(b) may be expressed to remain in force for a specified period or until revoked.

(6) The direction may not require its provisions to be implemented by specified means or within a specified period, but may include recommendations as to the means to be used and the timing of implementation.

(7) A recommendation made under subsection (6) may be expressed to be one to which section 9O(3) (duty to comply or explain) applies.

(8) The direction may not require the regulator to do anything that it has no power to do, but the existence of the direction is relevant to the exercise of any discretion conferred on the regulator.

(9) The direction may specify particular matters to which the regulator is or is not to have regard in complying with the direction, but those matters must be specified in relation to all regulated persons or a class of regulated person rather than a specified regulated person.

(10) The direction may refer to a publication issued by the FCA, the PRA, another body in the United Kingdom or an international organisation, as the publication has effect from time to time.

9H Compliance with directions under section 9G

(1) The regulator must comply with a direction given to it under section 9G as soon as reasonably practicable.

(2) An order under section 9K may, in relation to cases where the regulator is complying with a direction under section 9G, exclude or modify any procedural requirement that would otherwise apply under FSMA 2000 in relation to the exercise by the regulator of its functions in pursuance of the direction.

(3) The regulator to which a direction under section 9G is given must give the Financial Policy Committee one or more reports on how it is complying or has complied with the direction.

(4) The Financial Policy Committee may give directions to the regulator specifying the times by which reports required by subsection (3) must be given to the Committee.

(5) "Regulator" has the same meaning as in section 9G.

9I Revocation of directions under section 9G

(1) The Financial Policy Committee may at any time by notice to the regulator revoke a direction under section 9G.

(2) A direction under section 9G is to be taken to be revoked if the measure to which it relates ceases to be a macro-prudential measure, but this is subject to any provision made under section 9K(5)(f).

(3) The revocation of a direction under section 9G does not affect the validity of anything previously done in accordance with it.

(4) "Regulator" has the same meaning as in section 9G.

9J Further provisions about directions under section 9G

(1) Each of the following must be in writing—
(a) a direction under section 9G;
(b) a notice revoking such a direction;
(c) a report under section 9H(3).

(2) The Financial Policy Committee must give the Treasury a copy of any direction under section 9G or any notice revoking such a direction.

(3) The Treasury may, if they think fit, lay before Parliament a copy of a direction under section 9G or a notice revoking such a direction.

(4) Where a direction under section 9G, or a notice revoking such a direction, is included in a record published under section 9Q, the Treasury must, if they have not already done so, lay before Parliament a copy of the direction or notice in the form in which it is published in the record.

9K Macro-prudential measures

(1) For the purposes of section 9G a "macro-prudential measure" is a measure of a type prescribed by the Treasury by order.

(2) Before making an order under this section, the Treasury must—
(a) consult the Financial Policy Committee, or
(b) if the Treasury considers that the delay involved in consulting the Committee would be prejudicial to financial stability, consult the Governor of the Bank.

(3) In prescribing a type of measure, the order must specify whether the type is prescribed in relation to the FCA, the PRA, or both.

(4) An order under this section may, in relation to a prescribed type of measure, require the Financial Policy Committee to maintain a statement of the general policy that it proposes to follow in relation to the exercise of its power of direction under section 9G so far as it relates to measures of that type.

(5) An order under this section—
(a) may make different provision for different cases;
(b) may confer a discretion on the Financial Policy Committee, the FCA or the PRA;

(c) may refer to rules made by the FCA or the PRA;
(d) may refer to a publication issued by the FCA, the PRA, another body in the United Kingdom or an international organisation, as the publication has effect from time to time;
(e) may make provision about the preparation, review and publication of any statement of policy required by virtue of subsection (4), including provision requiring consultation;
(f) may contain transitional provisions and savings.

9L Parliamentary control of orders under section 9K

(1) Except as provided by subsection (2), an order under section 9K is not to be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament.

(2) An order under section 9K may be made without a draft having been laid and approved as mentioned in subsection (1) if the order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.

(3) An order under section 9K made in accordance with subsection (2)—
(a) must be laid before Parliament after being made, and
(b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without affecting anything done under the order or the power to make a new order).

(4) The "relevant period" is a period of 28 days beginning with the day on which the order is made.

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

Recommendations by Financial Policy Committee

9M Making of recommendations within the Bank

(1) The Financial Policy Committee may make recommendations within the Bank.

(2) The recommendations may, in particular, relate to—
(a) the provision by the Bank of financial assistance to financial institutions;
(b) the exercise by the Bank of its functions in relation to payment systems, settlement systems and clearing houses.

(3) The Committee may not make recommendations about—
(a) the provision by the Bank of financial assistance in relation to a particular financial institution, or
(b) the exercise by the Bank of its powers under Parts 1 to 3 of the Banking Act 2009 in relation to a particular institution.

(4) The recommendations must be made or confirmed in writing.

9N Recommendations to Treasury

(1) The Financial Policy Committee may make recommendations to the Treasury.

(2) The recommendations may, in particular, relate to the exercise by the Treasury of their power to make orders under—

(a) section 9K (macro-prudential measures),

(b) section 22(1) of FSMA 2000 (regulated activities),

(c) section 22A(1) of that Act (designation of activities requiring prudential regulation by the PRA),

(d) section 137C(1)(b) of that Act (purposes for which FCA may make product intervention rules), or

(e) section 165A(2)(d) of that Act (additional persons who may be required by PRA to provide information).

(3) The recommendations must be made or confirmed in writing.

9O Recommendations to FCA and PRA

(1) The Financial Policy Committee may make recommendations to the FCA and the PRA about the exercise of their respective functions.

(2) The recommendations may relate to regulated persons of a specified description, but may not relate to the exercise of the functions of the FCA or the PRA in relation to a specified regulated person.

(3) If recommendations are expressed to be recommendations to which this subsection applies, the body to which they are made must as soon as reasonably practicable—

(a) act in accordance with the recommendations, or

(b) if to any extent it does not, notify the Committee of the extent to which it has not acted in accordance with the recommendations and of the reasons for its decision.

(4) The recommendations, and any notification under subsection (3)(b), must be made or confirmed in writing.

(5) "Regulated person" has the same meaning as in section 9G.

9P Recommendations to other persons

(1) The Financial Policy Committee may make recommendations to persons other than those mentioned in sections 9M to 9O.

(2) The recommendations must be made or confirmed in writing.

Publication of record of meetings

9Q Publication of record of meetings

(1) The Bank must publish a record of each meeting of the Financial Policy Committee before the end of the period of 6 weeks beginning with the day of the meeting.

(2) The record must specify any decisions taken at the meeting (including decisions to take no action) and must set out, in relation to each decision, a summary of the Committee's deliberations.

(3) The decisions referred to in subsection (2) include in particular a decision—

(a) to give or revoke a direction under section 9G or 9U;

(b) to make recommendations under any of sections 9M to 9P.

(4) Where a decision has been made to give or revoke a direction under section 9G or 9U, the record must include the text of the direction or of the notice of revocation.

(5) Where a decision has been made to make recommendations under any of sections 9M to 9P, the record must include the recommendations.

(6) Where since the previous meeting the Committee has received a notification under section 9O(3)(b), the record must include the notification.

(7) The information required by subsections (1) and (2) does not include information identifying particular members of the Committee.

(8) Subsections (1) to (6) do not require the publication of—

(a) information about any recommendations made under 9M(2)(a);

(b) information whose publication at the time required by subsection (1) would in the opinion of the Committee be against the public interest;

(c) information about any decision under paragraph (b);

(d) information about a decision to give a direction under section 9G which has been revoked before the record of the meeting at which it was given is published;

(e) information about the decision to revoke a direction where information about the direction is withheld under paragraph (d).

(9) Publication under this section or section 9R is to be in such manner as the Bank thinks fit.

9R Deferred publication

(1) Where the Financial Policy Committee decides under subsection (8)(b) of section 9Q that publication of information within the time required by subsection (1) of that section would be against the public interest—

(a) it must consider whether to fix a date as the earliest date on which the information may be published, and

(b) if it does not fix a date, it must keep under consideration the question whether publication of the information would still be against the public interest.

(2) The Committee must from time to time determine the procedures that it will follow in complying with the duty in subsection (1)(b).

(3) Where the Committee—

(a) fixes a date under subsection (1)(a) as the earliest date on which any information may be published, or

(b) determines under subsection (1)(b) that publication of any information is no longer against the public interest,

the Bank must publish the information at the time when it next publishes under section 9Q(1) the record of a meeting of the Committee.

Financial stability reports by Financial Policy Committee

9S Financial stability reports by Financial Policy Committee

(1) The Financial Policy Committee must prepare and publish reports relating to financial stability ("financial stability reports").

(2) Two financial stability reports must be published in each calendar year.

(3) A financial stability report must include—

(a) the Committee's view of the stability of the UK financial system at the time when the report is prepared,

(b) an assessment of the developments that have influenced the current position,

(c) an assessment of the strengths and weaknesses of the UK financial system,

(d) an assessment of risks to the stability of the UK financial system, and

(e) the Committee's view of the outlook for the stability of the UK financial system.

(4) A financial stability report must also include—

(a) a summary of the activities of the Committee in the reporting period, and

(b) an assessment of the extent to which the exercise by the Committee of its functions (both during the reporting period and previously) has succeeded during the reporting period in achieving the Committee's objectives.

(5) The reporting period is the period since the date of the previous financial stability report, except that in the case of the first financial stability report it is the period since the time when this section came fully into force.

(6) Nothing in subsection (3) or (4) is to be regarded as requiring the Committee to include in a financial stability report any information whose publication would in the Committee's opinion be against the public interest.

(7) The Committee must give a copy of each financial stability report to the Treasury.

(8) The Treasury must lay before Parliament a copy of each financial stability report.

(9) Publication of a financial stability report is to be in such manner as the Bank thinks fit.

Meetings between Governor and Chancellor of the Exchequer

9T Meetings between Governor and Chancellor of the Exchequer

(1) As soon as reasonably practicable after the publication by the Financial Policy Committee of a financial stability report, the Governor of the Bank and the Chancellor of the Exchequer must meet to discuss the report and any other matters relating to the stability of the UK financial system that they consider it appropriate to discuss.

(2) The Treasury must publish a record of each meeting required by subsection (1) before the end of the period of 6 weeks beginning with the day of the meeting.

(3) Publication under subsection (2) is to be in such manner as the Treasury think fit.

(4) Subsection (2) does not require the publication of information whose publication at the time required by that subsection would in the opinion of the Treasury be against the public interest.

(5) Before publishing the record of a meeting required by subsection (1), or deciding under subsection (4) not to publish such a record, the Treasury must consult the Bank about the record and its publication.

Power of Bank to require FCA or PRA to provide information

9U Directions requiring information or documents

(1) The Bank may exercise the powers conferred by this section where it considers that information or documents are reasonably required in connection with the exercise by the Bank of its functions in pursuance of the Financial Stability Objective.

(2) The Bank may give a direction to the FCA or the PRA ("the regulator") requiring the regulator—

(a) to provide the Bank with specified information or information of a specified description, or

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

(3) The direction may relate to information or documents which are held by persons other than the regulator and which the regulator has power to obtain.

(4) Any information or documents to which the direction relates are—

(a) where the information or documents are held by a person in relation to whom the powers conferred by subsections (1) and (3) of section 165 of FSMA 2000 are exercisable, to be taken to be information or documents to which that section applies by virtue of subsection (4) of that section, and

(b) where they are held by a person to whom section 165A of FSMA 2000 applies and the direction is given to the PRA, to be taken to be information or documents to which that section applies by virtue of subsection (3) of that section.

(5) The information or documents must be provided or produced before the end of such period as may be specified.

(6) The Bank may require any information provided under this section to be provided in such form as it may require.

(7) The Bank may require—

(a) any information provided, whether in a document or otherwise, to be verified in such manner as it may require;

(b) any document produced to be authenticated in such manner as it may require.

9V Further provisions about directions under section 9U

(1) In the exercise of its functions under section 9U, the Bank must have regard to 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.

(2) Before giving a direction under section 9U to the FCA or the PRA ("the regulator), the Bank must consult the regulator.

(3) A direction under section 9U must be in writing, and may be revoked by a notice in writing.

(4) As soon as practicable after giving a direction under section 9U, the Bank must publish the direction in such manner as it thinks appropriate for bringing the direction to the attention of persons (other than the regulator to which it is given) who may be affected by it.

(5) Subsection (4) does not require the publication of information whose publication at the time required by that subsection would in the opinion of the Bank be against the public interest.

Supplementary

9W Interpretation of Part 1A

In this Part—

"the FCA" means the Financial Conduct Authority;

"financial assistance" has the meaning given by section 257(1) of the Banking Act 2009;

"the Financial Policy Committee" means the Financial Policy Committee of the Bank of England;

"the financial sector" means financial institutions generally;

"FSMA 2000" means the Financial Services and Markets Act 2000;

"the PRA" means the Prudential Regulation Authority;

"systemic risk" has the meaning given by section 9C(5);

"the UK economy" means the economy of the United Kingdom;

"the UK financial system" means the financial system of the United Kingdom."

(2) After Schedule 2 to the Bank of England Act 1998 insert as Schedule 2A the Schedule set out in Part 1 of Schedule 1 to this Act.

(3) The further amendments relating to the Financial Policy Committee in Part 2 of Schedule 1 have effect.

(4) Sections 2B and 2C of the Bank of England Act 1998 (which relate to the establishment and procedure of the Financial Stability Committee) cease to have effect.

4 Further amendments of Bank of England Act 1998

Schedule 2 contains further amendments of the Bank of England Act 1998, including amendments relating to the court of directors and the Monetary Policy Committee.

PART 2

AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

Financial Conduct Authority and Prudential Regulation Authority

5 The new Regulators

(1) For sections 1 to 18 of the Financial Services and Markets Act 2000 (in this Act referred to as "FSMA 2000") substitute—

"PART 1A

THE REGULATORS

CHAPTER 1

THE FINANCIAL CONDUCT AUTHORITY

The Financial Conduct Authority

1A The Financial Conduct Authority

(1) The body corporate previously known as the Financial Services Authority is to be known instead as the Financial Conduct Authority (in this Act referred to as "the FCA").

(2) The FCA must comply with the requirements as to its constitution set out in Schedule 1ZA.

(3) Schedule 1ZA also makes provision about the status of the FCA and the exercise of certain of its functions.

The FCA's general duties

1B The FCA's general duties

(1) In discharging its general functions, the FCA must, so far as is reasonably possible, act in a way which—

(a) is compatible with its strategic objective, and

(b) advances one or more of its operational objectives.

(2) The FCA's strategic objective is: protecting and enhancing confidence in the UK financial system.

(3) The FCA's operational objectives are—

(a) the consumer protection objective (see section 1C);
(b) the integrity objective (see section 1D);
(c) the efficiency and choice objective (see section 1E).

(4) The FCA must, so far as is compatible with its strategic and operational objectives, discharge its general functions in a way which promotes competition.

(5) In discharging its general functions the FCA must have regard to—
(a) the regulatory principles in section 3B, and
(b) the importance of taking action intended to minimise the extent to which it is possible for a business carried on—
(i) by an authorised person or a recognised investment exchange, or
(ii) in contravention of the general prohibition,
to be used for a purpose connected with financial crime.

(6) "Financial crime" includes any offence involving—
(a) fraud or dishonesty,
(b) misconduct in, or misuse of information relating to, a financial market, or
(c) handling the proceeds of crime.

(7) "Offence" includes an act or omission which would be an offence if it had taken place in the United Kingdom.

(8) The FCA's general functions are—
(a) its function of making rules under this Act (considered as a whole),
(b) its function of preparing and issuing codes under this Act (considered as a whole),
(c) its functions in relation to the giving of general guidance under this Act (considered as a whole), and
(d) its function of determining the general policy and principles by reference to which it performs particular functions.

(9) "General guidance" has the meaning given in section 139B(5).

1C The consumer protection objective

(1) The consumer protection objective is: securing an appropriate degree of protection for consumers.

(2) In considering what degree of protection for consumers may be appropriate, the FCA must have regard to—
(a) the differing degrees of risk involved in different kinds of investment or other transaction;
(b) the differing degrees of experience and expertise that different consumers may have;
(c) any information which the consumer financial education body has provided to the FCA in the exercise of the consumer financial education function;
(d) any information which the scheme operator of the ombudsman scheme has provided to the FCA pursuant to section 232A;

(e) the needs that consumers may have for advice and accurate information;

(f) the general principle that consumers should take responsibility for their decisions.

(3) "Consumers" means persons who—

(a) use, have used or may use services within subsection (4) or (5),

(b) have relevant rights or interests in relation to any of those services,

(c) have invested, or may invest, in financial instruments, or

(d) have relevant rights or interests in relation to financial instruments.

(4) The services within this subsection are services provided—

(a) by authorised persons in carrying on regulated activities;

(b) by authorised persons in carrying on a consumer credit business in connection with the accepting of deposits;

(c) by authorised persons in communicating, or approving the communication by others of, invitations to engage in investment activity;

(d) by authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services;

(e) by persons acting as appointed representatives;

(f) by payment service providers in providing payment services;

(g) by electronic money issuers in issuing electronic money;

(h) by sponsors to issuers of securities;

(i) by primary information providers to persons who issue financial instruments.

(5) The services within this subsection are services that are provided by persons other than authorised persons but are provided in carrying on regulated activities.

(6) A person ("P") has a "relevant right or interest" in relation to any services within subsection (4) or (5) if P has a right or interest—

(a) which is derived from, or is otherwise attributable to, the use of the services by others, or

(b) which may be adversely affected by the use of the services by persons acting on P's behalf or in a fiduciary capacity in relation to P.

(7) If a person is providing a service within subsection (4) or (5) as trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or may use the service.

(8) A person who deals with another person ("B") in the course of B providing a service within subsection (4) or (5) is to be treated as using the service.

(9) A person ("P") has a "relevant right or interest" in relation to any financial instruments if P has—

(a) a right or interest which is derived from, or is otherwise attributable to, investment in the instruments by others, or

(b) a right or interest which may be adversely affected by the investment in the instruments by persons acting on P's behalf or in a fiduciary capacity in relation to P.

(10) In this section—

"accepting", in relation to deposits, includes agreeing to accept;

"consumer credit business" has the same meaning as in the Consumer Credit Act 1974;

"credit institution" means—

(a) a credit institution authorised under the banking consolidation directive, or

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

"electronic money" has the same meaning as in the Electronic Money Regulations 2011;

"electronic money issuer" means a person who is an electronic money issuer for the purposes of the Electronic Money Regulations 2011 as a result of falling within paragraphs (a) to (d) of the definition in regulation 2(1) of those Regulations;

"engage in investment activity" has the meaning given in section 21;

"financial instrument" has the meaning given in section 102A(4);

"issuer", except in the expression "electronic money issuer", has the meaning given in section 102A(6);

"payment services" has the same meaning as in the Payment Services Regulations 2009;

"payment service provider" means a person who is a payment service provider for the purposes of those regulations as a result of falling within any of paragraphs (a) to (e) of the definition in regulation 2(1);

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

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

"securities" has the meaning given in section 102A(2);

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

1D The integrity objective

(1) The integrity objective is: protecting and enhancing the integrity of the UK financial system.

(2) The "integrity" of the UK financial system includes—

(a) its soundness, stability and resilience,

(b) its not being used for purposes of financial crime, as defined in section 1B(6),

(c) its not being affected by behaviour that amounts to market abuse,

(d) the orderly operation of the financial markets, and
(e) the transparency of the price formation process in those markets.

1E The efficiency and choice objective

The efficiency and choice objective is: promoting efficiency and choice in the market for—
(a) the services within section 1C(4), or
(b) services provided by a recognised investment exchange in carrying on regulated activities in respect of which it is by virtue of section 285(2) exempt from the general prohibition.

1F Power to amend objectives

The Treasury may by order—
(a) amend any of subsections (3) to (10) of section 1C;
(b) amend section 1E so as to vary the services referred to in that section.

1G Guidance about objectives

(1) The general guidance given by the FCA under section 139A must include guidance about—
(a) how it intends to advance its objectives in discharging its general functions in relation to different categories of authorised person or regulated activity, and
(b) which matters it regards, in relation to PRA-authorised persons, as being primarily its responsibility rather than that of the PRA.

(2) Before giving or altering any guidance complying with subsection (1), the FCA must consult the PRA.

Arrangements for consulting practitioners and consumers

1H The FCA's general duty to consult

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

1I The Practitioner Panel

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

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

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

(4) The FCA must appoint to the Practitioner Panel such—
(a) persons representing authorised persons, and
(b) persons representing recognised investment exchanges,
as it considers appropriate.

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

1J The Smaller Business Practitioner Panel

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

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

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

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

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

(a) individuals who are eligible practitioners, and

(b) persons representing eligible practitioners,

as it considers appropriate.

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

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

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

(9) The FCA must—

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

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

1K The Markets Practitioner Panel

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

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

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

(4) The FCA must appoint to the Markets Practitioner Panel such persons to represent the interests of persons within subsection (5) as it considers appropriate.

(5) The persons within this subsection are—

(a) authorised persons,
(b) persons who issue financial instruments,
(c) sponsors as defined in section 88(2),
(d) recognised investment exchanges, and
(e) primary information providers, as defined in section 89P(2).

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

1L The Consumer Panel

(1) Arrangements under section 1H must include the establishment and maintenance of a panel of persons (to be known as "the Consumer Panel") to represent the interests of consumers.

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

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

(4) The FCA may appoint to the Consumer Panel such consumers, or persons representing the interests of consumers, as it considers appropriate.

(5) The FCA must secure that membership of the Consumer Panel is such as to give a fair degree of representation to those who are using, or are or may be contemplating using, services otherwise than in connection with businesses carried on by them.

(6) Sections 425A and 425B (meaning of "consumers") apply for the purposes of this section, but the references to consumers in this section do not include consumers who are authorised persons.

1M Duty to consider representations made by the Panels

(1) The FCA must consider representations that are made to it in accordance with arrangements made under section 1H.

(2) The FCA must from time to time publish in such manner as it thinks fit responses to the representations.

Reviews

1N Reviews

(1) The Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the FCA has used its resources in discharging its functions.

(2) A review may be limited by the Treasury to such functions of the FCA (however described) as the Treasury may specify in appointing the person to conduct it.

(3) A review is not to be concerned with the merits of the FCA's general policy or principles in pursuing its strategic objective and its operational objectives.

(4) On completion of a review, the person conducting it must make a written report to the Treasury—
  (a) setting out the result of the review, and
  (b) making such recommendations (if any) as the person considers appropriate.

(5) A copy of the report must be—
  (a) laid before Parliament, and
  (b) published in such manner as the Treasury consider appropriate.

(6) Any expenses reasonably incurred in the conduct of the review are to be met by the Treasury out of money provided by Parliament.

(7) "Independent" means appearing to the Treasury to be independent of the FCA.

1O Right to obtain documents and information

(1) A person conducting a review under section 1N—
  (a) has a right of access at any reasonable time to all such documents as the person may reasonably require for the purposes of the review, and
  (b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.

(2) Subsection (1) applies only to documents in the custody of or under the control of the FCA.

(3) An obligation imposed on a person as a result of the exercise of the powers conferred by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

CHAPTER 2

THE PRUDENTIAL REGULATION AUTHORITY

The Prudential Regulation Authority

2A The Prudential Regulation Authority

(1) The body corporate known as the Prudential Regulation Authority (in this Act referred to as "the PRA") is to have the functions conferred on it by or under this Act.

(2) The PRA must comply with the requirements as to its constitution set out in Schedule 1ZB.

(3) Schedule 1ZB also confers on the Bank of England functions in relation to the PRA and makes provision about the status of the PRA and the exercise of certain of its functions.

The PRA's general duties

2B The PRA's general objective

(1) In discharging its general functions the PRA must, so far as is reasonably possible, act in a way which advances its general objective.

(2) The PRA's general objective is: promoting the safety and soundness of PRA-authorised persons.

(3) That objective is to be met primarily by—

(a) seeking to ensure that the business of PRA-authorised persons is carried on in a way which avoids any adverse effect on the stability of the UK financial system, and

(b) seeking to minimise the adverse effect that the failure of a PRA-authorised person could be expected to have on the stability of the UK financial system.

(4) The adverse effects mentioned in subsection (3) may, in particular, result from the disruption of the continuity of financial services.

(5) In this Act "PRA-authorised person" means an authorised person who has permission—

(a) given under Part 4A, or

(b) resulting from any other provision of this Act,

to carry on regulated activities that consist of or include one or more PRA-regulated activities.

(6) In this Act "the UK financial system" means the financial system operating in the United Kingdom and includes—

(a) financial markets and exchanges,

(b) regulated activities, and

(c) other activities connected with financial markets and exchanges.

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

2C Insurance objective

(1) In discharging its general functions so far as relating to a PRA-regulated activity relating to the effecting or carrying out of contracts of insurance or PRA-authorised persons carrying on that activity, the PRA must, so far as is reasonably possible, act in a way—

(a) which is compatible with its general objective and its insurance objective, and

(b) which the PRA considers most appropriate for the purpose of advancing those objectives.

(2) The PRA's insurance objective is: contributing to the securing of an appropriate degree of protection for those who are or may become policyholders.

(3) This section applies only if the effecting or carrying out of contracts of insurance as principal is to any extent a PRA-regulated activity.

2D Power to provide for additional objectives

(1) An order under section 22A which, at any time after the coming into force of the first order under that section, extends the regulated activities that are PRA-regulated activities may specify an additional objective ("the specified objective") in relation to specified activities that become PRA-regulated activities by virtue of the order ("the additional activities").

(2) In discharging its general functions so far as relating to PRA-authorised persons carrying on the additional activities, the PRA must, so far as is reasonably possible, act in a way—

(a) which is compatible with its general objective and the specified objective, and

(b) which the PRA considers most appropriate for the purpose of meeting those objectives.

2E Interpretation of references to objectives

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

(a) so far as the function is exercisable in relation to the activity of effecting or carrying out contracts of insurance or PRA-authorised persons carrying on that activity, is a reference to its general objective and its insurance objective;

(b) so far as the function is exercisable in relation to an activity specified for the purposes of section 2D(1) by an order under section 22A, or a PRA-authorised persons carrying on that activity, is reference to its general objective and the objective specified by the order.

2F Limit on effect of section 2B to 2D

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

2G Duty to have regard to regulatory principles

In discharging its general functions, the PRA must also have regard to the regulatory principles in section 3B.

2H Guidance about objectives

(1) The PRA must give, and from time to time review, guidance about

(a) how it intends to advance its objectives in discharging its general functions in relation to different categories of PRA-authorised person or PRA-regulated activity, and

(b) which matters it regards as being primarily its responsibility rather than that of the FCA.

(2) Before giving or altering any guidance complying with subsection (1), the PRA must consult the FCA.

(3) The PRA must publish the guidance as for the time being in force.

2I Interpretation of Chapter 2

(1) For the purposes of this Chapter, the PRA's general functions are—

(a) its function of making rules under this Act (considered as a whole),
(b) its function of preparing and issuing codes under this Act (considered as a whole), and
(c) its function of determining the general policy and principles by reference to which it performs particular functions.

(2) For the purposes of this Chapter, the cases in which a PRA-authorised person ("P") is to be regarded as failing include those where—
(a) P enters insolvency,
(b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to P, or
(c) P falls to be taken for the purposes of the compensation scheme to be unable, or likely to be unable, to satisfy claims against P.

(3) In subsection (2)(a) "insolvency" includes—
(a) bankruptcy,
(b) liquidation,
(c) bank insolvency,
(d) administration,
(e) bank administration,
(f) receivership,
(g) a composition between P and P's creditors, and
(h) a scheme of arrangement of P's affairs.

(4) For the purposes of this Part, a PRA-authorised person may be, but is not necessarily to be, regarded as failing, in a case not falling within subsection (2), if the person receives financial assistance from the Treasury or the Secretary of State.

(5) In subsection (4) "financial assistance" includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent).

(6) The Treasury may by order provide that a specified activity or transaction, or class of activity or transaction, is to be or not to be treated as financial assistance for the purposes of subsection (4); and subsection (5) is subject to this subsection.

Arrangements for consulting practitioners

2J The PRA's general duty to consult

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

(2) Those arrangements may include the establishment of such panels as the PRA thinks fit.

(3) The PRA must publish details of any arrangements made under this section.

2K Duty to consider representations

(1) The PRA must consider representations that are made to it in accordance with arrangements made under section 2J.

(2) The PRA must from time to time publish in such manner as it thinks fit responses to the representations.

Reviews

2L Reviews

(1) The Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the PRA has used its resources in discharging its functions.

(2) A review may be limited by the Treasury to such functions of the PRA (however described) as the Treasury may specify in appointing the person to conduct it.

(3) A review is not to be concerned with the merits of the PRA's general policy or principles in pursuing the PRA's objectives.

(4) On completion of a review, the person conducting it must make a written report to the Treasury—

(a) setting out the result of the review, and

(b) making such recommendations (if any) as the person considers appropriate.

(5) A copy of the report must be—

(a) laid before Parliament, and

(b) published in such manner as the Treasury consider appropriate.

(6) Any expenses reasonably incurred in the conduct of the review are to be met by the Treasury out of money provided by Parliament.

(7) "Independent" means appearing to the Treasury to be independent of the PRA.

2M Right to obtain documents and information

(1) A person conducting a review under section 2L—

(a) has a right of access at any reasonable time to all such documents as the person may reasonably require for the purposes of the review, and

(b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.

(2) Subsection (1) applies only to documents in the custody of or under the control of the PRA.

(3) An obligation imposed on a person as a result of the exercise of the powers conferred by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

CHAPTER 3

FURTHER PROVISIONS RELATING TO FCA AND PRA

Introductory

3A Meaning of "regulator"

(1) This section has effect for the interpretation of this Act.

(2) The FCA and the PRA are the "regulators", and references to a regulator are to be read accordingly.

(3) Subsection (2) does not affect—

(a) the meaning of the following expressions—

"home state regulator";

"host state regulator";

"overseas regulator", or

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

Regulatory principles

3B Regulatory principles to be applied by both regulators

(1) In relation to the regulators, the regulatory principles referred to in section 1B(5)(a) and 2G are as follows—

(a) the need to use the resources of each regulator in the most efficient and economic way;

(b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;

(c) the general principle that consumers should take responsibility for their decisions;

(d) the responsibilities, in relation to compliance with requirements imposed by or under this Act, of the senior management of persons subject to those requirements;

(e) 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;

(f) the principle that the regulators should exercise their functions as transparently as possible.

(2) "Consumer" has the same meaning as in section 1C.

(3) The Treasury may by order amend subsection (2).

Corporate governance

3C Duty to follow principles of good governance

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

Relationship between PRA and FCA

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

(1) The regulators must co-ordinate the exercise of their respective qualifying functions with a view to ensuring—

(a) that each regulator consults the other regulator (where not otherwise required to do so) in connection with any proposed exercise of a qualifying function in a way that may have a material adverse effect on the advancing by the other regulator of any of its objectives;

(b) that where appropriate each regulator obtains information and advice from the other regulator in connection with matters in relation to which the other regulator exercises qualifying functions and may be expected to have particular expertise;

(c) that where either regulator exercises qualifying functions in relation to matters of common regulatory interest, both regulators comply with their respective duties under section 1B(5)(a) or 2G, so far as relating to the regulatory principles in section 3B(1)(a) and (b).

(2) The duty in subsection (1) applies only to the extent that compliance with the duty—

(a) is compatible with the advancing by each regulator of its objectives, and

(b) does not impose a burden on the regulators that is disproportionate to the benefits of compliance.

(3) The "qualifying functions" of the FCA are—

(a) its functions relating to the regulation of authorised persons, and

(b) its other functions that relate to matters in respect of which the PRA exercises similar or related functions.

(4) All the public functions of the PRA are "qualifying functions".

(5) A qualifying function of either regulator relates to matters of common regulatory interest if—

(a) the other regulator exercises similar or related functions in relation to the same persons,

(b) the other regulator exercises functions which relate to different persons but relate to similar subject-matter, or

(c) its exercise could affect the pursuit by the other regulator of its objectives.

(6) In this section references to the FCA's objectives are to its operational objectives.

3E Memorandum of understanding

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

(a) the role of each regulator in relation to the exercise of qualifying functions which—

(i) relate to the regulation of authorised persons, or

(ii) relate to matters of common regulatory interest, and

(b) how the regulators intend to comply with section 3D in relation to the exercise of such functions.

(2) The memorandum may in particular contain provisions about how the regulators intend to comply with section 3D in relation to—

(a) applications for Part 4A permission;

(b) the variation of permission;

(c) the imposition of requirements;

(d) the obtaining and disclosure of information;

(e) cases where a PRA-authorised person is a member of a group whose other members include one or more other authorised persons (whether or not PRA-authorised persons);

(f) functions under Schedule 3 (EEA passport rights) and Schedule 4 (Treaty rights);

(g) powers to appoint competent persons under Part 11 (information gathering and investigations) to conduct investigations on their behalf;

(h) functions under Part 12 (control over authorised persons);

(i) functions under Part 13 (incoming firms: intervention by regulator);

(j) functions under Part 19 (Lloyd's);

(k) functions under section 347 (record of authorised persons etc.);

(l) fees payable to either regulator.

(3) The memorandum must contain provision about the co-ordination by the regulators of—

(a) their relations with regulatory bodies outside the United Kingdom,

(b) their relations with the European Supervisory Authorities (namely, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority), and

(c) the exercise of their functions in relation to the compensation scheme.

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

(5) The regulators must send to the Treasury a copy of the memorandum and any revised memorandum.

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

(7) The regulators must ensure that the memorandum as currently in force is published in the way appearing to them to be best calculated to bring it to the attention of the public.

(8) The memorandum need not relate to any aspect of compliance with section 3D if the regulators consider—

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

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

(9) "Qualifying function" has the same meaning as in section 3D.

(10) The reference in subsection (1)(a) to matters of common regulatory interest is to be read in accordance with section 3D(5).

3F With-profits insurance policies

(1) In relation to PRA-authorised persons carrying on the activity of effecting or carrying out contracts of insurance, responsibility for contributing to the securing of an appropriate degree of protection for the reasonable expectations of policyholders as to the distribution of surplus under with-profits policies is that of the PRA rather than the FCA.

(2) A "with-profits policy" is a contract of insurance under which the policyholder is eligible to participate in surplus.

(3) This section applies only if the effecting or carrying out of with-profits policies is a PRA-regulated activity.

3G Power to establish boundary between FCA and PRA responsibilities

(1) The Treasury may by order specify matters that, in relation to the exercise by either regulator of its functions relating to PRA-authorised persons, are to be, or are to be primarily, the responsibility of one regulator rather than the other.

(2) The order may—

(a) provide that one regulator is or is not to have regard to specified matters when exercising specified functions;

(b) require one regulator to consult the other.

(3) Subsection (1) is subject to section 3F.

(4) An order under this section—

(a) must be laid before Parliament after being made, and

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

(5) "Relevant period" means a period of 28 days beginning with the day on which the order is made.

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

Power of PRA to restrain proposed action by FCA

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

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

(2) The first condition is that, in relation to PRA-authorised persons generally, a class of PRA-authorised persons or a particular PRA-authorised person, the FCA is proposing to exercise any of its powers under this Act which relate to the regulation of authorised persons, other than its power in relation to consent for the purposes of section 55F or 55I.

(3) The second condition is that the PRA is of the opinion that the exercise of the power in the manner proposed may—

(a) threaten the stability of the UK financial system, or

(b) result in the failure of a PRA-authorised person in a way that would adversely affect the UK financial system.

(4) The third condition is that the PRA is of the opinion that the giving of the direction is necessary in order to avoid the possible consequence falling within subsection (3).

(5) A direction under this section is a direction requiring the FCA not to exercise the power or not to exercise it in a specified manner.

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

(7) The FCA is not required to comply with a direction under this section if or to the extent that in the opinion of the FCA compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.

(8) The reference in subsection (3)(b) to the "failure" of a PRA-authorised person is to be read in accordance with section 2I(2) to (6).

3I Revocation of directions under section 3H

(1) The PRA may at any time by notice to the FCA revoke a direction under section 3H.

(2) The revocation of a direction under section 3H does not affect the validity of anything previously done in accordance with it.

3J Further provisions about directions under section 3H

(1) Before giving a direction under section 3H, the PRA must consult the FCA.

(2) A direction under section 3H must be given or confirmed in writing, and must be accompanied by a statement of the reasons for giving it.

(3) A notice revoking a direction under section 3H must be given or confirmed in writing.

(4) The PRA must give the Treasury a copy of—

(a) a direction under section 3H;

(b) a statement relating to such a direction;

(c) a notice revoking such a direction.

(5) The Treasury must lay before Parliament any document received by them under subsection (4).

(6) The PRA must also—

(a) publish the direction and statement, or the notice, in such manner as it thinks fit, and

(b) where the direction or notice relates to a particular authorised person, give a copy of the direction and statement, or the notice, to that person.

(7) But subsections (5) and (6) do not apply in a case where the PRA considers that compliance with those subsections would be against the public interest.

Directions relating to consolidated supervision

3K Directions relating to consolidated supervision of groups

(1) This section applies where one of the regulators ("the supervising regulator"), but not the other, is the competent authority for the purpose of consolidated supervision that is required in relation to some or all of the members of a group ("the relevant group") in pursuance of any of the relevant directives.

(2) "Consolidated supervision" includes supplementary supervision.

(3) The "relevant directives" are—

(a) the banking consolidation directive;

(b) Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate;

(c) Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions;

(d) Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

(4) The supervising regulator may, if it considers it necessary to do so for the effective consolidated supervision of the relevant group, give the other regulator a direction under this section.

(5) A direction under this section is a direction requiring the other regulator to exercise, or not to exercise, a relevant function in a specified manner in relation to authorised persons who are members of the relevant group.

(6) The direction may relate to members of the relevant group other than the members in respect of which consolidated supervision is required.

(7) A "relevant function", in relation to either regulator, is a function under this Act which relates to the regulation of authorised persons, but does not include—

(a) the regulator's function of making rules under this Act;

(b) its function of preparing and issuing codes under this Act;

(c) its function of determining the general policy and principles by reference to which it performs particular functions;

(d) the FCA's functions in relation to the giving of general guidance;

(e) the PRA's functions in relation to the giving of guidance under section 2H;

(f) the FCA's functions in relation to consent for the purposes of section 55F or 55I.

(8) The direction may not require the regulator to which it is given ("the directed regulator") to do anything that it has no power to do, but the direction is relevant to the exercise of any discretion conferred on the directed regulator.

(9) The directed regulator must comply with the direction as soon as practicable, but this is subject to subsections (10) and (11).

(10) The directed regulator is not required to comply with a direction under this section if or to the extent that in its opinion compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.

(11) Directions given by the FCA under this section are subject to any directions given to the FCA under section 3H.

3L Revocation of directions under section 3K

(1) The supervising regulator may at any time by notice to the other regulator revoke a direction under section 3K.

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

(3) Expressions defined for the purposes of section 3K have the same meaning in this section.

3M Further provisions about directions under section 3K

(1) Before giving a direction under section 3K, the supervising regulator must consult the other regulator.

(2) A direction under section 3K must be given or confirmed in writing, and must be accompanied by a statement of the reasons for giving it.

(3) A notice revoking a direction under section 3K must be given or confirmed in writing.

(4) The regulator to which a direction under section 3K is given must give a copy of the direction and statement to each of the authorised persons to whom the direction relates.

(5) The supervising regulator must publish the direction and statement, or the notice, in such manner as it thinks fit.

(6) But subsections (4) and (5) do not apply in a case where the regulator on which the duty is imposed considers that compliance with the subsection would be against the public interest.

(7) Expressions defined for the purposes of section 3K have the same meaning in this section.

3N Consultation by regulator complying with direction

(1) If the directed regulator is required by this Act to consult any person other than the supervising regulator before exercising the relevant function to which the direction relates, the complying regulator must give the supervising regulator copies of any written representations received from the persons consulted.

(2) Expressions defined for the purposes of section 3K have the same meaning in this section.

Co-operation with Bank of England

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

(1) Each regulator must take such steps as it considers appropriate to co-operate with the Bank of England in the pursuit by the Bank of its Financial Stability Objective.

(2) Co-operation under subsection (1) may include the sharing of information that the regulator is not prevented from disclosing."

(2) For Schedule 1 to FSMA 2000 substitute the Schedules 1ZA and 1ZB set out in Part 1 of Schedule 3 to this Act.

(3) Part 2 of that Schedule contains other amendments related to the provisions of this section.

(4) On the coming into force of subsection (1) so far as relating to the renaming of the Financial Services Authority as the Financial Conduct Authority, the registrar of companies for England and Wales must—

(a) enter the new name on the register of companies in place of the former name, and

(b) issue a new certificate of incorporation altered to take account of the new name.

Regulated activities

6 Designation of activities requiring prudential regulation by PRA

After section 22 of FSMA 2000 insert—

"22A Designation of activities requiring prudential regulation by PRA

(1) The Treasury may by order specify the regulated activities that are "PRA-regulated activities" for the purposes of this Act.

(2) An order under subsection (1) may—

(a) provide for exceptions;

(b) confer powers on the Treasury, the FCA or the PRA;

(c) authorise the making of rules or other instruments by the PRA or the FCA for purposes of, or connected with, any relevant provision;

(d) make provision in respect of any information or document which in the opinion of the Treasury, the FCA or the PRA, is relevant for purposes of, or connected with, any relevant provision;

(e) make such consequential, transitional, or supplemental provision as the Treasury considers appropriate for purposes of, or connected with, any relevant provision.

(3) Provision made as a result of subsection (2)(e) may amend any primary or subordinate legislation, including any provision of, or made under, this Act.

(4) "Relevant provision" means this section or any provision made under this section.

(5) Subsection (7) applies to the first order made under subsection (1).

(6) Subsection (7) also applies to any subsequent order made under subsection (1) which—

(a) contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order would be—

(i) that an activity would become a PRA-regulated activity, or

(ii) that a PRA-regulated activity would become a regulated activity that is not a PRA-regulated activity, or

(b) amends primary legislation.

(7) An order to which this subsection applies—

(a) must be laid before Parliament after being made, and

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

(8) "Relevant period" means a period of 28 days beginning with the day on which the order is made.

(9) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days."

Permission to carry on regulated activities

7 The threshold conditions

(1) Schedule 6 to FSMA 2000 (the threshold conditions) is amended as follows.

(2) In Part 1, before paragraph 1 insert—

"Interpretation

A1 In this Part of this Schedule, "the appropriate regulator" means—

(a) in relation to the discharge by the FCA of functions in relation to the threshold conditions, the FCA;

(b) in relation to the discharge by the PRA of functions in relation to the threshold conditions, the PRA."

(3) In each of the following provisions for "Authority" or "Authority's", in each place, substitute "appropriate regulator" or "appropriate regulator's"—

(a) paragraph 1(2);
(b) paragraph 2A(1);
(c) paragraph 3(1);
(d) paragraph 4;
(e) paragraph 5.

(4) In Part 1, after paragraph 5 insert—

"Business model

5A The person concerned ("P") must satisfy the regulator that P's business model (that is, P's strategy for doing business) is suitable having regard to the regulated activities that P carries on or seeks to carry on."

(5) In the heading to Part 1, for "PART IV" substitute "PART 4A".

(6) In paragraph 6 (authorisation under Schedule 3)—
(a) in paragraph (a), for "Part IV" substitute "Part 4A", and
(b) for paragraph (b) substitute—
"(b) the exercise of a regulator's own-initiative variation power under section 55J or own-initiative requirement power under section 55L or 55M in relation to a Part 4A permission."

(7) In paragraph 7 (authorisation under Schedule 4) for paragraph (b) substitute—
"(b) the exercise of a regulator's own-initiative variation power under section 55J or own-initiative requirement power under section 55L or 55M in relation to a Part 4A permission."

(8) In paragraph 8 (additional conditions) in sub-paragraph (2)(b), for "the Authority" substitute "the appropriate regulator (as defined by paragraph A1)"

8 Permission to carry on regulated activities

(1) In section 31 (authorised persons), in subsection (1)(a), for "Part IV permission" substitute "Part 4A permission".

(2) For sections 40 to 55 of FSMA 2000 substitute—

"Application for permission

55A Application for permission

(1) An application for permission to carry on one or more regulated activities may be made to the appropriate regulator by—
(a) an individual,
(b) a body corporate,
(c) a partnership, or
(d) an unincorporated association.

(2) "The appropriate regulator", in relation to an application under this section, means—
(a) the PRA, in a case where—

(i) the regulated activities to which the application relates consist of or include a PRA-regulated activity, or

(ii) the applicant is a PRA-authorised person otherwise than by virtue of a Part 4A permission;

(b) the FCA, in any other case.

(3) An authorised person who has a permission under this Part which is in force may not apply for permission under this section.

(4) An EEA firm may not apply for permission under this section to carry on a regulated activity which it is, or would be, entitled to carry on in exercise of an EEA right, whether through a United Kingdom branch or by providing services in the United Kingdom.

(5) A permission given by the appropriate regulator under this Part or having effect as if so given is referred to in this Act as "a Part 4A permission".

55B The threshold conditions

(1) "The threshold conditions", in relation to a regulated activity, means the conditions set out in Schedule 6.

(2) In giving or varying permission, imposing or varying a requirement or giving consent under, any provision of this Part, the regulator concerned must ensure that the person concerned will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which the person has or will have permission.

(3) But the duty imposed by subsection (2) does not prevent a regulator, having due regard to that duty, from taking such steps as it considers are necessary, in relation to a particular authorised person, in order to advance—

(a) in the case of the FCA, any of its operational objectives;

(b) in the case of the PRA, any of its objectives.

(4) This section is subject to sections 55C and 55D.

55C Arrangements relating to threshold conditions

(1) The regulators may arrange, in relation to any of the threshold conditions, for only one of them—

(a) to be responsible for complying with section 55B(2) in relation to that condition in cases falling within subsection (2);

(b) to be capable of exercising its own-initiative variation power (see section 55J) or its own-initiative requirement power (see sections 55L and 55M) on the ground that a PRA-authorised person is failing, or is likely to fail, to satisfy that condition.

(2) The cases falling within this subsection are those in which (apart from this section and section 55D)—

(a) one regulator would have to comply with section 55B(2) in relation to a decision about the giving or variation of permission in relation to a person who is (or if the permission were given or varied would be) a PRA-authorised person, and

(b) the other regulator would have to comply with section 55B(2) in deciding whether to give consent to that decision.

(3) The arrangements may make different provision for different purposes; and may provide for one regulator to consult the other or obtain the consent of the other before making a determination.

(4) Before making or varying arrangements under this section, the regulators must consult the Treasury about a draft of the arrangements or of the arrangements as varied.

(5) The arrangements must be in writing, and must specify—
  (a) the threshold conditions to which they relate, and
  (b) the date on which they come into force.

(6) Where arrangements are in force under this section, the regulators must exercise functions in accordance with the arrangements.

(7) The regulators must publish any arrangements under this section in such manner as they think fit.

(8) This section is subject to section 55D.

55D Orders making provision that could be made under section 55C

(1) The Treasury may by order make any provision that could be made by the regulators under section 55C.

(2) The power under this section is exercisable whether or not arrangements under section 55C are in force.

(3) If arrangements under section 55C are in force on the coming into force of an order under this section, they are revoked by virtue of the coming into force of the order to the extent that they are incompatible with the provisions of the order.

(4) While an order under this section is in force, no arrangements under section 55C may be made that are incompatible with the provisions of the order.

55E Giving permission: the FCA

(1) This section applies where the FCA is the appropriate regulator in relation to an application for permission under section 55A.

(2) The FCA may give permission for the applicant to carry on the regulated activity or activities to which the application relates or such of them as may be specified in the permission.

(3) If the applicant is a member of a group which includes a PRA-authorised person, the FCA must consult the PRA before determining the application.

(4) If it gives permission, the FCA must specify the permitted regulated activity or activities, described in such manner as the FCA considers appropriate.

(5) The FCA may—
  (a) incorporate in the description of a regulated activity such limitations (for example as to circumstances in which the activity may, or may not, be carried on) as it considers appropriate;

(b) specify a narrower or wider description of regulated activity than that to which the application relates;

(c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates and is not a PRA-regulated activity.

55F Giving permission: the PRA

(1) This section applies where the PRA is the appropriate regulator in relation to an application for permission under section 55A.

(2) The PRA may, with the consent of the FCA, give permission for the applicant to carry on the regulated activity or activities to which the application relates or such of them as may be specified in the permission.

(3) If it gives permission, the PRA must specify the permitted regulated activity or activities, described in such manner as the PRA considers appropriate.

(4) The PRA may—

(a) incorporate in the description of a regulated activity such limitations (for example as to circumstances in which the activity may, or may not, be carried on) as it considers appropriate;

(b) specify a narrower or wider description of regulated activity than that to which the application relates;

(c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates.

(5) Consent given by the FCA for the purposes of this section may be conditional on the manner in which the PRA exercises its powers under subsections (3) and (4).

(6) Subsections (3) and (4)(b) and (c) do not enable the PRA to give permission that relates only to activities that are not PRA-regulated activities, except where the applicant is a PRA-authorised person otherwise than by virtue of a Part 4A permission.

55G Giving permission: special cases

(1) "The applicant" means an applicant for permission under section 55A.

(2) If the applicant—

(a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 39(1) or an order made under section 38(1), but

(b) has applied for permission in relation to another regulated activity,

the application is to be treated as relating to all the regulated activities which, if permission is given, the applicant will carry on.

(3) If the applicant—

(a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 285(2) or (3), but

(b) has applied for permission in relation to another regulated activity,

the application is to be treated as relating only to that other regulated activity.

(4) If the applicant—

(a) is a person to whom, in relation to a particular regulated activity, the general prohibition does not apply as a result of Part 19, but

(b) has applied for permission in relation to another regulated activity,

the application is to be treated as relating only to that other regulated activity.

(5) Subsection (6) applies where either regulator ("the responsible regulator") receives an application for permission under section 55A which is in the regulator's opinion similar to an application which was previously made to the other regulator and was either—

(a) treated by the other regulator as not being a valid application to that regulator because of the regulated activities to which it related, or

(b) refused by the other regulator after being considered.

(6) The responsible regulator must have regard to the desirability of minimising—

(a) the additional work for the applicant in dealing with the new application, and

(b) the time taken to deal with the new application.

Variation and cancellation of Part 4A permission

55H Variation by FCA at request of authorised person

(1) This section applies in relation to an authorised person who has a Part 4A permission but is not a PRA-authorised person.

(2) The FCA may, on the application of the authorised person, vary the permission by—

(a) adding a regulated activity, other than a PRA-regulated activity, to those for which it gives permission;

(b) removing a regulated activity from those for which it gives permission;

(c) varying the description of a regulated activity for which it gives permission.

(3) The FCA may, on the application of the authorised person, cancel the permission.

(4) The FCA may refuse an application under this section if it considers that it is desirable to do so in order to advance any of its operational objectives.

(5) If the applicant is a member of a group which includes a PRA-authorised person, the FCA must consult the PRA before determining the application.

(6) If as a result of a variation of a Part 4A permission under this section there are no longer any regulated activities for which the authorised

person concerned has permission, the FCA must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.

(7) The FCA's power to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given by it in response to an application under section 55A.

55I Variation by PRA at request of authorised person

(1) On the application of a PRA-authorised person with a Part 4A permission, the PRA may with the consent of the FCA vary the permission by—

(a) adding a regulated activity to those for which it gives permission;

(b) removing a regulated activity from those for which it gives permission;

(c) varying the description of a regulated activity for which it gives permission.

(2) On the application of a PRA-authorised person with a Part 4A permission, the PRA may cancel the permission.

(3) On the application of an authorised person other than a PRA-authorised person, the PRA may with the consent of the FCA vary the permission by adding to the regulated activities to which the permission relates one or more regulated activities which include a PRA-regulated activity.

(4) The PRA may refuse an application under this section if it appears to it that it is desirable to do so in order to advance any of its objectives.

(5) The FCA may withhold its consent to a proposed variation under this section if it appears to it that it is desirable to do so in order to advance any of its operational objectives.

(6) If as a result of a variation of a Part 4A permission under this section there are no longer any regulated activities for which the authorised person concerned has permission, the PRA must, once it is satisfied after consulting the FCA that it is no longer necessary to keep the permission in force, cancel it.

(7) The PRA's power to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given in response to an application under section 55A.

(8) Consent given by the FCA for the purposes of subsection (1) may be conditional on the manner in which the PRA exercises its powers under section 55F(3) and (4) (as a result of subsection (7)).

55J Authorised persons: variation etc. on initiative of regulator

(1) Either regulator may exercise its power under this section in relation to an authorised person with a Part 4A permission ("A") if it appears to the regulator that—

(a) A is failing, or is likely to fail, to satisfy the threshold conditions,

(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—

(i) in the case of the FCA, its operational objectives,

(ii) in the case of the PRA, its objectives.

(2) The FCA's power under this section is the power—

(a) to vary the Part 4A permission by—

(i) adding a regulated activity other than a PRA-regulated activity to those for which it gives permission,

(ii) removing a regulated activity from those for which it gives permission, or

(iii) varying the description of a regulated activity for which it gives permission in a way which, if it is a PRA-regulated activity, does not, in the opinion of the FCA, widen that the description, or

(b) to cancel the Part 4A permission.

(3) The PRA's power under this section is the power, in the case of a PRA-authorised person, to vary the Part 4A permission in any of the ways mentioned in section 55I(1) or to cancel it.

(4) The FCA—

(a) must consult the PRA before exercising its power under this section in relation to—

(i) a PRA-authorised person, or

(ii) a member of a group which includes a PRA-authorised person, and

(b) in the case of a PRA-authorised person, may exercise the power so as to add a new activity to those to which the permission relates or to widen the description of a regulated activity to which the permission relates, only with the consent of the PRA.

(5) The PRA—

(a) must consult the FCA before exercising its power under this section, and

(b) may exercise the power so as to add a new activity to those to which the permission relates or to widen the description of a regulated activity to which the permission relates, only with the consent of the FCA.

(6) Subsection (1)(a) is subject to sections 55C and 55D.

(7) Without prejudice to the generality of subsections (1) to (3), a regulator may, in relation to an authorised person who is an investment firm, exercise its power under this section to cancel the Part 4A permission if it appears to it that any of the conditions in section 55K is met.

(8) If, as a result of a variation of a Part 4A permission under this section, there are no longer any regulated activities for which the authorised person concerned has permission, the regulator responsible for the variation must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.

(9) Either regulator must consult the other before cancelling under subsection (8) a Part 4A permission which relates to a person who (before the variation) was a PRA-authorised person.

(10) The power of either regulator to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given in response to an application under section 55A.

(11) Consent given by one regulator for the purpose of subsection (4)(b) or (5)(b) may be conditional on the manner in which the other regulator exercises its powers under section 55E(4) and (5) or 55F(3) and (4) (as a result of subsection (10)).

(12) The power of the FCA or the PRA under this section is referred to in this Part as its own-initiative variation power.

55K Investment firms: particular conditions that enable cancellation

(1) The conditions referred to in section 55J(7) are as follows—

(a) that the firm has failed, during a period of at least 6 months, to carry on a regulated activity which is an investment service or activity for which it has a Part 4A permission;

(b) that the firm obtained the Part 4A permission by making a false statement or by other irregular means;

(c) that the firm no longer satisfies the requirements for authorisation pursuant to Chapter I of Title II of the markets in financial instruments directive, or pursuant to or contained in any EU legislation made under that Chapter, in relation to a regulated activity which is an investment service or activity for which it has a Part 4A permission;

(d) that the firm has seriously and systematically infringed the operating conditions pursuant to Chapter II of Title II of the markets in financial instruments directive, or pursuant to or contained in any EU legislation made under that Chapter, in relation to a regulated activity which is an investment service or activity for which it has a Part 4A permission.

(2) For the purposes of this section a regulated activity is an investment service or activity if it falls within the definition of "investment services and activities" in section 417(1).

Imposition and variation of requirements

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 that person such requirements, taking effect on or after the grant 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,

(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 any of the FCA's operational objectives.

(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 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.

(5) Subsection (2)(a) is subject to sections 55C and 55D.

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

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

(a) cancel a requirement imposed by the FCA under this section, or

(b) vary such a requirement.

55M Imposition of requirements by PRA

(1) Where—

(a) a person has applied for a Part 4A permission in relation to activities which consist of or include a PRA-regulated activity,

(b) a PRA-authorised person has applied for a Part 4A permission or the variation of a Part 4A permission, or

(c) an authorised person other than a PRA-authorised person has applied for a Part 4A permission to be varied by adding to the regulated activities to which it relates one or more regulated activities which include a PRA-regulated activity,

the PRA may impose on that person such requirements, taking effect on or after the grant or variation of the permission, as the PRA considers appropriate.

(2) The PRA may exercise its power under subsection (3) in relation to a PRA-authorised person with a Part 4A permission ("P") if it appears to the PRA that—

(a) P is failing, or is likely to fail, to satisfy the threshold conditions,

(b) P 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 any of the PRA's objectives.

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

(a) to impose a new requirement,

(b) to vary a requirement imposed by the PRA under this section, or

(c) to cancel such a requirement.

(4) The PRA must consult the FCA before imposing or varying a requirement.

(5) Subsection (2)(a) is subject to sections 55C and 55D.

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

(7) The PRA may, on the application of a PRA-authorised person with a Part 4A permission—

(a) cancel a requirement imposed by the PRA under this section, or

(b) vary such a requirement.

55N Requirements under section 55L or 55M: further provisions

(1) A requirement may, in particular, be imposed—

(a) so as to require the person concerned to take specified action, or

(b) so as to require the person concerned to refrain from taking specified action.

(2) A requirement may extend to activities which are not regulated activities.

(3) A requirement may be imposed by reference to the person's relationship with—

(a) the person's group, or

(b) other members of the person's group.

(4) A requirement expires at the end of such period as the regulator imposing it may specify, but this does not affect the regulator's power to impose a new requirement.

(5) A requirement may refer to the past conduct of the person concerned (for example, by requiring the person concerned to review or take remedial action in respect of past conduct).

(6) In this section "requirement" means a requirement imposed under section 55L or 55M.

55O Imposition of requirements on acquisition of control

(1) This section applies if it appears to the appropriate regulator that—

(a) a person has acquired control over a UK authorised person who has a Part 4A permission, but

(b) there are no grounds for exercising its own-initiative requirement power.

(2) If it appears to the appropriate regulator that the likely effect of the acquisition of control on the UK authorised person, or on any of its activities, is uncertain, the appropriate regulator may—

(a) impose on the UK authorised person a requirement that could be imposed by that regulator under section 55L or 55M (as the case may be) on the giving of permission, or

(b) vary a requirement imposed by that regulator under that section on the UK authorised person.

(3) "The appropriate regulator" means—

(a) in a case where the UK authorised person is a PRA-authorised person, the FCA or the PRA;
(b) in any other case, the FCA.

(4) This section does not affect any duty of the appropriate regulator to consult or obtain the consent of the other regulator in connection with the imposition of the requirement.

(5) Any reference to a person having acquired control is to be read in accordance with Part 12.

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, 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).

Exercise of power in support of overseas regulator

55Q Exercise of power in support of overseas regulator

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

(2) Subsection (1) applies whether or not the UK regulator has powers which are exercisable in relation to the authorised person by virtue of any provision of Part 13.

(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 power.

(4) If a request to a UK regulator for the exercise of its own-initiative power has been made by an overseas regulator who is—

(a) of a prescribed kind, and

(b) acting in pursuance of provisions of a prescribed kind,

the UK regulator must, in deciding whether or not to exercise those powers in response to the request, consider whether it is necessary to do so in order to comply with an EU obligation.

(5) In deciding in any case in which the UK regulator does not consider that the exercise of its own-initiative powers is necessary in order to comply with an EU obligation, it 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 power, in response to a request, unless the overseas regulator concerned undertakes to make such contribution towards the cost of its exercise as the UK regulator considers appropriate.

(7) Subsection (6) does not apply if the UK regulator decides that it is necessary for it to exercise its own-initiative power in order to comply with an EU obligation.

(8) In subsection (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 power", in relation to the FCA or the PRA, means its own-initiative variation power and its own-initiative requirement power.

Connected persons

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 which is relevant.

(2) Before—

(a) giving permission in response to an application under section 55A made by a person who is connected with an EEA firm (other than an EEA firm falling within paragraph 5(e) of Schedule 3 (insurance and reinsurance intermediaries)),

(b) cancelling or varying a Part 4A permission given to such a person,

the regulator concerned must in prescribed circumstances consult the firm's home state regulator.

(3) A person ("A") is connected with an EEA firm if—

(a) A is a subsidiary undertaking of the firm, or

(b) A is a subsidiary undertaking of a parent undertaking of the firm.

Additional permissions

55S Duty of FCA or PRA to consider other permissions

(1) "Additional Part 4A permission" —

(a) in relation to either regulator, means a Part 4A permission which is in force in relation to an EEA firm or a Treaty firm, and

(b) in relation to the FCA, also includes Part 4A permission which is in force in relation to a person authorised as a result of paragraph 1(1) of Schedule 5.

(2) If either regulator is considering whether, and if so how, to exercise its own-initiative variation power or its own-initiative requirement power in relation to an additional Part 4A permission, it must take into account—

(a) the home state authorisation of the authorised person concerned,

(b) any relevant directive, and

(c) relevant provisions of the Treaty.

Persons whose interests are protected

55T Persons whose interests are protected

For the purpose of any provision of this Part which refers to the FCA's operational objectives or the PRA's objectives in relation to the exercise of a power in relation to a particular person, it does not matter whether there is a relationship between that person and the persons whose interests will be protected by the exercise of the power.

Procedure

55U Applications under this Part

(1) An application for a Part 4A permission must—

(a) contain a statement of the regulated activity or regulated activities which the applicant proposes to carry on and for which the applicant wishes to have permission, and

(b) give the address of a place in the United Kingdom for service on the applicant of any notice or other document which is required or authorised to be served on the applicant under this Act.

(2) An application for the variation of a Part 4A permission must contain a statement—

(a) of the desired variation, and

(b) of the regulated activity or regulated activities which the applicant proposes to carry on if the permission is varied.

(3) An application for the variation of a requirement imposed under section 55L or 55M must contain a statement of the desired variation.

(4) An application under this Part must—

(a) be made in such manner as the regulator to which it is to be made may direct, and

(b) contain, or be accompanied by, such other information as that regulator may reasonably require.

(5) At any time after the application is received and before it is determined, the appropriate regulator may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(6) In subsection (5), the "appropriate regulator" means—

(a) in a case where the application is made to the FCA, the FCA;

(b) in a case where the application is made to the PRA, the FCA or the PRA.

(7) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(8) Each regulator may require an applicant to provide information which the applicant is required to provide to it under this section in such form, or to verify it in such a way, as the regulator may direct.

(9) The PRA must consult the FCA before—

(a) giving a direction under this section in relation to a class of applications, or

(b) imposing a requirement under this section in relation to a class of applications.

55V Determination of applications

(1) An application under this Part must be determined by the regulator to which it is required to be made ("the appropriate regulator") before the period of 6 months beginning with the date on which it received the completed application.

(2) The appropriate regulator may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within 12 months beginning with the date on which it received the application.

(3) Where the application cannot be determined by the appropriate regulator without the consent of the other regulator, the other regulator's decision must also be made within the period required by subsection (1) or (2).

(4) The applicant may withdraw the application, by giving the appropriate regulator written notice, at any time before the appropriate regulator determines it.

(5) If the appropriate regulator grants an application—

(a) for Part 4A permission,

(b) for the variation of a Part 4A permission, or

(c) for the variation of a requirement imposed under section 55L or 55M,

it must give the applicant written notice.

(6) The notice must state the date from which the permission or variation has effect.

55W Applications under this Part: communications between regulators

The PRA must as soon as practicable notify the FCA of the receipt or withdrawal of—

(a) an application for permission under section 55A,

(b) an application under section 55I, or

(c) an application under section 55M(7).

55X Determination of applications: warning notices and decision notices

(1) If a regulator proposes—

(a) to give a Part 4A permission but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),

(b) to give a Part 4A permission but to exercise its power under section 55L(1) or 55M(1) in connection with the application for permission,

(c) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),

(d) to vary a Part 4A permission but to exercise its power under section 55L(1) or 55M(1) in connection with the application for variation,

it must give the applicant a warning notice.

(2) If a regulator proposes to refuse an application made under this Part, it must (unless subsection (3) applies) give the applicant a warning notice.

(3) This subsection applies if it appears to the regulator that—

(a) the applicant is an EEA firm, and

(b) the application is made with a view to carrying on a regulated activity in a manner in which the applicant is, or would be, entitled to carry on that activity in the exercise of an EEA right whether through a United Kingdom branch or by providing services in the United Kingdom.

(4) If the FCA proposes to exercise its power under section 55L(1) in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission, it must give the applicant a warning notice.

(5) If a regulator decides—

(a) to give a Part 4A permission but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),

(b) to give a Part 4A permission but to exercise its power under section 55L(1) or 55M(1) in connection with the giving of the permission,

(c) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),

(d) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section 55L(1) or 55M(1) in connection with the variation,

(e) in the case of the FCA, to exercise its power under section 55L(1) in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission, or

(f) to refuse an application under this Part,

it must give the applicant a decision notice.

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").

(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 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).

55Z Cancellation of Part 4A permission: procedure

(1) If a regulator proposes to cancel an authorised person's Part 4A permission otherwise than at the person's request, it must give the person a warning notice.

(2) If a regulator decides to cancel an authorised person's Part 4A permission otherwise than at the person's request, it must give the person a decision notice.

References to the Tribunal

55Z1 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 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."

Passporting

9 Passporting: exercise of EEA rights and Treaty rights

Schedule 4 contains amendments of the following provisions of FSMA 2000—

(a) Schedule 3 (EEA passport rights),

(b) Schedule 4 (Treaty rights),

(c) sections 34 and 35 (EEA firms and Treaty firms), and

(d) Part 13 (incoming firms: powers of intervention).

Performance of regulated activities

10 Prohibition orders

(1) FSMA 2000 is amended as follows.

(2) Section 56 (performance of regulated activities: prohibition orders) is amended as follows.

(3) For subsection (1) substitute—

"(1) The FCA may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by—

(a) an authorised person;

(b) a person who is an exempt person in relation to that activity; or

(c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity.

(1A) The PRA may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by—

(a) a PRA-authorised person; or

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

(4) In subsection (2), for "The Authority may make an order ("a prohibition order")" substitute "A "prohibition order" is an order".

(5) In subsection (3), for paragraph (b) substitute—

"(b) all persons falling within subsection (3A) or a particular paragraph of that subsection or all persons within a specified class of person falling within a particular paragraph of that subsection."

(6) After subsection (3) insert—

"(3A) A person falls within this subsection if the person is—

(a) an authorised person;

(b) an exempt person; or

(c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to a regulated activity."

(7) In subsection (6), for "An authorised person" substitute "A person falling within subsection (3A)".

(8) In subsection (7)—

(a) for "The Authority" substitute "The body that has made a prohibition order", and

(b) for "a prohibition order" substitute "the order".

(9) After subsection (7) insert—

"(7A) If—

(a) the FCA proposes to vary or revoke a prohibition order, and

(b) as a result of the proposed variation or revocation, an individual—

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

(ii) will be prohibited from performing such a function,

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

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

(a) a PRA-authorised person; or

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

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

(10) Omit subsection (8).

(11) In section 57 (prohibition orders: procedure and right to refer to Tribunal), at the end insert—

"(6) If—

(a) the FCA proposes to make a prohibition order, and

(b) as a result of the proposed order, an individual will be prohibited from performing a function of interest to the PRA,

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

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

(a) a PRA-authorised person; or

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

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

11 Approval for particular arrangements

(1) FSMA 2000 is amended as follows.

(2) In section 59 (approval for particular arrangements)—

(a) in subsections (1) and (2), for "the Authority" substitute "the appropriate regulator", and

(b) for subsections (3) to (7) substitute—

"(3) "Controlled function"—

(a) in relation to the carrying on of a regulated activity by a PRA-authorised person, means a function of a description specified in rules made by the FCA or the PRA; and

(b) in relation to the carrying on of a regulated activity by any other authorised person, means a function of a description specified in rules made by the FCA.

(4) "Appropriate regulator"—

(a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA; and

(b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA.

(5) The FCA may specify a description of function under subsection (3)(a) or (b) only if, in relation to the carrying on of a regulated activity by an authorised person, it is satisfied that the function is—

(a) a customer-dealing function; or

(b) a significant-influence function.

(6) The PRA may specify a description of function under subsection (3)(a) only if, in relation to the carrying on of a regulated activity by a PRA-authorised person, it is satisfied that the function is a significant-influence function.

(7) In determining whether a function is a significant-influence function, the FCA or the PRA may take into account the likely consequences of a failure to discharge the function properly.

(7A) "Customer-dealing function", in relation to the carrying on of a regulated activity by an authorised person ("A"), means a function that will involve the person performing it in dealing with—

(a) customers of A, or

(b) property of customers of A,

in a manner substantially connected with the carrying on of the activity.

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

(3) After section 59 insert—

"59A Specifying functions as controlled functions: supplementary

(1) The FCA must—

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

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

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

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

(4) "Approval" means an an approval under section 59.

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

(4) In section 63 (withdrawal of approval), for subsection (1) substitute—

"(1) The FCA may withdraw an approval under section 59 given by the FCA or the PRA in relation to the performance by a person of a function if the FCA considers that the person is not a fit and proper person to perform the function.

(1A) The PRA may withdraw an approval under section 59 in relation to the performance by a person ("A") of a function if—

(a) the PRA gave the approval, or the FCA gave the approval and the function is a significant-influence function performed in relation to the carrying on by a PRA-authorised person of a regulated activity; and

(b) the PRA considers that A is not a fit and proper person to perform the function.

(1B) "Significant-influence function" has the same meaning as in section 59.

(1C) The FCA and the PRA must each consult the other before withdrawing an approval given by the other."

(5) In section 64 (conduct of approved persons: statement and codes), for subsection (1) substitute—

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

(1A) The PRA may issue statements of principle with respect to—

(a) the conduct expected of persons in relation to whom it has given its approval under section 59; and

(b) the conduct expected of persons in relation to whom the FCA has given its approval under section 59 in respect of the performance by them of significant-influence functions in relation to the carrying on by PRA-authorised persons of regulated activities.

(1B) A statement of principle issued by the FCA or the PRA may relate to conduct expected of persons in relation to—

(a) the performance by them of controlled functions; or

(b) the performance by them of any other functions in relation to the carrying on by authorised persons of regulated activities."

12 Further amendments relating to performance of regulated activities

Schedule 5 contains further amendments of Part 5 of FSMA 2000 (performance of regulated activities).

Official listing

13 FCA to exercise functions under Part 6 of FSMA 2000

(1) FSMA 2000 is amended as follows.

(2) In every provision of Part 6 (official listing etc) other than one omitted by this section—

(a) for "competent authority", in each place, substitute "FCA", and

(b) for "competent authority's", in each place, substitute "FCA's".

(3) In section 77(3) (discontinuance and suspension of listing), for "sections 96 and 99" substitute "section 96 and paragraph 23(4) of Schedule 1ZA".

(4) Omit the following provisions—

(a) section 72 (the Authority to exercise functions of the competent authority under Part 6);

(b) section 73 (general duty of the competent authority);

(c) section 99 (fees);

(d) section 100 (penalties);

(e) in section 101 (general provisions), subsections (1) and (3) to (8);

(f) section 102 (exemption from liability in damages);

(g) in section 103 (interpretation), subsections (2) and (3);

(h) in section 195 (exercise of power in support of overseas regulator), subsection (4)(b);

(i) in section 410 (international obligations), omit subsection (4)(b);

(j) in section 415 (jurisdiction in civil proceedings), subsection (1)(b);

(k) Schedule 7 (modification of Act in its application to the Authority when acting as competent authority for purposes of Part 6;

(l) Schedule 8 (power to transfer functions under Part 6 to other persons).

14 Discontinuance or suspension at the request of the issuer: procedure

(1) FSMA 2000 is amended as follows.

(2) In section 78A (discontinuance or suspension at the request of the issuer: procedure)—

(a) in subsection (1), for paragraphs (a) and (b) substitute—

"(a) immediately, if the notification under subsection (2) so provides;

(b) in any other case, on such date as may be provided for in that notification.",

(b) in subsection (2), for "give him written notice" substitute "notify the issuer (whether in writing or otherwise)", and

(c) for subsection (3) substitute—

"(3) The notification must—

(a) notify the issuer of the date on which the discontinuance or suspension took effect or will take effect; and

(b) notify the issuer of such other matters (if any) as are specified in listing rules."

(3) In section 395(13) (definition of "supervisory notice"), after "a notice" insert "or notification".

15 Listing rules: disciplinary powers in relation to sponsors

(1) FSMA 2000 is amended as follows.

(2) In section 88 (provision that may be made by listing rules in relation to sponsors)—

(a) in subsection (3), at the end insert—

"(e) provide for limitations or other restrictions to be imposed on the services to which an approval relates (whether or not the approval has already been granted);

(f) provide for the approval of a sponsor to be suspended on the application of the sponsor.",

(b) in subsection (4), in paragraph (a), for "for approval as a sponsor" substitute "under sponsor rules",

(c) after that paragraph (but before the "or" at the end) insert—

"(aa) to impose limitations or other restrictions on the services to which a person's approval relates,",

(d) in subsection (5), in paragraph (a), for "for approval" substitute "under sponsor rules",

(e) after that paragraph (but before the "or" at the end) insert—

"(aa) not to impose limitations or other restrictions on the services to which a person's approval relates,",

(f) in subsection (6), in paragraph (a), for "for approval" substitute "under sponsor rules",

(g) after that paragraph (a) (but before the "or" at the end) insert—

"(aa) to impose limitations or other restrictions on the services to which a person's approval relates,", and

(h) after subsection (7) insert—

"(8) In this section any reference to an application under sponsor rules means—

(a) an application for approval as a sponsor;

(b) an application for the suspension of an approval as a sponsor;

(c) an application for the withdrawal of the suspension of an approval as a sponsor; or

(d) an application for the withdrawal or variation of a limitation or other restriction on the services to which a sponsor's approval relates."

(3) The power to make provision under section 88(3)(e) of FSMA 2000 (as inserted by subsection (2)(a) above) includes power to make provision in relation to persons who were approved as sponsors before the coming into force of subsection (2)(a) above.

(4) For section 89 substitute—

"88A Disciplinary powers: contravention of s.88(3)(c) or (e)

(1) The FCA may take action against a sponsor under this section if it considers that the sponsor has contravened a requirement or restriction

imposed on the sponsor by rules made as a result of section 88(3)(c) or (e).

(2) If the FCA is entitled to take action under this section against a sponsor, it may do one or more of the following—

(a) impose a penalty on the sponsor of such amount as it considers appropriate;

(b) suspend, for such period as it considers appropriate, the sponsor's approval;

(c) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance of services to which the sponsor's approval relates as it considers appropriate;

(d) publish a statement to the effect that the sponsor has contravened a requirement or restriction imposed on the sponsor by rules made as a result of section 88(3)(c) or (e).

(3) The period for which a suspension or restriction is to have effect may not exceed 12 months.

(4) A suspension may relate only to the performance in specified circumstances of a service to which the approval relates.

(5) A restriction may, in particular, be imposed so as to require the sponsor to take, or refrain from taking, specified action.

(6) The FCA may—

(a) withdraw a suspension or restriction; or

(b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(7) The FCA may not take action against a sponsor under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the sponsor under section 88B(1).

(8) "The limitation period" means the period of 3 years beginning with the first day on which the FCA knew that the sponsor had contravened the requirement or restriction.

(9) For this purpose the FCA is to be treated as knowing that a sponsor has contravened a requirement or restriction if it has information from which that can reasonably be inferred.

88B Action under s.88A: procedure and right to refer to Tribunal

(1) If the FCA proposes to take action against a sponsor under section 88A, it must give the sponsor a warning notice.

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

(3) A warning notice about a proposal—

(a) to suspend an approval, or

(b) to impose a restriction in relation to the performance of a service,

must state the period for which the suspension or restriction is to have effect.

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

(5) If the FCA decides to take action against a sponsor under section 88A, it must give the sponsor a decision notice.

(6) A decision notice about the imposition of a penalty must state the amount of the penalty.

(7) A decision notice about—

(a) the suspension of an approval, or

(b) the imposition of a restriction in relation to the performance of a service,

must state the period for which the suspension or restriction is to have effect.

(8) A decision notice about the publication of a statement must set out the terms of the statement.

(9) If the FCA decides to take action against a sponsor under section 88A, the sponsor may refer the matter to the Tribunal.

88C Action under s.88A: statement of policy

(1) The FCA must prepare and issue a statement of its policy with respect to—

(a) the imposition of penalties, suspensions or restrictions under section 88A;

(b) the amount of penalties under that section; and

(c) the period for which suspensions or restrictions under that section are to have effect.

(2) The FCA's policy in determining what the amount of a penalty should be, or what the period for which a suspension or restriction is to have effect should be, must include having regard to—

(a) the seriousness of the contravention in question in relation to the nature of the requirement concerned;

(b) the extent to which that contravention was deliberate or reckless; and

(c) whether the sponsor concerned is an individual.

(3) The FCA may at any time alter or replace a statement issued under this section.

(4) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replaced statement.

(5) In exercising, or deciding whether to exercise, its power under section 88A in the case of any particular contravention, the FCA must have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.

(6) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(7) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

(8) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

88D Statement of policy under s.88C: procedure

(1) Before issuing a statement under section 88C, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.

(3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).

(4) If the FCA issues the proposed statement it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2); and

(b) its response to them.

(5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.

88E Powers exercisable to advance operational objectives

(1) The FCA may take action against a sponsor under this section if it considers that it is desirable to do so in order to advance one or more of its operational objectives.

(2) If the FCA is entitled to take action under this section against a sponsor, it may—

(a) suspend, for such period as it considers appropriate, the sponsor's approval; or

(b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance of services to which the sponsor's approval relates as it considers appropriate.

(3) A suspension may relate only to the performance in specified circumstances of a service to which the approval relates.

(4) A restriction may, in particular, be imposed so as to require the sponsor to take, or refrain from taking, specified action.

(5) The FCA may—

(a) withdraw a suspension or restriction; or

(b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(6) A person against whom the FCA takes action under this section may refer the matter to the Tribunal.

88F Action under s.88E: procedure

(1) Action against a sponsor under section 88E takes effect—
  (a) immediately, if the notice given under subsection (3) so provides; or
  (b) on such later date as may be specified in the notice.

(2) If the FCA—
  (a) proposes to take action against a sponsor under that section, or
  (b) takes action against a sponsor under that section with immediate effect,

it must give the sponsor written notice.

(3) The notice must—
  (a) give details of the action;
  (b) state the FCA's reasons for taking the action and for its determination as to when the action takes effect;
  (c) inform the sponsor that the sponsor may make representations to the FCA within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal);
  (d) inform the sponsor of when the action takes effect;
  (e) inform the sponsor of the right to refer the matter to the Tribunal; and
  (f) give an indication of the procedure on such a reference.

(4) The FCA may extend the period allowed under the notice for making representations.

(5) If the FCA decides—
  (a) to take the action in the way proposed, or
  (b) if the action has taken effect, not to rescind it,

the FCA must give the sponsor written notice.

(6) If the FCA decides—
  (a) not to take the action in the way proposed,
  (b) to take action under section 88E that differs from the action originally proposed, or
  (c) to rescind action which has taken effect,

the FCA must give the sponsor written notice.

(7) A notice under subsection (5) must—
  (a) inform the sponsor of the right to refer the matter to the Tribunal; and
  (b) give an indication of the procedure on such a reference.

(8) A notice under subsection (6)(b) must comply with subsection (3)."

(5) In section 392 (warning and decisions notices: application of provisions relating to third party rights and access to evidence)—
  (a) for "section 89(2)," substitute "section 88B(1),", and
  (b) for "section 89(3)," substitute "section 88B(5),".

(6) In section 395(13) (meaning of "supervisory notice"), after paragraph (bza) insert—
  "(bzb) section 88F(3), (5) or (6)(b);".

16 Penalties for breach of Part 6 rules

In section 91(6) of FSMA 2000 (penalties for breach of Part 6 rules: limitation period), for "two years" substitute "3 years".

17 Repeal of competition scrutiny power

Section 95 of FSMA 2000 (competition scrutiny) ceases to have effect.

18 Contravention of Part 6 rules: reports by skilled persons

(1) In section 97(1)(d) of FSMA 2000 (contravention of Part 6 rules: appointment of persons to carry out investigations), for "83, 85, 87G or 98" substitute "85 or 87G".

(2) After section 97 of FSMA 2000 insert—

"97A Reports by skilled persons

(1) The FCA may, by notice in writing given to a person to whom this section applies, require the person to provide the FCA with a report on any matter.

(2) The power conferred by subsection (1) is exercisable only if the report on the matter is reasonably required in connection with the exercise by the FCA of functions conferred on it—

(a) by or under this Part; or

(b) by or under provision otherwise made in accordance with the prospectus directive or the transparency obligations directive.

(3) This section applies to—

(a) any of the following persons on whom a requirement is, or was at the relevant time, imposed by or under this Part—

(i) an issuer;

(ii) a sponsor (within the meaning of section 88);

(iii) a primary information provider (within the meaning of section 89P);

(b) a person who is, or was at the relevant time, a director of a person within paragraph (a).

(4) The FCA may require the report to be in such form as may be specified in the notice.

(5) The person appointed to make a report required by this section (a "skilled person") must be someone—

(a) nominated or approved by the FCA; and

(b) appearing to the FCA to have the skills necessary to make a report on the matter concerned.

(6) It is the duty of any person who is providing (or who at any time has provided) services to a person to whom this section applies to give a skilled person all such assistance as the skilled person may reasonably require for the purposes of a report required by this section.

(7) Section 177(1) and (2) (failure to comply with a Part 11 requirement: contempt of court) are to have effect as if a requirement imposed under

subsection (1) of this section were imposed under Part 11 (information gathering etc).

(8) The obligation imposed by subsection (6) is enforceable, on the application of the FCA, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988."

(3) In section 348(5)(d) of FSMA 2000 (restrictions on disclosure of confidential information), after "report under section" insert "97A or".

19 Primary information providers

(1) In Part 6 of FSMA 2000 (official listing), after section 89O insert—

"Primary information providers

89P Primary information providers

(1) Part 6 rules may require issuers of financial instruments to use primary information providers for the purpose of giving information of a specified description to a market of a specified description.

(2) "Primary information provider" means a person approved by the FCA for the purposes of this section.

(3) "Specified" means specified in the Part 6 rules.

(4) Part 6 rules made by virtue of subsection (1) may—
- (a) provide for the FCA to maintain a list of providers;
- (b) impose requirements on a provider in relation to the giving of information or of information of a specified description;
- (c) specify the circumstances in which a person is qualified for being approved as a provider;
- (d) provide for limitations or other restrictions to be imposed on the giving of information to which an approval relates (whether or not the approval has already been granted);
- (e) provide for the approval of a provider to be suspended on the application of the provider.

(5) If the FCA proposes—
- (a) to refuse a person's application under information provider rules,
- (b) to impose limitations or other restrictions on the giving of information to which a person's approval relates, or
- (c) to cancel a person's approval as a provider otherwise than at the person's request,

it must give the person a warning notice.

(6) If the FCA decides—
- (a) to grant the application under information provider rules,
- (b) not to impose limitations or other restrictions on the giving of information to which a person's approval relates, or
- (c) not to cancel the approval,

it must give the person concerned written notice of its decision.

(7) If the FCA decides—

(a) to refuse to grant the application under information provider rules,

(b) to impose limitations or other restrictions on the giving of information to which a person's approval relates, or

(c) to cancel the approval,

it must give the person concerned a decision notice.

(8) A person to whom a decision notice is given under this section may refer the matter to the Tribunal.

(9) In this section any reference to an application under information provider rules means—

(a) an application for approval as a provider;

(b) an application for the suspension of an approval as a provider;

(c) an application for the withdrawal of the suspension of an approval as a provider; or

(d) an application for the withdrawal or variation of a limitation or other restriction on the giving of information to which a provider's approval relates.

89Q Disciplinary powers: contravention of s.89P(4)(b) or (d)

(1) The FCA may take action against a provider under this section if it considers that the provider has contravened a requirement or restriction imposed on the provider by rules made as a result of section 89P(4)(b) or (d).

(2) If the FCA is entitled to take action under this section against a provider, it may do one or more of the following—

(a) impose a penalty on the provider of such amount as it considers appropriate;

(b) suspend, for such period as it considers appropriate, the provider's approval;

(c) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the giving by the provider of information as it considers appropriate;

(d) publish a statement to the effect that the provider has contravened a requirement or restriction imposed on the provider by rules made as a result of section 89P(4)(b) or (d).

(3) The period for which a suspension or restriction is to have effect may not exceed 12 months.

(4) A suspension may relate only to the giving of information in specified circumstances.

(5) A restriction may, in particular, be imposed so as to require the provider to take, or refrain from taking, specified action.

(6) The FCA may—

(a) withdraw a suspension or restriction; or

(b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(7) The FCA may not take action against a provider under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the provider under section 89R(1).

(8) "The limitation period" means the period of 3 years beginning with the first day on which the FCA knew that the provider had contravened the requirement or restriction.

(9) For this purpose the FCA is to be treated as knowing that a provider has contravened a requirement or restriction if it has information from which that can reasonably be inferred.

89R Action under s.89Q: procedure and right to refer to Tribunal

(1) If the FCA proposes to take action against a provider under section 89Q, it must give the provider a warning notice.

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

(3) A warning notice about a proposal—
(a) to suspend an approval, or
(b) to impose a restriction in relation to the giving of information,
must state the period for which the suspension or restriction is to have effect.

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

(5) If the FCA decides to take action against a provider under section 89Q, it must give the provider a decision notice.

(6) A decision notice about the imposition of a penalty must state the amount of the penalty.

(7) A decision notice about—
(a) the suspension of an approval, or
(b) the imposition of a restriction in relation to the giving of information,
must state the period for which the suspension or restriction is to have effect.

(8) A decision notice about the publication of a statement must set out the terms of the statement.

(9) If the FCA decides to take action against a provider under section 89Q, the provider may refer the matter to the Tribunal.

89S Action under s.89Q: statement of policy

(1) The FCA must prepare and issue a statement of its policy with respect to—
(a) the imposition of penalties, suspensions or restrictions under section 89Q;
(b) the amount of penalties under that section;
(c) the period for which suspensions or restrictions under that section are to have effect; and

(d) the matters in relation to which suspensions or restrictions under that section are to have effect.

(2) The FCA's policy in determining what the amount of a penalty should be, or what the period for which a suspension or restriction is to have effect should be, must include having regard to—

(a) the seriousness of the contravention in question in relation to the nature of the requirement concerned;

(b) the extent to which that contravention was deliberate or reckless; and

(c) whether the provider concerned is an individual.

(3) The FCA may at any time alter or replace a statement issued under this section.

(4) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replaced statement.

(5) In exercising, or deciding whether to exercise, its power under section 89Q in the case of any particular contravention, the FCA must have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.

(6) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(7) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

(8) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

89T Statement of policy under s.89S: procedure

(1) Before issuing a statement under section 89S, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.

(3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).

(4) If the FCA issues the proposed statement it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2); and

(b) its response to them.

(5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.

89U Powers exercisable to advance operational objectives

(1) The FCA may take action against a provider under this section if it considers that it is desirable to do so in order to advance one or more of its operational objectives.

(2) If the FCA is entitled to take action under this section against a provider, it may—

(a) suspend, for such period as it considers appropriate, the provider's approval; or

(b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the giving by the provider of information as it considers appropriate.

(3) A suspension may relate only to the giving of information in specified circumstances.

(4) A restriction may, in particular, be imposed so as to require the provider to take, or refrain from taking, specified action.

(5) The FCA may—

(a) withdraw a suspension or restriction; or

(b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(6) A person against whom the FCA takes action under this section may refer the matter to the Tribunal.

89V Action under s.89U: procedure

(1) Action against a provider under section 89U takes effect—

(a) immediately, if the notice given under subsection (3) so provides; or

(b) on such later date as may be specified in the notice.

(2) If the FCA—

(a) proposes to take action against a provider under that section, or

(b) takes action against a provider under that section with immediate effect,

it must given the provider written notice.

(3) The notice must—

(a) give details of the action;

(b) state the FCA's reasons for taking the action and for its determination as to when the action takes effect;

(c) inform the provider that the provider may make representations to the FCA within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal);

(d) inform the provider of when the action takes effect;

(e) inform the provider of the right to refer the matter to the Tribunal; and

(f) give an indication of the procedure on such a reference.

(4) The FCA may extend the period allowed under the notice for making representations.

(5) If the FCA decides—
  (a) to take the action in the way proposed, or
  (b) if the action has taken effect, not to rescind it,
the FCA must give the provider written notice.

(6) If the FCA decides—
  (a) not to take the action in the way proposed,
  (b) to take action under section 89U that differs from the action originally proposed, or
  (c) to rescind action which has taken effect,
the FCA must give the provider written notice.

(7) A notice under subsection (5) must—
  (a) inform the provider of the right to refer the matter to the Tribunal; and
  (b) give an indication of the procedure on such a reference.

(8) A notice under subsection (6)(b) must comply with subsection (3)."

(2) In section 395(13) (meaning of "supervisory notice"), after paragraph (bzb) (as inserted by section 15(6)) insert—
"(bzc) section 89V(3), (5) or (6)(b);".

Hearings and appeals

20 Proceedings before Tribunal

(1) Part 9 of FSMA 2000 (hearings and appeals) is amended as follows.

(2) In section 133 (proceedings before Tribunal: general provision)—
  (a) in subsection (1)(a), for "the Authority" substitute "the FCA or the PRA",
  (b) for subsections (5) and (6) substitute—

"(5) In the case of a disciplinary reference or a reference under section 393(11), the Tribunal—
  (a) must determine what (if any) is the appropriate action for the decision-maker to take in relation to the matter; and
  (b) on determining the reference, must remit the matter to the decision-maker with such directions (if any) as the Tribunal considers appropriate for giving effect to its determination.

(6) In any other case, the Tribunal must determine the reference or appeal by either—
  (a) dismissing it; or
  (b) remitting the matter to the decision-maker with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal.

(6A) The findings mentioned in subsection (6)(b) are limited to findings as to—

(a) issues of fact or law;

(b) the matters to be, or not to be, taken into account in making the decision; and

(c) the procedural or other steps to be taken in connection with the making of the decision.", and

(c) after subsection (7) insert—

"(7A) A reference is a "disciplinary reference" for the purposes of this section if it is in respect of any of the following decisions—

(a) a decision to impose a penalty under section 63A;

(b) a decision to take action under section 66;

(c) a decision to take action under section 87M;

(d) a decision to take action under section 88A;

(e) a decision to take action under section 89K;

(f) a decision to take action under section 89Q;

(g) a decision to take action under section 91;

(h) a decision to take action under section 123;

(i) a decision to take action under section 131G;

(j) a decision to publish a statement under section 205, impose a penalty under section 206 or suspend a permission or impose a restriction under section 206A;

(k) a decision to publish a statement under section 312E or impose a penalty under section 312F;

(l) a decision to disqualify a person under section 345."

(3) In section 133A (proceedings before Tribunal: decision and supervisory notices, etc)—

(a) in subsection (1)—

(i) after "determining" insert "in accordance with section 133(5)", and

(ii) for the words from "given by the Authority" to "the Authority would" substitute "given by a body, the Tribunal may not direct the body to take action which it would",

(b) omit subsections (2) and (3),

(c) in subsection (4), for the words from the beginning to "a decision notice—" substitute "The action specified in a decision notice must not be taken—", and

(d) in subsection (5)—

(i) for "the Authority" substitute "the FCA or the PRA", and

(ii) for "the Authority's" substitute "its".

(4) In section 133B (offences), in subsection (1)(a), for "the Authority" substitute "the FCA or the PRA".

(5) In section 136 (funding of the legal assistance scheme), in subsections (1), (2), (6)(a), (7) (in both places) and (8), for "Authority" substitute "FCA".

Rules and guidance

21 Rules and guidance

(1) For sections 138 to 164 of FSMA 2000 substitute—

"PART 9A

RULES AND GUIDANCE

CHAPTER 1

RULE-MAKING POWERS

General rule-making powers of the FCA and the PRA

137A The FCA's general rules

(1) The FCA may make such rules applying to authorised persons—

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

(b) with respect to the carrying on by them of activities which are not regulated activities,

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

(2) Rules made under this section are referred to in this Act as the FCA's general rules.

(3) The FCA's general rules may make provision applying to authorised persons even though there is no relationship between the authorised persons to whom the rules will apply and the persons whose interests will be protected by the rules.

(4) The FCA's general rules may contain requirements which take into account, in the case of an authorised person who is a member of a group, any activity of another member of the group.

(5) The FCA's general rules may not—

(a) make provision prohibiting an EEA firm from carrying on, or holding itself out as carrying on, any activity which it has permission conferred by Part 2 of Schedule 3 to carry on in the United Kingdom;

(b) make provision, as respects an EEA firm, about any matter for which responsibility is, under any of the single market directives, reserved to the firm's home state regulator.

137B FCA general rules: clients' money, right to rescind etc.

(1) Rules relating to the handling of money held by an authorised person in specified circumstances ("clients' money") may—

(a) make provision which results in that clients' money being held on trust in accordance with the rules,

(b) treat 2 or more accounts as a single account for specified purposes (which may include the distribution of money held in the accounts),

(c) authorise the retention by the authorised person of interest accruing on the clients' money, and

(d) make provision as to the distribution of such interest which is not to be retained by the authorised person.

(2) An institution with which an account is kept in pursuance of rules relating to the handling of clients' money does not incur any liability as constructive trustee if the money is wrongfully paid from the account, unless the institution permits the payment—

(a) with knowledge that it is wrongful, or

(b) having deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.

(3) Rules may—

(a) confer rights on persons to rescind agreements with, or withdraw offers to, authorised persons within a specified period, and

(b) make provision, in respect of authorised persons and persons exercising those rights, for the restitution of property and the making or recovery of payments where those rights are exercised.

(4) "Rules" means general rules of the FCA.

(5) "Specified" means specified in the rules.

137C FCA general rules: product intervention

(1) The power of the FCA to make general rules includes power to make such rules ("product intervention rules") prohibiting authorised persons from doing anything mentioned in subsection (2) as appear to it to be necessary or expedient for the purpose of advancing—

(a) the consumer protection objective or the efficiency and choice objective, or

(b) if the Treasury by order provide for this paragraph to apply, the integrity objective.

(2) Those prohibited things are—

(a) entering into specified agreements with any person or specified person;

(b) entering into specified agreements with any person or specified person unless requirements specified in the rules have been satisfied;

(c) doing anything that would or might result in the entering into of specified agreements by persons or specified persons, or the holding by them of a beneficial or other kind of economic interest in specified agreements;

(d) doing anything within paragraph (c) unless requirements specified in the rules have been satisfied.

(3) "Specified agreements" means agreements of a description specified in general rules made by the FCA.

(4) "Specified persons" means persons of a description specified in general rules made by the FCA.

(5) It is of no relevance—

(a) whether the entering into of a specified agreement itself constitutes the carrying on of a regulated activity, or

(b) whether, in a case within subsection (2)(c) or (d), the specified agreements are with the authorised persons concerned or anyone else.

(6) The requirements that may be specified under subsection (2)(b) or (d) include in particular—

(a) requirements as to the terms and conditions that are to be, or are not to be, included in specified or other agreements, and

(b) requirements limiting invitations or inducements to enter into specified or other agreements to those made to specified persons.

(7) In relation to contraventions of product intervention rules, the rules may—

(a) provide for a relevant agreement or obligation to be unenforceable against any person or specified person;

(b) provide for the recovery of any money or other property paid or transferred under a relevant agreement or obligation by any person or specified person;

(c) provide for the payment of compensation for any loss sustained by any person or specified person as a result of paying or transferring any money or other property under a relevant agreement or obligation.

(8) "A relevant agreement or obligation" means—

(a) a specified agreement;

(b) an agreement entered into in contravention of any rule made as a result of subsection (2)(c) or (d);

(c) an obligation to which a person is subject as a result of exercising a right conferred by an agreement within paragraph (a) or (b) of this subsection.

(9) The provision that may be made as a result of subsection (7) includes provision corresponding to that made by section 30 (enforceability of agreements resulting from unlawful communications).

(10) In this section—

(a) any reference to entering into an agreement includes inviting or inducing persons to enter into an agreement, and

(b) any reference to an agreement includes an arrangement.

137D Orders under s.137C(1)(b)

(1) An order under section 137C(1)(b)—

(a) must be laid before Parliament after being made, and

(b) ceases to have effect at the end of the relevant period unless before the end of that period it is approved by a resolution of each House of Parliament.

(2) If an order ceases to have effect as a result of subsection (1)(b) that does not affect—

(a) anything done under it, or

(b) the power to make a new one.

(3) "Relevant period" means a period of 28 days beginning with the day on which the order is made.

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

137E The PRA's general rules

(1) The PRA may make such rules applying to PRA-authorised persons—

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

(b) with respect to the carrying on by them of activities which are not regulated activities,

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

(2) Rules made under this section are referred to in this Act as the PRA's general rules.

(3) The PRA's general rules may contain requirements which take into account, in the case of a PRA-authorised person who is a member of a group, any activity of another member of the group.

(4) The PRA's general rules may not—

(a) make provision prohibiting an EEA firm from carrying on, or holding itself out as carrying on, any activity which it has permission conferred by Part 2 of Schedule 3 to carry on in the United Kingdom;

(b) make provision, as respects an EEA firm, about any matter for which responsibility is, under any of the single market directives, reserved to the firm's home state regulator.

137F General rules about remuneration

(1) This section applies where either regulator exercises its power to make general rules so as to make rules prohibiting persons, or persons of a specified description, from being remunerated in a specified way.

(2) The rules may—

(a) provide that any provision of an agreement that contravenes such a prohibition is void, and

(b) provide for the recovery of any payment made, or other property transferred, in pursuance of a provision that is void by virtue of paragraph (a).

(3) A provision that, at the time the rules are made, is contained in an agreement made before that time may not be rendered void under subsection (2)(a) unless it is subsequently amended so as to contravene a prohibition referred to in that subsection.

137G Remuneration policies: Treasury direction to consider compliance

(1) This section applies where either regulator exercises its power to make general rules so as to make rules requiring authorised persons, or authorised persons of a description specified in the rules, to act in accordance with a remuneration policy.

(2) A "remuneration policy" is a policy about the remuneration by an authorised person of—

(a) officers,

(b) employees, or

(c) other persons,

of a description specified in the rules.

(3) The Treasury may direct the regulator to consider whether the remuneration policies of authorised persons specified in the direction (or of authorised persons of a description so specified) comply with requirements imposed by rules made by that regulator as to the contents of the policies.

(4) Before giving a direction under subsection (3), the Treasury must consult the regulator concerned.

(5) If the regulator considers that a remuneration policy of an authorised person fails to make provision which complies with the requirements mentioned in subsection (3), the regulator must take such steps as it considers appropriate to deal with the failure.

(6) The steps that the regulator may take include requiring the remuneration policy to be revised.

(7) "Authorised person", in relation to the PRA, means PRA-authorised person.

137H Rules about recovery plans: duty to consult

(1) Before either regulator prepares a draft of any general rules that require each relevant person (or each relevant person of a specified description) to prepare a recovery plan, the regulator must consult—

(a) the Treasury, and

(b) the Bank of England.

(2) A "relevant person" is an authorised person in relation to whom any power under Part 1 of the Banking Act 2009 (special resolution regime) is exercisable.

(3) A "recovery plan" is a document containing information within subsection (4) or (5).

(4) Information is within this subsection if it relates to action to be taken to secure that, in the event of specified circumstances affecting the carrying on of the business (or any part of the business) of an authorised person—

(a) the business of the authorised person, or

(b) a specified part of that business,

is capable of being carried on (whether or not by the authorised person and whether or not in the same way as previously).

(5) Information is within this subsection if it would facilitate the carrying on of the business (or any part of the business) of an authorised person by any other person.

(6) In this section—

"authorised person", in relation to the PRA, means PRA-authorised person;

"specified" means specified in the rules.

137I PRA rules about resolution plans: duty to consult

(1) Before the PRA prepares a draft of any general rules that require each relevant person (or each relevant person of a specified description) to prepare a resolution plan, the PRA must consult—

(a) the Treasury, and

(b) the Bank of England.

(2) A "relevant person" is a PRA-authorised person in relation to whom any power under Part 1 of the Banking Act 2009 (special resolution regime) is exercisable.

(3) A "resolution plan" is a document containing information within subsection (4) or (5).

(4) Information is within this subsection if it relates to action to be taken in the event of—

(a) circumstances arising in which it is likely that the business (or any part of the business) of an authorised person will fail, or

(b) the failure of the business (or any part of the business) of an authorised person.

(5) Information is within this subsection if it would facilitate anything falling to be done by any person in consequence of that failure.

(6) An example of information within subsection (5) is information that, in the event of that failure, would facilitate—

(a) planning by the Treasury in relation to the possible exercise of any of its powers under Part 1 of the Banking Act 2009, or

(b) planning by the Bank of England in relation to the possible exercise of any of its powers under Part 1, 2 or 3 of that Act.

137J Interpretation of sections 137H and 137I

(1) This section has effect for the interpretation of sections 137H and 137I.

(2) References to the taking of action include the taking of action by—

(a) the authorised person,

(b) any other person in the same group as the authorised person, or

(c) a partnership of which the authorised person is a member.

(3) In subsection (2)(b) the definition of "group" in section 421 applies with the omission of subsection (1)(e) and (f) of that section.

(4) References to the business of an authorised person include the business of—

(a) any person in the same group as the authorised person, and

(b) a partnership of which the authorised person is a member.

(5) For the purposes of section 137I the cases in which the business (or any part of the business) of the authorised person is to be regarded as having failed include—

(a) the insolvency or bankruptcy of the authorised person,

(b) the authorised person entering into administration, and
(c) a power under Part 1 of the Banking Act 2009 being exercised in relation to the authorised person.

(6) In subsection (5)—
(a) "administration" includes administration under Part 3 of the Banking Act 2009, and
(b) "insolvency" includes insolvency under Part 2 of that Act.

137K Special provision relating to adequacy of resolution plans

(1) This section applies where the PRA has exercised its power to make general rules so as to make rules requiring PRA-authorised persons, or PRA-authorised persons of a specified description, to prepare a resolution plan.

(2) The PRA must consult the Treasury and the Bank of England ("the Bank") about the adequacy of resolution plans required to be prepared by those rules, so far as relating to any matter which may be relevant to the exercise by the Treasury or the Bank of any power under Part 1, 2 or 3 of the Banking Act 2009.

(3) After being consulted under subsection (2)—
(a) the Treasury or the Bank may notify the PRA that, in the opinion of the Treasury or the Bank, a resolution plan fails to make satisfactory provision in relation to any such matter, and
(b) if the Treasury or the Bank give a notification under paragraph (a), the Treasury or the Bank must give reasons for being of that opinion to the PRA.

(4) The PRA must have regard to any notification given under subsection (3)(a) before considering whether any resolution plan makes satisfactory provision in relation to any such matter.

(5) If—
(a) a notification is given under subsection (3)(a), but
(b) the PRA is nonetheless of the opinion that the resolution plan makes satisfactory provision in relation to any such matter,

the PRA must give reasons for being of that opinion to the person who gave the notification.

(6) In this section—
"resolution plan" has the same meaning as in section 137I;
"specified" means specified in the rules.

137L Recovery plans and resolution plans: restriction on duty of confidence

(1) A contractual or other requirement imposed on a person ("P") to keep information in confidence does not apply if—
(a) the information is or may be relevant to anything required to be done as a result of a requirement imposed by general rules made by either regulator to prepare a recovery plan or a resolution plan,
(b) an authorised person or a skilled person requests or requires P to provide the information for the purpose of securing that those things are done, and

(c) the regulator in question has approved the making of the request or the imposition of the requirement before it is made or imposed.

(2) An authorised person may provide information (whether received under subsection (1) or otherwise) that would otherwise be subject to a contractual or other requirement to keep it in confidence if it is provided for the purposes of anything required to be done as a result of a requirement imposed by general rules to prepare a recovery plan or a resolution plan.

(3) In this section, references to preparing a recovery plan or a resolution plan include—
(a) keeping that plan up to date, and
(b) collecting specified information for the purposes of that plan.

(4) In this section, references to a skilled person are to a person appointed, in accordance with a requirement imposed by either regulator, by an authorised person whom the regulator considers to have contravened a relevant requirement of rules made by that regulator.

(5) A person appointed under subsection (4) must be a person—
(a) nominated or approved by the regulator that made the rules imposing the relevant requirement, and
(b) appearing to that regulator to have the skills necessary to collect or update the information in question.

(6) In this section—
"authorised person", in relation to rules of the PRA, means a PRA-authorised person;
"relevant requirement" means a requirement to collect, and keep up to date, information of a specified description for the purposes of a recovery plan or a resolution plan;
"specified" means specified in the rules.

Specific rule-making powers

137M Control of information rules

(1) Either regulator may make rules ("control of information rules") about the disclosure and use of information held by an authorised person ("A").

(2) Control of information rules may—
(a) require the withholding of information which A would otherwise be required to disclose to a person ("B") for or with whom A does business in the course of carrying on any regulated or other activity;
(b) specify circumstances in which A may withhold information which A would otherwise be required to disclose to B;
(c) require A not to use for the benefit of B information—
(i) which is held by A, and
(ii) which A would otherwise be required to use for the benefit of B;

(d) specify circumstances in which A may decide not to use for the benefit of B information within paragraph (c).

137N Price stabilising rules

(1) The FCA may make rules ("price stabilising rules") as to—
(a) the circumstances and manner in which,
(b) the conditions subject to which, and
(c) the time when or the period during which,
action may be taken for the purpose of stabilising the price of investments of specified kinds.

(2) Price stabilising rules—
(a) are to be made so as to apply only to authorised persons;
(b) may make different provision in relation to different kinds of investment.

(3) The FCA may make rules which, for the purposes of section 397(5)(b), treat a person who acts or engages in conduct—
(a) for the purpose of stabilising the price of investments, and
(b) in conformity with such provisions corresponding to price stabilising rules and made by a body or authority outside the United Kingdom as may be specified in rules made by the FCA,
as acting, or engaging in that conduct, for that purpose and in conformity with price stabilising rules.

137O Financial promotion rules

(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, 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);
(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 requirements of—

(i) paragraphs 1 to 8 of Article 19 of the markets in financial instruments directive; or

(ii) any implementing measure made under paragraph 10 of that Article,

apply to the communication, and

(c) that the FCA considers that the rules are necessary to secure that the communication satisfies such of the requirements mentioned in paragraph (b) as the FCA considers apply to the communication.

(6) "Engage in investment activity" has the same meaning as in section 21.

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

137P 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

(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—

(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) it must give written notice to the authorised person, and

(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), 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.

(11) After the period for making representations in relation to a direction given under this section has ended, the FCA must 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.

Supplementary powers

137Q General supplementary powers

Rules made by either regulator—

(a) may make different provision for different cases and may, in particular, make different provision in respect of different descriptions of authorised persons, activity or investment, and

(b) may contain such incidental, supplemental, consequential and transitional provision as the regulator making the rule considers appropriate.

CHAPTER 2

RULES: MODIFICATION, WAIVER, CONTRAVENTION AND PROCEDURAL PROVISIONS

Modification or waiver of rules

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 rules made by the FCA under section 247 (trust scheme rules) or section 248 (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 result in undue risk to persons whose interests the rules are intended to protect.

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

(6) 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.

(7) "Direction" means a direction under this section.

138B Consultation in relation to directions under section 138A

(1) The PRA must consult the FCA before giving a direction under section 138A.

(2) After consulting the FCA under subsection (1), the PRA must notify the FCA in writing whether it has given the direction and of the reasons for its decision to give or not to give the direction.

(3) The FCA must consult the PRA before giving a direction under section 138A in a case where the direction relates to—

(a) a PRA-authorised person, or

(b) a person who has as a member of its immediate group a PRA-authorised person.

(4) Where the FCA has consulted the PRA under subsection (3), the FCA must notify the PRA in writing whether it has given the direction and of the reasons for its decision to give or not to give the direction.

(5) A notification under subsection (2) or (4) must be made as soon as reasonably practicable after the decision to which it relates is made.

138C 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 138E,

(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-authorised person, or

(b) an authorised person who has as a member of its immediate group a PRA-authorised 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.

Contravention of rules

138D Evidential provisions

(1) If a particular rule made by either regulator so provides, contravention of the rule does not give rise to any of the consequences provided for by other provisions of this Act.

(2) A rule made by a regulator which so provides must also provide—

(a) that contravention may be relied on as tending to establish contravention of such other rule made by that regulator as may be specified, or

(b) that compliance may be relied on as tending to establish compliance with such other rule made by that regulator as may be specified.

(3) A rule may include the provision mentioned in subsection (1) only if the regulator making the rule considers that it is appropriate for it also to include the provision required by subsection (2).

138E 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 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—
(a) Part 6 rules;
(b) rules under section 131B (short selling rules);
(c) a rule requiring an authorised person to have or maintain financial resources.

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

138F Limits on effect of contravening rules

(1) A person is not guilty of an offence by reason of a contravention of a rule made by either regulator.

(2) No such contravention makes any transaction void or unenforceable.

(3) Subsection (2) does not apply in relation to product intervention rules made by the FCA under section 137C.

Procedural provisions

138G Notification of rules

If either regulator makes, alters or revokes any rules, that regulator must without delay give written notice to the Treasury.

138H Rule-making instruments

(1) Any power conferred on either regulator to make rules is exercisable in writing.

(2) An instrument by which rules are made by either regulator ("a rule-making instrument") must specify the provision under which the rules are made.

(3) To the extent that a rule-making instrument does not comply with subsection (2), it is void.

(4) A rule-making instrument must be published by the regulator making the rule in the way appearing to that regulator to be best calculated to bring it to the attention of the public.

(5) The regulator making the rule may charge a reasonable fee for providing a person with a copy of a rule-making instrument.

(6) A person is not to be taken to have contravened any rule made by a regulator if the person shows that at the time of the alleged contravention the rule-making instrument concerned had not been made available in accordance with this section.

138I Verification of rules

(1) The production of a printed copy of a rule-making instrument purporting to be made by a regulator—

(a) on which is endorsed a certificate signed by a member of staff of that regulator who is authorised by the regulator for that purpose, and

(b) which contains the required statements,

is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.

(2) The required statements are—

(a) that the instrument was made by the FCA or the PRA (as the case may be),

(b) that the copy is a true copy of the instrument, and

(c) that on a specified date the instrument was made available to the public in accordance with section 138H(4).

(3) A certificate purporting to be signed as mentioned in subsection (1) is to be taken to be have been properly signed (unless the contrary is shown).

(4) A person who wishes in any legal proceedings to rely on a rule-making instrument may require the regulator that made the rule to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (1).

138J Consultation by the FCA

(1) Before making any rules, the FCA must—

(a) consult the PRA, and

(b) after doing so, publish a draft of the proposed rules in the way appearing to the FCA to be best calculated to bring them to the attention of the public.

(2) The draft must be accompanied by—

(a) a cost benefit analysis,

(b) an explanation of the purpose of the proposed rules,

(c) any statement prepared under section 138L(2),

(d) an explanation of the FCA's reasons for believing that making the proposed rules is compatible with section 1B(1), and

(e) notice that representations about the proposals may be made to the FCA within a specified time.

(3) Before making the proposed rules, the FCA must have regard to any representations made to it in accordance with subsection (2)(e).

(4) If the FCA makes the proposed rules, it must publish an account, in general terms, of—
(a) the representations made to it in accordance with subsection (2)(e), and
(b) its response to them.

(5) If the rules differ from the draft published under subsection (1)(b) in a way which is, in the opinion of the FCA, significant the FCA must publish—
(a) details of the difference (in addition to complying with subsection (4)) together with a cost benefit analysis, and
(b) any statement prepared under section 138L(4).

(6) The requirements to carry out a cost benefit analysis under this section do not apply in relation to rules made under—
(a) section 136(2);
(b) subsection (1) of section 213 as a result of subsection (4) of that section;
(c) section 234;
(d) paragraph 23 of Schedule 1ZA;
(e) paragraph 12 of Schedule 1A.

(7) "Cost benefit analysis" means—
(a) an analysis of the costs together with an analysis of the benefits that will arise—
(i) if the proposed rules are made, or
(ii) if subsection (5) applies, from the rules that have been made, and
(b) subject to subsection (8), an estimate of those costs and of those benefits.

(8) If, in the opinion of the FCA—
(a) the costs or benefits referred to in subsection (7) cannot reasonably be estimated, or
(b) it is not reasonably practicable to produce an estimate,
the cost benefit analysis need not estimate them, but must include a statement of the FCA's opinion and an explanation of it.

(9) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).

(10) Subsection (1)(a) does not apply to rules made by the FCA in relation to recognised investment exchanges under Part 18.

(11) This section is subject to section 138M.

138K Consultation by the PRA

(1) Before making any rules, the PRA must—
(a) consult the FCA, and

(b) after doing so, publish a draft of the proposed rules in the way appearing to the PRA to be best calculated to bring them to the attention of the public.

(2) The draft must be accompanied by—

(a) a cost benefit analysis,

(b) an explanation of the purpose of the proposed rules,

(c) any statement prepared under section 138L(2),

(d) an explanation of the PRA's reasons for believing that making the proposed rules is compatible with section 2B(1), and

(e) a notice that representations about the proposals may be made to the PRA within a specified time.

(3) Before making the proposed rules, the PRA must have regard to any representations made to it in accordance with subsection (2)(e).

(4) If the PRA makes the proposed rules, it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2)(e), and

(b) its response to them.

(5) If the rules differ from the draft published under subsection (1)(b) in a way which is, in the opinion of the PRA, significant the PRA must publish—

(a) details of the difference (in addition to complying with subsection (4)) together with a cost benefit analysis, and

(b) any statement prepared under section 138L(4).

(6) The requirements to carry out a cost benefit analysis under this section do not apply in relation to rules made under—

(a) section 136(2);

(b) subsection (1) of section 213 as a result of subsection (4) of that section;

(c) section 234;

(d) paragraph 31 of Schedule 1ZB;

(e) paragraph 12 of Schedule 1A.

(7) "Cost benefit analysis" means—

(a) an analysis of the costs together with an analysis of the benefits that will arise—

(i) if the proposed rules are made, or

(ii) if subsection (5) applies, from the rules that have been made, and

(b) subject to subsection (8), an estimate of those costs and of those benefits.

(8) If, in the opinion of the PRA—

(a) the costs or benefits referred to in subsection (7) cannot reasonably be estimated, or

(b) it is not reasonably practicable to produce an estimate,

the cost benefit analysis need not estimate them, but must include a statement of the PRA's opinion and an explanation of it.

(9) The PRA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).

(10) This section is subject to section 138M.

138L Consultation: mutual societies

(1) Subsection (2) applies where a regulator proposes to make a rule ("the proposed rule") which would apply both to—
  (a) authorised persons which are mutual societies, and
  (b) other authorised persons.

(2) The regulator must prepare a statement setting out—
  (a) its opinion whether or not the impact of the proposed rule on persons within subsection (1)(a) will be significantly different from its impact on persons within subsection (1)(b), and
  (b) if so, details of the difference.

(3) Subsection (4) applies where a regulator makes a rule which—
  (a) applies both to—
    (i) authorised persons which are mutual societies, and
    (ii) other authorised persons, and
  (b) differs from the draft of the proposed rule published under section 138J(1)(b) or section 138K(1)(b) (as the case may be).

(4) The regulator must prepare a statement setting out—
  (a) its opinion whether or not the impact of the rule is significantly different from the impact of the proposed rule on—
    (i) the persons within subsection (3)(a)(i), and
    (ii) those persons as compared with persons within subsection (3)(a)(ii), and
  (b) if so, details of the difference.

(5) A "mutual society" is—
  (a) a building society within the meaning of the Building Societies Act 1986;
  (b) a friendly society within the meaning of the Friendly Societies Act 1992;
  (c) a registered society within the meaning of the Co-operative and Community Benefit Societies and Credit Unions Act 1965;
  (d) an EEA mutual society.

(6) An "EEA mutual society" is—
  (a) a body which is a European Cooperative Society for the purposes of Council Regulation (EC) No 1435/2003 (statute for a European Cooperative Society);
  (b) a body which is established as a cooperative under the law of an EEA state as mentioned in that Regulation;
  (c) a body which is a cooperative or mutual undertaking of such description as the Treasury specify by order and which is established or operates in accordance with the laws of an EEA state.

138M Consultation: general exemptions

(1) Sections 138J(1)(b) and (2) to (5) and 138L do not apply in relation to rules made by the FCA if the FCA considers that the delay involved in complying with them would be prejudicial to the interests of consumers, as defined in section 425A.

(2) Sections 138K(1)(b) and (2) to (5) and 138L do not apply in relation to rules made by the PRA if the PRA considers that the delay involved in complying with them would—

(a) be prejudicial to the safety and soundness of PRA-authorised persons, or

(b) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policy holders.

(3) The exception in subsection (1) does not apply in relation to rules made by the FCA under section 131B (short selling rules).

(4) The provisions listed in subsection (5) do not apply if the regulator concerned considers that, making the appropriate comparison—

(a) there will be no increase in costs, or

(b) there will be an increase in costs but that increase will be of minimal significance.

(5) Those provisions are—

(a) subsections (2)(a) and (5)(a) of section 138J;

(b) subsections (2)(a) and (5)(a) of section 138K.

(6) The "appropriate comparison" means—

(a) in relation to section 138J(2)(a) or 138K(2)(a), a comparison between the overall position if the rules are made and the overall position if the rules are not made;

(b) in relation to section 138J(5)(a) or 138K(5)(a), a comparison between the overall position after the making of the rules and the overall position before they were made.

138N Consultation: exemptions for temporary product intervention rules

(1) Sections 138J(1)(b) and (2) to (5) and 138L do not apply in relation to product intervention rules made by the FCA if it considers that it is necessary or expedient not to comply with them for the purpose of advancing—

(a) the consumer protection objective or the efficiency and choice objective, or

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

(2) Any rules made as a result of subsection (1) ("temporary product intervention rules") are to cease to have effect at the end of the period specified in the rules.

(3) The longest period that may be specified is the period of 12 months beginning with the day on which the rules come into force.

(4) Nothing in subsection (2) prevents the FCA from revoking temporary product intervention rules before the end of the period mentioned there.

(5) If the FCA has made temporary product intervention rules ("the initial rules"), it may not make further temporary product intervention rules containing the same, or substantially the same, provision as that contained in the initial rules until the prohibited period has ended.

(6) "The prohibited period" means the period of one year beginning with the day on which the period mentioned in subsection (2) ends (whether or not the initial rules have been revoked before the end of the period mentioned there).

138O Temporary product intervention rules: statement of policy

(1) The FCA must prepare and issue a statement of its policy with respect to the making of temporary product intervention rules.

(2) The FCA may at any time alter or replace a statement issued under this section.

(3) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replaced statement.

(4) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(5) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(6) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

138P Statement of policy under section 138O: procedure

(1) Before issuing a statement under section 138O, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.

(3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).

(4) If the FCA issues the proposed statement it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2), and

(b) its response to them.

(5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.

CHAPTER 3

GUIDANCE

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 rules under section 131B (short selling rules) to which those persons are subject.

(5) Where this subsection applies, subsections (1), (2)(e) and (4) of section 138J (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.

(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 made 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 same meaning as in section 1C.

(9) "FCA-regulated person" means—

(a) an authorised person, or

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

139B Notification of FCA guidance to the Treasury

(1) On giving any general guidance, the FCA must give written notice to the Treasury without delay.

(2) If the FCA alters any of its guidance, it must give written notice to the Treasury without delay.

(3) The notice under subsection (2) must include details of the alteration.

(4) If the FCA revokes any of its general guidance, it must give written notice to the Treasury without delay.

(5) "General guidance" means guidance given by the FCA under section 139A which is—

(a) given to persons generally, to FCA-regulated persons generally or to a class of FCA regulated person,

(b) intended to have continuing effect, and

(c) given in writing or other legible form.

(6) "FCA-regulated person" has the same meaning as in section 139A.

CHAPTER 4

COMPETITION SCRUTINY

140A Interpretation

(1) In this Chapter—

"market in the United Kingdom" includes—

(a) so far as it operates in the United Kingdom or a part of the United Kingdom, any market which operates there and in another country or territory or in a part of another country or territory, and

(b) any market which operates only in a part of the United Kingdom;

"the OFT" means the Office of Fair Trading;

"practices", in relation to each regulator, means practices adopted by that regulator in the exercise of functions under this Act;

"regulating provisions" means—

(a) in relation to the FCA, any—

(i) rules of the FCA;

(ii) general guidance (as defined by section 139B(5));

(iii) statement issued by the FCA under section 64;

(iv) code issued by the FCA under section 64 or 119;

(b) in relation to the PRA, any—

(i) rules of the PRA;

(ii) statement issued by the PRA under section 64;

(iii) code issued by the PRA under section 64.

(2) In this Chapter each of the Competition Commission and the OFT is "a competition authority".

(3) For the purposes of this Chapter, any reference to a feature of a market in the United Kingdom for goods or services is to be read as a reference to—

(a) the structure of the market concerned or any aspect of that structure,

(b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned, or

(c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.

(4) In subsection (3) "conduct" includes any failure to act (whether or not intentional) and any other unintentional conduct.

140B Advice about effect of regulating provision or practice

(1) In this Chapter, any reference to the giving of "section 140B advice" to a regulator is to be read in accordance with this section.

(2) The OFT gives "section 140B advice" to a regulator if—

(a) it gives advice to the regulator under section 7 of the Enterprise Act 2002 (provision of competition advice to Ministers etc.), and

(b) the advice states that in the opinion of the OFT one or more of the things mentioned in subsection (4) may cause, or contribute to, the effect mentioned in subsection (5), or might be expected to do so in the future.

(3) The Competition Commission gives "section 140B advice" to a regulator if a report published by it under section 136 of the Enterprise Act 2002 (investigations and reports on market investigation reference) contains—

(a) a decision that one or more of the things mentioned in subsection (4) may cause, or contribute to, the effect mentioned in subsection (5), and

(b) a recommendation that any action should be taken by that regulator.

(4) Those things are—

(a) a regulating provision or practice of the regulator,

(b) two or more regulating provisions or practices (of that regulator or of both regulators) taken together,

(c) a particular combination of regulating provision or practices (of that regulator or of both regulators), or

(d) a feature, or combination of features, of a market in the United Kingdom that could be dealt with by regulating provision or practices (of that regulator or of both regulators).

(5) That effect is the prevention, restriction or distortion of competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

140C Consultation with regulator

Before giving section 140B advice, a competition authority must consult the regulator to which the advice is to be given.

140D Investigation powers of OFT

Where the OFT is deciding whether to exercise its power under section 7 of the Enterprise Act 2002 to give advice which, if given, would be section 140B advice, section 174 of that Act has effect as if—

(a) in subsection (1), for the words from "make a reference" to the end there were substituted "give advice which would for the purposes of Chapter 4 of Part 9A of the Financial Services and Markets Act 2000 be section 140B advice", and

(b) in subsection (2), for "make such a reference" there were substituted "give such advice".

140E Publication by OFT of section 140B advice

The OFT must publish in such manner as it thinks fit any section 140B advice given by it to either regulator.

140F Duty of Competition Commission to send report to regulator

(1) Where the publication of a report of the Competition Commission under section 142 of the Enterprise Act 2002 constitutes the giving of section 140B advice to either regulator, the Commission must give a copy of the report to that regulator.

(2) The day on which the copy is given is the day on which the regulator is to be taken to receive the section 140B advice.

140G Duty of regulator to publish response

(1) A regulator must, within 90 days after the day on which it receives section 140B advice, publish a response stating how it proposes to deal with the advice and in particular—

(a) whether it has decided to take any action, or to take no action, in response to the advice,

(b) if it has decided to take action, what action it proposes to take, and,

(c) its reasons for its proposals.

(2) Publication is to be in such manner as the regulator thinks fit.

140H Role of the Treasury

(1) This section applies where—

(a) a competition authority has given section 140B advice and the regulator has published a response under section 140G, and

(b) the competition authority remains of the opinion that one or more of the things mentioned in section 140B(4) may cause or contribute to, the effect mentioned in section 140B(5).

(2) The competition authority may refer the section 140B advice to the Treasury by sending the Treasury—

(a) a copy of the section 140B advice and of the response, and

(b) a request to consider the advice and the response.

(3) In referring the section 140B advice, the competition authority may give advice to the Treasury as to what action, if any, ought to be taken by the regulator.

(4) If section 140B advice is referred to them, the Treasury may give a direction to the regulator to which the advice was given requiring the regulator to take such action as may be specified in the direction.

(5) In considering whether to give a direction and, if so, what action to specify, the Treasury must have regard to—

(a) any advice the competition authority has given under subsection (3),

(b) any action which the section 140B advice suggests that the regulator should take, and

(c) the response of the regulator to the section 140B advice.

(6) The direction may not require the regulator to do anything that it has no power to do, but the existence of the direction is relevant to the exercise of any discretion conferred on the regulator.

(7) Before giving a direction under this section, the Treasury must consult the regulator to which it is to be given.

(8) If the Treasury give a direction under this section they must—

(a) publish in such manner as they think fit a statement giving details of the direction and of their reasons for giving it, and

(b) lay a copy of the statement before Parliament."

(2) In section 391 of FSMA 2000 (publication), after subsection (5) insert—

"(5A) Subsection (5) does not apply in relation to a notice given in accordance with section 137P(5) or (8)(a) (but see section 137P(11))."

(3) In section 395 of FSMA 2000 (procedures in relation to giving of supervisory notices etc), in subsection (13), after paragraph (bb) insert—

"(bba) section 137P(5) or (8)(a);".

(4) Omit Schedule 14 to FSMA 2000 (role of the Competition Commission).

22 Short selling rules

(1) In every provision of Part 8A of FSMA 2000 (short selling) for "Authority", in each place, substitute "FCA".

(2) In section 131D of FSMA 2000 (procedure in urgent cases)—

(a) in subsection (1)—

(i) for "section 155 (consultation in relation to proposed rules)" substitute "subsections (1)(b) and (2) to (5) of section 138J (public consultation in relation to proposed rules)", and

(ii) for paragraphs (a) and (b) substitute "advance one or more of its operational objectives.", and

(b) in subsection (4), for paragraphs (a) and (b) substitute "advance one or more of its operational objectives.".

Control over authorised persons

23 Control over authorised persons

(1) FSMA 2000 is amended as follows.

(2) In every provision of Part 12 (control over authorised persons), for "Authority", in each place (where not expressly amended by the following provisions), substitute "appropriate regulator".

(3) In section 178 (obligation to notify an acquisition of control), after subsection (2) insert—

"(2A) In this Part, "the appropriate regulator" means—

(a) where the UK authorised person is a PRA-authorised person, the PRA;
(b) in any other case, the FCA."

(4) In section 179 (requirements for section 178 notices) in subsection (2), for "The Authority" substitute "Each regulator".

(5) In section 187 (approval with conditions), for subsection (2) substitute—

"(2) The appropriate regulator may only impose conditions where—
(a) if it did not impose those conditions, it would propose to object to the acquisition, or
(b) it is required to do so by a direction under section 187A(3)(b) or section 187B(3)."

(6) After section 187 insert—

"187A Assessment: consultation by PRA with FCA

(1) The PRA must consult the FCA before acting under section 185.

(2) The FCA may make representations to the PRA in relation to any of the matters set out in sections 185(2) and 186.

(3) If the FCA considers that on the basis of the matters set out in section 186(f) there are reasonable grounds to object to the acquisition, the FCA may—
(a) direct the PRA to object to the acquisition, or
(b) direct the PRA not to approve the acquisition unless it does so subject to conditions specified in the direction (with or without other conditions).

(4) Before giving a direction under subsection (3), the FCA must notify the PRA of its proposal to do so.

(5) In order to comply with the obligation under subsection (1), the PRA must provide the FCA with—
(a) copies of—
(i) the section 178 notice, and
(ii) any document included with that notice,
(b) any further information provided pursuant to section 190, and
(c) any other information in the possession of the PRA which—
(i) in the opinion of the PRA, is relevant to the application, or
(ii) is reasonably requested by the FCA.

(6) If the PRA acts under section 185(1)(b), it must indicate to the section 178 notice-giver any representations or directions received from the FCA.

(7) Directions given by the FCA under this section are subject to any directions given to the FCA under section 3H.

187B Assessment: consultation by FCA with PRA

(1) The FCA must consult the PRA before acting under section 185 if—

(a) the UK authorised person to which the section 178 notice relates has as a member of its immediate group a PRA-authorised person, or

(b) the section 178 notice-giver is a PRA-authorised person.

(2) The PRA may make representations to the FCA in relation to any of the matters set out in sections 185(2) and 186.

(3) If the PRA considers that on the basis of relevant matters that there are reasonable grounds to object to the acquisition, the PRA may direct the FCA not to approve the acquisition unless it does so subject to conditions specified in the direction (with or without other conditions).

(4) In subsection (3) "relevant matters" means—

(a) the matters in paragraphs (d) and (e)(i) of section 186, and

(b) in a case falling within subsection (1)(b) of this section, also includes the matter in paragraph (c) of section 186.

(5) In order to comply with the obligation under subsection (1), the FCA must provide the PRA with—

(a) copies of—

(i) the section 178 notice, and

(ii) any document included with that notice,

(b) any further information provided pursuant to section 190, and

(c) any other information in the possession of the FCA which—

(i) in the opinion of the FCA, is relevant to the application, or

(ii) is reasonably requested by the PRA.

(6) If the FCA acts under section 185(1)(b), it must indicate to the section 178 notice-giver any representations or directions received from the PRA.

187C Variation etc of conditions

(1) Where the PRA has imposed conditions required by a direction given by the FCA under section 187A(3)—

(a) the FCA may direct the PRA to exercise its power under section 187(4) to vary or cancel any of those conditions;

(b) the PRA must consult the FCA before it exercises that power in relation to those conditions otherwise than in accordance with a direction under paragraph (a).

(2) Where the FCA has imposed conditions required by a direction given by the PRA under section 187B(3)—

(a) the PRA may direct the FCA to exercise its power under section 187(4) to vary or cancel any of those conditions;

(b) the FCA must consult the PRA before it exercises that power in relation to those conditions otherwise than in accordance with a direction under paragraph (a)."

(7) In section 191A (objection to control), after subsection (4) insert—

"(4A) Where the appropriate regulator is the PRA, it must consult the FCA before giving a warning notice under this section.

(4B) Where the appropriate regulator is the FCA, it must consult the PRA before giving a warning notice under this section if—

(a) the UK authorised person has as a member of its immediate group a PRA-authorised person, or

(b) the person to whom the warning notice is to be given is a PRA-authorised person."

(8) In section 191B (restriction notices), after subsection (2) insert—

"(2A) Where the appropriate regulator is the PRA, it must consult the FCA before giving a restriction notice under this section.

(2B) Where the appropriate regulator is the FCA, it must consult the PRA before giving a restriction notice under this section if—

(a) the UK authorised person has as a member of its immediate group a PRA-authorised person, or

(b) the person to whom the restriction notice is to be given is a PRA-authorised person."

(9) In section 191C (orders for the sale of shares), after subsection (2) insert—

"(2A) Where the appropriate regulator is the PRA, it must consult the FCA before making an application to court under this section.

(2B) Where the appropriate regulator is the FCA, it must consult the PRA before making an application to court under this section if—

(a) the UK authorised person has as a member of its immediate group a PRA-authorised person, or

(b) the person holding the shares or voting power is a PRA-authorised person."

(10) In section 191D (obligation to notify of disposition of control), after subsection (1) insert—

"(1A) The PRA must provide the FCA with a copy of any notice it receives under this section.

(1B) The FCA must provide the PRA with a copy of any notice it receives under this section which—

(a) relates to a UK authorised person who has as a member of its immediate group a PRA-authorised person, or

(b) is given by a PRA-authorised person."

(11) In section 191E (requirements for notices under section 191D) in subsection (2), for "The Authority" substitute "Each regulator".

24 Powers of regulators in relation to parent undertakings

(1) After section 192 of FSMA 2000 insert—

"PART 12A

POWER OF DIRECTION IN RELATION TO PARENT UNDERTAKINGS

192A Meaning of "qualifying authorised person"

(1) In this Part "qualifying authorised person" means an authorised person satisfying the following conditions.

(2) Condition A is that the authorised person is a body corporate incorporated in any part of the United Kingdom.

(3) Condition B is that the authorised person is—
  (a) a PRA-authorised person, or
  (b) an investment firm.

(4) The Treasury may by order—
  (a) amend subsection (3) so as to add to or restrict the descriptions of authorised person who can be qualifying authorised persons, or
  (b) provide that while the order is in force subsection (3) is not to have effect.

(5) Except as provided by subsection (6), an order under subsection (4) is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(6) An order under subsection (4) may be made without a draft having been laid and approved as mentioned in subsection (5) if the order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.

(7) An order under subsection (4) made in accordance with subsection (6)—
  (a) must be laid before Parliament after being made, and
  (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without affecting anything done under the order or the power to make a new order).

(8) The "relevant period" is a period of 28 days beginning with the day on which the order is made.

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

192B Power to direct parent undertaking of qualifying authorised person

(1) The appropriate regulator may give a direction under this section to a parent undertaking of a qualifying authorised person if the following conditions are satisfied.

(2) Condition A is that the parent undertaking is a body corporate incorporated in any part of the United Kingdom.

(3) Condition B is that the parent undertaking is not itself an authorised person.

(4) Condition C is that the parent undertaking is a financial institution of a kind prescribed by the Treasury by order.

(5) Condition D is that the appropriate regulator considers that the acts or omissions of the parent undertaking are having or may have a material adverse effect on the regulation by the regulator of one or more qualifying authorised persons in pursuance of the regulator's objectives.

(6) In deciding whether to give a direction under this section, a regulator must have regard—

(a) to the desirability where practicable of exercising its powers in relation to authorised persons rather than its powers under this section, and

(b) to the principle that a burden or restriction which is imposed on a person should be proportionate to the benefits, considered in general terms, which are expected to result from its imposition.

(7) "The appropriate regulator" means—

(a) where the qualifying authorised person mentioned in subsection (1) is a PRA-authorised person, the FCA or the PRA;

(b) in any other case, the FCA.

(8) The Treasury may by order—

(a) amend subsection (4) by omitting the words "a financial institution", and

(b) make any amendment of subsection (2) that they consider desirable in connection with an amendment made under paragraph (a).

192C Requirements that may be imposed

(1) A direction under section 192B may require the parent undertaking—

(a) to take specified action, or

(b) to refrain from taking specified action.

(2) A requirement may be imposed by reference to the parent undertaking's relationship with—

(a) its group, or

(b) other members of its group.

(3) A requirement may refer to the past conduct of the parent undertaking (for example, by requiring the parent undertaking to review or take remedial action in respect of past conduct).

(4) The direction must specify the period during which each requirement remains in force.

192D Direction: procedure

(1) If a regulator proposes to give a direction under section 192B, or gives such a direction with immediate effect, it must give written notice to—

(a) the parent undertaking to which the direction is given (or to be given) ("P"), and
(b) any authorised person who will, in the opinion of the regulator, be significantly affected by the direction.

(2) In the following provisions of this section "notified person" means a person to whom notice under subsection (1) is given.

(3) A direction under section 192B takes effect—
(a) immediately, if the notice under subsection (1) states that that is the case,
(b) on such other date as may be specified in the notice, or
(c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

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

(5) The notice under subsection (1) must—
(a) give details of the direction,
(b) state the regulator's reasons for the direction and for its determination as to when the direction takes effect,
(c) inform the notified person that the person may make representations to the regulator within such period as may be specified in the notice (whether or not the notified person has referred the matter to the Tribunal), and
(d) inform the notified person of the person'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 any notified person, the regulator decides—
(a) to give the direction proposed, or
(b) if the direction has been given, not to revoke the direction,
it must give each of the notified persons written notice.

(8) If, having considered any representations made by any notified person, the regulator decides—
(a) not to give the direction proposed,
(b) to give a different direction, or
(c) to revoke a direction which has effect,
it must give each of the notified persons written notice.

(9) A notice given under subsection (7) must inform the notified person of the person'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 the notified person of the person's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(12) For the purposes of subsection (3)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

192E Consultation between regulators

(1) Before the PRA gives a notice under section 192D(1) or (8)(b), it must consult the FCA.

(2) Before the FCA gives a notice under section 192D(1) or (8)(b) in relation to the parent undertaking of a PRA-authorised person, the FCA must consult the PRA.

192F References to Tribunal

(1) A notified person who is aggrieved by the exercise by either regulator of its powers in relation to directions under section 192B may refer the matter to the Tribunal.

(2) "Notified person" is to be read in accordance with subsection (2) of section 192D, except that it includes a person to whom a notice under subsection (1) of that section ought to have been given.

192G Enforcement

(1) The court may, on the application of the regulator which gave a direction under section 192B, order the person to whom the direction was given to comply with the direction.

(2) "The court" means—
(a) the High Court, or
(b) in Scotland, the Court of Session.

192H Statement of policy

(1) Each regulator must prepare and issue a statement of policy with respect to the giving of directions under section 192B.

(2) A regulator may at any time alter or replace a statement issued under this section.

(3) If a statement issued under this section is altered or replaced, the regulator must issue the altered or replacement statement.

(4) In exercising or deciding whether to exercise its power under section 192B in any particular case, a regulator must have regard to any statement published under this section and for the time being in force.

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

(6) A regulator may charge a reasonable fee for providing a person with a copy of a statement published under this section.

(7) A regulator must, without delay, give the Treasury a copy of any statement which the regulator publishes under this section.

192I Statement of policy: procedure

(1) Before issuing a statement of policy under section 192H, a regulator ("the issuing regulator") must—

(a) consult the other regulator, and
(b) publish a draft of the proposed statement in the way appearing to the issuing regulator to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the issuing regulator within a specified time.

(3) Before issuing the proposed statement, the issuing regulator must have regard to any representations made to it in accordance with subsection (2).

(4) If the issuing regulator issues the proposed statement it must publish an account, in general terms, of—
(a) the representations made to it in accordance with subsection (2), and
(b) its response to them.

(5) If the statement differs from the draft published under subsection (2) in a way which is, in the opinion of the issuing regulator, significant, the issuing regulator—
(a) must before issuing it consult the other regulator again, and
(b) must (in addition to complying with subsection (4)), publish details of the difference.

(6) The issuing regulator may charge a reasonable fee for providing a person with a draft published under subsection (1)(b).

(7) This section also applies to a proposal to alter or replace a statement."

Recognised investment exchanges and clearing houses

25 Powers exercisable in relation to recognised investment exchanges and clearing houses

(1) After section 285 of FSMA 2000 insert—

"285A Powers exercisable in relation to recognised investment exchanges and clearing houses

(1) For the purposes of this Part, the FCA is "the appropriate regulator" in relation to recognised investment exchanges.

(2) For the purposes of this Part, the Bank of England is "the appropriate regulator" in relation to recognised clearing houses.

(3) In Schedule 17A—
(a) Part 1 makes provision for a memorandum of understanding between the appropriate regulators and the PRA with respect to the exercise of their functions in relation to recognised investment exchanges and clearing houses;
(b) Part 2 applies certain provisions of this Act in relation to the Bank of England in consequence of the conferring of functions on the Bank under this Part of this Act; and
(c) Part 3 makes provision about fees."

(2) After Schedule 17 of FSMA 2000 insert the Schedule 17A set out in Schedule 6 to this Act.

(3) In section 285(2) of FSMA 2000 (exemption from general prohibition for recognised investment exchanges), omit paragraph (b) (which provides for the exemption in relation to the provision of clearing services by exchanges).

26 Recognition requirements: power of FCA and Bank to make rules

In section 286 of FSMA 2000 (qualification for recognition), after subsection (4E) insert—

"(4F) Regulations under subsection (1) may confer power on the appropriate regulator to make rules for the purposes of the regulations or of any specified provision made by the regulations."

27 Recognised bodies: procedure for giving directions under s.296 etc

(1) Section 298 of FSMA 2000 (directions under section 296 and revocation orders under section 297(2) or (2A): procedure) is amended as follows.

(2) In subsection (1), omit paragraphs (b) and (c) (requirements to bring notice to attention of members of the body and other persons).

(3) In subsection (3), omit paragraphs (b) and (c) (members of the body and other persons may make representations).

(4) For subsection (4) substitute—

"(4) The period for making representations is such period as is specified in the notice (which may, in any particular case, be extended by the appropriate regulator)."

(5) In subsection (6), omit paragraph (b) (notice of decision to members of the body and others) and the "and" before it.

(6) In subsection (7), for "considers it essential" substitute "reasonably considers it necessary".

28 Power to take disciplinary measures against recognised bodies

After section 312D of FSMA 2000 insert—

"CHAPTER 3B

DISCIPLINARY MEASURES

312E Public censure

(1) If the appropriate regulator considers that a recognised body has contravened a relevant requirement imposed on the body, it may publish a statement to that effect.

(2) Where the FCA is the appropriate regulator, a requirement is a "relevant requirement" for the purposes of this Chapter if it is—

(a) a requirement that is imposed by or under any provision of this Part that relates to a recognised investment exchange;

(b) a requirement that is imposed under any other provision of this Act by the FCA that relates to a recognised investment exchange;

(c) a requirement that is imposed by any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury; or

(d) a requirement that is imposed by this Act and whose contravention constitutes an offence that the FCA has power to prosecute under this Act (see section 401).

(3) Where the Bank of England is the appropriate regulator, a requirement is a "relevant requirement" for the purposes of this Chapter if it is—

(a) a requirement that is imposed by or under any provision of this Part that relates to a recognised clearing house;

(b) a requirement that is imposed under any other provision of this Act by the Bank;

(c) a requirement that is imposed by any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury; or

(d) a requirement that is imposed by this Act and whose contravention constitutes an offence that the Bank has power to prosecute under this Act (see section 401, as applied by paragraph 24 of Schedule 17A).

312F Financial penalties

If the appropriate regulator considers that a recognised body has contravened a relevant requirement imposed on the body, it may impose on the body a penalty, in respect of the contravention, of such amount as it considers appropriate.

312G Proposal to take disciplinary measures

(1) If the appropriate regulator proposes—

(a) to publish a statement in respect of a recognised body under section 312E, or

(b) to impose a penalty on a recognised body under section 312F,

it must give the body 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.

312H Decision notice

(1) If the appropriate regulator decides—

(a) to publish a statement in respect of a recognised body under section 312E (whether or not in the terms proposed), or

(b) to impose a penalty on a recognised body under section 312F (whether or not of the amount proposed),

it must give the body 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.

(4) If the appropriate regulator decides—
(a) to publish a statement in respect of a recognised body under section 312E, or
(b) to impose a penalty on a recognised body under section 312F,
the body may refer the matter to the Tribunal.

312I Publication

After an appropriate regulator publishes a statement under section 312E, it must send a copy of the statement to—
(a) the recognised body concerned; and
(b) any person to whom a copy of the decision notice was given under section 393(4).

312J Statement of policy

(1) Each appropriate regulator must prepare and issue a statement of its policy with respect to—
(a) the imposition of penalties under section 312F; and
(b) the amount of penalties under that section.

(2) An appropriate regulator's policy in determining what the amount of a penalty should be must include having regard to—
(a) the seriousness of the contravention in question in relation to the nature of the requirement concerned; and
(b) the extent to which that contravention was deliberate or reckless.

(3) An appropriate regulator may at any time alter or replace a statement issued by it under this section.

(4) If a statement issued by an appropriate regulator under this section is altered or replaced, the regulator must issue the altered or replaced statement.

(5) In exercising, or deciding whether to exercise, its power under section 312F in the case of any particular contravention, an appropriate regulator must have regard to any statement of policy published by it under this section and in force at a time when the contravention in question occurred.

(6) A statement issued by an appropriate regulator under this section must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(7) An appropriate regulator may charge a reasonable fee for providing a person with a copy of the statement.

(8) An appropriate regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

312K Statement of policy: procedure

(1) Before issuing a statement under section 312J, an appropriate regulator must publish a draft of the proposed statement in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the regulator within a specified time.

(3) Before issuing the proposed statement, the regulator must have regard to any representations made to it in accordance with subsection (2).

(4) If the regulator issues the proposed statement it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2); and

(b) its response to them.

(5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with subsection (4)) publish details of the difference.

(6) An appropriate regulator may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement."

29 Repeal of special competition regime

In Part 18 of FSMA 2000 (recognised investment exchanges and clearing houses)—

(a) omit Chapter 2 (competition scrutiny), and

(b) omit Chapter 3 (exclusion from the Competition Act 1998).

30 Sections 25 to 29: minor and consequential amendments

Schedule 7 contains—

(a) minor amendments of FSMA 2000 in connection with provision made by sections 25 to 29, and

(b) other amendments of that Act in consequence of that provision.

Suspension and removal of financial instruments from trading

31 Suspension and removal of financial instruments from trading

In every provision of Part 18A of FSMA 2000 (suspension and removal of financial instruments from trading)—

(a) for "Authority", in each place, substitute "FCA", and

(b) for "Authority's", in each place, substitute "FCA's".

Discipline and enforcement

32 Discipline and enforcement

Schedule 8 contains miscellaneous amendments of FSMA 2000 relating to discipline and enforcement.

Financial Services Compensation Scheme

33 The Financial Services Compensation Scheme

(1) Schedule 9 contains amendments of Part 15 of FSMA 2000 (the Financial Services Compensation Scheme).

(2) In section 224F(1) of that Act (power to require FSCS manager to act in relation to other schemes: rules about the schemes), for "Authority" substitute "regulators".

Financial ombudsman service

34 The financial ombudsman service

Schedule 10 contains amendments of FSMA 2000 relating to the financial ombudsman service.

Lloyd's

35 Lloyd's

(1) Part 19 of FSMA 2000 (Lloyd's) is amended as follows.

(2) In section 314 (Authority's general duty)—

(a) for subsection (1) substitute—

"(1) So far as it is appropriate to do so for the purpose of advancing one or more of its operational objectives, the FCA must keep itself informed about—

(a) the way in which the Council supervises and regulates the market at Lloyd's; and

(b) the way in which regulated activities are being carried on in that market.

(1A) So far as it is appropriate to do so for the purpose of advancing its general objective or (if section 2C applies) its insurance objective, the PRA must keep itself informed about—

(a) the way in which the Council supervises and regulates the market at Lloyd's; and

(b) the way in which any PRA-regulated activities are being carried on in that market.",

(b) in subsection (2), for "The Authority" substitute "Each regulator", and

(c) in the title, for "**Authority's**" substitute "**Regulators'**".

(3) After that section insert—

"314A The PRA's objectives in relation to Lloyd's etc

(1) This section modifies—

(a) the effect of sections 2B and 2C (the PRA's general objective and insurance objective), and

(b) the effect of section 3H (power of PRA to require FCA to refrain from specified action),

in relation to anything done, or proposed to be done, by the PRA under or for the purposes of this Part.

(2) This section applies only if PRA-authorised persons include—

(a) the Society; or

(b) other persons who carry on regulated activities in relation to anything done at Lloyd's.

(3) Section 2B(2) and (3) have effect as if references to PRA-authorised persons (or a PRA-authorised person) were references to the Society, and the members of the Society, taken together (and sections 2F and 2I(2) and (4) are to be read accordingly).

(4) Section 2C(1) has effect as if the reference to the discharge of the PRA's general functions so far as relating to the activity mentioned there were a reference to the discharge of its general functions so far as relating to the carrying on by the Society or other persons of regulated activities in relation to anything done at Lloyd's.

(5) Section 3H(3)(b) has effect as if the reference to a PRA-authorised person were a reference to the Society, and the members of the Society, taken together."

(4) For section 315 substitute—

"315 The Society: regulated activities

(1) This section applies if an activity carried on by the Society is of a kind specified in an order made under section 22 (regulated activities).

(2) The order may provide that the Society is not to be subject to any requirement of this Act concerning the registered office of a body corporate."

(5) In section 316 (direction by Authority)—

(a) in subsection (1), for "the Authority" substitute "a regulator",

(b) after that subsection insert—

"(1A) A direction under subsection (1)—

(a) may be given by the FCA only if it considers that giving the direction is necessary or expedient for the purpose of advancing one or more of its operational objectives; and

(b) may be given by the PRA only if it considers that giving the direction is necessary or expedient for the purpose of advancing its general objective or (if section 2C applies) the insurance objective.",

(c) in subsection (4), for "the Authority", in both places, substitute "the regulator concerned",

(d) in subsection (9)—
  (i) after "subsection (1)" insert "given by a regulator", and
  (ii) for "the Authority" substitute "the regulator",
(e) in subsection (10), for "The Authority" substitute "A regulator who gives a direction under subsection (1)",
(f) in subsection (11)—
  (i) for "The Authority" substitute "A regulator who gives a direction under subsection (1)", and
  (ii) for "any direction which it gives under this section" substitute "the direction", and
(g) in the title, for "**Authority**" substitute "**a regulator**".

(6) In section 318 (exercise of powers through Council)—
(a) in subsection (1), for "The Authority" substitute "A regulator",
(b) after subsection (3) insert—

"(3A) A direction under subsection (1)—
  (a) may be given by the FCA only if it considers that giving the direction is necessary or expedient for the purpose of advancing one or more of its operational objectives; and
  (b) may be given by the PRA only if it considers that giving the direction is necessary or expedient for the purpose of advancing its general objective or (if section 2C applies) the insurance objective.",

(c) in subsection (4)(b), for "the Authority" substitute "the regulator concerned",
(d) in subsection (6)(a), for "the Authority" substitute "a regulator",
(e) in subsection (7)—
  (i) after "subsection (1)" insert "given by a regulator", and
  (ii) for "the Authority" substitute "the regulator",
(f) in subsection (8), for "The Authority" substitute "A regulator who gives a direction under subsection (1)", and
(g) in subsection (9)—
  (i) for "The Authority" substitute "A regulator who gives a direction under subsection (1)", and
  (ii) for "any direction which it gives under this section" substitute "the direction".

(7) In section 319 (consultation)—
(a) for subsection (1) substitute—

"(1) Before a regulator gives a direction under section 316 or 318, it must—
  (a) consult the other regulator, and
  (b) after doing so, publish a draft of the proposed direction.",

(b) in subsection (2)(b), for "the Authority" substitute "the regulator",
(c) in subsection (3), for "giving the proposed direction, the Authority" substitute "a regulator gives the proposed direction, it",
(d) in subsections (4) and (5) (in both places), for "the Authority" substitute "the regulator",

(e) for subsection (6) substitute—

"(6) Subsections (1)(b) and (2) to (5) do not apply in relation to—

(a) a direction given by the FCA if it considers that the delay involved in complying with them would be prejudicial to the interests of consumers, as defined in section 425A; or

(b) a direction given by the PRA if it considers that the delay involved in complying with them would—

(i) be prejudicial to the safety and soundness of PRA-authorised persons, or

(ii) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policy holders.",

(f) in subsection (7), for "the Authority" substitute "the regulator concerned",

(g) in subsection (8)—

(i) for "The Authority" substitute "A regulator who publishes a draft under subsection (1)", and

(ii) for "a draft published under subsection (1)" substitute "the draft",

(h) in subsection (9), for "the Authority" substitute "a regulator", and

(i) for subsection (10) substitute—

"(10) "Cost benefit analysis" means—

(a) an analysis of the costs together with an analysis of the benefits that will arise—

(i) if the proposed direction is given; or

(ii) if subsection (5)(b) applies, from the direction that has been given; and

(b) subject to subsection (10A), an estimate of those costs and of those benefits.

(10A) If, in the opinion of the regulator concerned—

(a) the costs or benefits referred to in subsection (10) cannot reasonably be estimated, or

(b) it is not reasonably practicable to produce an estimate,

the cost benefit analysis need not estimate them, but must include a statement of the opinion of the regulator concerned and an explanation of it."

(8) In section 320 (former underwriting members)—

(a) in subsection (2), for "Part IV permission" substitute "Part 4A permission",

(b) in subsection (3), for "The Authority" substitute "The PRA", and

(c) at the end insert—

"(5) In the event that the activity of effecting or carrying out contracts of insurance as principal is not to any extent a PRA-regulated activity, the function conferred on the PRA by subsection (3) is exercisable instead by the FCA.

(6) Accordingly, in that case—

(a) references in section 321 to the PRA are to be read as references to the FCA, and
(b) the reference in section 321(13) to the FCA is to be read as a reference to the PRA."

(9) In section 321 (requirements imposed under section 320)—
(a) in subsection (2), for "the Authority" substitute "the PRA",
(b) in subsection (3)(b), for "the Authority's" substitute "the PRA's",
(c) in subsections (3)(c), (4) to (9) and (11), for "Authority" substitute "PRA", and
(d) after subsection (12) insert—

"(13) Before giving a notice under any provision of this section, the PRA must consult the FCA."

(10) In section 322 (rules applicable to former underwriting members)—
(a) in subsection (1), for "The Authority" substitute "The PRA",
(b) in subsection (4), for "Part X (except sections 152 to 154)" substitute "Part 9A (except sections 137Q, 138G, 138H and 138I)", and
(c) at the end insert—

"(5) In the event that the activity of effecting or carrying out contracts of insurance as principal is not to any extent a PRA-regulated activity, the function conferred on the PRA by subsection (1) is exercisable instead by the FCA."

Information

36 Information, investigations, disclosure etc.

Schedule 11 contains miscellaneous amendments of FSMA 2000, including amendments relating to information gathering, investigations and disclosure.

Competition

37 Power of FCA to make request to Office of Fair Trading

After section 354C of FSMA 2000 (as inserted by Schedule 11) insert—

"Power of FCA to make request to Office of Fair Trading

354D Power of FCA to make request to Office of Fair Trading

(1) The FCA may ask the Office of Fair Trading ("the OFT") to consider whether any feature, or combination of features, of a market in the United Kingdom for financial services may prevent, restrict or distort competition in connection with the supply or acquisition of any financial services in the United Kingdom or a part of the United Kingdom.

(2) The OFT must, within 90 days after the day on which it receives the request, publish a response stating how it proposes to deal with the request and in particular—

(a) whether it has decided to take any action, or to take no action, in response to the request, and
(b) if it has decided to take action, what action it proposes to take.

(3) The response must state the OFT's reasons for its proposals.

(4) The Treasury may by order amend subsection (2) by substituting any period for the period for the time being specified there.

(5) In this section—
(a) "market in the United Kingdom" has the meaning given in section 140A(1);
(b) the reference to a feature of a market in the United Kingdom for financial services has a meaning corresponding to that which a reference to a feature of a market in the United Kingdom for goods and services has (by virtue of section 140A(3)) for the purposes of Chapter 4 of Part 9A."

Miscellaneous amendments of FSMA 2000

38 Members of the professions

Schedule 12 contains miscellaneous amendments of FSMA 2000 relating to financial services provided by members of the professions.

39 International obligations

In section 410 of FSMA 2000 (international obligations), in subsection (4), for paragraphs (a) and (b) substitute—
"(a) the FCA;
(aa) the PRA;
(ab) the Bank of England when exercising functions conferred on it by Part 18;".

40 Interpretation of FSMA 2000

(1) In section 417 of FSMA 2000 (definitions), in subsection (1)—
(a) omit the definition of "the Authority";
(b) in the definition of "control of information rules" for "section 147(1)" substitute "section 137M";
(c) after the definition of "exempt person" insert—
""the FCA" means the Financial Conduct Authority;";
(d) in the definition of "financial promotion rules" for "section 145" substitute "section 137O";
(e) for the definition of "general rules" substitute—
""general rules"—
(a) in relation to the FCA, has the meaning given in section 137A(2), and
(b) in relation to the PRA, has the meaning given in section 137E(2);";
(f) omit the definition of "money laundering rules";

(g) for the definition of "Part IV permission" substitute—

""Part 4A permission" has the meaning given in section 55A(5);";

(h) after the definition of "partnership" insert—

""the PRA" means the Prudential Regulation Authority;

"PRA-authorised person" has the meaning given in section 2B(5);

"PRA-regulated activity" has the meaning given in section 22A;";

(i) in the definition of "price stabilising rules" for "section 144" substitute "section 137N";

(j) in the definition of "regulating provisions" for "section "159(1)" substitute "section 140A";

(k) after that definition insert—

""regulators" has the meaning given in section 3A(2);";

(l) omit the definition of "regulatory objectives";

(m) omit the definition of "regulatory provisions";

(n) for the definition of "rule" substitute—

""rule means a rule made by the FCA or the PRA under this Act;";

(o) in the definition of "rule-making instrument" for "section 153" substitute "section 138H";

(p) in the definition of "UK authorised person" for "section 178(4)" substitute "section 191G(1)";

(q) in the definition of "the UK financial system" for "section 3" substitute "section 2of 2B(6)".

(2) After section 421 of FSMA 2000 insert—

"421ZA Immediate group

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

(a) A;

(b) a parent undertaking of A;

(c) a subsidiary undertaking of A;

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

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

41 Parliamentary control of statutory instruments

(1) Section 429 of FSMA 2000 (Parliamentary control of statutory instruments) is amended as follows.

(2) In subsection (1) (orders subject to the affirmative resolution procedure)—

(a) in paragraph (a)—

(i) after "section" insert "1F, 3B(3)",

(ii) after "or (e)," insert "138L(6)(c), 192B(8), 204A(6), 213(1A),", and

(iii) after "236(5)," insert "380(11), 382(14), 384(12),", and

(b) omit paragraph (b) (together with the "or" before it).

(3) In subsection (8)—

(a) after "under section" insert "3G(1), 137C(1)(b),",

(b) after "165A(2)(d)" insert ", 192A(4)", and
(c) after "which" insert "section 22A(7) or".

PART 3

COLLABORATION BETWEEN TREASURY AND BANK OF ENGLAND, FCA OR PRA

42 Duty of Bank to notify Treasury of possible need for public funds

(1) Where it appears to the Bank of England—
(a) that there is a material risk of circumstances within any of the following cases arising, or
(b) that such circumstances have arisen but no previous notification under this section has been given,
the Bank must immediately notify the Treasury.

(2) The first case is where the Treasury or the Secretary of State might reasonably be expected to regard it as appropriate to provide financial assistance in respect of a financial institution.

(3) The second case is where—
(a) the Treasury, the Bank of England, the PRA or the Secretary of State might reasonably be expected to regard it as appropriate to exercise any of their respective powers under Parts 1 to 3 of the Banking Act 2009, and
(b) the Treasury might reasonably be expected to regard it as appropriate to incur expenditure in connection with the exercise of any of those powers (whether by the Treasury, the Bank or the Secretary of State).

(4) The third case is where the scheme manager of the Financial Services Compensation Scheme might reasonably be expected to request—
(a) a loan from the National Loans Fund under section 223B of that Act, or
(b) financial assistance from the Treasury,
for the purpose of funding expenses incurred or expected to be incurred under the Financial Services Compensation Scheme.

(5) The notification under subsection (1) must give a general indication of the matters giving rise to the notification.

(6) If there is a substantial change in the matters concerned, the Bank must give a further notification under subsection (1).

(7) A notification under subsection (1) must be given or confirmed in writing.

43 Memorandum of understanding: crisis management

(1) The Treasury (on the one hand) and the Bank of England and the PRA (on the other) must prepare and maintain a memorandum describing how they intend to co-ordinate the discharge of their respective relevant functions so far as they relate to—
(a) steps to be taken when the Bank has given a notification to the Treasury under section 42(1);
(b) such other matters as may be agreed between the Treasury and the Bank and the PRA, which must be matters that—

(i) relate to the stability of the UK financial system or the regulation of financial services, and
(ii) affect the public interest.

(2) The memorandum must, in particular, make provision about—
(a) what the Treasury and the Bank regard as a material risk for the purposes of section 42(1);
(b) the respective roles of the Treasury, the Bank and the PRA, in cases where the Bank has given the Treasury a notification under 42(1), in relation to the consideration and assessment of, and taking of, steps to resolve or reduce threats to the stability of the UK financial system;
(c) how the Treasury, the Bank and the PRA will co-operate in fulfilling those roles;
(d) the obtaining and sharing of information.

(3) The memorandum need not make provision about the relationship between the Bank and the PRA.

(4) The Treasury, the Bank of England and the PRA may, with the agreement of a body falling within subsection (5), include in the memorandum provisions relating to co-operation between any of them and that body in relation to matters falling within subsection (1)(a) or (b).

(5) The bodies falling within this subsection are—
(a) the FCA;
(b) the scheme manager of the Financial Services Compensation Scheme;
(c) any other body exercising functions that relate to the stability of the UK financial system or the regulation of financial services.

(6) The Treasury must—
(a) lay before Parliament a copy of the memorandum and any revised memorandum, and
(b) publish the memorandum as currently in force in such manner as they think fit.

44 Memorandum of understanding: international organisations

(1) The UK authorities must prepare and maintain a memorandum describing how they intend to co-ordinate the exercise of their relevant functions so far as they relate to membership of, or relations with, the European Supervisory Authorities, EU institutions and other international organisations.

(2) The "UK authorities" are the Treasury, the Bank of England, the FCA and the PRA.

(3) The "European Supervisory Authorities" are the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.

(4) The memorandum is to be made with a view to ensuring—
(a) that the UK authorities agree consistent objectives in relation to matters of common interest;
(b) that they exercise their relevant functions in a way that is likely to advance those objectives;

(c) that they exercise their relevant functions in a way that is consistent and effective.

(5) The memorandum must, in particular, make provision—

(a) stating, in relation to each of the UK authorities, those international organisations of which it is a member or in relation to which it has responsibility for representing the United Kingdom;

(b) about the procedures to be followed by the UK authorities in agreeing consistent objectives in relation to matters that materially affect 2 or more of them;

(c) about how the UK authorities will consult each other about the discharge of their functions relating to international organisations.

(6) The UK authorities may, with the agreement of a body exercising functions relating to the stability of the UK financial system or the regulation of financial services, include in the memorandum provisions relating to co-operation between any of them and that body in relation to relations with the European Supervisory Authorities, EU institutions and other international organisations.

(7) The Treasury must—

(a) lay before Parliament a copy of the memorandum and any revised memorandum, and

(b) publish the memorandum as currently in force in such manner as they think fit.

45 Interpretation of Part

(1) This section has effect for the interpretation of this Part.

(2) "Relevant function"—

(a) in relation to the FCA or the PRA, means any of its functions;

(b) in relation to the Bank of England, means any of its functions relating to the stability of the UK financial system or the regulation of financial services;

(c) in relation to the Treasury, means any of their functions relating to the matters mentioned in paragraph (b).

(3) "Financial assistance" includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent).

(4) The Treasury may by order provide that a specified activity or transaction, or class of activity or transaction, is to be or not to be treated as financial assistance for a specified purpose of this Part; and subsection (3) is subject to this subsection.

(5) An order—

(a) is to be made by statutory instrument, and

(b) is subject to annulment in pursuance of a resolution of either House of Parliament.

PART 4

INQUIRIES AND INVESTIGATIONS

Inquiries

46 Cases in which Treasury may arrange independent inquiries

(1) This section applies in two cases.

(2) The first case is where it appears to the Treasury that—

(a) events have occurred in relation to—

(i) a collective investment scheme,

(ii) a person who is, or was at the time of the events, carrying on a regulated activity (whether or not as an authorised person), or

(iii) listed securities or an issuer of listed securities,

which posed or could have posed a serious threat to the stability of the UK financial system or caused or risked causing significant damage to the interests of consumers, and

(b) those events might not have occurred, or the threat or damage might have been reduced, but for a serious failure in—

(i) the system established by FSMA 2000, or by any previous statutory provision, for the regulation of such schemes, or of such persons and their activities, or the listing of securities, or

(ii) the operation of that system.

(3) The second case is where it appears to the Treasury that—

(a) events have occurred in relation to a recognised clearing house or a recognised inter-bank payment system which—

(i) posed or could have posed a serious threat to the stability of or confidence in the UK financial system, or

(ii) had or could have had serious consequences for business or other interests throughout the United Kingdom, and

(b) those events might not have occurred, or the threat or consequences might have been reduced, but for a serious failure in—

(i) the system established by Part 18 of FSMA 2000, or by any previous statutory provision, for the regulation of clearing houses,

(ii) the system established by Part 5 of the Banking Act 2009 for the regulation of inter-bank payment systems, or

(iii) the operation of either of those systems.

(4) If the Treasury consider that it is in the public interest that there should be an independent inquiry into the events and the circumstances surrounding them, they may arrange for an inquiry to be held under section 47.

(5) In this section—

"event" does not include any event occurring before 1 December 2001 (but no such limitation applies to the reference in subsection (4) to surrounding circumstances);

"recognised inter-bank payment system" means an inter-bank payment system, as defined by section 182 of the Banking Act 2009, that is a recognised system for the purposes of Part 5 of that Act.

47 Power to appoint person to hold an inquiry

(1) If the Treasury decide to arrange for an inquiry to be held under this section, they may appoint such person as they consider appropriate to hold the inquiry.

(2) The Treasury may, by a direction to the appointed person, control—
(a) the scope of the inquiry;
(b) the period during which the inquiry is to be held;
(c) the conduct of the inquiry;
(d) the making of reports.

(3) A direction may, in particular—
(a) confine the inquiry to particular matters;
(b) extend the inquiry to additional matters;
(c) require the appointed person to discontinue the inquiry or to take only such steps as are specified in the direction;
(d) require the appointed person to make such interim reports as are so specified.

48 Powers of appointed person and procedure

(1) The person appointed to hold an inquiry under section 47 ("A") may—
(a) obtain such information from such persons and in such manner as A thinks fit,
(b) make such inquiries as A thinks fit, and
(c) determine the procedure to be followed in connection with the inquiry.

(2) A may require any person who, in A's opinion, is able to provide any information, or produce any document, which is relevant to the inquiry to provide any such information or produce any such document.

(3) For the purposes of an inquiry, A has the same powers as the court in respect of the attendance and examination of witnesses (including the examination of witnesses abroad) and in respect of the production of documents.

(4) "Court" means—
(a) the High Court, or
(b) in Scotland, the Court of Session.

49 Conclusion of inquiry

(1) On completion of an inquiry under section 47, the person holding the inquiry must make a written report to the Treasury—
(a) setting out the result of the inquiry, and
(b) making such recommendations (if any) as the person considers appropriate.

(2) Any expenses reasonably incurred in holding an inquiry under section 47 are to be met by the Treasury out of money provided by Parliament.

50 Obstruction and contempt

(1) If a person ("P")—

(a) fails to comply with a requirement imposed on P by a person holding an inquiry under section 47, or

(b) otherwise obstructs such an inquiry,

the person holding the inquiry may certify the matter to the High Court (or, in Scotland, the Court of Session).

(2) The court may enquire into the matter.

(3) If, after hearing—

(a) any witnesses who may be produced against or on behalf of P, and

(b) any statement made by or on behalf of P,

the court is satisfied that P would have been in contempt of court if the inquiry had been proceedings before the court, it may deal with P as if P were in contempt.

Investigations

51 Duty of FCA to investigate and report on possible regulatory failure

(1) Subsection (3) applies where it appears to the FCA that—

(a) events have occurred in relation to a regulated person or collective investment scheme which—

(i) indicated a significant failure to secure an appropriate degree of protection for consumers,

(ii) had or could have had a significant adverse effect on the integrity of the UK financial system, as defined by section 1D of FSMA 2000 (the integrity objective),

(iii) had or could have had a significant adverse effect on efficiency and choice in the market for the services mentioned in section 1E of FSMA 2000 (the efficiency and choice objective), or

(iv) caused or could have caused a significant restriction in competition in the provision of those services, and

(b) those events might not have occurred, or the extent of the failure, adverse effect, or restriction might have been less, but for a serious failure in—

(i) the system established by FSMA 2000 for the regulation of authorised persons and their activities, for the listing of securities or for the regulation of collective investment schemes, so far as it relates to the functions of the FCA, or

(ii) the operation of that system, so far as it relates to those functions.

(2) Subsection (3) also applies where the Treasury direct the FCA that they are of the opinion that the conditions in subsection (1) are met in relation to specified events.

(3) The FCA must carry out an investigation into the events and the circumstances surrounding them and report to the Treasury on the result of the investigation.

(4) Subsection (3) does not apply by virtue of subsection (1) if the Treasury direct the FCA that it is not required to carry out an investigation into the events concerned.

(5) "Regulated person" means—

(a) an authorised person,

(b) a recognised investment exchange,

(c) any other person lawfully carrying on a regulated activity,

(d) a person carrying on business in contravention of the general prohibition in section 19 of FSMA 2000, or

(e) an issuer of listed securities.

52 Duty of PRA to investigate and report on possible regulatory failure

(1) Subsection (4) applies where it appears to the PRA that—

(a) relevant public expenditure has been incurred in respect of a PRA-authorised person, and

(b) that expenditure might not have incurred but for a serious failure in—

(i) the system established by FSMA 2000 for the regulation of PRA-authorised persons and their activities, so far as it relates to the functions of the PRA, or

(ii) the operation of that system, so far as it relates to those functions.

(2) Subsection (4) also applies where it appears to the PRA that—

(a) events have occurred which—

(i) had or could have had a significant adverse effect on the safety or soundness of one or more other PRA-authorised persons, or

(ii) if the effecting and carrying out of contracts of insurance is a PRA-regulated activity for the purposes of FSMA 2000, related to a PRA-authorised person carrying on that activity and indicated a significant failure to secure an appropriate degree of protection for policyholders, and

(b) those events might not have occurred, or the extent of the adverse effect or failure might have been less, but for a serious failure in—

(i) the system established by FSMA 2000 for the regulation of PRA-authorised persons and their activities, so far as it relates to the functions of the PRA, or

(ii) the operation of that system, so far as it relates to those functions.

(3) Subsection (4) also applies where the Treasury direct the PRA that it appears to them—

(a) that the conditions in subsection (1)(a) and (b) are met in relation to a specified person, or

(b) that the conditions in subsection (2)(a) and (b) are met in relation to specified events.

(4) The PRA must—

(a) carry out an investigation into—

(i) the events that gave rise to the incurring of the public expenditure mentioned in subsection (1)(a) and the circumstances surrounding them, or

(ii) the events mentioned in subsection (2)(a) and the circumstances surrounding them, and

(b) report to the Treasury on the result of the investigation

(5) Subsection (4) does not apply by virtue of subsection (1) if the Treasury direct the PRA that it is not required to carry out an investigation into the events concerned.

53 Interpretation of section 52

(1) This section has effect for the interpretation of section 52.

(2) "PRA-authorised person" has the meaning given by section 2B(5) of FSMA 2000.

(3) "Policyholder" has the same meaning as in FSMA 2000.

(4) Relevant public expenditure has been incurred in respect of a PRA-authorised person ("P") in each of the following cases (but no others)—

(a) where the Treasury or the Secretary of State have provided financial assistance to or in respect of P for the purposes of resolving or reducing a threat to the stability of the UK financial system;

(b) where the Treasury have incurred expenditure in connection with the exercise by the Treasury, the Secretary of State or the Bank of England of any power under Parts 1 to 3 of the Banking Act 2009 in relation to P;

(c) where the scheme manager of the Financial Services Compensation Scheme has received a loan from the National Loans Fund, or financial assistance from the Treasury, for the purpose of funding expenses incurred or expected to be incurred under the Financial Services Compensation Scheme by reason of events relating to P.

(5) In subsection (4)(a) and (c) "financial assistance" includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent), but does not include the giving by the Treasury of an indemnity or guarantee in respect of the provision of financial assistance by the Bank of England.

(6) The Treasury may by order made by statutory instrument provide that a specified activity or transaction, or class of activity or transaction, is to be or is not to be treated as financial assistance for the purposes of subsection (4)(a) and (c), and subsection (5) is subject to this subsection.

(7) An order under subsection (6) is subject to annulment in pursuance of a resolution of either House of Parliament.

54 Power of Treasury to require FCA or PRA to undertake investigation

(1) If the Treasury considers that it is in the public interest that either regulator should undertake an investigation into any relevant events, it may give the regulator a direction specifying the relevant events and requiring the regulator to undertake an investigation into those events and the circumstances surrounding them and to report to the Treasury on the result of the investigation.

(2) "Relevant events" means events that have occurred in relation to—

(a) a collective investment scheme,

(b) a person who is, or was at the time of the events, carrying on a regulated activity (whether or not as an authorised person), or

(c) listed securities or an issuer of listed securities.

(3) "Relevant events" do not include any events occurring before 1 December 2001 (but no such limitation applies to the reference to surrounding circumstances).

55 Conduct of investigation

(1) Where a regulator is required by section 51 or 52 or under section 54 to carry out an investigation, it is for the regulator to decide how it is to be carried out, but this is subject to the following provisions.

(2) The Treasury may, by a direction to the regulator, control—

(a) the scope of the investigation;

(b) the period during which the investigation is to be carried out;

(c) the conduct of the investigation;

(d) the making of reports.

(3) A direction may, in particular—

(a) confine the investigation to particular matters;

(b) extend the investigation to additional matters;

(c) require the regulator to postpone the start of an investigation until a specified time or until a further direction;

(d) require the regulator to discontinue the investigation or to take only such steps as are specified in the direction;

(e) require the regulator to make such interim reports as are so specified.

56 Conclusion of investigation

On completion of an investigation required by section 51 or 52 or under section 54, the regulator must make a written report to the Treasury—

(a) setting out the result of the investigation,

(b) setting out the lessons (if any) that the regulator considers that it should learn from the investigation, and

(c) making such recommendations (if any) as the regulator considers appropriate.

Publication of reports

57 Publication of reports of inquiries and investigations

(1) This section applies where a report is made to the Treasury under section 49 or 56.

(2) Subject to subsection (3), the Treasury must publish the report in full.

(3) The Treasury may withhold material in the report from publication to such extent—

(a) as is required by any statutory provision, enforceable EU obligation or rule of law, or

(b) as the Treasury consider to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).

(4) Those matters are—

(a) the extent to which withholding material might inhibit the allaying of public concern;

(b) the risk of harm or damage that could be avoided or reduced by withholding any material;

(c) any conditions of confidentiality subject to which any person acquired information that was given to the inquiry or used in the investigation.

(5) In subsection (4)(b) "harm or damage" includes in particular—

(a) damage to national security or international relations;

(b) damage to the economic interests of the United Kingdom or a part of the United Kingdom;

(c) damage caused by disclosure of commercially sensitive information.

(6) The Treasury must lay before Parliament whatever is published under subsection (2).

(7) If the Treasury receive a report under section 49 or 56, but withhold all or part of the material in the report from publication, they must publish and lay before Parliament a statement of their reasons for not publishing the report in full.

(8) Publication under subsection (2) or (7) is to be in such manner as the Treasury think fit.

(9) References to a report under section 49 or 56 include references to an interim report required under section 47 or 55.

Supplementary

58 Interpretation and supplementary provision

(1) In this Part—

"authorised person" has the same meaning as in FSMA 2000;

"collective investment scheme" has the same meaning as in FSMA 2000;

"consumer" has the meaning given in section 1C of FSMA 2000;

"listed securities" means anything which has been admitted to the official list under Part 6 of FSMA 2000;

"recognised clearing house" has the same meaning as in FSMA 2000;

recognised investment exchange" has the same meaning as in FSMA 2000;

"regulated activity" has the same meaning as in FSMA 2000;

"regulator" means the FCA or the PRA.

(2) A direction by the Treasury under this Part must be given in writing.

PART 5

AMENDMENTS OF BANKING ACT 2009

Special resolution regime and bank administration

59 Private sector purchasers

(1) The Banking Act 2009 is amended as follows.

(2) After section 26 insert—

"26A Private sector purchaser: reverse share transfer

(1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 11(2) ("the original instrument") providing for the transfer of securities issued by a bank to a person ("the original transferee").

(2) The Bank of England may make one or more private sector reverse share transfer instruments in respect of securities issued by the bank and held by the original transferee.

(3) A private sector reverse share transfer instrument is a share transfer instrument which—

(a) provides for transfer to the transferor under the original instrument;

(b) makes other provision for the purposes of, or in connection with, the transfer of securities which are, could be or could have been transferred under paragraph (a).

(4) The Bank of England must not make a private sector reverse share transfer instrument without the written consent of the original transferee.

(5) Sections 7, 8 and 50 do not apply to a private sector reverse share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes including for the purposes of the application of a power under this Part).

(6) Before making a private sector reverse share transfer instrument the Bank of England must consult—

(a) the Prudential Regulation Authority, and

(b) the Treasury.

(7) Section 26 applies where the Bank of England has made a private sector reverse share transfer instrument."

(3) In section 29 (reverse share transfer)—

(a) in subsection (3) for the words from "securities", in the second place, to the end substitute "securities issued by the bank and held by a transferee under the onward share transfer order ("the onward transferee").", and

(b) after subsection (4) insert—

"(4A) The Treasury must not make a reverse share transfer order under subsection (3) unless—

(a) the onward transferee is—

(i) a company wholly owned by the Bank of England,

(ii) a company wholly owned by the Treasury, or

(iii) a nominee of the Treasury, or

(b) the reverse share transfer order is made with the written consent of the onward transferee."

(4) In section 31 (bridge bank: reverse share transfer)—

(a) in subsection (1) omit the words from "providing for" to the end,

(b) in subsection (2) for "person within subsection (1)(a) to (c)" substitute "transferee under the original instrument",

(c) after subsection (3) insert—

"(3A) The Bank of England must not make a bridge bank reverse share transfer instrument unless—

(a) the transferee under the original instrument is—

(i) a company wholly owned by the Bank of England,

(ii) a company wholly owned by the Treasury, or

(iii) a nominee of the Treasury, or

(b) the bridge bank reverse share transfer instrument is made with the written consent of the transferee under the original instrument."

(5) After section 42 insert—

"42A Private sector purchaser: reverse property transfer

(1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 11(2) ("the original instrument") providing for the transfer of property, rights or liabilities of a bank to a person ("the original transferee").

(2) The Bank of England may make one or more private sector reverse property transfer instruments in respect of property, rights or liabilities of the original transferee.

(3) A private sector reverse property transfer instrument is a property transfer instrument which—

(a) provides for transfer to the transferor under the original instrument;

(b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities that are, could be or could have been transferred under paragraph (a) (whether the transfer has been or is to be effected by that instrument or otherwise).

(4) The Bank of England must not make a private sector reverse property transfer instrument without the written consent of the original transferee.

(5) Sections 7, 8 and 50 do not apply to a private sector reverse property transfer instrument (but it is to be treated in the same way as any other property transfer instrument for all other purposes including for the purposes of the application of a power under this Part).

(6) Before making a private sector reverse property transfer instrument the Bank of England must consult—

(a) the Prudential Regulation Authority, and

(b) the Treasury.

(7) Section 42 applies where the Bank of England has made a private sector reverse property transfer instrument."

(6) In section 44 (reverse property transfer)—

(a) in subsection (3) for "of a transferee" to the end substitute "of a transferee under the onward property transfer instrument ("the onward transferee").",

(b) after subsection (4) insert—

"(4A) The Bank of England must not make a reverse property transfer instrument unless—

(a) the onward transferee is—

(i) a company wholly owned by the Bank of England,

(ii) a company wholly owned by the Treasury, or

(iii) a company wholly owned by a nominee of the Treasury, or

(b) the reverse property transfer instrument is made with the written consent of the onward transferee."

(7) In section 46 (temporary public ownership: reverse property transfer)—

(a) in subsection (1) omit from "providing for" to the end, and

(b) after subsection (3) insert—

"(3A) The Treasury must not make a reverse property transfer order unless—

(a) the transferee under the original order is—

(i) a company wholly owned by the Bank of England,

(ii) a company wholly owned by the Treasury, or

(iii) a nominee of the Treasury, or

(b) the reverse property transfer order is made with the written consent of the transferee under the original order."

(8) In section 48A (creation of liabilities), in subsection (1) after "42(3)(b)," insert "42A(3)(b),".

(9) In section 53 (onward and reverse transfers: compensation), in subsection (1)—

(a) before paragraph (a) insert—

"(za) the Bank of England makes a private sector reverse share transfer instrument under section 26A,",

(b) after paragraph (d) insert—

(da) the Bank of England makes a private sector reverse property transfer instrument under section 42A,".

(10) In the Table in section 261 (index of defined terms), after the entry relating to "partial property transfer", insert—

"Private sector reverse property transfer instrument	42A
Private sector reverse share transfer instrument	26A".

60 Property transfer instruments: property held on trust

(1) The Banking Act 2009 is amended as follows.

(2) In section 34(7) (effect of property transfer instruments: provision in respect of property held on trust), in paragraph (a) omit "(which provision may remove or alter the terms of the trust)".

(3) At the end of section 34 insert—

"(8) Provision under subsection (7)(a) may remove or alter the terms of the trust on which the property is held only to the extent that the Bank of England thinks it necessary or expedient for the purpose of transferring—

(a) the legal or beneficial interest of the transferor in the property;

(b) any powers, rights or obligations of the transferor in respect of the property.

(9) In subsection (8) references to the transferor are references to the transferor under the property transfer instrument."

(4) In section 45 (temporary public ownership: property transfer orders) after subsection (5) insert—

"(5A) In the application of section 34(8) by virtue of subsection (5)(b) above, the reference to the Bank of England is to be treated as a reference to the Treasury."

(5) In section 46 (temporary public ownership: reverse property transfer orders) after subsection (5) insert—

"(5A) In the application of section 34(8) by virtue of subsection (5)(b) above, the reference to the Bank of England is to be treated as a reference to the Treasury."

61 Reports following exercise of a stabilisation power

(1) After section 79 of the Banking Act 2009 insert—

"79A Private sector purchaser: report

(1) This section applies where the Bank of England sells all or part of a bank's business to a commercial purchaser.

(2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments and property transfer instruments under section 11(2).

(3) The report must comply with any requirements as to content specified by the Treasury.

(4) The report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer instrument made under section 11(2)."

(2) After section 81 of that Act insert—

"81A Accounting information to be included in reports under sections 80 and 81

(1) A report under section 80(1) or 81 must include accounting information in respect of the bank or bridge bank that is the subject of the report.

(2) In this section "accounting information" means—

(a) a balance sheet that, in the opinion of the person making the report, gives a true and fair view of the state of affairs of the bank or bridge bank as at the reporting date, and

(b) a profit and loss account that, in the opinion of the person making the report, gives a true and fair view of the profit or loss of the bank or bridge bank for the reporting period.

(3) In this section—

(a) "reporting period" means the period to which the report relates, and

(b) "reporting date" means the last day of the reporting period."

62 State aid

After section 145 of the Banking Act 2009 insert—

"145A Power to direct bank administrator

(1) This section applies where—

(a) a bank administration order has been made, and

(b) the Treasury are of the opinion that anything done, or proposed to be done, in connection with the exercise of one or more of the stabilisation powers may constitute the granting of aid to which any of the provisions of Article 107 or 108 of TFEU applies ("State aid").

(2) The Treasury may, in writing, direct the bank administrator to take specified action to enable the United Kingdom to fulfil any of the purposes specified in subsection (3).

(3) The purposes are—

(a) to inform the European Commission that State aid has been, may have been, or may be, given;

(b) to obtain a decision from the Commission whether State aid—

(i) has been given, or

(ii) would be given, if the action proposed was taken;

(c) to apply for approval that such aid is, or would be, compatible with the internal market, within the meaning of Article 107 of TFEU;

(d) to comply with any requirements to enable an investigation under Article 108 of TFEU to be carried out;

(e) to comply with any undertaking given to the European Commission in connection with the application for approval referred to in paragraph (c);

(f) to comply with any requests from the Commission relating to the application for approval, including the provision of information;

(g) to comply with any undertakings given to the Commission, or conditions imposed by the Commission, where approval has been given.

(4) Before giving a direction under this section the Treasury must consult the bank administrator.

(5) The bank administrator must comply with the direction within the period of time specified in the direction, or if no period of time is specified, as soon as reasonably practicable.

(6) A direction under this section is enforceable on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

(7) A direction may specify circumstances in which the bank administrator is immune from liability in damages.

(8) Immunity by virtue of subsection (7) does not extend to action—

(a) in bad faith, or

(b) in contravention of section 6(1) of the Human Rights Act 1998.

(9) If the United Kingdom has made, or proposes to make, an application to the Council of the European Union under Article 108 of the TFEU, references in subsection (3) to the Commission are to be read as including references to the Council.

(10) In this section "TFEU" means the Treaty on the Functioning of the European Union."

Inter-bank payment systems

63 Inter-bank payment systems

(1) Part 5 of the Banking Act 2009 (inter-bank payment systems) is amended as follows.

(2) After section 186 insert—

"186A Amendment of recognition order

(1) The Treasury may amend a recognition order.

(2) Before amending a recognition order the Treasury must—

(a) consult the Bank of England,

(b) notify the operator of the recognised inter-bank payment system, and

(c) consider any representations made.

(3) In addition, the Treasury—

(a) must consult the FCA before amending a recognition order in respect of a payment system the operator of which—

(i) is, or has applied to become, a recognised investment exchange, or

(ii) has, or has applied for, a Part 4A permission, and

(b) if the operator has, or has applied for, a Part 4A permission for the carrying on of a PRA-regulated activity, must also consult the PRA.

(4) The Treasury must consider any request by the operator of a recognised inter-bank payment system for the amendment of its recognition order."

(3) For section 191 substitute—

"191 Directions

(1) The Bank of England may give directions in writing to the operator of a recognised inter-bank system.

(2) A direction may—

(a) require or prohibit the taking of specified action in the operation of the system;

(b) set standards to be met in the operation of the system.

(3) If a direction is given for the purpose of resolving or reducing a threat to the stability of the UK financial system, the operator (including its officers and staff) has immunity from liability in damages in respect of action or inaction in accordance with the direction.

(4) An immunity does not extend to action or inaction—

(a) in bad faith, or

(b) in contravention of section 6(1) of the Human Rights Act 1998.

(5) A direction given for the purpose mentioned in subsection (3) must—

(a) include a statement that it is given for that purpose, and

(b) inform the recipient of the effect of that subsection."

(4) In section 183 (interpretation), for paragraph (e) (and the "and" before it) substitute—

"(e) "the FCA" means the Financial Conduct Authority,

(f) "Part 4A permission" has the meaning given by section 55A of the Financial Services and Markets Act 2000,

(g) "the PRA" means the Prudential Regulation Authority,

(h) "PRA-regulated activity" has the meaning given by section 22A of the Financial Services and Markets Act 2000, and

(i) "recognised investment exchange" has the meaning given by section 285 of that Act."

(5) In section 186 (procedure)—

(a) for subsection (2) substitute—

"(2) In addition, the Treasury—

(a) must consult the FCA before making a recognition order in respect of a payment system the operator of which—

(i) is, or has applied to become, a recognised investment exchange, or

(ii) has, or has applied for, a Part 4A permission, and

(b) if the operator has, or has applied for, a Part 4A permission for the carrying on of a PRA-regulated activity, must also consult the PRA.", and

(b) in subsection (3), for "or the FSA" substitute ", the FCA or the PRA".

(6) In section 187 (de-recognition), for subsection (4) substitute—

"(4) In addition, the Treasury—

(a) must consult the FCA before revoking a recognition order in respect of a payment system the operator of which—

(i) is, or has applied to become, a recognised investment exchange, or

(ii) has, or has applied for, a Part 4A permission, and

(b) if the operator has, or has applied for, a Part 4A permission for the carrying on of a PRA-regulated activity, must also consult the PRA."

(7) In section 192 (role of FSA)—

(a) in subsection (1), for "the FSA" substitute "the FCA or the PRA",

(b) for subsection (2) substitute—

"(2) The Bank of England—

(a) must consult the FCA before taking action under this Part in respect of a recognised inter-bank payment system the operator of which satisfies section 186(2)(a), and

(b) must also consult the PRA before taking action under this Part in respect of a recognised inter-bank payment system the operator of which satisfies section 186(2)(b).",

(c) in subsection (3)—

(i) for "the FSA", in the first place, substitute "the FCA or the PRA",

(ii) for "the FSA", in the second place, substitute "it",

(iii) for "section 186(2)" substitute "section 186(2)(a) or (b)", and

(iv) in paragraph (a), for "the FSA" substitute "the FCA or (as the case may be) the PRA", and

(d) in the heading, for "**FSA**" substitute "**FCA and PRA**".

(8) After section 202 insert—

"202A Injunctions

(1) If, on the application of the Bank of England, the court is satisfied—

(a) that there is a reasonable likelihood that there will be a compliance failure, or

(b) that there has been a compliance failure and there is a reasonable likelihood that it will continue or be repeated,

the court may make an order restraining the conduct constituting the failure.

(2) If, on the application of the Bank of England, the court is satisfied—

(a) that there has been a compliance failure by the operator of a recognised inter-bank payment system, and

(b) that there are steps which could be taken for remedying the failure,

the court may make an order requiring the operator, and anyone else who appears to have been knowingly concerned in the failure, to take such steps as the court may direct to remedy it.

(3) If, on the application of the Bank of England, the court is satisfied—

(a) that there may have been a compliance failure by the operator of a recognised inter-bank payment system, or

(b) that a person may have been knowingly concerned in a compliance failure,

the court may make an order restraining the operator or person from dealing with any assets which it is satisfied the operator or person is reasonably likely to deal with.

(4) The jurisdiction conferred by this section is exercisable—

(a) in England and Wales and Northern Ireland, by the High Court, and

(b) in Scotland, by the Court of Session.

(5) In this section—

(a) references to an order restraining anything are, in Scotland, to be read as references to an interdict prohibiting that thing,

(b) references to remedying a failure include mitigating its effect, and

(c) references to dealing with assets include disposing of them."

(9) In section 204 (information)—

(a) after subsection (1), insert—

"(1A) The Bank of England may by notice in writing require the operator of a recognised inter-bank payment system to provide information which the Bank requires in connection with the exercise of its functions (whether under this Part or otherwise) in pursuance of its financial stability objective.",

(b) in subsections (2) and (3), after "notice" insert "under subsection (1) or (1A)",

(c) in subsection (4), for paragraph (b) substitute—

"(b) the FCA;

(ba) the PRA;", and

(d) in paragraph (c) of that subsection, for "or the FSA" substitute ", the FCA or the PRA".

(10) In section 206A (services forming part of recognised inter-bank payment systems)—

(a) in subsection (4)(a), for "and the FSA" substitute ", the FCA and the PRA", and

(b) in subsection (6), for paragraph (b) (and the "and" at the and of it) substitute—

"(b) the FCA,

(ba) the PRA, and".

(11) In the table in section 259(3) (statutory instruments: Parliamentary procedure), omit the entry relating to section 191.

64 International obligations

In Part 5 of the Banking Act 2009, after section 206A insert—

"206B International obligations

(1) If it appears to the Treasury that any action proposed to be taken by the Bank of England in exercising its powers under this Part would be incompatible with EU obligations or any other international obligations of the United Kingdom, the Treasury may direct the Bank not to take that action.

(2) If it appears to the Treasury that any action which the Bank of England has power under this Part to take is required for the purpose of implementing any such obligation, the Treasury may direct the Bank to take that action.

(3) A direction under this section—

(a) may include such supplemental or incidental requirements as the Treasury consider necessary or expedient, and

(b) is enforceable on an application by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988."

Miscellaneous

65 Duty to collect information about financial stability

In section 250(1) of the Banking Act 2009 (information) for "Financial Services Authority" substitute "Prudential Regulation Authority".

PART 6

MISCELLANEOUS

Settlement systems

66 Evidencing and transfer of title to securities without written instrument

In section 785 of the Companies Act 2006 (provision enabling procedures for evidencing and transferring title), at the end insert—

"(7) The regulations may confer functions on any person, including—

(a) the function of giving guidance or issuing a code of practice in relation to any provision made by the regulations, and

(b) the function of making rules for the purposes of any provision made by the regulations.

(8) The regulations may, in prescribed cases, confer immunity from liability in damages."

PART 7

GENERAL

Interpretation

67 Interpretation

(1) In this Act "FSMA 2000" means the Financial Services and Markets Act 2000.

(2) In this Act—

"the FCA" means the Financial Conduct Authority;

"the PRA" means the Prudential Regulation Authority;

"the UK financial system" means the financial system of the United Kingdom.

Final provisions

68 Extent

This Act extends to England and Wales, Scotland and Northern Ireland.

69 Commencement

(1) The following provisions come into force on the day on which this Act is passed—

section 67;

section 68;

this section;

section 70.

(2) The other provisions of this Act come into force on such day as the Treasury may by order made by statutory instrument appoint.

(3) Different days may be appointed for different purposes.

70 Short title

This Act may be cited as the Financial Services Act 2012.

SCHEDULES

SCHEDULE 1

Section 3

BANK OF ENGLAND FINANCIAL POLICY COMMITTEE

PART 1

SCHEDULE TO BE INSERTED AS SCHEDULE 2A TO BANK OF ENGLAND ACT 1998

This is the Schedule to be inserted in the Bank of England Act 1998 after Schedule 2—

"SCHEDULE 2A

Section 9B

FINANCIAL POLICY COMMITTEE

Terms of office of appointed members

1 (1) Appointment under section 9B(1)(d) or (e) as a member of the Financial Policy Committee is to be for a period of 3 years, but this is subject to sub-paragraph (2) and to paragraph 3.

(2) Initially some appointments may be for shorter and different periods so as to secure that appointments expire at different times.

2 (1) A person may not be appointed as a member of the Committee under section 9B(1)(e) more than twice.

(2) For this purpose an appointment which by virtue of paragraph 1(2) is for a period of less than 3 years is to be disregarded

3 (1) If it appears to the Chancellor of the Exchequer that in the circumstances it is desirable to do so, the Chancellor may, before the end of term for which a person is appointed as a member of the Committee under section 9B(1)(e), extend the persons's term of office on one occasion for a specified period of not more than 6 months.

(2) The term being extended may be the person's first or second term or, in a case where paragraph 2(2) allows a third term, the person's third term.

(3) If a person whose first term of office is extended is subsequently re-appointed under section 9B(1)(e)—

(a) the length of the second term is to be reduced by a period equal to the extension of the first term, but

(b) the second term may itself subsequently be extended under sub-paragraph (1).

(4) In a case where a person's second term of office is extended and paragraph 2(2) allows a third term, sub-paragraph (3) is to be read as if the references to first and second terms were references to second and third terms respectively.

4 (1) A person appointed under section 9B(1)(d) or (e) may resign the office by written notice to the Bank.

(2) Where the notice relates to a person appointed under section 9B(1)(e), the Bank must give a copy of the notice to the Treasury.

5 (1) A person who holds office as a member of the Committee under section 9B(1)(e) is to be a servant of the Bank.

(2) The terms and conditions of service under sub-paragraph (1) are to be such as the Bank may determine.

(3) The function of determining terms and conditions of service under sub-paragraph (2) is to stand delegated to the sub-committee constituted by section 3.

Qualification for appointment

6 (1) The following persons are disqualified for appointment under section 9B(1)(d) or (e)—

(a) a Minister of the Crown;

(b) a person serving in a government department in employment in respect of which remuneration is paid out of money provided by Parliament.

(2) A member of the Monetary Policy Committee of the Bank appointed under section 13(2)(c) is disqualified for appointment under section 9B(1)(e).

Removal of appointed members

7 A person appointed under section 9B(1)(d) or (e) vacates office on becoming a person to whom paragraph 6(1)(a) or (b) applies.

8 A person appointed under section 9B(1)(d) vacates office on ceasing to have executive responsibility within the Bank for the analysis of threats to financial stability or, as the case may be, the analysis of markets or market operations.

9 (1) The Bank may, with the consent of the Chancellor of the Exchequer, remove a member appointed under section 9B(1)(d) or (e) ("M") if it is satisfied—

(a) that M has been absent from 3 or more meetings of the Committee without the Committee's consent,

(b) that M has become bankrupt, that M's estate has been sequestrated or that M has made an arrangement with or granted a trust deed for M's creditors, or

(c) that M is unable or unfit to discharge M's functions as a member.

(2) The Bank may, with the consent of the Chancellor of the Exchequer, also remove a member appointed under section

9B(1)(e) ("M") if it is satisfied that in all the circumstances M's financial or other interests are such as substantially to affect the functions as member which it would be proper for M to discharge.

(3) The function of removing a member under sub-paragraph (1) or (2) is to stand delegated to the sub-committee constituted by section 3.

Meetings

10 (1) The Committee shall meet at least 4 times in each calendar year.

(2) The Governor of the Bank (or in the Governor's absence the Bank's Deputy Governor for financial stability) may summon a meeting at any time on giving such notice as the person giving the notice thinks the circumstances require.

Proceedings

11 (1) At a meeting of the Committee, the proceedings are to be regulated as follows.

(2) The quorum is to be 7 (excluding the Treasury's representative) and of the 7—

(a) one must be the Governor of the Bank or the Bank's Deputy Governor for financial stability,

(b) unless both those mentioned in paragraph (a) are present, one must be either of the other Deputy Governors of the Bank, and

(c) one must be a member appointed under section 9B(1)(e).

(3) The chair is to be taken by the Governor of the Bank or, if the Governor is not present, the Bank's Deputy Governor for financial stability.

(4) The person chairing the meeting must seek to secure that decisions of the Committee are reached by consensus wherever possible.

(5) Where that person forms the opinion that consensus cannot be reached, a decision is to be taken by a vote of all those members present at the meeting.

(6) In the event of a tie, the person chairing the meeting is to have a second casting vote.

(7) At a meeting of the Committee—

(a) the Treasury's representative may not vote, and

(b) anything done by the Treasury's representative is to be disregarded in determining under sub-paragraph (4) or (5) whether there is a consensus.

(8) Subject to sub-paragraphs (2) to (7) and paragraph 14, the Committee is to determine its own procedure.

12 The Committee may, in relation to sub-paragraph (2), (3), (4) or (5) of paragraph 11, determine circumstances in which a member who is not present at, but is in communication with, a meeting is

to be treated for the purposes of that sub-paragraph as present at it.

13 The Committee may invite other persons to attend, or to attend and speak at, any meeting of the Committee.

14 If a member of the Committee ("M") has any direct or indirect interest (including any reasonably likely future interest) in any dealing or business which falls to be considered by the Committee—

(a) M must disclose that interest to the Committee when it considers the dealing or business, and

(b) the Committee must decide whether M is to be permitted to participate in any proceedings of the Committee relating to any question arising from its consideration of the dealing or business, and if so to what extent and subject to what conditions (if any).

PART 2

OTHER AMENDMENTS RELATING TO FINANCIAL POLICY COMMITTEE

Bank of England Act 1998 (c. 11)

1 In section 4 of the Bank of England Act 1998 (annual report by Bank), in subsection (2), for the "and" at the end of paragraph (a) substitute—

"(aa) a report by the court of directors on the activities of the Financial Policy Committee of the Bank, and".

2 In section 15 of the Bank of England Act 1998 (publication of minutes of meetings of Monetary Policy Committee) after subsection (4) insert—

"(4A) The Monetary Policy Committee shall exclude from minutes published under this section information which relates to proceedings of the Financial Policy Committee if the Monetary Policy Committee considers that publication of that information would be against the public interest."

3 In section 40 of the Bank of England Act 1998 (orders), after subsection (4) insert—

"(4A) Section 9L contains its own provisions about parliamentary procedure in relation to an order under section 9K."

4 In Schedule 1 to the Bank of England Act 1998 (court of directors), at the end of paragraph 5 insert—

"(3) Sub-paragraph (2) does not apply to a person who is a servant of the Bank merely because of being a member of the Financial Policy Committee appointed under section 9B(1)(e)."

House of Commons Disqualification Act 1975 (c. 24)

5 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975

(other disqualifying offices), at the appropriate place insert—

"Member of the Financial Policy Committee of the Bank of England appointed under section 9B(1)(d) or (e) of the Bank of England Act 1998."

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

6 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices), at the appropriate place insert—

"Member of the Financial Policy Committee of the Bank of England appointed under section 9B(1)(d) or (e) of the Bank of England Act 1998."

SCHEDULE 2

Section 4

FURTHER AMENDMENTS OF BANK OF ENGLAND ACT 1998

Court of directors

1 (1) Schedule 1 to the Bank of England Act 1998 (which makes further provision about the court of directors) is amended as follows.

(2) In paragraph 1, at the end of sub-paragraph (2) insert ", and for this purpose work in an office that an enactment requires to be held by the Governor or a Deputy Governor is to be taken to be work for the Bank".

(3) In paragraph 2, for the words from "3 years" to the end substitute "4 years, or such shorter period as may be specified in the appointment".

(4) Omit paragraph 3.

(5) In paragraph 8—

(a) the existing provision becomes sub-paragraph (1), and

(b) after that provision insert—

"(2) In relation to the Deputy Governor for prudential regulation, the reference in sub-paragraph (1)(c) to inability or unfitness to discharge functions as member of the court of directors is to be read as including a reference to inability or unfitness to discharge functions as Chief Executive of the Prudential Regulation Authority."

(6) Sub-paragraph (3) or (4) does not affect the term of any appointment made before the commencement of that sub-paragraph.

Monetary Policy Committee

2 (1) Schedule 3 to the Bank of England Act 1998 (Monetary Policy Committee) is amended as follows.

(2) In paragraph 1, for the words from "except that" to the end substitute "but this is subject to paragraph 2B".

(3) Omit paragraph 2.

(4) After paragraph 2A insert—

"2B (1) If it appears to the Chancellor of the Exchequer that in the circumstances it is desirable to do so, the Chancellor may, before the end of the 3 years for which a person is appointed as a member of the Committee under section 13(2)(c), extend the persons's term of office on one occasion for a specified period of not more than 6 months.

(2) The term being extended may be the person's first or second term.

(3) If a person whose first term of office is extended is subsequently re-appointed under section 13(2)(c)—

(a) the length of the second term is to be reduced by a period equal to the extension of the first term, but

(b) the second term may itself subsequently be extended under sub-paragraph (1)."

(5) In paragraph 3—

(a) the existing provision becomes sub-paragraph (1), and

(b) after that provision insert—

"(2) Where the notice relates to a person appointed under section 13(2)(c), the Bank must give a copy of the notice to the Treasury."

(6) After paragraph 5 insert—

"5A A member of the Financial Policy Committee of the Bank appointed under section 9B(1)(e) is disqualified for appointment under section 13(2)(c)."

(7) In paragraphs 10(2) and 11(3), leave out "with executive responsibility".

(8) Sub-paragraph (3) does not affect the term of any appointment made before the commencement of that sub-paragraph.

SCHEDULE 3

Section 5

FINANCIAL CONDUCT AUTHORITY AND PRUDENTIAL REGULATION AUTHORITY

PART 1

SCHEDULES TO BE SUBSTITUTED AS SCHEDULES 1ZA AND 1ZB TO FSMA 2000

These are the Schedules 1ZA and 1ZB to be substituted for Schedule 1 to

FSMA 2000 –

"SCHEDULE 1ZA Section 1A

THE FINANCIAL CONDUCT AUTHORITY

PART 1

GENERAL

Interpretation

1 (1) In this Schedule –

"the Bank" means the Bank of England;

"functions" means functions conferred on the FCA by or under any provision of this Act.

(2) For the purposes of this Schedule, the following are the FCA's legislative functions –

(a) making rules;

(b) issuing codes under section 64 or 119;

(c) issuing statements under section 63C, 64, 69, 88C, 89S, 93, 124, 131J, 138O, 192H, 210 or 312J;

(d) giving directions under section 316, 318 or 328;

(e) issuing general guidance (as defined in section 139B(5)).

Constitution

2 (1) The constitution of the FCA must provide for the FCA to have a governing body.

(2) The governing body must consist of –

(a) a chair appointed by the Treasury,

(b) a chief executive appointed by the Treasury,

(c) the Bank's Deputy Governor for prudential regulation,

(d) 2 members appointed jointly by the Secretary of State and the Treasury, and

(e) at least one other member appointed by the Treasury.

(3) The members referred to in sub-paragraph (2)(a), (c) and (d) are to be non-executive members.

(4) In exercising its powers under sub-paragraph (2)(e) to appoint executive or non-executive members, the Treasury must secure that the majority of members of the governing body are non-executive members.

(5) An employee of the FCA may not be appointed as a non-executive member.

(6) In the following provisions of this Schedule an "appointed member" means a member of the governing body appointed under sub-paragraph (2)(a), (b), (d) or (e).

3 (1) The terms of service of the appointed members are to be determined by the Treasury.

(2) In the case of a member appointed under paragraph 2(2)(d), the Treasury must consult the Secretary of State about the terms of service.

(3) Before appointing a person as an appointed member, the Treasury (or as the case requires the Treasury and the Secretary of State) must consider whether the person has any financial or other interests that could have a material effect on the extent of the functions as member that it would be proper for the person to discharge.

(4) The terms of service of an appointed member ("M") must be such as—

(a) to secure that M is not subject to direction by the Treasury or the Secretary of State,

(b) to require M not to act in accordance with the directions of any other person, and

(c) to prohibit M from acquiring any financial or other interests that have a material effect on the extent of the functions as member that it would be proper for M to discharge.

(5) If an appointed member is an employee of the FCA, the member's interest as employee is to be disregarded for the purposes of sub-paragraphs (3) and (4)(c) and paragraph 4(1)(b).

(6) A person who is an employee of the PRA is disqualified for appointment as an appointed member.

(7) The FCA may pay expenses to the Bank's Deputy Governor for prudential regulation in respect of that person's service as a member.

4 (1) The Treasury may remove an appointed member from office—

(a) on the grounds of incapacity or serious misconduct, or

(b) on the grounds that in all the circumstances the member's financial or other interests are such as to have a material effect on the extent of the functions as member that it would be proper for the person to discharge.

(2) Before removing from office a member appointed under paragraph 2(2)(d), the Treasury must consult the Secretary of State.

5 The validity of any act of the FCA is not affected—

(a) by any vacancy in the office of the Bank's Deputy Governor for prudential regulation,

(b) by a defect in the appointment of a person—

(i) to that office, or

(ii) as an appointed member.

6 The Bank's Deputy Governor for prudential regulation must not take part in any discussion by or decision of the FCA which relates to—

(a) the exercise of the FCA's functions in relation to a particular person, or

(b) a decision not to exercise those functions.

Remuneration

7 The FCA must pay to the appointed members such remuneration as may be determined—

(a) in the case of the non-executive members, by the Treasury;

(b) in the case of the executive members, by the FCA.

Arrangements for discharging functions

8 (1) The FCA may make arrangements for any of its functions to be discharged by a committee, sub-committee, officer or member of staff of the FCA, but subject to the following provisions.

(2) In exercising the legislative functions mentioned in paragraph 1(2)(a) to (d), the FCA must act through its governing body.

(3) The legislative function mentioned in paragraph 1(2)(e) may not be discharged by an officer or member of staff of the FCA.

Monitoring and enforcement

9 (1) The FCA must maintain arrangements designed to enable it to determine, in cases where it is the appropriate regulator for the purposes of Part 14 of this Act, whether persons on whom requirements are imposed—

(a) by or under this Act, or

(b) by any directly applicable EU regulation specified, or of a description specified, by the Treasury by order,

are complying with them.

(2) Those arrangements may provide for functions to be performed on behalf of the FCA by any body or person who, in its opinion, is competent to perform them.

(3) The FCA must also maintain arrangements for enforcing, in cases where it is the appropriate regulator for the purposes of Part 14 of this Act—

(a) the provisions of, or made under, this Act, and

(b) the provisions of any directly applicable EU regulation specified, or of a description specified, by the Treasury by order.

(4) Sub-paragraph (2) does not affect the FCA's duty under sub-paragraph (1).

Records

10 The FCA must maintain satisfactory arrangements for—

(a) recording decisions made in the exercise of its functions, and

(b) the safe-keeping of those records which it considers ought to be preserved.

Annual report

11 (1) At least once a year the FCA must make a report to the Treasury on—

(a) the discharge of its functions,

(b) the extent to which, in its opinion, its operational objectives have been advanced,

(c) the extent to which, in its opinion, it has acted compatibly with its strategic objective,

(d) how far its general functions have been exercised in a way which promotes competition,

(e) its consideration of the matter mentioned in section 1B(5)(b),

(f) its consideration of the principles in section 3B,

(g) how it has complied with section 3D,

(h) any direction received under section 3F during the period to which the report relates, and

(i) such other matters as the Treasury may from time to time direct.

(2) Sub-paragraph (1) does not require the inclusion in the report of any information whose publication would in the opinion of the FCA be against the public interest.

(3) The report must be accompanied by such other reports or information, prepared by such persons, as the Treasury may from time to time direct.

(4) The report must be accompanied by—

(a) a statement of the remuneration of the appointed members of the governing body of the FCA during the period to which the report relates, and

(b) such other reports or information, prepared by such persons, as the Treasury may from time to time direct.

(5) The Treasury must lay before Parliament a copy of each report received by them under this paragraph.

(6) The Treasury may—

(a) require the FCA to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or

(b) direct that any such provision of that Act is to apply to the FCA with such modifications as are specified in the direction.

(7) Compliance with any requirement under sub-paragraph (5)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.

(8) Proceedings under sub-paragraph (6) may be brought only by the Treasury.

Annual public meeting

12 (1) Not later than 3 months after making a report under paragraph 11, the FCA must hold a public meeting ("the annual meeting") for the purposes of enabling that report to be considered.

(2) The FCA must organise the annual meeting so as to allow—

(a) a general discussion of the contents of the report which is being considered, and

(b) a reasonable opportunity for those attending the meeting to put questions to the FCA about the way in which it discharged, or failed to discharge, its functions during the period to which the report relates.

(3) But otherwise the annual meeting is to be organised and conducted in such a way as the FCA considers appropriate.

(4) The FCA must give reasonable notice of its annual meeting.

(5) That notice must—

(a) give details of the time and place at which the meeting is to be held,

(b) set out the proposed agenda for the meeting,

(c) indicate the proposed duration of the meeting,

(d) give details of the FCA's arrangements for enabling persons to attend, and

(e) be published by the FCA in the way appearing to it to be best calculated to bring the notice to the attention of the public.

(6) If the FCA proposes to alter any of the arrangements which have been included in the notice given under sub-paragraph (5), it must—

(a) give reasonable notice of the alteration, and

(b) publish that notice in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

Report of annual meeting

13 Not later than one month after its annual meeting, the FCA must publish a report of the proceedings of the meeting.

Audit of accounts

14 (1) The FCA must send a copy of its annual accounts to the Comptroller and Auditor General as soon as is reasonably practicable.

(2) The Comptroller and Auditor General must—

(a) examine, certify and report to the Treasury on accounts received under this paragraph, and

(b) send a copy of the accounts and the report to the Treasury.

(3) The Treasury must lay the copy of the accounts and the report before Parliament.

(4) The expenses of the Comptroller and Auditor General under this paragraph are to be met by the FCA.

(5) Except as provided by paragraph 11(6), the FCA is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.

(6) In this paragraph "annual accounts" has the meaning given in section 471 of the Companies Act 2006.

PART 2

INVESTIGATION OF COMPLAINTS

Arrangements for the investigation of complaints

15 (1) The FCA must—

(a) make arrangements ("the complaints scheme") for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of its functions (other than its legislative functions); and

(b) appoint an independent person ("the investigator") to be responsible for the conduct of investigations in accordance with the complaints scheme.

(2) The complaints scheme must be designed so that, as far as reasonably practicable, complaints are investigated quickly.

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

(4) The terms and conditions on which the investigator is appointed must be such as, in the opinion of the FCA, are reasonably designed to secure—

(a) that the investigator will be free at all times to act independently of the FCA, and

(b) that complaints will be investigated under the complaints scheme without favouring the FCA.

Consultation in relation to, and publication of, complaints scheme

16 (1) Before making the complaints scheme, the FCA must publish a draft of the proposed scheme in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about it may be made to the FCA within a specified time.

(3) Before making the proposed complaints scheme, the FCA must have regard to any representations made to it in accordance with sub-paragraph (2).

(4) If the FCA makes the proposed complaints scheme, it must publish an account, in general terms, of—

(a) the representations made to it in accordance with sub-paragraph (2), and

(b) its response to them.

(5) If the complaints scheme differs from the draft published under sub-paragraph (1) in a way which is, in the opinion of the FCA, significant the FCA must (in addition to complying with sub-paragraph (4)) publish details of the difference.

(6) The FCA must publish up-to-date details of the complaints scheme including, in particular, details of—

(a) the provision made under paragraph 17(5), and

(b) the powers which the investigator has to investigate a complaint.

(7) Those details must be published in the way appearing to the FCA to be best calculated to bring them to the attention of the public.

(8) The FCA must notify the Treasury of the publication of details under sub-paragraph (6).

(9) The FCA may charge a reasonable fee for providing a person with a copy of—

(a) a draft published under sub-paragraph (1), or

(b) details published under sub-paragraph (6).

(10) Sub-paragraphs (1) to (5) and (9)(a) also apply to a proposal to alter or replace the complaints scheme.

Investigation of complaints

17 (1) The FCA is not obliged to investigate a complaint in accordance with the complaints scheme which it reasonably considers would be more appropriately dealt with in another way (for example by referring the matter to the Tribunal or by the institution of other legal proceedings).

(2) The complaints scheme must provide—

(a) for reference to the investigator of any complaint which the FCA is investigating, and

(b) for the investigator—

(i) to have the means to conduct a full investigation of the complaint,

(ii) to report to the FCA and the complainant on the result of the investigator's investigation, and

(iii) to be able to publish the investigator's report (or part of it) if the investigator considers that it (or the part) ought to be brought to the attention of the public.

(3) If the FCA has decided not to investigate a complaint, it must notify the investigator.

(4) If the investigator considers that a complaint of which the investigator has been notified under sub-paragraph (3) ought to be investigated, the investigator may proceed as if the complaint had been referred to the investigator under the complaints scheme.

(5) The complaints scheme must confer on the investigator the power to recommend, if the investigator thinks it appropriate, that the FCA takes either or both of the following steps—

(a) makes a compensatory payment to the complainant, or
(b) remedies the matter complained of.

(6) The complaints scheme must require the FCA, in a case where the investigator—
(a) has reported that a complaint is well-founded, or
(b) has criticised the FCA in a report,
to inform the investigator and the complainant of the steps which it proposes to take in response to the report.

(7) The investigator may require the FCA to publish the whole or a specified part of the response.

(8) The investigator may appoint a person to conduct the investigation on the investigator's behalf but subject to the investigator's direction.

(9) Neither an officer nor an employee of the FCA may be appointed under sub-paragraph (8).

(10) Sub-paragraph (2) is not to be taken as preventing the FCA from making arrangements for the initial investigation of a complaint to be conducted by the FCA.

PART 3

STATUS

Status

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

Exemption from requirement for use of "limited" in name of FCA

19 The FCA is to continue to be exempt from the requirements of the Companies Act 2006 relating to the use of "limited" as part of its name.

20 If the Secretary of State is satisfied that any action taken by the FCA makes it inappropriate for the exemption given by paragraph 19 to continue, the Secretary of State may, after consulting the Treasury, give a direction removing it.

PART 4

PENALTIES AND FEES

Penalties

21 (1) In determining its policy with respect to the amounts of penalties to be imposed by it under this Act, the FCA must take no account

of the expenses which it incurs, or expects to incur, in discharging its functions.

(2) The FCA must prepare and operate a scheme ("the financial penalty scheme") for ensuring that—

(a) the amounts paid to it by way of penalties imposed under this Act (other than Part 6 or 18) are applied for the benefit of authorised persons, and

(b) the amounts paid to it by way of penalties imposed under Part 6 of this Act are applied for the benefit of—

(i) issuers of securities admitted to the official list, and

(ii) issuers who have requested or approved the admission of financial instruments to trading on a regulated market.

(3) The financial penalty scheme may, in particular, make different provision with respect to different classes of authorised person or issuer.

(4) Up-to-date details of the financial penalty scheme must be set out in a document ("the scheme details").

22 (1) The scheme details must be published by the FCA in the way appearing to it to be best calculated to bring them to the attention of the public.

(2) Before making the financial penalty scheme, the FCA must publish a draft of the proposed scheme in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(3) The draft must be accompanied by notice that representations about the proposals may be made to the FCA within a specified time.

(4) Before making the scheme, the FCA must have regard to any representations made to it in accordance with sub-paragraph (3).

(5) If the FCA makes the proposed scheme, it must publish an account, in general terms, of—

(a) the representations made to it in accordance with sub-paragraph (3), and

(b) its response to them.

(6) If the scheme differs from the draft published under sub-paragraph (2) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with sub-paragraph (5)) publish details of the difference.

(7) The FCA must, without delay, give the Treasury a copy of any scheme details published by it.

(8) The FCA may charge a reasonable fee for providing a person with a copy of—

(a) a draft published under sub-paragraph (2);

(b) scheme details.

(9) Sub-paragraphs (2) to (6) and (8)(a) also apply to a proposal to alter or replace the financial penalty scheme.

Fees

23 (1) The FCA may make rules providing for the payment to it of such fees, in connection with the discharge of any of its functions under or as a result of this Act, as it considers will (taking account of its expected income from fees and charges provided for by any other provision of this Act) enable it—

(a) to meet expenses incurred in carrying out its functions or for any incidental purpose,

(b) to repay the principal of, and pay any interest on, any relevant borrowing and to meet relevant commencement expenses, and

(c) to maintain adequate reserves.

(2) In sub-paragraph (1)(b)—

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

"relevant commencement expenses" means expenses incurred by the FCA—

(a) in preparation for the exercise of functions by the FCA under this Act, or

(b) for the purpose of facilitating the exercise by the FCA of those functions or otherwise in connection with their exercise by it.

(3) For the purposes of sub-paragraph (2) it is irrelevant when the borrowing of the money, the incurring of the expenses or the assumption of functions took place (and, in particular, it is irrelevant if any of those things were done at a time when the FCA was known as the Financial Services Authority).

(4) In the case of rules made under Part 6 of this Act, the rules may, in particular, require the payment of fees in respect of—

(a) the continued inclusion of securities or persons in any list or register required to be kept by the FCA as a result of any provision made by or under that Part,

(b) access to any list or register within paragraph (a), and

(c) the continued admission of financial instruments to trading on a regulated market.

(5) In fixing the amount of any fee which is to be payable to the FCA, no account is to be taken of any sums which the FCA receives, or expects to receive, by way of penalties imposed by it under this Act.

(6) Any fee which is owed to the FCA under any provision made by or under this Act may be recovered as a debt due to the FCA.

Services for which fees may not be charged

24 The power conferred by paragraph 23 may not be used to require—

(a) a fee to be paid in respect of the discharge of any of the FCA's functions under paragraph 13, 14, 19 or 20 of Schedule 3, or

(b) a fee to be paid by any person whose application for approval under section 59 has been granted.

PART 5

MISCELLANEOUS

Exemption from liability in damages

25 (1) Neither the FCA nor any person who is, or is acting as, a member, officer or member of staff of the FCA is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the FCA's functions.

(2) Neither the investigator appointed under paragraph 15 nor a person appointed to conduct an investigation on the investigator's behalf under paragraph 17(8) is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of functions in relation to the investigation of a complaint.

(3) Neither sub-paragraph (1) nor sub-paragraph (2) applies—

(a) if the act or omission is shown to have been in bad faith, or

(b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

Accredited financial investigators

26 For the purposes of this Act anything done by an accredited financial investigator within the meaning of the Proceeds of Crime Act 2002 who is—

(a) a member of the staff of the FCA, or

(b) a person appointed by the FCA under section 97, 167 or 168 to conduct an investigation,

is to be treated as done in the exercise or discharge of a function of the FCA.

Amounts required by rules to be paid to the FCA

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

SCHEDULE 1ZB

Section 2A

THE PRUDENTIAL REGULATION AUTHORITY

PART 1

GENERAL

Interpretation

1 (1) In this Schedule—

"the Bank" means the Bank of England;

"functions", in relation to the PRA, means functions conferred on the PRA by or under any provision of this Act.

(2) For the purposes of this Schedule, the following are the PRA's legislative functions—

(a) making rules;

(b) issuing codes under section 64;

(c) issuing statements under section 63C, 64, 69, 192H or 210;

(d) giving directions under section 316, 318 or 328;

(e) issuing guidance under section 2H.

Constitution

2 The constitution of the PRA must provide—

(a) for the Governor of the Bank to be the chair of the PRA,

(b) for the Bank's Deputy Governor for prudential regulation to be the chief executive of the PRA, and

(c) for the PRA to have a governing body.

3 The governing body must include—

(a) the chair,

(b) the chief executive,

(c) the Bank's Deputy Governor for financial stability,

(d) the chief executive of the FCA, and

(e) other members (in this Schedule referred to as "appointed members").

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

(a) by any vacancy resulting from a vacancy in the office of Governor of the Bank, Deputy Governor of the Bank for prudential regulation, Deputy Governor of the Bank for financial stability, or chief executive of the FCA, or

(b) by a defect in the appointment of a person—

(i) to any of those offices, or

(ii) as an appointed member.

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

(a) the exercise of the PRA's functions in relation to a particular person, or

(b) a decision not to exercise those functions.

Appointed members of governing body

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

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

8 The Bank must secure that the majority of the members of the governing body of the PRA are non-executive members.

9 For the purposes of paragraph 8, and for the purposes of the principles to which section 3C requires the PRA to have regard, none of the following can be non-executive members—

(a) the members referred to in paragraph 3(a), (b) and (c), and

(b) a member who is an employee of the PRA or a servant of the Bank.

10 The Bank must have regard to generally accepted principles of good practice relating to the making of public appointments.

11 (1) Before appointing a person as an appointed member, the Bank must consider whether the person has any financial or other interests that could have a material effect on the extent of the functions as member that it would be proper for the person to discharge.

(2) The terms on which an appointed member ("M") is appointed must be such as—

(a) to secure that M is not subject to direction by the Bank,

(b) to require M not to act in accordance with the directions of any other person, and

(c) to prohibit M from acquiring any financial or other interests that have a material effect on the extent of the functions as member that it would be proper for M to discharge.

(3) If M is an employee of the PRA, M's interest as employee is to be disregarded for the purposes of sub-paragraphs (1) and (2)(c) and paragraph 14.

12 An employee of the FCA is disqualified for appointment as an appointed member.

13 The PRA must pay to the Bank the amount of any expenses incurred by the Bank in connection with the appointment of appointed members.

14 The Bank may, with the approval of the Treasury, remove an appointed member from office—

(a) on the grounds of incapacity or serious misconduct, or

(b) on the grounds that in all the circumstances the member's financial or other interests are such as to have a material effect on the extent of the functions as member that it would be proper for the person to discharge.

Terms of service

15 (1) The terms of service of the members of the governing body are to be determined by the Bank.

(2) The PRA must pay to the members of its governing body such remuneration as may be determined by the Bank.

(3) The functions of the Bank under sub-paragraphs (1) and (2) are to stand delegated to the sub-committee constituted by section 3 of the Bank of England Act 1998 (functions to be carried out by non-executive members).

Arrangements for discharging functions

16 (1) The PRA may make arrangements for any of its functions to be discharged by a committee, sub-committee, officer or member of staff of the PRA, but subject to the following provisions.

(2) In exercising its legislative functions, the PRA must act through its governing body.

Monitoring and enforcement

17 (1) The PRA must maintain arrangements designed to enable it to determine, in cases where it is the appropriate regulator for the purposes of Part 14 of this Act, whether persons on whom requirements are imposed—

(a) by or under this Act, or

(b) by any directly applicable EU regulation specified, or of a description specified, by the Treasury by order,

are complying with them.

(2) Those arrangements may provide for functions to be performed on behalf of the PRA by any body or person who, in its opinion, is competent to perform them.

(3) The PRA must also maintain arrangements for enforcing, in cases where it is the appropriate regulator for the purposes of Part 14 of this Act—

(a) the provisions of, or made under, this Act, and

(b) the provisions of any directly applicable EU regulation specified, or of a description specified, by the Treasury by order.

(4) Sub-paragraph (2) does not affect the PRA's duty under sub-paragraph (1).

Records

18 The PRA must maintain satisfactory arrangements for—

(a) recording decisions made in the exercise of its functions, and

(b) the safe-keeping of those records which it considers ought to be preserved.

Annual report

19 (1) At least once a year the PRA must make a report to the Treasury on—

(a) the discharge of its functions,

(b) the extent to which, in its opinion, its objectives have been advanced,

(c) its consideration of the principles in section 3B,

(d) how it has complied with section 3D,

(e) any direction given under section 3F during the period to which the report relates, and

(f) such other matters as the Treasury may from time to time direct.

(2) Sub-paragraph (1) does not require the inclusion in the report of any information whose publication would in the opinion of the PRA be against the public interest.

(3) The report must be accompanied by—

(a) a statement of the remuneration of the members of the governing body of the PRA during the period to which the report relates, and

(b) such other reports or information, prepared by such persons, as the Treasury may from time to time direct.

(4) The Treasury must lay before Parliament a copy of each report received by them under this paragraph.

(5) The Treasury may—

(a) require the PRA to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or

(b) direct that any such provision of that Act is to apply to the PRA with such modifications as are specified in the direction.

(6) Compliance with any requirement under sub-paragraph (5)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.

(7) Proceedings under sub-paragraph (6) may be brought only by the Treasury.

Consultation about annual report

20 (1) In relation to each report made under paragraph 19, the PRA must publish at the same time as the report an invitation to members of the public to make representations to the PRA, within the 3 months beginning with the date of publication—

(a) about the report,

(b) about the way in which the PRA has discharged, or failed to discharge, its functions during the period to which the report relates, and

(c) about the extent to which, in their opinion, the PRA's objectives have been advanced and the PRA has considered the regulatory principles in section 3B.

(2) The invitation must be published in the way appearing to it to be best calculated to bring the invitation to the attention of the public.

Report on consultation

21 (1) The PRA must publish a report about its consultation in accordance with paragraph 20.

(2) The report must contain an account, in general terms, of any representations received in pursuance of the invitation published under that paragraph.

(3) The report must be published not later than 4 months after the date on which the report under paragraph 19 was published.

Audit of accounts

22 (1) The PRA must send a copy of its annual accounts to the Comptroller and Auditor General as soon as is reasonably practicable.

(2) The Comptroller and Auditor General must—

(a) examine, certify and report on accounts received under this paragraph, and

(b) send a copy of the accounts and the report to the Treasury.

(3) The Treasury must lay a copy of the accounts and the report before Parliament.

(4) The PRA must send a copy of the accounts and the report to the Bank.

(5) The expenses of the Comptroller and Auditor General under this paragraph are to be met by the PRA.

(6) Except as provided by paragraph 19(5), the PRA is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.

(7) In this paragraph "annual accounts" has the meaning given in section 471 of the Companies Act 2006.

PART 2

INVESTIGATION OF COMPLAINTS

Arrangements for the investigation of complaints

23 (1) The PRA must make arrangements ("the complaints scheme") for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of its functions (other than its legislative functions).

(2) The complaints scheme must be designed so that, as far as reasonably practicable, complaints are investigated quickly.

(3) The complaints scheme requires the approval of the Bank.

(4) The Bank must appoint an independent person ("the investigator") to be responsible for the conduct of investigations in accordance with the complaints scheme.

(5) The terms and conditions on which the investigator is appointed must be such as, in the opinion of the Bank, are reasonably designed to secure—

(a) that the investigator will be free at all times to act independently of the PRA, and

(b) that complaints will be investigated under the complaints scheme without favouring the PRA.

Publication of complaints scheme

24 (1) The PRA must publish up-to-date details of the complaints scheme including, in particular, details of—

(a) the provision made under paragraph 25(5), and

(b) the powers which the investigator has to investigate a complaint.

(2) Those details must be published in the way appearing to the PRA to be best calculated to bring them to the attention of the public.

(3) The PRA must notify the Treasury and the Bank of the publication of details under this paragraph.

(4) The PRA may charge a reasonable fee for providing a person with a copy of details published under this paragraph.

Investigation of complaints

25 (1) The PRA is not obliged to investigate a complaint in accordance with the complaints scheme which it reasonably considers would be more appropriately dealt with in another way (for example by referring the matter to the Tribunal or by the institution of other legal proceedings).

(2) The complaints scheme must provide—

(a) for reference to the investigator of any complaint which the PRA is investigating, and

(b) for the investigator—

(i) to have the means to conduct a full investigation of the complaint,

(ii) to report to the PRA, the Bank and the complainant on the result of the investigator's investigation, and

(iii) to be able to publish the investigator's report (or part of it) if the investigator considers that it (or the part) ought to be brought to the attention of the public.

(3) If the PRA has decided not to investigate a complaint, it must notify the investigator.

(4) If the investigator considers that a complaint of which the investigator has been notified under sub-paragraph (3) ought to be investigated, the investigator may proceed as if the complaint had been referred to the investigator under the complaints scheme.

(5) The complaints scheme must confer on the investigator the power to recommend, if the investigator thinks it appropriate, that the PRA takes either or both of the following steps—

(a) makes a compensatory payment to the complainant, or

(b) remedies the matter complained of.

(6) The complaints scheme must require the PRA, in a case where the investigator—

(a) has reported that a complaint is well-founded, or

(b) has criticised the PRA in a report,

to inform the investigator and the complainant of the steps which it proposes to take in response to the report.

(7) The investigator may require the PRA to publish the whole or a specified part of the response.

(8) The investigator may appoint a person to conduct the investigation on the investigator's behalf but subject to the investigator's direction.

(9) None of the following may be appointed under sub-paragraph (8)—

(a) an officer or employee of the PRA or the FCA;

(b) a servant of the Bank.

(10) Sub-paragraph (2) is not to be taken as preventing the PRA from making arrangements for the initial investigation of a complaint to be conducted by the PRA.

PART 3

STATUS

Status

26 In relation to any of its functions—

(a) the PRA is not to be regarded as acting on behalf of the Crown, and

(b) its members, officers and staff are not to be regarded as Crown servants.

Exemption from requirement for use of "limited" in name of PRA

27 The PRA is to be exempt from the requirements of the Companies Act 2006 relating to the use of "limited" as part of its name.

28 If the Secretary of State is satisfied that any action taken by the PRA makes it inappropriate for the exemption given by paragraph

27 to continue, the Secretary of State may, after consulting the Treasury, give a direction removing it.

PART 4

PENALTIES AND FEES

Penalties

29 (1) In determining its policy with respect to the amounts of penalties to be imposed by it under this Act, the PRA must take no account of the expenses which it incurs, or expects to incur, in discharging its functions.

(2) The PRA must prepare and operate a scheme ("the financial penalty scheme") for ensuring that the amounts paid to the PRA by way of penalties imposed under this Act are applied for the benefit of authorised persons.

(3) The financial penalty scheme may, in particular, make different provision with respect to different classes of authorised person.

(4) Up-to-date details of the financial penalty scheme must be set out in a document ("the scheme details").

30 (1) The scheme details must be published by the PRA in the way appearing to it to be best calculated to bring them to the attention of the public.

(2) Before making the financial penalty scheme, the PRA must publish a draft of the proposed scheme in the way appearing to the PRA to be best calculated to bring it to the attention of the public.

(3) The draft must be accompanied by notice that representations about the proposals may be made to the PRA within a specified time.

(4) Before making the scheme, the PRA must have regard to any representations made to it in accordance with sub-paragraph (3).

(5) If the PRA makes the proposed scheme, it must publish an account, in general terms, of—

(a) the representations made to it in accordance with sub-paragraph (3), and

(b) its response to them.

(6) If the scheme differs from the draft published under sub-paragraph (2) in a way which is, in the opinion of the PRA, significant, the PRA must (in addition to complying with sub-paragraph (5)) publish details of the difference.

(7) The PRA must, without delay, give the Treasury a copy of any scheme details published by it.

(8) The PRA may charge a reasonable fee for providing a person with a copy of—

(a) a draft published under sub-paragraph (2);

(b) scheme details.

(9) Sub-paragraphs (2) to (6) and (8)(a) also apply to a proposal to alter or replace the financial penalty scheme.

Fees

31 (1) The PRA may make rules providing for the payment to it of such fees, in connection with the discharge of any of its functions under or as a result of this Act, as it considers will (taking account of its expected income from fees and charges provided for by any other provision of this Act) enable it—

(a) to meet expenses incurred in carrying out its functions or for any incidental purpose,

(b) to repay the principal of, and pay any interest on, any relevant borrowing and to meet relevant commencement expenses, and

(c) to maintain adequate reserves.

(2) In sub-paragraph (1)(b)—

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

"relevant commencement expenses" means expenses incurred by the PRA, the FCA or the Bank of England—

(a) in preparation for the exercise of functions by the PRA under this Act, or

(b) for the purpose of facilitating the exercise by the PRA of those functions or otherwise in connection with their exercise by it.

(3) For the purposes of sub-paragraph (2) it is irrelevant when the borrowing of the money, the incurring of the expenses or the assumption of functions took place (and, in particular, it is irrelevant if expenses were incurred by the FCA at a time when it was known as the Financial Services Authority).

(4) In fixing the amount of any fee which is to be payable to the PRA, no account is to be taken of any sums which the PRA receives, or expects to receive, by way of penalties imposed by it under this Act.

(5) Any fee which is owed to the PRA under any provision made by or under this Act may be recovered as a debt due to the PRA.

(6) The PRA may authorise the FCA to act on its behalf in relation to the payment and recovery of any fees payable under any provision made by or under this Act.

Services for which fees may not be charged

32 The power conferred by paragraph 31 may not be used to require—

(a) a fee to be paid in respect of the discharge of any of the PRA's functions under paragraph 13, 14, 19 or 20 of Schedule 3, or

(b) a fee to be paid by any person whose application for approval under section 59 has been granted.

PART 5

MISCELLANEOUS

Exemption from liability in damages

33 (1) Neither the PRA nor any person who is, or is acting as, a member, officer or member of staff of the PRA is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the PRA's functions.

(2) Neither the investigator appointed under paragraph 23 nor a person appointed to conduct an investigation on the investigator's behalf under paragraph 25(8) is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of functions in relation to the investigation of a complaint.

(3) Neither sub-paragraph (1) nor sub-paragraph (2) applies—

(a) if the act or omission is shown to have been in bad faith, or

(b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

Accredited financial investigators

34 For the purposes of this Act anything done by an accredited financial investigator within the meaning of the Proceeds of Crime Act 2002 who is—

(a) a member of the staff of the PRA, or

(b) a person appointed by the PRA under section 167 or 168 to conduct an investigation,

is to be treated as done in the exercise or discharge of a function of the PRA.

Amounts required by rules to be paid to the PRA

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

PART 2

AMENDMENTS OF OTHER ACTS

House of Commons Disqualification Act 1975 (c. 24)

1 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices)—

(a) omit the entry "Member of the governing body of the Financial Services Authority", and

(b) at the appropriate place in each case insert—

"Member of the governing body of the Financial Conduct Authority;";

"Member of the governing body of the Prudential Regulation Authority;".

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

2 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices)—

(a) omit the entry "Member of the governing body of the Financial Services Authority", and

(b) at the appropriate place in each case insert—

"Member of the governing body of the Financial Conduct Authority;";

"Member of the governing body of the Prudential Regulation Authority;".

Freedom of Information Act 2000 (c. 36)

3 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices: general)—

(a) omit the entry relating to the Financial Services Authority, and

(b) at the appropriate place in each case insert—

"The Financial Conduct Authority;";

"The Prudential Regulation Authority;".

SCHEDULE 4

Section 9

EEA PASSPORT RIGHTS AND TREATY RIGHTS

PART 1

AMENDMENTS OF SCHEDULE 3 TO FSMA 2000: EEA PASSPORT RIGHTS

Introductory

1 Schedule 3 to FSMA 2000 (EEA passport rights) is amended as follows.

Exercise of passport rights by EEA firms

2 (1) Paragraph 13 (establishment) is amended as follows.

(2) In sub-paragraphs (1) and (1A), for "Authority", in each place, substitute "appropriate UK regulator".

(3) After sub-paragraph (1A) insert—

"(1B) Where the PRA receives a consent notice, it must give a copy to the FCA without delay.

(1C) Where the FCA receives a consent notice it must in prescribed cases give a copy to the PRA without delay.

(1D) In a case where the FCA is the appropriate UK regulator, the consent of the PRA is required for any notice by the FCA for the purposes of sub-paragraph (1)(ba) which relates to—

(a) a PRA-regulated activity,

(b) a PRA-authorised person, or

(c) a person whose immediate group includes a PRA-authorised person.

(1E) If the FCA—

(a) receives a consent notice, or

(b) receives under sub-paragraph (1B) a copy of a consent notice,

it must prepare for the firm's supervision.

(1F) If the PRA—

(a) receives a consent notice,

(b) receives under sub-paragraph (1C) a copy of a consent notice which identifies PRA-regulated activities or relates to a PRA-authorised person,

it must prepare for the firm's supervision."

(4) In sub-paragraph (2)—

(a) for "Authority" substitute "appropriate UK regulator", and

(b) omit paragraph (a).

(5) In sub-paragraph (3), for "Authority" substitute "appropriate UK regulator".

(6) In sub-paragraph (4), after the definition of "applicable provisions" insert—

""appropriate UK regulator" means whichever of the FCA and the PRA is the competent authority for the purposes of the relevant single market directive;".

3 (1) Paragraph 14 (services) is amended as follows.

(2) In sub-paragraph (1), for "Authority", in each place, substitute "appropriate UK regulator".

(3) After sub-paragraph (1) insert—

"(1A) "Relevant notice" means—

(a) a regulator's notice, or

(b) where none is required by sub-paragraph (1), a notice informing the appropriate UK regulator of the firm's intention to provide services in the United Kingdom.

(1B) Where the PRA receives a relevant notice, it must give a copy to the FCA without delay.

(1C) Where the FCA receives a relevant notice, it must in prescribed cases give a copy to the PRA without delay.

(1D) If the FCA—

(a) receives a relevant notice, or

(b) receives under sub-paragraph (1B) a copy of a relevant notice,

it must prepare for the firm's supervision.

(1E) If the PRA—

(a) receives a relevant notice,

(b) receives under sub-paragraph (1C) a copy of a relevant notice which identifies PRA-regulated activities or relates to a PRA-authorised person,

it must, unless the firm falls within paragraph 5(e), prepare for the firm's supervision."

(4) For sub-paragraph (2) substitute—

"(2) If the appropriate UK regulator has received a relevant notice, it must, unless the firm falls within paragraph 5(a) or (e), notify the firm of the applicable provisions (if any)."

(5) Omit sub-paragraph (2A).

(6) In sub-paragraph (3)—

(a) for "(2)(b)" substitute "(2)", and

(b) for the words from "Authority" to the end substitute "appropriate UK regulator received the relevant notice".

(7) In sub-paragraph (4), after the definition of "applicable provisions" insert—

""appropriate UK regulator" means whichever of the FCA and the PRA is the competent authority for the purposes of the relevant single market directive;".

4 (1) Paragraph 15A (power to restrict permission of management companies) is amended as follows.

(2) For "Authority", in each place, substitute "FCA".

(3) After sub-paragraph (2) insert—

"(2A) If the firm is a PRA-authorised person or the firm's immediate group includes a PRA-authorised person, the FCA must give the PRA a copy of the notice under sub-paragraph (2)."

5 In paragraph 17 (continuing regulation of EEA firms)—

(a) before paragraph (a) insert—

"(za) require the FCA and the PRA to notify each other about EEA firms qualifying for authorisation;", and

(b) in paragraph (c), for "the Authority" substitute "the FCA or the PRA".

6 In paragraph 18 (giving up right to authorisation), in paragraph (b), for "Part IV permission" substitute "Part 4A permission".

Exercise of passport rights by UK firms

7 (1) Paragraph 19 (establishment) is amended as follows.

(2) For "Authority", in each place, substitute "appropriate UK regulator".

(3) After sub-paragraph (7B) insert—

"(7C) Where the appropriate UK regulator is the PRA, it must consult the FCA before deciding whether to give a consent notice, except where sub-paragraph (7A) applies.

(7D) Where the appropriate UK regulator is the FCA, it must consult the PRA before deciding whether to give a consent notice in relation to a UK firm whose immediate group includes a PRA-authorised person."

(4) After sub-paragraph (12A) insert—

"(12B) In this paragraph "the appropriate UK regulator" means—
(a) where the UK firm is a PRA-authorised person, the PRA,
(b) in any other case, the FCA."

8 (1) Paragraph 20 (services) is amended as follows.

(2) For "Authority", in each place, substitute "appropriate UK regulator".

(3) After sub-paragraph (3A) insert—

"(3AA) Where the PRA is the appropriate UK regulator, it must consult the FCA before deciding whether to give a consent notice.

(3AB) Where the FCA is the appropriate UK regulator, it must consult the PRA before deciding whether to give a consent notice in relation to a UK firm whose immediate group includes a PRA-authorised person."

(4) Before sub-paragraph (6) insert—

"(5A) In this paragraph "the appropriate UK regulator" means—
(a) where the UK firm is a PRA-authorised person, the PRA,
(b) in any other case, the FCA."

9 In paragraph 22 (continuing regulation of UK firms), in sub-paragraph (3)—
(a) for "the Authority's consent" substitute "the consent of the FCA or the PRA", and
(b) in paragraph (b), for "the Authority" substitute "the FCA or the PRA".

10 (1) Paragraph 23 (power to impose requirements) is amended as follows.

(2) For "the Authority", in each place, substitute "the FCA".

(3) In sub-paragraph (1)(a), for "Part IV permission" substitute "Part 4A permission".

(4) In sub-paragraphs (2) and (2A), for "section 45" substitute "section 55J or 55L".

(5) After sub-paragraph (2A) insert—

"(2B) This paragraph does not affect any duty of the FCA to consult the PRA before exercising its power under section 55J or 55L."

11 (1) Paragraph 24 (which relates to UK firms exercising rights under the banking consolidation directive) is amended as follows.

(2) In sub-paragraph (1)(a), for "Part IV permission" substitute "Part 4A permission".

(3) In sub-paragraph (2)—

(a) for "the Authority", in the first place, substitute "either regulator",

(b) in paragraph (a), for "Part IV permission" substitute "Part 4A permission", and

(c) in paragraph (b), for "the Authority" substitute "that regulator".

12 After paragraph 24 insert—

"Arrangements between FCA and PRA

24A (1) The regulators may make arrangements about—

(a) how they will consult each other when required to do so by paragraph 19(7C) or (7D) or by regulations under paragraph 22;

(b) how each of them will act in response to any advice or representations received from the other.

(2) The arrangements may require one regulator to obtain the consent of the other in specified circumstances before—

(a) giving a consent notice under paragraph 19 or 20, or

(b) exercising specified functions under regulations under paragraph 22.

(3) The arrangements must be in writing, and must specify—

(a) the EEA rights to which they relate, and

(b) the date on which they come into force.

(4) Where arrangements are in force under this paragraph, the regulators must exercise functions in accordance with the arrangements.

(5) The regulators must publish any arrangements under this paragraph in such manner as they think fit."

13 In paragraph 25 (information to be included in the public record) for "Authority" substitute "FCA".

PART 2

AMENDMENTS OF SCHEDULE 4 TO FSMA 2000: TREATY RIGHTS

14 Schedule 4 to FSMA 2000 (Treaty rights) is amended as follows.

15 (1) Paragraph 3 (exercise of Treaty rights) is amended as follows.

(2) In sub-paragraph (2), for "the Authority" substitute "the FCA or the PRA".

(3) After that sub-paragraph insert—

"(2A) Where the PRA receives a notification under sub-paragraph (2), it must give a copy to the FCA without delay.

(2B) Where the FCA receives a notification under sub-paragraph (2), it must in prescribed cases give a copy to the PRA without delay."

16 After paragraph 3 insert—

"Notification between UK regulators

3A Regulations may require the PRA and the FCA to notify each other about Treaty firms qualifying for authorisation."

17 (1) Paragraph 4 (permission) is amended as follows.

(2) In sub-paragraph (3)—
(a) for "a Part IV permission" substitute "a Part 4A permission", and
(b) for "Authority" substitute "appropriate UK regulator".

(3) In sub-paragraph (4), for "Authority" substitute "appropriate UK regulator".

(4) After that sub-paragraph insert—

"(5) "The appropriate UK regulator" means—
(a) where the Treaty firm is a PRA-authorised person, the FCA or the PRA;
(b) in any other case, the FCA."

18 (1) Paragraph 5 (notice to Authority) is amended as follows.

(2) In sub-paragraph (2), for "the Authority" substitute "the appropriate UK regulator".

(3) After sub-paragraph (2) insert—

"(2A) "The appropriate UK regulator" means—
(a) where any of the activities to which the notice relates is a PRA-regulated activity, the PRA;
(b) in any other case, the FCA.

(2B) Where the PRA receives a notice under sub-paragraph (2), it must give a copy to the FCA without delay.

(2C) Where the FCA receives a notice under sub-paragraph (2) from—
(a) a PRA-authorised person, or
(b) a person whose immediate group includes a PRA-authorised person,
it must give a copy to the PRA without delay."

(4) For sub-paragraph (4) substitute—

"(4) Subsections (1), (4) and (8) of section 55U apply to a notice under sub-paragraph (2) as they apply to an application for a Part 4A permission."

(5) In the italic heading immediately before paragraph 5, for "Authority" substitute "UK regulator".

PART 3

AMENDMENTS OF SECTIONS 34 AND 35 OF FSMA 2000: EEA FIRMS AND TREATY FIRMS

19 (1) Section 34 of FSMA 2000 (EEA firms) is amended as follows.

(2) In subsection (2), for "the Authority" substitute "the appropriate regulator".

(3) After that subsection insert—

"(2A) In subsection (2) "the appropriate regulator" means—

(a) in the case of a PRA-authorised person, the PRA, and

(b) in any other case, the FCA."

(4) In subsection (3), for "Part IV permission" substitute "Part 4A permission".

20 (1) Section 35 of FSMA 2000 (Treaty firms) is amended as follows.

(2) In subsection (2), for "the Authority" substitute "the appropriate regulator".

(3) After that subsection insert—

"(2A) In subsection (2) "the appropriate regulator" means—

(a) in the case of a PRA-authorised person, the PRA, and

(b) in any other case, the FCA."

(4) In subsection (3), for "Part IV permission" substitute "Part 4A permission".

PART 4

AMENDMENTS OF PART 13 OF FSMA 2000: POWERS OF INTERVENTION

21 Part 13 of FSMA 2000 (incoming firms: intervention by Authority) is amended as follows.

22 In the heading to Part 13, for "Authority" substitute "FCA or PRA".

23 In section 193 (interpretation of Part 13), in subsection (1), in the definition of "power of intervention", for "the Authority" substitute "the FCA or the PRA".

24 (1) Section 194 (general grounds on which power of intervention is exercisable) is amended as follows.

(2) In subsection (1)—

(a) for "Authority", in each place, substitute "appropriate regulator",

(b) in paragraph (c), for the words from "meet" to the end substitute "advance—

(i) in the case of the FCA, any of its operational objectives, and

(ii) in the case of the PRA, any of its objectives."

(3) After subsection (1A) insert—

"(1B) The "appropriate regulator" means—

(a) where the incoming firm is a PRA-authorised person, the FCA or the PRA;

(b) in any other case, the FCA."

(4) In subsection (3), for "Authority", in each place, substitute "FCA".

25 (1) Section 194A (contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive) is amended as follows.

(2) For "Authority" or "Authority's", in each place (and in the heading), substitute "appropriate regulator" or "the appropriate regulator's".

(3) After subsection (7) insert—

"(8) "The appropriate regulator" means—

(a) where the relevant EEA firm is a PRA-authorised person, the FCA or the PRA;

(b) in any other case, the FCA."

26 (1) Section 195 (exercise of power in support of overseas regulator) is amended as follows.

(2) In subsection (1), for "Authority" substitute "appropriate regulator".

(3) In subsection (2), for "Authority's" substitute "appropriate regulator's".

(4) After subsection (2) insert—

"(2A) The appropriate regulator" means—

(a) where the incoming firm is a PRA-authorised person, the FCA or the PRA;

(b) in any other case, the FCA."

(5) In subsection (4)—

(a) in paragraph (a), for "the Authority" substitute "either regulator", and

(b) omit paragraph (b).

(6) In subsections (5) to (8), for "Authority", in each place, substitute "appropriate regulator".

27 (1) Section 195A (contravention by relevant EEA firm of requirement under markets in financial instruments directive: home state regulator primarily responsible for securing compliance) is amended as follows.

(2) For "Authority", in each place, substitute "appropriate regulator".

(3) In subsection (11), before the definition of "home state" insert—

""the appropriate regulator" means—

(a) where the relevant EEA firm is a PRA-authorised person, the FCA or the PRA;

(b) in any other case, the FCA;".

28 For section 196 substitute—

"196 The power of intervention

(1) If a regulator is entitled to exercise its power of intervention in respect of an incoming firm under this Part, it may impose any requirement in relation to the firm which that regulator could impose if—

(a) the firm's permission was a Part 4A permission; and

(b) the regulator was entitled to exercise its power under section 55L(3) or 55M(3).

(2) The FCA must consult the PRA before exercising its powers by virtue of this section in relation to—

(a) a PRA-authorised person, or

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

(3) The PRA must consult the FCA before exercising its powers by virtue of this section."

29 (1) Section 197 (procedure on exercise of power of intervention) is amended as follows.

(2) In subsection (2), for "Authority" substitute "regulator".

(3) In subsection (3), for "the Authority" substitute "a regulator".

(4) In subsection (4)—

(a) in paragraph (c), for "Authority's" substitute "regulator's", and

(b) in paragraph (d), for "Authority" substitute "regulator".

(5) In subsections (5) to (7), for "Authority", in each place, substitute "regulator".

30 In section 198 (power to apply to court for injunction in respect of certain overseas insurance companies), for "Authority", in each place, substitute "PRA".

31 (1) Section 199 (additional procedure for EEA firms in certain cases) is amended as follows.

(2) In subsections (1) and (2)(a), for "the Authority" substitute "either regulator".

(3) In subsections (3) to (9), for "Authority" substitute "regulator".

32 (1) Section 200 (rescission and variation of requirements) is amended as follows.

(2) In subsection (1), for "The Authority" substitute "Either regulator".

(3) In subsection (2)—

(a) for "the Authority", in the first place, substitute "either regulator", and

(b) for "the Authority", in the second place, substitute "the regulator".

(4) In subsections (3) and (4), for "Authority" substitute "regulator".

(5) In subsection (5)—

(a) for "the Authority", in the first place, substitute "either regulator", and

(b) in paragraph (a), for "the Authority" substitute "the regulator".

33 For section 201 substitute—

"201 Effect of certain requirements on other persons

If either regulator, in exercising its power of intervention, imposes on an incoming firm a requirement of the kind mentioned in subsection (4) of section 55P, the requirement has the same effect in relation to the firm as it would have in relation to an authorised person if it had been imposed on the authorised person by the regulator acting under section 55L or 55M."

34 In section 202 (contravention of requirement imposed under Part 13), in subsection (1), for "the Authority" substitute "a regulator".

SCHEDULE 5

Section 12

PERFORMANCE OF REGULATED ACTIVITIES

1 Part 5 of FSMA 2000 is amended as follows.

2 In section 57(1) and (3) (prohibition orders: procedure and right to refer to Tribunal), for "the Authority" substitute "the FCA or the PRA".

3 (1) Section 58 (applications relating to prohibition orders: procedure and right to refer to Tribunal) is amended as follows.

(2) In subsections (2) to (5), for "the Authority" substitute "the appropriate regulator".

(3) After subsection (5) insert—

"(6) "The appropriate regulator" means the body to whom the application is made."

4 In section 59 (approval for particular arrangements), omit subsection (9).

5 (1) Section 60 (applications for approval) is amended as follows.

(2) In subsection (1), for "Authority's" substitute "appropriate regulator's".

(3) In subsections (2)(a) and (b), (3) and (4) (in both places), for "Authority" substitute "appropriate regulator".

(4) In subsection (6), for "Part IV" substitute "Part 4A".

(5) After subsection (6) insert—

"(7) "Appropriate regulator" has the same meaning as in section 59."

6 (1) Section 61 (determination of applications) is amended as follows.

(2) In subsection (1), for "The Authority may grant an application made under section 60" substitute "The body to whom an application is made under section 60 may grant the application".

(3) In subsection (2)—

(a) for "the Authority" substitute "the body", and

(b) after "general rules" insert "made by the body".

(4) In subsection (3), for the words from the beginning to "determine" substitute "The body to whom an application is made under section 60 must, before the end of the period for consideration, determine".

(5) After subsection (3) insert—

"(3A) "The period for consideration"—

(a) in any case where the application under section 60 is made by a person applying for permission under Part 4A (see section 60(6)), means the end of whichever is the later of—

(i) the period before which the application for that permission must be determined under section 55V(1) or (2); and

(ii) the period of 3 months beginning with the date on which the body receives the application under section 60; and

(b) in any other case, means the period of 3 months beginning with the date on which the body receives the application under section 60."

(6) In subsection (4), for "the Authority", in each place, substitute "the body".

(7) In subsection (5)—

(a) for "the Authority", in the first place, substitute "the body to whom the application was made", and

(b) for "the Authority", in the second place, substitute "the body".

7 (1) Section 62 (applications for approval: procedure and right to refer to Tribunal) is amended as follows.

(2) In subsection (1), for the words from "If" to ", it" substitute "If the body to whom an application is made under section 60 ("an application") decides to grant the application, it".

(3) In subsections (2) to (4)—

(a) for "the Authority" substitute "the body to whom an application is made", and

(b) for "an application" substitute "the application".

8 (1) Section 63 (withdrawal of approval) is amended as follows.

(2) In subsection (2)—

(a) for "its approval, the Authority may take into account any matter which it could take into account if it were" substitute "an approval, the FCA or the PRA may take into account any matter which could be taken into account in", and

(b) at the end insert "(on the assumption, if it is not the case, that the application was one falling to be considered by it)".

(3) In subsections (3) to (5)—

(a) for "the Authority" substitute "the FCA or the PRA", and

(b) for "its approval" substitute "an approval".

9 In section 63A(1), (3), (4) and (5) (performance of controlled functions without approval: power to impose penalties), for "Authority" substitute "appropriate regulator".

10 In section 63B(1), (3) and (5) (procedure and right to refer to Tribunal), for "the Authority" substitute "the FCA or the PRA".

11 (1) Section 63C (statement of policy) is amended as follows.

(2) In subsection (1), for "The Authority must" substitute "The FCA and the PRA must each".

(3) In subsections (2) and (3), for "The Authority's" substitute "The FCA's or the PRA's".

(4) In subsection (4), for "the Authority" substitute "the body that has issued the statement".

(5) In subsection (5)—

(a) for "The Authority" substitute "A body that has issued a statement under this section", and
(b) for "a statement issued under this section" substitute "the statement".

(6) In subsection (6), for "replaced, the Authority" substitute "replaced by a body, the body".

(7) In subsection (7)—
(a) for "The Authority" substitute "A body that publishes a statement under this section", and
(b) for "any statement which it publishes under this section" substitute "the statement".

(8) In subsection (8)—
(a) after "section" insert "by a body", and
(b) for "the Authority", in both places, substitute "the body".

(9) In subsection (9), for "The Authority" substitute "A body that has issued a statement under this section".

(10) In subsection (10)—
(a) for "the Authority" substitute "the FCA or (as the case may be) the PRA", and
(b) after "published" insert "by it".

12 (1) Section 63D (statement of policy: procedure) is amended as follows.

(2) In subsection (1)—
(a) for "issuing" substitute "a body issues", and
(b) for "the Authority", in both places, substitute "the body".

(3) In subsections (2), (3), (4) and (5) (in both places), for "the Authority" substitute "the body".

(4) In subsection (6)—
(a) for "The Authority" substitute "A body that has published a draft under subsection (1)", and
(b) for "a draft published under subsection (1)" substitute "the draft".

13 (1) Section 64 (conduct of approved persons: statement and codes) is amended as follows.

(2) In subsection (2)—
(a) for "the Authority" substitute "the FCA or the PRA", and
(b) after "subsection (1)" insert "or (1A)".

(3) In subsection (3)(a) to (c), for "the Authority" substitute "the body issuing the code".

(4) In subsection (4)—
(a) for "The Authority" substitute "A body that has issued a statement or code under this section", and
(b) for "a statement or code issued under this section" substitute "the statement or code".

(5) In subsection (5)—

(a) after "replaced" insert "by a body", and
(b) for "the Authority" substitute "the body".

(6) In subsection (6)—
(a) for "the Authority", in the first place, substitute "the body that issued it", and
(b) for "the Authority", in the second place, substitute "that body".

(7) In subsection (10)—
(a) for "The Authority" substitute "A body that publishes a statement or code under this section", and
(b) for "any statement or code which it publishes under this section" substitute "the statement or code".

(8) In subsection (11), for paragraph (b) substitute—
"(b) is to be treated for the purposes of section 1B(8)(a) as part of the FCA's rule-making functions (where the power is exercisable by the FCA) and is to be treated for the purposes of section 2I(1)(a) as part of the PRA's rule-making functions (where the power is exercisable by the PRA)."

(9) In subsection (12)—
(a) for "The Authority" substitute "A body that has published a statement or code under this section", and
(b) for "a statement or code published under this section" substitute "the statement or code".

(10) For subsection (13) substitute—

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

14 (1) Section 65 (statements and codes: procedure) is amended as follows.

(2) For subsection (1) substitute—

"(1) Before the FCA or the PRA issues a statement or code under section 64, it must—
(a) consult the other regulator; and
(b) after doing so, publish a draft of the statement or code in the way appearing to it to be best calculated to bring the statement or code to the attention of the public.

(1A) The duty of the FCA to consult the PRA under subsection (1)(a) applies only in so far as the statement or code applies to persons in relation to whom approval is given under section 59 in respect of the performance by them of significant-influence functions (within the meaning of that section) in relation to the carrying on by PRA-authorised persons of regulated activities."

(3) In subsection (2)(b), for "the Authority" substitute "the body publishing the draft".

(4) In subsection (3)—
(a) for "issuing" substitute "the FCA or the PRA issues", and
(b) for "the Authority" substitute "it".

(5) In subsection (4), for "the Authority" substitute "the FCA or the PRA".

(6) In subsection (5)—

(a) for "the Authority", in the first place, substitute "the body issuing the statement or code", and

(b) for "the Authority", in the second place, substitute "the body".

(7) In subsection (6), for "the Authority" substitute "the body concerned".

(8) For subsection (7) substitute—

"(7) Subsections (1)(b) and (2) to (6) do not apply in relation to—

(a) a statement or code issued by the FCA if it considers that the delay involved in complying with them would be prejudicial to the interests of consumers, as defined in section 425A; or

(b) a statement or code issued by the PRA if it considers that the delay involved in complying with them would—

(i) be prejudicial to the safety and soundness of PRA-authorised persons, or

(ii) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policyholders."

(9) In subsection (9)—

(a) for "The Authority" substitute "A body that publishes a draft under subsection (1)", and

(b) for "a draft published under subsection (1)" substitute "the draft".

(10) For subsection (11) substitute—

"(11) "Cost benefit analysis" means—

(a) an analysis of the costs together with an analysis of the benefits that will arise—

(i) if the proposed statement or code is issued, or

(ii) if subsection (5)(b) applies, from the statement or code that has been issued, and

(b) subject to subsection (11A), an estimate of those costs and of those benefits.

(11A) If, in the opinion of the body concerned—

(a) the costs or benefits referred to in subsection (11) cannot reasonably be estimated, or

(b) it is not reasonably practicable to produce an estimate,

the cost benefit analysis need not estimate them, but must include a statement of the opinion of the body concerned and an explanation of it."

15 (1) Section 66 (disciplinary powers) is amended as follows.

(2) In subsection (1)—

(a) in the opening words—

(i) for "The Authority" substitute "The FCA or the PRA", and

(ii) after "this section" insert "(whether or not it has given its approval in relation to the person)", and

(b) in paragraphs (a) and (b), for "the Authority" substitute "the FCA or (as the case may be) the PRA".

(3) For subsection (2) substitute—

"(2) For the purposes of action by the FCA, a person is guilty of misconduct if, while an approved person—

(a) the person has failed to comply with a statement of principle issued by the FCA under section 64; or

(b) the person has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under this Act or by any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury.

(2A) For the purposes of action by the PRA, a person is guilty of misconduct if, while an approved person in respect of the performance of a significant-influence function in relation to the carrying on by a PRA-authorised person of a regulated activity—

(a) the person has failed to comply with a statement of principle issued by the PRA under section 64; or

(b) the person has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under this Act or by any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury."

(4) In subsection (3), for "the Authority" substitute "the FCA or the PRA".

(5) In subsection (3D), for "The Authority" substitute "The body taking action under this section".

(6) In subsection (4)—

(a) for "The Authority" substitute "A body", and

(b) for "the Authority" substitute "the body".

(7) In subsection (5)(a), for "the Authority" substitute "a body".

(8) For subsection (6) substitute—

"(6) "Approved person" means a person in relation to whom an approval is given under that section."

16 (1) Section 67 (disciplinary measures: procedure and right to refer to Tribunal) is amended as follows.

(2) In subsections (1) and (4), for "the Authority" substitute "the FCA or the PRA".

(3) In subsection (7)—

(a) for "the Authority", in the first place, substitute "the FCA or the PRA", and

(b) for "the Authority", in the second place, substitute "it".

(4) In subsection (9)—

(a) for "an approved person ("A")," substitute "a person ("A") in relation to whom approval has been given,", and

(b) omit the second sentence.

17 In section 68 (publication), for "the Authority" substitute "the body publishing it".

18 (1) Section 69 (statement of policy) is amended as follows.

(2) In subsection (1), for "The Authority must" substitute "The FCA and the PRA must each".

(3) In subsection (2), for "The Authority's" substitute "The FCA's or the PRA's".

(4) In subsection (3)—

(a) for "The Authority" substitute "A body that has issued a statement under this section", and

(b) for "a statement issued under this section" substitute "the statement".

(5) In subsection (4), for "replaced, the Authority" substitute "replaced by a body, the body".

(6) In subsection (5)—

(a) for "The Authority" substitute "A body that publishes a statement under this section", and

(b) for "any statement which it publishes under this section" substitute "the statement".

(7) In subsection (6)—

(a) after "section" insert "by a body", and

(b) for "the Authority", in both places, substitute "the body".

(8) In subsection (7), for "The Authority" substitute "A body that has issued a statement under this section".

(9) In subsection (8)—

(a) for "the Authority" substitute "the FCA or (as the case may be) the PRA", and

(b) after "published" insert "by it".

19 (1) Section 70 (statements of policy: procedure) is amended as follows.

(2) In subsection (1)—

(a) for "issuing" substitute "a body issues", and

(b) for "the Authority", in both places, substitute "the body".

(3) In subsections (2), (3), (4) and (5) (in both places), for "the Authority" substitute "the body".

(4) In subsection (6)—

(a) for "The Authority" substitute "A body that has published a draft under subsection (1)", and

(b) for "a draft published under subsection (1)" substitute "the draft".

SCHEDULE 6

Section 25

APPLICATION OF PROVISIONS OF FSMA 2000 TO BANK OF ENGLAND ETC

This is the Schedule 17A to be inserted in FSMA 2000 after Schedule 17—

"SCHEDULE 17A

Section 285A

FURTHER PROVISION IN RELATION TO EXERCISE OF PART 18 FUNCTIONS BY BANK OF ENGLAND

PART 1

CO-OPERATION BETWEEN APPROPRIATE REGULATORS

Memorandum of understanding between appropriate regulators and PRA

1 (1) The appropriate regulators must prepare and maintain a memorandum describing how they intend to work together in exercising their functions in relation to persons who are recognised bodies.

(2) The memorandum must in particular make provision about—

(a) the need for each party when exercising a function in relation to any person ("A") who is a recognised body, or any member of A's group, to have regard to the exercise (or possible exercise) of any function by the other party in relation to A or any member of A's group;

(b) the role of each party in cases where they are both exercising functions in relation to the same persons;

(c) the obtaining and disclosure of information;

(d) the co-ordination by the parties of the exercise of their powers to appoint competent persons under Part 11 (information gathering and investigations) to conduct investigations on their behalf.

(3) In this paragraph any reference to a function is to any function whether conferred by or under any provision of this Part of this Act or any other provision of this Act or otherwise.

2 (1) The appropriate regulators and the PRA must prepare and maintain a memorandum describing how they intend to work together in exercising their functions in relation to persons who are recognised bodies and who—

(a) are PRA authorised persons; or

(b) are members of a group of which a member is a PRA-authorised person.

(2) The memorandum must in particular make provision about—

(a) the need for each party when exercising a function in relation to any person ("A") who is a recognised body, or any member of A's group, to have regard to the exercise (or possible exercise) of any function by the other party in relation to A or any member of A's group;

(b) the role of each party in cases where they are both exercising functions in relation to the same persons;

(c) the obtaining and disclosure of information;
(d) the co-ordination by the parties of the exercise of their powers to appoint competent persons under Part 11 (information gathering and investigations) to conduct investigations on their behalf.

(3) In this paragraph any reference to a function is to any function whether conferred by or under any provision of this Part of this Act or any other provision of this Act or otherwise.

3 The parties to a memorandum under paragraph 1 or 2 must review the memorandum at least once in each calendar year.

4 The parties to a memorandum under paragraph 1 or 2 must send to the Treasury a copy of the memorandum and any revised memorandum.

5 The Treasury must lay before Parliament a copy of any document received by them under paragraph 4.

6 The parties to a memorandum under paragraph 1 or 2 must ensure that the memorandum as currently in force is published in the way appearing to them to be best calculated to bring it to the attention of the public.

Notification by FCA of action in relation to recognised clearing houses

7 The FCA must notify the Bank of England of any direction given by it under section 128 to a recognised clearing house (market abuse: suspension of investigations).

8 The FCA must notify the Bank of England of any requirement imposed by it under section 313A on a recognised clearing house (power to require suspension or removal of financial instruments from trading).

PART 2

APPLICATION OF PROVISIONS OF THIS ACT IN RELATION TO BANK OF ENGLAND

Introduction

9 (1) The provisions of this Act mentioned in this Part of this Schedule are to apply in relation to the Bank of England in accordance with the provision made by this Part of this Schedule.

(2) In any case where sub-paragraph (1) applies—
(a) any reference in this Act to the FCA or the PRA which is contained in, or relates to, any of those provisions (however expressed) is to be read as a reference to the Bank; and
(b) this Act has effect with any other necessary modifications.

Rules

10 (1) The following provisions of Part 9A of this Act are to apply in relation to rules made by the Bank under any provision made by or under this Act—

(a) section 137Q (general supplementary powers);

(b) sections 138A and 138C (modification or waiver of rules), but with the omission of subsection (4)(b) of section 138A and subsection (4) of section 138C;

(c) section 138D (evidential provisions);

(d) section 138E (actions for damages), but with the omission of subsection (2);

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

(f) section 138G (notification of rules);

(g) section 138H (rule-making instruments);

(h) section 138I (verification of rules);

(i) section 138K (consultation), but with the omission of subsections (1)(a), (2)(c) and (5)(b); and

(j) section 138M (consultation: general exemptions), but with the omission of subsections (1) and (3).

(2) Any reference in any of those provisions to an authorised person is to be read as a reference to a recognised clearing house.

(3) Section 138K(2)(d) has effect in relation to rules proposed to be made by the Bank as if the reference to the compatibility of the proposed rules with section 2B(1) were a reference to their compatibility with the Bank's financial stability objective.

(4) Section 138M(2) has effect as if for paragraphs (a) and (b) there were substituted "be prejudicial to financial stability".

Information gathering and investigations

11 (1) The powers conferred by section 165(1) and (3) (power to require information) are exercisable by the Bank or (as the case may be) its officers to impose requirements on—

(a) a recognised clearing house;

(b) a person who for the purposes of section 165 is connected with a recognised clearing house.

(2) The information or documents that the Bank may require to be provided or produced are limited to—

(a) information or documents reasonably required in connection with the exercise by the Bank of functions conferred on it by or under this Part of this Act; and

(b) information or documents reasonably required in connection with the exercise by the Bank of any of its other functions in pursuance of its financial stability objective.

(3) In consequence of the provision made by sub-paragraph (2), section 165(4) is not to apply in relation to section 165(1) and (3) as applied by this paragraph.

12 The power conferred by section 166 (reports by skilled person) is exercisable by the Bank as if references in that section to an authorised person were to a recognised clearing house.

13 (1) The powers conferred by section 167 (appointment of persons to carry out general investigations) are exercisable by the Bank as if references in that section to an authorised person were to any recognised clearing house other than an overseas clearing house.

(2) In addition to the powers conferred by section 171, a person conducting an investigation under section 167 as a result of this paragraph is to have the powers conferred by sections 172 and 173 (and for this purpose the references in those sections to an investigator are to be read accordingly).

14 (1) The power conferred by section 168(5) (appointment of persons to carry out investigations in particular cases) is exercisable by the Bank.

(2) That power is exercisable if it appears to the Bank that there are circumstances suggesting that—

(a) a clearing house may be guilty of an offence under section 398(1) or an offence under prescribed regulations relating to money laundering;

(b) a clearing house may have contravened a rule made by the Bank under Part 18 of this Act;

(c) a clearing house may have contravened the recognition requirements;

(d) a clearing house may have contravened any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury;

(e) a clearing house may have breached the general prohibition.

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

15 An overseas regulator may, in accordance with section 169, request the Bank to exercise the power conferred by section 165 (as applied by paragraph 11 of this Schedule).

16 The power to give an information under section 176(1) (entry of premises under warrant) is exercisable by the Bank, or an investigator appointed by the Bank, as if the reference to the second set of conditions were omitted.

Public record and disclosure of information

17 Section 347 (record of authorised persons, recognised investment exchanges, etc) applies in relation to the Bank as if references in that section to a recognised investment exchange were to a recognised clearing house.

18 Sections 348 to 350 and 353 (disclosure of information) apply in relation to information received by the Bank for the purposes of, or in the discharge of, any of its functions relating to recognised clearing houses.

Injunctions and restitution

19 (1) The power to make an application under section 380(1), (2) or (3) (injunctions) is exercisable by the Bank.

(2) For the purposes of the application, any reference in that section to a relevant requirement is to—

(a) a requirement that is imposed by or under any provision of Part 18 of this Act that relates to a recognised clearing house;

(b) a requirement that is imposed under any other provision of this Act by the Bank;

(c) a requirement that is imposed by any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury; or

(d) a requirement that is imposed by this Act and whose contravention constitutes an offence that the Bank has power to prosecute under this Act (see section 401, as applied by paragraph 24).

20 (1) The power to make an application under section 382(1) (restitution order) is exercisable by the Bank.

(2) For the purposes of the application, any reference in that section to a relevant requirement is to be read in accordance with paragraph 19(2) of this Schedule.

21 (1) The power conferred by section 384(5) (power of FCA to require restitution order) is exercisable by the Bank.

(2) That power is exercisable if the Bank is satisfied that a recognised clearing house has contravened a relevant requirement, or been knowingly concerned in the contravention of a relevant requirement, and—

(a) that profits have accrued to the recognised clearing house 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.

(3) For the purposes of that power, "relevant requirement" is to be read in accordance with paragraph 19(2) of this Schedule.

(4) Where this paragraph applies, section 384(5) and (6) are to have effect as if—

(a) any reference to the person concerned were a reference to the recognised clearing house; and

(b) any reference to subsection (1) were a reference to sub-paragraph (2) of this paragraph.

Notices

22 The provisions of Part 26 of this Act (notices) apply in relation to a warning or decision notice given by the Bank under section 312G or 312H as they apply in relation to such a notice given by the FCA under that section.

Offences

23 Section 398 (misleading the FCA: residual cases) applies to information given to the Bank in purported compliance with—

(a) a requirement that is imposed by or under any provision of Part 18 of this Act that relates to a recognised clearing house;

(b) a requirement that is imposed under any other provision of this Act by the Bank; or

(c) a requirement that is imposed by any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury.

24 (1) Section 401 (proceedings for an offence) applies to the Bank as if for the purposes of subsections (2)(a) and (3)(a) of that section the Bank were an appropriate regulator in respect of each of the following offences—

(a) an offence under section 177(3) where the investigation is being, or is likely to be, conducted on behalf of the Bank;

(b) an offence under section 177(4) where the requirement is imposed by the Bank;

(c) an offence under section 177(6) where the warrant is issued as a result of information on oath given by the Bank or a person appointed by it to conduct an investigation on its behalf;

(d) an offence under section 398(1) where the information was given to the Bank.

(2) Section 401(3B) has effect subject to the provision made by this paragraph (so that the FCA is not the appropriate regulator for the purposes of subsections (2)(a) and (3)(a) in respect of the above offences).

Jurisdiction

25 Section 415 (jurisdiction in civil proceedings) applies in relation to any act or omission (or proposed act or omission) of the Bank in the discharge or purported discharge of any of its functions relating to recognised clearing houses.

Powers of Bank relating to recognised clearing houses

26 Section 415A (powers of the FCA) applies in relation to any power which the Bank has that relates to recognised clearing houses.

Monitoring and enforcement

27 (1) The duty imposed on the PRA by paragraph 17(1) of Schedule 1ZB (monitoring and enforcement) is to apply to the Bank in cases where it is exercising functions relating to recognised clearing houses.

(2) That duty is to apply in relation to compliance with relevant requirements within the meaning of paragraph 19(2) of this Schedule.

(3) The duty imposed on the PRA by paragraph 17(3) of Schedule 1ZB is to apply to the Bank in cases where it is exercising functions relating to recognised clearing houses.

(4) That duty is to apply in relation to the enforcement of—

(a) the provisions of, or made under, Part 18 of this Act that relate to recognised clearing houses;

(b) any other provisions of this Act under which requirements may be imposed by the Bank;

(c) the provisions of any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury; and

(d) the provisions of this Act the contravention of which constitutes an offence that the Bank has power to prosecute under this Act (see section 401, as applied by paragraph 24).

Records

28 Paragraph 18 of Schedule 1ZB (records) applies in relation to the recording of decisions made by the Bank in the exercise of its functions relating to recognised clearing houses.

Annual report

29 The requirement to make a report to the Treasury imposed by paragraph 19 of Schedule 1ZB (annual report by PRA) is to apply to the Bank, but—

(a) as if for paragraphs (a) to (e) of sub-paragraph (1) there were substituted—

"(a) the discharge of its functions relating to recognised clearing houses,

(b) the extent to which, in its opinion, in discharging those functions its financial stability objective has been met, and

(c) such other matters as the Treasury may from time to time direct.", and

(b) as if sub-paragraph (3) were omitted.

Investigation of complaints

30 Part 2 of Schedule 1ZB (investigation of complaints) is to apply to the Bank in relation to the discharge of any of its functions relating to recognised clearing houses other than the function of—

(a) making rules;
(b) issuing statements under section 312J.

PART 3

FEES

31 (1) The Bank of England may, in connection with the discharge of any of its functions under or as a result of this Part of this Act, require recognised clearing houses to pay fees to the Bank.

(2) The power of the Bank to set fees includes power to set fees for the purpose of meeting expenses incurred by it or the FCA—
(a) in preparation for the exercise of functions by the Bank under this Part of this Act, or
(b) for the purpose of facilitating the exercise by the Bank of those functions or otherwise in connection with their exercise by it.

(3) It is irrelevant when the expenses were incurred (and, in particular, it is irrelevant if expenses were incurred by the FCA at a time when it was known as the Financial Services Authority).

32 Any fee which is owed to the Bank under paragraph 31 may be recovered as a debt due to the Bank."

SCHEDULE 7

Section 30

SECTIONS 25 TO 29: MINOR AND CONSEQUENTIAL AMENDMENTS

1 FSMA 2000 is amended as follows.

2 In section 285(2) (exemption for recognised investment exchanges and clearing houses), omit the "or" immediately before paragraph (b).

3 (1) Section 286 (qualification for recognition) is amended as follows.

(2) In subsection (1)(a), for "the Authority" substitute "the appropriate regulator".

(3) In subsections (4A), (4C) and (6), for "the Authority" substitute "the FCA".

4 In section 287 (application by an investment exchange), in subsections (1), (2) (in both places) and (3)(d) and (e), for "the Authority" substitute "the FCA".

5 (1) Section 288 (application by a clearing house) is amended as follows.

(2) In subsection (1), for "the Authority" substitute "the Bank of England".

(3) In subsection (2)—
(a) in the opening words, for "the Authority" substitute "the Bank of England", and
(b) in paragraph (d), for "the Authority" substitute "the Bank".

6 In section 289 (applications: supplementary), in subsections (1), (2) (in both places) and (3), for "the Authority" substitute "the appropriate regulator".

7 (1) Section 290 (recognition orders) is amended as follows.

(2) In subsection (1)—

(a) for "the Authority", in the first place, substitute "the appropriate regulator", and

(b) for "the Authority", in the second place, substitute "the regulator concerned".

(3) In subsection (1B), for "the Authority" substitute "the FCA".

(4) Omit subsection (2).

(5) In subsection (3), for "the Authority" substitute "the appropriate regulator".

(6) Omit subsection (6).

8 (1) Section 290A (refusal of recognition on ground of excessive regulatory provision) is amended as follows.

(2) In subsection (1)—

(a) for "The Authority must" substitute "The appropriate regulator must", and

(b) for "the Authority that" substitute "it that".

(3) In subsection (3), for "Authority" substitute "appropriate regulator".

9 In section 292 (overseas investment exchanges and overseas clearing house), in subsections (2), (3)(c) and (d), (4) and (5)(c), for "the Authority" substitute "the appropriate regulator".

10 In section 292A (publication of information by recognised investment exchange), in subsections (1), (3), (5) and (6), for "Authority" substitute "FCA".

11 (1) Section 293 (notification requirements) is amended as follows.

(2) In subsections (1) to (3) and (5), for "Authority" substitute "appropriate regulator".

(3) In subsection (6), for "the Authority" substitute "the FCA and the Bank of England".

(4) In subsection (7), for "the Authority" substitute "the Bank of England and the FCA".

(5) In subsection (9), for "the Authority's" substitute "the appropriate regulator's".

12 (1) Section 293A (information: compliance of recognised investment exchanges with directly applicable Community regulations) is amended as follows.

(2) For "Authority" (in both places) substitute "appropriate regulator".

(3) For "a recognised investment exchange" substitute "a recognised body".

(4) For "the exchange" substitute "the body".

(5) For the words from "Community" to the end substitute "EU regulation specified (or of a description specified) in an order made by the Treasury".

13 In section 294 (modification or waiver of rules), in subsections (1), (2), (4) and (6), for "Authority" substitute "appropriate regulator".

14 (1) Section 295 (notification: overseas investment exchanges and overseas clearing houses) is amended as follows.

(2) In subsection (1), for "the Authority" substitute "the appropriate regulator".

(3) In subsection (2), for the words from "likely" to the end substitute "likely to affect the appropriate regulator's assessment of whether it is satisfied as to the requirements set out in section 292(3)".

(4) In subsection (3), for "the Authority" substitute "the appropriate regulator".

(5) Omit subsection (4).

15 (1) Section 296 (power to give directions) is amended as follows.

(2) In subsection (1), for "the Authority" substitute "the appropriate regulator".

(3) In subsection (1A)—

(a) for the words from "in the case of a recognised body which is a recognised investment" to "the body" substitute "if it appears to the appropriate regulator that a recognised body", and

(b) for the words from "Community" to the end substitute "EU regulation specified (or of a description specified) in an order made by the Treasury".

(4) In subsection (2), for "The Authority" substitute "The regulator concerned".

(5) In subsection (2A)—

(a) in the opening words, for "a recognised investment exchange other than an overseas investment exchange" substitute "a recognised body other than an overseas investment exchange or overseas clearing house",

(b) in paragraph (a)—

(i) for "the Authority", in both places, substitute "the regulator concerned", and

(ii) for "the exchange" substitute "the body", and

(c) in paragraph (b), for "the exchange" substitute "the body".

(6) In subsection (3), for "the Authority" substitute "the regulator concerned".

(7) In subsection (4), for "the Authority" substitute "an appropriate regulator".

(8) In the title, for "**Authority's**" substitute "**Appropriate regulator's**".

16 (1) Section 297 (revoking recognition) is amended as follows.

(2) In subsections (1) and (2), for "the Authority" substitute "the appropriate regulator".

(3) In subsection (2A)—

(a) in the opening words—

(i) for "the Authority" substitute "the appropriate regulator", and

(ii) omit "which is a recognised investment exchange",

(b) in paragraphs (a) and (b), after "exchange" insert "or (as the case may be) of a clearing house", and

(c) in paragraph (c), for the words from "Community" to the end substitute "EU regulation specified (or of a description specified) in an order made by the Treasury".

(4) In subsection (2C), at the end insert "or overseas clearing house".

(5) In subsection (5), for "the Authority" substitute "the appropriate regulator".

17 In section 298 (directions and revocation: procedure), in subsections (1), (2)(a), (3), (5), (6), (7) (in both places) and (8), for "the Authority" substitute "the appropriate regulator".

18 In section 299 (complaints about recognised bodies), in subsections (1) and (2), for "Authority" substitute "appropriate regulator".

19 In section 300A (power to disallow excessive regulatory provision), in subsections (2) (in both places) and (4), and in the title, for "Authority" substitute "appropriate regulator".

20 In section 300B (duty to notify proposal to make regulatory provision), in subsections (1) to (3), for "Authority" substitute "appropriate regulator".

21 In section 300C (restriction on making provision before Authority decides whether to act), in subsections (1), (2)(a), (3) (in both places), (4)(a) and (b), and in the title, for "Authority" substitute "appropriate regulator".

22 (1) Section 300D (consideration by Authority whether to disallow proposed provision) is amended as follows.

(2) In subsections (1) to (4) and (5)(a) and (b), for "Authority" substitute "appropriate regulator".

(3) In subsection (6)—

(a) in the opening words, for "the Authority" substitute "the appropriate regulator",

(b) in paragraph (b)—

(i) for "the Authority's" substitute "the appropriate regulator's", and

(ii) for "the Authority" substitute "the regulator concerned", and

(c) in paragraph (c)(i) and (ii), for "the Authority" substitute "the appropriate regulator".

(4) In the heading, for "**Authority**" substitute "**appropriate regulator**".

23 (1) Section 301 (supervision of certain contracts) is amended as follows.

(2) In subsection (2), for "the Authority" substitute "the Bank of England".

(3) In subsection (3)—

(a) for "the Authority", in the first place, substitute "the FCA or the Bank of England", and

(b) for "the Authority", in the second place, substitute "the Bank".

(4) In subsections (4)(a), (6)(a), (7) and (9), for "Authority" substitute "Bank of England".

24 In section 301A (obligation to notify the Authority: acquisitions of control), in subsections (1) and (2), and in the title, for "the Authority" substitute "the FCA".

25 In section 301B (requirements for s.301A notices), in subsections (1) to (3), for "Authority" substitute "FCA".

26 In section 301C (acknowledgement of receipt), in subsections (1) and (2), for "Authority" substitute "FCA".

27 In section 301F (assessment: general), in subsections (1) to (3), for "Authority" substitute "FCA".

28 (1) Section 301G (assessment: procedure) is amended as follows.

(2) In subsections (1) (in both places) and (2) to (5), for "Authority" substitute "FCA".

(3) In subsection (6), for "the Authority's" substitute "the FCA's".

29 In section 301H (duration of approval), in subsections (1), (2) and (3) (in both places), for "the Authority" substitute "the FCA".

30 In section 301I (objections by the Authority), in subsections (1) to (5), and in the title, for "Authority" substitute "FCA".

31 In section 301J (restriction notices), in subsections (1), (2)(b), (3) and (7), for "Authority" substitute "FCA".

32 In section 301K (order for sale of shares), in subsection (1), for "the Authority" substitute "the FCA".

33 (1) Section 301L (offences under Chapter) is amended as follows.

(2) In subsections (1) and (2) (in both places), for "the Authority" substitute "the FCA".

(3) In subsection (4), for "the Authority's" substitute "the FCA's".

(4) In subsections (5) and (9), for "the Authority" substitute "the FCA".

34 In section 312A (exercise of passport rights by EEA market operator), in subsection (1)(b), for "the Authority" substitute "the FCA".

35 In section 312B (removal of passport rights from EEA market operator), in subsections (1) (in each place), (3), (4)(b), (5), (6), (7)(a) and (b), (8)(b), (9) to (11) and (12) (in both places), for "Authority" substitute "FCA".

36 In section 312C (exercise of passport rights by recognised investment exchange), in subsections (2) to (6), for "Authority" substitute "FCA".

37 In section 392 (warning and decisions notices: application of provisions relating to third party rights and access to evidence)—

(a) in paragraph (a), after "section 280(1)," insert "section 312G(1),", and

(b) in paragraph (b), after "section 280(2)," insert "section 312H(1),".

38 In section 412A (approval and monitoring of trade-matching and reporting systems), in subsections (1), (2), (4), (5) (in both places), (6) (in both places) and (7), for "Authority" substitute "FCA".

39 In section 412B (procedure for approval and suspension or withdrawal of approval), in subsections (1) to (6), (7) (in both places), (8) and (9), for "Authority" substitute "FCA".

SCHEDULE 8

Section 32

DISCIPLINE AND ENFORCEMENT

PART 1

INTRODUCTORY

1 FSMA 2000 is amended as follows.

PART 2

AUTHORISED PERSONS ACTING WITHOUT PERMISSION

2 (1) Section 20 (authorised persons acting without permission) is amended as follows.

(2) In subsection (1)—

(a) in the opening words, after "an authorised person" insert "other than a PRA-authorised person",

(b) for paragraph (a) substitute—

"(a) given to that person under Part 4A, or", and

(c) in the words after paragraph (b), for "the Authority" substitute "the FCA".

(3) After that subsection insert—

"(1A) If a PRA-authorised person carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission given to the person under Part 4A or resulting from any other provision of this Act, the person is to be taken to have contravened—

(a) a requirement imposed by the FCA, and

(b) a requirement imposed by the PRA."

(4) In subsection (2), for "The contravention" substitute "A contravention within subsection (1) or (1A)".

(5) In subsection (3), for "the contravention" (in the first place) substitute "a contravention within subsection (1) or (1A)".

PART 3

MARKET ABUSE

3 (1) In the provisions of Part 8 (market abuse) mentioned in sub-paragraph (2)—

(a) for "Authority", in each place, substitute "FCA", and

(b) for "Authority's", in each place, substitute "FCA's".

(2) The provisions are: sections 119, 120 (including the heading), 121 to 130A and 131A.

(3) In section 121 (codes: procedure), for subsection (10) substitute—

"(10) "Cost benefit analysis" means—

(a) an analysis of the costs together with an analysis of the benefits that will arise—

(i) if the proposed code is issued, or

(ii) if subsection (5)(b) applies, from the code that has been issued, and

(b) subject to subsection (10A), an estimate of those costs and of those benefits.

(10A) If, in the opinion of the FCA—

(a) the costs or benefits referred to in subsection (10) cannot reasonably be estimated, or

(b) it is not reasonably practicable to produce an estimate,

the cost benefit analysis need not estimate them, but must include a statement of the FCA's opinion and an explanation of it."

PART 4

DISCIPLINARY MEASURES

4 In Part 14, before section 205 insert—

"204A Meaning of "relevant requirement" and "appropriate regulator"

(1) The following definitions apply for the purposes of this Part.

(2) "Relevant requirement" means a requirement imposed—

(a) by or under this Act; or

(b) by any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury.

(3) The PRA is the "appropriate regulator" in the case of a contravention of—

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

(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;

(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; or

(d) a requirement that is imposed by any directly applicable EU regulation and is specified (or is of a description specified) in an order made by the Treasury.

(4) In the case of a contravention of a requirement where the contravention constitutes an offence, the "appropriate regulator" is whichever of the PRA or the FCA has power to prosecute the offence (see section 401).

(5) The FCA is the "appropriate regulator" in the case of a contravention of any other requirement.

(6) The Treasury may by order amend the definition of "appropriate regulator"."

5 In section 205 (public censure)—

(a) for "the Authority", in the first place, substitute "the appropriate regulator", and
(b) for the words from "a requirement" to "may" substitute "a relevant requirement imposed on the person, it may".

6 (1) Section 206 (financial penalties) is amended as follows.

(2) In subsection (1)—
(a) for "the Authority" substitute "the appropriate regulator", and
(b) for the words from "a requirement" to "directive," substitute "a relevant requirement imposed on the person,".

(3) In subsection (3), for "the Authority" substitute "the body that imposed the penalty".

7 (1) Section 206A (suspending permission to carry on regulated activities etc) is amended as follows.

(2) In subsection (1), for "the Authority" substitute "the appropriate regulator".

(3) After that subsection insert—

"(1A) The power conferred by subsection (1) is also exercisable by the FCA if it considers that an authorised person has contravened a requirement imposed on the person by—
(a) the Payment Services Regulations 2009; or
(b) the Electronic Money Regulations 2011."

(4) In subsection (2)—
(a) in the definition of "permission", for "the Authority" substitute "the FCA or the PRA", and
(b) omit the definition of "relevant requirement".

(5) In subsection (6), for "The Authority" substitute "The appropriate regulator".

8 In section 207(1) (proposal to take disciplinary measures), for "the Authority" substitute "an appropriate regulator".

9 In section 208(1) and (4) (decision notice), for "the Authority" substitute "an appropriate regulator".

10 In section 209 (publication), for "the Authority" substitute "the appropriate regulator concerned".

11 (1) Section 210 (statements of policy) is amended as follows.

(2) In subsection (1), for "The Authority" substitute "Each appropriate regulator".

(3) In subsection (2), for "The Authority's policy" substitute "An appropriate regulator's policy".

(4) In subsection (3)—
(a) for "The Authority" substitute "An appropriate regulator", and
(b) after "issued" insert "by it".

(5) In subsection (4)—
(a) after "issued" insert "by an appropriate regulator", and

(b) for "the Authority" substitute "the regulator".

(6) In subsection (5), for "The Authority" substitute "An appropriate regulator".

(7) In subsection (6)—
(a) after "issued" insert "by an appropriate regulator", and
(b) for "the Authority", in both places, substitute "the regulator".

(8) In subsection (7)—
(a) for "the Authority" substitute "an appropriate regulator", and
(b) after "published" insert "by it".

(9) In subsection (8), for "The Authority" substitute "An appropriate regulator".

12 (1) Section 211 (statements of policy: procedure) is amended as follows.

(2) In subsection (1)—
(a) for "the Authority", in the first place, substitute "an appropriate regulator", and
(b) for "the Authority", in the second place, substitute "the regulator".

(3) In subsections (2) to (4) and (5) (in both places), for "the Authority" substitute "the regulator".

(4) In subsection (6), for "The Authority" substitute "An appropriate regulator".

PART 5

INJUNCTIONS AND RESTITUTION

13 (1) Section 380 (injunctions) is amended as follows.

(2) In subsections (1) to (3), for "the Authority" substitute "the appropriate regulator".

(3) In subsection (6)(a)—
(a) in the opening words, for "the Authority" substitute "the appropriate regulator",
(b) in sub-paragraph (i), for the words from "any directly applicable" to "directive" substitute "any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury", and
(c) in sub-paragraph (ii), for the words from "which the Authority" to the end substitute "mentioned in section 402(1)".

(4) In subsection (7), omit paragraph (a) (together with the "and" at the end of it).

(5) After subsection (7) insert—

"(8) The PRA is the "appropriate regulator" in the case of a contravention of—
(a) a requirement that is imposed under any provision of this Act by the PRA;
(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;

(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; or

(d) a requirement that is imposed by any directly applicable EU regulation and is specified (or is of a description specified) in an order made by the Treasury.

(9) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the "appropriate regulator" is whichever of the PRA or the FCA has power to prosecute the offence (see section 401).

(10) The FCA is the "appropriate regulator" in the case of a contravention of any other requirement.

(11) The Treasury may by order amend the definition of "appropriate regulator"."

14 (1) Section 381 (injunctions in case of market abuse) is amended as follows.

(2) In subsections (1) to (3), for "the Authority" substitute "the FCA".

(3) In subsection (4), after "The court" insert "may".

15 (1) Section 382 (restitution orders) is amended as follows.

(2) In subsection (1), for "the Authority" substitute "the appropriate regulator".

(3) In subsections (2) and (3), for "the Authority" substitute "the regulator concerned".

(4) In subsection (7), for "the Authority" substitute "the appropriate regulator".

(5) In subsection (9)(a)—

(a) in the opening words, for "the Authority" substitute "the appropriate regulator",

(b) in sub-paragraph (i), for the words from "any directly applicable" to "directive" substitute "any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury", and

(c) in sub-paragraph (ii), for the words from "which the Authority" to the end substitute "mentioned in section 402(1)".

(6) In subsection (10), omit paragraph (a) (together with the "and" at the end of it).

(7) After subsection (10) insert—

"(11) The PRA is the "appropriate regulator" in the case of a contravention of—

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

(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;

(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; or

(d) a requirement that is imposed by any directly applicable EU regulation and is specified (or is of a description specified) in an order made by the Treasury.

(12) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the "appropriate regulator" is whichever of the PRA or the FCA has power to prosecute the offence (see section 401).

(13) The FCA is the "appropriate regulator" in the case of a contravention of any other requirement.

(14) The Treasury may by order amend the definition of "appropriate regulator"."

16 In section 383(1), (4), (5) and (9) (restitution orders in case of market abuse), for "the Authority" substitute "the FCA".

17 (1) Section 384 (power of Authority to require restitution) is amended as follows.

(2) In subsection (1), for "The Authority" substitute "The appropriate regulator".

(3) In subsections (2) and (4), for "Authority" substitute "FCA".

(4) In subsection (5)—

(a) for "the Authority", in the first place, substitute "the body exercising the power ("the body concerned")", and

(b) for "the Authority", in each of the other places, substitute "the body concerned".

(5) In subsection (6), for "the Authority" substitute "the body concerned".

(6) In subsection (7)—

(a) in paragraph (a), for the words from "any directly applicable" to "directive" substitute "any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury", and

(b) in paragraph (b), for the words from "in relation to which" to the end substitute "mentioned in section 402(1)".

(7) Omit subsection (8).

(8) After subsection (8) insert—

"(9) The PRA is the "appropriate regulator" in the case of a contravention of—

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

(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;

(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; or

(d) a requirement that is imposed by any directly applicable EU regulation and is specified (or is of a description specified) in an order made by the Treasury.

(10) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the "appropriate regulator" is whichever of the PRA or the FCA has power to prosecute the offence (see section 401).

(11) The FCA is the "appropriate regulator" in the case of a contravention of any other requirement.

(12) The Treasury may by order amend the definition of "appropriate regulator"."

(9) In the heading, for "**Authority**" substitute "**FCA or PRA**".

(10) In the italic heading before section 384, for "*Authority*" substitute "*FCA or PRA*".

18 (1) Section 385 (warning notices) is amended as follows.

(2) In subsection (1), for "the Authority" substitute "the FCA or the PRA".

(3) In subsection (2), for "the Authority" substitute "the FCA or (as the case may be) the PRA".

19 In section 386(1) and (3) (decision notices), for "the Authority" substitute "the FCA or the PRA".

PART 6

NOTICE PROCEDURES

20 (1) Section 387 (warning notices) is amended as follows.

(2) In subsection (1)(a), for "the Authority" substitute "the body giving the notice ("the regulator concerned")".

(3) In subsection (2)—
(a) for "28 days" substitute "14 days", and
(b) for "the Authority" substitute "the regulator concerned".

(4) In subsections (3) and (4), for "The Authority" substitute "The regulator concerned".

21 (1) Section 388 (decision notices) is amended as follows.

(2) In subsection (1)(b), for "the Authority's reasons" substitute "the reasons of the body giving the notice ("the regulator concerned")"

(3) In subsections (3) and (4), for "The Authority" substitute "The regulator concerned".

22 In section 389(1) (notices of discontinuance), for "the Authority" substitute "the FCA or the PRA".

23 (1) Section 390 (final notices) is amended as follows.

(2) In subsection (1)—

(a) for "the Authority", in the first place, substitute "the FCA or the PRA", and

(b) for "the Authority", in the second place, substitute "the FCA or (as the case may be) the PRA".

(3) In subsection (2)—

(a) for "the Authority", in the first place, substitute "the FCA or the PRA", and

(b) for "the Authority", in the second place, substitute "the FCA or (as the case may be) the PRA".

(4) In subsections (9) and (10), for "the Authority" substitute "the body giving the notice".

24 (1) Section 391 (publication) is amended as follows.

(2) For subsection (1) substitute—

"(1) In the case of a warning notice falling within subsection (1ZB)—

(a) neither the body giving the notice nor a person to whom it is given or copied may publish the notice;

(b) a person to whom the notice is given or copied may not publish any details concerning the notice unless the body giving the notice has published those details; and

(c) after consulting the persons to whom the notice is given or copied, the body giving the notice may publish such information about the matter to which the notice relates as it considers appropriate.

(1ZA) In the case of a warning notice not falling within subsection (1ZB), neither the body giving the notice nor a person to whom it is given or copied may publish the notice or any details concerning it.

(1ZB) A warning notice falls within this subsection if it is given under—

(a) section 63B;

(b) section 67;

(c) section 87M;

(d) section 88B;

(e) section 89K;

(f) section 89R;

(g) section 92;

(h) section 126;

(i) section 131H;

(j) section 207;

(k) section 312G;

(l) section 345."

(3) In subsection (1A), (2) and (3), for "the Authority" substitute "the body giving the notice".

(4) In subsection (4)—

(a) for "The Authority" substitute "The body giving a decision or final notice", and

(b) for "a decision notice or final notice" substitute "the notice".

(5) In subsection (5), for "the Authority" substitute "the body giving the notice".

(6) For subsection (6) substitute—

"(6) The FCA may not publish information under this section if, in its opinion, publication of the information would be—

(a) unfair to the person with respect to whom the action was taken (or was proposed to be taken);

(b) prejudicial to the interests of consumers; or

(c) detrimental to the stability of the UK financial system.

(6A) The PRA may not publish information under this section if, in its opinion, publication of the information would be—

(a) unfair to the person with respect to whom the action was taken (or was proposed to be taken);

(b) prejudicial to the safety and soundness of PRA-authorised persons; or

(c) in a case where section 2C applies, prejudicial to securing the appropriate degree of protection for policyholders."

(7) In subsection (7), for "the Authority" substitute "the FCA or (as the case may be) the PRA".

25 (1) Section 393 (third party rights) is amended as follows.

(2) In subsections (1)(b) and (2), for "the Authority" substitute "the body giving the notice".

(3) In subsection (3)—

(a) for "28 days" substitute "14 days", and

(b) for "the Authority" substitute "the body giving the notice".

(4) In subsections (4)(b), (6), (7), (9)(b) and (11)(b), for "the Authority" substitute "the body giving the notice".

(5) In subsection (12), for "which the Authority must disclose" substitute "to which access must be given".

26 (1) Section 394 (access to Authority material) is amended as follows.

(2) In subsection (1)—

(a) in the opening words, for "the Authority" substitute "the FCA or the PRA", and

(b) in paragraph (b), for ", in the opinion of the Authority," substitute ", in its opinion,".

(3) In subsection (2), for "the Authority", in both places, substitute "the body giving the notice".

(4) In subsection (3), for "The Authority" substitute "The body giving the notice".

(5) In subsection (4)—

(a) for "the Authority" substitute "the body giving the notice", and

(b) for "the Authority's" substitute "the body's".

(6) In subsection (5), for "the Authority" substitute "the body giving the notice".

(7) In subsection (6)—
(a) in paragraph (a), for "the Authority" substitute "the body giving the notice", and
(b) in paragraph (b), for "the Authority in connection with the matter to which the notice to which this section applies" substitute "the body giving the notice in connection with the matter to which that notice".

(8) In the heading, for "**Authority**" substitute "**FCA or PRA**".

27 (1) Section 395 (the Authority's procedures) is amended as follows.

(2) In subsection (1), for "The Authority must" substitute "The FCA and the PRA must each".

(3) In subsection (2), at the end insert ", or by two or more persons who include a person not directly involved in establishing that evidence".

(4) In subsection (3), for the words from "taken" to the end substitute "taken otherwise as mentioned in subsection (2) if the person taking the decision is of a level of seniority laid down by the procedure and—
(a) in the case of procedure proposed by the FCA, the FCA considers that, in the particular case, it is necessary in order to advance one or more of its operational objectives, or
(b) in the case of procedure proposed by the PRA, the PRA considers that, in the particular case, it is necessary in order to advance its general objective or its insurance objective."

(5) In subsection (5)—
(a) for "The Authority must" substitute "The FCA and the PRA must each", and
(b) for "the procedure" substitute "its procedure".

(6) In subsection (6)—
(a) for "the Authority" substitute "the body issuing it", and
(b) for "it" substitute "the statement".

(7) In subsection (7), for "The Authority" substitute "The body issuing the statement".

(8) In subsection (8)—
(a) for "The Authority" substitute "The body issuing a statement under this section", and
(b) for "any statement which it issues under this section" substitute "the statement".

(9) In subsection (9)—
(a) for "giving" substitute "the FCA or the PRA gives", and
(b) for "the Authority" substitute "it".

(10) In subsection (10)—
(a) for "the Authority" substitute "the FCA or the PRA", and
(b) for "the procedure" substitute "its procedure".

(11) In subsection (11), for "The Authority's" substitute "The FCA's or the PRA's".

(12) In subsection (13), for paragraph (a) substitute—

"(a) 55Y(4), (7) or (8)(b);".

(13) In the heading, for "**Authority's**" substitute "**FCA's and PRA's**".

(14) In the italic heading before that section, for "*Authority's*" substitute "*FCA's and PRA's*".

28 (1) Section 396 (statements under s.395: consultation) is amended as follows.

(2) In subsection (1)—

(a) after "a statement of" insert "its",

(b) for "the Authority", in the first place, substitute "the FCA or (as the case may be) the PRA",

(c) for "the Authority", in the second place, substitute "it", and

(d) for "it" substitute "the draft".

(3) In subsection (2), for "the Authority" substitute "the body publishing the draft".

(4) In subsection (3), for "Before issuing the proposed statement of procedure, the Authority" substitute "Before the FCA or the PRA issues the proposed statement of its procedure, it".

(5) In subsection (4), for "the Authority issues the proposed statement of procedure" substitute "the FCA or the PRA issues the proposed statement of its procedure,".

(6) In subsection (5)—

(a) for "statement of procedure differs from the draft published" substitute "statement of the FCA's or the PRA's procedure differs from the draft published by it",

(b) for ", in the opinion of the Authority," substitute ", in its opinion,", and

(c) for "the Authority must" substitute "it must".

(7) In subsection (6)—

(a) for "The Authority" substitute "The body publishing a draft under subsection (1)", and

(b) for "a draft published under subsection (1)" substitute "the draft".

PART 7

OFFENCES

29 (1) Section 398 (misleading the Authority: residual cases) is amended as follows.

(2) In subsection (1), for "the Authority" substitute "the FCA or the PRA".

(3) In the heading, for "**the Authority**" substitute "**FCA or PRA**".

30 (1) Section 401 (proceedings for offences) is amended as follows.

(2) In subsections (2)(a) and (3)(a), for "the Authority" substitute "the appropriate regulator".

(3) After subsection (3) insert—

"(3A) For the purposes of subsections (2)(a) and (3)(a), the PRA is the "appropriate regulator" in respect of each of the following offences—

(a) an offence under section 55P(10) where the contravention is of a requirement imposed by the PRA;

(b) an offence under section 56(4) where the prohibition order is made by the PRA;

(c) an offence under section 177(3) where the investigation is being, or is likely to be, conducted on behalf of the PRA;

(d) an offence under section 177(4) where the requirement is imposed by the PRA;

(e) an offence under section 177(6) where the warrant is issued as a result of information on oath given by the PRA or a person appointed by the PRA to conduct an investigation on its behalf;

(f) an offence under section 191F(1) where the notice should have been given to the PRA;

(g) an offence under any of section 191F(2) to (7) where the notice, approval or information was given to or by the PRA;

(h) an offence under section 366(3);

(i) an offence under section 398(1) where the information was given to the PRA.

(3B) For the purposes of subsections (2)(a) and (3)(a), the FCA is the "appropriate regulator" in respect of all other offences under this Act or subordinate legislation made under this Act."

(4) In subsection (5), for "the Authority" substitute "the appropriate regulator".

31 (1) Section 402 (power of the Authority to institute proceedings for certain other offences) is amended as follows.

(2) In subsections (1) and (2), for "the Authority" substitute "the FCA".

(3) In the heading, for "**the Authority**" substitute "**FCA**".

PART 8

CO-OPERATION

32 After section 415A insert—

"Consultation

415B Consultation in relation to taking certain enforcement action

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

(a) is a PRA-authorised person; or

(b) has a qualifying relationship with a PRA-authorised person.

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

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

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

(b) the giving of a warning notice or decision notice under section 67 (disciplinary powers in relation to approved person);

(c) the giving of a warning notice under section 126 or a decision notice under section 127 (market abuse);

(d) the giving of a warning notice or decision notice under section 131H (short selling);

(e) the giving of a warning notice under section 207 or a decision notice under section 208 (breaches of requirements imposed by or under Act etc);

(f) the giving of a warning notice under section 312G or a decision notice under section 312H (recognised bodies);

(g) the making of an application to the court under section 380, 381, 382 or 383 (injunctions or restitution); or

(h) the giving of a warning notice under section 385 or a decision notice under section 386 (power of FCA or PRA to require restitution).

(4) A person has a qualifying relationship with a PRA-authorised person ("A") for the purposes of this section if—

(a) the person is a member of A's immediate group; or

(b) in the case of a qualifying step within subsection (3)(a) or (b), the person performs a significant-influence function under an arrangement entered into by A, or by a contractor of A, in relation to the carrying on by A of a regulated activity.

"Significant-influence function" and "arrangement" have the same meanings here as in section 59."

SCHEDULE 9

Section 33

THE FINANCIAL SERVICES COMPENSATION SCHEME

1 Part 15 of FSMA 2000 (the Financial Services Compensation Scheme) is amended as follows.

2 In section 212 (the scheme manager), in subsections (2), (4) and (5) for "Authority" substitute "regulators".

3 (1) Section 213 (the compensation scheme) is amended as follows.

(2) In each place, for "Authority" substitute "regulators".

(3) In subsection (1) after "rules" insert "made in accordance with an order under subsection (1A)".

(4) After subsection (1) insert—

"(1A) The Treasury must by order specify—

(a) the cases in which the FCA are, or are not, to make rules under subsection (1), and

(b) the cases in which the PRA are, or are not, to make rules under that subsection.

(1B) Each regulator must consult the other regulator before making rules under this section."

(5) In subsection (2), after "rules" insert "(taken together)".

4 In section 215 (rights of the scheme in insolvency), in each place, for "Authority" substitute "regulators".

5 In section 217 (insurers in financial difficulties), in subsection (5), for "Authority" substitute "either regulator or both regulators".

6 After section 217 insert—

"Relationship with the regulators

217A Co-operation

(1) The regulators and the scheme manager must each take such steps as they consider appropriate to co-operate with each other in the exercise of their functions under this Part and Part 15A.

(2) The regulators and the scheme manager must prepare and maintain a memorandum of understanding describing how they intend to comply with subsection (1).

(3) The scheme manager must ensure that the memorandum of understanding as currently in force is published in the way appearing to it to be best calculated to bring it to the attention of the public."

7 For the italic heading before section 218 substitute "*Annual plan and report*".

8 Before section 218 insert—

"217B Annual plan

(1) The scheme manager must in respect of each of its financial years prepare an annual plan which has been approved by the regulators.

(2) The plan must be prepared before the start of the financial year.

(3) An annual plan in respect of a financial year must make provision about the use of the resources of the scheme manager.

(4) The plan may include material relating to periods longer than the financial year in question.

(5) Before preparing an annual plan, the scheme manager must consult such persons (if any) as the scheme manager considers appropriate.

(6) The scheme manager must publish each annual plan in the way it considers appropriate."

9 (1) Section 218 (annual report) is amended as follows.

(2) In subsections (1) and (2)(b), for "Authority" substitute "regulators".

(3) At the end insert—

"(4) The Treasury may—

(a) require the scheme manager to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or

(b) direct that any such provision of that Act is to apply to the scheme manager with such modifications as are specified in the direction.

(5) Compliance with any requirement under subsection (4)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.

(6) Proceedings under subsection (5) may be brought only by the Treasury."

10 After section 218 insert—

"218ZA Audit of accounts

(1) The scheme manager must send a copy of its annual accounts to the Comptroller and Auditor General as soon as is reasonably practicable.

(2) The Comptroller and Auditor General must—

(a) examine, certify and report to the Treasury on accounts received under this section, and

(b) send a copy of the accounts and the report to the Treasury.

(3) The Treasury must lay the copy of the accounts and the report before Parliament.

(4) The scheme manager must send a copy of the accounts and the report to the regulators.

(5) The expenses of the Comptroller and Auditor General under this section are to be met by the scheme manager.

(6) Except as provided by section 218(4), the scheme manager is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.

(7) In this section "annual accounts" has the meaning given by section 471 of the Companies Act 2006."

11 (1) Section 218A (power to require information) is amended as follows.

(2) In subsection (1)—

(a) for "The Authority", in the first place, substitute "Each regulator", and

(b) for "the Authority", in the second and third place, substitute "that regulator".

(3) In subsections (2) and (4), for "Authority" substitute "regulator".

(4) In subsection (5), for "Authority's" substitute "regulator's".

(5) In the title, for "**Authority's**" substitute "**Regulators'**".

SCHEDULE 10

Section 34

THE FINANCIAL OMBUDSMAN SERVICE

1 In section 226 (compulsory jurisdiction), in subsection (3)(a), for "Authority" substitute "FCA".

2 In section 226A (consumer credit jurisdiction), in subsection (7), for "Authority" substitute "FCA".

3 In section 227 (voluntary jurisdiction), in subsection (6), for "Authority's" substitute "FCA's".

4 (1) Section 228 (determination under the compulsory and consumer credit jurisdiction) is amended as follows.

(2) In subsection (4), in paragraph (c), omit "in writing".

(3) After subsection (6) insert—

"(6A) But the complainant is not to be treated as having rejected the determination by virtue of subsection (6) if—

(a) the complainant notifies the ombudsman after the specified date of the complainant's acceptance of the determination,

(b) the complainant has not previously notified the ombudsman of the complainant's rejection of the determination, and

(c) the ombudsman is satisfied that such conditions as may be prescribed by rules made by the scheme operator for the purposes of this section are satisfied."

(4) After subsection (7) insert—

"(7A) Where a determination is rejected by virtue of subsection (6), the notification under subsection (7) must contain a general description of the effect of subsection (6A)."

5 In section 229 (awards), in subsection (4), for "Authority" substitute "FCA".

6 In section 230 (costs), in subsection (2), for "Authority" substitute "FCA".

7 After section 230 insert—

"230A Reports of determinations

(1) The scheme operator must publish a report of any determination made under this Part.

(2) But if the ombudsman who makes the determination informs the scheme operator that, in the ombudsman's opinion, it is inappropriate to publish a report of that determination (or any part of it) the scheme operator must not publish a report of that determination (or that part).

(3) Unless the complainant agrees, a report of a determination published by the scheme operator may not include the name of the complainant, or particulars which, in the opinion of the scheme operator, are likely to identify the complainant.

(4) The scheme operator may charge a reasonable fee for providing a person with a copy of a report."

8 After section 232 insert—

"232A Scheme operator's duty to provide information to FCA

If the scheme operator considers that it has information that, in its opinion, would or might be of assistance to the FCA in advancing one or more of the FCA's operational objectives, it must disclose that information to the FCA."

9 In section 234 (industry funding), in subsection (1), for "Authority" substitute "FCA".

10 In section 234A (funding by consumer credit licensees), in subsection (1), for "Authority" substitute "FCA".

11 After section 234A insert—

"Successors to businesses

234B Transfers of liability

(1) This section applies where a person (the "successor") has assumed a liability (including a contingent one) of a person (the "predecessor") who was, or (apart from this section) would have been, the respondent in respect of a complaint falling to be dealt with under the ombudsman scheme.

(2) The complaint may (but need not) be dealt with under this Part as if the successor were the respondent."

12 Schedule 17 (the ombudsman scheme) is amended as follows.

13 In paragraph 2 (establishment), in sub-paragraph (2), for "Authority" substitute "FCA".

14 In paragraph 3 (constitution), in each place, for "Authority" substitute "FCA".

15 After paragraph 3 insert—

"Relationship with FCA

3A (1) The scheme operator and the FCA must each take such steps as it considers appropriate to co-operate with the other in the exercise of their functions under this Part.

(2) The scheme operator and the FCA must prepare and maintain a memorandum of understanding describing how they intend to comply with sub-paragraph (1).

(3) The scheme operator must ensure that the memorandum of understanding as currently in force is published in the way appearing to the scheme operator to be best calculated to bring it to the attention of the public."

16 In paragraph 7 (annual reports)—

(a) in each place, for "Authority" substitute "FCA", and

(b) at the end insert—

"(5) The Treasury may—

(a) require the scheme operator to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or

(b) direct that any such provision of that Act is to apply to the scheme operator with such modifications as are specified in the direction.

(6) Compliance with any requirement under sub-paragraph (5)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.

(7) Proceedings under sub-paragraph (6) may be brought only by the Treasury."

17 After paragraph 7 insert—

"Audit of accounts

7A (1) The scheme operator must send a copy of its annual accounts to the Comptroller and Auditor General as soon as is reasonably practicable.

(2) The Comptroller and Auditor General must—

(a) examine, certify and report to the Treasury on accounts received under this paragraph, and

(b) send a copy of the accounts and the report to the Treasury.

(3) The Treasury must lay the copy of the accounts and the report before Parliament.

(4) The scheme operator must send a copy of the accounts and the report to the FCA.

(5) The expenses of the Comptroller and Auditor General under this paragraph are to be met by the scheme operator.

(6) Except as provided by paragraph 7(5), the scheme operator is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.

(7) In this paragraph "annual accounts" has the meaning given by section 471 of the Companies Act 2006."

18 For the italic heading before paragraph 8 substitute "*Information, advice and guidance*".

19 In paragraph 8 (guidance), for "guidance consisting of such information and advice" substitute "such information, guidance or advice".

20 In paragraph 9 (budget), in each place, for "Authority" substitute "FCA".

21 After paragraph 9 insert—

"Annual plan

9A (1) The scheme operator must in respect of each of its financial years prepare an annual plan.

(2) The plan must be prepared before the start of the financial year.

(3) An annual plan in respect of a financial year must make provision about the use of the resources of the scheme operator.

(4) The plan may include material relating to periods longer than the financial year in question.

(5) Before preparing an annual plan, the scheme operator must consult such persons (if any) as the scheme operator considers appropriate.

(6) The scheme operator must publish each annual plan in the way it considers appropriate."

22 In paragraph 13 (procedural rules)—

(a) in each place, for "Authority" substitute "FCA", and

(b) in each place, (including the italic heading), for "Authority's" substitute "FCA's".

23 In paragraph 14 (scheme operator's rules)—

(a) in sub-paragraph (2), after paragraph (f) insert—

"(fa) allow the correction of any clerical mistake in the written statement of a determination made by an ombudsman;

(fb) provide that any irregularity arising from a failure to comply with any provisions of the scheme rules does not of itself render a determination void;", and

(b) in sub-paragraph (7), for "Authority" substitute "FCA".

24 In paragraph 16B (procedure for complaints etc), in sub-paragraph (1), after paragraph (d) insert—

"(e) may provide that an ombudsman may correct any clerical mistake in a determination made by that ombudsman;

(f) provide that any irregularity arising from a failure to comply with any provisions of the consumer credit rules does not of itself render a determination void."

25 In paragraph 16E (consumer credit rules), in each place, for "Authority" substitute "FCA".

26 In paragraph 18 (terms of reference), in each place, for "Authority" substitute "FCA".

27 In paragraph 19 (delegation), in sub-paragraph (3), for "Authority" substitute "FCA".

28 In paragraph 20 (voluntary jurisdiction rules: procedure), in each place, for "Authority" substitute "FCA".

SCHEDULE 11

Section 36

AMENDMENTS OF PARTS 11 AND 23 OF FSMA 2000

PART 1

PART 11 OF FSMA 2000: INFORMATION GATHERING AND INVESTIGATIONS

1 (1) Section 165 (power to require information) is amended as follows.

(2) In subsection (1), for "The Authority" substitute "Either regulator".

(3) In subsection (3), for "Authority" substitute "regulator".

(4) In subsection (4), for "the Authority" substitute "either regulator".

(5) In subsections (5) and (6) for "The Authority", in each place, substitute "The regulator in question".

(6) In subsection (7), for the words from "exercised" to the end substitute "exercised—

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

(b) by the FCA, to impose requirements on an operator, trustee or depositary of a scheme recognised under section 270 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."

(7) In subsection (9)—

(a) for "the Authority", in the first place, substitute "the regulator exercising the power",

(b) for "the Authority's" substitute "that regulator's", and

(c) for "the Authority", in the second place, substitute "that regulator".

(8) In subsection (11)—

(a) in the opening words, for "an authorised person" substitute "another person", and

(b) in paragraph (d), at the end insert "(reading references in that Part to the authorised person as references to A)".

(9) In the heading, for "Authority's" substitute "Regulator's".

2 In section 165A (power to require information relevant to financial stability)—

(a) for "Authority", in each place, substitute "PRA", and

(b) in the heading, for "Authority's" substitute "PRA's".

3 In section 165B (safeguards relating to section 165A)—

(a) for "Authority", in each place, substitute "PRA", and

(b) for "Authority's", in each place, substitute "PRA's".

4 (1) Section 166 (reports by skilled persons) is amended as follows.

(2) In subsection (1)—

(a) for "The Authority", in the first place, substitute "Either regulator",
(b) for "the Authority", in the second place, substitute "the regulator giving the notice", and
(c) for "the Authority", in the third place, substitute "that regulator".

(3) In subsection (3), for "Authority" substitute "regulator".

(4) In subsection (4)—
(a) for "the Authority", in the first place, substitute "the regulator which gives the notice under subsection (1)", and
(b) for "the Authority" in the second place, substitute "that regulator".

(5) In subsection (6), for "Authority" substitute "regulator which gave the notice under subsection (1)".

(6) After subsection (6) insert—

"(7) The power conferred by subsection (1) may also be exercised by the FCA to require a person to whom subsection (8) applies to provide the FCA with a report in accordance with this section (and, accordingly, the reference in subsection (5) to a person to whom subsection (2) applies includes a person to whom subsection (8) applies).

(8) The 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,
(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."

5 After section 166 insert—

"166A Appointment of skilled person to collect and update information

(1) This section applies if either regulator considers that an authorised person has contravened a requirement in rules made by that regulator to collect, and keep up to date, information of a description specified in the rules.

(2) The regulator may require the authorised person to appoint a skilled person to collect or update the information in question.

(3) References in this section to a skilled person are to a person—
(a) nominated or approved by the regulator imposing the requirement, and
(b) appearing to that regulator to have the skills necessary to collect or update the information in question.

(4) The skilled person may require any person to provide all such assistance as the skilled person may reasonably require to collect or update the information in question.

(5) A requirement imposed under subsection (4) 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.

(6) A contractual or other requirement imposed on a person ("P") to keep any information in confidence does not apply if—

(a) the information is or may be relevant to anything required to be done as a result of this section,

(b) an authorised person or a skilled person requests or requires P to provide the information for the purpose of securing that those things are done, and

(c) the regulator in question has approved the making of the request or the imposition of the requirement before it is made or imposed.

(7) An authorised person may provide information (whether received under subsection (6) or otherwise) that would otherwise be subject to a contractual or other requirement to keep it in confidence if it is provided for the purposes of anything required to be done as a result of this section.

(8) In this section "authorised person", in relation to the PRA, means PRA-authorised person."

6 (1) Section 167 (appointment of investigator in general cases) is amended as follows.

(2) In subsection (1), for "the Authority or the Secretary of State ("the investigating authority")" substitute "an investigating authority".

(3) After subsection (5) insert—

"(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;

(c) in relation to an appointed representative or former appointed representative, the FCA or the PRA."

7 (1) Section 168 (appointment of investigator in specific cases) is amended as follows.

(2) In subsection (1)(b), for "191" substitute "191F".

(3) In subsection (4)—

(a) in the opening words, for "the Authority" substitute "an investigating authority",

(b) in paragraph (c), for "Authority" substitute "investigating authority",

(c) after that paragraph insert—

"(ca) a recognised investment exchange may have contravened the recognition requirements (within the meaning of Part 18);",

(d) in paragraph (f), for "an authorised or exempt person" substitute "a person", and

(e) in paragraph (h), for "Authority" substitute "investigating authority".

(4) In subsection (5), for "Authority" substitute "investigating authority".

(5) For subsection (6) substitute—

"(6) "Investigating authority" means—

(a) in subsections (1) to (3), the FCA, the PRA or the Secretary of State;

(b) in subsections (4) and (5), the FCA or the PRA."

8 (1) Section 169 (investigations at the request of an overseas regulator) is amended as follows.

(2) In subsection (1), for "the Authority" substitute "a regulator".

(3) In subsections (3) and (4), in each place, for "Authority" substitute "regulator".

(4) In subsection (5), in each place, for "Authority" substitute "regulator".

(5) In subsection (6), for "Authority" substitute "regulator".

(6) In subsection (7), for "the Authority" substitute "a regulator".

(7) In subsection (8), for "Authority" substitute "regulator",

(8) In subsection (9), for "The Authority" substitute "Each regulator".

(9) In subsection (11), for "Authority" substitute "regulator".

9 In section 169A (supporting an overseas regulator regarding financial stability), in subsection (1), for "Authority" substitute "PRA".

10 In section 170 (investigations: general), in subsection (10), for paragraphs (a) and (b) substitute—

"(a) the FCA, if the FCA appointed the investigator;

(aa) the PRA, if the PRA appointed the investigator;

(b) the Secretary of State, if the Secretary of State appointed the investigator."

11 In section 174 (admissibility of statements to investigators), in subsection (2), for "the Authority" substitute "a regulator".

12 (1) Section 175 (information and documents: supplemental) is amended as follows.

(2) In subsection (1), for "the Authority" substitute "either regulator".

(3) After subsection (2) insert—

"(2A) A document so produced may be retained for so long as the person to whom it is produced considers that it is necessary to retain it (rather than copies of it) for the purposes for which the document was requested.

(2B) If the person to whom a document is so produced has reasonable grounds for believing—

(a) that the document may have to be produced for the purposes of any legal proceedings, and

(b) that it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded."

(4) In subsection (3), for "Authority" substitute "regulator".

13 (1) Section 176 (entry of premises under warrant) is amended as follows.

(2) In subsection (1), for "the Authority" substitute "either regulator".

(3) After subsection (5) insert—

"(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."

(4) In subsection (6), for "16" substitute "16(3) to (12)".

(5) In subsection (7), for "18" substitute "18(3) to (12)".

(6) Omit subsection (8).

(7) In subsection (11), in paragraph (a), for "the Authority" substitute "a regulator".

14 After section 176 insert—

"176A Retention of documents taken under section 176

(1) Any document of which possession is taken under section 176 ("a seized document") may be retained so long as it is necessary to retain it (rather than copies of it) in the circumstances.

(2) A person claiming to be the owner of a seized document may apply to a magistrates' court or (in Scotland) the sheriff for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.

(3) If on an application under subsection (2) the court or (in Scotland) the sheriff cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.

(4) An order under subsection (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.

(5) Any right to bring proceedings (as described in subsection (4)) may only be exercised within 6 months of the date of the order made under subsection (2) or (3)."

PART 2

PART 23 OF FSMA 2000: PUBLIC RECORD, DISCLOSURE OF INFORMATION AND CO-OPERATION

15 (1) Section 347 (record of authorised persons) is amended as follows.

(2) In subsections (1) to (6), for "Authority", in each place, substitute "FCA".

(3) Omit subsection (1)(f).

(4) In subsection (2), in paragraph (e)—
(a) omit "or recognised clearing house,", and
(b) omit "or clearing house".

(5) In subsection (8), for "Authority" substitute "FCA or the PRA".

16 After section 347 insert—

"347A Duty of PRA to disclose information relevant to the record

(1) The PRA must, for the purpose of assisting the FCA to comply with its duty under section 347—
(a) notify the FCA if the information included in the record as required under section 347(2)(a) appears to the PRA to be incomplete or inaccurate,
(b) if it makes a prohibition order relating to an individual, provide the FCA with information falling within section 347(2)(f) in relation to that order,
(c) where it is the appropriate regulator in relation to an approved person, provide the FCA with information falling within section 347(2)(g) in relation to that approved person, and
(d) where the FCA has notified the PRA that it considers it appropriate to include in the record information of a certain description, disclose to the FCA such information of that description as the PRA has in its possession.

(2) The duty to provide information under this section does not apply to information which the PRA reasonably believes is in the possession of the FCA.

(3) Subsection (1) does not require or authorise the disclosure of information whose disclosure is prohibited by or under section 348.

(4) This section is without prejudice to any other power to disclose information.

(5) In this section references to the "record" are to the record maintained under section 347."

17 (1) Section 348 (restrictions on disclosure of information) is amended as follows.

(2) In subsection (2)(b)—
(a) for "Authority" substitute "FCA, the PRA", and
(b) omit ", the competent authority for the purposes of Part VI".

(3) In subsection (5)—
(a) for paragraph (a) substitute—
"(a) the FCA;
(aa) the PRA;",
(b) omit paragraph (b), and
(c) in paragraph (d), for "139E" substitute "166A".

(4) In subsection (6)—
(a) in paragraph (a), for "the competent authority" substitute "the FCA",
(b) in paragraph (b), for "Authority" substitute "FCA, the PRA", and

(c) for paragraph (c) substitute—

"(c) any body or person appointed under paragraph 9 of Schedule 1ZA to perform a function on behalf of the FCA;

(d) any body or person appointed under paragraph 17 of Schedule 1ZB to perform a function on behalf of the PRA."

(5) In the heading for "Authority" substitute "FCA, PRA".

18 (1) Section 349 (exceptions from section 348) is amended as follows.

(2) In subsection (2)(c), for "Authority" substitute "FCA or the PRA".

(3) In subsection (3A)(a), for "Authority" substitute "FCA or the PRA".

(4) In subsection (3B)(c), for "Authority's functions" substitute "functions of the FCA or the PRA".

19 Omit section 351 (competition information).

20 (1) In section 353 (removal of other restrictions on disclosure), in subsection (1)(b)—

(a) for "Authority", in the first place, substitute "PRA or the FCA", and

(b) for "Authority", in the second place, substitute "either of them".

21 After section 353 insert—

"Information received from Bank of England

353A Information received from Bank of England

(1) A regulator must not disclose to any person specially protected information.

(2) "Specially protected information" is information in relation to which the first and second conditions are met.

(3) The first condition is that the regulator received the information from—

(a) the Bank of England ("the Bank"), or

(b) the other regulator where that regulator had received the information from the Bank.

(4) The second condition is that the Bank notified the regulator to which it disclosed the information that the Bank held the information for the purpose of its functions with respect to any of the following—

(a) monetary policy;

(b) financial operations intended to support financial institutions for the purposes of maintaining stability;

(c) the provision of private banking services and related services.

(5) The notification referred to in subsection (4) must be—

(a) in writing, and

(b) given before, or at the same time as, the Bank discloses the information.

(6) The prohibition in subsection (1) does not apply—

(a) to disclosure by one regulator to the other regulator where the regulator making the disclosure informs the other regulator that the information is specially protected information by virtue of this section;

(b) where the Bank has consented to disclosure of the information;

(c) to information which has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section;

(d) to information which the regulator is required to disclose in pursuance of any EU obligation.

(7) In this section references to disclosure by or to a regulator or by the Bank include references to disclosure by or to—

(a) the regulator's or the Bank's, officers or employees (including persons on secondment to the regulator or the Bank); or

(b) auditors, experts, contractors or investigators appointed by the regulator or the Bank under powers conferred by this Act or otherwise.

(8) References to disclosure by a regulator do not include references to disclosure between persons who fall within subsection (7)(a) or (b) in relation to that regulator.

(9) Each regulator must take such steps as are reasonable in the circumstances to prevent the disclosure of specially protected information, in cases not excluded by subsection (6), by those who are or have been—

(a) its officers or employees (including persons seconded to it);

(b) auditors, experts, contractors or investigators appointed by the regulator under powers conferred by this Act or otherwise;

(c) persons to whom the regulator has delegated any of its functions."

22 For section 354 substitute—

"354A FCA's duty to co-operate with others

(1) The FCA must take such steps as it considers appropriate to co-operate with other persons (whether in the United Kingdom or elsewhere) who have functions—

(a) similar to those of the FCA, or

(b) in relation to the prevention or detection of financial crime.

(2) The persons referred to in subsection (1) do not include the Bank of England or the PRA (but see sections 3D and 3O).

(3) The FCA must take such steps as it considers appropriate to co-operate with—

(a) the Panel on Takeovers and Mergers;

(b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;

(c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appears to the FCA to be similar to those of the Panel on Takeovers and Mergers.

(4) Co-operation may include the sharing of information which the FCA is not prevented from disclosing.

(5) "Financial crime" has the meaning given in section 1B(6).

354B PRA's duty to co-operate with others

(1) The PRA must take such steps as it considers appropriate to co-operate with—

(a) other persons (whether in the United Kingdom or elsewhere) who have functions similar to those of the PRA, and

(b) other bodies that have functions relevant to financial stability.

(2) The persons referred to in subsection (1) do not include the Bank of England or the FCA (but see sections 3D and 3O).

(3) Co-operation may include the sharing of information which the PRA is not prevented from disclosing.

354C PRA's duty to provide information to Bank of England

(1) The PRA must disclose to the Bank of England ("the Bank") any information in its possession that it thinks will or may assist the Bank in achieving its financial stability objective.

(2) The duty in subsection (1) applies whether or not the Bank has requested that the information be disclosed to it.

(3) Subsection (1) does not require or authorise the disclosure of information whose disclosure—

(a) is prohibited by or under section 348 or any other enactment;

(b) is incompatible with any EU obligation;

(c) would constitute or be punishable as a contempt of court.

(4) This section is without prejudice to any other power to disclose information.

(5) The Bank's financial stability objective is the objective set out in section 2A(1) of the Bank of England Act 1998.

(6) In this section "enactment" includes—

(a) an Act of the Scottish Parliament,

(b) Northern Ireland legislation, and

(c) a Measure or Act of the National Assembly for Wales."

SCHEDULE 12

Section 38

PROVISION OF FINANCIAL SERVICES BY MEMBERS OF THE PROFESSIONS

1 In section 325 (general duty)—

(a) for "Authority", in each place, substitute "FCA", and
(b) in the heading, for "Authority's" substitute "FCA's".

2 In section 328 (directions relating to the general prohibition), for "Authority", in each place, substitute "FCA".

3 In section 329 (orders relating to the general prohibition), for "Authority", in each place, substitute "FCA".

4 In section 330 (consultation)—
(a) for "Authority", in each place, substitute "FCA", and
(b) for subsection (10) substitute—

"(10) "Cost benefit analysis" means—
(a) an analysis of the costs together with an analysis of the benefits that will arise—
(i) if the proposed direction is given, or
(ii) if subsection (5)(b) applies, from the direction that has been given, and
(b) subject to subsection (10A), an estimate of those costs and of those benefits.

(10A) If, in the opinion of the FCA—
(a) the costs or benefits referred to in subsection (10) cannot reasonably be estimated, or
(b) it is not reasonably practicable to produce an estimate,
the cost benefit analysis need not estimate them, but must include a statement of the FCA's opinion and an explanation of it."

5 In section 331 (procedure for making orders), for "Authority", in each place, substitute "FCA".

6 In section 332 (rules relating to persons to whom the general prohibition does not apply), for "Authority", in each place, substitute "FCA".

4 Explanatory notes

4.1 This chapter contains the explanatory notes to be read in conjunction with the draft Bill.

FINANCIAL SERVICES BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Financial Services Bill as published in draft for pre-legislative scrutiny on 16 June 2011. They have been prepared by HM Treasury in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the draft Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the draft Bill. They are not, and are not meant to be, a comprehensive description of the draft Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

Background

3. The Government is committed to putting in place a new system for financial regulation as stated in the Government's publication "*The Coalition: our programme for government"*:

> We will reform the regulatory system to avoid a repeat of the financial crisis. We will bring forward proposals to give the Bank of England control of macro-prudential regulation and oversight of micro-prudential regulation.

4. The Government's proposals were first set out and consulted on in Cm 7874 "*A new approach to financial regulation: judgement, focus and stability"*. The proposed system was developed further and set out for a further period of consultation in Cm 8012 "*A new approach to financial regulation: building a stronger system"*. Copies of relevant documents, including these consultation documents were made available on the Treasury's website (www.hm-treasury.gov.uk). Alongside the Bill, the Government has published a White Paper *A new approach to financial regulation: the blueprint for reform* setting out further policy detail and some further areas for consultation.

Summary

5. The Bill provides a new framework for financial regulation in the United Kingdom. The Bill places responsibility for financial stability with the Bank of England (the Bank).

6. The Bill introduces three institutional changes:

- Establishing the Financial Policy Committee (FPC) as a committee of the Court of the Bank. The FPC will have responsibility for macro-prudential regulation; that is, regulation of the stability and resilience of the system as a whole.

- Establishing the Prudential Regulation Authority (PRA) as an operationally independent subsidiary of the Bank with responsibility for micro-prudential regulation. The PRA will regulate institutions that manage significant risks on their balance sheets; institutions that require a sophisticated level of prudential regulation.

- Establishing the Financial Conduct Authority (FCA) as an independent conduct of business regulator, protecting and enhancing confidence in the UK financial system.

7. The Bill equips the FPC, the PRA and the FCA with a range of powers and provides the objectives and principles by which they will operate. Existing powers, exercised by the Financial Services Authority will be transferred to one or more successor bodies and certain new powers are provided for in the Bill.

8. The Bill sets out how the regulators will be held accountable for fulfilling their roles and how they will be governed, including the constitution of their governing bodies. It also sets out the role of HM Treasury in relation to the regulators.

9. The Bill requires the regulators to coordinate their functions effectively, placing a statutory duty on them to coordinate with each other and cooperate with the Bank. The Bill establishes the PRA as lead regulator where firms are regulated by both the PRA and the FCA and empowers the PRA to veto an action to be taken by the FCA if it is likely to lead to the disorderly failure of a firm or wider financial instability. The Bill details how some specific processes will be coordinated between the regulators.

10. Recognising the international nature of financial regulation, the Bill states the mechanisms by which the regulators will look to ensure coordination relating to the membership of, or relations with, international bodies such as the new European Supervisory Authorities.

11. The Bill states the mechanisms that will define responsibilities between HM Treasury, the Bank, the PRA and the FCA in the event of crisis in the financial system.

OVERVIEW OF STRUCTURE OF THE BILL

12. The Bill contains 7 Parts and 12 Schedules. The Bill makes changes to a number of existing Acts, most notably the Financial Services and Markets Act 2000 (FSMA), the Bank of England Act 1998 and the Banking Act 2009. The general arrangement of the Bill is as follows:

Part 1	Amendments of Bank of England Act 1998
Part 2	Amendments of Financial Services and Market Act 2000
Part 3	Collaboration between Treasury, Bank of England, FCA or PRA
Part 4	Inquiries and Investigations
Part 5	Amendments of Banking Act 2009
Part 6	Miscellaneous
Part 7	General

TERRITORIAL EXTENT AND APPLICATION

13. The Bill extends to the whole of the United Kingdom (see *clause 68*). It addresses matters relating to financial services and markets, which are reserved to the UK Parliament.

14. No powers have been transferred to the National Assembly for Wales or the Welsh Ministers, and the Bill does not affect the functions of any of the devolved administrations.

COMMENTARY

15. In the Commentary on Part 1 of the Bill, references to "new sections" and "new Schedules" are to the sections and Schedules to be inserted into the Bank of England Act 1998 by the Bill. Elsewhere in the Commentary, except where the text indicates otherwise, references to "new sections" and "new Schedules" are to the sections and Schedules to be inserted into FSMA by the Bill. A Glossary of other terms and expressions used in the Explanatory Notes below is provided at the end of this document.

PART 1 – AMENDMENTS OF BANK OF ENGLAND ACT 1998

Clause 1: Deputy Governors

16. *Subsection (1)* amends section 1 of the Bank of England Act 1998 (the "BoE Act") to provide for the creation of a new post of Deputy Governor for prudential regulation. The Deputy Governor for prudential regulation, like the Deputy Governors for monetary policy and financial stability, is to be a member of the Bank's court of directors.

17. *Subsection (2)* amends section 13 so as to provide that the new Deputy Governor for prudential regulation is not a member of the Monetary Policy Committee.

Clause 2: The Bank's financial stability objective

18. Under section 2A of the BoE Act, an objective of the Bank is to contribute to protecting and enhancing the stability of the financial systems of the United Kingdom. In pursuing that objective, the Bank is required to aim to work with other relevant bodies including the Treasury and the FSA.

19. *Subsection (2)* amends the Bank's financial stability objective in section 2A: the new objective is to protect and enhance the stability of the financial system of the United Kingdom. This change will reflect the enhanced role that the Bank will have in relation to the protection of financial stability. The amendments to section 2A also align the terminology in the BoE Act with the terminology used in FSMA. *Subsection (3)* makes a consequential amendment, replacing the reference to the Bank aiming to work with the FSA with a reference to working with the new regulators. *Subsection (4)* removes the existing requirement for the Bank's financial stability strategy, which is replaced by new section 9A of the BoE Act.

Clause 3 and Schedule 1: Financial stability strategy and Financial Policy Committee, and other amendments of Bank of England Act 1998

20. *Subsection (1)* inserts a new Part 1A into the BoE Act.

21. *New section 9A* replaces section 2A(3) of the BoE Act and requires the court of directors of the Bank to determine the Bank's strategy in relation to the Bank's financial stability objective. The court of directors must consult the FPC and the Treasury on a draft of the strategy. In addition, the FPC may make recommendations to the court of directors as to the provisions of the strategy. The strategy must be reviewed at least every 3 years. The strategy, and any revised strategies, must be published.

22. *New section 9B* provides for the creation of a sub-committee of the court of directors to be known as the "Financial Policy Committee", the membership of which is set out in *subsection (1).*

23. The procedures of the FPC are to be kept under review by the non-executive committee of the court of directors established under section 3 of the BoE Act.

24. *New section 9B(6)* introduces *new Schedule 2A*, set out in *Part 1 of Schedule 1* to the Bill, which makes further provision about the FPC.

25. *Paragraph 1* of that Schedule specifies that the term of appointment of FPC members appointed by the Governor or by Chancellor ("appointed members") is to be 3 years. *Paragraph 2* provides that a member may not be appointed by the Chancellor more than twice. Additional provision is made for initial appointments to the FPC to be shorter than 3 years; this is so that the terms of members may be staggered appropriately. Where initial appointments are shorter than 3 years, members may serve a further two terms. *Paragraph 3* allows the Chancellor to extend the term of appointment of a member appointed by him for up to 6 months. This might be appropriate to avoid a vacancy in cases where the person identified as a new member is unable to take up his post and a new recruitment exercise is required or where a member's term is due to expire at a time when a recruitment process to replace that member would not be possible or would be inappropriate. Any period of extension under this provision is to be counted towards the person's subsequent term if that person is reappointed to the FPC. *Paragraph 4* provides that appointed members may resign by written notice to the Bank.

26. *Paragraph 6* provides that a Minister of the Crown or a person employed by a government department may not be an appointed member. A member of the Monetary Policy Committee may not be appointed to the FPC by the Chancellor.

27. *Paragraphs 7 to 9* deal with the removal of appointed members. An appointed member ceases to hold office if they become a person who could not (under paragraph 6) be appointed to the FPC. A member appointed by the Governor ceases to hold office if they cease to have relevant executive responsibilities within the Bank. In addition, the Bank may, with the consent of the Chancellor, remove an appointed member on the ground that the member has been absent from meetings (*paragraph 9(1)(a)*); entered a relevant insolvency process (*paragraph 9(1)(b)*); or is unable or unfit to discharge their duties (*paragraph 9(1)(c)*). In the case of a member appointed by the Chancellor, the Bank may also remove the member on grounds of conflict of interest (*paragraph 9(2)*).

28. *Paragraph 10* requires the FPC to meet at least 4 times a year. The Governor (or in the Governor's absence the Bank's Deputy Governor for financial stability) may call a meeting at any time on reasonable notice.

29. *Paragraphs 11 to 13* deal with the proceedings of the FPC. The quorum is to be 7 (not counting the Treasury representative) and must include either the Governor or the Deputy Governor for financial stability (who is to chair the meeting) and one member appointed by the Chancellor of the Exchequer. Also, the effect of paragraph 11(2)(b) is that for a meeting to be quorate either the Governor **and** the Deputy Governor for

financial stability must be present or one of them and another Deputy Governor. The chair is required to seek to secure that decisions are reached by consensus where possible. Where this is not possible, decisions are to be taken by a vote of members present at the meeting with the chair having a second casting vote. The Treasury's representative may not vote at the meeting. The FPC is to determine how to treat members who are not present at the meeting but are in communication with the meeting (for example via video conferencing facilities). The FPC has a discretion to invite other persons to attend meetings and to determine whether they may speak at the meeting. *Paragraph 14* makes provision for disclosure of, and handling of, conflicts of interest.

30. *New section 9C* provides that the objective of the FPC is to contribute to the achievement by the Bank of the financial stability objective provided for in section 2A of the BoE Act (as amended by *clause 2* of the Bill). *Subsection (2)* provides that the FPC is to contribute to that objective primarily by identifying, monitoring and taking action to remove or reduce systemic risks with a view to protecting and enhancing the resilience of the UK financial system. *Subsection (3)* sets out two types of systemic risk in particular which are included. "Systemic risk" is defined in *subsection (5)*. *Subsection (4)* limits the operation of *subsections (2) and (3)* by providing that they do not allow the FPC to exercise its functions in a way which would be likely to have a significant adverse effect on the capacity of the financial sector to contribute to the growth of the UK economy in the medium or long term.

31. *New section 9D* enables the Treasury to make recommendations to the FPC. These recommendations may relate to matters that the FPC should regard as relevant to the Committee's understanding of the Bank's financial stability objective; the responsibility of the FPC in relation to the achievement of that objective; and matters to which the Treasury consider the FPC should have regard in the exercise of its functions. For example, the Treasury could recommend that the FPC take into account the experience of another country in using a particular macro-prudential measure.

32. Recommendations about the objective must be made at least once in every calendar year. The FPC must notify the Treasury how far the FPC accepts the recommendation and what, if any, action it proposes to take in response. The recommendations of the Treasury and the FPC's response must be published by the Treasury and laid before Parliament. *New section 9E* provides that the FPC must have regard to the financial stability strategy prepared by the court of directors under section 9A (except when exercising functions which relate to the strategy). *Subsection (2)* provides that the FPC should seek to avoid exercising its functions in a way which would prejudice the advancement by the FCA of its strategic and operational objectives or the PRA's advancement of its objectives. This duty operates subject to the FPC's objective.

33. *Subsection (3)* sets out three further factors to which the FPC must have regard in the exercise of its functions. These are the principle of proportionality (as outlined in paragraph (a)); the merits of disclosure of the FPC's views and the disclosure of

information (parag*raph (b));* and the international obligations of the United Kingdom, particularly where relevant to the exercise by the FPC of its functions which relate to the PRA or FCA (paragraph (c)).

34. *New section 9F* sets out the functions of the FPC. These comprise the monitoring of the stability of the UK financial system; giving directions to the PRA or FCA under section 9G; making recommendations to the PRA, FCA and others; and preparing financial stability reports under section 9S.

35. *Subsection (2)* enables the court of directors to delegate further functions of the Bank to the FPC. The court of directors may only do so with the consent of the Treasury.

36. *New section 9G* enables the FPC to give a direction to the PRA or FCA. The FPC may require a regulator to exercise its functions to implement a macro-prudential measure (a measure prescribed by the Treasury by order made under section 9K). The direction may require the regulator to implement the macro-prudential measure in relation to all regulated persons or a class of regulated persons. However the direction may not relate to a specified regulated person. "Regulated person" is defined in *subsection (2)*. *Subsection (5)* allows the FPC to refer to the opinion of the regulator (for example, to make provision such as "if the PRA considers that condition X is satisfied") or authorise the exercise of a discretion by the regulator (for example, to make provision such as "the FCA may provide for exemptions as it considers appropriate"). *Subsection (6)* enables the FPC to give recommendations as to how and when the direction is to be implemented. The FPC may provide for the "comply or explain" mechanism provided for in new section 9O(3) to apply to such recommendations. *Subsection (8)* prevents the FPC purporting to direct a regulator to do something that it has no power to do. However in determining whether it is appropriate to exercise a power in a particular way, a regulator may have regard to the direction. For example, in determining whether a proposed rule can be said to be necessary or expedient for the purpose of advancing its objectives (see *new section 137A* of FSMA as inserted by clause 21), the PRA may have regard to the fact that the FPC has directed it to take certain action for the purpose of promoting or enhancing financial stability. *Subsection (9)* enables the FPC to specify matters to which the regulator is to have regard in complying with the direction, so long as those matters do not relate to a specified regulated person. *Subsection (10)* enables the FPC, when giving a direction, to make references (including ambulatory references) to publications issued by the FCA, PRA or other persons in the United Kingdom or international organisations.

37. *New section 9H* requires the PRA and FCA to comply with any direction from the FPC as soon as reasonably practicable. *Subsection (2)* enables the Treasury, when making an order under section 9K, to exclude or modify any procedural requirement which would otherwise apply under FSMA to the FCA or PRA when it is complying

with a direction. For example, an order under section 9K which specifies a macro-prudential measure could provide that the obligation of the PRA or FCA under section 138J of FSMA or section 138K of FSMA (as inserted by *clause 21*) to consult on proposed rules does not apply to rules made to implement a direction from the FPC which relates to that macro-prudential measure.

38. *Subsection (3)* requires the regulator which has received a direction to report to the FPC on how it is complying with the direction. Under *subsection (4)*, the FPC may specify the times at which such reports are required.

39. *New section 9I* enables the FPC to revoke a direction. A direction is to be treated as being revoked if it relates to a macro-prudential measure which ceases to be a macro-prudential measure (subject to any transitional provision made under new section 9K(5)(f)).

40. *New section 9J* contains procedural matters relating to directions, including the obligation on the FPC to give a direction in writing and to give the Treasury a copy of a direction or notice of revocation of a direction. The Treasury may lay before Parliament a copy of the direction or revocation it receives from the FPC. Where the Treasury has not done so before the direction or revocation is included in the record of the FPC meeting at which the direction or revocation was given (for example, because disclosure of the direction in full would be contrary to the public interest), the Treasury must lay before Parliament the direction or revocation included in the record (which may have been redacted in accordance with section 9Q(8)(b)).

41. *New section 9K* enables the Treasury to prescribe, by order, what macro-prudential measures are. *Subsection (2)* provides that before making an order under section 9K, the Treasury must consult the FPC (or, in cases of urgency, the Governor). By virtue of *subsection (3)*, the order must specify if the measure is prescribed in relation to the PRA, the FCA or both. *Subsection (4)* provides that the order may require the FPC to maintain a statement of general policy as to how it will exercise its power of direction in relation to a particular measure. *Subsection (5)* sets out various matters that an order may contain including the making of ambulatory references to certain publications (for example references to publications as they have effect from time to time, rather than to the version of that publication which had effect at the time of the order) and referring to rules made by the PRA or FCA.

42. *New section 9L* sets out the requirements for Parliamentary control of orders under section 9K. Such orders are subject to the affirmative procedure. The orders must be approved in draft by each House of Parliament before being made except in urgent cases where the order may be made immediately but ceases to have effect if not approved by each House within 28 sitting days.

43. *New section 9M* enables the FPC to make recommendations within the Bank. *Subsection (3)* provides that recommendations may not be made on the provision by the Bank of financial assistance to a particular financial institution or the exercise by

the Bank of its powers under Parts 1 to 3 of the Banking Act 2009 in relation to a particular institution.

44. *New section 9N* enables the FPC to make recommendations to the Treasury. Those recommendations may in particular relate to the exercise by the Treasury of certain powers to make secondary legislation including section 22 of FSMA (power to specify activities and investments) and section 22A of FSMA (designation of activities requiring prudential regulation by the PRA) (see *clause 6*).

45. *New section 9O* enables the FPC to make recommendations to the FCA and PRA about the exercise of their functions. Such recommendations may not relate to the exercise of functions in relation to a particular regulated person. If the FPC so provides in its recommendation, the PRA or FCA must either act in accordance with the recommendation or explain why it has not done so.

46. *New section 9P* enables the FPC to make recommendations to other persons, for example the Financial Reporting Council.

47. *New section 9Q* requires the Bank to publish a record of each meeting of the FPC within 6 weeks of the day of the meeting. The record must set out the decisions taken at the meeting and a summary of the discussion at the meeting. Under *subsection (4)*, the record must include the text of any direction under section 9G or section 9U. *Subsection (5)* requires any recommendations made by the FPC to be included in the record. *Subsection (6)* requires the FPC to include in the record any explanation from the PRA or FPC under section 9O as to why they have not complied with a recommendation. *Subsection (7)* specifies that the record is not required to include information identifying particular members of the FPC.

48. *Subsection (8)* provides for exclusions from the record. This includes information about recommendations from the FPC to the Bank which relate to the provision by the Bank of financial assistance (*subsection (8)(a)*); information publication of which the FPC considers be contrary to the public interest (*subsection (8)(b)*); and information about a direction given to the PRA or FCA which has been revoked before the record is published (*subsection (8)(d)*).

49. *New section 9R* deals with information which has not been included in the record of a FPC meeting on the basis that its publication at that time would be against the public interest (see *section 9Q(8)(b)*). In such cases, the FPC must consider whether to fix a date when the information may be published. This might be appropriate where information is to be made public by other means on a certain date, for example as part of the duty of financial institutions to publish their accounts. Where the FPC does not fix a date, it must keep under review whether publication of the information would still be contrary to the public interest, in line with a procedure to be adopted under

subsection (2). Publication of information previously excluded from the record is to take place at the time when the FPC next publishes a record of a meeting of the FPC.

50. *New section 9S* requires the FPC to publish reports relating to financial stability. The FPC must publish two such reports each year. Under *subsections (3) and (4)*, each report must include certain matters including the FPC's view on the stability of the UK financial system (*subsection (3)(a)*); an assessment of risks to the stability of the UK financial system (*subsection (3)(d)*); the FPC's view of the outlook for the stability of the UK financial system (*subsection (3)(e)*); a summary of the activities of the FPC in the reporting period (*subsection (4)(a)*); and an assessment of the extent to which the FPC has succeeded in achieving its objectives in the reporting period (*subsection (4)(b)*).

51. *Subsection (6)* specifies that the FPC is not required to include in the report any information publication of which would be against the public interest. *Subsections (7) to (10)* require the FPC to publish each report and to give a copy of each report to the Treasury who must lay it before Parliament.

52. *New section 9T* requires the Governor and the Chancellor of the Exchequer to meet as soon as possible after the publication of each FPC report to discuss the report and other matters relating to the stability of the UK financial system. The Treasury are to publish records of the meeting, except where, having consulted the Bank, the Treasury are of the view that it would be against the public interest to do so.

53. *New section 9U* enables the Bank to direct the FCA or PRA to provide the Bank with specified information or produce to the Bank specified documents. The Bank may only do so where it considers that the information or documents are reasonably required in connection with the exercise of its functions in pursuance of its Financial Stability Objective (see section 2A of the BoE Act as amended by *clause 2*). This will include the functions of the FPC and functions of the Bank under Parts 1 to 3 of the Banking Act 2009, functions in relation to systemically important market infrastructure and functions in relation to the provision of liquidity support to financial institutions.

54. *Subsection (4)* provides that the FCA and PRA may exercise their powers under sections 165 and 165A FSMA to obtain information or a document which is the subject of a direction from the Bank.

55. *New section 9V* makes further provision about direction under section 9U. *Subsection (1)* requires the Bank to have regard to the principle of proportionality. *Subsection (2)* requires the Bank to consult the PRA or FCA before giving the regulator a direction. Under *subsections (4) and (5)* a direction must be published as soon as practicable after it is given except to the extent that publication would be against the public interest.

56. *Clause 3(3)* introduces Part 2 of Schedule 1 which makes further amendments to the BoE Act in connection with the FPC.

57. *Paragraph 1 of Part 2 of Schedule 1* amends section 4 of the BoE Act to require the annual report by the Bank to include a report by the court of directors on the activities of the FPC.

58. *Paragraph 2 of Part 2 of Schedule 1* amends section 15 of the BoE Act to require the Monetary Policy Committee to exclude from its published minutes information which relates to the proceedings of the FPC (for example, decisions taken by the FPC) publication of which the Monetary Policy Committee considers would be against the public interest. This reflects the basis on which the FPC may determine not to include information in the record of its meetings under section 9Q(8)(b).

59. *Paragraph 4 of Part 2 of Schedule 1* amends paragraph 5 of Schedule 1 to the BoE Act to provide that a person who is appointed by the Chancellor to be a member of the FPC is not disqualified for appointment to the court of directors.

60. *Paragraphs 5 and 6 of Part 2 of Schedule 1* provide for appointed members of the FPC to be disqualified from being a member of the House of Commons or the Northern Ireland Assembly.

61. *Clause 3(4)* repeals the provisions of the BoE Act which relate to the Financial Stability Committee.

Clause 4 and Schedule 2: Further amendments of Bank of England Act 1998

62. *Clause 4* introduces *Schedule 2* to the Bill. This amends the provisions of the BoE Act which relate to the Monetary Policy Committee and the court of directors.

63. *Paragraph 1 of Schedule 2* amends Schedule 1 to the BoE Act which makes provision for the court of directors.

64. *Paragraph 1(2)* provides that work in a post which is required by an enactment to be held by the Governor or Deputy Governor (for example, that of the chief executive of the PRA) is to be taken as work for the Bank (and so such work will not breach the requirement that the Governor and Deputy Governors work exclusively for the Bank).

65. *Paragraph 1(3)* provides that the term of appointment for directors of the Bank is to be 4 years or such shorter term as may be specified in the term of appointment (rather than 3 years). *Paragraph 1(6)* specifies that this amendment does not affect any term of appointment that began before the commencement of the Bill.

66. *Paragraph 1(5)* ensures that the inability or unfitness of the Deputy Governor for prudential regulation to discharge the functions of being the chief executive of the PRA can be taken into account in considering his ability or fitness to be that Deputy Governor.

67. *Paragraph 2* amends Schedule 3 to the BoE Act which makes further provision for the Monetary Policy Committee ("MPC").

68. *Paragraph 2(4)* inserts a *new paragraph 2B* which allows the Chancellor to extend the term of appointment of a member appointed by the Chancellor to the MPC for up to 6 months. This might be appropriate to avoid a vacancy in cases where the person identified as a new member is unable to take up his post and a new recruitment exercise is required. Any period of extension under this provision is to be counted towards the person's term if that person is reappointed to the MPC.

69. *Paragraph 2(5)* amends paragraph 3 to require a member of the MPC who was appointed by the Chancellor who resigns to send a copy of his notice of resignation to the Treasury.

70. *Paragraph 2(6)* inserts a *new paragraph 5A* to Schedule 3 to the BoE Act which prevents a member of the FPC who has been appointed by the Chancellor from being appointed by the Chancellor to the MPC.

PART 2 - AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

Financial Conduct Authority and Prudential Regulation Authority

Clause 5 and Schedule 3: The new Regulators

71. *Clause 5* replaces the provisions in Part 1 of FSMA relating to the FSA, and Schedule 1 to FSMA, with provisions relating to the FCA and the PRA (*subsections (1) to (4), and Schedule 3*). *Part 1 of Schedule 3* inserts *new Schedule 1ZA* and *new Schedule 1ZB* (which make provision in relation to the FCA and the PRA respectively). *Part 2 of Schedule 3* makes consequential amendments to other Acts, replacing references to the FSA in the House of Commons Disqualification Act 1975, the Northern Ireland Assembly Disqualification Act 1975 and the Freedom of Information Act 2000 with references to the PRA and the FCA.

The FCA

72. *New section 1A* renames the FSA the "Financial Conduct Authority". *Subsection (2)* requires the FCA to comply with the requirements set out in *new Schedule 1ZA* which makes provision in relation to the constitution of the FCA and other matters.

73. *New section 1B* sets out how the FCA must discharge its general functions (as defined in *subsection (8)*). In particular, the FCA must, so far as reasonably possible, act in a way which is compatible with its strategic objective (described in *subsection (2)*) and

advances one or more of its operational objectives (specified in *new sections 1C, 1D and 1E*). In addition, so far as is compatible with its strategic and operational objectives, the FCA must discharge its general functions in a way which promotes competition (*subsection (4)*). The effect of this duty is that where the FCA decides to act in pursuance of an operational objective and has the choice between two options, one of which would have a negative impact on competition (option 1), the other which would have a positive impact on competition (option 2), the FCA must choose option 2 unless this would be incompatible with its objectives. *Subsection (5)* provides that in discharging its general functions the FCA must also have regard to the regulatory principles which apply to the FCA and the PRA (as set out in *new section 3B*) and must have regard to the importance of taking action intended to minimise the extent to which it is possible for certain types of business to be used for a purpose connected with financial crime (as defined in *subsection (6)*). This duty is placed on the FCA (rather than the PRA) as the FCA is to have responsibility for regulating the conduct of business of authorised persons (and certain other entities) and is therefore best placed to take regulatory action to tackle financial crime.

74. *New section 1C* sets out the FCA's "consumer protection" objective. *Subsection (2)* specifies the factors to which the FCA must have regard in considering what degree of protection for consumers may be appropriate. "Consumers" is defined in *subsection (3)*. This definition is an extended form of the definition used in sections 425A and 425B of FSMA. This is because the definition of "general functions" in the *new section 1B* extends to those functions under Part 6 of FSMA (official listing). Therefore it is appropriate, for example, to include in the definition a reference to investors in financial instruments.

75. None of the FCA's objectives impose on the FCA a statutory duty to take action, for example, to secure an appropriate degree of protection for all persons who fall within the definition of "consumer". Instead, the objectives provide a mandate for the FCA to act in the event, for example, that the Authority identifies actual or potential consumer detriment. The FCA could take action, for example, under its consumer protection objective for the purposes of protecting only one category of person who falls within the definition of "consumer". The FCA need not ensure that action taken for the purposes of advancing this operational objective secures an appropriate degree of protection for all persons who fall within that definition. In addition, the FCA may take action in pursuance of this operational objective which has the effect of securing an appropriate degree of protection for one or more categories of person within the definition of consumer and which also has the effect of protecting persons who fall outside the definition.

76. *New section 1D* sets out the FCA's "integrity" objective. The term "integrity" has a non-exhaustive definition (*subsection (2)*). For example, the term "integrity" means, among other things, the soundness, stability and resilience of the financial system.

Examples of action which the FCA may take in pursuance of this operational objective are: (i) the FCA may choose to exercise its powers under Part 8A of FSMA to make rules banning the short-selling of a financial instrument for the purposes of addressing a threat to the stability of the financial system; (ii) the FCA may choose to make rules to address risks of money laundering or the use of the financial system to fund terrorist activity; and (iii) the FCA may make disclosure rules under Part 6 of FSMA imposing requirements on listed issuers of financial instruments as to the information which must be disclosed to the market.

77. *New section 1E* sets out the FCA's "efficiency and choice" objective. The FCA may take action in pursuance of this operational objective to promote efficiency and choice in the market for certain types of service, for example to promote efficiency and choice in the market for basic financial products.

78. *New section 1F* confers on the Treasury a power to make an order amending *new section 1C*, for example to amend the definition of "consumer" by adding or removing a category of person within that definition. An order is subject to the affirmative resolution procedure – see *clause 41(2)*.

79. *New section 1G* requires the FCA to give guidance on two matters. First the FCA must give guidance on how it intends to advance its objectives 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. Second, guidance must be given by the FCA on the matters which it regards as primarily its responsibility, rather than that of the PRA. This guidance, coupled by similar guidance issued by the PRA under *new section 2H* (see below) will assist in making the division of responsibilities between the PRA and the FCA more transparent. Guidance issued in accordance with this duty will be made under new section 139A (see below) and subject to the procedure provided for in that section.

80. *New section 1H* imposes on the FCA 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 specified in *new section 1B* such as the extent to which it has promoted competition in accordance with its duty under *new section 1B(4)*.

81. *New section 1I* makes provision for the Practitioner Panel and *new section 1J* places on a statutory footing the Smaller Business Practitioner Panel. *New section 1K* also establishes a Markets Practitioner Panel to represent the interests of persons likely to be affected by the exercise by the FCA of its functions relating to markets. *New section 1L* makes provision for the Consumer Panel. *New section 1M* imposes on the FCA a duty to consider representations made in accordance with arrangements established under *new section 1H*

82. *New section 1N* enables the 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 certain of its functions. *New section 1O* specifies that a person conducting a review under *new section 1N* has certain rights to access information and to require a person holding, or accountable for, any such document to provide such information and explanations as are reasonably necessary for the review.

83. *Part 1 of new Schedule 1ZA (The Financial Conduct Authority)* sets out requirements for the FCA's constitution and imposes certain obligations on the FCA. *Part 2* makes provision for the investigation of complaints. *Part 3* deals with the status of the FCA. *Part 4* makes provision in relation to penalties and fees and *Part 5* gives the FCA and those who work for it limited immunity from liability in damages and makes other miscellaneous provision.

84. *Paragraphs 2 to 6 of new Schedule 1ZA* make provision in relation to the constitution of the FCA.

85. The FCA must have a governing body consisting of:

(a.) a chair and a chief executive (both appointed by the Treasury),
(b.) the Bank's Deputy Governor for prudential regulation,
(c.) two further members appointed jointly by the Treasury and the Secretary of State, and
(d.) at least one further member appointed by the Treasury.

86. The majority of the members of the governing body of the FCA are to be non-executive members, including the chair (*paragraph 2(3) and (4)*). The appointment process and terms of appointment are designed to ensure the independence of the appointed members (*paragraph 3(3) and (4)*). In addition, the Bank's Deputy Governor for prudential regulation is not to take part in any discussion by, or decision of, the FCA which relates to the exercise of the FCA's functions in relation to a particular person, or a decision not to exercise those functions (*paragraph 6*).

87. *Paragraph 5* provides for the acts of the FCA to be valid irrespective of a vacancy in the office of the Bank's Deputy Governor for prudential regulation (or a defect in their appointment), or any defect in an appointment of an appointed member. This is to prevent the FCA's rules, and any action it takes in pursuit of its functions, being rendered invalid purely as a result of such a vacancy or defect in appointment.

88. *Paragraph 8* allows the FCA's functions, with the exception of its legislative functions, to be delegated. However, the governing body must discharge the legislative functions set out in *paragraph 1(2)(a) to (d)*; these are: rule-making; issuing codes under sections 64 and 119 of FSMA; issuing statements of policy on,

for example, financial penalties and other disciplinary measures; and giving directions relating to exemptions from the general prohibition. The governing body may discharge the function of issuing general guidance to one of its members or a committee, but not to an individual officer or member of staff (*sub-paragraph (3)*).

89. *Paragraph 9* requires the FCA to maintain arrangements for monitoring compliance with, and enforcing requirements imposed, by or under FSMA or by relevant directly applicable EU regulation. The FCA may arrange for monitoring, but not enforcement, to be delegated to another body or person whom it believes is competent, which might include, for example, a professional body or the PRA. If it does so, the FCA remains responsible for ensuring that proper monitoring arrangements are in place (*sub-paragraph (4)*).

90. *Paragraph 10* requires the FCA to maintain satisfactory arrangements or recording decisions made in exercise of its functions and the safe-keeping of those records.

91. *Paragraph 11* requires the FCA to report at least once a year to the Treasury on the discharge of its functions, on the extent to which it has acted compatibly with its strategic objective and advanced its operational objectives. The FCA is also required to report on how far its general functions have been exercised in a way which promotes competition and its consideration of the regulatory principles and certain other matters. The Treasury is to lay the report before Parliament. *Paragraphs 12 and 13* require the FCA to hold a public meeting to discuss its annual report, and to publish a report of the meeting.

92. *Sub-paragraph (6) of paragraph 11* allows the Treasury to direct the FCA to comply with provisions of the Companies Act 2006 dealing with accounts and audit which would otherwise not apply to it. The direction may modify provisions under that Act in their application to the FCA.

93. *Paragraph 14* provides for the FCA's annual accounts to be audited by the Comptroller and Auditor General; the National Audit Office carries out audit functions of the Comptroller and Auditor General. The Treasury must lay before Parliament the accounts of the FCA and the report of the Comptroller and Auditor General on them.

94. *Paragraphs 15 and 16* make arrangements for the investigation of complaints. The FCA is required to put in place a scheme, the "complaints scheme", for the prompt, independent investigation of complaints made against it, for example complaints about maladministration. It must appoint an investigator, with the approval of the Treasury, on terms and conditions reasonably designed to ensure independence from the FCA, and to ensure that complaints will be investigated under the scheme without favouring the FCA. The FCA is required to publish details of the complaints scheme.

95. *Paragraph 17* deals with the operation of the complaints scheme. The FCA may decide not to investigate a complaint in accordance with the scheme where it

considers that the complaint would be dealt with more appropriately in another way, for example by reference to the Tribunal. The FCA may make an initial investigation of a complaint, but it must then refer any complaint it is investigating to the investigator, and notify the investigator of complaints it has decided not to investigate; the investigator may choose to investigate a complaint which the FCA has decided not to investigate. The investigator must report to the FCA and the complainant on the investigation, and the investigator can recommend that the FCA makes a compensatory payment to the complainant or remedies the matter, or both. The investigator can publish all or part of the report if the investigator thinks that it ought to be brought to the attention of the public and, if a report is critical of the FCA, *sub-paragraphs (6) and (7)* require the FCA to inform the investigator and the complainant of the steps it proposes to take in response, and the investigator may require the FCA to publish all or part of that response. To ensure the independence of investigations, *sub-paragraph (9)* prevents officers or employees of the FCA from investigating a complaint on the investigator's behalf.

96. The FSA is a company limited by guarantee; it is exempt by virtue of paragraph 14 of Schedule 1 to FSMA from the need to use "limited" as part of its name. *Paragraph 19* continues that exemption for the FCA.

97. *Paragraph 21(1)* provides that in determining its policy with regard to the level of penalties to impose under powers in the Act, the FCA may take no account of its expenses or anticipated expenses; there is to be no link or incentive to fund the FCA by levying penalties on the regulated community. *Sub-paragraph (2)* requires the FCA to operate a scheme to ensure that penalties paid to it under certain provisions are to be applied for the benefit of the persons listed in that sub-paragraph. *Paragraph 22* provides for the FCA to consult on these arrangements.

98. *Paragraph 23* provides for a rule-making power for the FCA to raise fees to meet the costs it incurs in the discharge of its functions under FSMA. It may use the fees to meet its expenses, to repay borrowing incurred in connection with the commencement of the Act resulting from the Bill and to maintain adequate reserves. *Sub-paragraph (5)* requires that the FCA may not take into account any penalties which it has received, or expects to receive, in setting the fees under FSMA.

99. *Paragraph 24* provides that fees may not be charged when a person gives notice of their intention to exercise passporting rights under Schedule 3 of FSMA or where any person whose application for approval under section 59 has been granted.

100. *Paragraph 25* provides immunity for the FCA and its staff, and those investigating complaints under the complaints scheme, from actions for damages except where the act or omission is shown to have been in bad faith or where damages are sought under the Human Rights Act 1998.

101. *Paragraph 26* treats the actions of an accredited financial investigator who is an employee of the FCA or undertaking an investigation for the FCA as being done in the exercise or discharge of a function of the FCA. The Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2009, S.I. 2009/975, defines "accredited financial investigator" in the list in Schedule 1 to that Order.

102. *Paragraph 27* provides that any amount (other than a fee) which is required by rules to be paid to the FCA may be recovered as a debt due to the FCA.

The PRA

103. The PRA will be a limited company formed under the Companies Act 2006.

104. *New section 2B* requires the PRA to discharge its general functions in a way which advances its general objective, which is the promotion of the safety and soundness of PRA-authorised persons. The main means of achieving that objective are by seeking to ensure that the way in which the business of PRA-authorised persons is carried on avoids any adverse effect on the UK financial system (*subsection (3)(a)*), and by seeking to ensure that, if a PRA-authorised person fails, that failure occurs in as orderly a manner as possible (*subsection (3)(b)*). *New section 2I(2) to (4)* provides further details about the meaning of "failure". It includes: insolvency; being taken for the purposes of the financial services compensation scheme as being, or being likely to be, unable to meet claims; and having a stabilisation option under Part 1 of the Banking Act 2009 implemented (for example transfer to a private sector purchaser (section 11 of that Act), transfer to a bridge bank (section 12 of that Act), or transfer to temporary public ownership (section 13 of that Act)). The fact that a PRA-authorised person has received financial assistance from the Treasury or the Secretary of State may be relevant in determining whether that person has failed but is not to be considered a sign of failure in all cases. *New section 2F* emphasises that the PRA's objectives do not oblige it to ensure that no PRA-authorised person fails.

105. *New section 2C* provides for the PRA to have an additional objective which will apply if an order made under section 22A FSMA provides for certain activities relating to insurance to be PRA-regulated activities. Where the PRA is discharging its general functions in relation to PRA-authorised persons who are insurers or reinsurers, it must seek to advance its insurance objective; the insurance objective is contributing to the securing of an appropriate degree of protection for policy holders (*new section 2C*). The insurance objective and the general objective have the same legal status. When the PRA is discharging its functions in relation to such PRA-authorised persons, it must act compatibly with both the general objective and the insurance objective and act in a way which the PRA considers most appropriate for advancing both objectives.

106. *New section 2D* provides that further objectives may be specified in relation to activities that become PRA-regulated activities by order under section 22A of FSMA (see commentary on *clause 6* below).

107. *New section 2E* makes provision for how references in FSMA to the PRA's objectives should be interpreted. For example, *new section 137E* (see *clause 21*) provides that the PRA may make rules applying to PRA-authorised persons as appear to the PRA to be necessary or expedient for the purposes of advancing one or more of its objectives. New section 2E explains how the reference to the PRA's objectives in that provision should be interpreted.

108. *New section 2H* requires the PRA to give guidance on two matters. First the PRA must give guidance on how it intends to advance its objectives in relation to different categories of PRA-authorised persons or PRA-regulated activity. For example, the PRA must give guidance as to how it proposes to regulate PRA-authorised persons who accept deposits differently from PRA-authorised persons who effect or carry on contracts of insurance. Second, guidance must be given by the PRA on the matters which it regards as primarily its responsibility, rather than that of the FCA. This guidance, coupled by similar guidance issued by the FCA under *new section 1G* (see above) will assist in making the division of responsibilities between the PRA and the FCA more transparent. The PRA must consult the FCA before issuing any such guidance.

109. Definitions relevant to the PRA's general duties are set out in *new section 2I*, including a list of the PRA's "general functions".

110. *New sections 2J and 2K* require the PRA to make and maintain effective arrangements for consulting those who are PRA-authorised persons or who appear to the PRA to represent the interests of such persons (for example, relevant industry associations), and to consider representations made under those arrangements. The PRA must publish details of the arrangements and its responses to those representations.

111. *New sections 2L and 2M* make provision for independent reviews of the economy, efficiency and effectiveness with which the PRA has used its resources, and access to documents and information for the purposes of such a review.

112. *Part 1 of new Schedule 1ZB (The Prudential Regulation Authority)* sets out requirements for the PRA's constitution and imposes certain obligations on the PRA. *Part 2* makes provision for the investigation of complaints. *Part 3* deals with the status of the PRA. *Part 4* makes provision in relation to penalties and fees and *Part 5* gives the PRA and those who work for it limited immunity from liability in damages and makes other miscellaneous provision.

113. *Paragraphs 2 to 14 of new Schedule 1ZB* make provision in relation to the constitution of the PRA.

114. The PRA must have a governing body consisting of:

(a.) the Governor of the Bank, who is to be the chair of the PRA,
(b.) the Bank's Deputy Governor for prudential regulation, who is to be the chief executive of the PRA,
(c.) the Bank's Deputy Governor for financial stability,
(d.) the chief executive of the FCA, and
(e.) appointed members.

115. The appointed members are appointed by the Bank with the approval of the Treasury. The appointment process and terms of appointment are designed to ensure the independence of the appointed members (*paragraph 11*). The majority of the governing body of the PRA are to be non-executive members (*paragraph 8*). For the purposes of determining the balance of the board, and for corporate governance purposes, the Governor of the Bank and the Deputy Governors, and any board members who are PRA staff (whether employees of the PRA or secondees from the Bank), are not to be treated as non-executive members (*paragraph 9*); this is to ensure a proper number of independent board members, and it is those members who will undertake the corporate governance roles reserved to non-executives. In addition, the chief executive of the FCA is not to take part in any firm-specific decisions made by the PRA (*paragraph 5*).

116. *Paragraph 4* provides for the acts of the PRA still to be valid irrespective of a vacancy in the office of the ex-officio members of its governing body (those listed at (a) to (d) above) or any defect in an appointment of an ex-officio member or an appointed member. This is to prevent the PRA's rules, and any action it takes in pursuit of its functions, being rendered invalid purely as a result of such a vacancy or defect.

117. *Paragraph 16* allows the PRA's functions, with the exception of its legislative functions, to be delegated. The legislative functions set out in *paragraph 1(2)* are: rule-making; issuing codes and statements of principle under section 64 of FSMA and issuing under section 69 of FSMA statements of policy relating to the imposition of penalties, suspensions and restrictions for misconduct by such persons; issuing under section 210 of FSMA statements of policy relating to the imposition of penalties, suspensions and restrictions on authorised persons; and giving under section 328 of FSMA directions that the exemption from the general prohibition available under section 327 of FSMA for professionals (and those they control or manage) is not to apply to specified classes of professional or descriptions of regulated activity.

118. *Paragraph 17* requires the PRA to maintain arrangements for monitoring compliance with, and enforcing requirements imposed, by or under FSMA or by directly applicable EU regulations. The PRA may arrange for monitoring, but not enforcement, to be delegated to another body or person whom it believes is competent, which might include, for example, a professional body or the FCA. If it does so, the PRA remains responsible for ensuring that proper monitoring arrangements are in place (*sub-paragraph (4)*).

119. *Paragraph 19* requires the PRA to report at least once a year to the Treasury on the discharge of its functions, on the extent to which the statutory objectives have been met and its regulatory principles have been taken into account, and on such other matters as directed by the Treasury. The report must set out the remuneration of the members of the governing body, and any other information or reports the Treasury may direct. The Treasury is to lay the report before Parliament. *Paragraphs 20 and 21* require the PRA to consult publicly on its annual report; the PRA must publish a report on its consultation, including an account of representations received.

120. *Sub-paragraph (5) of paragraph 19* allows the Treasury to direct the PRA to comply with provisions of the Companies Act 2006 dealing with accounts and audit which would otherwise not apply to the PRA. The direction may modify provisions under that Act in their application to the PRA.

121. *Paragraph 22* provides for the PRA's annual accounts to be audited by the Comptroller and Auditor General; the National Audit Office carries out audit functions of the Comptroller and Auditor General. The Treasury must lay before Parliament the accounts of the PRA and the report of the Comptroller and Auditor General on them.

122. *Paragraphs 23 to 25* make arrangements for the investigation of complaints. The PRA is required to put in place a scheme, the "complaints scheme", for the prompt, independent investigation of complaints made against it, for example complaints about maladministration. The Bank must approve the complaints scheme, and appoint an independent investigator on terms and conditions reasonably designed to ensure his independence from the PRA and to ensure that complaints will be investigated under the scheme without favouring the PRA. The PRA is required to publish details of the complaints scheme.

123. *Paragraph 25* deals with the operation of the complaints scheme. The PRA may decide not to investigate a complaint in accordance with the scheme where it considers that the complaint would more appropriately be dealt with in another way, for example by reference to the Tribunal. The PRA may make an initial investigation of a complaint, but it must then refer any complaint it is investigating to the investigator, and notify the investigator of complaints it has decided not to investigate; the investigator may choose to investigate a complaint which the PRA has decided not to investigate. The investigator must report to the PRA, the Bank and the complainant on his investigation, and the investigator can recommend that the PRA makes a compensatory payment to the complainant or remedies the matter, or both. The investigator can publish all or part of the report if the investigator thinks that it ought to be brought to the attention of the public and, if a report is critical of the PRA, *sub-paragraphs (6) and (7)* require the PRA to inform the investigator and the complainant of the steps it proposes to take in response, and the investigator may

require the PRA to publish all or part of that response. To ensure the independence of investigations, *sub-paragraph (9)* prevents officers or employees of the PRA or the FCA, and servants of the Bank, from investigating a complaint on the investigator's behalf.

124. The PRA is a company limited by shares; as it is not able to benefit from the exemptions available in section 60 of the Companies Act 2006 to include "limited" in its name, *paragraph 27* exempts the PRA from having to do so. *Paragraph 28* provides for the Secretary of State to remove that exemption after consulting the Treasury, if it is inappropriate for it to continue. Similar provision was made in respect of the FSA by paragraphs 14 and 15 of paragraph 1 of Schedule 1 to FSMA.

125. *Paragraph 29(1)* provides that in determining its policy with regard to the level of penalties to impose under powers in the Act, the PRA may take no account of its expenses or anticipated expenses; there is to be no link or incentive to fund the PRA by levying penalties on the regulated community. *Sub-paragraph (2)* requires the PRA to operate a scheme to ensure that penalties paid to it are to be applied for the benefit of authorised persons. *Paragraph 30* provides for the PRA to consult on these arrangements.

126. *Paragraph 31* provides for a rule-making power for the PRA to raise fees for what it does in the discharge of its functions under the Act. It may use the fees to meet its expenses, to repay borrowing incurred in connection with the commencement of the Act resulting from the Bill, and to maintain adequate reserves. *Sub-paragraph (4)* provides that the PRA may not take into account any penalties which it has received, or expects to receive, in setting the fees under FSMA. This will ensure that penalty setting policy is kept distinct from PRA budget setting. *Sub-paragraph (6)* provides for the PRA to authorise the FCA collect and recover fees payable to it under FSMA.

127. *Paragraph 32* provides that fees may not be charged when a person gives notice of their intention to exercise passporting rights under Schedule 3 of FSMA, or to persons approved under Part 5.

128. *Paragraph 33* provides immunity for the PRA and its staff, and those investigating complaints under the complaints scheme, from actions for damages except where they act in bad faith or where damages are sought under the Human Rights Act 1998.

129. *Paragraph 34* treats the actions of an accredited financial investigator who is an employee of the PRA or undertaking an investigation for the PRA as being done in the exercise or discharge of a function of the PRA. The Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2009, S.I. 2009/975, defines "accredited financial investigator" in the list in Schedule 1 to that Order.

Further provisions relating to the FCA and the PRA

130. *New sections 3A to 3N* contain further provisions relating to the FCA and the PRA.

131. *New section 3B* lists the regulatory principles to which the regulators must have regard; for example' the principle that a burden or restriction should be proportionate to the benefit that is expected to result from the imposition of that burden or restriction, and the principle that consumers should take responsibility for their decisions. The Treasury may amend the definition of "consumer" in this context, by order under the draft affirmative procedure (*subsection (3)* together with clause 41).

132. *New section 3C* requires the regulators to have regard to relevant generally accepted principles of good corporate governance, for example the UK Corporate Governance Code issued by the Financial Reporting Council and, where appropriate, the corporate governance code for central government departments.

133. *New section 3D* requires the regulators to co-ordinate the exercise of their "qualifying functions". These are, for the FCA, its functions relating to the regulation of authorised persons or functions in relation to which the PRA has a similar or related function (for example, the function of the FCA of making rules in relation to the Financial Services Compensation Scheme). Certain functions of the FCA, for example its functions in relation to listing, will not be "qualifying functions". For the PRA, all of its public functions are qualifying functions. Private functions of the PRA, such as the function of employing staff, are not qualifying functions.

134. The regulators are required to co-ordinate their qualifying functions for three purposes: to ensure that they consult each other before exercising a function which may have an adverse impact on pursuit by the other regulator of its objectives; to ensure that they obtain advice or information from each other where the other regulator has a particular expertise and exercises qualifying functions; and to ensure that, where the regulators exercise qualifying functions in relation to a matter of common regulatory interest (see *subsection (5)*), they have regard to the need to use resources efficiently and economically and to the proportionality principle. The duty to co-ordinate does not override the requirement that each regulator discharge its general functions in a way which advances its objectives, and it does not apply where the burden on the regulators of co-ordinating the exercise of their functions would outweigh the benefits (*subsection (2)*).

135. Under *new section 3E*, the regulators must prepare a memorandum setting out how they will comply with the duty to co-ordinate the exercise of their qualifying functions. The memorandum must contain general provision on the matters set out in *subsection (1).* The memorandum may contain specific provision about the matters set out in *subsection (2). Subsection (3)* sets out additional matters on which the memorandum must contain provision. The memorandum is to be reviewed annually; the regulators must publish the current memorandum and send a copy to the Treasury, which must lay it before Parliament.

136. *New section 3F* provides that the PRA (rather than the FCA) is to be responsible for securing an appropriate degree of protection of the reasonable expectations of policyholders of with-profits policies as to how surplus will be distributed. The section only applies if the PRA is prudentially regulating the activity of effecting or carrying out of contracts of insurance.

137. *New section 3G* enables the Treasury by order to specify matters which are primarily or solely the responsibility of one or other regulator. Any such order must be laid before Parliament after being made and ceases to have effect unless approved by each House of Parliament within 28 sitting days (see *subsections (5) and (6)).*

138. *New sections 3H to 3J* make provision for the PRA to direct the FCA not to exercise a regulatory power in relation to PRA-authorised persons or a particular PRA-authorised person, or not to exercise it in a particular manner, if exercise of the power might threaten the stability of the UK financial system or lead to the failure of a PRA-authorised person in a disorderly manner and the PRA considers that giving a direction is necessary in order to avoid that consequence. For example, the FCA could propose to cancel a firm's deposit taking permission under Part 4A FSMA. If the PRA determined that this could lead to the sudden and disorderly failure of the firm, the power could be exercised to prevent the FCA from cancelling the firm's permission. As a safeguard, the PRA must consult the FCA before giving a direction; and the direction must be published and laid before Parliament unless the PRA considers it would be against the public interest to do so. The FCA is not required to comply with a direction to the extent that compliance would be incompatible with an EU or international law obligation of the United Kingdom. Certain functions of the FCA are excluded from this power (those relating to the giving of consent to the giving of permission under *new section 55F* or variation of permission under *new section 55I*).

139. *New sections 3K to 3N* provide that one regulator may give the other a direction in relation to the consolidated supervision of some or all of the members of the group for the purposes of relevant EU directives. The direction may require the regulator to exercise, or not to exercise, its functions in a particular way. The direction may not require the regulator to do something that it does not have the power to do. The regulator need not comply with a direction it has received if compliance with the direction would not be compatible with the EU obligations or other international obligations of the United Kingdom. Certain functions of the regulators (including rule making) are excluded.

140. The regulators are obliged to co-operate with the Bank in pursuit of its financial stability objective, including the sharing of information (*new section 3O*). This might include, for example, the PRA collecting information from PRA-authorised persons and passing it to the FPC for the purposes of its financial stability functions.

Regulated activities

Clause 6: Designation of activities requiring prudential regulation by PRA

141. *Clause 6* inserts *new section 22A* which provides for the Treasury to specify, by order, the activities that are "PRA-regulated activities" for the purposes of FSMA. The order will determine the scope of regulation by the PRA and the persons whom the PRA will regulate. For example, the Government has announced its intention to designate accepting deposits and effecting and carrying out contracts of insurance as PRA-regulated activities.

142. *Subsection (2)* sets out further provision as to what an order under section 22A may include. In particular, such an order may confer powers on the Treasury, FCA or PRA. The Government has announced its intention to confer on the PRA a power to designate activities carried on by particular investment banks as PRA-regulated activities where certain criteria have been satisfied and subject to procedural safeguards.

143. The procedure for orders under *new section 22A* reflects that for orders made under section 22 (regulated activities). The first order under *new section 22A* must be laid before Parliament after it is made and approved by each House within 28 days (ignoring certain periods when both Houses are not sitting). The same procedure is to apply to any subsequent order which, in the Treasury's opinion, makes a regulated activity into a PRA-regulated activity or removes a regulated activity from the list of PRA-regulated activities or which amends primary legislation.

144. A definition of "PRA-regulated activity" is inserted into section 417 FSMA (definitions) by clause 40 (see below).

Permission to carry on regulated activities

Clause 7: The threshold conditions

145. *Clause 7* makes amendments to Part 1 of Schedule 6 consequential on the replacement of the FSA by the new regulators. It also introduces a new threshold condition which a person applying for Part 4A permission (or a variation of permission) will need to satisfy. This new condition relates to the suitability of the person's business models, in other words the strategy for doing business.

Clause 8: Permission to carry on regulated activities

146. *Clause 8* replaces Part 4 of FSMA with a new *Part 4A* dealing with the application, granting, limitation, variation and cancellation of permission to carry on regulated activities (as defined in section 22). *Part 4A* replicates Part 4 with modifications reflecting the replacement of the FSA by the new regulators.

147. *New section 55A* provides that permission to carry on a regulated activity can be granted to individuals, bodies corporate, partnerships and unincorporated associations.

In the case of some regulated activities, there are specific constraints on the type of person which may be given permission under the threshold conditions in Schedule 6.

148. Permission may cover a number of regulated activities. *Subsection (3)* prevents an authorised person who already has permission under Part 4A from making a further application: once permission is granted, it can be varied to include further (or exclude certain) regulated activities (see *sections 55H and 55I*). Similarly, under *subsection (4)* EEA firms who could exercise rights derived from the single market directives listed in paragraph 1 of Schedule 3 to carry on regulated activities in the UK are precluded from applying for permission.

149. Applications for permission are to be made to the "appropriate regulator"; this means the FCA, unless the regulated activities to which the application relates are or include PRA-regulated activities. Thus where any of the activities for which permission is sought is a PRA-regulated activity, permission should be sought from the PRA. The PRA is also the appropriate regulator where the applicant is a PRA-authorised person otherwise than by virtue of permission under Part 4A (for example, an EEA firm carrying on a PRA-regulated activity and qualifying for authorisation under Schedule 3).

150. *New section 55B* relates to the threshold conditions in Schedule 6 (as amended by *clause 7*) which are the conditions which a regulator must ensure that the person concerned (for example, the person making the application for authorisation) will satisfy when the regulator makes a decision relevant to that person under Part 4A. But the requirement to ensure that the person concerned will satisfy the threshold conditions is not to prevent the FCA from taking steps to advance any of its operational objectives (see *new section 1B(3)*) or the PRA from advancing any of its objectives (see *new sections 2B to 2D*). For example, the PRA might delay for a short period the cancellation of the permission of a deposit taker which does not satisfy its threshold conditions to allow preparations to be made to ensure that the failure of the deposit taker is orderly.

151. *New section 55C* permits the regulators, after consulting the Treasury, to decide between themselves who will take responsibility for ensuring that the threshold conditions, or any of them, will be met where one regulator gives or varies permission in relation to someone who is (or would be) a PRA-authorised person in circumstances where the other regulator must consent to that decision (*subsection (1)(a) and (2)*). It also permits arrangements for only one regulator to vary a permission or to impose or vary requirements (see *new sections 55J to 55M*) on the ground that a PRA-authorised person is not satisfying, or is likely not to satisfy, the threshold condition in question. The effect of any such arrangements is to modify the duty of the regulators under new section 55B to ensure that the person concerned by a decision under Part 4A will satisfy, and continue to satisfy, the threshold conditions. The Treasury may, by order, make arrangements between the regulators, and such an order overrides any arrangement entered into by the regulators (*new section 55D*). If

the regulators make arrangements, the regulators must publish them and exercise their functions in accordance with them.

152. *New sections 55E and 55F* provides that the regulators may grant permission for all the activities applied for, or just some of them, may impose limitations (for example, limitations on the class of consumer to whom the authorised person may provide services or limiting the type of insurance contracts that an authorised person could write to a particular class) and may permit activities which are wider or narrower than the activities as described in the application.

153. Although the FCA may give permission for a regulated activity which was not included in the application, it may not give permission for such an activity if it is a PRA-regulated activity. And the FCA must always consult the PRA if the application is from a member of a group which includes a PRA-authorised person.

154. The PRA requires the FCA's consent to give permission in all cases. This is because all PRA-authorised persons will also be regulated by the FCA. The FCA may make its consent conditional; for example, if the FCA has concerns about the applicant, it may give consent conditional on the PRA imposing a limitation on the permission given to the applicant that addresses those concerns. The PRA may not give permission that results in the person being an authorised person who is not a PRA-authorised person.

155. *New section 55G* makes provision for special cases. *Subsection (2)* deals with the situation where a person who is exempt from the general prohibition in section 19 by virtue of an order under section 38 or by virtue of being an appointed representative (see section 39) makes an application for permission to carry on another regulated activity. This reflects the existing principle that a person cannot be both exempt and regulated at the same time. In those cases, the regulator is to treat the application as an application to carry on all the regulated activities in question, that is both the activities from which the person is exempt and the activities for which permission is applied for. This means that the regulator must assess the ability of the firm to meet the threshold conditions for both the exempt activity and the new (regulated) activity, rather than just the new activity. This might happen if an appointed representative who gives mortgage advice wishes to provide advice on other matters (for example entering into contracts of insurance). If the appointed representative's principal firm does not have permission to carry on the activity of providing advice on entering into contracts of insurance, or does not want to allow the appointed representative to do so, the appointed representative would have to apply for permission from the FCA. If the application were granted, the person would cease to be an appointed representative. In such cases, the person is treated as applying for permission to carry out both the activity which he carries out as an appointed representative (mortgage advice) and the additional activity he wishes to carry out (advice on entering into contracts of

insurance), and be assessed for its ability to do both activities as part of the authorisation process.

156. *Subsection (3)* provides that recognised investment exchanges and recognised clearing houses which make an application for permission to carry on a regulated activity are assessed only in respect of the application and not as to their activities as an investment exchange or clearing house (in relation to which, they are exempt) from the general prohibition).) *Subsection (4)* makes similar provision in respect of members of Lloyd's. *Subsection (6)* deals with cases where an application was made to the wrong regulator, or made to the right regulator but refused: it requires the regulator dealing with a subsequent similar application to have regard to the desirability of minimising the additional work and processing time for the applicant.

157. *New sections 55H and 55I* make provision for authorised person to apply for a variation or cancellation of their permission, in terms parallel to the provisions dealing with applications for permission. Thus under *new section 55H* an authorised person who is not a PRA-authorised person may apply to the FCA to vary his permission either by adding a regulated activity (other than a PRA-regulated activity) to the permission, removing a regulated activity from permission or varying the description of regulated activity for which permission has been given. An application may also be made to cancel the permission. The FCA may refuse an application if it considers it desirable to do so to advance one of its operational objectives. The FCA must consult with the PRA on an application if the applicant is a member of a group which includes a PRA-authorised person.

158. *New section 55I* makes similar provision for the PRA to vary the permission on the application of a PRA-authorised person. The PRA may only vary permission in such cases with the consent of the FCA. An authorised person who is not a PRA-authorised person may apply to the PRA for a variation of his permission to add a PRA-regulated activity to his permission. The PRA must obtain the consent of the FCA before granting such an application.

159. *New sections 55J and 55K* permit the regulators to vary or cancel a permission without an application from the authorised person. This "own-initiative variation power" may only be exercised by the regulator: if the authorised person is not satisfying or is likely not to satisfy the threshold conditions; if the authorised person has not carried on for at least 12 months a regulated activity within its permission (so the regulators can remove permission for a regulated activity which the authorised person is no longer undertaking); or if desirable to advance the regulator's objectives. For example, the FCA might vary a firm's permission on its own initiative to prevent a firm taking new deposits relating to a particular product, where in the FCA's view the firm in question did not have adequate processes in place to protect consumers purchasing these products. The own-initiative power may also be exercised at the request of an overseas regulator (*new section 55Q*).

160. *New sections 55L to 55P* permit the regulators to impose or vary requirements on an authorised person, including requirements relating to the holding or disposal of assets. Unlike the power to vary permission on the regulator's own initiative (dealt with under section 55J), this "own-initiative requirement power" may be used to impose requirements which do not relate to the scope of regulated activity which an authorised person has permission to carry on. For example, the PRA might require a firm to dispose of a particular loan portfolio, where retention of that portfolio might undermine the firm's safety and soundness. The power replicates the power in section 43 FSMA to impose requirements as part of permission, with the exception of the new provision in *new section 55N(5)* which enables a requirement to refer to the past conduct of the person concerned. This could be used by either regulator to require an authorised person to carry out a review of its past conduct (for example, to identify customers who have been treated unfairly).

161. *New section 55R* provides that the regulators must have regard to relevant relationships of an authorised person or an applicant for permission when exercising their powers under Part 4A, for example other members of the authorised person's group. In circumstances prescribed in regulations by the Treasury, the regulator must also consult the home state regulator of any EEA firm in the applicant's or the authorised person's group (except where the EEA firm is an insurance intermediary or a reinsurance intermediary).

162. Where an EEA firm or Treaty firm has permission under Part 4A in addition to qualifying for permission under Schedule 3 or 4, *new section 55S* provides that, in considering the exercise of own initiative powers in relation to the permission granted under Part 4A, the regulators must take account of the relevant EU law and of the home state authorisation of the person concerned. Such consideration may inform the regulator's view on whether the firm or scheme is fit and proper to continue to hold the additional permissions in question, or its view on whether the cancellation or variation it proposes is appropriate in light of the wider assessment of the firm which the home State regulator is responsible for making. The FCA must also take these matters into account in exercising its own initiative power in relation to an additional Part 4A permission of a collective investment scheme operator, trustee or depositary.

163. *New section 55T* provides that in exercising their functions in relation to a particular person to protect the interests of another person, there need not be a relationship between the particular person and the person whose interests are being protected. For example, where authorised person Y is refusing to provide services to authorised person Z which are necessary for the continued provision of financial services to Z's customers, the FCA could impose a requirement on Y to protect the interests of the customers of Z.

164. *New sections 55U to 55W* make provision relating to the making and content of applications for permission, the timescale for determining applications (which is six months from the date of receipt of the application where the application is a complete application), and for the PRA to notify the FCA of the receipt or withdrawal of an application for permission or an application for the variation or cancellation of a permission or a requirement. *New section 55V(4)* confirms that an applicant may withdraw an application at any time, and *new section 55V(5)* requires the regulator to issue a written notice when it grants an application for permission, an application for a variation of permission or an application to vary a requirement.

165. *New section 55X* requires the regulators to give a warning notice where they propose to refuse an application, or where they propose to grant the application but with requirements, with limitations, or with a description of regulated activity different from that specified in the application. No warning notice need be given if the applicant is an EEA firm which could exercise an EEA right to carry on the activity (see Schedule 3 to FSMA). The issue of a warning notice provides an opportunity for the applicant to make representations to the regulator if the applicant wishes to do so. *Subsection (5)* requires the regulator to issue a decision notice where it grants or varies permission in response to an application but with requirements, with limitations, or with a description of regulated activity different from that specified in the application; the regulator must also issue a decision notice where it refuses the application. In addition, the FCA must issue a warning notice if it proposes to impose a requirement on an applicant whose application was made to the PRA, and must issue a decision notice when it imposes the requirement.

166. *New section 55Y* sets out the procedural requirements relating to the exercise of the regulators' own-initiative powers. The variation of a permission, or the variation or imposition of a requirement, may take effect immediately or on a specified date if the regulator considers it necessary for it to do so having regard to the ground on which the regulator is exercising the power. If the regulator does not specify a date, the variation will take effect only after the time for referring the matter to the Tribunal has expired and any reference and further appeal has been finally determined (see the definition of "open to review" in section 391(8)). The regulator must give the authorised person a written notice which gives the details of the variation, the date on which it takes effect, the reasons for the variation and for the choice of date. The notice must also inform the person of his right to make representations to the regulator within a specified period, and to refer the matter to the Tribunal. *Subsections (7) to (11)* require the regulator to give further written notice of its response to any representations which are made. This can be a decision not to proceed with the variation (or to cancel it if it has already taken effect), to propose a different variation (in which case the original notice procedure must be repeated), or to proceed with the variation (in which case the person concerned has a further right to refer the matter to the Tribunal).

167. *New section 55Z* requires the regulator to issue warning and decision notices regarding, respectively, the proposal to cancel a permission and the cancellation of a permission.

168. *New section 55Z1* confers a right to refer the Tribunal any matter under Part 4A, such as a decision to refuse an application for permission, to impose conditions or to vary a permission other than in the way requested. On such a reference, the applicant is not limited to challenging the regulator which has taken the decision which the applicant is concerned about. Thus on a reference in relation to a refusal by the PRA to give permission, the applicant may challenge the decision of the FCA to refuse to give consent to the grant of permission.

Passporting

Clause 9 and Schedule 4: Passporting: exercise of EEA rights and Treaty rights

169. *Clause 9* introduces Schedule 4 which amends sections 34 and Schedule 3 (EEA passport rights), section 35 and Schedule 4 (Treaty rights) and Part 13 of FSMA (incoming firms: powers of intervention). Section 34 and Schedule 3 provide that EEA firms which are authorised by their home state regulator in accordance with the relevant single market directive (see paragraph 1 of Schedule 3) may establish a branch or provide services in the UK without requiring permission under Part 4A; this is known as "passporting". Section 35 and Schedule 4 make similar provision in relation to EEA persons where there is no such right under a single market directive but the law of their home state affords equivalent protection or there is European Community law providing for coordination or harmonisation of Member States' laws and administrative procedures in relation to the activity in question.

170. *Paragraphs 2 to 6 of Schedule 4* make amendments to Schedule 3 to FSMA which relate to the exercise of passport rights by EEA firms under the single market directives (defined in paragraph 1 of Schedule 3 to FSMA).

171. Notices in relation to the exercise of passport rights to establish a branch or provide services in the UK must be given to the "appropriate UK regulator". The United Kingdom will specify which of the PRA and FCA is the appropriate regulator in relation to each of the single market directives listed in paragraph 1, by the provision of notice to the European Commission. The PRA must pass all notices it receives in relation to the exercise of passporting rights to the FCA; the FCA must pass copies of such notices it receives to the PRA in prescribed circumstances. The circumstances to be prescribed will, for example, relate to the activities described in the order under section 22A. The FCA will supervise all incoming EEA firms; the PRA will have to supervise incoming EEA firms which are PRA-authorised persons or intend to undertake PRA-regulated activities.

172. *Paragraphs 7 to 13* make amendments to Schedule 3 to FSMA which relate to the exercise of passport rights under the single market directives by UK firms.

173. Notices in relation to the exercise of passport rights must be given to the "appropriate UK regulator". Where the authorised person is a PRA-authorised person, the appropriate regulator is the PRA. In other cases, the appropriate regulator is the FCA.

174. The amendments made by *paragraph 7(3)* to paragraph 19 of Schedule 3 and the amendments made by *paragraph 8(3)* to paragraph 20 of Schedule 3 deal with co-ordination between the regulators. Where the PRA is the appropriate regulator, it must consult the FCA before deciding whether to give a consent notice in connection with the exercise of passporting rights (except in relation to the establishment of a branch under the insurance mediation directive). Where the FCA is the appropriate regulator and the immediate group of the authorised person includes a PRA-authorised person, the FCA must consult the PRA. New paragraph 24A of Schedule 3, inserted by *paragraph 12* makes further provision for co-ordination. It enables the PRA and FCA to make arrangements about how they will consult with each other when required. The arrangements may provide for one regulator to be required to obtain the consent of the other before giving a consent notice or exercising functions in relation to the ongoing supervision of such UK firms.

175. *Paragraphs 14 to 18* make amendments to Schedule 4 to FSMA which relate to the exercise of Treaty rights. Notifications by incoming Treaty firms are to be made to the FCA or PRA. The PRA must give a copy of any notifications it receives to the FCA. The FCA must give a copy of notifications it receives to the PRA where the notification relates to a permitted activity which is a PRA-regulated activity, a PRA-authorised person, a person whose immediate group includes a PRA-regulated activity or in circumstances specified by the Treasury. The powers and duties in relation to Treaty firms are conferred on the PRA where the firm is a PRA-authorised person or carrying on a PRA-authorised person, and on the FCA in other cases.

176. *Paragraphs 19 to 34* amend Part 13 of FSMA (powers of intervention). Where the incoming firm is a PRA-authorised person, both the PRA and FCA may exercise the powers of intervention. In other cases, only the FCA may exercise the powers of intervention. By virtue of section 196 of FSMA as substituted by *paragraph 28*, the FCA must consult the PRA before exercising its powers of intervention under Part 13 in relation to a PRA-authorised person or a member of a group which includes a PRA-authorised person. The PRA must consult the FCA before exercising its powers of intervention under Part 13 in all cases.

Performance of regulated activities

Clause 10: Prohibition orders

177. *Clause 10* makes amendments to sections 56 and 57 of FSMA consequential on the replacement of the FSA by the new regulators. It also imposes requirements for the FCA to consult the PRA (where a PRA-authorised person, or a person who is an

exempt person in relation to a PRA-regulated activity, is concerned), and for the PRA to consult the FCA, before issuing a warning notice to an individual that it proposes to make a prohibition order, and before revoking or varying such an order.

Clause 11: Approval for particular arrangements

178. *Clause 11* makes amendments to sections 59, 63 and 64 of FSMA consequential on the replacement of the FSA by the new regulators; it also inserts *new section 59A.*

179. Section 59 provides that authorised persons must take reasonable care not to allow persons to perform certain functions without the approval of the regulator; a person in respect of whom approval is given is an "approved person". The effect of the amendments made by *clause 11* is that each regulator will specify in rules the functions in respect of which approval must be sought from that regulator. Both regulators may specify "significant-influence functions" (defined in new subsection (7B) of section 59) but only the FCA may specify "customer-dealing function" (defined in new subsection (7A) of section 59). Also the PRA may only specify functions performed in relation to the carrying out of regulated activities by a PRA-authorised person.

180. *New section 59A* requires the regulators to consult each other before specifying significant-influence functions and for the FCA to keep its power to specify such functions under review and to exercise that power in a way designed to minimise the need for a person to be approved by both regulators. Thus the FCA should generally not specify as a significant-influence function a function which has already been specified by the PRA. Where the PRA specifies a function which the FCA has specified as a significant-influence function, the FCA should generally revoke its specification of that function.

181. Under section 63 (as amended by *subsection (4)),* either regulator may withdraw approval from a person who is carrying on a significant-influence function in connection with a PRA-authorised person, regardless of which regulator gave approval. Only the FCA can withdraw approval to carry on a customer-dealing function.

182. Under section 64 (as amended by *subsection (5)*) both regulators may issue statements of principle with respect to the conduct expected of persons who have been given approval (from either regulator) to perform a significant-influence function in relation to carrying on of a regulated activity by a PRA-authorised person. Only the FCA can issue statements of principle about the conduct expected of other approved persons.

Clause 12 and Schedule 5: Further amendments relating to performance of regulated activities

183. *Clause 12* introduces Schedule 5, which makes amendments to Part 5 of FSMA (performance of regulated activities) consequential on the replacement of the FSA by the new regulators.

184. *Paragraphs 2 and3* of Schedule 5 make consequential amendments to sections 57 and 58 of FSMA (prohibition orders).

185. *Paragraphs 4 to 19* amend sections 59 to 70 of FSMA (approval). The amendments are primarily consequential on the amendments made by clause 11.

186. *Paragraph 6(5)* amends the timetable for determining an application for approval set out in section 61 of FSMA. The amendment provides that where the application is made by a person who is also applying for permission under Part 4A, the application must be determined by the date by which the application for permission must be determined (see new section 55V) or 3 months after the application is received, whichever is the later.

187. *Paragraph 8* amends section 63 of FSMA (withdrawal of approval) to ensure that both regulators may withdraw approval. The withdrawal does not have to be by the regulator that gave the approval provided that the application for approval could have been made to that regulator.

188. *Paragraph 14* amends section 65 of FSMA (statements and codes: procedure) to require the FCA and PRA to consult each other before issuing a statement or code under section 64. The definition of "cost benefit analysis" in section 65(11) is also amended.

189. *Paragraph 15* amends section 66 of FSMA (disciplinary powers) to provide that a person is guilty of misconduct for the purposes of each regulator (and so amenable to action by that regulator under section 66) if a person has failed to comply with a statement of principle issued by that regulator. Thus each regulator may only take action in relation to a breach of its own statement. In addition, each regulator may take action in relation to breach of directly applicable EU regulation.

Official listing

190. Part 6 of FSMA sets out the regime under which the "competent authority" is responsible for: (a) maintaining the official list of securities admitted to trading on a regulated market in the UK (the "Official List"); (b) regulating the admission of securities to the Official List; and (c) monitoring compliance with requirements imposed on issuers of securities (and other relevant persons) by or under the Part or by directly applicable European measures. Currently, the FSA is the "competent authority" and is known in this context as the UK Listing Authority ("UKLA").

191. Part 6 has been substantially amended as a result of a number of developments in European law. For example, in addition to performing the functions as the competent

authority for listing, the UKLA now has responsibility for making the prospectus rules (section 84) and the disclosure and transparency rules (section 89A and 96A) which are derived from Directive 2003/6/EC on insider dealing and market manipulation (market abuse) and Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading.

Clause 13: FCA to exercise functions under Part 6 of FSMA

192. 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. Therefore Part 6 was prepared as a self-contained Part and Schedule 7 to the FSMA makes modifications to that Act in its application to the FSA as the competent authority under Part 6. Paragraph 2 of Schedule 7 carves out the FSA's functions under Part 6 from the application of the FSA's general duties (which are specified in section 2 of FSMA). In addition Schedule 8 to FSMA confers on the Treasury a power to confer on another body some or all of the functions under Part 6.

193. Under the new regulatory arrangements, the FCA is to undertake all of the FSA's functions under Part 6. Therefore *clause 13(2)* changes the references in that Part from the "competent authority" to the "FCA". In addition, the power to confer on any other body some or all of the functions under Part 6 of FSMA is removed.

194. The FCA's general duties, including its strategic and operational objectives (specified in *new section 1B*) will apply to the discharge of the rule and guidance-making functions under Part 6.

Clause 14: Discontinuance or suspension at the request of the issuer: procedure

195. Section 77 of FSMA (as amended by *clause 13(3)*) provides that the FCA may discontinue or suspend the listing of securities where there are special circumstances which preclude normal regular dealings with them. ("Discontinuance" and "suspension" are defined in section 78(13) and (14).) Section 78 describes the procedural arrangements which apply where the FCA, of its own doing, proposes or decides to discontinue or suspend the listing of securities. Section 78A sets out the procedure to be followed where the issuer applies to the FCA for listing to be discontinued or suspended.

196. The requirement imposed by section 78A(2) to issue a written notice where the FCA decides to discontinue or suspend the listing of securities at the request of the issuer is onerous in practice as the FCA may wish to act very quickly in response to the request. Therefore *clause 14(2)* makes some minor and technical changes to section 78A to enable the FCA to give notice in writing or orally where the FCA decides to take the action requested by the issuer. *Subsection (2)(c)* substitutes section 78A(3) and sets out the information which should be included in a notification.

197. *Subsection (3)* makes a consequential change to section 395 so that an oral notification constitutes a "supervisory notice" for the purposes of that section which sets out provision in relation to the procedural arrangements which must be put in place by the FCA.

Clause 15: Listing rules: disciplinary powers in relation to sponsors

198. Section 88(1) enables the FCA to make listing rules requiring issuers to make arrangements with "sponsors" for certain purposes. A "sponsor" is a person who is approved for the purposes of the rules and has the function, in broad terms, of advising an issuer on the listing and disclosure requirements imposed by or under Part 6.

199. *Subsection (2)(a)* extends the provision which may be made in listing rules such that the rules may specify that the FCA may grant approval, or make an existing approval, subject to such limitations or other restrictions as may be specified by the FCA. The rules may also specify that the FCA may agree to suspend (rather than cancel) a person's approval as a sponsor. This may be, for example, because that person has not undertaken a certain form of transactional work for some considerable time and the suspension will last until the sponsor has demonstrated the competencies necessary to undertake this work.

200. Should the FCA propose to impose limitations or other restrictions to which a person's approval relates (in accordance with rules made under the *new section 88(3)(e)*), the FCA must issue a warning notice. Should the FCA decide not to impose such limitations or restrictions following consideration of any representations received from the person concerned, it must issue a written notice. Should the FCA decide to impose such limitations or restrictions, the FCA must issue a decision notice. *Subsection (2)(h)* lists the different forms of application which may be made under "sponsor rules". For example, where the FCA has imposed a limitation or other restriction in relation to a person's approval as a sponsor, that person may apply for the withdrawal or variation of such limitation or restriction. *Subsection (3)* provides that the power for the FCA to impose limitations or other restrictions on the services to which an approval relates is available in relation to persons who were approved as sponsors prior to the coming into force of *subsection (2)(a)*.

201. Section 89 of FSMA (public censure of a sponsor) enables the FSA to make provision in listing rules enabling the Authority to issue a public censure where the sponsor has been found to have contravened a requirement imposed by rules under section 88(3)(c). *Subsection (4)* substitutes for section 89 *new sections 88A, 88B, 88C, 88D, 88E and 88F*.

202. *New section 88A(1) and (2)* extend the types of disciplinary sanction which may be imposed on sponsors and the circumstances in which such action may be taken. *New section 88A(4) to (6)* make provision in relation to suspensions or restrictions imposed by way of a disciplinary measure and *section 88A(7)* makes clear that the FCA may not take disciplinary action in relation to a contravention once the limitation period

has expired. A suspension or restriction imposed under this section is not to have effect for a period of more than 12 months. This is consistent with the provision made in relation to suspensions or restrictions of a person's authorisation to conduct regulated activities (section 206A of FSMA (suspending permission to carry on regulated activities etc)).

203. *New section 88B* specifies the procedure which the FCA must follow before taking action against a sponsor under *new section 88A*. In the event that the FCA decides to take any of the forms of action specified in *new section 88A(2)*, the person subject to the measure has the right to refer the matter to the Tribunal (subsection (9)). These arrangements are consistent with the procedure to be followed in relation to disciplinary measures imposed on authorised persons (see sections 205 to 208 of FSMA).

204. *New section 88C* requires the FCA to prepare and issue a statement of its policy with respect to the imposition of penalties, suspensions, or restrictions under *new section 88A* to which it must have regard in exercising or deciding whether to exercise its powers under section 88A. A copy of the statement must be given to the Treasury. *Subsection (2)* specifies the matters to which the FCA must have regard in determining its policy with respect of the action. A statement issued under this section can be altered and replaced and the FCA may charge a reasonable fee for providing copies of a statement.

205. *New section 88D* sets out the procedural arrangements to be followed by the FCA in respect of statements issued under *new section 88C*. In particular, before a statement is issued it must be published in draft and a response given to any representations made about it.

206. *New section 88E* confers a new power on the FCA to suspend, for such period as it considers appropriate, a sponsor's approval, or to impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance of services to which the sponsor's approval relates. The power can be used where the FCA considers it appropriate to do so for the purposes of advancing one or more of its operational objectives.

207. *New section 88F* sets out the procedure to be followed where the FCA proposes or decides to take action under the power conferred by *new section 88E*. Under *subsection (1)(a)* action may take effect immediately or on such later date as may be specified in a written notice. This aligns with the procedure to be followed in relation to variations of an authorised person's permission to carry on regulated activities.

Clause 16: Penalties for breach of Part 6 rules

208. Section 91 of FSMA specifies the types of penalties which may be imposed by the FCA in relation to a breach of Part 6 rules. Section 91(6) provides that the FCA may not take action against a person for a breach of Part 6 rules after the end of the period of two years following the date on which the FCA knew of the contravention. Proceedings are treated as having been begun within that period when a warning notice is given under section 92 (procedure). The amendment made by this clause extends the period to three years. This is in order achieve consistency with section 66(4) which deals with penalties imposed on approved persons.

Clause 17: Repeal of competition scrutiny power

209. Clause 17 repeals section 95 of FSMA. The power conferred by that section is no longer needed as the provisions in Chapter 4 of Part 9A (inserted by clause 21) will apply.

Clause 18: Contravention of Part 6 rules: reports by skilled persons

210. *Subsection (1)* makes a minor technical change to section 97(1)(d) of FSMA in order to omit references to sections 83 and 98 which were repealed by the Prospectus Regulations 2005 (S.I. 2005/1433; regulation 2(1), Schedule 1, paragraph 4 and 9).

211. *Subsection (2)* inserts the *new section 97A* which confers a power on the FCA to require a person of a kind specified in *new section 97A(3)* to provide the FCA with a report on any matter. This provision aligns the powers of the FCA, in its capacity as the UKLA, with those under other parts of the Act (for example, see section 166 of FSMA which is available in relation to persons who are authorised to carry on regulated activities and connected persons).

Clause 19: Primary information providers

212. *Clause 19* inserts *new sections 89P, 89Q, 89R, 89S, 89T, 89U and 89V* into Part 6 of FSMA.

213. *New section 89P* enables the FCA to make rules which may require the issuers of financial instruments to use primary information providers for the purposes of disseminating information to the market. A "primary information provider" is defined in *subsection (2)* as a person approved by the FCA for the purposes of section 89P. *Subsection (4)* specifies that Part 6 rules made by virtue of *subsection (1)* may provide for the FCA to maintain a list of providers, impose requirements on a provider in relation to the giving of information or information of a specified description and other matters. *Subsections (5) to (9)* make similar provision to that made by section 88 (as amended by *clause 15(2)*) in relation to sponsors.

214. *New sections 89R to 89V* make similar provision in the case of primary information providers to that made by *new sections 88A to 88F*, which confer on the FCA new supervisory and disciplinary powers in relation to sponsors.

Hearings and appeals

Clause 20: Proceedings before Tribunal

215. Many provisions of FSMA confer on a person subject to certain decisions of the FSA the right to refer the matter to the Tribunal (defined in section 417(1) of FSMA as the Upper Tribunal). For example, section 92(7) confers such a right on a person subject to a decision of the FSA to impose a financial penalty in respect of a breach of rules made under Part 6. Part 9 of FSMA makes provision for proceedings before the Tribunal. Section 133(5) specifies that, in relation to a reference or appeal, the Tribunal must determine what (if any) is the appropriate action for the decision-maker (that is, the FSA) to take in relation to the matter referred or appealed to the Tribunal. This means that the Tribunal may substitute for the opinion of the FSA its own view as to the precise nature of regulatory action, such as a variation of a permission to carry on regulated activities under Part 4, which the FSA should take.

216. *Subsection (2)(a)* makes consequential amendments to section 133(1)(a) as a result of the conferral of functions on the FCA and the PRA. *Subsection (2)(b)* replaces section 133(5) and (6) with *new subsection(5) to (6A).*

217. These amendments have the effect of preserving the arrangements under FSMA as regards the consideration of certain types of decisions of the FCA and the PRA and the determinations which may be made by the Tribunal in respect of such decisions. The decisions within this category are decisions concerning punitive measures designed to discipline a person for a contravention of a relevant requirement (see the *new subsections (5) and (7A)*). For example, a person subject to a decision by the FCA to impose a penalty under section 206 (financial penalties) may refer the matter to the Tribunal which, on determining the matter and deciding that the FCA's decision should not be upheld, must remit the matter to the FCA with such directions (if any) as it considers appropriate for the purposes of giving effect to its determination as to the action which should be taken by the FCA. These directions could, for example, specify that, in light of new evidence put before the Tribunal, the most appropriate course of action would be for the FCA to impose a financial penalty of £150,000 in respect of a contravention, rather than the £100,000 set out in the decision notice referred to the Tribunal.

218. In relation to other matters which may be referred or appealed to the Tribunal, the scope of the determinations which may be made by Tribunal is more limited (see *new subsections (6) and (6A)*). For example, in relation to a decision by the PRA to vary a person's permission to carry on regulated activities, the Tribunal will no longer be able to reach its own view as to the precise nature of the variation which should be made by the PRA. Instead, if the Tribunal were not to uphold the PRA's decision, the Tribunal would be required to remit the matter to the PRA with a direction to reconsider the matter and reach a decision in accordance with the findings of the

Tribunal. Such findings may only concern certain matters (listed in the *new subsection (6A)*). This distinction is drawn between "disciplinary" and other measures, as the FCA and PRA are best placed to form a view as to the precise nature of supervisory action taken in pursuance of wider public-policy aims such as consumer protection.

219. *Subsections (3) to (5)* make consequential changes to various provisions of Part 9.

Rules and guidance

Clause 21: Rules and guidance

220. *Clause 21* replaces Part 10 of FSMA with a *new Part 9A* which re-enacts Part 10 with amendments. *Chapter 1 of new Part 9A* sets out the general rule-making powers of the FCA and the PRA; *Chapter 2* deals with the modification, waiver and contravention of rules, and procedural provisions; *Chapter 3* makes provision for the FCA to issue guidance; and *Chapter 4* makes provision for competition scrutiny.

221. *New section 137A* provides for the FCA to issue general rules applying to authorised persons. The rules may relate to the carrying on of regulated activities, and to the carrying on of activities which are not regulated; for example, rules may restrict authorised persons, or a particular description of authorised person (see *new section 137Q*) from engaging in a particular activity. Any rules made by the FCA under this section must appear to the FCA to be necessary or expedient to advance one or more of its operational objectives. However, there need not be a direct relationship between the authorised persons to whom the rules apply and the persons who are protected by the rules.

222. *New section 137B* makes provision about general rules which relate to the handling of clients' money.

223. *New section 137C* provides that the FCA's power to make general rules includes power to make rules that prohibit or restrict authorised persons from exposing consumers to an economic interest in specified products by prohibiting or restricting the making of "specified agreements" that might have such an effect. The FCA may attach specific provisions to such rules as to the effect of contravention of such rules including that agreements entered into in breach of rules made under this provision are rendered automatically void and unenforceable against a consumer. By virtue of *new section 138N* (considered below), the FCA may make such rules without complying with the usual procedural requirements for rule making if this is necessary or expedient to advance the FCA's consumer protection or efficiency and choice objective (extendable by order by the Treasury to the FCA's market integrity objective).

224. *Subsection (1)* specifies that the power of the FCA to make general rules includes power to make "product intervention rules". Such rules can prohibit authorised persons from doing anything the FCA considers to be necessary or expedient for the

purpose of advancing the consumer protection or efficiency and choice objective and if the Treasury so provides by way of order made under subsection (1)(b)), the integrity objective. The procedure for making such an order is set out in new section 137D and n*ew section 9N(2)(d)* of the Bank of England Act 1998 (inserted by *clause 3)* provides that the FPC may give the Treasury advice about the exercise of this order making power.

225. *Subsection (2)* lists the things that the FCA can specify as prohibited in its product intervention rules. These include: entering into specified agreements with any person or specified person; entering into specified agreements with any person or specified person unless requirements specified in the rules have been satisfied; doing anything else that might result in (a) the entering into of specified agreements by persons or specified persons or (b) the holding by them of a beneficial or other kind of economic interest in a specified agreement; or doing anything else unless certain requirements in the rules are met. The FCA will be able to specify a class of consumer who should not be exposed to a particular product, or should only be exposed to it if certain requirements are met.

226. The power is intended to capture all kinds of exposure, including providing, selling, arranging and advising. Rules may be made in relation to all kinds of products, including where there is no direct agreement between a retail consumer and a provider. The focus is on protecting the consumer from exposure to an economic interest in a product which the FCA considers is likely to cause detriment. The product could take any form, ranging from a straightforward agreement between provider and retail consumer to exposure to a product through a complex product chain. It would also be possible to have a product that is structured such that the consumer enters into a deed of trust through which he is exposed to the product. In this situation, there may be a deed of trust or an arrangement but the definition of "specified agreement" is intended to be wide enough to capture such arrangements.

227. *Subsection (10)* specifies that references to an "agreement" include "arrangements". This is to ensure that the provisions can cover collective investment schemes, for example, which are described in FSMA as "arrangements".

228. The PRA may make general rules under *new section 137E*. The PRA's general rules may only apply to PRA-authorised persons, but may relate to the carrying on of regulated activities and to the carrying on of activities which are not regulated. Any rules made by the PRA under this section must appear to the PRA to be necessary or expedient to advance one or more of its objectives.

229. General rules made by either regulator can impose restrictions on the remuneration of staff and others (*new section 137F*), and may provide (i) that provisions in an

agreement which breach the restrictions are void and (ii) for the recovery of payments made or property transferred under a void provision.

230. General rules may also require authorised persons to have and comply with a remuneration policy (*new section 137G*). If rules contain a requirement for such a policy the Treasury may direct the regulator to review the compliance by a specified authorised person, or description of authorised persons, with the rules on remuneration policies. If there is non-compliance, the regulator must take such steps as it considers appropriate to deal with the non-compliance, for example requiring the authorised person to review its remuneration policy.

231. Part 1 of the Banking Act 2009 establishes a special resolution regime (SRR), providing statutory tools to deal with banks and building societies that get into financial difficulties. General rules made by either regulator under FSMA may require those in respect of whom the SRR may be exercised (such as banks and building societies) to prepare recovery plans. Recovery plans are plans setting out action to be taken to secure the carrying of the business, or information to facilitate the carrying on of the business. Action described in the plan may include the restructuring, scaling back or sale of certain business lines or assets of the authorised person in question. The purpose of a recovery plan is not to help an authorised person to avoid getting into difficult circumstances, but to plan what they can do to enable them to recover should they encounter such circumstances.

232. *New section 137H* provides that, before they prepare rules about recovery plans, the regulators must consult the Treasury and the Bank, both of whom have roles under Part 1 of the Banking Act 2009.

233. Similarly, *new section 137I* provides that the PRA must consult the Treasury and the Bank before making general rules requiring the preparation of resolution plans. A resolution plan is a plan setting out (i) steps to be taken in the event of it becoming likely that the business will fail or in the event of it failing, or (ii) information to facilitate anything that falls to be done in consequence of the failure of the business. Resolution plans might include provisions to ensure that a "data room" can be set up quickly and effectively, or contain information about the simplification of legal structures ahead of a resolution being triggered. *Subsection (6)* confirms that information that would facilitate planning by the Treasury and the Bank of the exercise of their powers under the Banking Act 2009 is information eligible for inclusion in a resolution plan. Where the PRA has made rules requiring the preparation of resolution plans, *new section 137K* requires it to consult the Treasury and the Bank about the adequacy of the plans prepared.

234. *New section* 137L makes further provision in respect of recovery plans and resolution plans. If a regulator considers that an authorised person has failed to comply with its rules relating to the collection and keeping up-to-date of information for the purposes of a recovery plan or a resolution plan, the regulator may require the authorised person to appoint a 'skilled person" to collect, and maintain up-to-date, the

information that is needed (*subsections (3) to (6)*). To prepare a recovery or resolution plan an authorised person is likely to need to obtain information from persons connected to it and others. *Subsection (1)* facilitates the flow of information to the authorised person, or the skilled person, for the purposes of preparing a recovery or resolution plan from other parties, for example other parties in the group, or persons such as service providers. It enables other parties to disclose information relevant to preparing or maintaining a recovery or resolution plan to the authorised person without being in breach of any duty or obligation of confidence (whether imposed by contract or otherwise). *Subsection (2)* provides that an authorised person that has received confidential information under subsection (1) may, for example, include such information in its recovery or resolution plan and submit it to the relevant regulator without having to seek the consent of a third party.

235. *New section 137M* provides that the regulators may make rules about the disclosure and use of information held by an authorised person. These rules are commonly known as "Chinese walls" rules. Chinese walls are barriers in the form of procedures, systems, management and physical separation which firms may employ in order to ensure that information obtained by one part of a firm is not communicated in inappropriate circumstances to another part of the firm (for example, where it would advantage one client at the expense of another). Under *subsection (2)(a) and (c)*, rules may require that information be withheld or not used for a customer's benefit where it would otherwise have to be disclosed or used, while subsection (2)(b) and (d) provide that rules may specify circumstances in which an authorised person may withhold or not use information which would otherwise have to be disclosed or used. This means that, if an authorised person maintains Chinese walls in accordance with rules made under the section, then the authorised person will not be subject to obligations as to the disclosure and use of information that would otherwise apply.

236. Section 397 of FSMA creates an offence of making a misleading statement, promise or forecast to induce the entry or the refraining from entry into relevant agreements (as defined in section 397) or the exercise or the refraining from exercise of rights conferred by relevant investments (as defined in section 397). Section 397(5) provides a defence where the person in question reasonably believed their actions were not misleading, were acting for the purpose of stabilising the price of investments and in accordance with price stabilisation rules. *New section 137N* confers a power on the FCA to make rules specifying when and how authorised persons may take steps to stabilise the price of investments, and are to be treated as acting in accordance with price stabilisation rules.

237. Section 21 of FSMA prohibits financial promotion (the communication, in the course of business, of an invitation or inducement to engage in investment activity) other than by or with the approval of an authorised person. *New section 137O* confers a power on the FCA to make rules applying to authorised persons in relation to the

regulation of financial promotion. *Subsection (7)* enables the Treasury to restrict this rule-making power.

238. *New section 137P* enables the FCA to direct a firm to withdraw a financial promotion that the FCA considers is likely to breach its rules concerning financial promotion. This provision is intended to enable the FCA to take swift action to minimise consumer detriment. It includes power to take action in relation to a financial promotion, if it was made or approved by an authorised person. The FCA can direct the firm to refrain from making a promotion, to withdraw a promotion, to publish details of it, or to do anything else the FCA directs it to do in relation to the promotion. It is envisaged this might include, for example, contacting consumers who have acted upon the promotion. *Subsection (3)* is intended to prevent firms from making promotions that are materially the same as the promotion in relation to which a direction already exists.

239. The FCA must give the person to whom written notice of a direction under subsection (5) is addressed an opportunity to make representations, during which time the fact of the notice cannot be published. After this period, the FCA will amend (*subsection (7)*), revoke (*subsection (10)*) or confirm (*subsection (8)*) its original direction. At this stage, the FCA must publish details of the action it has taken, if it considers this is appropriate. There is nothing to prevent a firm from publishing details of action the FCA has taken, once the FCA has confirmed, revoked or amended its original direction. A firm must publish any details about the promotion that the FCA requires it to under *subsection (2)(c)*.

240. *New sections 138A to 138C* provide for the regulators to give directions waiving or modifying rules applicable to an authorised person, at the request of an authorised person or with their consent. *Subsection (4) of new section 138A* sets out the conditions which must apply for each regulator to give a direction. Waivers or modifications of rules can have indefinite effect, or can be revoked or varied. *New section 138B* sets out consultation requirements and *new section 138C* provides that the regulator should publish the direction unless it is inappropriate or unnecessary: *subsection (3)* sets out the factors the regulator must consider in determining whether publication of the direction is inappropriate or unnecessary. Those factors include consideration of whether a whether a breach of the rule in question would give rise to a right of action by a person under *new section 138E*: persons affected by the modification or waiver will include clients of the authorised person, and other authorised persons who might wish to benefit from similar arrangements.

241. *New section 138D* enables the regulators to disapply the disciplinary provisions in Part 14 of FSMA in relation to specific rules. For example, a PRA rule on capital requirements could provide that contravention of the rule does not lead to the disciplinary consequences that would normally attach to breach of that rule, provided that contravention may be relied on as tending to establish contravention of another specified PRA rule.

so, how. It must also publish a statement when the rule is made if the rule differs from the draft rule. In this case the statement must explain the effect of the difference on mutual societies, and on mutual societies as compared with other authorised persons.

249. Where delay would prejudice the interests of consumers, *new section* 138M provides the FCA does not need to observe these procedural requirements (though it must always consult the PRA), except in relation to short selling rules; and where there would be no or minimal increase in costs, the FCA does not need to publish a cost benefit analysis. Similarly, where delay would prejudice the safety and soundness of PRA authorised persons or, where *new section 2C* (the insurance objective) applies, the appropriate degree of protection for policyholders. The PRA does not need to observe these procedural requirements. Again, the PRA must in all cases consult the FCA.

250. *New sections 138N to 138P* provide for exemptions from the obligation to consult on proposed rules where the FCA proposes to make product intervention rules under section 137C. The FCA need not comply with the obligation to consult on proposed rules where it considers it necessary or expedient not to do so for the purpose of its consumer protection or efficiency and choice objective (or its integrity objective if provided for by order made by the Treasury). Any rules made pursuant to this provision are temporary and must cease to have effect within 12 months of the day on which they come into force. The FCA may not make further temporary rules which are substantially the same as temporary rules which have lapsed within one year.

251. *New section 138O* requires the FCA to issue a statement of policy with respect to the making of temporary product intervention rules. The FCA must consult on any such statement.

252. The FCA may give guidance under *new section 139A* about the operation of FSMA or specified parts of it, and of any rules the FCA has made; guidance may relate to the FCA's functions or any other matter the FCA considers relevant. The guidance need not be published, though the FCA may do so; and if the FCA gives guidance in response to a request, it may make a reasonable charge for that guidance (*subsection (6)*).

253. If the FCA intends to give guidance on its rules to FCA regulated persons generally or to a class of FCA regulated persons ("general guidance"), it must consult the PRA and then publish a draft of the guidance, inviting representations on it. The FCA must have regard to any representations received and publish an account of those representations and its response to them (*subsections (3) and (4)*). As with the making of rules, the FCA does not need to observe these procedural requirements if doing so would prejudice the interests of consumers. *New section 139B* requires the FCA to notify the Treasury if it issues, amends or revokes its general guidance.

242. *New section 138E* sets out the circumstances in which persons who suffer loss as a result of the breach of a rule by an authorised person have a right of action for damages for resulting losses. It does not remove any common law cause of action which a person might otherwise have. Breach of an FCA rule (unless the rule provides otherwise) will give private persons who suffer loss as a result of the breach a right of action for damages: they will need only show that there has been a breach of a rule as a result of which they have suffered loss rather than having to rely on that breach as evidence of negligence. PRA rules may provide for the same effect. There is a presumption that persons other than private persons do not have a right of action for damages, although the Treasury may by regulations specify that breaches of certain rules are actionable by non-private persons. "Private persons" will be defined by the Treasury by regulations. The section does not apply to listing rules, short selling rules or capital adequacy rules.

243. *New section 138F* provides that a breach of rules is not an offence, and that it does not make a transaction unenforceable or void.

244. If either regulator makes, amends or revokes any rules, it must immediately notify the Treasury in writing (*new section 138G*).

245. *New section 138H* provides that rules must be made in writing and specify the provision under which they are made. Each regulator must publish its rules; if a person can show that a rule had not been made available at the time they are alleged to have contravened it, *subsection (6)* provides that the person is not to be taken as having contravened the rule.

246. *New section 138J* provides that, before the FCA makes any rules, it must consult the PRA and then publish a draft of the rules accompanied by various materials, including a cost benefit analysis and an explanation of the rules. It must invite representations on the draft rules. A "cost benefit analysis" is an analysis of the costs and of the benefits that will result from the rule being made, and the analysis should include a financial estimate of the costs and of the benefits where possible. The FCA must have regard to any representations it receives on the draft rules, and publish an account of those representations and its response to them. If the issued rules differ from the draft rules, the FCA must publish details of the differences and a further cost benefit analysis.

247. *New section 138K* makes corresponding provision for rules made by the PRA.

248. *New section 138L* provides that, where a rule proposed by the FCA or PRA is to apply both to mutual societies (as defined in *subsection (5)*) and other authorised persons, the regulator must publish with the draft rule a statement saying whether the rule will affect mutual societies significantly differently from other authorised persons and, if

254. *New clauses 140A to 140H* relate to the scrutiny of the regulators' regulating provisions and practices by the competition authorities (the Office of Fair Trading ("OFT") and the Competition Commission).

255. Under *new section 140B*, where the OFT gives advice to the PRA or FCA under section 7 of the Enterprise Act 2002 which contains a statement that the OFT considers that the regulating provisions or practices of either regulator (or a combination of both) may cause or contribute to the prevention, restriction or distortion of competition in the supply or acquisition of goods and services in the United Kingdom, the regulator is required to respond to the advice within 90 days. Similar provision applies where the Competition Commission makes a recommendation to the regulator in a report under section 136 of the Enterprise Act 2002 (reports on market investigation references). The regulator is not required to accept and act on the advice but must have regard to the advice and state with reasons how it proposes to deal with the advice. Any response from the regulator must be published.

256. Under *new section 140H* if, having considered the response of the regulator, the OFT or Competition Commission continues to consider that the regulating provisions or practices of either regulator (or a combination of both) may cause or contribute to the prevention, restriction or distortion of competition in the supply or acquisition of goods and services in the United Kingdom, the OFT or Competition Commission may refer the matter to the Treasury. The Treasury may, having considered the advice given by the competition authority and the regulator's response and having consulted the regulator, give a direction to the regulator requiring the regulator to take specified action.

Clause 22: Short selling rules

257. Part 8A of FSMA confers on the FSA a power to make rules to prohibit, or require the disclosure of information about, short selling (section 131B(1) and (2)). 'Short selling" is defined in section 131C(2) and concerns the situation in which a person benefits from the decline in the value of a "financial instrument" (defined in subsection (3)).

258. *Clause 22(1)* amends Part 8A for the purposes of conferring on the FCA the powers under Part 8A.

259. *Clause 22(2)* amends section 131D, which enables rules to be made using an urgent procedure where the FCA considers it necessary to advance one or more of its operational objectives. Currently section 131D enables the FSA to make rules under the urgent procedure where the necessary to do so: (a) to maintain confidence in the UK financial system; or (b) to protect the stability of the UK financial system. As the FCA is to have differing statutory objectives to the FSA, the grounds for making

emergency rules, and extending the period in which they have effect, require amendment. Rules made under this procedure may only have effect for a period of three months, although section 131D(3) enables the FCA to extend the period to a maximum of six months.

Control over authorised persons

260. Part 12 of FSMA is primarily designed to implement European requirements in respect of acquisitions or increases of control over certain types of firm such as credit institutions, investment firms and insurance undertakings. In summary, Part 12 requires a person (the "section 178 notice-giver") who decides to acquire or increase control over a UK authorised person to give notice to the FSA before making the acquisition (the 'section 178 notice") (section 178(1)).

261. "Acquiring control" is defined in section 181 and includes cases in which the notice-giver intends to hold 10% or more of the shares in the authorised person or 10% or more of the shares in the parent undertaking of the authorised person. "Increasing control" is defined in section 182 as a circumstance in which a person increases the percentage of shares or voting power in the authorised person above certain thresholds (for example, a person who decides to move from a shareholding of 19% to 22 % is required to give a section 178 notice). A notice is also required to be submitted where a person reduces control (as defined in section 183) or ceases to have control (section 191D(1)). Part 12 also confers certain powers to take action where, for example, a person breaches the requirement to give a section 178 notice.

Clause 23: Control over authorised persons

262. *Clause 23(2)* amends Part 12 to change references to the "Authority" to references to the "appropriate regulator". *Subsection (3)* inserts into section 178 a *new subsection (2A)* which provides that the PRA, as the prudential regulator of a PRA-authorised person is the "appropriate regulator" in cases concerning the change of control over PRA-authorised persons. The FCA is the "appropriate regulator" in other cases. Therefore, in the case of a person who wishes to acquire control in a bank, that person would need to submit a section 178 notice to the PRA.

263. *Subsection (4)* amends section 179 with the effect of imposing on each of the PRA and the FCA a requirement to publish a list of requirements as to the form, information and accompanying documents for a section 178 notice.

264. *Subsection (5)* amends section 187 by inserting a *new subsection (2)*. *Paragraph (a) of new subsection (2)* replicates the effect of the existing subsection (2) which specifies that a regulator may grant approval of a change of control subject to conditions where, if it were not to impose those conditions, it would propose to object to the application (on the grounds specified in section 185). *Paragraph (b)* is new and provides that the appropriate regulator may grant conditional approval where it is required to do so by virtue of a direction issued by the other regulator under *new section 187A(3)(b)* or the *new section 187B(3)* (as the case may be).

265. *New section 187A(1)* requires the PRA to consult the FCA before approving or objecting to an acquisition of control over a PRA-authorised person and to supply to the FCA relevant information (*subsection (5)*). These requirements ensure that the FCA can consider and, if necessary, make representations to the PRA concerning the acquisition of control over a firm regulated by the FCA on a conduct of business basis. *Subsection (3)* confers a power on the FCA, where it considers there are reasonable grounds for objecting to the acquisition on the basis of the assessment criteria specified in section 186(f) (this provision concerns the risk of money laundering or terrorist financing being committed or attempted), to direct the PRA (a) to object to the acquisition; or (b) to grant approval subject to any conditions specified by the FCA. The FCA, in its capacity as the conduct of business regulator, will be best placed to make this assessment. If the PRA is subject to a direction from the FCA under *subsection (3)* the PRA must indicate to the notice-giver any representations received from the FCA. *The effect of subsection (7)* is that the PRA could exercise its power under *new section 3H* to prevent the FCA from giving a direction under *subsection (3)*.

266. *New section 187B(1)* requires the FCA to consult with the PRA before approving or objecting to an acquisition of control over an FCA-authorised person where (a) the firm to which the section 178 notice relates has a PRA-authorised person as a member of its "immediate group" (defined in *section 421ZA* (inserted by *clause 40*)) or (b) the section 178 notice-giver is a PRA-authorised person. *Subsection (2)* enables the PRA to make representations to the FCA on any of the matters set out in section 185(2) and section 186 (the criteria against which a notice must be assessed). *Subsection (3)* confers on the PRA a power (a) to direct the FCA to object to the acquisition; or (b) to direct the FCA to grant approval subject to any conditions specified by the PRA. This power is available where the PRA considers that, on the basis of "relevant matters" (defined in *subsection (4)* and including the ability of the firm to meets its prudential requirement following the acquisition) there are reasonable grounds to object to the acquisition.

267. *New section 187C* provides that where one regulator has directed the other to impose conditions, it may direct the variation or cancellation of those conditions; and the other regulator may not vary or cancel conditions other than in accordance with the direction without first consulting the regulator which gave the direction.

268. *Subsection (7)* inserts a *new subsection (4A) and (4B)* into section 191A which require the PRA and FCA to consult with one another before giving a warning notice objecting to the acquisition of control in certain cases. *Subsections (8) and (9)* make similar amendments in relation to sections 191B and 191C, which deal with restriction notices and applications to court for orders for the sale of shares.

269. *Subsection (10)* requires the PRA and the FCA (as the case may be) to provide a copy of a notice received under section 191D (regarding a disposition of control) in certain cases.

Clause 24: Powers of regulators in relation to parent undertakings

270. *Clause 24* provides powers for the regulators to give directions to unregulated parent undertakings. It inserts sections 192A to 192I into FSMA.

271. *New section 192A* defines a "qualifying authorised person" as a body corporate incorporated in the UK, which is a PRA-authorised person or an investment firm. *Subsections (4) to (9)* make provision for the Treasury to amend this definition by order.

272. *New section 192B* sets out certain conditions before the power of direction may be exercised. The parent undertaking of the qualifying authorised person must be a UK person (other than an individual or a partnership), must not be an authorised person, and must be a financial institution of a type prescribed by the Treasury by order. In addition the power of direction is exercisable only if the regulator considers that the acts of the parent undertaking are having a material adverse effect on the ability of the regulator to regulate qualifying authorised persons, in pursuance of the regulator's objectives. *New section 192B(6)* requires the regulator to consider whether it could use powers in relation to authorised persons in general, and to consider the principle of proportionality.

273. *New section 192D* sets out the procedural requirements relating to the issue of directions. If the regulator proposes to issue a direction, it must first issue a warning notice to the parent undertaking and to any authorised person it thinks will be significantly affected, giving the details set out at *subsection (5)*. The direction may take effect immediately or on a specified date if the regulator considers it necessary for it to do so. If no date is specified in this way, the direction will take effect only after the time for referring the matter to the Tribunal has expired and any reference and further appeal has been finally determined (see the definition of "open to review" in section 391(8)). *Subsections (7) and (8)* require the regulator to give further written notice of its response to any representations which are made to the proposed direction. The regulator can decide not to give the direction (or to cancel it if it has already taken effect), to propose a different direction (in which case the original notice procedure must be repeated), or to proceed with the direction (in which case the person concerned has a further right to refer the matter to the Tribunal). *New section 192E* also requires consultation between the regulators before the issuing of notices under *new section 192D*.

274. *New section 192F* confers a right to refer the Tribunal an exercise of a regulator's powers in relation to the issuing of directions. *New section 192G* provides for court enforcement of directions.

275. *New sections 192H and 192I* require each regulator to publish a statement of policy on the exercise of its powers to issue directions, and to give a copy of the statement to the Treasury. Before publishing a statement of policy, the regulators must first consult each other, and publicly, on the draft statement; they must also publish an account of what representations they received and their response to them.

Recognised investment exchanges and clearing houses

276. Part 18 of FSMA sets out the regime under which "recognised clearing houses" and "recognised investment exchanges" (together "recognised bodies") are regulated. A person specified as a recognised body is exempt, for certain purposes, from the general prohibition (set out in section 19 of FSMA) as regards the carrying on of regulated activities.

277. Under the new arrangements the Bank is to be responsible for the regulation of recognised clearing houses and the FCA is to be responsible for the regulation of recognised investment exchanges. The Bank is to conduct its functions under Part 18 in pursuance of its financial stability objective (as amended by *clause 2*).

Clause 25 and Schedule 6: Powers exercisable in relation to recognised investment exchanges and clearing houses

278. *Clause 25* inserts *new section 285A*. *New section 285A* provides that for the purposes of Part 18, the FCA is the "appropriate regulator" in relation to recognised investment exchanges, and that the Bank is the "appropriate regulator" in relation to recognised clearing houses. The clause also inserts *new Schedule 17A* to FSMA as set out in *Schedule 6*.

279. *Paragraph 1 of new Schedule 17A* requires the Bank and the FCA to prepare and maintain a memorandum describing how they will work together in exercising their functions. *Sub-paragraph (2)* specifies the matters which must be included in the memorandum. *Sub-paragraph (3)* provides that a reference in *paragraph 1* to a "function" of the Bank and FCA means any function however conferred. For example, it may be the case that a person specified as a recognised investment exchange is also the operator of a recognised payment system under Part 5 of the Banking Act 2009. In such a case the person would be regulated by both the Bank (under Part 5 of the Banking Act 2009) and the FCA (under Part 18). Therefore it is appropriate that the memorandum of understanding makes provision to ensure the authorities cooperate effectively whether in the discharge of functions under Part 18 of FSMA or, for example, under directly applicable European measures.

280. *Paragraph 2* requires the Bank, the FCA and the PRA to enter into a memorandum of understanding setting out how they will work together in exercising their functions in relation to persons who are recognised bodies and who are also PRA-authorised

persons, or are members of a group in which a member is a PRA-authorised person. The exemption from the requirement to be authorised to carry on regulated activities, which is conferred on a person as a result of recognition under Part 18, extends only to activities which are carried on for the purposes of, or in connection with, a person's business as an investment exchange or a person's business which consists of the provision of clearing services. Therefore, if a person wishes to carry on a regulated activity which is not part of such business that person will need to seek authorisation from the FCA (or PRA and FCA as the case may be) and may be regulated by more than one body. This memorandum ensures the effective co-ordination of the regulation of such persons.

281. *Paragraph 3* requires the Bank and the FCA (and, if relevant, the PRA) to review a memorandum of understanding entered into under *paragraph 1* or *paragraph 2* at least once each calendar year. Each memorandum made under these paragraphs (and any revised memoranda) must be sent to the Treasury (*paragraph 4*) and made public (*paragraph 6*). The Treasury are required to lay in Parliament a copy of each memorandum they receive under *paragraph 4* (*paragraph 5*).

282. *Paragraph 7* requires the FCA to notify the Bank where it has issued a direction under section 128 (suspension of investigations) to a recognised clearing house to suspend or to refrain from conducting an inquiry under its rules. Such a direction may be given where the FCA considers it desirable or expedient in connection with the exercise or possible exercise of a power relating to market abuse.

283. *Paragraph 8* requires the FCA to notify the Bank of any requirement imposed on a recognised clearing house under section 313A (power to require suspension or removal of financial instruments from trading).

284. *Part 2 of the new Schedule 17A* applies certain provisions of FSMA to the Bank in its capacity as the regulator of recognised clearing houses. These powers are available under the FSMA to the FCA in relation to the regulation of recognised investment exchanges and are therefore explicitly made available to the Bank in relation to recognised clearing houses.

285. *Paragraph 10* applies certain provisions of the *new Part 9A (rules and guidance)* in relation to rules made by the Bank under any provision made by or under FSMA, for example in relation to rules made under section 293(1) (notification requirements) or under any power conferred by the Treasury in regulations made under section 286 (as modified by *clause 26* (recognition requirements: power of FCA and Bank to make rules). For example, *sub-paragraph (1)(i)* applies new section 138K which requires the Bank to consult before making rules unless the Bank considers that the delay in complying would be detrimental to financial stability (*sub-paragraph (3)*).

286. *Paragraph 11* makes available to the Bank the powers conferred by section 165(1) and (3), to require a recognised clearing house, or a person connected to a recognised clearing house, to provide specified information and to produce specified documents

which are reasonably required in connection with the exercise by the Bank of the functions conferred on it under Part 18 or any of its other functions in pursuance of its financial stability objective (so the Bank could require a recognised clearing house to provide information reasonably required by the FPC) (*sub-paragraph (2)*).

287. *Paragraph 12* makes available to the Bank the power conferred by section 166 in order that it may require a recognised clearing house to provide a report to the Bank on any matter in relation to which the Bank may require information under section 165 as applied by *paragraph 11*.

288. *Paragraph 13* makes available to the Bank the power to appoint persons to carry out investigations into the nature, conduct or state of the business of a recognised clearing house, a particular aspect of that business, or the ownership or control of a recognised clearing house. *Sub-paragraph (2)* provides that a person appointed as an investigator is to have the powers conferred by section 172 (additional power of person appointed as a result of section 168(1) and (4)) and 173 (powers of persons appointed as a result of section 168(2)). For example, an investigator may require a person who is not the subject of the investigation or is not connected with the person under investigation to attend a meeting with the investigator.

289. *Paragraph 14* makes available to the Bank the power to appoint investigators in particular cases, for example if there are circumstances suggesting that a clearing house, in the context of an application to be a recognised body, has given the Bank false or misleading information.

290. *Paragraph 15* provides that an overseas regulator may require the Bank to require information to be provided (in exercise of the power conferred by section 165 as applied by *paragraph 11*) or may require the appointment of one or more competent persons to investigate a matter.

291. *Paragraph 16* applies section 176 (entry of premises under warrant) such that a justice of the peace may issue a warrant if satisfied that there are reasonable grounds for believing that a person on whom an information requirement has been imposed by the Bank, or by a person appointed by the Bank, has failed to comply with it.

292. *Paragraph 17* applies section 347 (as amended by *paragraph 37 of Schedule 7*) with the effect of requiring the Bank to maintain a record of every recognised clearing house.

293. *Paragraph 18* applies sections 348 (restriction on disclosure of confidential information by Authority etc) to 350 (disclosure of information by Inland Revenue) and 353 (removal of other restrictions on disclosure) in relation to any information received by the Bank. This has the effect, for example of requiring the Bank to keep

information received in the discharge of its functions under Part 18 in confidence, save where specified gateways are available.

294. *Paragraph 19* makes available to the Bank the power to make an application to court under section 380(1), (2) or (3) for an injunction, for example, in the event that the Bank consider it reasonably likely that a recognised clearing house will contravene a relevant requirement (which is defined in *sub-paragraph (2)*).

295. *Paragraph 20* makes available to the Bank the power to apply to the court for an order requiring a person to make a payment where it is satisfied that a person has contravened a relevant requirement and that profits have accrued as a result of the contravention. The definition of "relevant requirement" for this purpose is set out in *paragraph 19(2).*

296. *Paragraph 21* makes available to the Bank the power to require a recognised clearing house to make a payment where the condition in *sub-paragraph (2)(a) or (b)* is met.

297. *Paragraph 22* applies the provisions of Part 26 (notices) in relation to warning or decision notices given by the Bank under *new section 312G* (proposal to issue a public censure or impose a financial penalty) and *new section 312H* (decision to issue a public censure or impose a financial penalty) (inserted by *clause 26*). By way of example, section 387 sets out the matters which must be included in a warning notice.

298. *Paragraph 23* applies section 398 such that it is an offence for a person, who, in purported compliance with a requirement listed in that paragraph knowingly or recklessly gives the Bank information which is false or misleading.

299. *Paragraph 24* provides that the Bank may initiate proceedings with regard the prosecution of certain offences under the Act (as specified in *sub-paragraph (1)*).

300. *Paragraph 25* provides that proceedings arising out of any act or omission (or proposed act or omission) of the Bank in the discharge or purported discharge of any of its functions under FSMA may be brought before the High Court or Court of Session (in Scotland).

301. *Paragraph 26* applies section 415A (powers of the FCA) which provides that any power which the Bank has under any provision of FSMA is not limited in any way by any other power which it has under the Act.

302. *Paragraphs 27 to 30* apply certain provisions of the *new Schedule 1ZB* (inserted by *clause 5*). For example, *paragraph 27* applies the duty imposed on the PRA by *paragraph 17(1) of Schedule 1ZB* to maintain arrangements designed to enable the Bank to determine whether persons on whom "relevant requirements" (as defined in *paragraph 19(2)*) are imposed are complying with them. *Paragraph 28* applies *paragraph 18 of Schedule 1ZB* and has the effect of requiring the Bank to produce an annual report concerning the discharge of its functions relating to recognised clearing

houses. The Bank is required to provide the Treasury with a copy of the report, which the Treasury must lay before Parliament. *Paragraph 30* applies Part 2 of Schedule 1ZB which has the effect of requiring the Bank to establish a complaints scheme in relation to the discharge of its functions relating to recognised clearing houses (other than the "excluded functions" referred to in *sub-paragraph (2)*).

303. *Paragraph 31* provides that the Bank may require recognised clearing houses to pay fees in connection with the discharge of its functions under or as a result of Part 18. *Paragraph 32* provides that any fees owed to the Bank under *paragraph 31* may be recovered as a debt due to the Bank.

304. *Clause 25(3)* amends section 285(2) of FSMA. The effect of the amendment is that a person specified as a recognised investment exchange is exempt from the general prohibition as respects any regulated activity carried on as part of the person's business as an exchange only. In the event the person wishes to carry on regulated activities for the purposes of, or in connection with, the provision of clearing services then that person would need to apply to the Bank for an order specifying that person as a recognised clearing house (under section 288 (application by a clearing house)). Transitional provision will be made to deal with recognised investment exchanges that, at the time of the coming into force of the amendments to Part 18, carry on regulated activities for the purposes, of or in connection with the provision of clearing services.

Clause 26: Recognition requirements: power of FCA and Bank to make rules

305. This clause inserts a new *subsection (4F)* into section 286 of FSMA (qualification for recognition) which confers on the Treasury a power to make regulations setting out the requirements which must be satisfied by an investment exchange or a clearing house in order for it to qualify as a recognised body. *Subsection (4F)* provides that the Treasury may make provision in regulations made under section 286 for the purposes of conferring on the Bank or the FCA (as the case may be) the power to make rules for the purposes of the regulations or any specified provision made by the regulations. This power will enable the Treasury to confer on the appropriate regulator the power to make rules relating to the recognition requirements whether those requirements are specified under directly applicable European regulation (and only referred to in the domestic regulations) or are set out in the domestic regulations. This enables further, or more prescriptive requirements (for example, concerning what constitutes "adequate resources"), to be imposed if necessary.

Clause 27: Recognised bodies: procedure for giving directions under s.296 etc

306. Section 298 sets out the procedural arrangements to be followed before the Bank or the FCA (as the case may be) may (a) give directions to a recognised body or (b) revoke a recognition order. These changes are designed to simplify the powers.

307. *Subsection (2)* omits paragraphs (b) and (c) of subsection (1) and as a result the Bank and the FCA will no longer need to take steps to bring to the attention of the members of the recognised body, and any other persons which it considers are likely to be affected, its proposal to issue a direction or revoke a recognition order. *Subsections (3) and (5)* make provision consequential on the change to subsection (1).

308. *Subsection (4)* replaces subsection (4) such that the minimum period for making representations in response to a notice issued by the Bank or the FCA (as the case may be) setting out its intention to issue a direction is such period as is specified in the notice, rather than a minimum period being set out on the face of the legislation. This will enable the appropriate regulator to prescribe a shorter period than is currently the case under FSMA (which prescribes a minimum period of two months), for example, where the Bank needs to act urgently in the interests of addressing a potential threat to financial stability.

309. *Sub-paragraph (6)* amends subsection (7) so as to enable the appropriate regulator to give a direction without following the procedure set out in section 298 where it reasonably considers it necessary. This aligns the circumstances in which the power can be used with those in which the PRA and the FCA may vary, with immediate effect, a person's permission to carry on authorised activities (see *new sections 55J and 55Y(3)* inserted by *clause 8*).

Clause 28: Power to take disciplinary measures against recognised bodies

310. *Clause 28* inserts into FSMA *new sections 312E to 312K*. *New sections 312E and 312F* confer on the Bank and the FCA new disciplinary powers.

311. *New section 312E* confers on the FCA and the Bank the power to publish a statement that a recognised body has contravened a relevant requirement (defined in *subsections (2) and (3)* respectively). This is consistent with the power available to the FCA and the PRA to issue public censures in relation to authorised persons (section 205 (public censure)).

312. *New section 312F* confers on the Bank and the FCA the power to impose on a recognised clearing house or recognised investment exchange (as the case may be) a financial penalty. This is consistent with the power available to the FCA and the PRA in relation to authorised persons (section 206 (financial penalties)).

313. *New section 312G* requires the Bank and the FCA, before publishing a statement under section 312E, or imposing a financial penalty, to issue a warning notice. This is consistent with the requirement imposed on the PRA and the FCA (section 207 (proposal to take disciplinary measures)). If, after considering any representations received in response to the warning notice, the Bank or the FCA decide to take the proposed disciplinary step, the relevant regulator must issue a decision notice in accordance with the requirement imposed by the *new section 312H*. Again, this is consistent with the requirement imposed on the FCA and the PRA in relation to a decisions to take disciplinary measures in relation to authorised persons (section 208

(decision notice)). A person who receives a decision notice under this section has the right to refer the matter to the Tribunal (*subsection (4)*).

314. *New section 312I* requires the Bank and the FCA (as the case may be) to provide a copy of a statement published under section 312E to the recognised body concerned, and to any person to whom a copy of the decision notice was given under section 393(4) (third party rights).

315. *New section 312J* requires the Bank and the FCA to prepare and issue a statement of policy with respect to the imposition of financial penalties under *new section 312F* and the amount of penalties under that section. The policy as regards the amount of a penalty must include having regard to the seriousness of the contravention in question and the extent to which the contravention was deliberate or reckless. Before issuing a statement of policy under this section, the Bank and the FCA are required to publish a copy of the statement in draft form and conduct a consultation exercise (*new section 312K*).

Clause 29: Repeal of special competition regime

316. *Clause 29* omits Chapter 2 (competition scrutiny) and Chapter 3 (exclusion from the Competition Act 1998) of Part 18.

317. Chapter 2 of Part 18 makes provision for the scrutiny by the OFT and the Competition Commission of regulatory provisions issued by a recognised body and sets out various roles for the Treasury and Chapter 3 disapplies certain provisions of the Competition Act 1998.

318. Chapter 2 is now considered to be redundant, particularly as a result of the coming into force of section 290A (refusal of recognition on ground of excessive regulatory provision), which permits the appropriate regulator to refuse to make a recognition order if it appears that an existing or proposed regulatory provision of the applicant (in connection with relevant business) imposes or will impose an excessive requirement on a person affected directly or indirectly by it. The repeal of Chapter 2 means there is no need to maintain the exclusions from the Competition Act 1998 in Chapter 3.

Clause 30 and Schedule 7: Sections 25 to 29: minor and consequential amendments

319. *Clause 30* introduces Schedule 7 which makes minor amendments to FSMA in consequence of the conferral of the functions under Part 18 on the Bank (in relation to recognised clearing houses) and the FCA (in relation to recognised investment exchanges).

320. *Paragraphs 3 to 36 of Schedule 7* make amendments to *Part 18* mainly to amend references to the FSA to the Bank or the FCA (as appropriate). The effect of the amendments made by *paragraphs 12(5), 15(3)(b) and 16(3)(c)* is that the Bank and the FCA (as the case may be) may take certain forms of action to enforce such directly applicable requirements (specified in European law) as are specified in an order made by the Treasury.

321. *Paragraph 37* makes amendments to section 392 (warning and decision notices: application of provisions relating to third party rights and access to evidence) so that sections 393 (third party rights) and 394 (access to material of the relevant regulator) apply where a warning notice or decision notice is given u*nder the new section 312G or 312H.*

322. *Paragraph 38* makes amendments to section 412A of FSMA (approval and monitoring of trade-matching and reporting systems) to transfer to the FCA the FSA's functions under that section and *paragraph 39* makes similar amendments to section 412B (procedure for approval and suspension or withdrawal of approval).

Suspension and removal of financial instruments from trading

Clause 31: Suspension and removal of financial instruments from trading

323. *Clause 31* makes amendments to Part 18A of FSMA to confer on the FCA the FSA's functions under that Part.

324. Part 18A implements certain requirements set out in the Markets in Financial Instruments Directive (Directive 2004/39/EC). The power conferred under Part 18A will enable the FCA to require an institution to suspend or remove a financial instrument from trading in order to protect the interests of investors or the orderly functioning of the financial markets (section 313A).

Discipline and enforcement

Clause 32 and Schedule 8: Discipline and enforcement

325. *Clause 32* introduces *Schedule 8* which contains various amendments to various Parts of FSMA which confer powers relating to disciplinary and enforcement measures.

326. *Part 2 of Schedule 8* amends section 20 (authorised persons acting without permission). The effect is that a person who is authorised by the FCA to conduct regulated activities, and who carries on a regulated activity or purports to do so otherwise than in accordance with the permission, is to be taken to have contravened a requirement imposed by the FCA. This means that the FCA could, for example, take disciplinary action under Part 14 of FSMA (see below) in relation to that contravention. Also, a PRA-authorised person who carries on a regulated activity or purports to do so otherwise than in accordance with the permission is to be taken to have contravened a requirement imposed by the FCA and the PRA, which means that either regulator could take disciplinary action in relation to the contravention.

327. *Part 3 of Schedule 8* makes certain amendments to Part 8 of FSMA (market abuse). Part 8 confers powers on the FSA to impose penalties for market abuse (see section 118) and to publish the Code of Market Conduct (section 119). Under the new arrangements, the FCA is to assume the FSA's functions under Part 8; therefore, *paragraph 3 of the Schedule* amends FSMA and replaces references to the "Authority" with references to the "FCA" in the relevant places.

328. *Part 4 of Schedule 8* amends Part 14 of FSMA (disciplinary measures). Part 14 confers powers to issue a statement that a person has contravened a requirement (section 205), impose a financial penalty (section 206) or suspend, or impose a restriction on, a person's authorisation under Part 4 of FSMA to carry on regulated activities (section 206A)) These powers may be exercised where, currently, the FSA considers that an authorised person has contravened a requirement imposed by or under the Act or by any directly applicable Community regulation made under the markets in financial instruments directive (Directive 2004/39/EC).

329. The amendments are designed to give the PRA and the FCA powers to take action in relation to contraventions of requirements imposed by or under the Act or relevant directly European measures (i.e. requirements imposed under European law which do not need to be implemented by domestic legislation). *New section 204A* sets out when the powers are available to the FCA and when they are available to the PRA.

330. *Part 5 of Schedule 8* makes amendments to Part 25 of FSMA (injunctions and restitution). *Paragraph 13* amends section 380 (under which the court may grant an injunction where, for example, it is satisfied that there is a reasonable likelihood that any person will contravene a relevant requirement*)* to enable the PRA (in specified cases) and the FCA (in other cases) to make an application to court for an injunction.

331. *Paragraph 14* amends section 381 which confers a power to apply for an injunction to prevent threatened or continuing market abuse, to require a person to remedy the consequences of market abuse or to prevent the disposal of assets. As the FCA is to assume the FSA's functions under Part 8 relating to market abuse, the powers under section 381 are also transferred to the FCA.

332. *Paragraph 15* amends section 382 to enable the PRA and the FCA (as the case may be) to apply to the court for an order requiring a person to pay a sum by way of restitution. Section 382 (as amended) enables the relevant regulator to apply to the court for an order requiring a person to pay to the authority such sum as the court considers to be just having regard to (a) the profits appearing to have accrued as a result of a contravention of a relevant requirement; (b) the extent of the loss or other adverse effect arising as a result of the contravention. Any amount received by the regulator as a result of an order issued by the court under subsection (2) must be paid to such qualifying person (for example a consumer who suffers loss as a result of the

contravention) as the regulator may direct. Section 383 provides for applications for restitution orders in cases of market abuse so powers under this section are transferred to the FCA.

333. *Paragraph 17* amends section 384 so as to enable the PRA and the FCA (as the case may be) to require a person to make payments by way of restitution where the relevant regulator is satisfied that the person has, for example, contravened a relevant requirement (defined in subsection (7)) and: (a) that profits have accrued to that person as a result of the contravention; or (b) that one or more persons have suffered loss or have been otherwise adversely affected as a result of the contravention. *Paragraphs 18 and 19* make consequential changes to sections 385 and 386.

334. *Part 6 of Schedule 8* makes amendments in relation to Part 26 of FSMA (notices). Part 26 makes provision in relation to the different types of notices which are required to be given in specified circumstances under the Act (for example, where a relevant regulator proposes to impose on a person a financial penalty).

335. Section 387 sets out the matters which must be included in a warning notices (for example, the notice must specify the period in which the subject of the notice may make representations to the relevant regulator regarding the proposed action described in the notice). Section 388 makes similar provision in relation to decisions notices which are required to be given where the relevant regulator has decided to take the action described in the warning notice. In the event that an authority decides not to take the action set out in the warning notice, or the action to which a decision notice relates, a "notice of discontinuance" must be issued (section 389). Section 390 makes provision for final notices which are required to be given where a decision notice has been given and the matter has not been referred to the Tribunal within the time limit specified in the notice, or where the matter has been referred to the Tribunal and has been dealt with in appropriate in accordance with any directions of the Tribunal.

336. *Paragraphs 20 to 23* make consequential changes to make clear that the requirements regarding notices under these sections are to apply to the PRA and the FCA (as the case may be). In addition *paragraph 20(3)* changes the minimum time period within which a person must have an opportunity to make representations to the FCA or the PRA (as the case may be) concerning matters referred to in a warning notice (such period may be extended by the relevant regulator). This period is to be reduced from 28 days to 14 days in order to enable the regulators to take disciplinary action more expeditiously (for example, in relation to contraventions which have been admitted by an authorised person), albeit that each regulator may extend this period on a case-by-case basis. A corresponding reduction in the period in which representations may be made is made in section 393 (third party rights).

337. Section 391 imposes a general prohibition on the FCA and PRA (and any person to whom a warning notice or decision notice is given) from publishing a warning or decision notice or details concerning the notice. However, in the case of decision notices, this prohibition is lifted where the FCA or PRA (as the case may be) has

published the notice or details concerning the notice (see subsection (1A) which was inserted by section 13(1) of the Financial Services Act 2010). *Paragraph 24(2)* replaces section 391(1) and relaxes the general prohibition on the publication of information about warning notices given under the sections referred to in the *new subsection (1ZB)* such that the FCA or the PRA (as the case may be) may publish information about warning notices given in certain cases. Before publishing such information the relevant authority must consult the person to whom the notice is given or copied, and must be of the view that the publication of the information would not, for example, be unfair to the person with respect to whom the action is proposed to be taken (see *new subsection (6) and (6A)*).

338. *Paragraphs 25 and 26* make consequential amendments to sections 393 and 394 in order to apply them to the FCA and the PRA (as the case may be). Section 393 imposes a requirement to give a copy of a warning notice or decision notice to which the section applies to a third party where any reasons set out in the notice relate to a matter which identifies that person and where, in the opinion of the relevant authority, any of those reasons are prejudicial to the third party. A person who receives a copy of the notice has certain rights (see, for example, subsections (3) and (12)). Section 393 confers a right on a person who has received a warning or decision notice to which section 394 applies to access the material on which the relevant authority has relied in taking the decision which gave rise to the notice; and any secondary material, which, in the opinion of the relevant regulator, might undermine that decision.

339. Section 395 deals with how the procedure to be followed in relation to the giving of supervisory notices (defined in subsection (13)), warning notices and decision notices is to be determined. *Paragraph 27(3) and (4)* make amendments to section 395 so as to enable a person who has been directly involved in establishing the evidence on which a decision of a kind described in section 395(1) is based to participate in the decision-making even where the PRA or the FCA (as the case may be) does not consider it necessary for that person to be a decision-maker for the reasons specified in subsection (3) (as amended). *Paragraph 27* also makes consequential amendments to this section so that it applies to the FCA and the PRA.

340. *Part 7 of Schedule 8* makes provision in relation to specific offences which, currently, the FSA has the power to prosecute.

341. *Paragraph 29* makes consequential amendments to section 398 (misleading the Authority: residual cases) such that a person who, in purported compliance with a requirement imposed by or under FSMA knowingly or recklessly gives the PRA or the FCA (as the case may be) information which is false or misleading in a material particular is taken to have committed an offence.

342. *Paragraphs 30 and 31* make amendments to sections 401 and 402 and specify the circumstances in which the PRA and the FCA have the power to prosecute offences under FSMA and in certain other cases.

343. *Part 8 of Schedule 8* inserts *new section 415B* which requires the PRA and the FCA (as the case may be) to consult with the other authority before taking certain qualifying steps (specified in *subsection (3)* of that section).

Financial Services Compensation Scheme

Clause 33 and Schedule 9: The Financial Services Compensation Scheme

344. *Clause 33 and Schedule 9* amend Parts 15 and 15A of FSMA (the Financial Services Compensation Scheme and other schemes). The amendments to section 213 provide for the Treasury to make an order specifying which scheme rules the FCA will be responsible for and which scheme rules the PRA will be responsible for. The order will be subject to the affirmative resolution procedure (see clause 41).

345. Each regulator must consult the other before making scheme rules. And *new section 3E(3)(c)*, inserted by *clause 5*, requires the regulators to set in their memorandum of understanding how they will exercise their functions in relation to the Financial Services Compensation Scheme (FSCS).

346. *New clause 217A* provides for the FCA, PRA and the scheme manager of the Financial Services Compensation Scheme to co-operate with each other in relation to the FSCS. The regulators and the scheme manager must also prepare and maintain a memorandum of understanding describing how they will do this. The memorandum must be published by the scheme manager.

347. *New clause 217B* requires the scheme manager to prepare and publish an annual plan. The plan must be approved by the PRA and the FCA.

348. The amendments to section 218 of FSMA (annual report) provide that the Treasury can require the scheme manager to comply with the auditing requirements of the Companies Act 2006.

349. New section 218ZA provides for the accounts of the FSCS to be audited by the National Audit Office.

350. *Clause 33(2)* makes a consequential amendment to section 224F of FSMA, in respect of the power to make rules in connection with the exercise by the FSCS scheme manager of functions in respect of relevant schemes (as defined in section 224B).

Financial ombudsman service

Clause 34 and Schedule 10: The financial ombudsman service

351. *Clause 34* and Schedule 10 amend the provisions of FSMA relating to the Financial Ombudsman Service (FOS).

352. Section 228(6) of FSMA provides that a complainant is treated as having rejected an ombudsman's determination if the complainant does not accept or reject the determination by a date specified by the ombudsman. New *subsection (6A)* enables a complainant to accept a determination after the deadline has passed, if certain conditions are met. It is intended that the scheme operator of the FOS will make rules specifying the circumstances in which complainants will not be treated as having rejected a determination.

353. *New section 230A* places a duty on the scheme operator of the FOS to publish reports of determinations. However, a report must not be published if the ombudsman making the determination informs the scheme operator that publication of any part of the determination is inappropriate. The report of a determination will not include the name of the complainant or any particulars which the scheme operator deems likely to identify the complainant, unless the complainant agrees.

354. *New section 232A* requires the scheme operator of 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.

355. *New section 1C(2)(d)* (see *clause 3*) places a duty on the FCA to have regard to any information which the scheme operator of the FOS has provided to the FCA pursuant to new clause 232A (in considering what degree of protection for consumers may be appropriate, for the purposes of securing the FCA's consumer protection objective).

356. *Paragraph 11* inserts a *new clause 234B.* This provision provides that a "successor firm" that takes over liability for the acts or omissions of a predecessor firm can be a respondent to a complaint made under the FOS regarding a predecessor firm. The aim of this provision is not to require a firm which acquires the business of another to accept liability for subsequent FOS claims but to ensure that where the firm has agreed to accept such liability, it also becomes a potential respondent to a complaint before the ombudsman scheme. The amendment applies equally to businesses that fall under the consumer credit jurisdiction and the voluntary jurisdiction.

357. *Paragraph 15* inserts a *new paragraph 3A* into schedule 17 FSMA (the ombudsman scheme). This provides for co-operation between the scheme operator of the FOS and the FCA in the exercise of their separate functions. It reflects the fact that some co-operation is necessary for the FCA and the scheme operator of the FOS to each carry out their functions as effectively and as efficiently as possible. It makes co-operation compulsory but is silent as to the form that co-operation should take (except for the requirement to prepare and maintain a memorandum of understanding).

Clause 35: Lloyd's

358. *Clause 35* amends Part 19 of FSMA which imposes duties and confers powers on the FSA in relation to Lloyd's of London. The effect of clause 35 is to impose these duties and confer these powers on both the FCA and the PRA.

359. *Subsection (2)* amends section 314 of FSMA to require the FCA and PRA to keep themselves informed about the way in which the Council of Lloyd's supervises and regulates the market at Lloyd's and the way in which regulated activities that the regulator regulates are being carried on in that market. The duty only applies in so far as it is appropriate for the purpose of, for the FCA, advancing its operational objectives and, for the PRA, for advancing its general objective and insurance objective (if effecting or carrying out of contracts of insurance is a PRA-regulated activity such that section 2C applies).

360. *Subsection (3)* modifies the application of the PRA's objectives and related provisions such as section 3H (power of PRA to require FCA to refrain from specified action) so that the reference to PRA authorised persons includes a reference to the Society of Lloyd's and its members, taken together, notwithstanding the fact that the members of Lloyd's are not authorised persons. Thus the general objective applies to require the PRA to promote the safety and soundness of the Society and its members, taken together, and the power in section 3H may be exercisable where the PRA is of the opinion that the exercise by the FCA of a proposed power may result in the disorderly failure of the Society and its members taken together.

361. *Subsection (4)* substitutes section 315 of FSMA. It provides that if an activity carried on by the Society is a regulated activity, the order made under section 22 of FSMA may make provision disapplying any requirement of FSMA which relates to the registered office of a body corporate.

362. *Subsection (5)* amends section 316 FSMA. The effect of the amendments is to provide that either the PRA or FCA may exercise the power of direction if it considers that it is necessary or expedient to do so for the purpose of advancing its operational objectives (in the case of the FCA) or general objective or, if applicable, insurance objective (in the case of the PRA).

363. *Subsection (6)* amends section 318 FSMA. The effect of the amendments is to provide that either the PRA or FCA may exercise the power of direction to the Council or Society if it considers that it is necessary or expedient to do so for the purpose of advancing its operational objectives (in the case of the FCA) or general objective or, if applicable, insurance objective (in the case of the PRA).

364. *Subsection (7)* amends section 319 (consultation in connection with the exercise of the powers under section 316 and 318). Each regulator must consult the other before exercising a power of direction under section 316 or 318. Provision is made to allow the regulator to dispense with the duty to consult publicly on a proposed direction (in the case of the FCA, on the basis that to comply with the duty would be prejudicial to

the interests of consumers, and in the case of the PRA, on the basis that to comply with the duty would be prejudicial to its general objective, or if applicable, its insurance objective. Subsection (7) also amends the definition of "cost benefit analysis" in section 319(10).

365. *Subsection (8)* amends section 320 (former underwriting members). The power to impose requirements on former underwriting members is conferred on the PRA (unless the activity of effecting or carrying out of contracts of insurance is not a PRA-regulated activity in which case the power is exercisable by the FCA). Subsection (9) makes related amendments to section 321 (procedure for requirements imposed under section 320) including requiring the PRA to consult the FCA before giving notice under section 320.

366. *Subsection (10)* amends section 322 (rules applicable to former underwriting members). The power to make rules imposing requirements on former underwriting members is conferred on the PRA (unless the activity of effecting or carrying out of contracts of insurance is not a PRA-regulated activity in which case the power is exercisable by the FCA).

Information

Clause 36 and Schedule 11: Information, investigations, disclosure etc.

367. *Clause 36* introduces *Schedule 11* which makes various amendments to FSMA including amendments relating to information gathering and investigations (*Part 1*) and the public record, disclosure of information and co-operation (*Part 2).*.

368. *Paragraphs 1 to 4* of *Schedule 11* amend sections 165 to 166 of FSMA, transferring the information gathering powers of the FSA under these sections to the new regulators, or to the relevant regulator as the case may be (for example, the FCA in certain of the amendments to section 165(7) made by *paragraph 1(6)*, or the PRA in relation to the power to obtain information relating to financial stability under sections 165A and 165B as amended by *paragraphs 2 and 3*).

369. *Paragraph 5* inserts a *new section 166A* which confers a power on the regulators to appoint a "skilled person" to collect or update information which an authorised person was required (but failed) to collect or maintain under rules imposed by that regulator, for example in relation to recovery plans. As with *new section 137L*, *new section 166A* facilitates the collection of confidential information from others (for example, other members of the authorised person's group) (*subsection (6)*) and enables the authorised person to disclose confidential information if required (*subsection (7)*).

370. *Paragraphs 6 to 13* amend sections 167 to 176 of FSMA, transferring powers of the FSA under these sections to the new regulators, or the relevant regulator as the case

may be, including powers in relation to investigations, information and documents, and entry to premises under warrants.

371. *Paragraph 12(3)* also amends section 175 to provide that where a regulator or investigator has obtained documents under information-gathering powers set out in Part 11 of FSMA, they may retain the originals for as long as necessary for the purpose for which they were requested, or until any legal proceeding are concluded. The effect of *paragraph 13(3)* is to place on a statutory footing in a uniform way across the United Kingdom the provisions relating to the execution of warrants and the powers exercisable by those accompanying the constable in the execution of the warrant, for example FCA or PRA staff who accompany a constable in entering and searching premises under a warrant. And *paragraph 14* inserts *new section 176A* which provides for original documents seized under a warrant to be retained as long as may be necessary, and for the owner to be able to apply for a court order requiring their; this replaces the three month limit set out in section 176(8) (which is extended if criminal proceedings are commenced within that period).

372. Section 347 of FSMA requires the FSA to maintain a publicly available record of certain details about authorised persons (and other categories of persons set out in subsection (1)), including details of the services provided by authorised persons, their addresses, and any other information the Authority thinks is appropriate. *Paragraph 15* transfers the function of maintaining the record of authorised persons (including PRA-authorised persons) to the FCA; the public record to be maintained by the FCA will not include recognised clearing houses (*sub-paragraphs (2) and (3)*). *Paragraph 16* inserts a *new section 347A*, which requires the PRA to give the FCA information needed to maintain the record.

373. *Paragraphs 17 to 19* make consequential amendments to sections 348, 349 and 353 of FSMA, replacing references to the FSA with references to the new regulators; these sections deal with restrictions on disclosure of information.

374. *Paragraph 20* inserts *new section 353A* which protects information about monetary policy, financial stability operations and private banking services that has been provided by the Bank of England. The regulators must not disclose this information (*subsection (1)*) though they may, for example, disclose such information to each other (*subsection (6)(a)*) and to investigators (*subsections (7) and (8)*).

375. Section 354 of FSMA imposes a duty on the FSA to co-operate with various bodies. *Paragraph 21* replaces section 354 with *new sections 354A and B*, imposing duties on the new regulators to co-operate with the persons listed in those new sections.

376. *New section 354C* requires the PRA to provide information to the Bank to assist the Bank in achieving its financial stability objective set out in section 2A(1) of the Bank of England Act 1998, which is to contribute to protecting and enhancing the stability of the financial systems of the United Kingdom.

Competition

Clause 37: Power of FCA to make a request to Office of Fair Trading

377. *Clause 37* inserts a new section 354D into FSMA. This provision enables the FCA to ask the OFT to consider whether a feature of the market in the United Kingdom for financial services may prevent, restrict or distort competition in the United Kingdom. The OFT is required to respond within 90 days explaining how it proposes to respond to the request. The OFT is not however required to take any specified action in response to the request. The FCA might make such a request where, for example, it did not have the powers to address the potential problem in the market (for example because the problem related to the structure of the market rather than the conduct of market participants) or where the FCA considered that the matter would benefit from the competition expertise of the OFT.

Miscellaneous amendments of FSMA 2000

Clause 38 and Schedule 12: Members of the professions

378. *Clause 38* introduces Schedule 12 which makes amendments to Part 20 FSMA (provision of financial services by members of the professions). Part 20 provides that members of a profession may, subject to certain conditions, carry on regulated activities without authorisation where the activity is incidental to the provision of professional services which are supervised and regulated by a professional body which has been designated by the Treasury.

379. *Paragraph 1 of Schedule 12* amends section 325 of FSMA to require the FCA to keep itself informed about the way in which designated professional bodies supervise and regulate the carrying on of exempt regulated activities by their members and the way in which such members are carrying on exempt regulated activities.

380. *Paragraph 2* amends section 328 (directions in relation to the general prohibition) to enable the FCA to direct that the disapplication of the general prohibition under section 327 is not to apply. *Paragraph 4 of Schedule 12* makes related amendments to section 330 (consultation on directions under section 328). Paragraph 4 also amends the definition of "cost benefit analysis" in section 330(10).

381. *Paragraph 3* amends section 329 (orders in relation to the general prohibition) to enable the FCA to make an order disapplying section 327 (disapplication of the general prohibition) in relation to a person whom the FCA considers is not fit and proper to carry on regulated activities in accordance with section 327. *Paragraph 5* makes related amendments to section 331 (procedure on making or varying orders under section 329).

382. *Paragraph 6* amends section 332 (rules relating to persons to whom the general prohibition does not apply) to enable the FCA to make rules applicable to persons to whom, as a result of section 327, the general prohibition does not apply.

Clause 39: International obligations

383. *Clause 39* amends section 410 of FSMA. Section 410 enables the Treasury to direct "relevant persons" not to take proposed action if it appears to the Treasury that action would be incompatible with Community obligations or any other international obligations of the United Kingdom. The Treasury may also direct a relevant person to take action which that person has power to take where that action is required for the purpose of implementing any such obligation.

384. The effect of clause 39 is to provide that the FCA, the PRA and the Bank of England when exercising functions conferred on it by Part 18 of FSMA are "relevant persons" for this purpose and so can be the subject of a direction under section 410.

Clause 40: Interpretation of FSMA 2000

385. *Subsection (2)* amends section 417 of FSMA (definitions). In particular, definitions of "the FCA", "Part 4A permission", "the PRA", "PRA-authorised person" and "PRA-regulated activity" are inserted. *Subsection (3)* inserts new section 421ZA which provides a definition of "immediate group".

Clause 41: Parliamentary control of statutory instruments

386. *Clause 41* amends section 429 of FSMA to make provision for the Parliamentary control of statutory instruments made under powers created by the Bill. Where no express provision is made in clause 41 as to the procedure that applies, the negative procedure applies (see section 429(8) of FSMA).

PART 3 – COLLABORATION BETWEEN TREASURY AND BANK OF ENGLAND, FCA OR PRA

Clause 42: Duty of Bank to notify Treasury of possible need for public funds

387. *Subsection (1)* requires the Bank of England to notify the Treasury where it appears to the Bank that there is a material risk of circumstances arising in which public funds would be needed. The duty also applies where such circumstances have arisen but have not been the subject of a previous notification. Clause 43 provides for provision as to what is to be regarded as a "material risk" for these purposes to be included in a memorandum prepared by the Treasury, Bank and PRA.

388. The duty arises in three specified cases: where the Treasury or Secretary of State might reasonably be expected to provide financial assistance to or in respect of a financial institution (*subsection (2)*); where it is possible that a power under Parts 1 to 3 of the Banking Act 2009 may be exercised and that the Treasury might be expected to incur expenditure in connection with that (*subsection (3)*); or where the scheme manager of the Financial Services Compensation Scheme might be expected to request a loan from the National Loans Fund or other financial assistance from the

Treasury in order to meet expenses of the Scheme (*subsection (4)* in order to meet the expenses of the Scheme). If there is a substantial change in the matters to which the notification relates, the Bank must give a further notification.

Clause 43: Memorandum of understanding: crisis management

389. *Subsection (1)* requires the Treasury on the one hand and the Bank of England and the PRA on the other to prepare and maintain a memorandum of understanding describing how they will co-ordinate their relevant functions which relate to the steps that are to be taken when the Bank has given a notification to the Treasury under clause 42. In addition, the Treasury, Bank and PRA may agree to include in the memorandum other matters relating to the public interest so long as they relate to financial stability or the regulation of financial services. For example, the memorandum could include provisions about the regulation of a financial institution which might seriously affect diplomatic relations between the United Kingdom and a foreign country.

390. The memorandum is to relate to how the Treasury, the PRA and the Bank are to co-ordinate their functions. However *subsection (3)* provides that the memorandum need not relate to the relationship between the PRA and the Bank and so need not contain provision relating to, for example, how the PRA and Bank will share information or keep each other informed about matters of common interest.

391. The memorandum must include provisions which relate to the matters specified in *subsection (2),* including what is to be regarded as a material risk for the purposes of clause 42, the roles of the Treasury, Bank and PRA in taking steps to resolve or reduce threats to financial stability which have prompted a notification under clause 42 and the sharing of information.

392. The relevant functions of each party to the memorandum are defined for this purpose in *clause 45*. In relation to the Treasury and the Bank, "relevant functions" are functions which relate to the regulation of financial services or the stability of the UK financial system. Thus the functions of the Bank in its capacity as monetary authority will not be covered by the memorandum (except in so far as they relate to stability).

393. *Subsection (4)* enables the parties to the memorandum to include in the memorandum provisions which relate to the functions of certain other persons, where that person consents. *Subsection (5)* specifies the persons whose functions may be included in the memorandum (the FCA, the Financial Services Compensation Scheme and any other body exercising functions in relation to the regulation of financial services or the stability of the UK financial system). This means, for example, that if the situation being managed under the provisions of the memorandum involved the payment of compensation from the FSCS, the memorandum could set out how the FSCS would coordinate with the PRA, the Bank and the Treasury in those circumstances.

394. *Subsection (6)* requires the Treasury to publish and to lay before Parliament a copy of the memorandum.

Clause 44: Memorandum of understanding: international organisations

395. *Subsection (1)* requires the Treasury, the Bank of England, the FCA and the PRA to prepare and maintain a memorandum describing how they will co-ordinate the exercise of relevant functions so far as they relate to membership of, or relations with, international organisations. "Relevant functions" for these purposes are defined in clause 45.

396. *Subsection (4)* sets out the purpose of the memorandum.

397. *Subsection (5)* sets out the matters which must be included in the memorandum.

398. *Subsection (7)* requires the Treasury to publish and to lay before Parliament a copy of the memorandum.

Clause 45: Interpretation of Part 3

399. *Subsection (2)* defines "relevant function" for the purposes of Part 3 of the Bill.

400. *Subsection (3)* defines "financial assistance" for the purposes of Part 3 of the Bill.

401. *Subsection (4)* enables the Treasury by order to provide that a specified activity or transaction, or class of activity or transaction, is or is not to be treated as financial assistance. This will enable the Treasury to clarify how a particular activity or transaction, or class of activity or transaction, is to be treated.

PART 4 – INQUIRIES AND INVESTIGATIONS

Inquiries

Clause 46: Cases in which Treasury may arrange independent inquiries

402. *Clause 46* enables the Treasury to appoint a person to carry out an inquiry. The power is exercisable where events have occurred which give rise to concern and which relate to collective investment schemes, the carrying out of regulated activities, the issue of listed securities, recognised clearing houses or recognised inter-bank payment systems, and these events may not have occurred but for a serious failure in the legislative regime for regulation or its operation.

Clause 47: Power to appoint person to hold an inquiry

403. Where this clause applies (see *clause 46*), the Treasury may appoint a person to hold an inquiry. The Treasury may, under *subsection (2)*, give a direction to that person on a range of matters.

Clause 48: Powers of appointed person and procedure

404. *Clause 48* makes provision for the procedure to be followed on an inquiry and for the person holding the inquiry to be able to obtain information and documents and require the attendance of witnesses which are relevant to the inquiry.

Clause 49: Conclusion of inquiry

405. *Subsection (1)* requires the person holding the inquiry to provide to the Treasury a written report at the end of the inquiry. The duty of the Treasury to publish the report is dealt with in *clause 57* (see below).

Clause 50: Obstruction and contempt

406. *Clause 50* makes provision about those persons who have obstructed an inquiry such as by failing to comply with a request by the person holding the inquiry (for example, a request to provide information or documents). If the person's behaviour would have amounted to contempt of court (if the inquiry had been court proceedings), a court may deal with the person as if in contempt.

Investigations

Clause 51: Duty of FCA to investigate and report on possible regulatory failure

407. *Clause 51* requires the FCA to investigate events and to report to the Treasury on the result of the investigation. The duty applies where events have occurred which relate to those who are regulated by the FCA or within its regulatory remit (see *subsection (5)*) which have or may have caused serious harm to the values underpinning the FCA's operational objectives (the appropriate degree of protection for consumers, the integrity of the UK financial system, the efficiency and choice in the market and competition) and those events may not have occurred but for a serious failure in the legislative regime for regulation or its operation. The duty applies where the FCA itself is satisfied that the test is met (unless the Treasury directs the FCA that an investigation is not required) or where the Treasury direct the FCA that the test is met.

Clause 52: Duty of PRA to investigate and report on possible regulatory failure

408. *Clause 52* requires the PRA to investigate events and to report to the Treasury on the result of the investigation. The duty applies where events have occurred which relate to PRA-authorised persons which have or may have caused serious harm to the values underpinning the PRA's objectives (the safety and soundness of those persons or the adequate degree of protection for policyholders) or where public expenditure (as defined in *clause 53*) has been incurred in respect of a PRA-authorised person and those events may not have occurred but for a serious failure in the legislative regime for regulation or its operation. The duty applies where the PRA itself is satisfied that the test is met (unless the Treasury directs the PRA that an investigation is not required) or where the Treasury direct the PRA that the test is met.

Clause 53: Interpretation of section 52

409. *Clause 53* defines terms for the purposes of clause 52, including "relevant public expenditure". "Relevant public expenditure" is incurred for these purposes in three cases: where the Treasury or Secretary of State have provided financial assistance to or in respect of a PRA-authorised person for financial stability reasons (for example where the Treasury have provided a guarantee to a PRA-authorised person); where the Treasury have incurred expenditure in relation to a PRA-authorised person in connection with the exercise of powers under Parts 1 to 3 of the Banking Act 2009 (for example, by giving an indemnity to the Bank in connection with the operation of a bridge bank); or where the scheme manager of the Financial Services Compensation Scheme has received a loan from the National Loans Fund or financial assistance from the Treasury for the purposes of funding expenses incurred in connection with a PRA-authorised person.

Clause 54: Power of Treasury to require FCA or PRA to undertake investigation

410. *Clause 54* enables the Treasury to require the FCA or PRA to carry out an investigation and provide the Treasury with a report if the Treasury consider that it is in the public interest to do so. The investigation must relate to "relevant events" as defined within the meaning of *subsections (2) and (3).*

Clause 55: Conduct of investigation

411. *Clause 55* provides that it is for the regulator carrying out the investigation to decide how it is to be carried out, subject to any direction given by the Treasury under *subsection (2).*

Clause 56: Conclusion of investigation

412. On the conclusion of the investigation, the regulator must provide to the Treasury a written report setting out the result of the investigation, any lessons it (the regulator) has learnt and any recommendations it wishes to make. Publication of the report is dealt with in *clause 57*.

Publication of reports

Clause 57: publication of reports of inquiries and investigations

413. *Clause 57* deals with the publication of reports made to the Treasury under clause 49 or 56. In each case the Treasury must lay the report before Parliament and publish it in full subject to a power to withhold matters on the grounds specified in *subsections (3) and (4).* Where the Treasury fail to publish the report in full, they must lay before Parliament and publish a statement of their reasons.

Supplementary

Clause 58: Interpretation and supplementary provision

414. *Clause 58* contains definitions relevant to Part 4.

PART 5 – AMENDMENTS OF BANKING ACT 2009

Special resolution regime and bank administration

Clause 59: Private sector purchasers

415. Part 1 of the Banking Act 2009 makes provision for the "special resolution regime" which confers powers on the Bank and the Treasury to effect the transfer of the shares or property, rights and liabilities ("business") of a bank which has encountered, or is likely to encounter, financial difficulties.

416. There are three "stabilisation options" available to the authorities enabling: (a) the Bank to transfer the shares or some or all of the business of a bank to a commercial purchaser (section 11); (b) the Bank to transfer some or all of the business of a bank to a "bridge bank" (this is a company wholly owned by the Bank) (section 12); and (c) the Treasury to transfer the securities of a bank into temporary public ownership (section 13). The stabilisation options are effected by an exercise of the "stabilisation powers": the share transfer powers (sections 14 to 32) and the property transfer powers (sections 33 to 48) which enable the Bank to make "transfer instruments" and the Treasury to make "transfer orders".

417. Following an initial exercise of a transfer power under the Banking Act 2009, the relevant authority may effect supplemental, onward and reverse transfers (see sections 26 to 31 and 42 to 46). In summary "reverse transfers" can be used to transfer the securities, or property, rights and liabilities from a transferee back to a transferor. For example, where the Bank has transferred property, rights and liabilities from a failing bank to a bridge bank it may transfer some of that business back to the failing bank (it may wish to do this, for example, in order to minimise the need to capitalise a bridge bank with public funds where the assets transferred from the failing bank are found to be significantly impaired).

418. Under the Banking Act 2009, the reverse transfer powers are not available in respect of securities or property, rights and liabilities which have been transferred to a commercial purchaser. *Clause 59* inserts a *new section 26A and 42A* into the Banking Act 2009 and makes other modifications to Part 1 of that Act to extend the availability of the reverse transfer powers in order to provide the authorities with greater flexibility, for example to remedy the situation where securities or property, rights and liabilities have been transferred in error. However, in order to provide comfort to prospective acquirers of securities or property, rights and liabilities under a transfer instrument, these new reverse transfer powers may be exercised only where the person from whom the securities or property, rights and liabilities are to be transferred has given their prior consent in writing (see, for example, *new section 26A(4)*).

Clause 60: Property transfer instruments: property held on trust

419. Section 33 of the Banking Act 2009 describes a property transfer instrument as an instrument which, in short, may provide for the property, rights and liabilities of a

specified bank to be transferred; may make other provision for the purposes, or in connection with the transfer; and may relate to some or all of the property, rights and liabilities of the failing bank.

420. A property transfer instrument may be made by the Bank for the purposes of effecting a transfer to a private sector purchaser or to a bridge bank (sections 11 and 12 respectively) and may also be made to make additional transfers from the failed bank (section 42); reverse transfers from the bridge bank to the failed bank (section 44); and onward transfers from a bridge bank to another person (section 43). For completeness, the Treasury may make property transfer orders to transfer property, rights and liabilities from a bank in temporary public ownership (section 45) and reverse transfers in certain cases (section 46).

421. Sections 34 and 36 to 40 make provision for some of the matters that may be provided for in a property transfer instrument (or property transfer order as the case may be). Section 34(7) specifies that a property transfer instrument (or order) may make provision about property held on trust. Concerns have been raised by the Banking Liaison Panel (the Panel established under section 10 of the Banking Act 2009 to advise the Treasury about the effect to the special resolution regime on banks, building societies and the financial markets) that this subsection suggests that provision could be made in a transfer instrument or order to modify or terminate the terms of such trust arrangements for reasons other than to effect a transfer and irrespective of the consequences for the beneficiaries of the trust. Therefore *clause 60(2) and (3)* makes minor amendments to this provision to clarify that the terms on which trust property is held may only be modified or altered to the extent necessary or expedient, in the opinion of the Bank, to transfer the legal or beneficial interest in that property and any powers, rights or obligations in respect of that property. Subsections (4) and (5) provide for the same restrictions to apply to the Treasury.

Clause 61: Reports following exercise of a stabilisation power

422. Where the Bank effects a transfer of property, rights and liabilities from a bank to a bridge bank under section 12 of the Banking Act 2009, it is required to report to the Chancellor about the activities of the bridge bank as soon as is reasonably practicable after: (a) the end of one year beginning with the date of the first transfer to the bridge bank, and (b) the end of each subsequent year (section 80(1) to (3)). The Chancellor must lay a copy of each report before Parliament (subsection (4)). The Bank must also comply with any request from the Treasury for a report on any matters in relation to a bridge bank (subsection (5)).

423. Similarly, where the Treasury makes a share transfer order under section 13(2) to transfer the shares of a bank into temporary public ownership the Treasury is required to lay reports before Parliament on the activities of the bank (section 81(1) to (3)). This reporting requirement is also applied under section 83(2)(g) in the case of a transfer of the parent undertaking of a bank (a holding company) into temporary public ownership in reliance of section 82.

424. At present, no provision is made in the Banking Act 2009 as regards the information that must be included in such reports. Therefore, potentially, reports could be produced on the operation of a bridge bank or a bank in temporary public ownership without reference to the institution's financial position. In addition, at present under the Act, the Bank is not required to prepare a report where it has exercised its transfer power under section 11(2) to transfer the business or shares in a bank to a private sector purchaser.

425. *Clause 61* inserts *new sections 79A* and *81A* into the Banking Act 2009 which, respectively, require the Bank to report to the Chancellor about an exercise of the transfer power under section 11(2) and for reports produced under section 80 and 81 to include accounting information about the bank in temporary public ownership of bridge bank that is the subject of the report.

Clause 62: State aid

426. *Clause 62* inserts a *new section 145A* into the Banking Act 2009 which confers a power on the Treasury to issue directions to a person appointed as a bank administrator under Part 3 of the Banking Act 2009 for the purposes of ensuring compliance with any undertakings, commitments or conditions given or imposed in relation to the consideration and approval by the European Commission of State aid given in connection with an exercise of transfer powers under Part 1 of the Act.

427. Part 3 of the Act creates a new administration procedure for banks in certain cases. For example, the Bank may apply to the court for an order appointing a bank administrator following a transfer under Part 1 (special resolution regime) of some of the business of a failing bank: (a) to a commercial purchaser (section 11(1)); and/or (b) to a bridge bank (section 12(1)).

428. A bank administrator has two objectives: (a) Objective 1 is to provide support to the acquirer of the transferred business in order to ensure the business can continue to be operated effectively; and (b) Objective 2 is "normal administration" (that is, to rescue the residual bank as a going concern or to achieve a better result for the bank's creditors as a whole than would be likely if the residual bank had been wound up without first being placed in bank administration). The bank administrator is required to begin working towards both objectives immediately upon appointment (section 137(2)). However, Objective 1 is to take priority over Objective 2. This means that the interests of the creditors are essentially subordinated until such time as Objective 1 has been completed.

429. Article 107 of the Treaty on the Functioning of the European Union effectively prohibits Member States from using State resources to provide aid to institutions on a selective basis where such aid would distort or threaten competition (as this would be incompatible with the principles of the internal market) unless such aid is approved by

the Commission, for example, where aid is provided to remedy a serious disturbance in the economy of a Member State. In many cases the resolution of an institution by way of an exercise of one or more of the stabilisation powers under Part 1 of the Act will involve the use of public funds (in other words, State resources), for example, by virtue of the provision of: (a) a capital facility to the residual of a failed institution; (b) a capital facility to a bridge bank; or (c) funding to facilitate the transfer of business from a failed institution to a private sector purchaser. Therefore, in such cases the UK will need to notify and seek the approval of the European Commission to any aid provided.

430. The new power of direction ensures that the UK can secure compliance with commitments given in connection with a State aid measure, and any undertakings given or conditions imposed on the residual of a failed institution by issuing a direction under *subsection (2)* to a bank administrator. In addition, *subsection (7)* confers a power on the Treasury to confer on the person subject to the direction immunity from liability in damages for action or inaction taken in accordance with a direction.

Clause 63: Inter-bank payment systems

431. Part 5 of the Banking Act 2009 makes provision for regulation by the Bank of payment systems specified by the Treasury as "recognised payment systems". *Clause 63* makes amendments to that Part. The Bank performs its functions under Part 5 in pursuance of its financial stability objective (specified in section 2A of the Bank of England Act 1998 as amended by *clause 2*).

432. *Subsection (2)* inserts a *new section 186A* which confers a power on the Treasury to amend an order made under section 184 (recognition order) specifying a payment system as a "recognised system". This power may be used, for example, to amend the description of the arrangements which constitute the recognised system. Before amending a recognition order the Treasury must consult the Bank and notify the operator of the relevant system and consider any representations made. In addition, in certain cases the Treasury must consult the PRA and the FCA.

433. *Subsection (3)* substitutes for section 191 (directions) a new section 191. Section 191 confers on the Bank the power to give directions to a recognised payment system. Such directions may, for example, be given for the purposes of securing the compliance with a requirement imposed under section 190 (system rules) or may be given for the purposes of addressing an immediate threat to financial stability. Where a direction is specified by the Bank as being given for the purposes of resolving or reducing a threat to the stability of the UK financial system, *new section 191(3)* provides that the operator of the system, and its officers and staff has immunity from liability in damages in respect of action or inaction in accordance with the direction. This replaces existing arrangements under which the Treasury may confer by order immunity from liability in damages in respect of things done or not done in compliance with any direction given by the Bank. The new arrangements reduce the administrative steps necessary for the purposes of conferring immunity from liability

in damages, with the aim of enhancing the speed at which action may be taken to address threats to financial stability. Subsection (11) makes a consequential amendment to the table in section 259(2) (statutory instruments: Parliamentary procedure) arising as a result of the substitution of section 191.

434. *Subsections (4) to (7) and (10)* make consequential or supplementary provision arising from the transfer of the FSA's functions to the PRA and the FCA (as the case may be).

435. *Subsection (8)* inserts a *new section 202A* which allows the Bank to apply to the court for an order restraining conduct which constitutes a compliance failure by the operator of a recognised payment system or requiring the operator to take steps to remedy a compliance failure. A "compliance failure" is defined in section 196 (compliance failure) and includes a failure to comply with a direction given by the Bank.

436. *Subsection (9)* inserts a *new subsection (1A)* into section 204 (information) which provides that the Bank can require the operator of a recognised payment system to provide information in connection with any other of the Bank's functions undertaken in pursuance of its financial stability objective. The Bank can already require persons to provide information in connection with its functions under Part 5.

Clause 64: International obligations

437. *Clause 64* amends the Banking Act 2009 by inserting a *new section 206B*. This enables the Treasury to direct the Bank in exercising its powers under Part 5 of that Act (inter-bank payment systems) not to take proposed action if it appears to the Treasury that action would be incompatible with Community obligations or any other international obligations of the United Kingdom. The Treasury may also direct the Bank to take action which it has power to take where that action is required for the purpose of implementing any such obligation. This power is similar to the power in section 410 of FSMA.

Clause 65: Duty to collect information about financial stability

438. *Clause 65* amends section 250 of the Banking Act 2009 to require the PRA (rather than the FSA) to collect information about financial stability.

PART 6 – MISCELLANEOUS

Settlement systems

Clause 66: Evidencing and transfer of title to securities without written instrument

439. Chapter 2 of the Companies Act 2006 (evidencing and transfer of title to securities without written instrument) confers on the Treasury and the Secretary of State the

power to make (either on a joint or concurrent basis) regulations concerning: (a) the procedures for recording and transferring title to 'securities" (defined in section 783); and (b) the regulation of those procedures and the persons responsible for, or involved in the operation of relevant systems (section 785(2)). The Uncertificated Securities Regulations 2001, S.I. 2001/3755 (the "Regulations") were made under this power.

440. The Regulations enable title to securities to be transferred without a written instrument (that is, in "dematerialised" or "uncertificated" form). In addition, the Regulations set out the regulatory framework for the operators of settlement systems which provide for the electronic transfer of title (see Part 2 (the operator) and Schedule 1 to the Regulations (requirements for approval of a person as an operator)).

441. Currently, certain functions (for example, concerning the approval of a person as an operator) are conferred on the Treasury under the Regulations. However, the Treasury has exercised its power under regulation 11 (delegation of Treasury functions) to delegate to the Authority (defined as the FSA) all of the functions conferred by Part 2 of the regulations (for example, responsibility for approving systems as "relevant systems") save for those specified in regulation 12 (international obligations).

442. As part of the regulatory reforms, it is intended that the Bank is to assume the FSA's functions under the Regulations. This is to be achieved by making new regulations conferring the relevant functions directly on the Bank. In order to facilitate this, minor amendments to the enabling power in section 785 are needed. *Clause 66* inserts a *new subsection (7)* into section 785 of the Companies Act 2006 in order to enable provision to be made in the regulations for the purposes of conferring functions directly on the Bank (or any other person), and ensuring 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. In addition, a *new subsection (8)* is inserted which will enable provision to be made in the regulations which confers immunity from liability in damages in specified cases (for example, in cases in which action is taken in the interests of addressing a threat to financial stability).

PART 7 – GENERAL

Interpretation

Clause 67: Interpretation

443. References in the Bill to the Financial Services and Markets Act 2000 are abbreviated to "FSMA 2000".

Final provisions

Clause 68: Extent

444. The Bill extends to the whole of the United Kingdom.

Clause 69: Commencement

445. The only provisions of the Bill that are to come into force on the day on which the Bill receives Royal Assent are those dealing with interpretation, extent, commencement and the short title to the Bill. All the other provisions of the Bill will only come into force on the day appointed by the Treasury by order.

Clause 70: Short title

446. The short title of the Bill (once it is enacted) will be the Financial Services Act 2012.

FINANCIAL EFFECTS

447. There will be no significant effects on spending by Government departments met from money voted by Parliament. The effects on expenses incurred by the FSA, Bank of England and, when they are established, the FCA and PRA are considered in the impact assessment.

PUBLIC SECTOR MANPOWER

448. The Bill will have no impact on manpower in Government departments.

SUMMARY OF THE IMPACT ASSESSMENT

449. The purpose of this Bill is to restructure the tripartite system of financial regulation which failed to ensure financial stability – in particular by failing to identify the risk posed by the rapid and unsustainable increase in debt in the economy. This resulted in considerable economic costs in lost output and in substantial deterioration in public finances. The impact assessment considered 3 options:

(a) Do nothing. This would leave the regulatory system unchanged and not address the failings that were identified;

(b) Two regulator option. This is the preferred option. It requires the creation of two new regulators (the PRA – concentrating on the prudential regulation of deposit-takers, insurers and investment firms which manage significant risks on their balance sheets – and the FCA concentrating on regulating the conduct of all firms in their dealing with other persons and regulating market conduct more generally). The Bank of England takes responsibility for the regulation of systemically important infrastructure. There will also be a Financial Policy Committee (FPC) which will have responsibility for macro-prudential regulation;

(c) Three regulator option. This is the same as the preferred option but with the FCA's responsibilities divided between a consumer-facing regulator

responsible for regulating conduct in retail financial services and a market and wholesale conduct regulator focussing on conduct in those areas. The responsibilities of the PRA, FPC and the Bank of England would be essentially unchanged.

450. The preferred option is the most cost-effective way of meeting the Government's objectives. There will be transitional costs for the existing authorities and the new regulators, and for regulated firms, particularly for those firms (about 2,000) which will be regulated by both the FCA and PRA. There are likely to be some extra ongoing administrative costs for the new regulators (in comparison with the do nothing option i.e. the continuation of the present system). Costs cannot be estimated precisely but it is clear that costs would be higher in the three regulator model owing to further duplication in regulatory bodies and increased transitional and ongoing compliance costs for regulated firms. The benefits (for which only illustrative estimates can be given in the impact assessment) should be broadly equal in both the two regulator and the three regulator options. The two regulator option is therefore the preferred option.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

451. The Government confirms that it is of the opinion that the Bill is compatible with the Convention rights. The vast majority of the provisions of the Bill do not give rise to any new issues as regards the compatibility of the powers available under FSMA with the Convention rights (as defined in section 1 of the Human Rights Act 1998). However, relevant amendments are discussed below.

New powers to take disciplinary and supervisory action

452. The new powers for the FCA to take disciplinary and supervisory action in relation to sponsors and primary information providers (*clauses 15 and 19*) and for the Bank and the FCA to take disciplinary action in relation to recognised clearing houses and recognised investment exchanges (*clause 28*) will or may engage Article 1 Protocol 1 ("A1P1"), Article 6 and Article 8 of the Convention.

453. A1P1 specifies that "*every natural or legal person is entitled to the peaceful enjoyment of his possessions"* and "*No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law....*" Where A1P1 is engaged, the Government considers that an interference in property rights is justifiable as a means of securing compliance with regulatory requirements and ensuring that, for example, the FCA can take any necessary action to maintain market integrity and protect investors from harm (both of which are operational objectives of the FCA).

454. Article 6 specifies, among other things: "*In the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and*

public hearing within a reasonable time by an independent and impartial tribunal established by law." An exercise of the new disciplinary and supervisory powers referred to above is likely to engage Article 6(1) as it is, or is likely to, amount to a determination of a civil right or obligation (Le Compte, Van Leuven and De Meyere v Belgium (1982) 4 E.H.R.R. 1, ECHR). The Government considers that the arrangements under the Bill are adequate to secure compliance with Article 6. In particular, the Government notes that a person subject to such a decision has the right to refer the matter to the Upper Tribunal.

455. Article 8 may be engaged in relation to a decision to issue a public censure in relation to a recognised body, a sponsor or a PIP. Article 8 specifies that "*everyone has the right to respect for his private and family life, his home and his correspondence."* Interferences in this right may be justified, for example, by what is in the interests of the economic well-being of the country (Hatton v UK (2003) 37 E.H.R.R 28, ECHR). In this case the Government considers that interferences can be justified by reference to the need to ensure that the relevant authority can take proportionate action for the purposes of securing compliance with regulatory requirements imposed in pursuance of legitimate public policy aims.

Changes to the arrangements for challenging "supervisory" decisions taken by the PRA and the FCA

456. In the context of the shift towards a more judgment-led approach to regulation the Government has decided to include in the Bill measures which effectively prohibit the Tribunal from issuing a direction to the relevant regulator as to the precise nature of the "supervisory" action to be taken albeit that the scope of review by the Tribunal is to be preserved (see *clause 20*).

457. The Government considers that the right to refer a "supervisory" decision to the Tribunal is adequate to secure compliance with Article 6 notwithstanding the limitation introduced by the *new section 133(6A)* (inserted by *clause 20*). The Government notes that the Tribunal will remain able to determine disputes of fact, consider questions of law (for example, whether the relevant authority has interpreted accurately the scope of its powers), and assess whether the authority has acted reasonably and proportionately. For completeness, the Government is not proposing to make any changes to the existing arrangements for the consideration of decisions concerning "disciplinary" measures referred to in the *new section 133(7A).*

Power to make rules banning products (clause 21 (new section 137C))

458. A ban on the provision of a financial services "product", or the imposition of a restriction in exercise of the powers conferred by the new section 137C has the potential to interfere with a person's peaceful enjoyment of their "possessions" and is

likely therefore to engage A1P1. The Government considers that an interference in a person's A1P1 rights is justifiable by reference to the need to ensure that the FCA can take appropriate steps to protect consumers. The Government also notes that an exercise of the powers may be referred to the court for judicial review which provides an appropriate mechanism for challenging an exercise of the FCA's rule-making powers.

Power to make public the fact that a warning notice has been issued (clause 32 and paragraph 24 of Schedule 8)

459. A decision to exercise the new power to publish the fact that a warning notice, in relation to a disciplinary measure, has been issued is likely to engage Article 8. The Government considers that the measures included in the Bill, in particular the requirement for the relevant authority to consult the person concerned before publishing information about the notice, will ensure that full account is taken of the impact of publication on the person concerned.

Expansion of the circumstances in which information may be required to be produced (including powers to require a person to appoint a skilled person to produce a report on a matter under the new section 97A of FSMA as inserted clause 18, and paragraphs 11 and 12 of the new Schedule 17A to FSMA as inserted by clause 25), and the duty on the PRA to provide information to the Bank under the new section 354C (as inserted by paragraph 22 of Schedule 11)

460. A number of provisions of the Bill make changes to the powers available to the PRA, the FCA and the Bank to require a person to produce information. These powers either engage Article 8 or may engage that Article. The Government considers that any interference in a person's Article 8 right arising as a result of an exercise of these powers is justifiable by reference to the need to ensure that the regulators have the necessary information to perform effectively their functions in pursuance of broader public policy aims.

GLOSSARY OF TERMS AND EXPRESSIONS

authorised person	Section 31 of FSMA (as amended by the Bill) defines an authorised person as: • a person who has permission under Part 4A to carry on one or more regulated activities • an EEA firm qualifying for authorisation under Schedule 3 • a Treaty firm qualifying for authorisation under Schedule 4 • a person who is otherwise authorised by or under FSMA (for example, an operator, trustee or depositary or a recognised collective investment scheme; see paragraph 1(1) of Schedule 5 to FSMA)
the Bank	The Bank of England
the BoE Act	The Bank of England Act 1998
EEA firm	Paragraph 5 of Schedule 3 to FSMA defines as EEA firm as: • an investment firm as defined in the Markets in Financial Instruments Directive (Directive 2004/39/EC) • a credit institution as defined in the Banking Consolidation Directive (Directive 2006/48/EC) • a financial institution as defined in the Banking Consolidation Directive (Directive 2006/48/EC) which is a subsidiary of a kind mentioned in Article 24 of that Directive • an undertaking pursing the activity of direct insurance as defined in the Life Assurance Consolidation Directive (Directive 2002/83/EC) or the First Non-Life Insurance Directive (Directive 73/239/EC) which has received authorisation from its home state regulator • an undertaking pursing the activity of reinsurance as defined in the Reinsurance Directive (Directive 2005/68/EC) which has received authorisation from its home state regulator • an insurance intermediary as defined in the Insurance

	Mediation Directive (Directive 2002/92/EC) which is registered with its home state regulator • a management company as defined in the UCITS Directive (Directive 85/611/EC) which is registered by its home state regulator An EEA firm must not have its head office (or, in the case of an insurance intermediary, its registered office) in the United Kingdom. Paragraphs 12 to 18 of Schedule 3 to FSMA set out the circumstances in which an EEA firm is authorised to establish a branch or provide services in the UK.
FCA	The Financial Conduct Authority
FOS	The Financial Ombudsman Service
FPC	The Financial Policy Committee of the Bank of England
FSA	The Financial Services Authority
FSCS	The Financial Services Compensation Scheme
FSMA	The Financial Services and Markets Act 2000
PRA	The Prudential Regulation Authority
PRA-authorised person	See new section 2B(5) (clause 5): a PRA-authorised person is an authorised person who has permission to carry on regulated activities which consist of or include one or more PRA-regulated activities (i.e. regulated activities specified in an order made by the Treasury under new section 22A)
regulated activity	Activity of a kind specified by order made by the Treasury under section 22 of FSMA; see, for example, the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, S.I. 2001/544
the regulators	The FCA and the PRA

Treaty firm	Paragraph 1 of Schedule 4 defines a Treaty firm as one whose head office is situated in an EEA State other than the United Kingdom and which is recognised under the law of that State as a national of that State. Paragraphs 2 to 3 of that Schedule set out the circumstances in which a Treaty firm is authorised to carry on a regulated activity.
the Tribunal	The Upper Tribunal
UKLA	United Kingdom Listing Authority (the name under which the FSA operates in discharging its functions relating to official listing and other matters under Part 6 of FSMA.

A Consultation questions and how to respond

A.1 The following table lists the consultation questions posed in this document.

Box A.1: List of consultation questions

1 Do you have any specific views on the proposals for the FPC as described in paragraphs 2.6 to 2.24 and in Chapters 3 and 4?

2 Do you have any specific views on the proposals for the Bank of England's regulation of RCHs, settlement and payment systems as described in paragraphs 2.32 to 2.40 and in Chapters 3 and 4?

3 Do you have any comments on:

- the proposed crisis management arrangements; and
- the proposals for minor and technical changes to the Special Resolution Regime

as described in paragraphs 2.41 to 2.44 and in Chapters 3 and 4?

4 Do you have any comments on the objectives and scope of the PRA, as described in paragraphs 2.46 to 2.61 and in Chapters 3 and 4?

5 Do you have any comments on the detailed arrangements for the PRA described in paragraphs 2.62 to 2.78 and in Chapters 3 and 4?

6 Do you have any views on the FCA's objectives – including its competition remit - as set out in paragraphs 2.80 to 2.90 and in Chapters 3 and 4?

7 Do you have any views on the proactive regulatory approach of the FCA, detailed in paragraphs 2.91 to 2.110 and in Chapters 3 and 4?

8 What are your views on the proposal to allow nominated parties to refer to the FCA issues that may be causing mass detriment?

9 What are your views on the proposal to require the FCA to set out its decision on whether a particular issue or product may be causing mass detriment and preferred course of action, and in the case of referrals from nominated parties, to do so within a set period of time?

10 Do you have any comments on the competition proposals for the FCA set out in paragraphs 2.111 to 2.119 and in Chapters 3 and 4?

11 Do you have any views on the proposals for markets regulation by the FCA, described in paragraphs 2.120 to 2.123 and in Chapters 3 and 4?

12 Do you have any comments on the governance, accountability and transparency arrangements proposed for the FCA, as described in paragraphs 2.124 to 2.132 and in Chapters 3 and 4?

13 Do you have any comments on the general coordination arrangements for the PRA and FCA described in paragraphs 2.138 to 2.149 and in Chapters 3 and 4?

14 Do you have any views on the detail of specific regulatory processes involving the PRA and FCA, as described in paragraphs 2.150 to 2.195 and in Chapters 3 and 4?

15 Do you have any comments on the proposals for the FSCS and FOS set out in paragraphs 2.196 to 2.204 and in Chapters 3 and 4?

How to respond

A.2 This paper is available on the Treasury website at www.hm-treasury.gov.uk.

A.3 Responses are requested by 8 September 2011. The Government will also engage directly with relevant stakeholders ahead of this date. For further details, please email financial.reform@hmtreasury.gsi.gov.uk.

A.4 Please ensure that responses are sent in before the closing date. The Government cannot guarantee that responses received after this date will be considered.

A.5 Responses can be sent by email to: financial.reform@hmtreasury.gsi.gov.uk. Alternatively, they can be posted to:

Financial Regulation Strategy
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

A.6 When responding, please state whether you are doing so as an individual or on behalf of an organisation.

Confidentiality

A.7 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act (FOIA), the Data Protection Act 1998 and the Environmental Information Regulations 2004).

A.8 If you would like the information that you provide to be treated as confidential, please mark this clearly in your response. However, please be aware that under the FOIA, there is a Statutory Code of Practice with which public authorities must comply and which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain why you regard the information you provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

A.9 In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of emails will be disregarded unless an explicit request for confidentiality is made in the body of the response.

Code of practice for written consultation

A.10 This consultation process is being conducted in line with the Code of Practice available on the Department for Business, Innovation and Skills website at:
http://www.bis.gov.uk/files/file47158.pdf

A.11 If you feel that this consultation does not fulfil these criteria, please contact:

Isabel Summers
Transport, regulation and competition
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

B Summary of responses to February consultation

Overview

B.1 *A new approach to financial regulation: building a stronger system* was published on 17 February. The consultation period closed on 14 April and over 150 responses were received.

B.2 As with the July consultation document, the overwhelming majority of respondents were in favour of the proposed framework for financial regulation, and the Government's willingness to listen to and take account of stakeholder views was praised in many responses. Most responses also welcomed the increased level of detail in this consultation document. The decision to amend FSMA, rather than create a new Bill, was also broadly supported. A number of respondents made the point that the Government should focus on ensuring that the reforms were well-considered and appropriate rather than being led by the legislative and implementation timetable.

B.3 Alongside this general support for regulatory reform, respondents also highlighted a number of areas for further consideration in relation to the proposed regulatory framework. This Annex summarises responses to specific consultation questions.

Detailed responses to questions in February consultation

Chapter 2: Bank of England and Financial Policy Committee

Box B.1: Question 1

What are your views on the likely effectiveness and impact of the instruments outlined in paragraphs 2.51 to 2.75 as macro-prudential tools?

B.4 The consensus of respondents was that the range of tools described was sensible, appropriate and comprehensive in scope and flexibility.

B.5 Many respondents felt that it was difficult to fully assess the potential effectiveness and impact of the tools without more detail about how they would work in practice. Many respondents suggested that the FPC undertake in-depth analysis of the tools before they are used, including a robust and transparent assessment of their market impact and potential unintended consequences and stress-testing against possible scenarios.

B.6 Respondents unanimously agreed with the Government's view that macro-prudential measures are likely to prove more effective if the broad framework for their use is designed and adopted at the international level. They underlined the importance of international coordination and synchronisation in implementing macro-prudential tools in order to ensure a level playing-field and minimise cross-sector and cross-border leakage. In particular, respondents emphasised the need for the FPC to work closely with the ESRB in Europe and the FSB at international level to ensure consistency. Nevertheless, many respondents also acknowledged the need for national discretion in implementing tools.

B.7 Many respondents commented that the tools set out in the consultation document are mainly focused on banks and that specific tools relevant to other sectors, such as insurance, will need to be developed if those sectors are to be subject to macro-prudential regulation.

B.8 The proposal for tools to be set out in secondary legislation by the Treasury was widely welcomed, although some suggested that the tools should be subject to sunset clauses. Respondents generally supported the proposal for the Treasury to have the ability to create new tools, as this was seen as a sensible future-proofing mechanism. However, respondents emphasised the need for clear triggers and checks and balances to be built around the power to create tools on an urgent basis.

B.9 There were some specific points about the impact tools might have, particularly the impact the use of loan to value (LTV) or loan to income (LTI) limits might have on consumers and their access to finance. Some consumer groups pointed out that extra capital requirements on products that were seen as novel or more risky could penalise companies that innovate to offer genuinely new products to consumers.

B.10 The banking sector offered some specific responses. Some believed that more direct tools such as LTV and LTI caps are likely to be more effective than indirect tools that work via capital requirements. Others commented that tools that can be targeted at specific sources of risk are likely to be more effective than generic ones. Banks also questioned how a counter-cyclical capital buffer would be implemented in practice.

B.11 The assertions in the consultation paper around the FPC publishing a policy statement in advance of using each tool and evaluating the effectiveness of its actions were warmly welcomed, and most respondents believed that a policy statement should be required for all tools, instead of the Treasury being able to determine this on a tool-by-tool basis. Some respondents suggested that the FPC should be required to include in the policy statement its analysis of the likely impact on consumers. In addition, there was wide support for the proposal in the consultation document that the FPC will be required to provide an evaluation of the effectiveness of its actions in the twice-yearly Financial Stability Report (FSR).

B.12 There were many responses to the proposal that the Treasury be able to switch off or modify PRA and FCA consultation and CBA requirements when they are implementing certain tools. The general view from respondents was that consultation and cost-benefit analysis requirements should always apply, although most agreed that they could be waived if the delay would pose a risk to stability.

B.13 Some respondents proposed that the FPC should also monitor systemic risks that originated from outside the financial sector (for example, those arising from monetary or fiscal policy).

Box B.2: Question 2

Are there any other potential macro-prudential tools which you believe the interim FPC and the Government should consider?

B.14 Some respondents suggested potential new tools, including liquidity requirements on specific exposures, mortgage indemnity insurance and counter-cyclical capital encumbrances. One suggestion was that pre-funding for depositor protection should be considered when assessing the impact of the tools and the capacity of firms to withstand additional requirements.

Box B.3: Question 3

Do you have any general comments on the proposed role, governance and accountability mechanisms of the FPC?

B.15 Respondents welcomed the revised FPC objective, with the link to the Bank's financial stability objectives and the focus on resilience. Some believed that financial stability needs to be defined more precisely, while recognising the practical difficulties in doing so. There was also broad support for the proposal to build economic growth into the FPC's objective, although some felt the current formulation is subjective as it leaves it up to the FPC to decide whether economic growth would be adversely affected by its actions. Some suggested that the FPC should have joint objectives for financial stability and economic growth, with many drawing a parallel with the language in the ESRB's objective. In addition to the trade-off between stability and growth, respondents pointed out other potential issues that the Bank and FPC will need to manage, for example conflicts between micro- and macro-prudential regulation and the Bank's objectives for monetary and financial stability.

B.16 There was broad support for the proposal that the Treasury have the power to set a remit for the FPC. Many believed that the Treasury should have an even stronger oversight role over the FPC, given the potential socio-economic impacts of its actions. A small number of respondents from the banking sector thought that the Treasury should have a more operational role in the FPC; one suggestion was that the Treasury and Bank should meet regularly to discuss systemic risk and a trade association thought that the FPC's use of tools should be subject to the explicit authorisation of the Chancellor.

B.17 There was universal support for the three proposed 'have regards' (proportionality, openness and international law). A small number of respondents believed that the international have regard should also include international agreements as well as binding law. Others raised the lack of a requirement for the FPC to undertake full cost-benefit analysis of their actions. Some respondents suggested additional have regards, such as the international nature of financial services, competition, competitiveness and social or distributional impacts. Most respondents agreed with the proposal to set out that the FPC should avoid, where possible, impeding the objectives of the regulators, although some would have preferred the alternative proposal that the FPC have regard to the regulators' objectives. There were some calls for the FPC to take advice from the statutory panels.

B.18 The proposals for the FPC's levers and powers were widely welcomed, including the proposal that the levers should not be used in a specific order, although a legal sector respondent suggested that the FPC should be required to consider, before issuing a direction, whether a less directive lever could effectively be used instead. Respondents supported the proposal that the FPC be prevented from making interventions aimed at an individual firm, though there were doubts about how this would work in practice given the concentrated nature of the UK financial sector.

B.19 There were varied views on membership of the FPC. Many respondents supported the TSC's view that the membership is weighted towards the Bank, with some stating that the CEO of the FCA should not be counted as external. Some suggested that the number of external members should be increased and/or the number of Bank members reduced, with some even advocating that the FPC should have an independent majority. A large number of respondents underlined the importance of external members with recent and relevant financial sector experience and expertise in non-bank areas such as insurance, investor and consumer issues. While the statements in the consultation provided some reassurance, respondents pointed to the lack of financial sector expertise and insurance background in the external membership of the interim

FPC. Some respondents emphasised the importance of the external members being provided with adequate support and resource by the Bank. It was suggested that The Financial Reporting Council (FRC) should sit on the FPC as an observer. A small number of respondents suggested that the FCA have two representatives on the FPC instead of one. Conversely, one respondent suggested that the CEO of the FCA should not be on the FPC.

B.20 There was strong support for the proposed transparency arrangements for the FPC (including the ability to redact sensitive material and publish it later), although respondents stressed the need for robust governance arrangements for the FPC and the wider Bank. Respondents agreed with the TSC that adequate checks and balances were vital to ensure accountability and support mechanisms to resolve conflicts between the Bank's different objectives. Many respondents noted that it would be important to provide Court with adequate resources to fulfil its oversight role, and to ensure that the Bank as an organisation was sufficiently open and transparent.

B.21 Respondents were in favour of the TSC playing a key role in scrutinising the FPC's actions, with some suggesting that the TSC should be strengthened and provided with more resource in order to play this role.

Box B.4: Question 4

Do you have any comments on the proposals for the regulation of systemically important infrastructure?

B.22 Respondents supported the transfer of the regulation of systemically important infrastructure to the Bank of England. There was considerable emphasis on ensuring effective cooperation between the Bank and the FCA. There were also points from a small number of respondents about possible 'gold-plating' of EMIR requirements.

Chapter 3 Prudential Regulation Authority

Box B.5: Question 5

What are your views on the (i) strategic and operational objectives and (ii) the regulatory principles proposed for the PRA?

B.23 The overwhelming majority of respondents broadly welcomed the strategic and operational objectives and the principles of regulation. However a significant number of respondents felt that the PRA's objectives should take into account non-systemic firms, such as insurers.

B.24 Across the board, there was strong support for the emphasis on proportionality.

B.25 Most respondents did not refer specifically to the 'transparency' principle. Some of those who did strongly welcomed it, provided it maintained consistency with directives.

B.26 However, there were other principles of regulation which respondents felt ought to be included:

- a significant number of respondents (including most trade bodies) felt that the international character of the UK market needed to be taken into account as part of the objectives. Respondents from the banking sector noted that the European Supervisory Authorities will be under such a requirement. There was some support for including principles around supporting economic growth and encouraging innovation;

- almost all groups representing consumers argued that the PRA's objective should reflect consumer protection in some way. The Cruickshank report (1999) was referred to, which proposed that the FSA be given a primary competition objective to minimise the anti-competitive effects of its regulatory activity;
- a number of respondents, including consumer groups, proposed that the PRA should have regard to competition and diversity;
- a number of respondents argued that the objectives should reflect the importance of diversity in financial services; and
- some financial services practitioner groups recommended adding effective coordination to the regulatory principles.

Box B.6: Question 6

What are your views on the scope proposed for the PRA, including Lloyd's, and the allocation mechanism and procedural safeguards for firms conducting the 'dealing in investments as principal' regulated activity?

B.27 The majority of respondents agreed with the scope proposed for the PRA, and welcomed the recognition of the differences between the insurance and banking business models. Respondents who commented supported making the PRA the lead regulator for Lloyd's. A number of respondents suggested that the PRA should be the prudential regulator of Lloyd's members' agents as well as of the Society and the managing agents.

B.28 A large proportion of respondents requested further clarity on the split of investment firms across the two authorities, and how the process for designation might work, including whether the criteria for designation would be statutory or not. A number of respondents also suggested that all investment firms within a group, or all investment firms for which the PRA has responsibility for consolidated supervision, should be supervised by the PRA on a solo basis.

Box B.7: Question 7

What are your views on the mechanisms proposed to make the regulator judgement-led, particularly regarding: rule-making, authorisation, approved persons; and enforcement (including hearing appeals against some decisions on a more limited grounds for appeal)?

B.29 Almost all respondents welcomed the move to 'judgement-led' supervision. A number commented that with the increased emphasis on discretion, the quality of PRA staff will take on additional importance. A number of respondents commented that 'judgement-led' should still be 'evidence-based', and it was important to maintain appropriate consultation mechanisms.

B.30 A significant majority of respondents commented on the proposals to limit the grounds for appeal, particularly in the context of the possible removal of the Regulatory Decisions Committee (RDC). A number of respondents queried whether this would be consistent with ECHR obligations and directive requirements, particularly Solvency II article 297 and article 52(1) of the Banking Consolidation Directive. One bank argued that scaling back appeals is inconsistent with the conclusions of the House of Lords Select Committee on the Constitution, 6th Report of Session 2003-2004.

B.31 A number of respondents hoped that there would be further consultation and engagement with industry before the proposed Proactive Intervention Framework was introduced as the

'demarcated stages' approach regarding pre-resolution could reinforce a downward trajectory for a firm as soon as it became clear to the market it has entered a particular stage.

Box B.8: Question 8

What are your views on the proposed governance framework for the PRA and its relationship with the Bank of England?

B.32 Respondents were supportive of the proposal to locate the PRA within the Bank group, whilst emphasising the need for appropriate accountability mechanisms, and generally supported the proposed governance framework for the PRA.

B.33 Some respondents requested more clarity about the arrangements for delegation and other forms of support for the Governor and senior Bank staff as they take on extensive new responsibilities. A significant number of respondents were not generally confident that the PRA will be properly 'operationally independent'. The first point was that involvement of Bank executives in significant decisions compromises the PRA's operational independence. An insurer argued that the PRA's articles must make it clear that regulatory policy must remain the responsibility of the PRA and is not a matter where flexibility will be allowed when determining how the PRA and Bank of England will interact. The second point was that Court's role in relation to the PRA's budget will compromise its operational independence. A respondent questioned what would happen, for example, if the board of the PRA establishes a strategy and approach for the PRA for which the Court is not prepared to provide an adequate level of resources.

B.34 There were some comments about the independence of the PRA board. A small number of respondents suggested that the PRA should have an independent chair. A number of respondents saw the non-executive directors (NEDs) as key to delivering external scrutiny of key decisions, and welcomed the proposal in the consultation document that there should be flexibility for the PRA to involve NEDs in these decisions if appropriate. Some respondents argued that the NEDs should be appointed by the Treasury.

B.35 The overwhelming majority of respondents representing insurers recommended that the PRA board should include a NED with experience of the insurance industry, as they queried whether the Bank has the necessary expertise in this area. The importance of transparency in the appointments process was emphasised and it was suggested that the make-up of Court will also need to be kept under review.

Box B.9: Question 9

What are your views on the accountability mechanisms proposed for the PRA?

B.36 Almost all stakeholders welcomed the accountability proposals, in particular supporting the proposal for NAO audit of the PRA.

B.37 The major area for comment was the proposed complaints mechanism. Most respondents took the view that the arrangements should be the same as those currently in place for the FSA to ensure proper accountability. They argued that having the complaints system run by a non-executive director on Court is not sufficiently independent. A small number of respondents went further, suggesting that the existing system should be strengthened. One respondent commented that it would be more efficient to have a single complaints commissioner covering the whole regulatory system.

B.38 Most respondents did not comment specifically on the new transparency power but those who did were generally supportive. Specific comments around transparency came from the banking sector in the main. Some suggested that the reports should have due regard to maintaining financial stability, and were concerned over the definition of 'public interest' with regard to disclosure of confidential information.

Box B.10: Question 10

What are your views on the Government's proposed mechanisms for the PRA's engagement with industry and the wider public?

B.39 In general respondents were pleased to note the proposal that there should be no significant reductions to the existing consultation requirements under FSMA. Some respondents noted that the true test will be the PRA's willingness to engage. Many respondents were in favour of retaining a formal role for the Practitioner and Consumer Panels, and supportive of consultation on European rules.

B.40 Almost all respondents argued that the PRA should retain the Practitioner Panel in its current form. A response from a banking group stated that it did not see the link between the PRA moving towards a more judgement-based approach and giving it flexibility in the arrangements for engagement with practitioners. Other respondents argued that it is better to have a standing panel, as this has the ability to develop a consistent view of the totality of regulation over time, which is not possible under a system of ad hoc arrangements. A further suggestion was that the panels could play a role in looking at whether the system as a whole is operating effectively, including looking at coordination between the PRA and FCA.

B.41 Almost all of the bodies representing the interests of consumers suggested that the Consumer Panel should have a role in relation to the PRA. They argued that the PRA will be making decisions which will have implications for consumers, and that it is therefore vital that the PRA establishes mechanisms to ensure that consumer interests are represented. One response argued that extending the role of the Consumer Panel to cover the PRA and FPC would enable early input and identification of possible consumer impacts of prudential measures.

B.42 Respondents from all sectors were generally satisfied that the FSMA approach to consultation and cost benefit analysis is being retained, and were wary of the implication that this could be streamlined. There were mixed views on whether, for rules coming from the EU, there should be streamlined processes or wholesale removal of the requirement for a CBA. Respondents were generally united in the view that there should be consultation wherever there is to be 'gold plating' of EU rules.

Chapter 4 Financial Conduct Authority

Box B.11: Question 11

What are your views on the (i) strategic and operational objectives and (ii) the regulatory principles proposed for the FCA?

B.43 There was general support for the FCA's strategic and operational objectives, and the regulatory principles.

B.44 In particular, the majority of respondents welcomed the operational objective of 'facilitating efficiency and choice in the market for financial services' as increasing the regulator's focus on consumer outcomes. Several respondents asked for more detail on what this would

mean in practice. Some respondents said that the objective should refer more directly to consumer outcomes; others said that it should also refer to 'access' to financial services.

B.45 The majority of respondents supported the new competition duty, although a few expressed a preference for a 'top-line' competition objective.

B.46 Some respondents said there should be a fourth operational objective reflecting the FCA's important role in prudential regulation. Some said there should be a reference to financial inclusion; others agreed that this is a public policy issue for the Government

B.47 There was general support for the regulatory principles. However, a significant number of respondents were in favour of a principle to have regard to 'international competitiveness'.

B.48 There were mixed views on the consumer responsibility principle. In general, industry respondents were very supportive. But many consumer groups felt that it must be heavily qualified to recognise the information asymmetries facing retail customers in financial services. Others noted that the principle only applies if financial products are safe and fit for purpose, or where it is properly supported through consumer education.

B.49 A few respondents commented that either the operational objectives or the regulatory principles should refer explicitly to the FCA's role in influencing EU developments.

B.50 A few markets respondents noted that the definition of 'consumer' used in the objectives is wide.

Box B.12: Question 12

What are your views on the Government's proposed arrangements for governance and accountability of the FCA?

B.51 There was widespread support for the proposed governance and accountability arrangements, in particular the proposals in relation to the Panels and the National Audit Office. Several respondents requested clarification of the role and composition of the new Markets Panel.

B.52 The majority of respondents welcomed the new transparency power, although many industry respondents asked what safeguards there would be around the publication of confidential information: There was also a request for clarity on the definition of regulatory failure.

B.53 Many respondents said that the FCA board should include representation of all regulated sectors, and contain a number of individuals with experience and knowledge of consumer issues.

B.54 Respondents were keen to ensure that strong transparency mechanisms are put in place. Suggestions included: publication of board and panel agendas and minutes; regular public board meetings; and a requirement (rather than an expectation) to engage directly with consumers. One proposal was that the FCA should be required to consult annually on its business plan, annual report and the extent to which it has achieved its objectives.

Box B.13: Question 13

What are your views on the proposed new FCA product intervention power?

B.55 The majority of the respondents supported the proposal to give the FCA a new product intervention power.

B.56 There was general agreement that well-targeted and proportionate product intervention could increase consumer confidence in financial products, while poorly targeted interventions could have a significant adverse impact on both firms and consumers, with implications for consumer choice, competition, innovation and financial inclusion.

B.57 Consumer groups strongly welcomed the power as an important tool to enable the FCA to intervene early in relation to products which could cause detriment to consumers. They noted that the power must give the FCA the flexibility to intervene quickly and effectively where it considers there is a serious problem with a particular product or product feature.

B.58 Industry respondents mainly agreed with the power, but wanted clarification on its practical application and what safeguards there would be, in particular to minimise the costs and uncertainties for firms. They also emphasised that product intervention must be a complement to, not a substitute for, consumer protections around the sales process, given that problems generally arise from mis-selling, rather than products being fundamentally flawed.

B.59 There was strong support for the requirement on the FCA to consult on and publish a set of principles governing its exercise of the new power, to provide industry with clarity and certainty over the use of the power and codifying the need for proportionality. Some suggested that the principles should be set out in legislation, rather than published by the FCA.

B.60 Several respondents raised the prospect that the new power could lead to an expectation among that all products available in the market have been endorsed by the FCA, and so are 'safe'. Others suggested that consumers may look to other jurisdictions to purchase riskier products, negatively affecting UK competitiveness. To mitigate these risks, some industry respondents said that the new power should be used only as a last resort, where a problem with product is genuinely industry-wide and no other regulatory tool would enable the FCA to reduce consumer detriment.

B.61 Those who raised issues with the power did so on the basis that:

- it pre-judges the outcome of the FSA's discussion paper on product intervention and/or the European Commission's MiFID review;
- the FSA already had sufficient powers to intervene in relation to financial products on a firm-specific basis; and/or
- the unenforceability provisions attached to the new power could have a significant adverse impact on the market.

B.62 There was a general consensus that, for product intervention to be effective, the FCA will need to develop expertise in financial products, and proactively engage with industry on issues related to product features, design and governance. It was also clear that the scope of and reasons for any intervention should be clearly and fairly communicated, to give clarity and certainty to both firms and consumers.

B.63 Finally, there was strong support for the statement that the Government does not support the pre-approval of products by the FCA, and that product intervention is unlikely to be appropriate in relation to professional or wholesale customers.

Box B.14: Question 14

The Government would welcome specific comments on:

- the proposed approach to the FCA using transparency and disclosure as a regulatory tool;
- the proposed new power in relation to financial promotions; and
- the proposed new power in relation to warning notices.

B.64 There was widespread support for greater transparency on the part of the regulator, particularly in relation to its emerging thinking and views on market developments – on the basis that it would both deliver benefits in terms of consumer protection, and give firms greater clarity on the regulator's expectations and good practice. The latter was seen as particularly important in light of the FCA's new powers in relation to products and financial promotions; the shift to more issues-based supervision (and therefore to less relationship management); and the expectation that there will be greater disclosure on the part of firms.

B.65 There was also felt to be scope for improvement in terms of how the regulator engages and communicates with both firms and consumers, including its website.

B.66 There were mixed views on the proposed approach to use greater disclosure as a tool to encourage good practice across the industry.

B.67 The proposal was strongly welcomed by many consumer groups, although some said the proposals should go further, enabling the FCA, for example, to publish firm-specific results of its thematic work, or to require firms to provide relevant price data on their products.

B.68 Industry respondents stressed that new disclosure powers should be accompanied by appropriate safeguards to ensure their consistent and prudent use, and, in particular, the appropriate treatment of confidential information. Several respondents suggested that greater disclosure could negatively affect the relationship between firms and the FCA.

B.69 There was widespread support for the new financial promotions power. Enabling the FCA to publish the fact that it has asked a firm to withdraw or amend a misleading advertisement was seen as an important tool to increase confidence in the regulatory system, particularly where the FCA's action has been triggered by consumer complaints.

B.70 However, some respondents suggested that the FCA should be given the ability, rather than a duty, to publish - to be exercised, for example, where a firm contests the FCA's direction or is a 'serial offender', or where an advertisement is misleading beyond reasonable doubt.

B.71 Others welcomed the duty to publish, as it would enable firms to better understand the regulator's expectations and thereby to improve their compliance.

B.72 There were varied opinions on the proposal to give the regulators the power (but not the duty) to disclose the fact that a warning notice has been issued. Many respondents, particularly consumer groups, welcomed the proposal and the presumption towards disclosure and noted how this put consumers' interests first, providing that the right information was disclosed.

B.73 Whilst in favour, respondents stressed that it was important the right safeguards were put in place and that there was no presumption to publish in all or most cases.

B.74 Respondents highlighted several areas that could be considered further noting that:

- disclosure posed a risk of reputational damage of firms, which could in turn damage the interests of consumers if it affected the share price of listed companies. Reputational damage would not be undone by a notice of discontinuance. This raised the question of redress against the regulator;
- the Government would need to significantly strengthen the proposed safeguards. However, too many safeguards could make the overall enforcement process too long and drawn-out;
- disclosure should be the exception rather than the norm;
- threat of disclosure could lead to firms being more likely to propose early settlement rather than enforcement cases being taken to their conclusion; or the FCA could be incentivised to push through enforcement action at all costs so as to not have to publish a notice of discontinuance; and
- the proposal could have unintended consequences if consumers lost confidence in the industry and hence made irrational or uninformed decisions or disengaged from financial services entirely.

Box B.15: Question 15

Which, if any, of the additional new powers in relation to general competition law outlined above would be appropriate for the FCA? Are there any other powers the Government should consider?

B.75 There was support for limited concurrency in the form of market investigation reference (MIR) powers for the FCA from some consumer groups, while other consumer groups wanted the Government to go further than the proposals in the consultation and pursue full concurrency by granting the FCA equivalent responsibilities and powers to other sector regulators, including the power to prohibit cartels and the abuse of dominance (e.g. the Consumer Panel). There was also support for giving the FCA a MIR power from a significant minority of industry respondents.

B.76 Most industry respondents were not in favour of MIR powers for the FCA, citing issues over the potential for confusion, duplication, and increased burden. There was therefore some support from industry for the alternative proposal that a body such as the Consumer Panel should be able to trigger the super-complaints process. This was also the approach favoured by some other respondents. However, some industry respondents questioned whether the FCA needed any additional powers at all.

B.77 A few respondents emphasised the need for coordination with the reforms proposed to establish a new Competition and Markets Authority (CMA) and for clarity about the relationship between the two bodies. Some respondents preferred to await the outcome of the Government's consultation on the CMA before giving a view on the FCA's powers.

Box B.16: Question 16

The Government would welcome specific comments on:

- the proposals for RIEs and Part XVIII of FSMA; and
- the proposals in relation to listing and primary market regulation.

B.78 There was general support from respondents for the proposals to retain Part XVIII of FSMA and to retain the UKLA as part of the FCA. However, some respondents were concerned about integrating the UKLA fully into the FCA and applying the general FCA objectives to UKLA activities. A number of respondents queried whether the proposed technical improvements to the recognised body regime were needed.

B.79 There were mixed views on the proposed technical improvements to listing and primary market regulation although most proposals were supported overall. However, the proposal to allow the FCA to require 'skilled person' reports from listed issuers was not thought an appropriate part of the listing regime and was considered potentially burdensome rather than deregulatory.

Chapter 5 Regulatory processes and coordination

Box B.17: Question 17

What are your views on the mechanisms and processes proposed to support effective coordination between the PRA and the FCA?

B.80 Respondents were supportive of the proposed coordination mechanisms. However, most took the view that the proposals could go further towards tackling the increased regulatory burden that may result from having two regulators rather than one.

B.81 Industry representatives were almost unanimous in their view that there should be some form of 'single point of contact' or 'shared services' for regulatory processes.

B.82 Respondents welcomed the new general duty to coordinate. A number suggested that the duty should be strengthened, or introduced as an additional principle of regulation. Groups representing exchanges argued that the duty should also bite on the Bank group in general. One bank suggested that the duty to coordinate should apply to the FPC.

B.83 Respondents welcomed the statutory requirement for the MOU, and there were a range of proposals for areas that it should be required to cover, including areas of regulatory overlap, dispute resolution, enforcement, Lloyd's, fees and levies, engagement with Europe and the timings for regulatory decisions. A significant number of respondents argued that the MOU should be consulted on annually. Regardless of whether there is a formal requirement for consultation on the MOU, trade bodies and dual-regulated firms suggested that industry should have an opportunity to comment on the MOU prior to it being introduced.

B.84 There was general concern about how the regulators will be held to account for effective coordination. One respondent argued that there should be a Panel with a remit to comment on the overall effectiveness of the system. Another proposal was that the annual report of each regulator should cover the effectiveness of coordination between the PRA and FCA.

Box B.18: Question 18

What are your views on the Government's proposal that the PRA should be able to veto an FCA taking actions that would be likely to lead to the disorderly failure of a firm or wider financial instability?

B.85 In general, firms and industry bodies welcomed the veto, and consumer groups opposed it. A majority of respondents (whether or not they supported the veto in principle) emphasised that it should only be used in extremis. Respondents welcomed the proposals to ensure transparency around use of the veto, although some were sceptical about how much it would be possible to say in public given the likely financial implications for the stability of firms.

B.86 A significant number of consumer groups and industry representatives suggested that the proposal risks casting the FCA as the 'junior regulator'. Some respondents argued that there should be a role for the FPC in assessing whether the failure of a firm would undermine wider financial stability.

Box B.19: Question 19

What are your views on the proposed models for the authorisation process outlined in Chapter 5 – which do you prefer, and why?

B.87 Respondents overwhelmingly preferred the alternative model, in which one of the authorities has responsibility for processing applications and seeking consent from the other where appropriate. Respondents felt that this was closer to the 'single point of contact' idea, which was generally favoured by respondents for all regulatory processes.

B.88 Most of the respondents who commented agreed that both regulators should give approval. There was one slightly more nuanced mechanism proposed, whereby the FCA would become a 'centre of expertise' on authorisation, carry out the due diligence and present this to the PRA, who would make the final decision on the prudential aspects of the application. There were diverging views about whether the PRA or FCA should lead the process for dual-regulated firms, with some preferring the PRA and others the FCA.

B.89 A number of respondents highlighted the importance of an efficient authorisation process for UK competitiveness. The OFT noted that, in its recent report *Review of barriers to entry, expansion and exit in retail banking*, it received evidence to suggest that firms had faced difficulties and uncertainties in gaining FSA authorisation.

Box B.20: Question 20

What are your views on the proposals on variation and removal of permissions?

B.90 There was general agreement to the OIVOP and VVOP proposals. Most respondents agreed that both the PRA and FCA would need these powers. However, it was stated that permissions are relevant to the assessment of the suitability of the firm to operate, and, as such, should rest with the PRA for dual-regulated firms and with the FCA for FCA-regulated firms.

B.91 Respondents raised a number of issues around how the exercise of the OIVOP by one regulator could impact on the other. Some industry respondents argued that where a firm is prudentially supervised by the FCA but is subject to group supervision by the PRA, the FCA should consult the PRA on any proposed action so that any potential for contagion is

considered. One mutual argued that there should be a mechanism in place to address the situation where a unilateral withdrawal of permission by the PRA affects the FCA's ability to achieve its objectives. An industry group suggested that the PRA and FCA should have a statutory duty to consult each other and reach agreement before exercising the OIVOP powers.

B.92 From the consumer perspective, consumer groups supported the ability of regulators to use OIVOP and VVOP powers, but were concerned about the lack of transparency. It was also argued that the OIVOP should be strengthened to make it more effective for enforcement in respect of consumer detriment.

Box B.21: Question 21

What are your views on the Government's proposals for the approved persons regime under the new regulatory architecture?

B.93 Some respondents were positive about the proposals. However, there were a number of points raised in relation to the designation of Significant Influence Functions (SIFs). Respondents requested more detail about the proposals.

B.94 In relation to the designation of SIFs, respondents argued that the CEO function (and a number of other SIFs, including compliance oversight) would be difficult to allocate as prudential or conduct. One proposal was the decision to approve a candidate for these functions in a dual-regulated firm should be joint between the PRA and the FCA; albeit there would need to be a process to give the final say, if there was a dispute, to the regulator in respect to whose scope the concerns fall. A consumer group suggested the proposal in the consultation document that the PRA lead on approval of SIFs may result in the downgrading of the consideration of consumer issues.

B.95 Respondents noted that approval of persons is already a major process for firms, and argued that this makes a 'single point of contact' particularly important. A firm with thousands of approved persons argued that there should be a single process, managed by a common back office, with a PRA decisions panel with FCA representation as appropriate. Some respondents noted that small dual-regulated firms such as credit unions would be particularly affected.

Box B.22: Question 22

What are your views on the Government's proposals on passporting?

B.96 The majority of respondents agreed with the proposal that the FCA should be responsible for receiving incoming notifications for firms wishing to passport into the UK.

Box B.23: Question 23

What are your views on the Government's proposals on the treatment of mutual organisations in the new regulatory architecture?

B.97 While the majority of respondents were in favour of the amended consultation requirements in relation to mutual organisations, some respondents felt that this wasn't sufficient to ensure parity among ownership models. Further suggestions included differential consultation requirements for all ownership models, differential consultation requirements for small firms as well as mutuals and analysis of the appropriateness of certain rules to mutuals.

There were also suggestions, however, that modified consultation requirements should not lead to over-promotion of the mutuals sector.

B.98 There was also general support for the proposal to transfer registration of non-financial mutuals to a function outside the financial regulatory structure.

Box B.24: Question 24

What are your views on the process and powers proposed for making and waiving rules?

B.99 Respondents broadly welcomed the rule-making proposals. However, a significant majority of respondents emphasised the importance of ensuring consistency of rules. A material number of respondents suggested that the proposals could lead to conflicts between the rules made by different regulators, despite the requirements to consult.

B.100 Insurance industry respondents highlighted that there are rules that relate to both prudential and conduct, and that it is essential to avoid a position where firms breach one regulator's rules by complying with the other's. A number of respondents from industry suggested that there should be a shared regulatory handbook, with common definitions, joint rules and guidance in relation to the high-level regulatory standards and common regulatory processes, similar to the FSA's existing supervision manual. One industry group argued that there should be a cross-regulatory steering group to own the handbook. Some respondents from the legal sector suggested that there should be a joint rules committee drawn from both.

B.101 Respondents broadly welcomed the rule-waiver proposals. Some agreed that it is appropriate for both the PRA and the FCA to have rule-waiving powers in relation to their own rules, and argued that the regulators should consult with each other before approving such rule waivers in relation to dual-regulated firms.

B.102 Consumer groups reiterated their points about the use of the PRA veto in relation to rulemaking. One firm argued that there should be an explanation of what the veto safeguards will be, and would expect it to be explicit that the PRA explains the reasoning behind its veto.

Box B.25: Question 25

The Government would welcome specific comments on

- proposals to support effective group supervision by the new authorities – including the new power of direction; and
- proposals to introduce a new power of direction over unregulated parent entities in certain circumstances?

B.103 In relation to group supervision, a number of respondents agreed with the proposals in the consultation document, although it was clear that the general consensus was that appropriate coordination will be needed to ensure efficiency and that the power of direction should only be used as a last resort. Queries were raised by a number of firms about the interaction between these powers and wider European legislation as well as the use of these powers on cross-border groups.

B.104 Respondents had misgivings over the power of direction over unregulated parent entities. Although there were a small number of responses which agreed with the power assuming that appropriate safeguards were in place, there was wider comment over the breadth of the power and the lack of safeguards. A large number of firms wanted more details about how or when

this power would be used, as well as clarity with respect to how this could be used in relation to non-UK parent entities. Some firms commented that the essence of this power already exists through other processes, such as continued assessment of threshold conditions, the SYSC handbook, and the approved persons regime. An industry group commented that this power risks subordinating the interests of any non-banking business undertaken by a group.

Box B.26: Question 26

What are your views on proposals for the new authorities' powers and coordination requirements attached to change of control applications and Part VII transfers?

B.105 The large majority of respondents agreed with the proposals for change of control applications, although some respondents stressed the possible complexities which could be created in relation to group applications. Similarly, there was a large amount of support from respondents for the PRA leading on Part VII transfers, although there was a lesser consensus on the level of input which the FCA should have in relation to this process.

Box B.27: Question 27

What are your views on the Government's proposals for the new regulatory authorities' powers and roles in insolvency proceedings?

B.106 There was general agreement among respondents in relation to the Government's proposals on insolvency proceedings. However, it was raised that the use of the PRA veto should not leave the FCA unable to take action against an insolvent firm which is still trading. There was also no agreement over which authority should be responsible for approving the voluntary winding-up of a life assurer.

Box B.28: Question 28

What are your views on the Government's proposals for the new authorities' powers in respect of fees and levies?

B.107 An overwhelming majority of respondents supported the proposals to allocate fee-raising powers to both authorities, and for there to be a non-statutory arrangement whereby arrangements are put in place for all fees to be collected through one organisation. There were points from a number of firms about perceived lack of transparency within the fee-collection process, and the possible sharp increase in fees for those firms subject to regulation by both the PRA and the FCA.

Chapter 6 Compensation, dispute resolution and financial education

Box B.29: Question 29

What are your views on the proposed operating model, coordination arrangements and governance for the FSCS?

B.108 There was general support for the proposed operating model for FSCS, especially as this model preserves a single point of access for consumers. However, a small number of respondents preferred a model where the FCA has lead responsibility for oversight of, and rule-

making for, the compensation scheme. One respondent wanted to see a role for the FPC in relation to FSCS design and rule-making. The principle of operational independence was supported by almost all respondents who commented.

B.109 A number of respondents noted that the proposed operating model is likely to be complicated to operate and some felt that this could lead to a lack of consistency and duplication among the two regulators (with the associated costs of duplication passed on to firms). This risk is particularly acute for firms whose activities would be covered by PRA and FCA rules on compensation. In general, respondents felt that the proposed coordination mechanisms are appropriate but some felt that more could be done to ensure effective coordination between the regulators and the FSCS, such as joint and simultaneous consultation on rules or that the FCA should adopt the 'lead regulator' role.

B.110 Some respondents also noted the difficulty of determining a future operating model in light of ongoing discussion in Europe on guarantee and compensation schemes and the FSA's review of the FSCS funding model. A number of respondents wanted to see an end to cross-subsidy in the FSCS funding and sought clarification on whether the proposed approach to split rule-making between the two regulators implied an end to cross-subsidy between classes. There were a number of criticisms of the FSCS funding model from investment firms, IFAs/brokers and small firms in general, in view of the recent interim levy related to Keydata.

Box B.30: Question 30

What are your views on the proposals relating to the FOS, particularly in relation to transparency?

B.111 Responses presented a wide spectrum of views on the FOS. Consumer groups supported the proposal and emphasised the importance of ensuring that that reforms do not downgrade the role of the FOS. But there were mixed views from industry respondents: a notable number of industry participants supported the proposals but the majority felt that, while the proposals were targeted to address the right issues and were in general helpful, they did not go far enough. A small number of respondents felt that the opportunity to fundamentally reform the FOS had been missed and urged a full review of the FOS model.

B.112 On the Government's proposals:

- there was general support for the proposed mechanisms for improving coordination between the FOS and the FCA, e.g. through a statutory MOU. A number of industry respondents did however seek for industry participants and other interested parties to be consulted on the MOU;
- there were mixed views on the proposal to increase transparency of the FOS by clarifying the FOS's ability to publish individual determinations; on balance, this measure was supported. Most respondents stressed the importance of consultation on the proposed principles which will govern the FOS's approach to publication and some wanted these principles to be set by the FCA or codified in legislation. Of those who did not support the measure, this tended to be on the grounds that publication of determinations could become a form of 'regulatory censure'; and
- there was also, on balance, support for the duty on the FOS to share 'horizon scanning' information with the FCA and a reciprocal duty on the FCA to consider and act on this information as appropriate. Some respondents were particularly supportive of this measure as this would support the FCA in taking early and proactive action before mass issues crystallise. However, one or two respondents

took the opposite view and felt this could encourage the FOS to act as a' quasi-regulator'.

B.113 Industry respondents suggested a number of additional legislative measures that they would like to see applied to the FOS, such as constraining the FOS 'fair and reasonable' test when deciding cases, introducing an appeals mechanism and codifying the roles and responsibilities of the newly established Coordination Committee.

B.114 A number of industry respondents called for stronger regulation of claims management companies (CMCs).

Box B.31: Question 31

What are your views on the proposed arrangements for strengthened accountability for the FSCS, FOS and CFEB?

B.115 There was almost universal support for the proposed arrangements for strengthened accountability for these bodies. Some wanted to see further accountability measures applied to the FOS.

Chapter 7 European and international issues

Box B.32: Question 32

What are your views on the proposed arrangements for international coordination outlined above?

B.116 Respondents warmly welcomed the consultation document's focus on European and international issues and strongly supported the Government's stated desire to see the UK continue to play a key role in the development and implementation of international financial regulation. Consultation responses strongly endorsed the Government's emphasis on the need for the UK to have a single, coherent and consistent strategy to deliver sound reform which complements changes proposed to the UK framework.

B.117 There was broad support for the proposed coordination arrangements, including the proposal to establish a statutory MOU between the Treasury, Bank, PRA and FCA to coordinate the UK's overall approach to international coordination. However, many respondents saw this as a necessary, but possibly not sufficient mechanism, emphasising that a close and constructive relationship between the authorities and the involvement of senior executives and Government ministers will be vital in order to achieve the Government's aspirations in this area. Some specific suggestions for strengthening the arrangements included the creation of an international committee, with representatives from each of the relevant authorities, to coordinate the UK's involvement in EU and international negotiations. Others proposed the creation of an international secretariat, staffed by a combination of the authorities, as a single point of contact for international matters.

B.118 In terms of the content of the MOU, a law society suggested that coordination principles (such as those proposed in Chapter 5 of the consultation document for PRA-FCA coordination) could be included in the international MOU.

B.119 Several respondents were keen to highlight the importance of involving industry at an early stage in the development of EU or international regulatory proposals. One firm proposed that the regulators be given a legislative duty to communicate EU and international developments and to engage with industry and consumer groups at an early stage.

B.120 Some respondents made specific suggestions about the assignment of UK seats on international bodies, although there was a general acceptance that the Bank and the regulators are best placed to decide who can most appropriately represent the UK in each individual international institution. Some queried how UK regulatory organisations that are outside the main Bank-PRA-FCA system (e.g. the FRC) will be adequately represented internationally.

B.121 Several respondents raised a specific point about 'limited licence firms', whose capital requirements are regulated by Capital Requirements legislation, which will be dealt with by the European Banking Authority. These respondents were concerned that the PRA may not be able to adequately represent the needs of these firms.

Impact assessment

B.122 Only a small number of respondents commented on the impact assessment and there were few detailed answers to the consultation questions.

B.123 There were a number of points about benefits and alternative models:

- there could be benefits from better targeted regulation of wholesale markets (as well as higher costs) from having a single market regulator (option 2);
- there should be more emphasis on securing more immediate and tangible benefits (as well as the benefits of reducing the frequency and severity of financial crises); and
- other options such as introducing the FPC and keeping the FSA and following the division of responsibilities between the new European Supervisory Authorities should have been considered.

B.124 There were also some comments that transitional and ongoing costs for both the authorities and regulated persons will be higher than assumed:

- there was some doubt that it will be possible to keep ongoing costs for the new regulators at the same level as current FSA costs and that the additional costs of more intensive prudential supervision will be offset by lower IT costs;
- there were suggestions that costs for dual-regulated firms (especially smaller dual-regulated firms) both in setting up new systems and in ongoing compliance and maintaining relations with two regulators have been significantly underestimated; and
- there should be more focus on controlling costs.

C Impact assessment

C.1 The following pages contain the Government's consultation stage impact assessment for the proposals contained in this consultation document and White Paper. It builds on the consultation stage impact assessment published in February as part of *A new approach to financial regulation: building a stronger system.*

Title:	Impact Assessment (IA)
A new approach to financial regulation	**IA No:**
Lead department or agency: HM Treasury	**Date:**
Other departments or agencies:	**Stage:** Consultation
	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries: financial.reform@hmtreasury.gsi.gov.uk

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The tripartite system of financial regulation failed to ensure financial stability - in particular by failing to identify the risk posed by the rapid and unsustainable increase in debt in the economy. This resulted in considerable economic costs in lost output and in substantial deterioration in public finances. The regulatory system cannot be restructured without primary legislation. (This impact assessment does not cover the potential transfer of responsibility for consumer credit from the OFT to the FCA: this will be the subject of a separate impact assessment.)

What are the policy objectives and the intended effects?

The objective is to reform the financial services regulatory system to avoid a repeat of the financial crisis. The legislation will create a Financial Policy Committee in the Bank of England to take charge of macro-prudential regulation. The Bank of England will also regulate settlement systems and central counterparty clearing houses. A Bank of England subsidiary - the Prudential Regulation Authority (PRA) - will undertake the prudential regulation of deposit-takers, insurers and certain investment firms using a more judgement-based approach. The FCA will regulate conduct of business generally, market conduct, investment exchanges and listing. The FCA will also be responsible for consumer protection in financial services and for prudential regulation of non-PRA regulated firms.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The options are: "do nothing" (the base case); the preferred two regulator model of the PRA and FCA (option 1) and a three regulator model (adding a separate markets regulator - option 2). The benefits of the proposed option (net of the benefits of increases in capital and liquidity requirements) should outweigh the costs. The main additional costs are: (1) transitional administrative costs for the Treasury, Bank of England, FSA and the FCA and PRA; (2) ongoing administrative costs for the FCA and PRA (due to the need to duplicate some overheads); (3) transitional compliance costs for regulated firms, mainly for those regulated by the PRA and FCA; and (4) ongoing compliance costs for firms, mainly for firms regulated by the PRA and FCA. Costs cannot be estimated precisely. Costs would be higher in the three regulator model owing to further duplication in regulatory bodies and increased transitional and ongoing compliance costs for regulated firms but the benefits of option 1 and option 2 should be broadly equal.

Will the policy be reviewed? It will not be reviewed. **If applicable, set review date:** Month/Year	
What is the basis for this review? Not applicable. **If applicable, set sunset clause date:** Month/Year	
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Not applicable

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Date: 16 June 2011

Summary: Analysis and Evidence — Policy Option 1

Description:

Two regulator model (preferred option)

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 630	**High:** 10,670	**Best Estimate: 630**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	165	2	25	**330**
High	275		75	**770**
Best Estimate	275		75	**770**

Description and scale of key monetised costs by 'main affected groups'

Development and implementation costs (spread over about 2 years) for existing public authorities and two new regulators; ongoing costs for two new regulators. Transitional and ongoing costs for: firms (deposit-takers, insurers and certain investment firms) subject to prudential and conduct of business (COB) regulation. The estimates are not intended to be more precise than the discussion in the evidence base indicates.

Other key non-monetised costs by 'main affected groups'

There are no significant non-quantifiable costs.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0		see text	**1,400**
High	0		see text	**11,000**
Best Estimate	0		see text	**1,400**

Description and scale of key monetised benefits by 'main affected groups'

Illustrative benefits only from reduction in frequency of severe financial crises in the UK - a benefit for the UK as a whole rather than for specific groups.

Other key non-monetised benefits by 'main affected groups'

A reduction in frequency of major incidents of consumer detriment in provision of financial services in the UK and benefits for consumers arising from increased competition between financial services firms - benefits for UK consumers, regulated firms and the regulators. These benefits are likely to be significantly smaller than the monetised benefits.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

The key assumptions are those made for benefits calculations and for development, implementation and transitional costs for existing public authorities, new regulators and affected firms. The main risks in relation to costs are that the transitional costs for both public bodies and affected firms could be underestimated and, in relation to ongoing costs, that there could be significant additional compliance costs for firms subject to prudential and COB regulation. The main risk in relation to benefits is that the benefit from the reduction in the frequency of severe financial crises is overestimated; the main overall risk is that the reforms make little or no difference to incidence of financial crises.

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	**Benefits:** N/A	**Net:** N/A	No	NA

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			01/01/2013		
Which organisation(s) will enforce the policy?			Not applicable		
What is the annual change in enforcement cost (£m)?			Not applicable		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** 100	**Benefits:** 100	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties Statutory Equality Duties Impact Test guidance	No	16
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	17
Small firms Small Firms Impact Test guidance	No	17
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	16
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	16
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	16
Human rights Human Rights Impact Test guidance	No	16
Justice system Justice Impact Test guidance	No	16
Rural proofing Rural Proofing Impact Test guidance	No	16
Sustainable development Sustainable Development Impact Test guidance	No	16

Summary: Analysis and Evidence — Policy Option 2

Description:

Three regulator model.

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 415	**High:** 10,645	**Best Estimate: 415**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	195	2	25	**355**
High	325		100	**985**
Best Estimate	325		100	**985**

Description and scale of key monetised costs by 'main affected groups'

Development and implementation costs (spread over about 2 years) for existing public authorities and three new regulators; ongoing costs for three new regulators. Transitional and ongoing compliance costs for: (1) firms subject to prudential and conduct of business (COB) regulation; (2) some investment firms subject to COB regulation and market regulation; (3) some firms subject to prudential, COB and market regulation. The estimates are not intended to be more precise than the discussion in the evidence base indicates.

Other key non-monetised costs by 'main affected groups'

Loss of synergies between wholesale and retail conduct regulation caused by splitting conduct regulation between two regulators - these would directly affect both the regulators and regulated firms, and could have indirect effects on consumers.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0		see text	**1,400**
High	0		see text	**11,000**
Best Estimate	0		see text	**1,400**

Description and scale of key monetised benefits by 'main affected groups'

Illustrative benefits only from reduction in frequency of severe financial crises in the UK - a benefit for the UK as a whole rather than for specific groups.

Other key non-monetised benefits by 'main affected groups'

A reduction in frequency of major incidents of consumer detriment in provision of financial services in the UK and benefits for consumers arising from increased competition between financial services firms - benefits for UK consumers, regulated firms and the regulators. These benefits are likely to be significantly smaller than the monetised benefits. There may be benefits from better targeted regulation of UK wholesale markets, including from having specialist representation in the European Securities and Markets Authority.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

The key assumptions are those made for benefits and for development, implementation and transitional costs for existing public authorities, new regulators and affected firms. The main risks are that the transitional costs for both public bodies and affected firms could be underestimated and, in relation to ongoing costs, that there could be significant additional compliance costs for firms subject to prudential, COB and market regulation. The main risk in relation to benefits is that the benefit from the reduction in the frequency or severity of financial crisers is overestimated; the main overall risk is that the reforms make little or no difference to incidence of financial crises.

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	**Benefits:** N/A	**Net:** N/A	No	NA

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			01/01/2013		
Which organisation(s) will enforce the policy?			Not applicable		
What is the annual change in enforcement cost (£m)?			Not applicable		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** 100	**Benefits:** 100	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties Statutory Equality Duties Impact Test guidance	No	16
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	17
Small firms Small Firms Impact Test guidance	No	17
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	16
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	16
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	16
Human rights Human Rights Impact Test guidance	No	16
Justice system Justice Impact Test guidance	No	16
Rural proofing Rural Proofing Impact Test guidance	No	16
Sustainable development Sustainable Development Impact Test guidance	No	16

Evidence Base (for summary sheets) – Notes

References

No.	Legislation or publication
	See Treasury website for
1	A new approach to financial regulation: judgement focus and stability - Cm 7874 (July 2010)
2	A new approach to financial regulation: consultation on reforming the consumer credit regime (December 2010)
3	A new approach to financial regulation: building a stronger system – Cm 8012 (February 2011)
	See Bank for International Settlements website for
4	An assessment of the long-term economic impact of stronger capital and liquidity requirements (August 2010)
	See Financial Services Authority website for
5	CP 09/23: The assessment and redress of payment protection insurance complaints (September 2009)

Illustrative annual profile of monetised costs* - (£m) constant prices

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Transition costs	115	160								
Annual recurring cost			75	75	75	75	75	75	75	75
Total annual costs	115	160	75	75	75	75	75	75	75	75
Transition benefits										
Annual recurring benefits										
Total annual benefits										

*For a discussion of the benefits and the calculation of the NPVs given in the summary table, see discussion below. The benefit in any one year is essentially a small reduction in the probability of a financial crisis occurring in that year multiplied by the very large loss (the present value of the reduction in GDP in that years and several subsequent years) which would result from the financial crisis. But no actual benefit accrues in each year and so no annual recurring benefit figure is included in the table.

Evidence Base (for summary sheets) – Discussion

Introduction

1. This assessment restates the consultation stage impact assessment published in February 2011 with the consultation document *A new approach to financial regulation: building a stronger system* (reference 3). This section sets out the assumptions and analysis to support the assessment which have been updated or refined to reflect the comments made by consultees and further information from other sources. It should be read in conjunction with that consultation document (including the previous impact assessment) and other material published for the pre-legislative scrutiny of the Financial Services Bill. The Government would welcome comments on the impact assessment.
2. This impact assessment:
   a. does not cover the possible transfer of responsibility for the regulation of consumer credit from the Office of Fair Trading (OFT) to the FCA. This has been the subject of a separate consultation and impact assessment (reference 2) and the quantified costs and benefits of that proposal are not therefore included this assessment; or

b. include assessments of the minor measures included in the pre-legislative scrutiny version of the Financial Services Bill to make changes to provisions in or made under the Financial Services and Markets Act 2000, the Banking Act 2009 or other legislation. These changes will only affect the regulators or other authorities, make minor changes to existing regulatory arrangements (or formalise currently informal regulatory arrangements), affect only a very small number of businesses or will be deregulatory. In most cases the costs and benefits would be small in absolute terms (where it was possible to quantify them realistically) as well as small in relation to the main costs and benefits discussed in this assessment, and could not affect the overall assessment or choice of options.

Objective

3. The tripartite system of financial regulation failed to ensure financial stability in the UK in 2007 and 2008. As a result there was the longest and deepest recession since the Second World War and a record budget deficit. The policy objective is to reduce the frequency and severity of financial crises.

Overview of costs and benefits

Benefits

4. This impact assessment considers two alternative ways of implementing the Government's regulatory reforms. The key assumption for both options discussed is that creation of specialist financial regulators and the strengthening of the arrangements for coordination between the Prudential Regulatory Authority (PRA) and the Bank of England should result in a reduction in the frequency of severe financial crises in the UK, in addition to any such reduction that could be attributed to other measures (such as internationally agreed changes to regulatory requirements). If that assumption is correct, the benefits of the proposed reforms would be likely to be large but the actual quantification (discussed in detail below) can only be the result of the assumptions made, including those about economic growth and the impact of a single financial crisis. Since the severe financial crises are relatively infrequent (a reasonable assumption would be once every 20-25 years), it would probably not be possible to test the key assumptions for at least 30-40 years and even then, it would be difficult to isolate the effects of past regulatory reforms from other factors.

Costs

5. There will be both transitional costs and ongoing costs. Some regulated firms may incur transitional costs in making arrangements to deal with two regulators rather than one and may also incur ongoing costs in dealing with two regulators on a regular basis. Public authorities (primarily the Bank of England and the FSA) will incur transitional costs in setting up the new regulators. The new regulators' ongoing costs in total may differ from the costs that the FSA would have incurred if the regulatory reforms were not implemented. As at present, regulators' costs will be recovered in fees or levies paid by regulated persons or by persons engaged in regulatory transactions apportioned, as they currently are, on the basis of size and other factors relevant to the type of business activity or concerned.

6. It is assumed that the quantified benefits will be the same in option 1 and option 2 (and that differences in unquantifiable benefits between these options will not be significant). The choice between these options largely depends, therefore, on their costs. Since option 2 involves the creation of a third specialist regulator, focussing on wholesale markets and related issues, the transitional and ongoing costs for public authorities and regulated firms in this option would be likely to be higher.

Costs for public authorities

7. These cost estimates have been provided by the Bank of England and the Financial Services Authority (FSA) and relate principally to the creation of the PRA, its integration with the Bank and subsequent operations, and the transformation of the FSA into the FCA. The cost estimates are subject to updating and refinement as work progresses and estimating improves and they should be seen accordingly as the latest available "snapshot" of an ongoing process. The cost estimates therefore cover the transfer from the FSA to the PRA (or the Bank) of staff associated with prudential regulation and with the regulation of CCPs and settlement systems (this is likely to

account for about a third of the FSA's regulatory staff) and the transitional costs of making the FSA into the FCA. There are relatively small costs to the Bank in setting up the FPC.

8. The Bank's approach to creating the PRA is founded on a firm expectation that costs of prudential regulation will fall in the medium term. This will flow from the new judgement-based regulatory model, from improved quality of system support (flowing from the extension of Bank's more economical and secure IT framework to the new subsidiary), from eliminating duplication between the PRA and the Bank, and also from tight control of costs.

9. In the short run, however, the transition will involve significant expense to the Bank on premises and IT. Establishment of the PRA as part of the Bank involves substantially more than just splitting the FSA into two parts and putting one part under a Bank governance structure. The Bank's view is that to deliver the objectives of judgment-based regulation, integrated with the Bank's analytical capacity, the PRA will need to be physically located in or very close to the Bank, and given the likely staff numbers involved, a new building will be required. The Bank is also clear that in order to contain costs in the long run it would not wish to share in the existing IT systems at the FSA, which have relatively high running costs. So in order to reach a position in which it can both ensure integration and exercise a proper control over future costs, the Bank will need to invest in the transition.

10. This will involve preparing for and undertaking the transfer to the Bank of relevant FSA staff, most of whom will work in the PRA subsidiary; acquiring and fitting out suitable accommodation close to the Bank; delivery of Bank corporate IT to the PRA subsidiary, with associated networks and data centres; giving PRA access to selected FSA regulatory data and applications pending development of PRA-specific systems; and programme management and business change.

11. The FSA has indicated that much of its regulatory IT estate would be in need of amendment or replacement even in the absence of the changes envisaged by the Government's proposals. New or amended systems will therefore be developed as part of 'business as usual', though under the guidance of the PRA Transition Programme Board, a joint Bank/FSA body chaired by Hector Sants. Since both the draft legislation and the new regulatory model are themselves developing, there is at this stage a very wide range of options for future system requirements, and for connectivity to the Bank. Coupled with this is legal uncertainty about the status of some major contracts. So no detailed system design work has yet started.

12. There is also uncertainty about accommodation costs: there is a range of possible premises in the City, and of financial options for acquiring them. And although staff numbers at the point of transfer can be estimated, longer term staff requirements will depend on the evolution of the regulatory model. Underlying these uncertainties are the remaining open questions on the legislation, which may have implications for the size and complexity of the PRA.

13. The FSA legal entity will become the FCA and retain the staff and systems not transferring to the PRA. As with the PRA, there will be significant system development, although this would have been necessary in any event and is not seen as part of the cost of transition. There will however be a cost of restacking the FSA's main site as the PRA staff move out and space becomes available for re-letting; and some HR and training costs. There will also be legal and programme management expenses.

14. The Bank and the FSA are committed to ensuring that the transitional costs are minimised and controlled, and to achieving long-run cost savings to offset the transition costs. There will be further work to refine the cost estimates.

Costs for regulated firms

15. The Government has sought views on the transitional and ongoing costs for all types of regulated person in both consultations (reference 1 and reference 3). A small number of responses on these matters were received and the comments made have been taken into account in the assumptions made for the transitional and ongoing costs that firms would expect to incur in making changes to their internal systems and processes for option 1 or option 2.

Description of options considered

16. The first consultation (reference 1) considered the model of creating a Financial Policy Committee and setting up two regulators (PRA and FCA) to replace the Financial Services Authority (FSA).

The consultation also sought views on two variants of this model: merging the UK Listing Authority (UKLA) with the Financial Reporting Council (FRC) or retaining the UKLA with the FCA.

17. Most respondents to that consultation who commented on this issue strongly supported retaining the UKLA as a part of the FCA. Some respondents put forward arguments for other options including establishing a separate markets regulator distinct from the consumer protection and retail conduct functions of the FCA and this option has been considered further. The impact assessment therefore covers:

    Option 0 – "do nothing"

    Option 1 – two regulator model

    Option 2 – three regulator model.

Option 0 – "do nothing"

18. This option is the base case for this impact assessment. As the name implies, in this option the FSA would remain responsible for both the conduct of business regulation and the prudential regulation of all regulated financial services firms, would continue to regulate market conduct and be the UKLA and carry out its other activities as now. The roles and responsibilities of other organisations would also continue as before.

19. "Do nothing" does not mean "no change in the regulatory environment". It only means that the reforms to the regulatory structure discussed in this consultation document would not be made. Other changes to the regulatory environment – for example, arising from the implementation of changes to EU law or changes to domestic regulatory practice – will continue to happen. These changes will also happen if either option 1 or option 2 is chosen.

Option 1 – two regulator model (preferred option)

20. In this model:

    - a **Financial Policy Committee** in the Bank of England will have responsibility for considering the macro-economic and financial issues that may threaten financial stability;
    - the **Bank of England** will have responsibility for the regulation of settlement systems and central counterparty clearing houses to sit alongside its existing responsibilities for payment system oversight;
    - the **PRA**(a subsidiary of the Bank of England) will have responsibility for the prudential regulation of deposit-takers, insurers and certain investment firms;
    - the **FCA** will have responsibility for:
        - supervision (including prudential supervision) of all firms not regulated by the PRA, including most investment firms;
        - consumer protection in financial services (including through a stronger role in competition matters);
        - regulating the provision of consumer credit (see separate consultation);
        - regulating conduct in financial services generally, including in relation to firms authorised and supervised by the PRA;
        - regulating market conduct, including taking action to impose civil penalties for market abuse and pursuing criminal prosecutions;
        - regulating investment exchanges and providers of trading facilities;
        - primary market regulation (including listing).
    - the FRC remains a separate body.

Option 2 – three regulator model

21. There are a number of variants of this model depending on (i) whether responsibility for settlement systems and central counterparty clearing houses was transferred to the Bank of England (as in option 2), (ii) whether responsibility for regulating firms mainly active in wholesale markets, or for regulating wholesale conduct (i.e. conduct that was neither market conduct nor conduct in relation to

retail consumers) was placed with the separate markets regulator, and (iii) whether responsibility for other bodies such as the Financial Reporting Council was included in the separate markets regulator. For the purpose of this impact assessment, it is assumed that:

- a **Financial Policy Committee** in the Bank of England will have responsibility for considering the macro-economic and financial issues that may threaten financial stability;
- the **Bank of England** will retain responsibility for payment system oversight;
- the **PRA** (a subsidiary of the Bank of England) will have responsibility for the prudential regulation of deposit-takers, insurers and certain investment firms;
- the **FCA** would have responsibility for:
    - supervision (including prudential supervision) of most firms not regulated by the PRA, including most investment firms;
    - consumer protection in financial services (including through a stronger role in competition matters);
    - regulating the provision of consumer credit (see separate consultation);
    - regulating conduct in financial services generally, including in relation to firms authorised and supervised by the PRA.
- the separate markets regulator would have responsibility for:
    - regulating settlement systems and central counterparty clearing houses;
    - regulating market conduct, including taking action to impose civil penalties for market abuse and pursuing criminal prosecutions;
    - regulating investment exchanges and providers of trading facilities;
    - primary market regulation (including listing);
    - the FRC.

Analysis of costs and benefits

Introduction

22. As explained above, the "do nothing" option provides the base case for this impact assessment and it is assumed that other changes to the regulatory environment – changes which would happen irrespective of changes to the regulatory structure - would increase or decrease the costs and benefits of the three options by the same amounts on the same dates. The net present value (NPV) of each option would therefore be increased or decreased by the same amount and the ranking of the options and the differences between their NPVs would not be changed.

23. The costs and benefits of the "do nothing" option are therefore assumed to be zero and the costs and benefits of the other options are measured as differences from the amounts in the "do nothing" option. The costs and benefits of this option are the benefits and costs of the other options and so do not need to be discussed separately. It would, of course, amount to double counting to treat something both as a cost of the "do nothing" option and as a benefit in the other options. A number of minor reforms are discussed in the main consultation document text but are not considered in detail in this impact assessment. It is assumed that they would be taken forward in both option 1 and option 2 but not in the "do nothing" option.

(1) Costs for public authorities

Transitional costs

24. The current estimate, taking account of the accommodation, IT and staff transfer expenses, the full cost to the Bank and the FSA of creating the PRA will be in the region of £100 million - £150 million; this wide margin reflects continuing uncertainty over the likely scale and cost of the PRA's IT estate and of the acquisition of new premises. The residual cost of creating the FCA (excluding IT development undertaken as 'business as usual') is expected, as previously estimated, to be in the region of £15 million - £25 million. At this stage, therefore, the authorities are assuming that the

costs of establishing the PRA and transforming the FSA into the FCA would be between £115 million and £175 million.

25. Detailed estimates of the costs of establishing a separate market regulator have not been made. But it is clear that this would require additional expenditure to create the new organisation, acquire IT systems and premises etc. in addition to the expenditure required to create the FCA and the PRA. In particular, as the separate market regulator would be a separate legal entity from the FCA, it would, like the PRA need its own accommodation and systems, and staff would have to be transferred. The transitional costs for option 2 would be likely, therefore, to be significantly higher than those incurred in option 1. This impact assessment assumes an additional £20 million to £30 million again mainly spread over 2011 and 2012 but this could be on the low side, taking into account the significant costs that would be likely to be incurred in acquiring new premises and in installing new IT systems.

Ongoing administrative costs

26. The ongoing additional costs of the reforms will be mainly resource costs incurred by the new regulators less the ongoing administrative costs that the FSA would continue to incur in the "do nothing" option.

Changes in supervisory practice etc.

27. The FSA has been taking steps to improve the rigour and credibility of its supervisory effort and the costs of this are reflected in the base case. The PRA is expected to take a more judgement-led style of prudential supervision which is likely to mean more intensive and demanding engagement between the regulator and the firms concerned. The Bank of England considers that these changes in supervisory practice will not result in higher ongoing costs for the PRA because of a more efficient approach to regulation and the ability to adopt more cost-effective IT solutions.

28. The FCA is also likely to make some changes to the operational model of the FSA in order to deliver improvements to consumer protection and market integrity. This reflects its role as a single, integrated conduct regulator with a more proactive approach to regulating conduct in financial services and financial markets and taking on a stronger role in competition matters. These changes will be in addition to changes already made by the FSA towards a more interventionist and pre-emptive approach to retail conduct regulation which are included in the base case.

Loss of economies of scale

29. Some loss of economies of scale due to duplication of fixed costs is inevitable but this is not expected to be significant for the FCA in either option 1 or option 2 as it will remain a relatively large organisation. The PRA is likely to be a smaller organisation but it is expected to be able to share common services and overheads with the Bank of England.

30. The loss of economies of scale would be a more serious issue for a separate market regulator (option1) as this would be a relatively small organisation combining different activities. There would also be a loss of the synergies in combining wholesale and retail conduct regulation which are possible with the FCA while there are unlikely to be sufficient offsetting synergies in links with the FRC which is a specialist regulator in a particular area. A separate market regulator is also likely to have a relatively small permanent base of permanent fee-payers in the financial services area which would be able to cover overheads.

Increased specialisation and efficiency gains

31. Increased specialisation may result in some efficiency gains in option 1. However, these are likely to be limited as the FSA is large enough to ensure that there is a critical mass of expertise in both areas relevant to the FCA and PRA. The FCA should also be large enough to support the specialisation needed for certain activities such as listing, infrastructure regulation and market conduct. There is a risk, however, that a separate market regulator (option 2) would not be large enough to support critical masses of expertise in certain areas (such as listing and other areas currently in the FSA) and this could lead to increases in costs. Advantages arising from enabling the separate market regulator to specialise in representation in the European Securities and Markets Authority (ESMA) (which was an important issue for many respondents to the July consultation) would probably be offset by extra costs in ensuring that the consumer financial services and markets regulators could work closely together in this area.

Other matters

32. There should be no significant additional ongoing costs in respect of functions transferred to the Bank of England or arising from the activities of the Financial Policy Committee (FPC).

Conclusion

33. It remains difficult to estimate the overall balance of the factors discussed above. The Bank expects there to be long-run cost savings in the PRA arising from a more efficient approach to regulation and improvements to IT. But it is less likely that such savings could be made in the FCA which will retain a broad set of responsibilities. Overall, therefore, this impact assessment assumes that the FCA's and PRA's combined ongoing running costs should not be materially different (in real terms) in aggregate from the current FSA budget of about £500 million and that the range for additional ongoing costs in option 1 would be between £0 and £25 million higher than the base case costs. The ongoing administrative costs of option 2 are likely to be higher than those of option 1 but the same range of costs is assumed in this impact assessment.

(2) Costs for regulated firms

Transitional costs

34. The Government has updated the assumptions it made for the estimates of the transitional costs for regulated persons in previous impact assessments to reflect the comments received from a small number of consultees. However, considerable uncertainty must remain in relation to these estimates.

35. Most of the approximately 20,000 UK firms regulated under the Financial Services and Markets Act 2000 will be regulated solely by the FCA in option 1 or option 2.

36. These firms may face some transitional costs – for example updating websites and letterheads – but these costs seem unlikely to be important. All firms will need to replace stationery and update websites etc. on a regular basis and they will have had about two years' notice of the proposed change. The additional resources required specifically to take account of the transition from the FSA to FCA are, therefore, assumed to be negligible for the purposes of this assessment.

37. About 1,700 UK-authorised firms are likely to be prudentially supervised by the PRA while also subject to conduct of business regulation by the FCA ("dual-regulated firms"). These firms are more likely to have to make arrangements to deal with two regulators rather than one, including changes to IT systems and possibly to internal processes and organisation. There are also some groups containing both dual-regulated firms and FCA-only firms which may be affected in a similar way as dual-regulated firms.

38. Many dual-regulated firms will be large banks, insurance companies and investment banks and most groups which contain dual-regulated firms are likely to be large or to contain large firms of these types. These firms or groups seem more likely to incur transitional costs in setting up systems to deal with both regulators, largely a function of the size of the firm.

39. The PRA will also be responsible for prudentially supervising much smaller firms which take deposits or effect and carry out contracts of insurance. Almost all credit unions and some friendly societies and building societies would fall to be considered as small firms; many credit unions would be very small by any standard. Some investment firms regulated by the PRA may also be small firms although it is likely that they will be parts of groups that include a bank or insurance company. The transitional costs for these firms seem likely to be relatively less depending on the circumstances of the individual firm.

40. It is difficult, therefore, to estimate the transitional costs that dual-regulated firms will face. It would be difficult to separate genuinely additional costs from expenditure that would have been incurred anyway. Unlike most regulatory changes which involve firms having to make specific changes to staffing, processes or systems used in their businesses in order to meet precise, identifiable regulatory requirements, the principal effect of the regulatory reforms considered here is that dual-regulated firms will have to deal with two regulators rather than one. The transitional costs for these firms are simply the costs of setting themselves up to be able to do this. These costs are likely to vary considerably depending on their size, individual circumstances and their existing internal

organisations, systems and processes. The small number of respondents who commented on transitional costs only included large dual-regulated firms and they expected quite large transitional costs, partly reflecting experience with recent regulatory changes – although these would mainly include changes to regulatory requirements rather than to the regulatory organisation with which firms would have to deal.

41. It is not possible, therefore, to produce precise estimates of the transitional costs for dual-regulated firms. However, making some allowance for these concerns suggests that the original range of transitional costs (£50 million to £60 million) is too low. The upper limit has, therefore, been increased to £100 million. But this must remain a highly tentative estimate.

42. Transitional costs would be likely to be higher in option 2 than in option 1. Many of the larger dual-regulated firms and a large number of FCA-only firms would have to make further systems changes to make arrangements to deal with the separate market regulator. Depending again on the circumstances of the individual firms concerned and the extent of their involvement in areas overseen by the separate market regulator, the additional costs in option 2 could range from negligible (if the new systems could also be used for the consumer financial services regulator) to those of fully duplicating the additional systems. However, firms would have advance warning of the introduction of the need to make changes to systems etc. and could be expected to plan to minimise the costs of either option. For the purposes of this impact assessment, a range of additional costs of between £10 million to £20 million is still used; however, in view of the comments on transitional costs generally and especially the potential impact on larger dual-regulated firms (which would be most likely to be triple-regulated firms in option 2), this estimate would almost certainly be on the low side.

Ongoing compliance costs

43. The Government has updated the assumptions it made for the estimates of the ongoing costs for regulated persons in previous impact assessments to reflect comments received from a small number of consultees. However, considerable uncertainty must remain in relation to these estimates.

44. Regulated firms and applicants for authorisation are only like to face significantly higher ongoing compliance costs in option 1 or option 2 if they have to deal with more than one regulator. The majority of FCA-only firms are unlikely, therefore, to face higher ongoing compliance costs in either option 1 or option 2. Some firms may be affected by the possible changes to the FCA operating model but that will depend on a range of factors and need not imply higher costs for firms; this is discussed in more detail in the section on benefits.

45. Dual-regulated firms (and applicants) will have to deal with two regulators and may need to respond to the changes in supervisory practice in the PRA. The impact on larger dual-regulated firms seems likely to be relatively greater than for smaller dual-regulated firms but the amount of the impact would depend to a significant extent on the circumstances of individual firms and its existing internal systems and processes. Consultation respondents were concerned that dual-regulated firms would face significantly higher costs and that these would disproportionately on smaller dual-regulated firms. In practice, this probably means that the smallest dual regulated firms would (e.g. credit unions) would not be much affected while the largest banks and insurance companies would not face significantly higher compliance costs in comparison with their current compliance costs. The effect could be greatest in smaller banks or proprietary trading firms.

46. An implication of this is that ongoing compliance costs would be higher in option 2 than in option 1 for those firms that have to deal with a separate markets regulator as well as the PRA or FCA. This would affect the larger dual-regulated firms and FCA-only firms which are active in wholesale financial markets and need to engage with a separate market regulator. Again this would be most likely to affect the smaller banks or proprietary trading firms (but not the smallest dual-regulated firms which would not be wholesale market participants).

47. It is very difficult to make estimates of the additional ongoing compliance costs that firms or applicants will incur in option 1 and firms can be expected to adapt over time to the new regulatory arrangements so these costs can be assumed to diminish as that happens. However, in view of the comments made on the previous impact assessment about ongoing costs, this impact assessment assumes additional ongoing compliance costs of between £25 million and £50 million a year in option 1. This must also be a highly tentative estimate.

48. For the reasons given above, the additional compliance costs in option 2 would probably be higher than the costs in option 1. But the estimate would depend on how many FCA-only regulated firms would become dual-regulated firms and how many of the larger dual-regulated firms would become triple-regulated firms and on the extent to which entirely new systems had to be developed. This can also only be a highly tentative conclusion but this impact assessment assumes that the additional ongoing compliance costs in option 2 will be in the range of £0 to £25 million a year.

Benefits

Improvements in prudential regulation

49. In principle, the gross benefits from improvements in prudential regulation of option 1 and option 2 can be estimated by calculating the change in the present value of the total expected welfare losses (represented by the reduction in output i.e. GDP) from financial crises due to the reduction in the frequency and severity of financial crises. This is equivalent to estimating the change in the probability of a a financial crisis occurring in a year multiplied by the very large loss (the present value of the reduction in GDP in that years and several subsequent years) which would result from the financial crisis, and then discounting these annual amounts and summing them.

50. It is then necessary to deduct the amount of any benefits which could be expected to arise in the base case, including (i) the effects of the increased rigour and credibility of the FSA supervisory effort and (ii) the net effect of any changes to relevant regulatory requirements which would happen in any case – such as increases in bank capital and liquidity requirements made to implement the most recent recommendations of the Basel Committee on Banking Supervision to strengthen global capital and liquidity rules.

51. Of course, all such estimates are entirely dependent upon the assumptions made while isolating the net effects of other reforms or measures would be very difficult. The present values of benefits shown in option 1 and option 2 should be regarded as purely illustrative.

52. The Basel Committee on Banking Supervision has published estimates of the annual economic benefits and costs of tighter regulatory standards, including estimates of the effect of higher capital requirements on the probability of systemic banking crises (Reference 4). Their estimates of the annual benefits of reducing the probability of a financial crisis by 1 percentage point (e.g. reducing the incidence of financial crises from 4 per century to 3 per century) range from 0.19 per cent of output per year (assuming that financial crises have no permanent effect on output) to 1.58 per cent of output per year (assuming that financial crises have a large permanent effect on output).

53. The Basel Committee on Banking Supervision also considers that requiring banks to hold increased capital and liquidity will itself lead to significant reductions in the probability of financial crises and to significant net benefits in terms of reductions in output lost. It will always be difficult to assess how much of any benefits should be attributed to changes in capital and liquidity requirements rather than improvements in supervisory practice. The amount of capital and liquidity that a bank holds (and the amount of risk-weighted assets included in the denominator of a capital ratio calculation) can only be estimated on the basis of information from the bank's accounting systems and will depend on the quality of information in those systems. Clearly more intensive supervision could make a more important contribution to improving the stability of a bank if it led to the identification and correction of weaknesses in the bank's information systems. Increasing capital requirements would be more important for a bank which already had good systems.

54. It is impossible therefore to estimate the amount of any benefit that could be attributed to option 1 or option 2 (rather than being included in the base case) but if it is assumed that the proposed regulatory reforms alone reduced the probability of a financial crisis by only 0.1 percentage points, this would generate an annual benefit of between 0.02 per cent and 0.16 per cent of output. On this basis, for **illustrative** purposes, the annual benefit for the UK of the proposed regulatory reforms would be between about £250 million and £2,000 million a year. (This is estimated by assuming UK output (gross value added at basic prices) in 2010 to be about £1,300 billion. The estimates would be higher if GDP at market prices was used.)

55. For the purposes of this impact assessment, it is assumed that these benefits would only accrue from 2014 to 2020, reflecting the 10 year cut-off for impact assessments. In practice, of course, the benefits should endure as long as the new regulatory structure is maintained. (The method of estimating the benefits implicitly assumes they are long-run effects; the effect of the reforms is essentially to increase the time between severe financial crises although the analysis accepts that

much of this can be attributed to internationally agreed changes in regulatory requirements (which are in the base case).) On the assumptions made, these benefits should exceed any ongoing costs so the results of this assessment are not biased by working with the 10-year cutoff.

56. The benefits from improvements to prudential regulation are expected to arise mainly from the creation of a specialist prudential regulator (the PRA) as a subsidiary of the Bank of England. This would be largely unaffected by the different allocations of market and other conduct responsibilities in option 1 and option 2. It is assumed therefore that these benefits would be the same for option 1 and option 2.

Improvements in consumer protection

57. The benefits of a more proactive approach in regulating financial services and conduct can be estimated in essentially the same way by calculating the change in the NPV of the expected gains or losses for consumers, regulated firms and others (such as regulators) arising from adopting the new approach to consumer protection and from the FCA having a stronger role in relation to competition. This analysis will also be entirely dependent on the assumptions made.

58. There are potential resource benefits for consumers from a reduction in the frequency or severity of incidents of significant consumer detriment (e.g. major investment misselling cases). Consumers would not have to engage with firms, regulators or bodies such as the Financial Ombudsman Scheme (FOS) in order to obtain redress, or suffer any loss of interest because of the inevitable delay between suffering a loss and receiving compensation. They would also not suffer distress about potentially losing what may be large amounts of money or because of the uncertainty over whether they are able to obtain compensation; distress can be regarded as a resource loss for consumers although it is obviously more difficult to estimate.

59. The resource gains or losses for firms and regulatory bodies could also be large. Firms would not need to use resources to examine claims or complaints from customers or to deal with regulators or the FOS. Regulators, the FOS etc. and, if firms were in default and unable to pay claims, the Financial Services Compensation Scheme (FSCS) would not need to use resources to process claims. Both firms and regulators etc. can incur these costs whether or not the complaint is justified or compensation is payable. (Compensation paid or losses incurred because a customer is unable to obtain sufficient redress from a firm or from the FSCS (because the claim exceeds the limit in FSCS rules) are transfers rather than resource costs.)

60. There is no doubt that the quantifiable resource gains or losses involved could be large. The cost benefit analysis (CBA) included with an FSA consultation in 2009 on payment protection insurance (PPI) complaints (reference 5) indicates that there had been over 400,000 complaints since January 2005 about PPI while 63,000 cases were submitted to the FOS. The costs for firms and others in dealing with these complaints can differ significantly depending on how they are to be handled. The same FSA CBA assumed administrative costs for firms of £200 per complaint but indicated that this was lower because firms only had to review rejected complaints.

61. It is impossible, therefore, to estimate the amount of any benefit which could be attributable to option 1 or option 2 rather than the base case. However, assuming that numbers of customers affected by any one incident was of the order of 100,000 and that the resource costs were £5,000, the resource costs of any one incident would be £500 million. While the precise answer would depend on the assumed frequency of such incidents and the change in the frequency attributed to an improved operating model, this calculation suggests that benefits could not be of the same order as the benefits from the improvements to prudential regulation discussed above and would almost certainly be substantially lower. No amount has therefore been included in the illustrative benefits of option 1 or option 2.

62. The benefits from the FCA having a stronger role in competition matters are also very difficult to quantify. Most of the effect of the elimination of monopoly rents in the supply of real goods and services (which would include the provision of investment advice but not the provision of financial investments themselves) takes the form of a transfer from suppliers to consumers and so does not involve any resource cost or benefit. The benefits to consumers from the stronger FCA role in competition would therefore be found in any increase in the provision of financial services such as investment advice less the amount of any such benefits that might be expected to arise in the base case. There would also be some benefits in any reduction in resource costs incurred by other bodies such as the Office of Fair Trading. These benefits would be very difficult to estimate but there does not seem any reason for believing that they could be of the same order as the benefits

from the improvements to prudential regulation. No amount has therefore been included in the illustrative benefits of option 1 or option 2.

63. The benefits from improvements to consumer protection (including the stronger role in competition matters) would be expected to arise mainly from establishing the FCA as a clear consumer financial services regulator. This would also be largely unaffected by the different allocations of market and other conduct responsibilities in option 1 and option 2. It is assumed therefore that these benefits would be the same for option 1 and option 2.

Assumptions, risks and sensitivities

64. The principal assumptions are those relating to the benefits of avoiding a financial crisis (see above) and about the costs for public authorities and regulated firms.

65. The key assumption is that establishing two specialist financial regulators and the strengthening of the arrangements for coordination between the PRA and the Bank of England should result in a reduction in the frequency of severe financial crises in the UK, in addition to any such reduction that could be attributed to other measures (such as internationally agreed changes to regulatory requirements). Clearly, there is a risk that this assumption is not correct and that the benefits assumed in the impact assessment are overstated.

66. In addition, the amount of the benefits is clearly dependent on the detailed assumptions made (including by the Basel Committee of Banking Supervision in its work). This can be seen in the difference between the high and low estimates of the benefits which reflects different assumptions about whether there are permanent effects on output from a crisis. These estimates will always be very sensitive to changes in economic assumptions (for example, the long-run trend in economic growth).

67. In relation to costs, the main risks are that (1) the transitional costs (i.e. development and implementation costs) for regulatory bodies or firms are materially underestimated (including the risk that implementation takes longer than anticipated); and (2) the ongoing costs for regulatory bodies and firms are materially underestimated.

68. This impact assessment has assumed that the best estimate of the costs (or benefits) is at the unfavourable ends of the ranges. It is not thought, therefore, that there would be significant risks of costs materially exceeding the estimates. It is unlikely, therefore, that costs could increase by the amount necessary to make option 0 a superior option to option 1 or option 2. Since option 2 involves more duplication than option 1, the additional costs are likely to be larger and therefore a cost underestimate in option 2 is likely to be proportionately larger than a cost underestimate in option 1. The choice between those options is unlikely, therefore, to be affected by any cost underestimate. One consultation respondent argued that there would be unquantifiable benefits in option 2 (that would not have arisen in option 1) from having better targeted and more appropriate regulation of wholesale markets. These had been partly acknowledged in the summary table although not discussed in the evidence base in the previous impact assessment. Some benefit of this kind could arise but it is not clear that any such benefit (which could only be quantified with considerable difficulty, if at all) could outweigh the cost difference between options 1 and 2 which would, if anything, be larger in the light of the concerns expressed by many of those who commented on the impact assessment about the ongoing costs to be faced by dual-regulated firms.

Wider impacts

Statutory equality duties

69. The Government has considered the proposed reforms (option 1 and option 2) in relation to its public sector equality duties under the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, section 75 of the Northern Ireland Act 1998 and the Equality Act 2010. It has concluded that no relevant issues arise. All UK residents would be affected to a greater or lesser extent by a financial crisis having a severe impact upon the UK economy.

Environmental, social and sustainable development impacts

70. The Government does not anticipate any impact upon greenhouse gases, wider environmental issues, health and well-being, human rights, the justice system, rural proofing and sustainable

development. This assumes that the proposed reforms would not change the relationship between certain environmental phenomena and GDP.

Economic impacts

71. Apart from any effect arising from the stronger FCA role in competition matters, the principal effect on competition from financial services regulation is through the effect on barriers to entry into the industry. The Government does not envisage that the proposed reforms to regulatory structure will in themselves change the conditions which applicants have to satisfy to obtain authorisation from a regulator but there may be higher costs in obtaining authorisation for applicants to be dual-regulated firms as both the PRA and FCA will be involved in processing the application. The Government does not expect these costs to be significant and there would in any event be no effect upon the ability of EEA firms to enter the UK market using a 'passport' from their home State regulator issued under the relevant EU Directives. The Government does not consider, therefore, that the proposed reforms will have any significant adverse effect on competition.

72. Small firms which take deposits or effect or carry out contracts of insurance, and certain small investment firms will be regulated by the PRA and FCA. The proposed reforms are likely to have some effect on their costs (see above). Most small firms in the financial services industry are not deposit-takers or insurers and will be regulated by the FCA in succession to the FSA. They are not likely to be disproportionately affected by the proposed reforms.

73. Since option 2 is likely to involve higher costs than option 1, the effects on competition or small firms would be greater. There is no reason therefore for wider economic impacts to affect the choice between these options.

Summary and preferred option (with description of implementation plan)

74. The Government's preferred option is to proceed with option 1.

75. The main implementing measure will be primary legislation which is expected to be enacted in 2012. Secondary legislation and administrative measures (including action by the Bank of England and the FSA) will be needed to complete implementation which is assumed, for the purposes of this impact assessment, to be essentially completed by the end of 2012.

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