HM TREASURY

A new approach to financial regulation:

draft secondary legislation

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Any queries regarding this publication should be sent to us at: public.enquiries@hm-treasury.gov.uk.

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1 Introduction

1.1 The recent global financial crisis highlighted fundamental flaws in the confused and ineffective tripartite system of financial services regulation in the UK. The current regime relies too heavily on 'tick box' compliance at the expense of expert and system-wide risk analysis, and gives the FSA a remit that is too broad and disparate for it to manage effectively, across the entire range of prudential and conduct issues. These significant shortcomings left the UK's financial services sector particularly vulnerable to the crisis, the effects of which are still being felt today.

1.2 The Financial Services Bill was introduced into Parliament in January this year. It has completed its passage through the House of Commons and is currently subject to the scrutiny of the House of Lords. The Bill creates a new regulatory regime that:

- puts the Bank of England clearly in charge of financial stability;
- provides for focussed prudential and conduct of business regulators (the Prudential Regulation Authority or PRA, and the Financial Conduct Authority, or FCA); and.
- places the judgement of expert supervisors at the heart of regulation.

1.3 The structure of the new regime is set out on the face of the Bill, but much of the important detail of how the new regulators will carry out their roles will be in the secondary legislation made under this statutory framework. This document invites comments on key pieces of secondary legislation under the following provisions:

- Section 22A of the Financial Services and Markets Act 2000 as amended by the Bill ("FSMA"), covering the allocation of regulator responsibility between the PRA and the FCA. A draft of this was published alongside the Bill at Introduction, and the version annexed to this paper builds on this;
- Section 55C of FSMA, setting out the threshold conditions for both the PRA and FCA that authorised persons must meet in order to become and remain authorised. This was published in draft in July, and the version annexed to this paper builds on this;
- Clause 47 of the Bill, transferring regulation of mutual societies to the PRA and FCA. A draft of this was also made available when the Bill was introduced;
- Section 192 A-N of FSMA regarding the regulators' power of direction and information gathering rules over parent undertakings of authorised persons or recognised UK investment exchanges and, by virtue of Schedule 7 of the Bill, recognised UK clearing houses;
- Section 213 of FSMA on the allocation of responsibility for rule-making with regards to the FSCS between the FCA and PRA; and
- Section 234B of FSMA on the power to designate bodies that can make super-complaints about the impact of the market in the UK for financial services on the interests of consumers.

1.4 Detailed information on these instruments is set out in the document below, and drafts of each apart from Section 234B (where draft designation criteria have been published) are annexed.

Next steps

1.5 The consultation on these pieces of secondary legislation will be open until 24 December 2012. Responses should either be posted to the Financial Regulation Strategy team, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ, or emailed to financial.reform@hmtreasury.gsi.gov.uk. Further details on responding to the consultation can be found at Annex A.

1.6 The Government envisages the Bill receiving Royal Assent in late 2012 or early 2013, subject to the Parliamentary timetable. The secondary legislation included in this document (amended as appropriate following this consultation) will then be laid before Parliament as early as possible in 2013, and the new regime will be fully established on 1 April 2013.

1.7 More details on the transitional arrangements to the new regulatory system will be published in the coming months. As a general principle, the Government intends to minimise the disruption that could be caused by the transition by grandfathering existing Part IV permissions, controlled functions, rule waivers and modifications, passports, limitations and requirements. Firms do not need to take any action to enable this to happen.

1.8 The new regulatory regime set out here is intended to reduce the frequency with which financial crises occur. But it cannot remove this risk altogether, and domestic regulatory reform is only one part of the Government's response to the recent financial crisis. Through the Financial Services (Banking Reform) Bill (which was published in draft on 8 October and which is expected to be introduced into Parliament early next year) the Government is also working to reduce the severity of any such crisis, and to limit the damage it could cause to the wider economy.

2 Scope of PRA regulation

2.1 The scope of regulated activities may change over time – for example, as a result of international discussions on financial reform, or in response to innovation in the financial sector. The Financial Policy Committee (FPC) will be responsible for monitoring the perimeter of prudential regulation, and it will be able to make recommendations to the Treasury about changes to the scope of regulation by the Prudential Regulation Authority (PRA) or the Financial Conduct Authority (FCA), in pursuit of its objective. In order to provide the necessary flexibility to allow the regulatory system to respond to such future changes, the scope of activities regulated by the PRA will be set out in secondary legislation.

2.2 Clause 8 of the Financial Services Bill therefore adds new section 22A to the FSMA, providing that the Treasury may specify by way of an Order which regulated activities are PRA regulated activities. This permits changes to be made to the boundary between PRA and FCA regulation of firms. The draft Order, contained in the annex, provides that deposit taking, effecting and carrying on contracts of insurance and certain activities in relation to the Lloyd's market are to be prudentially regulated by the PRA.

2.3 As well as regulating deposit-takers and insurers, the Government intends that the PRA will be able to designate certain investment firms for prudential regulation by the PRA where it determines that it is desirable, in light of the PRA's objective, for the PRA to regulate prudentially that firm. This may be appropriate where the scale or complexity of such a firm's operations and its interconnectedness with other firms or the system as a whole give rise to a risk to the stability of the financial system or the safety and soundness of one or more PRA-authorised persons within their group. It is expected that a minority of investment firms will be designated by the PRA: most will be prudentially regulated by the FCA.

The draft Order

2.4 A draft Order was published in February 2012 alongside the Government's policy document "A new approach to financial regulation: securing stability, protecting consumers".[1] A draft for consultation is included in the annex to this document. This is substantively unchanged in its policy effect from the draft Order that was published in February, subject to some minor and technical changes outlined below.

2.5 The draft Order provides that accepting deposits, effecting or carrying out a contract of insurance, managing the underwriting capacity of a Lloyd's syndicate as a managing agent and the arranging, by the Society of Lloyd's, of deals in contracts of insurance at Lloyds, are all PRA-regulated activities. This means that anyone who wishes to carry on any of these activities in the UK will need to be authorised by the PRA, with the consent of the FCA.

2.6 The draft Order also sets out the criteria which the PRA will apply when considering whether it should designate individual firms dealing in investments as principal for PRA regulation:

[1] *A new approach to financial regulation: securing stability, protecting consumers* is available from the Treasury website, www.hm-treasury.gov.uk/d/fin_fs_bill_policy_document_jan2012.pdf

- the firm must hold or be seeking to hold permission to deal in investments as principal;
- the firm must be required to have initial capital of at least €730,000 (a level defined in the Capital Adequacy Directive[2]), which has the effect of excluding smaller investment firms; and
- designation must be desirable, having regard to the PRA's objectives.

2.7 In considering its decision to designate, the PRA must also have regard to:

- the assets of the firm; and
- if the firm is a member of a group, the assets of any other firms within the group which have permission to deal in investments as principal and are required to have €730,000 capital, whether any other firms in the group have been designated, and whether the firm's activities could have a material impact on the PRA's ability to promote the safety and soundness of other PRA-authorised entities in the group.

2.8 The draft Order also sets out the process which the PRA must follow in deciding whether to designate a firm and in withdrawing designation. It also requires the PRA to keep designations under review, and to publish a statement of policy as to how it will exercise its powers under the Order. As stated in the February policy document, the decision to designate will involve the exercise of judgment, it will not follow automatically from the application of designation criteria.

Further detail on the designation of investment firms

2.9 The decision as to whether to designate a firm for prudential regulation by the PRA will lie with the PRA. The Bank of England and Financial Services Authority (FSA) published a note in May 2012 setting out their initial views on how the PRA would be likely to exercise the powers that would be conferred by the Order.[3] The Bank of England and FSA will consult on a draft statement of policy shortly after the publication of this document.

2.10 The FSA moved to a "twin peaks" operating model on 2 April 2012. Under that model, the FSA established separate "prudential" and "conduct" business units. The prudential business unit (PBU) prudentially supervises those deposit-takers and insurers that, once the Bill comes into force, will be regulated by the PRA within the Bank of England. The conduct business unit (CBU) carries out those functions that will be performed by the FCA. The PBU also supervises those investment firms that, once the Bill comes into force, are likely to be designated for prudential regulation by the PRA. As set out in the note published in May, the FSA has sought to ensure that those firms that it considers are most likely to be designated by the PRA are supervised by the PBU under the internal 'twin peaks' model.

Box 2.A: Consultation question

1 Do you have any comments on the draft Order?

[2] Directive 2006/49/EC of the European Parliament and of the Council on the capital adequacy of investment firms and credit institutions.

[3] Bank of England and Financial Services Authority, "Designation of investment firms by the PRA", available from the Bank of England website www.bankofengland.co.uk/publications/Documents/other/financialstability/investmentfirms.pdf

3 Threshold conditions

Review of the threshold conditions

3.1 The threshold conditions (TCs), set out in Schedule 6 to FSMA, are the minimum requirements that firms need to meet in order to become authorised. They are also a key supervisory tool, and provide the basis for triggering certain powers of intervention in relation to the firm (including the power to vary or cancel permission) and are the basis for the triggering of the special resolution regime (SRR) to resolve failing banks and building societies.

3.2 The Joint Committee on the Draft Financial Services Bill recommended that the Treasury consider how the TCs could be changed to better support the new regulators' judgement-led and forward-looking approach to prudential and conduct issues.[1] The Government agreed with this recommendation. Under the new regulatory arrangements the TCs will be a vital tool in the PRA and FCA's forward-looking supervision.

3.3 In the command paper *A new approach to financial regulation: securing stability, protecting consumers*,[2] which was published in January 2012 alongside the introduction of the Financial Services Bill, the Government committed to review the TCs. Having completed this review, the Government is proposing amendments to the TCs. The purpose of these changes is to ensure that the TCs:

- provide clarity about which aspects of firms' business will be of particular interest to each regulator;
- are a clear, relevant and unambiguous set of standards which regulated firms are required to meet and upon which the regulators will base their regulatory judgements; and
- reflect and support the regulators' objectives and priorities.

Division of the threshold conditions

3.4 The most significant change is that there will now be separate sets of TCs for each regulator. This is important to ensure that there is clarity about each regulator's responsibilities. There will be:

- conditions for firms authorised and regulated by the FCA only;
- FCA-specific conditions for firms authorised by the PRA and subject to dual-regulation;
- PRA-specific conditions for insurance firms; and
- PRA-specific conditions for banks and dual-regulated investment firms.

3.5 For those who are, or who are seeking to become, PRA-authorised persons (also known as dual-regulated firms), having separate sets of TCs will provide clarity as to which regulator is responsible for assessing compliance with each TC when exercising their powers under new Part

[1] The Joint Committee's report is available from the Parliament website, http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-financial-services-bill/publications

[2] Available from the Treasury Financial Services Bill section of the Treasury website, www.hm-treasury.gov.uk

4A of FSMA. Part 4A deals with the granting, limitation, variation and cancellation of permission to carry on regulated activities.

3.6 Compared to the current TCs, the proposed TCs are better attuned to each regulator's areas of responsibilities. For instance, for dual-regulated firms the FCA will be more focussed on understanding whether an authorised person is likely to be vulnerable to financial crime than the PRA will be. In contrast, the PRA's objectives mean that it will be responsible for promoting the safety and soundness of firms it regulates, and as such, its focus will be more on the level of capital and liquidity held by those firms.

3.7 The Government has considered it preferable to set out separate TCs for which the PRA is responsible in relation to banks and investment firms on one hand, and insurers on the other hand, in recognition of their distinct characteristics. The TCs that apply to insurers are applied to the Society of Lloyds and the managing agents with modifications, given the distinct nature of the activities they carry on.

New elements of the TCs

3.8 The Government has introduced new threshold conditions. Some of the key elements are:

- in the PRA TCs, there will be a new threshold condition – business to be conducted in a prudent manner. This incorporates some of the considerations in the current adequate resources condition, and reflects the fact that regulated firms must have appropriate financial and non-financial resources. The condition now refers to "appropriate" (rather than "adequate") resources, to reflect the importance of considering both the quality and quantity of the resources available to the firm;
- the PRA's new "Business to be conducted in a prudent manner" TC states that the matters which are relevant in determining whether a firm has satisfied this TC include the effect that the firm's failure might be expected to have on the stability of the UK financial system. This introduces the concept of 'resolvability' into the threshold conditions;
- there is a new reference in the FCA's TCs to risks that might be posed to a firm, its customers, and the integrity of the UK financial system by deficiencies in its business model. As seen during the financial crisis, deficiencies in business models can leave firms vulnerable to systemic volatility and can lead to consumer detriment. The Government has proposed that the suitability of firms' business models should be recognised in the TCs; and
- there is a new reference in both FCA and PRA TCs to the 'probity' of a firm's management. The Government has included in the proposed amendments a new requirement for those responsible for managing the affairs of a firm to act with probity, in order to satisfy the regulators that the firm is fit and proper. In assessing this TC, the regulators will consider the entirety of a firm's board and non-board senior management. Where managers and directors do not act with probity, their firms can be held to account by the regulators. In appropriate cases, the regulators can take actions against the firm including imposing requirements on the firm to take certain steps, and where necessary the regulator can consider the removal of permissions held by the firm. Regulatory action may also be taken against a manager or director via other means, for example through the approved persons regime.

3.9 Further information is provided in the detailed commentary on the individual TCs, below.

Threshold condition codes

3.10 New section 137M of FSMA (as inserted by clause 22 of the Financial Services Bill) gives the regulators the power, to make rules supplementing any or all of the new TCs. The Bill refers to any rules made under this power as a "threshold conditions code".

3.11 New sections 55B(1) and (2) of FSMA make it clear the "threshold conditions" means the conditions set out in Schedule 6 as read with any threshold condition codes. Thus any codes made will have the same legal status as the provisions of Schedule 6.

Putting the new threshold conditions in place

3.12 The new TCs will be put in place through an Order under new section 55C of FSMA, as inserted by clause 9 of the Financial Services Bill, which enables the Treasury to amend the existing TCs. A draft of the Financial Services and Markets Act 2000 (Threshold Conditions) Order is annexed to this document. This is a revised version of the indicative draft which was published in July to inform Parliamentary consideration of the Bill. The Order will be subject to prior approval by both Houses of Parliament.

3.13 To ensure that the Treasury does so in time for legal 'cutover' to the new system, paragraph 5 of Schedule 20 to the Bill requires the Treasury to make an Order under section 55C before bringing clause 9 into force. The Government has published the TCs early in order to avoid uncertainty for industry around the scale and nature of the changes. Firms applying for authorisation under the new regulatory system will have to comply with the new conditions. The Bank and FSA will set out in more detail in forthcoming publications how the PRA and FCA will apply the revised TCs to firms who are already authorised.

Detailed commentary on the draft threshold conditions

3.14 The draft Order inserts seven new Parts into Schedule 6 to FSMA.

- Part 1A contains definitions and interpretation provisions;
- Part 1B covers the conditions for firms authorised and regulated by the FCA only;
- Part 1C covers the FCA-specific conditions for firms authorised by the PRA and subject to dual-regulation;
- Part 1D covers the PRA-specific conditions for insurance firms, managing agents at Lloyds and the Society of Lloyd's authorised by the PRA and subject to dual-regulation; and
- Part 1E covers the PRA-specific conditions for non-insurance firms authorised by the PRA and subject to dual-regulation.

3.15 Additionally the draft Order inserts new parts 1F and 1G into Schedule 6 to FSMA. Part 1F covers European Economic Area (EEA) firms seeking authorisation in the UK to carry out one or more regulated activities. Part 1G covers Treaty firms seeking authorisation in the UK to carry out one or more regulated activities.

Threshold conditions for dual-regulated firms

3.16 Dual-regulated firms will be subject to both PRA and FCA threshold conditions.

PRA threshold conditions for dual regulated firms

3.17 The PRA has two separate sets of TCs. Part 1D sets out the conditions for insurers. These conditions are also applied to the Society of Lloyd's and the managing agents, with

modifications to reflect the different structure of the Lloyd's market. Part 1E sets out the conditions for banks and PRA-authorised investment firms. There are differences in the detail of these conditions, which are apparent from the TCs themselves, and the different natures of the industries and businesses mean that the PRA's focus and approach will vary accordingly. However, the broad substance is similar, and is outlined below.

Legal status and location of offices

3.18 The existing TCs of legal status and location of offices are being carried forward unchanged from the previous system, and will be for the PRA to assess.

Business to be conducted in a prudent manner

3.19 The current condition of adequate resources has been amended to reflect the different roles of each regulator and their objectives. For the PRA, this is now business to be conducted in a prudent manner. This incorporates some of the considerations in the current adequate resources condition, and reflects the fact that regulated firms must have appropriate financial and non-financial resources. The condition now refers to "appropriate" (rather than "adequate") resources to reflect the importance of considering both the quality and quantity of the resources available to the firm. To satisfy the appropriate financial resources element of the condition, the firm must have appropriate capital (it "must have assets which are appropriate having regard to its liabilities"), liquidity (the liquidity of the firm's resources must be "appropriate having regard to when its liabilities fall due or may fall due"), and the firm must be willing and able to value assets and liabilities appropriately. To have appropriate non-financial resources, a firm must have appropriate systems, controls, plans, information or policies to monitor, measure and take action to remove or reduce risks to the firm's safety and soundness.

3.20 The business to be conducted in a prudent manner TC states that the matters which are relevant in determining whether a firm has satisfied this TC include the effect that the firm's failure might be expected to have on the stability of the UK financial system. This introduces the concept of 'resolvability' into the threshold conditions so, as part of the PRA's assessment of whether the firm satisfies this TC, the PRA will consider the extent to which, in the event of the firm's failure, the firm could be resolved with minimal disruption to the financial system. 'Resolvability' will form a core part of the PRA's supervisory strategy and is reflected in its general objective and the provision at new section 2F of FSMA as inserted by the Financial Services Bill. As such the Government has proposed that it should be reflected in the TCs.

Suitability

3.21 The current condition of suitability has been amended to capture the concept that firms must be generally cooperative in the provision of information to the regulators, both in relation to requests from the regulator to provide specific information and in compliance with any general requirements imposed on firms to provide information to the regulator on a pro-active basis. Additionally, there is a new requirement that those responsible for managing the affairs of a firm act with probity, in addition to having adequate skills and experience.

Effective supervision

3.22 This is a new condition; that the firm must be capable of being supervised effectively by the PRA. This is in regard to all circumstances including the nature (and complexity) of its regulated activities, the complexity of its products, and the way in which its business is organised. This complements the duty on the PRA to supervise the firms it regulates. This condition encompasses the existing close links condition (paragraph 3 of Schedule 6 to FSMA).

FCA threshold conditions for dual regulated firms (Part 1C)

Effective supervision

3.23 This is a new condition; that the firm must be capable of being effectively supervised by the FCA. This is in regard to all circumstances including the nature (and complexity) of its regulated activities, the complexity of its products, and the way in which its business is organised. This complements the duty on the FCA to supervise the firms it regulates. This condition encompasses the existing close links condition (paragraph 3 of Schedule 6 to FSMA).

Appropriate non-financial resources

3.24 The current condition of adequate resources has been amended to reflect the different roles of each regulator and their objectives. For the FCA with regards to dual-regulated firms, this is now appropriate non-financial resources and includes new references to the nature and scale of the firm's business, the risks to the continuity of services provided, and the skills and experience of those managing the firm's affairs. This leaves the PRA solely responsible for assessing appropriate financial resources for dual-regulated firms as part of its assessment of whether a firm satisfies the business to be conducted in a prudent manner TC.

Suitability

3.25 The current condition of suitability has been amended to capture the concept that firms must be generally cooperative in the provision of information to the regulators, both in relation to requests from the regulator to provide specific information and in compliance with any general requirement imposed on firms to provide information to the regulator on a pro-active basis. Additionally, there is a new requirement that those responsible for managing the affairs of a firm act with probity, in addition to having adequate skills and experience. The FCA has additional references to the firm's affairs being conducted in an appropriate manner with regards to the interests of consumers and the integrity of the UK financial system.

Business model

3.26 This condition means that the firm's strategy for doing business must be suitable for its regulated activities, having regard to the FCA's operational objectives. The PRA will also be assessing dual-regulated firms' business models (as part of its supervisory approach), however it does not need a specific business model TC of its own in order to do so, or to take action where it has concerns with a firm's business model.

Appointment of claims representative

3.27 The TC appointment of claims representatives is carried forward unchanged from the previous set of TCs, and will be assessed by the FCA.

Box 3.A: Questions on the proposed threshold conditions for dual-regulated firms

2 What are your views on the proposed division of threshold conditions between the PRA and FCA?

3 What are your views about the new content of the threshold conditions?

4 Do you have any other comments?

Threshold conditions for FCA-authorised firms (Part 1B)

3.28 FCA-authorised firms will be subject to FCA TCs. These are separate from the FCA's TCs for dual-regulated firms. FCA-authorised firms will not be subject to the PRA's TCs, as these firms will be authorised and regulated solely by the FCA.

Location of offices

3.29 The location of offices TC is carried forward unchanged from the previous system.

Effective supervision

3.30 This is a new condition; that the firm must be capable of being effectively supervised by the FCA. This is in regard to all circumstances including the nature (and complexity) of its regulated activities, the complexity of its products, and the way in which its business is organised. This complements the duty on the FCA to supervise the firms it regulates. This condition encompasses the existing close links condition (paragraph 3 of Schedule 6 to FSMA).

Appropriate resources

3.31 The current condition of adequate resources has been amended to reflect the different roles of each regulator and their objectives. In particular, the condition now relates to "appropriate" (rather than "adequate") resources. This reflects the importance of considering both the quality and quantity of the resources available to the firm. For the FCA, this is now appropriate resources and includes new references to the nature and scale of the firm's business, the risks to the continuity of services provided, and the skills and experience of those managing the firm's affairs.

Suitability

3.32 The current condition of suitability has been amended to capture the concept that firms must be generally cooperative in the provision of information to the regulators, both in relation to requests from the regulator to provide specific information and in compliance with any general requirement imposed on firms to provide information to the regulator on a pro-active basis. Additionally, there is a new requirement that those responsible for managing the affairs of a firm act with probity, in addition to having adequate skills and experience. There are references to the firm's affairs being conducted in an appropriate manner with regards to the interests of consumers and the integrity of the UK financial system and the need to minimise the extent to which the business carried on by the person can be used for a purpose connected with financial crime.

Business model

3.33 This condition means that the firm's strategy for doing business must be suitable for its regulated activities. Recently the FSA has increased its scrutiny of firms' business models; this will be continued by the FCA, and the FCA will also consider how firms' business models impact on, or have regard to – the interests of consumers and the integrity of the UK financial system.

Box 3.B: Questions on the threshold conditions for FCA-authorised firms

5 What are your views on the proposed threshold conditions?

6 Do you have any other comments?

Threshold conditions for EEA and Treaty firms (Parts 1F and 1G)

3.34 Part 1F sets out the threshold conditions for EEA firms (i.e. firms established in the EEA which carry on regulated activities in the UK by virtue of their passporting rights under the single market directives). Part 1G sets out the threshold conditions for Treaty firms (i.e. those firms which carry on regulated activities in the UK by virtue of their rights under the EU Treaty).

3.35 The majority of the TCs set out above are also appropriate for EEA and Treaty firms. However, some of the TCs are inappropriate for such firms. For example, paragraph 3F (appointment of claims representative) is a matter for the home state regulator rather than the

FCA. Similarly, paragraph 4C (location of offices for insurers) is inappropriate for a firm established in another country of the EEA which has a right under EU law to carry on a regulated activity in the UK. Parts 1F and 1G therefore apply only those threshold conditions which are considered to be relevant for EEA and Treaty firms.

3.36 For EEA or Treaty firms seeking to carry on PRA-regulated activities consisting of or including a regulated activity relating to the effecting or carrying out of contracts of insurance, the following TCs will apply where relevant to the discharge of each regulator's relevant[3] functions:

Specific FCA TCs (from Part 1C of the draft Order)

- Effective supervision
- Appropriate non-financial resources
- Suitability
- Business model

Specific PRA TCs (from Part 1D of the draft Order)

- Legal status
- Business to be conducted in a prudent manner
- Suitability
- Effective supervision

3.37 For EEA or Treaty firms seeking to carry on PRA-regulated activities not consisting of or including a regulated activity relating to the effecting or carrying out of contracts of insurance, the following threshold conditions will apply where relevant to the discharge of each regulator's relevant functions:

Specific FCA TCs (from Part 1C of the draft Order)

- Effective supervision
- Appropriate non-financial resources
- Suitability
- Business model

Specific PRA TCs (from Part 1E of the draft Order)

- Legal status
- Business to be conducted in a prudent manner
- Suitability
- Effective supervision

3.38 For EEA or Treaty firms seeking to carry on regulated activities not consisting of or including a PRA-regulated activity, the following TCs will apply where relevant to the discharge of the FCA's relevant functions:

[3] Each regulator's relevant functions are its functions in relation to an application for permission under Part 4A of FSMA, or the exercise of its own-initiative requirement power or own-initiative variation power in relation to a Part 4A permission.

Specific FCA TCs (from Part 1B of the draft Order)

- Legal status
- Effective supervision
- Appropriate resources
- Suitability
- Business model

Box 3.C: Questions on the proposed threshold conditions that will apply to EEA and Treaty firms

7 What are your views on the threshold conditions that should apply to EEA and Treaty firms?

8 What other comments do you have, if any, on any issues that should be considered with regards to this proposed approach?

4 Mutuals Order

4.1 The FSA exercises two distinct sets of functions in relation to mutual societies. First, it exercises functions under the legislation which governs the establishment and operation of mutual societies; for example, under the Building Societies Act 1986, the FSA registers building societies. Second, under the Financial Services and Markets Act 2000 (FSMA), the FSA regulates those mutual societies that undertake regulated activities such as accepting deposits and entering into a regulated mortgage contract as a lender. The Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) are to replace the FSA in exercising functions under FSMA. But this change necessitates amendments to the legislation which governs mutual societies as well. Clause 47 of the Financial Services Bill provides the Treasury with powers to make the necessary changes by order.

4.2 At the introduction of the Financial Services Bill to the House of Commons in January 2012, the Government published a draft Order (the Mutuals Order), and committed to consult on it later in the year. This consultation document seeks views on the updated draft of the Mutuals Order, which is included in the annex to this document, and includes an explanatory note.

4.3 The Government is committed to supporting the mutuals sector. In the Coalition Agreement, the Government stated its desire to foster diversity in financial services, promote mutuals and create a more competitive banking industry. Since then it has proposed in the Financial Services Bill that the PRA and FCA be required to analyse the impact of proposed rules on mutual societies, and brought relevant provisions of the Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011 into effect.

The Mutuals Order

4.4 Under FSMA, the PRA will be the prudential regulator of all deposit-takers, insurers and the systemically important investment firms, focusing on their safety and soundness. The arrangements for designating investment firms for regulation by the PRA are detailed in Chapter 2. The Mutuals Order assigns to the PRA all existing functions of the FSA in the current legislation relevant to the safety and soundness of mutuals that are PRA-authorised, in line with its objectives and narrower focus; for example, the PRA will have the role of confirming mergers and business transfers. The FCA will take over the other functions of the FSA under the existing legislation, including those related to registration, the register and the public file, enforcement of offences, and the majority of the functions related to administering mutuals in general. This approach reflects the high-level approach taken with the division of the FSA's functions under FSMA to the PRA and the FCA.

4.5 The draft Mutuals Order does not add to nor remove any current regulatory functions from existing mutuals legislation. Neither does it consolidate any pieces of mutuals legislation. In January 2012 the Government announced that it proposed to bring forward a Co-operatives Consolidation Bill to consolidate more than a dozen existing pieces of legislation governing co-operatives and mutuals. The Law Commission is currently drafting this legislation, which the Government intends to bring into force at the end of 2013.

4.6 In high level terms, the Mutuals Order will:

- replace references to the FSA with references to the FCA or the PRA or both as appropriate, within the various pieces of mutuals legislation; and
- insert co-ordination mechanisms similar to those in the Financial Services Bill, to allow for a consistent and effective approach under the new system of dual-regulation.

4.7 To aid efficiency and effectiveness under the new system of dual-regulation, the Mutuals Order will amend a number of provisions in the existing law to ensure consistency and clarity, e.g. areas for which one of the regulators is solely responsible, and areas where one regulator must consult the other before taking action. The Financial Services Bill contains several similar amendments to FSMA that require and allow the FCA and the PRA to co-ordinate their activities effectively whilst delivering their separate objectives. Additionally the Financial Services Bill imposes a duty on the PRA and the FCA to co-ordinate the exercise of their respective functions. The draft Mutuals Order applies this duty to co-ordinate on the regulators' mutuals functions.

4.8 The draft Mutuals Order sometimes amends a provision such that the provision refers to the "prudential regulator". This means the PRA for all mutuals that are PRA-authorised persons under FSMA (such as deposit takers or insurers), and the FCA for all other mutuals. In other places, the draft Mutuals Order confers a function on the "relevant regulator"; this means both the PRA and the FCA for mutuals that are PRA-authorised persons, and the FCA alone for all other mutuals. Having these definitions instead of referring to the regulators by name will avoid the need for further amendments to mutuals legislation if the scope of PRA regulation under FSMA changes.

Box 4.A: Questions on the policy approach of the Mutuals Order

9 What is your view on the high-level approach taken to splitting the functions between the PRA and the FCA?

10 What is your view on the approach taken to require and allow the FCA and the PRA to effectively co-ordinate their actions under mutuals legislation?

11 What other comments do you have, on principles or issues that you think should be considered with regards to the policy approach of the Order?

Application of the PRA's objectives to its functions under mutuals legislation

4.9 The Government has considered whether the PRA's general and insurance objectives should be applied to its functions under mutuals legislation. The draft Mutuals Order published in January in order to aid Parliamentary and industry understanding prior to this formal consultation was written on the basis that the PRA's objectives would apply to its functions under mutual legislation.

4.10 The reason this approach was taken is that there are advantages to applying the PRA's objectives to its mutual functions, such as:

- building on the principle of financial stability at the core of the regulatory reforms. The PRA has been given a single general objective to ensure a sharper regulatory focus. Applying the PRA's general objective, which is "promoting the safety and soundness of PRA-authorised persons", and its insurance objective, which is "contributing to the securing of an appropriate degree of protection for those who are or may become policyholders", to its functions under mutuals legislation, would require the PRA to exercise its mutuals functions in ways that advance these objectives. This means that the PRA will be able to operate with consistent

objectives irrespective of whether it is exercising FSMA functions or mutuals functions; and

- ensuring that Parliament can hold the PRA to account against its mandate of promoting the safety and soundness of firms when carrying out its mutuals functions. The PRA will therefore be held to account in the same way and against the same mandate across the full range of its activities.

4.11 Additionally, the Government believes that applying the PRA's objectives to its mutuals functions will not result in negative consequences for mutuals with regards to their prudential safety and soundness, and will not result in an increase in the burdens or restrictions on mutuals relative to non-mutuals. The Government also believes that this will not result in significant changes to the ways in which mutuals will be regulated under mutuals legislation (separate from the move to dual regulation).

The FCA's objectives

4.12 The Government has also considered whether the FCA's objectives should be applied to its functions under mutuals legislation, and intends to not apply these objectives. As stated earlier in this paper, the draft Mutuals Order splits the FSA's functions under mutuals legislation between the FCA and the PRA, in line with their different roles as established by the Financial Services Bill. The PRA's remit will extend to functions that could have an effect on prudential safety and soundness, and enforcement against firms committing PRA-related offences; and its role will be limited to mutuals which are PRA-authorised. The FCA will be responsible for all the other mutuals functions, including those related to registration, maintaining the register and the public file, and enforcement against firms committing all non-PRA related offences.

4.13 In line with the role of the FCA as detailed above, the FCA will have little or no discretion in exercising the majority of its functions (which are mostly administrative in nature) so in the legal sense there is little to which the FCA objectives could be applied. It would not be appropriate to apply the FCA's objectives where they are not needed or relevant, for example in relation to mutual societies that are not authorised under FSMA. In contrast, the prudentially-focused role of the PRA means that in carrying out a significant proportion of its functions, the PRA will need to exercise a wide-ranging discretion.

4.14 The FCA's objective will of course continue to apply to all of its functions under FSMA when regulating mutuals. For example, the FSA includes mutuals in its Treating Customers Fairly regime, which is wholly done through its FSMA functions including rules, supervision, and enforcement.

Box 4.B: Questions on the applicability of the PRA's objectives and the FCA's objectives to their respective mutuals functions

12 What is your view on the proposal to apply the PRA's objectives to its mutuals functions?

13 What is your view on the proposal to not apply the FCA's objectives to its mutuals functions?

14 What other comments do you have, if any, on any issues that should be considered with regards to the application of the PRA's objectives to its mutuals functions?

Building Societies

4.15 Schedule 8 of the draft Mutuals Order amends several provisions in the Building Societies Act 1986. Highlighted below are a number of these amendments which may be of particular interest to consultation respondents.

Securing the 'principal purpose', administering the system of regulation, and advising the Government

4.16 Paragraph 3 amends section 1 of the Building Societies Act 1986 such that the regulators will have the following functions (amongst others) under this Act in relation to building societies:

- to secure that the principal purpose of building societies remains that of making loans which are secured on residential property and are funded substantially by their members (this function falls only to the PRA);
- to administer the system of regulation of building societies provided by or under this Act, (but this function will apply to the PRA only in so far as sections 5(1) (principal purpose; principal office), sections 6 and 7 (lending and funding "nature" limits), 9A (restriction on certain transactions) and 9B (restriction on the creation of floating charges) relate to that system); and
- to advise and make recommendations to the Treasury and other government departments on any matter relating to building societies.

Transfers of engagements or business

4.17 Paragraph 13 amends section 42B of the Act such that the prudential regulator (i.e. the PRA) is given the power to direct transfers of engagements or business, and paragraphs 37 and 38 amend sections 94 and 95 of the Act similarly to confer decisions relating to mergers and transfers of business on the prudential regulator. The Government considers that applying the PRA's objectives to its mutuals functions would not result in changes to the way the regulator uses these powers.

Offences

4.18 Paragraph 47 specifies which offences the PRA will be able to prosecute (i.e. those that relate to PRA functions). The paragraph makes provision so that limitation periods run as normal despite the replacement of the FSA by the PRA.

Other functions

4.19 For ease of referencing, below is a table showing where the main functions are to be transferred. This is not a comprehensive list of all the functions.

Table 4.A: Transferred functions in Building Societies legislation

Responsibility / Power	Transferred to	Relevant section of the Building Societies Act 1986
Registrar	FCA	5, 103, 106, Schedule 2, etc
Power to direct restructuring	Prudential regulator – where purpose/lending limit/funding limit breached.	36
Prohibition orders	Prudential regulator – where the building society fails to restructure under 36	36A
Power to petition for winding up	Prudential regulator – power limited to 36(13), 36A(12) and breach of purpose	37
Power to direct transfers	Prudential regulator – to protect investment of shareholder or depositors	42B, Schedule 8A
Powers to obtain information	PRA and FCA, for supervisory functions	52
Investigations	PRA and FCA, for supervisory functions	55
Inspections	PRA and FCA, for supervisory functions	56-57
Chief exec and Secretary	FCA	59
Directors	FCA	61-69
Accounts or annual return	Relevant regulator (but prudential regulator in Schedule 11)	76-81
Insolvency	Relevant regulator	89
Amalgamations and transfers	Prudential regulator	93-102D and Schedules 16 and 17
Prosecutions	FCA, and PRA for PRA-related offences	111

Box 4.C: Questions on the proposed amendments to the Building Societies Act 1986

15 What are your views on the proposed amendments?

16 What other comments do you have, if any, on any issues that should be considered with regards to one or more of the proposed amendments?

Credit Unions

4.20 Schedule 6 of the draft Mutuals Order amends relevant provisions in the Credit Unions Act 1979.

4.21 For ease of referencing, below is a table showing where the main functions are to be transferred. This is not a comprehensive list of all the functions.

Table 4.B: Transferred functions in Credit Unions legislation

Responsibility / Power	Transferred to	Relevant sections of the Credit Unions Act 1979
Registrar	FCA	1 etc.
Power to petition for winding up	Relevant authority (after consultation with the other authority)	20
Powers to obtain information	Relevant authority	17
Inspections	Relevant authority	18

Box 4.D: Questions on the proposed amendments to the Credit Unions Act 1979

17 What are your views on the proposed amendments?

18 What other comments do you have, if any, on any issues that should be considered with regards to one or more of the proposed amendments?

4.22 Schedule 7 of the draft Mutuals Order amends relevant provisions in the Credit Unions (Northern Ireland) Order 1985.

4.23 Responsibility for regulation of credit unions in Northern Ireland as authorised persons for the purposes of FSMA was transferred to the FSA in March this year; those FSMA functions are transferred to the FCA and the PRA by the changes to FSMA made by the Financial Services Bill. The draft Mutuals Order transfers the relevant functions of the FSA to the PRA and FCA as appropriate. Responsibility for the registration of credit unions in Northern Ireland remains with the registrar of credit unions (who is appointed by DETI).

4.24 For ease of referencing, below is a table showing where the FSA's main functions are to be transferred. This is not a comprehensive list of all the functions.

Table 4.C: Transferred functions in Northern Ireland Credit Unions legislation

Responsibility / Power	Transferred to	Relevant articles of the Credit Unions (Northern Ireland) Order 1985
Power to petition for winding up	Registrar (after consultation with the prudential regulator)	63
Powers to obtain information	Registrar	57
Inspections	Registrar, with the consent of the FCA	58
Accounts or annual return	Registrar	49
Amalgamations and transfers	Prudential regulator	65-66
Prosecutions	Registrar	76

Box 4.E: Questions on the proposed amendments to the Credit Unions (Northern Ireland) Order 1985

19 What are your views on the proposed amendments?

20 What other comments do you have, if any, on any issues that should be considered with regards to one or more of the proposed amendments?

Friendly Societies

4.25 Schedules 4, 5, and 9 of the draft Mutuals Order amend relevant provisions in the Friendly and Industrial and Provident Societies Act 1968, the Friendly Societies Act 1974 and the Friendly Societies Act 1992 respectively.

4.26 For ease of referencing, below is a table showing where the main functions are to be transferred. This is not a comprehensive list of all the functions.

Table 4.D: Transferred functions in Friendly Societies legislation

Responsibility / Power	Transferred to	Relevant sections of the Friendly Societies Act 1992
Registrar	FCA	5, 6, 26, 104, Schedule 3 etc.
Investment of funds	Prudential regulator	14
Power to petition for winding up	Relevant authority (after consultation with the other authority) – specified grounds	22, 52 (s.87 of 1974 Act)
Supervision of subsidiaries and power to direct steps	Relevant authority	54
Powers to obtain information	Each, for supervisory functions	62
Investigations	Relevant authority, for supervisory functions	65
Inspections	Relevant authority	66-67 (s.90 of 1974 Act)
Chief exec & Secretary	FCA	29
Directors	FCA	29
Accounts or annual return	Relevant authority (but prudential regulator in Schedule 14)	74-78
complaints	FCA	81
Amalgamations and transfers	Prudential regulator	85-91
Prosecutions	FCA, and PRA for PRA-related offences	107

Box 4.F: Questions on the proposed amendments to the mutuals legislation on Friendly Societies

21 What are your views on the proposed amendments?

22 What other comments do you have, if any, on any issues that should be considered with regards to one or more of the proposed amendments?

Industrial and Provident Societies

4.27 Schedules 2, 3 and 4 of the draft Mutuals Order amend relevant provisions in the Industrial and Provident Societies Act 1965, the Industrial and Provident Societies Act 1967, and the Friendly and Industrial and Provident Societies Act 1968.

4.28 For ease of referencing, below is a table showing where the main functions are to be transferred. This is not a comprehensive list of all the functions.

Table 4.E: Transferred functions in Industrial and Provident Societies legislation

Responsibility / Power	Transferred to	Relevant sections of the Industrial and Provident Societies Act 1965
Registrar	FCA	1, 16, 17 etc.
Power to petition for winding up	Relevant authority (after consultation)	56
Powers to obtain information	FCA	48
Inspections	FCA	49
Accounts or annual return	FCA	39
Amalgamations and transfers	FCA (no discretion)	50-53

Box 4.G: Questions on the proposed amendments to the mutuals legislation on Industrial and Provident Societies

23 What are your views on the proposed amendments?

24 What other comments do you have, if any, on any issues that should be considered with regards to one or more of the proposed amendments?

Transitional arrangements

4.29 The intention is that the PRA will exercise the functions being conferred on it in relation to mutuals from commencement of the new regime. For example, if two building societies were to apply before commencement to the FSA for permission to merge, and the FSA had not confirmed the merger by the commencement date, it would be for the PRA to confirm the

merger. The draft Mutuals Order makes provision for the FCA to pass information to the PRA in such situations, and what information and consultation requirements relating to the PRA will apply. The draft Mutuals Order also clarifies when information, returns, etc first need to be sent or copied to the PRA.

Box 4.H: Questions on the proposed transitional arrangements

25 What are your views on the proposed transitional arrangements?

5 Parent undertakings

Introduction

5.1 The framework for the supervision of financial groups is intended to apply so that the same level of oversight and supervisory powers can be applied irrespective of the legal structure of the group. However, in instances where there is an entity within the regulatory group structure which is itself not regulated, but which controls and exerts influence over an authorised person, the supervisor has limited direct powers over that entity. The issue is most acute with an unregulated parent undertaking.

5.2 In most cases, where the regulator wants to impose a requirement on an unregulated parent undertaking, because it does not have the powers to do so, it has to seek to achieve the same outcome by imposing a requirement on the authorised subsidiaries of the parent undertaking. These indirect powers are not always sufficient to prevent unregulated undertakings acting in a way that may create risk for the regulated entities in the group and ultimately the consumer.

5.3 Clause 25 of the Financial Services Bill therefore strengthens the regulatory framework by providing that the regulator can take action in relation to a parent undertaking, which is itself not regulated, but which controls and exerts influence over an authorised person. These provisions will allow the regulators to give a direction if the acts or omissions of the parent undertaking are having or may have a material adverse effect on the regulation of one or more authorised firms, or the effectiveness of consolidated supervision, and to make rules on parent undertakings requiring the regular provision of information.

5.4 To limit the powers of direction to parent undertakings whose main business is related to financial services, the Bill provides that the powers may only be exercised in relation to parent undertakings of certain authorised persons, recognised investment exchanges or recognised clearing houses if the parent undertaking is a financial institution of a prescribed kind. This safeguard helps keep the power within acceptable bounds and ensures that the financial services regulators will not have powers of direction in relation to parent undertakings whose main business is not related to financial services.

Draft Order

5.5 A draft of the Order specifying the financial institutions that are subject to the Part 12A powers can be found at Annex E.

5.6 The Order specifies that parent undertakings of authorised persons which are financial institutions and within the scope of consolidated (or supplementary) supervision by virtue of EU law are subject to the Part 12A powers. The definitions of each category of specified undertaking derives from EU law and the list of EU directives that provide for consolidated supervision is set out in new section 3L of FSMA, as inserted by the Financial Services Bill:

a Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (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).

5.7 The Order specifies that parent undertakings of the following kinds are prescribed financial institutions for the purposes of Part 12A:

- an insurance holding company;
- a financial holding company; and
- a mixed financial holding company.

5.8 The Order also prescribes all financial institutions for the purposes of Part 12A in so far as that Part applies to the parent undertakings of recognised investment exchanges or to the Bank of England in the exercise of its functions in relation to recognised clearing houses. "Financial institution" is not defined for these purposes. It will include an entity which itself provides financial services or which operates financial market infrastructure or whose business involves the ownership of, or management of, such entities.

Box 5.A: Consultation question

26 Do you have any views on the draft Order at Annex E?

6 Financial Services Compensation Scheme rule-making responsibility

Introduction

6.1 The Financial Services Compensation Scheme (FSCS) plays a crucial role in supporting consumer protection, confidence in financial services and in protecting and enhancing financial stability through operating the compensation scheme for financial services. This means that the objectives of both the PRA and the FCA will interact with the role of the FSCS. As set out in previous consultation documents, the PRA and FCA will each have distinct responsibilities for making rules governing the FSCS in the new regulatory system. The PRA will have rule-making responsibility for claims for deposits and under insurance contracts (i.e. insurance claims following the failure of an insurer) and the FCA will have rule-making responsibility for all other claims (including claims in the investment sector and those related to regulated mediation activities including insurance). Given that both the PRA and FCA will have rule-making powers in relation to the FSCS, they will jointly take responsibility for the oversight functions currently carried out by the FSA.

6.2 The practical implications of this dual oversight, split rule-making, model will require effective coordination between the PRA and FCA in their roles in relation to the FSCS. The FSA and Bank of England published, at the introduction of the Financial Services Bill to Parliament, a draft memorandum of understanding (MOU), which contains provision on how the new regulators will coordinate in fulfilling their roles in relation to the FSCS[1].

6.3 Additionally, the Bill requires the FSCS to maintain an MOU with each of the PRA and FCA, setting out how they will co-operate. Drafts of these MOUs are also available online[2].

Draft Order

6.4 Paragraph 3 of Schedule 10 to the Financial Services Bill amends s.213 FSMA. Amended s.213 requires the Treasury to specify in secondary legislation the cases in which the PRA and FCA may, or may not, make rules relating to the FSCS. The division in rule-making responsibility broadly[3] follows the division in regulatory responsibility between the PRA and FCA that is also being made by secondary legislation (a draft Order – The Financial Services and Markets Act 2000 (PRA-Regulated Activities) Order – splitting regulatory responsibility between the PRA and FCA is contained in this consultation paper at Annex B).

6.5 A draft of the Order splitting FSCS rule-making responsibility between the PRA and FCA can be found at Annex F. Article 2 of the Order provides for the PRA to make rules for compensating persons in cases where relevant persons or successors (persons who have assumed responsibility for liabilities arising from acts or omissions of relevant persons) are

[1] Available at: http://www.fsa.gov.uk/static/pubs/mou/fca_pra.pdf and http://www.bankofengland.co.uk/financialstability/Documents/overseeing_fs/fca_pra_draft_mou.pdf)

[2] The draft MOU between the FSCS and the FCA is available at: http://www.fsa.gov.uk/static/pubs/mou/draft-fca-fscs.pdf and the draft MOU between the FSCS and the PRA is available at: http://www.fsa.gov.uk/static/pubs/mou/draft-pra-fscs.pdf and http://www.bankofengland.co.uk/publications/Documents/other/financialstability/draftprafscs.pdf

[3] The FCA will be responsible for making FSCS rules for all investment firms but the PRA will regulate those investment firms which are deemed significantly important and meet the criteria for designation to the PRA.

unable, or likely to be unable, to satisfy claims for a deposit. In this Order, a deposit means a deposit within the meaning of article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(S.I. 2001/544) disregarding the effect of the exclusion in article 6 of that Order; and including repayment claims within the meaning of section 5 of the Dormant Bank and Building Society Accounts Act 2008. This ensures that the PRA will have responsibility for making compensation rules for claims for deposits including reclaim funds.

6.6 The PRA will also have responsibility for making FSCS rules for claims under a contract of insurance. The Order also provides that the PRA may make compensation rules for claims arising in respect of the regulated activities of managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's; or arranging deals in contracts of insurance written at Lloyd's – both of which are also PRA-regulated activities. The FSA has not made any compensation rules for those activities in the past and it is not anticipated that the PRA will do so.

6.7 Article 3 of the Order provides for the FCA to make rules for compensating persons in cases where relevant persons or successors are unable, or likely to be unable, to satisfy claims against them for all matters not covered by the PRA.

6.8 Decisions on how the FSCS will be funded will continue to be taken by the regulators. On 25 July the FSA published a consultation paper on the future funding model of the FSCS in the new regulatory system[4]. The ability of the FCA and PRA to make rules which are consistent with the proposals contained in that paper is not affected by the Order and the FCA and PRA to make changes to the funding model in the future, if it is considered necessary, and make rules to that effect.

Box 6.A: Consultation question

27 Do you have any views on the drafting of the FSCS Order at Annex F?

[4] Available at: http://www.fsa.gov.uk/static/pubs/cp/cp12-16.pdf

7 Criteria for designating super-complainants to the FCA

FCA super-complaints

7.1 The Government proposes to give consumer bodies designated by the Treasury the right to make a "super-complaint" to the FCA where they consider that there are features of a market in the United Kingdom for financial services, such as the market structure or the conduct of firms operating within it, that are or which may be significantly damaging the interests of consumers.

7.2 These arrangements reflect the fact that individual consumers often do not have access to the kind of information necessary to make a judgement about market failure and so the aim of the procedure is to encourage groups who represent consumers to make relevant super-complaints on their collective behalf. The FCA will be obliged to respond to a super-complaint within 90 calendar days.

Consulting on the designation criteria

7.3 The Bill provides for the Treasury to designate a body only if it appears to them to represent the interests of consumers of any description[1]. In addition, the Treasury must publish criteria that they will apply in determining whether to make (or revoke) a designation. The Government is seeking views on the appropriate criteria for the Treasury to apply. Draft criteria and guidance for bodies seeking designation as super-complainants to the FCA is attached at Annex G.

7.4 The Government believes that the criteria employed by BIS to designate consumers as super-complainants under the Enterprise Act 2002 have worked well, and that many of the criteria will be relevant to determining whether to make (or revoke) a designation as super-complainant to the FCA. Furthermore, there are likely to be benefits in aligning the criteria and evidence requirements with those employed by BIS in terms of reducing the administrative burden on bodies which would seek designation under both regimes.

7.5 However, the establishment of a sector-specific regime for financial services markets presents an opportunity to tailor the conditions of access to super-complaints to maximise their effectiveness in meeting the needs of consumers of financial services.

Super-complaints for representatives of small to medium-sized enterprises

7.6 The role of financial services in the economy is such that consumers range from private individual retail clients and small businesses, to professional investors and large corporations. The definition of "consumer" which applies for the purposes of super-complaints to the FCA is therefore relatively broad and includes both non-business and business consumers, but excludes authorised persons.

7.7 The Government believes that small to medium-sized business consumers of financial services face many of the same problems in co-ordinating complaints to the regulator faced by

1 For these purposes "consumer" does not include authorised persons.

private individuals. Providing representatives of small to medium-sized businesses with access to super-complaints could therefore deliver significant benefits in terms of bringing analysis of issues which are impacting on this group of consumers to the FCA's attention, and enabling representatives of these consumers to hold the regulator to account for its response. Making it possible for the regulator to draw on the experience and expertise of representatives of small to medium-sized businesses in this way should also further the FCA's ability to advance its consumer protection and competition objectives.

7.8 However, the Government acknowledges that providing access to super-complaints to representatives of business consumers as well as non-business consumers could also present additional risks. For example, it might be possible for representative bodies to attempt to misuse the mechanism to gain a competitive edge for their members. However, within the sector-specific regime for financial services it has been possible to significantly reduce these risks by excluding authorised persons from the definition of consumers used for the purposes of super-complaints. This means that organisations which primarily represent regulated financial services firms will not be eligible for designation. While some risks of attempted misuse may remain, the Government is confident these can be managed by the FCA through the guidance it publishes on making a super-complaint and through careful consideration of the submitted cases.

7.9 Broadening access to super-complaints also has the potential to increase the costs and administrative burden on the regulator, by requiring the FCA to respond to a larger number of organisations that might meet the designation criteria. However, the Government believes that the potential benefits in extending access to small to medium sized business are likely to justify the potential increase in costs.

7.10 The Government has also considered whether representatives of larger firms, which are also consumers of financial services, should be eligible for designation as super-complainants. However, the Government's assessment is that larger businesses do not face the same resource constraints or co-ordination difficulties in providing analysis to the regulator. As such, there does not appear to be a strong justification for the potential increase in costs of extending the mechanism to representatives of larger businesses.

Box 7.A: Consultation question

28 Do you have any comments on the Government's proposals for designating consumer bodies as super-complainants to the FCA, or on the text of the draft criteria and guidance at Annex G?

A Consultation questions and how to respond

A.1 The following box lists the consultation questions posed in this document.

List of consultation questions

Chapter 2 – Scope of PRA regulation

1. Do you have any comments on the draft Order?

Chapter 3 – Threshold conditions

Questions on the proposed threshold conditions for dual-regulated firms

2. What are your views on the proposed division of threshold conditions between the PRA and FCA?
3. What are your views about the new content of the threshold conditions?
4. Do you have any other comments?

Questions on the threshold conditions for FCA-authorised firms

5. What are your views on the proposed threshold conditions?
6. Do you have any other comments?

Questions on the proposed threshold conditions that will apply to EEA and Treaty firms

7. What are your views on the threshold conditions that should apply to EEA and Treaty firms?
8. What other comments do you have, if any, on any issues that should be considered with regards to this proposed approach?

Chapter 4 – Mutuals Order

Questions on the policy approach of the Mutuals Order

9. What is your view on the high-level approach taken to splitting the functions between the PRA and the FCA?
10. What is your view on the approach taken to require and allow the FCA and the PRA to effectively co-ordinate their actions under mutuals legislation?
11. What other comments do you have, on principles or issues that you think should be considered with regards to the policy approach of the Order?

Questions on the applicability of the PRA's objectives and the FCA's objectives to their respective mutuals functions

12. What is your view on the proposal to apply the PRA's objectives to its mutuals functions?
13. What is your view on the proposal to not apply the FCA's objectives to its mutuals functions?
14. What other comments do you have, if any, on any issues that should be considered with regards to the application of the PRA's objectives to its mutuals functions?

List of consultation questions (continued)

Questions on the proposed amendments to the Building Societies Act 1986

15. What are your views on the proposed amendments?
16. What other comments do you have, if any, on any issues that should be considered with regards to one or more of the proposed amendments?

Questions on the proposed amendments to the Credit Unions Act 1979

17. What are your views on the proposed amendments?
18. What other comments do you have, if any, on any issues that should be considered with regards to one or more of the proposed amendments?

Questions on the proposed amendments to the Credit Unions (Northern Ireland) Order 1985

19. What are your views on the proposed amendments?
20. What other comments do you have, if any, on any issues that should be considered with regards to one or more of the proposed amendments?

Questions on the proposed amendments to the mutuals legislation on Friendly Societies

21. What are your views on the proposed amendments?
22. What other comments do you have, if any, on any issues that should be considered with regards to one or more of the proposed amendments?

Questions on the proposed amendments to the mutuals legislation on Industrial and Provident Societies

23. What are your views on the proposed amendments?
24. What other comments do you have, if any, on any issues that should be considered with regards to one or more of the proposed amendments?

Questions on the proposed transitional arrangements

25. What are your views on the proposed transitional arrangements?

Chapter 5 – Parent undertakings

26. Do you have any views on the draft Order at Annex E?

Chapter 6 – Financial Services Compensation Scheme rule-making responsibility

27. Do you have any views on the drafting of the FSCS Order at Annex F?

Chapter 7 – Criteria for designating super-complainants to the FCA

28. Do you have any comments on the Government's proposals for designating consumer bodies as super-complainants to the FCA, or on the text of the draft criteria and guidance at Annex G?

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 24 December 2012. 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.4 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.5 When responding, please state whether you are doing so as an individual or on behalf of an organisation.

Confidentiality

A.6 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.7 **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.8 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.

B Section 22A Order

B.1 This annex contains the draft Order for PRA-Regulated Activities.

CONSULTATION DRAFT

*Draft Order laid before Parliament under section 22B of the Financial Services Act ***, for approval by resolution of each House of Parliament.*

D R A F T S T A T U T O R Y I N S T R U M E N T S

201* No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (PRA-Regulated Activities) Order 201*

Laid before Parliament in draft

In accordance with section 22B of the Financial Services and Markets Act 2000, a draft of this Order has been laid before Parliament and approved by a resolution of each House;

The Treasury, in exercise of the powers conferred by sections 22A and 428(3) of the Financial Services and Markets Act 2000(**a**), make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (PRA-Regulated Activities) Order 201* and comes into force on [ ].

(2) In this Order —

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

"dealing in investments as principal" means the activity specified by article 14(1) of the Regulated Activities Order(**b**);

"the Regulated Activities Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**c**).

Regulated activities which are PRA-regulated activities

2. For the purposes of the Act, the following regulated activities are PRA-regulated activities—

(a) the activity of accepting deposits as specified by article 5 of the Regulated Activities Order(**d**);

(b) the activity of effecting a contract of insurance as principal as specified by article 10(1) of the Regulated Activities Order;

(c) the activity of carrying out a contract of insurance as principal as specified by article 10(2) of the Regulated Activities Order;

(d) dealing in investments as principal where carried on by a person designated by the PRA under article 3 of this Order;

(**a**) 2000 c.8, section 22A was inserted by section X of the Financial Services Act 201*.
(**b**) Amended by S.I. 2006/3384.
(**c**) S.I. 2001/544.
(**d**) Amended by S.I. 2002/682.

(e) the activity of managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's as specified by article 57 of the Regulated Activities Order;

(f) the activity of arranging, by the society incorporated by Lloyd's Act 1871(**a**) by the name of Lloyd's, of deals in contracts of insurance written at Lloyd's as specified by article 58 of the Regulated Activities Order;

(g) any other regulated activity carried on by that society in connection with, or for the purposes of, that activity.

Dealing in investments as principal: designation by the PRA

3.—(1) The PRA may designate a person ("P") for the purposes of article 2(d) if—

(a) the condition in paragraph (2) is met in relation to P,

(b) the condition in paragraph (3) is also met in relation to P, and

(c) having regard to the objectives of the PRA and to the matters mentioned in paragraph (4), the PRA considers that it is desirable that the activity of dealing in investments in principal, when carried on by P, should be a PRA-regulated activity.

(2) The condition in this paragraph is that P—

(a) is an authorised person with permission to carry on the activity of dealing in investments as principal;

(b) is a person who has applied for Part 4A permission to carry on that activity; or

(c) is an EEA firm which has notified its home state regulator of its intention to perform in the United Kingdom the activity of dealing on its own account in accordance with Article 31 of the markets in financial instruments directive or to establish a branch in the United Kingdom and to offer the service of dealing on its own account in accordance with Article 32 of that directive.

(3) The condition in this paragraph is that P—

(a) is an investment firm to which Article 9 of Directive 2006/49/EC of the European Parliament and of the Council on the capital adequacy of investment firms and credit institutions(**b**) (investment firms which are required to have initial capital of EUR 730,000) applies;

(b) has applied for Part 4A permission and would meet the requirement specified in paragraph (a) if permission were to be granted; or

(c) is established in a country which is not an EEA State but would meet the requirement specified in either paragraph (i) or (ii) if P were established in an EEA State and had obtained the necessary authorisation from its home state regulator for its business.

(4) The matters specified in this paragraph are—

(a) the assets of P;

(b) where P is a member of a group—

(i) the assets of the members of that group who satisfy the conditions in paragraphs (2) and (3) (regardless of whether they have been designated under this article);

(ii) whether a person who has been designated under this article is a member of P's group;

(iii) whether P's activities have, or might have, a material impact on the ability of the PRA to advance any of its objectives in relation to PRA-authorised persons in the group.

(5) A designation under this article must relate to a particular person and may not relate to persons of a specified description.

(6) Before making a designation under paragraph (1), the PRA must consult the FCA.

(**a**) 1871 c.21.
(**b**) OJ L 177, 30.6.2006, p.201.

Dealing in investments as principal: exercise of power to designate

4.—(1) This article applies to an exercise of the PRA's power to designate under article 3.

(2) The designation takes effect—

(a) immediately, if the notice given under paragraph (4) states that this is the case; or

(b) on such date as is specified in the notice.

(3) A designation may be expressed to take effect immediately only if the PRA considers that it is necessary for the designation to take effect immediately.

(4) If the PRA proposes to designate a person under article 3, or to designate a person under that article with immediate effect, it must give the person concerned ("P") written notice

(5) The notice must—

(a) state the reasons for the designation;

(b) inform P of when the designation takes effect and state the reasons for the PRA's determination as to when the designation takes effect;

(c) inform P that P may make representations to the PRA within such period as may be specified in the notice (whether or not P has referred the matter to the Tribunal); and

(d) inform P of P's right to refer the matter to the Tribunal.

(6) The PRA may extend the period allowed under the notice for making representations.

(7) If, having considered any representations made by P, the PRA decides—

(a) to designate P; or

(b) if P has already been designated, not to rescind the designation,

the PRA must give P written notice.

(8) If, having considered any representations made by P, the PRA decides—

(a) not to designate P; or

(b) to rescind a designation which has taken effect,

the PRA must give P written notice.

(9) A notice under paragraph (7) must inform P of P's right to refer the matter to the Tribunal.

(10) If a notice informs P of P's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(11) A person who is aggrieved by the exercise of the PRA's power to designate under article 3 may refer the matter to the Tribunal.

Dealing in investments as principal: review of designations

5.The PRA must keep under review all designations made under article 3.

Dealing in investments as principal: withdrawal of designation

6.—(1) The PRA may withdraw a designation under article 3 in relation to a person ("P") if the PRA considers it appropriate to do so.

(2) If the PRA proposes to withdraw a designation in relation to P, the PRA must give P a warning notice.

(3) If the PRA decides to withdraw a designation in relation to P, the PRA must give P a decision notice.

(4) If the PRA decides to withdraw a designation in relation to P, P may refer the matter to the Tribunal.

(5) Before withdrawing a designation under paragraph (1), the PRA must consult the FCA.

Dealing in investment as principal: cessation of designation

7. A designation under article 3 in relation to a person ("P") ceases to have effect if P ceases to have permission to carry on the activity of dealing in investments as principal.

Dealing in investments as principal: statement of policy

8.—(1) The PRA must prepare and issue a statement of its policy with respect to—

(a) the exercise of the power to designate under article 3;

(b) the discharge of its duty to review designations under article 5; and

(c) the exercise of the power to withdraw a designation under article 6.

(2) The statement of policy must include—

(a) an indication of the matters that the PRA may take into account in exercising its powers under article 3 or 6 or in discharging its duty under article 5;

(b) the procedures that the PRA propose to follow in relation to the exercise of its powers under article 3 or 6.

(3) The PRA may at any time alter or replace a statement issued under this article.

(4) If a statement issued under this article is altered or replaced, the PRA must issue the altered or replaced statement.

(5) In exercising or deciding whether to exercise its powers under article 3 or 6 in any particular case, and in discharging its duty under article 5, the PRA must have regard to any statement published under this article and for the time being in force.

(6) A statement under this article must be published by the PRA in the way appearing to it to be best calculated to bring it to the attention of the public.

(7) The PRA may charge a reasonable fee for providing a person with a copy of a statement published under this article.

(8) The PRA must, without delay, give the Treasury a copy of any statement which the PRA publishes under this article.

Statement of policy: procedure

9.—(1) Before issuing a statement of policy under article 8, the PRA—

(a) must consult the FCA;

(b) must consult the Bank of England;

(c) may consult the Financial Policy Committee of the Bank of England; and

(d) must publish a draft of the proposed statement in the way appearing to the PRA to be best calculated to bring it to the attention of the public.

(2) The draft published under paragraph (1)(d) must be accompanied by notice that representations about the proposal may be made to the PRA within a specified time.

(3) Before issuing the proposed statement, the PRA must have regard to any representations made to it in accordance with paragraph (2).

(4) If the PRA issues the proposed statement it must publish an account, in general terms, of—

(a) the representations made to it in accordance with paragraph (2); and

(b) its response to them.

(5) If the statement differs from the draft published under paragraph (1)(d) in a way which is, in the opinion of the PRA, significant, the PRA must—

(a) before issuing it, consult the FCA and Bank of England again; and

(b) publish details of the difference (in addition to complying with paragraph (4)).

(6) The PRA may charge a reasonable fee for providing a person with a draft published under paragraph (1)(d).

(7) This article also applies to a proposal to alter or replace a statement.

(8) In its application to the first statement of policy issued by the PRA under article 8—

(a) references in paragraphs (1) to (5) to the PRA are to be read as references to the Bank of England and the Financial Services Authority, acting together**;**

(b) paragraph 1(a) to (c) and paragraph (5)(a) do not apply; and

(c) it is immaterial whether the consultation required under this article took place prior to the date on which this article comes into force.

Name
Name
Two of the Lords Commissioners of Her Majesty's Treasury

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies, for the purposes of the Financial Services and Markets Act 2000, which regulated activities are "PRA-regulated activities" and so are the regulated activities which are subject to prudential regulation by the Prudential Regulation Authority ("PRA"), rather than the Financial Conduct Authority.

Article 2 provides that the activities of accepting deposits and effecting or carrying out contracts of insurance are specified as PRA-regulated activities. Acting as a managing agent at Lloyd's and the arranging by the Society of Lloyd's of contracts of insurance written at Lloyd's are also PRA-regulated activities.

The activity of dealing in investments as principal is a PRA-regulated activity only to the extent designated by the PRA under article 3. Designations relate to particular persons (rather than a class of person). Article 3 sets out the criteria which must be applied by the PRA in designating persons.

Article 4 sets out the procedure the PRA must follow when designating a person under article 3.

Article 5 requires the PRA to keep under review designations under article 3.

Article 6 enables the PRA to withdraw a designation and sets out the procedure for withdrawal.

Article 7 provides that a designation ceases to have effect if the person concerned ceases to have permission to carry on the activity of dealing in investment as principle.

Article 8 requires the PRA to prepare and issue a statement of its policy in relation to designation under article 3, the review of designations under article 5 and the withdrawal of designations under article 6. Article 9 sets out the procedure that the PRA must follow in preparing a statement of policy.

C Threshold Conditions Order

C.1 The following pages contain the draft statutory instruments for Threshold Conditions.

Draft Order laid before Parliament under section 429(1)(a)of the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2013 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013

Laid before Parliament in draft

The Treasury, in exercise of the powers conferred by sections [55C] and 428(3) of the Financial Services and Markets Act 2000(**a**), make the following Order:

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013 and comes into force on [ ].

Parts 1 and 2 of Schedule 6 to the Act

2. For Parts 1 and 2 of Schedule 6 to the Financial Services and Markets Act 2000 substitute the following—

"Part 1A

Introduction

1A.—(1) In this Schedule—

"assets" includes contingent assets;

"consolidated supervision" has the same meaning as in section 3L;

"consumer" has the meaning given by section 425A;

"functions" in relation to either the FCA or the PRA means the functions conferred on that regulator by or under the Act;

(**a**) 2000 c.8, section 55C was inserted by section X of the Financial Services Act 201*. By virtue of paragraph 5 of Schedule 20 to that Act, the Treasury is obliged to make an order under section 55C of the Financial Services and Markets Act 2000 which amends or replaces Parts 1 and 2 of Schedule 6 to that Act and which makes provision as to which of the conditions set out in those Parts of that Schedule are to relate to the discharge by each of the PRA and FCA of its functions.

"liabilities" includes contingent liabilities;

"relevant directives" has the same meaning as in section 3L;

"Society" means the society incorporated by Lloyd's Act 1871(**a**) by the name of Lloyd's;

"subsidiary undertaking" includes all the instances mentioned in Article 1(1) and (2) of the Seventh Company Law Directive in which an entity may be a subsidiary of an undertaking.

(2) For the purposes of this Schedule, the "non-financial resources" of a person include any systems, controls, plans, information or policies that the person maintains and the human resources that the person has available.

(3) References to "integrity of the UK financial system" are to be read with section 1D(2).

(4) The reference to the failure of a person is to be read in accordance with section 2I(3) and (4).

Part 1B

Part 4A permission: Authorised persons who are not PRA-authorised persons

Introduction

2A. If the person concerned ("A") carries on, or is seeking to carry on, regulated activities which do not consist of or include a PRA-regulated activity, the threshold conditions in relation to A that are relevant to the discharge by the FCA of its functions in relation to A are the conditions set out in paragraphs 2B to 2F.

Location of offices

2B.—(1) Unless sub-paragraph (3) or (4)(a) applies, if A is a body corporate constituted under the law of any part of the United Kingdom—

(a) A's head office, and

(b) if A has a registered office, that office,

must be in the United Kingdom.

(2) If A is not a body corporate but A's head office is in the United Kingdom, A must carry on business in the United Kingdom.

(3) If—

(a) A is seeking to carry on, or is carrying on, a regulated activity which is any of the investment services and activities,

(b) A is a body corporate with no registered office, and

(c) A's head office is in the United Kingdom,

A must carry on business in the United Kingdom.

(4) If A is seeking to carry on, or is carrying on, an insurance mediation activity—

(a) where A is a body corporate constituted under the law of any part of the United Kingdom, A's registered office, or if A has no registered office, A's head office, must be in the United Kingdom;

(b) where A is an individual, A is to be treated for the purposes of sub-paragraph (2), as having a head office in the United Kingdom if A's residence is situated there.

(5) "Insurance mediation activity" means any of the following activities—

(a) dealing in rights under a contract of insurance as agent;

(b) arranging deals in rights under a contract of insurance;

(c) assisting in the administration and performance of a contract of insurance;

(**a**) 34 Vict c xxi.

(d) advising on buying or selling rights under a contract of insurance;

(e) agreeing to do any of the activities specified in sub-paragraph (a) to (d).

(6) Sub-paragraph (5) must be read with—

(a) section 22;

(b) any relevant order under that section; and

(c) Schedule 2.

Effective supervision

2C.—(1) A must be capable of being effectively supervised by the FCA having regard to all the circumstances including—

(a) the nature (including the complexity) of the regulated activities that A carries on or seeks to carry on;

(b) the complexity of any products that A provides or will provide in carrying on those activities;

(c) the way in which A's business is organised;

(d) if A is a member of a group, whether membership of the group is likely to prevent the FCA's effective supervision of A;

(e) whether A is subject to consolidated supervision required under any of the relevant directives;

(f) if A has close links with another person ("CL")—

(i) the nature of the relationship between A and CL;

(ii) whether those links are or that relationship is likely to prevent the FCA's effective supervision of A; and

(iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State ("the foreign provisions"), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA's effective supervision of A.

(2) A has close links with CL if—

(a) CL is a parent undertaking of A;

(b) CL is a subsidiary undertaking of A;

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

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

(e) CL owns or controls 20% or more of the voting rights or capital of A; or

(f) A owns or controls 20% or more of the voting rights or capital of CL.

Appropriate resources

2D.—(1) The resources of A must be appropriate in relation to the regulated activities that A seeks to carry on, or carries on.

(2) The matters which are relevant in determining whether A has appropriate resources include—

(a) the nature and scale of the business carried on, or to be carried on, by A;

(b) the risks to the continuity of the services provided by, or to be provided by, A; and

(c) A's membership of a group and any effect which that membership may have.

(3) The matters which are relevant in determining whether A has appropriate financial resources include—

(a) the provision A makes and, if A is a member of a group, which other members of the group make, in respect of liabilities; and

(b) the means by which A manages and, if A is a member of a group, by which other members of the group manage, the incidence of risk in connection with A's business.

(4) The matters which are relevant in determining whether A has appropriate non-financial resources include—

(a) the skills and expertise of those who manage A's affairs;

(b) whether A's non-financial resources are sufficient to enable A to comply with —

(i) requirements imposed or likely to be imposed on A by the FCA in the course of the exercise of its functions;

(ii) any other requirement in relation to which the FCA is required to maintain arrangements under section 1L(2).

Suitability

2E. A must be a fit and proper person having regard to all the circumstances, including—

(a) A's connection with any person;

(b) the nature of any regulated activity that A carries on or seeks to carry on;

(c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;

(d) whether A has complied and is complying with obligations imposed by the FCA in the course of the exercise of its functions, or requests made by the FCA, relating to the provision of information to the FCA and, where A has so complied or is so complying, the manner of that compliance;

(e) whether those who manage A's affairs have adequate skills and experience and act with probity;

(f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner; and

(g) the need to minimise the extent to which it is possible for the business carried on by A, or to be carried on by A, to be used for a purpose connected with financial crime.

Business model

2F.—(1) A's business model (that is, A's strategy for doing business) must be suitable for a person carrying on the regulated activities that A carries on or seeks to carry on.

(2) The matters which are relevant in determining whether A satisfies the condition in sub-paragraph (1) include—

(a) whether the business model is compatible with A's affairs being conducted, and continuing to be conducted, in a sound and prudent manner;

(b) the interests of consumers; and

(c) the integrity of the UK financial system.

Part 1C

Part 4A permission: Conditions for which FCA is responsible in relation to PRA-authorised persons

Introduction

3A. If the person concerned ("B") carries on, or is seeking to carry on, regulated activities which consist of or include a PRA-regulated activity, the threshold conditions which are relevant to the discharge by the FCA of its functions in relation to B are the conditions set out in paragraphs 3B to 3F.

Effective supervision

3B.—(1) B must be capable of being effectively supervised by the FCA having regard to all the circumstances including—

(a) the nature (including the complexity) of the regulated activities that B carries on or seeks to carry on;

(b) the complexity of any products that B provides or will provide in carrying on those activities;

(c) the way in which B's business is organised;

(d) if B is a member of a group, whether membership of the group is likely to prevent the FCA's effective supervision of B;

(e) whether B is subject to consolidated supervision required under any of the relevant directives;

(f) if B has close links with another person ("CL")—

(i) the nature of the relationship between B and CL;

(ii) whether those links are or that relationship is likely to prevent the FCA's effective supervision of B; and

(iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State ("the foreign provisions"), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA's effective supervision of B.

(2) B has close links with CL if—

(a) CL is a parent undertaking of B;

(b) CL is a subsidiary undertaking of B;

(c) CL is a parent undertaking of a subsidiary undertaking of B;

(d) CL is a subsidiary undertaking of a parent undertaking of B;

(e) CL owns or controls 20% or more of the voting rights or capital of B; or

(f) B owns or controls 20% or more of the voting rights or capital of CL.

Appropriate non-financial resources

3C.—(1) The non-financial resources of B must be appropriate in relation to the regulated activities that B seeks to carry on, or carries on, having regard to the operational objectives of the FCA.

(2) The matters which are relevant in determining whether the condition in sub-paragraph (1) is met include—

(a) the nature and scale of the business carried on, or to be carried on, by B;

(b) the risks to the continuity of the services provided by, or to be provided by, B;

(c) whether B is a member of a group and any effect which that membership may have;

(d) the skills and experience of those who manage B's affairs;

(e) whether B's non-financial resources are sufficient to enable B to comply with—

(i) requirements imposed or likely to be imposed on B by the FCA in the course of the exercise of its functions; or

(ii) any other requirement in relation to which the FCA is required to maintain arrangements under section 1L(2).

Suitability

3D.—(1) B must be a fit and proper person, having regard to the operational objectives of the FCA.

(2) The matters which are relevant in determining whether B satisfies the condition in sub-paragraph (1) include—

(a) B's connection with any person;

(b) the nature of any regulated activity that B carries on or seeks to carry on;

(c) the need to ensure that B's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;

(d) whether B has complied and is complying with obligations imposed by the FCA in the course of the exercise its functions, or requests made by the FCA, relating to the provision of information to the FCA and, where B has so complied or is so complying, the manner of that compliance;

(e) whether those who manage B's affairs have adequate skills and experience and act with probity; and

(f) the need to minimise the extent to which it is possible for the business carried on by B, or to be carried on by B, to be used for a purpose connected with financial crime.

Business model

3E. B's business model (that is, B's strategy for doing business) must be suitable for a person carrying on the regulated activities that B carries on or seeks to carry on, having regard to the FCA's operational objectives.

Appointment of claims representative

3F.—(1) If—

(a) the regulated activity that B is carrying on, or is seeking to carry on, is the effecting or carrying out of contracts of insurance, and

(b) contracts of insurance against damage arising out of or in connection with the use of motor vehicles on land (other than carrier's liability) are being, or will be, effected or carried out by B,

B must have a claims representative in each EEA State other than the United Kingdom.

(2) For the purposes of sub-paragraph (1)(b), contracts of reinsurance are to be disregarded.

(3) A claims representative is a person with responsibility for handling and settling claims arising from accidents of the kind mentioned in Article 1(2) of the fourth motor insurance directive.

(4) In this paragraph "fourth motor insurance directive" means Directive 2000/26/EC of the European Parliament and of the Council of 16th May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC.

Part 1D

Part 4A permission: Conditions for which the PRA is responsible in relation to insurers etc

Introduction

4A.—(1) If the person concerned ("C") carries on, or is seeking to carry on, regulated activities which consist of or include a PRA-regulated activity relating to the effecting or carrying out of contracts of insurance, the threshold conditions which are relevant to the discharge by the PRA of its functions in relation to C are the conditions set out in paragraphs 4B to 4F.

(2) If the person concerned ("C") carries on, or is seeking to carry on, regulated activities which consist of or include a PRA-regulated activity relating to managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's, the conditions which are relevant to the discharge by the PRA of its functions in relation to C are the conditions set out in paragraphs 4C to 4F except for sub-paragraphs (5)(d), (5)(e) and (6) of paragraph 4D which are not relevant for that purpose.

(3) If the person concerned ("C") carries on, or is seeking to carry on, regulated activities which consist of or include a PRA-regulated activity relating to the arranging, by the Society, of deals in contracts of insurance written at Lloyd's, the conditions which are relevant to the discharge by the PRA of its functions in relation to C are the conditions set out in paragraphs 4C to 4F, subject to sub-paragraph (4).

(4) Paragraph 4D has effect in relation to persons of the kind specified by sub-paragraph (3) as if—

(a) for paragraph (d) and (e) of sub-paragraph (5) there were substituted—

"(d) the effect that the carrying on of business by C might be expected to have on the stability of the UK financial system or on those who are or may become policyholders of members of C;

(e) the effect that the failure of C might be expected to have on the stability of the UK financial system or on those who are or may become policyholders of members of C;"; and

(b) sub-paragraph (6) did not apply.

Legal status

4B. C must be—

(a) a body corporate (other than a limited liability partnership);

(b) a registered friendly society; or

(c) a member of Lloyd's.

Location of offices

4C.—(1) If C is a body corporate constituted under the law of any part of the United Kingdom—

(a) C's head office and,

(b) if C has a registered office, that office,

must be in the United Kingdom.

(2) If C is not a body corporate but C's head office is in the United Kingdom, C must carry on business in the United Kingdom.

Business to be conducted in a prudent manner

4D.—(1) The business of C must be conducted in a prudent manner.

(2) To satisfy the condition in sub-paragraph (1), C must in particular have appropriate financial and non-financial resources.

(3) To have appropriate financial resources C must satisfy the following conditions—

(a) C's assets must be appropriate given C's liabilities;

(b) the liquidity of C's resources must be appropriate given C's liabilities and when they fall due or may fall due; and

(c) C must be willing and able to value C's assets and liabilities appropriately.

(4) To have appropriate non-financial resources C must satisfy the following conditions—

(a) C must have resources to identify, monitor, measure and take action to remove or reduce risks to the safety and soundness of C;

(b) C must have resources to identify, monitor, measure and take action to remove or reduce risks to the accuracy of C's valuation of C's assets and liabilities;

(c) the business carried on by C must be, to a material extent, managed effectively; and

(d) C's non-financial resources must be sufficient to enable C to comply with—

(i) requirements imposed or likely to be imposed on C by the PRA in the course of the exercise of its functions; and

(ii) any other requirement in relation to which the PRA is required to maintain arrangements under section 2J.

(5) The matters which are relevant in determining whether C satisfies the condition in sub-paragraph (1) or (2) include—

(a) the nature (including the complexity) of the regulated activities that C carries on or seeks to carry on

(b) the nature and scale of the business carried on or to be carried on by C;

(c) the risks to the continuity of the services provided or to be provided by C;

(d) the effect that the carrying on of the business of effecting or carrying out contracts of insurance by C might be expected to have on the stability of the UK financial system or on those who are or may become C's policyholders;

(e) the effect that C's failure or C being closed to new business might be expected to have on the stability of the UK financial system or on those who are or may become C's policyholders; and

(f) whether C is a member of a group and any effect which that membership may have.

(6) C is"closed to new business" for the purposes of this paragraph if C has ceased to effect contracts of insurance or reinsurance or has substantially reduced the number of such contracts C effects.

Suitability

4E.—(1) C must be a fit and proper person, having regard to the PRA's objectives.

(2) The matters which are relevant in determining whether C satisfies the condition in sub-paragraph (1) include—

(a) whether those who manage C's affairs have adequate skills and experience and act with probity;

(b) whether C has complied and is complying with obligations imposed by the PRA in the course of the exercise of its functions, or requests made by the PRA relating to the provision of information to the PRA; and

(c) if C has so complied or is so complying, the manner of that compliance.

Effective supervision

4F.—(1) C must be capable of being effectively supervised by the PRA.

(2) The matters which are relevant in determining whether C satisfies the condition in sub-paragraph (1) include—

(a) the nature (including the complexity) of the regulated activities that C carries on or seeks to carry on;

(b) the complexity of any products that C provides or seeks to provide in carrying on those activities;

(c) the way in which C's business is organised;

(d) if C is a member of a group, whether membership of the group is likely to prevent the PRA's effective supervision of C;

(e) whether C is subject to consolidated supervision required under any of the relevant directives;

(f) if C has close links with another person ("CL")—

(i) the nature of the relationship between C and CL;

(ii) whether those links or that relationship are likely to prevent the PRA's effective supervision of C; and

(iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State ("the foreign provisions"), whether those foreign provisions, or any deficiency in their enforcement, would prevent the PRA's effective supervision of C.

(3) C has close links with CL if—

(a) CL is a parent undertaking of C;

(b) CL is a subsidiary undertaking of C;

(c) CL is a parent undertaking of a subsidiary undertaking of C;

(d) CL is a subsidiary undertaking of a parent undertaking of C;

(e) CL owns or controls 20% or more of the voting rights or capital of C; or

(f) C owns or controls 20% or more of the voting rights or capital of CL.

Part 1E

Part 4A permission: Conditions for which the PRA is responsible in relation to other PRA-authorised persons

Introduction

5A. If the person concerned ("D") carries on, or is seeking to carry on, PRA-regulated activities which do not consist of or include a regulated activity relating to —

(a) the effecting or carrying out of contracts of insurance,

(b) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyds, or

(c) arranging, by the Society, of deals in contracts of insurance written at Lloyd's,

the threshold conditions which are relevant to the discharge by the PRA of its functions in relation to D are the conditions set out in paragraphs 5B to 5F.

Legal status

5B. If D carries on or is seeking to carry on a regulated activity which consists of or includes accepting deposits or issuing electronic money, D must be—

(a) a body corporate; or

(b) a partnership.

Location of offices

5C.—(1) If D is a body corporate constituted under the law of any part of the United Kingdom—

(a) D's head office and,

(b) if D has a registered office, that office,

must be in the United Kingdom.

(2) If D is not a body corporate but D's head office is in the United Kingdom, D must carry on business in the United Kingdom.

Business to be conducted in a prudent manner

5D.—(1) The business of D must be conducted in a prudent manner.

(2) To satisfy the condition in sub-paragraph (1), D must in particular have appropriate financial and non-financial resources.

(3) To have appropriate financial resources D must satisfy the following conditions—

(a) D's assets must be appropriate given D's liabilities ;

(b) the liquidity of D's resources must be appropriate given D's liabilities and when they fall due or may fall due; and

(c) D must be willing and able to value D's assets and liabilities appropriately.

(4) To have appropriate non-financial resources D must satisfy the following conditions—

(a) D must have resources to identify, monitor, measure and take action to remove or reduce risks to the safety and soundness of D;

(b) D must have resources to identify, monitor, measure and take action to remove or reduce risks to the accuracy of D's valuation of D's assets and liabilities;

(c) the business carried on by D must be, to a material extent, managed effectively; and

(d) D's non-financial resources must be sufficient to enable D to comply with-

(i) requirements imposed or likely to be imposed on D by the PRA in the course of the exercise of its functions; and

(ii) any other requirement in relation to which the PRA is required to maintain arrangements under section 2J.

(5) The matters which are relevant in determining whether D satisfies the condition in sub-paragraph (1) or (2) include—

(a) the nature (including the complexity) of the regulated activities that D carries on or seeks to carry on;

(b) the nature and scale of the business carried on or to be carried on by D;

(c) the risks to the continuity of the services provided or to be provided by D;

(d) the effect that the carrying on of the business carried on or to be carried on by D might be expected to have on the stability of the UK financial system;

(e) the effect that D's failure might be expected to have on the stability of the UK financial system; and

(f) whether D is a member of a group and any effect which that membership may have.

Suitability

5E.—(1) D must be a fit and proper person, having regard to the PRA's objectives.

(2) The matters which are relevant in determining whether D satisfies the condition in sub-paragraph (1) include—

(a) whether those who manage D's affairs have adequate skills and experience and act with probity;

(b) whether D has complied and is complying with obligations imposed by the PRA in the course of the exercise of its functions, or requests made by the PRA relating to the provision of information to the PRA; and

(c) if D has so complied or is so complying, the manner of that compliance.

Effective supervision

5F.—(1) D must be capable of being effectively supervised by the PRA.

(2) The matters which are relevant in determining whether D satisfies the condition in sub-paragraph (1) include—

(a) the nature (including the complexity) of the regulated activities that D carries on or seeks to carry on;

(b) the complexity of any products that D provides or seeks to provide in carrying on those activities;

(c) the way in which D's business is organised;

(d) if D is a member of a group, whether membership of the group is likely to prevent the PRA's effective supervision of D;

(e) whether D is subject to consolidated supervision required under any of the relevant directives;

(f) if D has close links with another person ("CL")—

(i) the nature of the relationship between D and CL;

(ii) whether those links or that relationship are likely to prevent the PRA's effective supervision of D; and

(iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State ("the foreign provisions"), whether those foreign provisions, or any deficiency in their enforcement, would prevent the PRA's effective supervision of D.

(3) D has close links with CL if—

(a) CL is a parent undertaking of D;

(b) CL is a subsidiary undertaking of D;

(c) CL is a parent undertaking of a subsidiary undertaking of D;

(d) CL is a subsidiary undertaking of a parent undertaking of D;

(e) CL owns or controls 20% or more of the voting rights or capital of D; or

(f) D owns or controls 20% or more of the voting rights or capital of CL.

Part 1F

Authorisation under Schedule 3

6A.—(1) In relation to an EEA firm qualifying for authorisation under Schedule 3 which carries on PRA-regulated activities which consist of or include a regulated activity relating to the effecting or carrying out of contracts of insurance—

(a) the conditions in paragraphs 3B to 3E apply so far as relevant to the discharge by the FCA of its relevant functions; and

(b) the conditions in paragraphs 4B, 4D, 4E and 4F apply so far as relevant to the discharge by the PRA of its relevant functions.

(2) In relation to an EEA firm qualifying for authorisation under Schedule 3 which carries on PRA-regulated activities which do not consist of or include a regulated activity relating to the effecting or carrying out of contracts of insurance—

(a) the conditions in paragraphs 3B to 3E apply so far as relevant to the discharge by the FCA of its relevant functions; and

(b) the conditions in paragraphs 5B, 5D, 5E and 5F apply so far as relevant to the discharge by the PRA of its relevant functions.

(3) In relation to an EEA firm qualifying for authorisation under Schedule 3 which carries on regulated activities which do not consist of or include a PRA-regulated activity the conditions in paragraphs 2C, 2D, 2E and 2F apply so far as relevant to the discharge by the FCA of its relevant functions.

(4) In this paragraph, "relevant functions" in relation to either the FCA or the PRA means the functions of that regulator in relation to—

(a) an application for permission under Part 4A; or

(b) the exercise by that regulator of its own-initiative requirement power or own-initiative variation power in relation to a Part 4A permission.

Part 1G

Authorisation under Schedule 4

7A.—(1) In relation to a person who qualifies for authorisation under Schedule 4 who carries on PRA-regulated activities which consist of or include a regulated activity relating to the effecting or carrying out of contracts of insurance—

(a) the conditions in paragraphs 3B to 3E apply so far as relevant to the discharge by the FCA of its relevant functions; and

(b) the conditions in paragraphs 4B, 4D, 4E and 4F apply so far as relevant to the discharge by the PRA of its relevant functions.

(2) In relation to a person who qualifies for authorisation under Schedule 4 who carries on PRA-regulated activities which do not consist of or include a regulated activity relating to the effecting or carrying out of contracts of insurance—

(a) the conditions in paragraphs 3B to 3E apply so far as relevant to the discharge by the FCA of its relevant functions; and

(b) the conditions in paragraphs 5B, 5D, 5E and 5F apply so far as relevant to the discharge by the PRA of its relevant functions.

(3) In relation to a person who qualifies for authorisation under Schedule 4 who carries on regulated activities which do not consist of or include a PRA-regulated activity the conditions in paragraphs 2C, 2D, 2E and 2F apply so far as relevant to the discharge by the FCA of its relevant functions.

(4) In this paragraph, "relevant functions" in relation to either the FCA or the PRA means the functions of that regulator in relation to—

(a) an application for an additional permission; or

(b) the exercise by that regulator of its own-initiative requirement power or own-initiative variation power in relation to an additional permission.".

Name
Two of the Lords Commissioners of Her Majesty's Treasury

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This order amends the threshold conditions set out in Schedule 6 to the Financial Services and Markets Act 2000. In giving or varying permission under Part 4A of that Act or imposing or varying a requirement or giving consent under that Part, the Financial Conduct Authority ("FCA") or Prudential Regulation Authority ("PRA") must ensure that the person concerned will satisfy, and continue to satisfy the relevant threshold conditions for which that regulator is responsible.

Part 1B of Schedule 6, as inserted by this Order, sets out the conditions for which the FCA is responsible where the person concerned carries on, or is seeking to carry on, regulated activities which do not consist of or include a PRA-regulated activity.

Part 1C of Schedule 6, as inserted by this Order, sets out the conditions for which the FCA is responsible where the person concerned carries on, or is seeking to carry on, a PRA-regulated activity.

Part 1D of Schedule 6, as inserted by this Order, sets out the conditions for which the PRA is responsible where the person concerned carries on, or is seeking to carry on, a PRA-regulated activity relating to the effecting or carrying out of contracts of insurance or in connection with Lloyd's.

Part 1E of Schedule 6, as inserted by this Order, sets out the conditions for which the PRA is responsible where the person concerned carries on any other PRA-regulated activity.

Part 1F of Schedule 6, as inserted by this Order, sets out the conditions for which the FCA and PRA are responsible where the person concerned qualifies for authorisation under Schedule 3 to the Act (EEA passporting rights).

Part 1G of Schedule 6, as inserted by this Order, sets out the conditions for which the FCA and PRA are responsible where the person concerned qualifies for authorisation under Schedule 4 to the Act (Treaty rights).

D Mutuals Order

D.1 This annex contains the draft Order for Mutual Societies.

Draft Order laid before Parliament under section [97(2)(a)] of the Financial Services Act 2012, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

201* No. xxxx

FINANCIAL SERVICES AND MARKETS

The Financial Services Act 201* (Mutual Societies) Order 201*

Made - - - -	***
Coming into force - -	***

The Treasury make the following Order in exercise of the powers conferred by sections [47, 48, 96 and 99] of the Financial Services Act 201* ("the Act")(**a**):

In accordance with section [97(2)(a)] of the Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. This Order may be cited as the Financial Services Act 201* (Mutual Societies) Order 201* and comes into force on [ ].

Transfer of functions to the Financial Conduct Authority and the Prudential Regulation Authority

2. Schedules 1 to 12 have effect.

Name
Name
Date Two of the Lords Commissioners of Her Majesty's Treasury

(**a**) 201[*] c.[??].

SCHEDULE 1

Application of the Financial Services and Markets Act 2000 to transferred functions

Interpretation

1. In this Schedule—

(a) "functions transferred by this Order" includes, in relation to any time before this Order comes into force, such functions as they are to be transferred;

(b) "mutuals expenditure" means expenditure of the FCA or the PRA incurred—

(i) in carrying out functions transferred by this Order, or for any purpose incidental to the carrying out of those functions, or

(ii) in repaying the principal of, or paying any interest on, any money which it has borrowed and which has been used for the purpose of meeting expenses incurred in relation to its assumption of functions transferred by this Order;

(c) "the mutuals legislation" means the legislation listed in section [47(2)] of the Financial Services Act 201*;

(d) any reference to a section or Schedule is a reference to FSMA 2000(**a**).

General

2.—(1) For the purposes of the provisions specified in sub-paragraph (2), functions transferred by this Order are to be treated as functions conferred on the FCA under a provision of FSMA 2000.

(2) The provisions are—

(a) section 1A(3) and Schedule 1ZA (which make general provision in relation to the FCA and its functions);

(b) section 1S (reviews);

(c) section 3D (duty of FCA and PRA to ensure co-ordinated exercise of functions);

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

(e) sections 3I to 3K (power of PRA to restrain proposed action by FCA);

(f) section 139A (power of the FCA to give guidance); and

(g) section 415(**b**) (jurisdiction in civil proceedings).

3.—(1) For the purposes of the provisions specified in sub-paragraph (2), functions transferred by this Order are to be treated as functions conferred on the PRA under a provision of FSMA 2000.

(2) The provisions are—

(a) section 2A(3) and Schedule 1ZB (which make general provision in relation to the PRA and its functions);

(b) sections 2B to 2I (the PRA's general duties);

(c) section 2M(**a**) (reviews);

(**a**) [Section 98] of the Financial Services Act 201* ("the 201* Act") defines "FSMA 2000" as meaning the Financial Services and Markets Act 2000.

(**b**) Sections 1A, 1S, 3D, 3E, and 3I to 3K of, and Schedule 1ZA to, FSMA 2000 are inserted by section [5] of and Schedule 3 to the 201* Act. Section 139A of FSMA 2000 is inserted by section [22] of the 201* Act. Section 415 of FSMA 2000 is amended by paragraph [23] of Schedule [18] to the 201* Act.

(d) sections 3D (duty of FCA and PRA to ensure co-ordinated exercise of functions);

(e) section 3E (memorandum of understanding); and

(f) sections 3I to 3K (power of PRA to restrain proposed action by FCA).

4. For the purpose of paragraphs 2(2)(e) and 3(2)(f), section 3I is to be treated as if —

(a) the references in subsection (2) of that section to regulatory powers were references to the functions transferred by this Order; and

(b) subsections (2)(b) and (3) of that section were omitted.

5.—(1) The FCA must maintain arrangements designed to enable it to determine whether persons are complying with requirements imposed on them by or under the mutuals legislation.

(2) For the purposes of mutuals expenditure, the arrangements under paragraph (1) are to be treated as a function transferred by this Order.

Rules relating to fees

6.—(1) This paragraph applies if the FCA makes (or proposes to make) rules under paragraph 20 of Schedule 1ZA which require the payment to the FCA of fees which relate in whole or in part to mutuals expenditure.

(2) In the application of paragraph 20 of Schedule 1ZA to the rules, the reference to fees and charges provided for by any other provision of FSMA 2000 includes a reference to fees and charges provided for by any provision of the mutuals legislation

(3) To the extent that the fees relate to mutuals expenditure—

(a) section 138I(2)(d) (requirement for draft rules to be accompanied by an explanation of the FCA's reasons for believing that making the proposed rules is compatible with section 1B(1))(**b**) does not apply in relation to the rules; and

(b) the rules are not to be treated as regulating provisions for the purposes of section 140A(1) (interpretation of Chapter 4 of Part 9A (competition scrutiny)).

7.—(1) This paragraph applies if the PRA makes (or proposes to make) rules under paragraph 28 of Schedule 1ZB which require the payment to the PRA of fees which relate in whole or in part to mutuals expenditure.

(2) In the application of paragraph 28 of Schedule 1ZB to the rules, the reference to fees and charges provided for by any other provision of FSMA 2000 includes a reference to fees and charges provided for by any provision of the mutuals legislation.

(3) To the extent that the fees relate to mutuals expenditure, the rules are not to be treated as regulating provisions for the purposes of section 140A(1)(**c**) (interpretation of Chapter 4 of Part 9A (competition scrutiny)).

Guidance

8. For the purposes of sections 139A(3) (FCA power to give guidance) and 139B(5)(**d**) (notification of FCA guidance to the Treasury), guidance given to building societies, friendly societies and industrial and provident societies generally or to a class of such societies is to be treated as if given to FCA-regulated persons generally or to a class of FCA-regulated persons, whether or not those societies would otherwise be "FCA-regulated persons" within the meaning of those sections.

9.—(1) This paragraph applies if guidance is given by the FCA under section 139A on the operation of a rule of the kind mentioned in paragraph 6 above.

(**a**) Sections 2A to 2I and section 2M of, and Schedule 1ZB to, the 2000 Act are inserted by section [5] of and Schedule 3 to the 201* Act.
(**b**) Section 138I of the 2000 Act is inserted by section [22] of the 201* Act.
(**c**) Section 140A of the 2000 Act is inserted by section [22] of the 201* Act.
(**d**) Sections 139A and 139B of the 2000 Act are inserted by section [22] of the 201* Act.

(2) To the extent that the fees required to be paid by the rule relate to mutuals expenditure, the guidance is not to be treated as regulating provisions for the purposes of section 140A(1) (interpretation of Chapter 4 of Part 9A (competition scrutiny))(**a**).

10.—(1) This paragraph applies if general guidance is given by the FCA under section 139A (FCA power to issue guidance) with respect to any matter relating to functions transferred by this Order, or with respect to any provision of or made under the mutuals legislation, unless paragraph 8 above applies.

(2) The guidance is not to be treated as regulating provisions for the purposes of section 140A(1) (interpretation of Chapter 4 of Part 9A (competition scrutiny)).

SCHEDULE 2

Amendments of the Industrial and Provident Societies Act 1965

1. The Industrial and Provident Societies Act 1965(**b**) is amended as follows.

2. —(1) In the provisions listed in 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—

(a) section 1(1)(a)(**c**) (societies which may be registered);

(b) section 2(**d**) (registration of society);

(c) section 5(**e**)(name of society);

(d) section 7A(7)(**f**) (capacity of society not limited by its rules);

(e) section 10(**g**) (amendment of registered rules);

(f) section 16(**h**) (cancellation of registration of society);

(g) section 17(**i**) (suspension of registration);

(h) section 18(**j**) (appeal from refusal, cancellation or suspension of registration of society or rules);

(i) section 39(1)(**k**) (annual returns);

(j) section 39A(**l**) (year of account (existing registrations));

(k) section 39B(7)(**m**) (year of account (new registrations));

(l) section 43(**n**) (duties of receiver or manager of society's property);

(**a**) Section 140A of the 2000 Act is inserted by section [22] of the 201* Act.
(**b**) 1965 c.12. Section 2 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 renames the Industrial and Provident Societies Act 1967 as the Co-operative and Community Benefit Societies and Credit Unions Act 1965, but section 2 had yet been brought into force when this Order was made.
(**c**) Section 1(1)(a) was amended S.I. 2001/2617. Section 1 is to be substituted by section 1 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010, which had not yet been brought into force when this Order was made.
(**d**) Section 2 was amended by S.I. 2001/2617 and S.I. 2001/3649. Other amendments to the section are not relevant for the purposes of this Order.
(**e**) Section 5 was amended by S.I. 2001/2617. Other amendments to the section are not relevant for the purposes of this Order.
(**f**) Section 7A was inserted by section 3 of the Co-operatives and Community Benefit Societies Act 2003 (c.15).
(**g**) Section 10 was amended by S.I. 2001/2617 and S.I. 2001/3649. Other amendments to the section are not relevant for the purposes of this Order.
(**h**) Section 16 was amended by S.I. 2001/2617. Other amendments to the section are not relevant for the purposes of this Order.
(**i**) Section 17 was amended by S.I. 2001/2617. Other amendments to the section are not relevant for the purposes of this Order.
(**j**) Section 18 was amended by S.I. 2001/2617. Other amendments to the section are not relevant for the purposes of this Order.
(**k**) Section 39(1) was amended by S.I. 2001/2617. Other amendments to the section are not relevant for the purposes of this Order.
(**l**) Section 39A was inserted by S.I. 2011/2687.
(**m**) Section 39B was inserted by S.I. 2011/2687.
(**n**) Section 43 was amended by S.I. 2001/2617.

(m) section 44(4)(**a**) (register of members and officers);

(n) section 47(**b**) (inspection of books);

(o) section 48(**c**) (production of documents and information);

(p) section 49(**d**) (appointment of inspectors and calling of special meetings);

(q) section 50(4)(**e**) (amalgamation of societies);

(r) section 52(**f**) (conversion into, amalgamation with, or transfer of engagements to company);

(s) section 53(**g**) (conversion of company into registered society);

(t) section 59(**h**) (restriction on dissolution or cancellation of registration of society);

(u) section 72(**i**) (form, deposit and evidence of documents);

(v) section 74(2) (**j**) (seal); and

(w) section 76(**k**) (Northern Ireland societies).

3.—(1) Section 16 (cancellation of registration of society) is further amended as follows.

(2) After subsection (2), insert—

"(2A) The FCA must consult the PRA before cancelling the registration of a registered society which is a PRA-authorised person.".

(3) After subsection (4), insert—

"(4A) The FCA must consult the PRA before issuing directions under subsection (4) to a registered society which is a PRA-authorised person.".

4. After section 17(5) (suspension of registration of society), insert—

"(5A) The FCA must consult the PRA before suspending the registration of a registered society which is a PRA-authorised person.".

5. —(1) Section 43 (duties of receiver or manager of society's property) is further amended as follows.

(2) Renumber the existing provision as subsection (1).

(3) After that subsection, insert—

"(2) If the society is a PRA-authorised person—

(a) the receiver or manager must send to the PRA a copy of any notification or return sent under subsection (1) to the FCA; and

(b) the FCA must consult the PRA before allowing a period of greater than one month under paragraph (b) of subsection (1).".

6. After section 50(5) (amalgamation of societies), insert—

"(6) If one or more of the registered societies is a PRA-authorised person, the FCA must send a copy of the special resolution to the PRA.".

7. In section 51(2) (transfer of engagements between societies), for "(5)" substitute "(6)".

(**a**) Section 44(4) was amended by S.I. 2001/2617.
(**b**) Section 47 was amended by S.I. 2001/2617.
(**c**) Section 48 was amended by S.I. 2001/2617. Other amendments to the section are not relevant for the purposes of this Order.
(**d**) Section 49 was amended by S.I. 2001/2617. Other amendments to the section are not relevant for the purposes of this Order.
(**e**) Section 50(4) was amended by S.I. 2001/2617. Other amendments to the section are not relevant for the purposes of this Order.
(**f**) Section 52 was amended by S.I. 2001/2617. Other amendments to the section are not relevant for the purposes of this Order.
(**g**) Section 53 was amended by S.I. 2001/2617. Other amendments to the section are not relevant for the purposes of this Order.
(**h**) Section 59 was amended by S.I. 2001/2617.
(**i**) Section 72 was amended by S.I. 2001/2617 and S.I. 2001/3649. Other amendments to the section are not relevant for the purposes of this Order.
(**j**) Section 74(2) was inserted by S.I. 2001/2617.
(**k**) Section 76 was amended by S.I. 2001/2617. Other amendments to the section are not relevant for the purposes of this Order.

8. In section 52(3B)(**a**) (conversion into, amalgamation with, or transfer of engagements to company)—

(a) for "and (5)" substitute "to (6)"; and

(b) at the end, insert "and as if in subsection (6) of that section for "If one or more of the registered societies is" there were substituted "If the registered society is".

9.—(1) Section 55(**b**) (dissolution of society) is amended as follows.

(2) In subsection (1)(b)(iii), for "Authority" substitute "prudential regulator".

(3) In subsection (1B)—

(a) for paragraph (a), substitute—

"(a) fees paid to the FCA;

(aa) fees paid to the PRA;"; and

(b) for "Authority" substitute "FCA".

(4) In subsection (1C), for "Authority", in each place, substitute "prudential regulator".

(5) In subsection (2)(a), for "Authority" substitute "FCA".

(6) In subsection (3), for "Authority" substitute "FCA and, if the registered society is a PRA-authorised person, the PRA".

10.—(1) Section 56(**c**) (power to petition for winding up) is amended as follows.

(2) Number the existing provision as subsection (1).

(3) In that subsection, for "Authority", in each place, substitute "relevant authority".

(4) After that subsection, insert—

"(2) The FCA must consult the PRA before presenting a petition under subsection (1) in respect of a PRA-authorised person.

(3) The PRA must consult the FCA before presenting a petition under subsection (1).".

(5) In the heading, for "registrar" substitute "relevant authority".

11.—(1) Section 58(**d**) (instrument of dissolution) is amended as follows.

(2) In subsection (2)(d), for "Authority" substitute "FCA or the PRA".

(3) In subsection (4), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA".

(4) In subsection (5), for "Authority" substitute "FCA".

(5) In subsection (5A), for "Authority" substitute "prudential regulator".

(6) In subsection (5B), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA".

(7) In subsection (5C), for "Authority" substitute "FCA".

(8) In subsection (6), for "Authority" substitute "FCA".

(9) In subsection (7), for "Authority" substitute "FCA".

(10) In subsection (8), for "Authority", in each place, substitute "FCA and, if the registered society is a PRA-authorised person, the PRA".

12. In section 60(2A)(**e**) (decision of disputes), for "Authority" substitute "FCA or the PRA".

(**a**) Section 52(3B) was substituted for subsection (3) by section 1(2) of the Industrial and Provident Societies Act 2002.
(**b**) Section 55 was amended by S.I. 2009/1941 and S.I. 2011/2687.
(**c**) Section 56 was amended by S.I. 2001/2617.
(**d**) Section 58 was amended by S.I. 2001/2617 and S.I. 2011/2687. Other amendments to the section are not relevant for the purposes of this Order.
(**e**) Section 60(2A) was inserted by S.I. 2001/2617.

13. In section 61(b)(**a**) (general offences by societies), for "Authority" substitute "FCA or the PRA".

14.—(1) Section 66(**b**) (institution of proceedings) is amended as follows.

(2) In subsection (1), for "Authority", in each place, substitute "FCA".

(3) After subsection (1)(b), insert—

"(ba) in the case of proceedings by virtue of section 61 in respect of neglect or a failure to do any act, or furnish any information, required by the PRA—

(i) the FCA, after notifying the PRA; or

(ii) the PRA, after notifying the FCA;".

(4) In subsection (2), for "Authority"—

(a) in the first place, substitute "FCA, the PRA", and

(b) in the second place, substitute "FCA or the PRA".

15. In section 67(1)(**c**) (recovery of costs), for "Authority" substitute "relevant authority".

16. In section 70A(**d**) (fees for inspection or copying of documents), for "Authority" substitute "FCA or the PRA".

17. After section 72(4)(**e**) (form, deposit and evidence of documents), insert—

"(5) The FCA must consult the PRA before issuing a direction which relates to a return or document a copy of which is required to be sent to the PRA.".

18.—(1) Section 72A(**f**) (form etc. of electronic documents) is amended as follows.

(2) In subsection (1)—

(a) for "The Authority" substitute "Each of the FCA and the PRA"; and

(b) for "to the Authority" substitute "to it".

(3) In subsection (2)—

(a) for "to the Authority" substitute "to it"; and

(b) for "the Authority may" substitute "each of the FCA and the PRA may".

(4) In subsection (3), for "the Authority" substitute "each of the FCA and the PRA".

(5) In subsection (4), for "Authority" substitute "FCA or the PRA".

(6) In the heading, omit "sent to the Authority".

19. In section 74(1)(**g**) (interpretation)—

(a) omit the definition of "the Authority"; and

(b) at the appropriate places, insert—

""the FCA" means the Financial Conduct Authority;";

""the PRA" means the Prudential Regulation Authority;";

""PRA-authorised person" has the meaning in section 2B of the Financial Services and Markets Act 2000;";

""the prudential regulator" means—

(**a**) Section 61(b) was amended by S.I. 2001/2617. Other amendments to the section are not relevant for the purposes of this Order.
(**b**) Section 66 was amended by S.I. 2001/2617.
(**c**) Section 67(1) was amended by S.I. 2001/2617. Other amendments to the section are not relevant for the purposes of this Order.
(**d**) Section 70A was inserted by S.I. 2001/2617.
(**e**) Section 72 was amended by S.I. 2001/2617. Other amendments to the section are not relevant for the purposes of this Order.
(**f**) Section 72A was inserted by S.I. 2011/593.
(**g**) Section 74 was amended by S.I. 2001/2617. Other amendments to the section are not relevant for the purposes of this Order.

(a) in relation to a society which is a PRA-authorised person, the PRA; and

(b) in relation to a society which is not a PRA-authorised person, the FCA;"; and

""the relevant authority" means—

(a) in relation to a society which is a PRA-authorised person, the FCA or the PRA; and

(b) in relation to a society which is not a PRA-authorised person, the FCA;".

SCHEDULE 3

Amendments of the Industrial and Provident Societies Act 1967

20. The Industrial and Provident Societies Act 1967(**a**) is amended as follows.

21.—(1) In the provisions listed in paragraph (2), for "Authority", in each place, substitute "FCA".

(2) The provisions are—

(a) section 1(**b**) (charges on assets of English and Welsh societies);

(b) section 3(**c**) (applications to registered societies in Scotland of provisions relating to floating charges);

(c) section 4(**d**) (filing of information relating to charges); and

(d) section 5(**e**) (supplemental provisions).

22. In section 1(2)(b) (charges on assets of English and Welsh societies), for "paragraph 17 of Schedule 1" substitute "paragraph 20 of Schedule 1ZA".

23. In section 4 (filing of information relating to charges), for "paragraph 17 of Schedule 1", in each place, substitute "paragraph 20 of Schedule 1ZA".

24. In section 7(**f**) (interpretation), for ""the Authority"" substitute ""the FCA"".

SCHEDULE 4

Amendments of the Friendly and Industrial and Provident Societies Act 1968

1. The Friendly and Industrial and Provident Societies Act 1968(**g**) is amended as follows.

2. In section 3A(11)(**h**) (publication of accounts and balance sheets of societies), for "Authority" substitute "relevant authority".

(**a**) 1967 c. 48. Section 2 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 renames the Industrial and Provident Societies Act 1967 as the Co-operative and Community Benefit Societies and Credit Unions Act 1967, but section 2 had yet been brought into force when this Order was made.

(**b**) Section 1 was amended by S.I 1996/1738, S.I. 2001/2617 and S.I 2001/3649.

(**c**) Section 3 was amended by S.I. 2001/2617 and S.I. 2009/1941.

(**d**) Section 4 was amended by the Companies Consolidation (Consequential Provisions) Act 1985, S.I 1996/1738, S.I. 2001/2617 and S.I 2001/3649.

(**e**) Section 5 was amended by the Companies Consolidation (Consequential Provisions) Act 1985, S.I. 2001/2617 and S.I 2001/3649.

(**f**) Section 7 was amended by S.I. 2001/2617. Other amendments to the section are not relevant for the purposes of this instrument.

(**g**) 1968 c. 55. Section 2 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 renames the Friendly and Industrial and Provident Societies Act 1968 as the Co-operative and Community Benefit Societies and Credit Unions Act 1968, but section 2 had not yet been brought into force at the time this instrument was made.

(**h**) Section 3A was inserted by S.I 1999/1738; subsection (11) was amended by S.I. 2001/2617.

3. In section 4(**a**) (obligation to appoint auditors), for "Authority", in each place, substitute "FCA".

4. In section 4A(**b**) (power of societies to disapply section 4), for "Authority", in each place, substitute "FCA".

5.—(1) Section 9C(**c**) (power to require accounts for past years to be audited) is amended as follows.

(2) For "Authority", in each place, substitute "FCA".

(3) In the heading, for "Registrar's power" substitute "Power".

6.—(1) Section 11(**d**) (amendments relating to annual returns of societies) is amended as follows.

(2) In subsection (1), omit "to the Authority".

(3) In subsection (3), for "Authority" substitute "FCA".

7. In section 12(3)(**e**) (consequential amendment of rules by societies), for "Authority" substitute "FCA".

8. In section 13(4), (6) and (7)(**f**) (group accounts of industrial and provident societies), for "Authority" substitute "FCA".

9.—(1) Section 14(**g**) (exemption from requirements in respect of group accounts) is amended as follows.

(2) For "Authority", in each place, substitute "FCA".

(3) After subsection (4), insert—

"(5) If the society is a PRA-authorised person, the FCA must not give an approval under this section unless it has consulted the PRA.".

10. In the heading of section 14A(**h**) (form etc. of electronic documents), omit "sent to the Authority".

11. In section 18(**i**) (offences), for "Authority" substitute "FCA or the PRA".

12. In section 21(1)(**j**) (interpretation)—

(a) in the definition of "annual return", omit "to the Authority"; and

(b) at the appropriate places, insert—

""the FCA" means the Financial Conduct Authority;";

""the PRA" means the Prudential Regulation Authority;";

""PRA-authorised person" has the meaning in section 2B of the Financial Services and Markets Act 2000;"; and

""the relevant authority" means—

(a) in relation to a society which is a PRA-authorised person, the FCA or the PRA; and

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(**a**) Section 4 was amended by Schedule 11 to the Friendly Societies Act 1974, and S.I. 2001/2617.
(**b**) Section 4A was inserted by S.I 1996/1738 and amended by S.I. 2001/2617. Other amendments to section 4A are not relevant for the purposes of this instrument.
(**c**) Section 9C was inserted by S.I 1996/1738 and amended S.I. 2001/2617.
(**d**) Section 11 was amended by Schedule 11 to the Friendly Societies Act, S.I 1996/1738 and S.I. 2001/2617.
(**e**) Section 12 was amended by Schedule 11 to the Friendly Societies Act and by S.I. 2001/2617.
(**f**) Section 13 was amended by S.I. 2001/2617 and S.I. 2011/593.
(**g**) Section 14 was amended by S.I 1996/1738 and S.I. 2001/2617.
(**h**) Section 14A was inserted by S.I. 2011/593.
(**i**) Section 18 was amended by S.I 1996/1738 and S.I. 2001/2617.
(**j**) The definition of "annual return" in section 21(1) was amended by Schedule 11 to the Friendly Societies Act 1974 and by S.I. 2001/3649.

(b) in relation to a society which is not a PRA-authorised person, the FCA;".

SCHEDULE 5

Amendments of the Friendly Societies Act 1974

1. The Friendly Societies Act 1974(**a**) is amended as follows.

2.—(1) In the provisions specified 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—

(a) section 12(1) (**b**) (establishment of new branches);

(b) section 15A(1)(**c**) (acknowledgement of registration and rules of new branch);

(c) section 16(**d**) (appeals from refusal to register);

(d) section 18(**e**) (registration of amendments of rules of society or branch);

(e) section 19(**f**) (acknowledgement of registration of amendment of rules);

(f) section 20(**g**) (appeals from refusal to register amendment of rule);

(g) section 24(**h**) (trustees of registered societies and branches);

(h) section 43(**i**) (annual return)

(i) section 55(1) (**j**) (power of the Public Trustee to hold securities of certain friendly societies and branches);

(j) section 81(1)(**k**) (power to change name);

(k) section 82(5)(**l**) (amalgamation and transfer of engagements);

(l) section 84(3)(**m**) (conversion of registered societies into companies);

(m) section 84A(6)(**n**) (conversion of registered societies into industrial and provident societies);

(n) section 85(3) and (4)(**o**) (conversion of society into branch)

(o) section 86(3) and (4)(**p**) (meaning and registration of special resolutions);

(p) section 91(1A), (2), (3) and (5)(**q**) (cancellation and suspension of registration);

(q) section 94(4) and (7)(**r**) (instrument of dissolution)

(r) section 99(6)(**s**) (punishment of fraud etc. and recovery of property misapplied);

(s) section 101(1) and (1A)(**a**) (prosecution of offences, recovery of costs or expenses);

(**a**) 1974 c. 46.
(**b**) Section 12 was amended by S.I. 2001/2617.
(**c**) Section 15A was inserted by Schedule 16 to the Friendly Societies Act 1992 and amended by S.I. 2001/2617.
(**d**) Section 16 was amended by S.I. 2001/2617, and by Part 1 of Schedule 22 to the Friendly Societies Act 1992.
(**e**) Section 18 was amended by S.I. 2001/2617.
(**f**) Section 19 was amended by S.I. 2001/2617.
(**g**) Section 20 was amended by S.I. 2001/2617.
(**h**) Section 24 was amended by Schedule 16 to the Friendly Societies Act 1992 and S.I. 2001/2617.
(**i**) Section 43 was amended by Schedule 16 to the Friendly Societies Act 1992, S.I 1996/1738 and S.I. 2001/2617.
(**j**) Section 55(1) was amended by S.I. 2001/2617.
(**k**) Section 81(1) was amended by S.I. 2001/2617.
(**l**) Section 82(5) was amended by Schedule 22 to the Friendly Societies Act 1992 and S.I. 2001/3649.
(**m**) Section 84(3) was amended by S.I. 2001/3649 and S.I 2009/1941.
(**n**) Section 84A(6) was inserted by Schedule 16 to the Friendly Societies Act 1992 and amended by S.I. 2001/3649.
(**o**) Section 85 was amended by S.I. 2001/2617
(**p**) Section 86(3) and (4) was amended by S.I. 2001/2617.
(**q**) Section 91 was amended by Schedule 16 to the Friendly Societies Act 1992 and S.I. 2001/2617.
(**r**) Section 91 was amended by S.I. 2001/2617 and S.I 2001/3647.
(**s**) Section 99(6) was amended by S.I. 2001/2617.

(t) section 104A(**b**) (fees for inspection or copying of documents);

(u) section 109(1)(b) and (d)(**c**) (regulations);

(v) section 110(**d**) (evidence and deposit of documents);

(w) section 111(3)(**e**) (seal); and

(x) paragraphs 7(**f**) and 15 of Schedule 2 (matters to be provided for by the rules of societies registered under this Act).

3. In section 30A(11)(**g**) (publication of accounts and balance sheets), for "Authority" substitute "prudential regulator".

4. In section 32(**h**) (audit of exempt societies and branches), for "Authority", in each place, substitute "prudential regulator".

5. In section 32A(4) and (5)(**i**) (power of societies to disapply section 31 (obligation to appoint auditors)) , for "Authority", in each place, substitute "prudential regulator".

6.—(1) Section 39C(**j**) (power to require accounts of past years to be audited) is amended as follows.

(2) In subsection (1), for "Authority"—

(a) in the opening words of that subsection, substitute "prudential regulator"; and

(b) in paragraph (b), in each place, substitute "FCA and, if the registered society or branch is a PRA-authorised person, the PRA".

(3) In subsection (2), for "Authority" substitute "prudential regulator".

(4) In the heading, for "Authority's power" substitute "Power of prudential regulator".

7.—(1) Section 41(**k**) (valuations) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (b), for "Authority" substitute "FCA and, if the registered society or branch is a PRA-authorised person, the PRA"; and

(b) in the closing words of that subsection, for "Authority" substitute "prudential regulator".

(3) In subsection (3)—

(a) in the opening words of that subsection, omit "to the Authority"; and

(b) in paragraph (b), for "Authority" substitute "prudential regulator".

(4) In subsection (5), for "Authority" substitute "prudential regulator".

(5) In subsection (6)—

(a) in the opening words of that subsection—

(i) for "Authority" substitute "prudential regulator"; and

(ii) for "Authority's" substitute "its"; and

(b) in paragraph (b), omit "to the Authority".

8.—(1) Section 42(**l**) (regulations and directions relating to valuations) is amended as follows.

(**a**) Section 101 was amended by S.I. 2001/2617.
(**b**) Section 104A was substituted by S.I. 2001/2617.
(**c**) Section 109(1) was amended by S.I. 2001/2617.
(**d**) Section 110 was amended S.I. 2001/2617.
(**e**) Section 111(3) was substituted by S.I. 2001/2617.
(**f**) Paragraphs 7 and 15 of Schedule 2 were amended by Schedule 16 to the Friendly Societies Act 1992 and S.I. 2001/2617.
(**g**) Section 30A was inserted by S.I. 1996/1738 and amended by S.I. 2001/2617.
(**h**) Section 32 was amended by Schedule 16 to the Friendly Societies Act 1992 and S.I. 2001/2617.
(**i**) Section 32A was inserted by S.I 1996/1738. Subsections (4) and (5) were amended by S.I. 2001/2617.
(**j**) Section 39C was inserted by S.I 1996/1738 and amended by S.I. 2001/2617.
(**k**) Section 41 was amended by Schedule 16 to the Friendly Societies Act 1992 and S.I. 2001/2617.
(**l**) Section 42 was amended by Schedule 16 to the Friendly Societies Act 1992 and S.I. 2001/2617.

(2) In subsection (2), for "the Authority", in each place, substitute "the FCA and, if the registered society or branch is a PRA-authorised person, the PRA".

(3) In subsection (4)—

(a) in the opening words of that subsection, for "Authority", in each place, substitute "prudential regulator"; and

(b) in paragraph (b), for "Authority", in each place, substitute "FCA and, if the registered society or branch is a PRA-authorised person, the PRA".

(4) In subsection (5), for "Authority" substitute "prudential regulator".

9. After section 43(6)(**a**) (annual return) insert—

"(7) If the registered society or branch is a PRA-authorised person, it shall send to the PRA a copy of the annual return sent to the FCA under subsection (1).".

10. In section 65A(7)(**b**) (group insurance business), for "Authority" substitute "FCA or the PRA".

11. In section 76(3C)(**c**) (decision of disputes generally), for "Authority" substitute "FCA or the PRA".

12. After section 85(4) (conversion of society into branch) insert—

"(4A) Before making a finding under subsection (4) in relation to a society which is a PRA-authorised person, the FCA must consult the PRA.".

13.—(1) Section 87(**d**) (power to apply for winding up of registered friendly societies) is amended as follows.

(2) In subsection (1), for "Authority"—

(a) in the first place, substitute "relevant authority"; and

(b) in the second place, substitute "FCA, after consulting the PRA, or the PRA, after consulting the FCA,".

(3) After subsection (2), insert—

"(3) Subsection (1) does not require the FCA to consult the PRA if the society in question is not a PRA-authorised person.

(4) The PRA may only present a petition under subsection (1) in respect of a society which is a PRA-authorised person.".

(4) In the heading, for "Authority" substitute "FCA and of PRA".

14. In section 90(**e**) (appointment of inspectors and calling of special meetings), for "the Authority", in each place, substitute "the relevant authority".

15. In section 91(1)(**f**) (cancellation and suspension of registration), for "Authority"—

(a) in the first place, substitute "FCA, having consulted the PRA if the society is a PRA-authorised person,", and

(b) in each other place, substitute "FCA".

16. In section 93(1)(c)(**g**) (dissolution of societies and branches), for "Authority" substitute "FCA or the PRA".

17.—(1) Section 94(**a**) (instrument of dissolution) is amended as follows.

(**a**) Section 43(6) was amended by S.I. 2001/2617.
(**b**) Section 65A was inserted by Schedule 16 to the Friendly Societies Act 1992 and amended by S.I. 2001/2617.
(**c**) Section 76(3C) was inserted by S.I. 2001/2617.
(**d**) Section 87 was amended by Schedule 16 to the Friendly Societies Act 1992 and S.I. 2001/2617.
(**e**) Section 90 was amended by Schedule 16 to the Friendly Societies Act 1992 and S.I. 2001/2617.
(**f**) Section 91(1) was amended by S.I. 2001/2617.
(**g**) Section 93(1)(c) was amended by S.I. 2001/2617.

(2) In subsection (2)(d), for "Authority" substitute "FCA or the PRA".

(3) After subsection (4), insert—

"(4A) If the society or branch is a PRA-authorised person, a copy of the instrument and declaration sent to the FCA under paragraph (4) shall be sent to the PRA.".

18.—(1) Section 95(**b**) (dissolution by award) is amended as follows.

(2) In subsections (1), (3), (4) and (6), for "Authority", in each place, substitute "prudential regulator".

(3) After subsection (3), insert—

"(3A) The PRA must consult the FCA before making an award and direction under subsection (3).".

19.—(1) Section 95A(**c**) (dissolution of registered friendly societies and branches by award) is amended as follows.

(2) In subsections (1), (2) and (4), for "Authority", in each place, substitute "prudential regulator".

(3) After subsection (1), insert—

"(1A) The PRA must consult the FCA before making an award or a direction under subsection (1).".

20. In section 97(**d**) (notice of proceedings or order to set aside dissolution of society or branch), for "Authority" in each place substitute "FCA and, if the society or branch is a PRA-authorised person, the PRA".

21. In section 98(1)(b) and (7)(**e**) (offences), for "Authority" in each place substitute "relevant authority".

22.—(1) Section 101(**f**) (prosecution of offences, recovery of costs or expenses) is amended as follows.

(2) After subsection (1A), insert—

"(1B) Summary proceedings for an offence under a provision listed in subsection (1C) may also be commenced by the PRA, in the circumstances specified in that subsection in relation to that provision, after notifying the FCA.

(1C) The provisions and the circumstances are—

(a) section 32 (audit of exempt societies and branches), if the failure referred to in subsection (4) of that section is a failure to comply with a direction given by the PRA under subsection (2) of that section;

(b) section 39C (power to require accounts of past years to be audited), if the failure referred to in subsection (2) of that section is a failure to comply with a direction given by the PRA under subsection (1) of that section; and

(c) section 98 (offences), if the neglect or refusal referred to in subsection (1)(b) of that section relates to an act or information required by the PRA.".

(3) In subsection (2), for "Authority" substitute "FCA or the PRA".

23. In section 109(1)(c)(**g**) (regulations), for "Authority" substitute "FCA and of the PRA".

24. In Section 111(1)(**a**) (interpretation)—

(**a**) Section 94 was amended by S.I. 2001/2617 and S.I. 2001/3649.
(**b**) Section 95 was amended by Schedule 16 to the Friendly Societies Act 1992 and S.I. 2001/2617.
(**c**) Section 95A was inserted by Schedule 16 to the Friendly Societies Act 1992 and S.I. 2001/2617.
(**d**) Section 97 was amended by Schedule 16 to the Friendly Societies Act 1992 and S.I. 2001/2617.
(**e**) Section 98 was amended by Schedule 16 to the Friendly Societies Act 1992 and S.I. 2001/2617.
(**f**) Section 101 was amended by S.I. 2001/2617.
(**g**) Section 109(1)(c) was amended by S.I. 2001/2617.

(a) omit the definition of "the Authority"; and

(b) at the appropriate places, insert—

""the FCA" means the Financial Conduct Authority;";

""the PRA" means the Prudential Regulation Authority;";

""PRA-authorised person" has the meaning in section 2B of the Financial Services and Markets Act 2000;";

""the prudential regulator" means—

(a) in relation to a society which is a PRA-authorised person, the PRA; and

(b) in relation to a society which is not a PRA-authorised person, the FCA;"; and

""the relevant authority" means—

(a) in relation to a society which is a PRA-authorised person, the FCA or the PRA; and

(b) in relation to a society which is not a PRA-authorised person, the FCA;".

SCHEDULE 6

Amendments of the Credit Unions Act 1979

1. The Credit Unions Act 1979(**b**) is amended as follows.

2.—(1) Section 1(**c**) (registration under the Industrial and Provident Societies Act 1965) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), for "Authority" substitute "FCA";

(b) in paragraph (d), for "to the Authority for Part IV permission under section 40" substitute "for permission under Part 4A";

(c) at end of paragraph (d), omit "and"; and

(d) for paragraph (e), substitute—

"(e) the FCA is satisfied that, once registered under the 1965 Act, the society will satisfy, and continue to satisfy, the threshold conditions (within the meaning of section 55B(1) of the 2000 Act) for which the FCA is responsible in relation to the regulated activity of accepting deposits;

(f) the PRA is satisfied that, once registered under the 1965 Act, the society will satisfy, and continue to satisfy, the threshold conditions (within the meaning of section 55B(1) of the 2000 Act) for which the PRA is responsible in relation to the regulated activity of accepting deposits; and

(g) if the PRA is responsible for any such threshold conditions, it has confirmed to the FCA that it is so satisfied.".

(3) For subsections (1A) and (1B), substitute—

"(1A) The FCA must not issue an acknowledgement of registration under section 2(3) of the 1965 Act to a credit union unless—

(a) if the FCA is the appropriate regulator (within the meaning of section 55A of the 2000 Act), it proposes to give that society permission under Part 4A of the 2000 Act to accept deposits;

(**a**) Section 111 was amended by Schedule 16 to the Friendly Societies Act 1992 and S.I. 2001/2617.
(**b**) 1979 c.34.
(**c**) Section 41 was amended by S.I. 2001/2617, S.I. 2002/1501, S.I. 2003/256 and S.I. 2011/2687.

(b) if the PRA is the appropriate regulator (within the meaning of section 55A of the 2000 Act), the PRA has indicated to the FCA that it proposes to give that society permission under Part 4A of the 2000 Act to accept deposits.

(1B) If the FCA issues an acknowledgement of registration to a credit union under that section, the appropriate regulator (within the meaning of section 55A of the 2000 Act) must determine any outstanding application of that credit union for permission under Part 4A of the 2000 Act to accept deposits as soon as reasonable possible thereafter.".

3. In section 1A(2)(e) and (5)(**a**) (common bonds appropriate to a credit union), for "Authority" substitute "FCA".

4. In section 1B(4)(**b**) (further requirements where common bond relates to locality), for "Authority" substitute "FCA".

5.—(1) Section 3(**c**) (use of name "credit union" etc.) is amended as follows.

(2) In subsection (3)(b), for "Authority" substitute "FCA".

(3) In subsection (3A)(a), for "Part IV permission under the 2000 Act" substitute "permission under Part 4A of the 2000 Act".

6.—(1) Section 4(**d**) (rules) is amended as follows.

(2) In subsection (1), for "Authority", in each place, substitute "FCA".

(3) After subsection (1), insert—

"(1A) The FCA must consult the PRA before determining any provision under subsection (1)(b) which relates to credit unions which are PRA-authorised persons.".

7.In section 5A(4)(**e**) (corporate members), for "Authority" substitute "prudential regulator".

8.In section 7A(**f**) (power to issue interest-bearing shares), for "Authority", in each place, substitute "prudential regulator".

9. In section 16(3)(**g**) (guarantee funds), for "Authority", in each place, substitute "prudential regulator".

10. In the cross-heading above section 17, for "registrar" substitute "FCA and PRA".

11. In section 17(**h**) (power to require information), for "Authority" substitute "relevant authority".

12.—(1) Section 18(**i**) (power to appoint inspector and call meeting) is amended as follows.

(2) In subsection (1), for "Authority" substitute "relevant authority".

(3) In subsection (2), for "Authority" substitute "body appointing the inspector".

(4) After subsection (3), insert—

"(4) The FCA and the PRA must each notify the other before appointing an inspector or calling a meeting under subsection (1) in relation to a society which is a PRA-authorised person.".

13.—(1) Section 20(**j**) (cancellation or suspension of registration and petition for winding up) is is amended as follows.

(**a**) Section 1A was inserted by S.I. 2011/2687.
(**b**) Section 1B was inserted by S.I. 2011/2687.
(**c**) Section 3 was amended by S.I. 2003.256. Other amendments are not relevant for the purposes of this instrument.
(**d**) Section 4 was amended by S.I. 2001/2617 and S.I. 2002/1555.
(**e**) Section 5A was inserted by S.I. 2011/2687.
(**f**) Section 7A was inserted by S.I. 2011/2687.
(**g**) Section 16(3) was amended by S.I. 2001/2617.
(**h**) Section 17 was amended by S.I. 2001/2617 and S.I. 2002/1501.
(**i**) Section 18 was amended by S.I. 2001/2617 and S.I. 2002/1501.
(**j**) Section 20 was amended by S.I. 2001/2617, S.I. 2002/1501 and S.I. 2011/2687.

(2) For subsections (1A) and (1B), substitute—

"(1A) The FCA may also exercise the power to cancel the registration of a credit union under section 16 of the 1965 Act if the credit union's permission under Part 4A of the 2000 Act has been cancelled or if the credit union has received a warning notice under section 55Z of the 2000 Act.

(1B) The FCA must not cancel the registration of a credit union under section 16 of the 1965 Act by virtue of subsection (1A) unless the appropriate regulator (within the meaning of section 55A of the 2000 Act) has cancelled the credit union's permission under Part 4A of the 2000 Act and there is no possibility (or no further possibility) of that determination of the appropriate regulator being reversed or varied.".

(3) In subsection (1D), for "Authority", in each place, substitute "FCA".

(4) After subsection (1D), insert—

"(1E) If the credit union is a PRA-authorised person, the FCA must consult the PRA before cancelling the registration of the credit union by virtue of subsection (1A).".

(5) In subsection (2), for "Authority", in each place, substitute "relevant authority".

(6) After subsection (2), insert—

"(3) The FCA must consult the PRA before presenting a petition under subsection (2).

(4) The PRA must consult the FCA before presenting a petition under subsection (2).".

14.—(1) Section 21(**a**) (amalgamations and transfers of engagements) is amended as follows.

(2) In subsection (3), for "The Authority" substitute "In relation to a credit union which is not a PRA-authorised person, the FCA".

(3) After subsection (3), insert—

"(3A) In relation to a credit union which is a PRA-authorised person—

(a) the FCA shall not register a special resolution under section 50 or section 51 of the 1965 Act if the PRA informs the FCA that it is of the opinion that that paragraph (a) or (b) of subsection (3) is the case, and

(b) the PRA must consult the FCA before determining its opinion.".

15.—(1) Section 23(**b**) (conversion of company into credit union) is amended as follows.

(2) In subsection (3)—

(a) in the opening words, for "Authority" substitute "FCA"; and

(b) in paragraph (b), omit "made by the Authority under the 2000 Act".

(3) After subsection (3), insert—

"(4) In subsection (3), "applicable rules" are—

(a) if the credit union is a PRA-authorised person, rules made by the PRA or the FCA under the 2000 Act; and

(b) if the credit union is not a PRA-authorised person, rules made by the FCA under the 2000 Act.".

16. In section 31(1)(**c**) (interpretation), omit the definition of "Part IV permission".

17. In section 31A(3)(**d**), for "Authority", in each place, substitute "prudential regulator".

18.—(1) Section 32(**e**) (Northern Ireland) is amended as follows.

(**a**) Section 21 was amended by S.I. 2001/2617, S.I. 2002/1501 and S.I. 2011/2687.
(**b**) Section 23 was amended by S.I. 2001/2617 and S.I. 2002/1501.
(**c**) Section 31 was amended by the Statute Law (Repeals) Act 1993, the Civil Partnership Act 2004, S.I. 2001/2617, S.I. 2002/1501 and S.I. 2011/2687.
(**d**) Section 31A was inserted by S.I. 2011/2687.
(**e**) Section 32 was amended by S.I. 2001/2617 and S.I. 2002/15.

(2) In subsection (1), for "Authority", in each place, substitute "FCA".

(3) In subsection (2), for "the Authority" substitute "each of the FCA and the PRA".

19. In paragraphs 7 and 11 of Schedule 1(**a**) (matters to be provided for in rules of credit union), for "Authority" substitute "relevant authority".

SCHEDULE 7

Amendments of the Credit Unions (Northern Ireland) Order 1985

1. The Credit Unions (Northern Ireland) Order 1985(**b**) is amended as follows.

2.—(1) Article 2 (interpretation) is amended as follows.

(2) In paragraph (2)—

(a) in the definition of "authorised bank", in paragraph (a), for "Part 4" substitute "Part 4A";

(b) omit the definition of "the Authority";

(c) at the appropriate places, insert—

""the FCA" means the Financial Conduct Authority;";

""the PRA" means the Prudential Regulation Authority;";

""PRA-authorised person" has the meaning in section 2B of the 2000 Act;"; and

""the prudential regulator" means—

(a) in relation to a credit union which is a PRA-authorised person, the PRA; and

(b) in relation to a credit union which is not a PRA-authorised person, the FCA;".

3. For Article 2A(4) and (5) (the registrar and assistant registrar), substitute—

"(4) In the exercise of the registrar's functions under this Order, the registrar must cooperate with the FCA and the PRA in the exercise by those authorities of any of their functions in relation to credit unions.

(5) The registrar may share with each of the FCA and the PRA any information obtained by the registrar relating to credit unions which each of those authorities might reasonably require for the purpose of the performance of any of their functions in relation to credit unions.".

4. For Article 3(1)(d) and (e) (registration), substitute—

"(d) the society has made an application for a permission under Part 4A of the 2000 Act to accept deposits;

(e) the FCA has confirmed to the registrar that it is satisfied that, once registered under this Order, the society will satisfy, and continue to satisfy, the threshold conditions (within the meaning of section 55B(1) of the 2000 Act) for which the FCA is responsible in relation to the regulated activity of accepting deposits; and

(f) the PRA has confirmed to the registrar that it is satisfied that, once registered under this Order, the society will satisfy, and continue to satisfy, the threshold conditions (within the meaning of section 55B(1) of the 2000 Act) for which the PRA is responsible in relation to the regulated activity of accepting deposits.".

5. For Article 4(2A) (supplementary provisions as to registration), substitute—

"(2A) The registrar must not issue an acknowledgement of registration under paragraph (2) unless the appropriate regulator (within the meaning of section 55A of the 2000 Act)

(**a**) Paragraphs 7 and 11 of Schedule 1 were amended by S.I. 2002/1501.

(**b**) S.I. 1985/1205 (N.I. 12), as amended by S.I. 2011/2832; other amendments are not relevant for the purposes of this instrument.

has confirmed to the registrar that it proposes to give the society permission under Part 4A of that Act to accept deposits.".

6. In Article 31(3)(c) (charges on assets of credit unions), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA".

7. In Article 36(3) (application of surplus), for "Authority under the 2000 Act" substitute "FCA under the 2000 Act and, if the society is a PRA-authorised person, rules made by the PRA under the 2000 Act".

8. In Article 49(3)(b) and (4) (annual returns), for "Authority" substitute "prudential regulator".

9. In Article 53 (duties of receiver or manager of credit union's property), for "and the Authority", in each place, substitute ", the FCA and, if the society is a PRA-authorised person, the PRA".

10. In Article 60(1) (cancellation of registration), for "the Authority" substitute "the FCA and, if the society is a PRA-authorised person, the PRA".

11. Article 61(1) (suspension of registration), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA".

12. In Article 62(1) (appeals), for sub-paragraphs (b) and (c), substitute—

"(b) the society has not made an application under Part 4A of the 2000 Act to accept deposits; or

(c) the FCA or the PRA has not confirmed to the registrar that it is satisfied that, once registered under this Order, the society will satisfy, and continue to satisfy, the threshold conditions (within the meaning of section 55B(1) of the 2000 Act) for which it is responsible in relation to the regulated activity of accepting deposits, or both of them have not confirmed that they are so satisfied.".

13. Article 63 (petition for winding-up), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA".

14.—(1) Article 65 (amalgamation of credit unions) is amended as follows.

(2) In paragraph (7), for "Authority" substitute "prudential regulator".

(3) After paragraph (7), insert—

"(8) If the prudential regulator is the PRA, it must consult the FCA before giving its confirmation under paragraph (7).".

15.—(1) Article 66 (transfer of engagements between credit unions) is amended as follows.

(2) In paragraph (4), for "Authority" substitute "prudential regulator".

(3) After paragraph (4), insert—

"(5) If the prudential regulator is the PRA, it must consult the FCA before giving its confirmation under paragraph (4).".

16.—(1) Schedule 1 (matters to be provided for in rules of credit union) is amended as follows.

(2) In paragraph 7, for "the Authority" substitute "each of the FCA and the PRA".

(3) In paragraph 11, for "the Authority" substitute "each of the FCA and the PRA".

SCHEDULE 8

Amendments of the Building Societies Act 1986

1. The Building Societies Act 1986(**a**) is amended as follows.

2. In the heading of Part I, for "Authority" substitute "Financial Conduct Authority and Prudential Regulation Authority".

3.—(1) Section 1(**b**) (functions in relation to building societies) is amended as follows.

(2) In subsection (1)—

(a) for "The Financial Services Authority ("the Authority")" substitute "The FCA"; and

(b) omit paragraph (a).

(3) After subsection (1), insert—

"(1A) The PRA has the following functions under this Act in relation to building societies—

(a) to secure that the principal purpose of building societies remains that of making loans which are secured on residential property and are funded substantially by their members;

(b) to administer the system of regulation of building societies provided by or under this Act, but only in so far as sections 5(1), 6, 7, 9A and 9B relate to that system; and

(c) to advise and make recommendations to the Treasury and other government departments on any matter relating to building societies.".

(4) In subsection (2)—

(a) for "Authority also has" substitute "FCA and the PRA each also have"; and

(b) for "it" substitute "them respectively".

(5) In the heading, for "Financial Services Authority" substitute "Financial Conduct Authority and the Prudential Regulation Authority".

4. —(1) Section 5(**c**) (establishment, constitution and powers) is amended as follows.

(2) In subsection (2), for "Authority" substitute "FCA".

(3) In subsection (4A), for "Authority" substitute "prudential regulator".

(4) For subsection (13)(a), substitute—

"(a) section 1(1A)(a) (functions of the Prudential Regulation Authority in relation to building societies);".

5.—(1) Section 6(**d**) (the lending limit) is amended as follows.

(2) In subsection (5)(a), for "Authority" substitute "prudential regulator".

(3) For subsection (12)(a), substitute—

"(a) in respect of its business in effecting or carrying out contracts of long term insurance in accordance with rules made by—

(i) the FCA under section 137A of the Financial Services and Markets Act 2000, or

(ii) the PRA under section 137E of that Act,

(**a**) 1986 c.53.
(**b**) Section 1 was amended by S.I. 2001/2617.
(**c**) Section 5 was amended by the Building Societies Act 1997, the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 and S.I. 2001/2617.
(**d**) Section 6(5), (12) and (15) was amended by S.I. 2001/2617 and S.I. 2001/3649.

which require an authorised person who has permission to effect or carry out contracts of insurance to identify assets which belong to that person and which are maintained in respect of a particular aspect of that person's business; or".

(4) In subsection (15), for "Authority" substitute "prudential regulator".

6. In section 7(5)(a)(**a**) (the funding limit), for "Authority" substitute "prudential regulator".

7. In section 8(3)(**b**) (raising funds and borrowing), for "Authority" substitute "prudential regulator".

8. In section 9A(5)(a)(**c**) (restrictions on certain transactions), for "Part IV" substitute "Part 4A".

9.In the heading to Part 6, for "Authority" substitute "prudential regulator".

10.—(1) Section 36(**d**) (power to direct restructuring of business etc.) is amended as follows.

(2) For "Authority", in each place, substitute "prudential regulator".

(3) In subsection (5)(b), before "of the result" insert "and, if the prudential regulator is the PRA, the FCA".

(4) In subsection (6), before "of the option" insert "and, if the prudential regulator is the PRA, the FCA".

(5) After subsection (16), insert—

"(17) The PRA must consult the FCA before issuing a direction under this section.".

11. —(1) Section 36A(**e**) (power to make prohibition orders) is amended as follows.

(2) For "Authority", in each place, substitute "prudential regulator".

(3) After subsection (5D), insert—

"(5E) The PRA must consult the FCA about the terms of the prohibition order in question before issuing a warning notice or a decision notice under this section.".

(4) In subsection (6), omit ", and shall keep a copy of the order in the public file of the society".

(5) After subsection (9), insert—

"(9A) The PRA must give the FCA a copy of any order issued under this section.

(9B) The FCA must keep a copy of any order issued under this section in the public file of the society.".

12.—(1) Section 37(**f**) (powers to petition for winding up etc.) is amended as follows.

(2) In subsections (1) and (2), for "Authority", in each place, substitute "prudential regulator".

(3) In subsection (4), for "Authority" substitute "FCA".

(4) After subsection (4), substitute—

"(4A) Where the High Court makes an order under subsection (3)—

(a) if the prudential regulator is the PRA, it must give a copy of the order to the FCA; and

(b) the FCA must keep a copy of the order in the public file of the society.".

13.—(1) Section 42B(**g**) (power to direct transfers of engagements or business) is amended as follows.

(2) In subsections (1) to (5), for "Authority", in each place, substitute "prudential regulator".

(**a**) Section 7(5)(a) was amended by S.I. 2001/2617.
(**b**) Section 8(3) was amended by S.I. 2001/2617.
(**c**) Section 9A was inserted by the Building Societies Act 1997, and subsection (5) was amended by S.I. 2001/3649.
(**d**) Section 36 was amended by the Building Societies Act 1997 and S.I. 2001/2617.
(**e**) Section 36A was inserted by the Building Societies Act 1997 and amended S.I. 2001/2617.
(**f**) Section 37 was amended by the Building Societies Act 1997 and S.I. 2001/2617.
(**g**) Section 42B was inserted by the Building Societies Act 1997 and amended S.I. 2001/2617.

(3) In subsection (1), for "Part IV" substitute "Part 4A".

(4) In subsection (2)—

(a) for "section 45" substitute "section 55J (variation or cancellation on initiative of regulator), section 55L (imposition of requirements by FCA) or section 55M (imposition of requirements by PRA)"; and

(b) omit "(power to vary or cancel a Part IV permission on the Authority's own initiative)".

(5) After subsection (5), insert—

"(5A) The PRA must consult the FCA before giving a direction under this section.".

14.—(1) Section 42C(1)(**a**) (variation and revocation of transfer directions) is amended as follows.

(2) For "the Authority" substitute "the prudential regulator".

(3) After subsection (1), insert—

"(1A) If the prudential regulator is the PRA, it must consult the FCA before varying or revoking a direction.".

15. In section 46A(**b**) (notices, hearings and appeals), for "Authority", in each place, substitute "prudential regulator".

16.—(1) Section 52(**c**) (powers to obtain information and documents etc.) is amended as follows.

(2) In subsection (1), for "Authority of any of its functions" substitute "FCA or the PRA of any of their respective functions".

(3) In subsection (5), for "the Authority"—

(a) in the opening words of that subsection, substitute "each of the FCA and the PRA"; and

(b) in paragraphs (a) to (d) of that subsection, in each place, substitute "the body issuing the notice".

(4) In subsection (5A), for "Authority"—

(a) in the opening words of that subsection, substitute "FCA or the PRA"; and

(b) in paragraphs (a) to (c) of that subsection, in each place, substitute "body which authorised the person".

(5) In subsection (6)—

(a) for "Authority has power" substitute "FCA or the PRA has power"; and

(b) for "Authority or authorised officer"—

(i) in the first place, substitute "FCA, the PRA and the authorised officer"; and

(ii) in the second place, substitute "FCA, the PRA or the authorised officer".

(6) In subsection (9), for "Authority or authorised officer", in each place, substitute "FCA, the PRA or the authorised officer".

(7) In subsection (13), for "Authority" substitute "FCA or the PRA".

17. In section 52B(1)(**d**) (entry of premises under warrant), for "Authority" substitute "relevant authority".

18.—(1) Section 53A(**e**) (disclosure of information) is amended as follows.

(2) For subsection (1)(b)(i), substitute—

(**a**) Section 42C was inserted by the Building Societies Act 1997 and amended S.I. 2001/2617.
(**b**) Section 46A was amended by S.I. 2001/2617 and S.I. 2010/22.
(**c**) Section 52 was amended by the Building Societies Act 1997, the Legal Services Act 2007 and S.I. 2001/2617.
(**d**) Section 52B was amended by S.I. 2001/2617.
(**e**) Section 53A was amended by S.I. 2001/2617.

"(i) the FCA;

(ia) the PRA;".

(3) In subsection (1)(b)(ii) and (iii), for "Authority", in each place, substitute "FCA or the PRA".

(4) In subsection (2)(b), for "Authority" substitute "FCA or the PRA".

19.—(1) Section 54(**a**) (information from other sources) is amended as follows.

(2) For "Authority", in each place, substitute "FCA or the PRA".

(3) In the heading, for "Authority" substitute "FCA or PRA".

20.—(1) Section 55(**b**) (investigations) is amended as follows.

(2) In subsection (1), for "the Authority"—

(a) in the first place, substitute "the FCA or the PRA"; and

(b) in the second place, substitute "it".

(3) In subsection (6), for "Authority" substitute "FCA or the PRA".

(4) In the heading, for "Authority" substitute "FCA or PRA".

21.—(1) Section 56(**c**) (inspections and special meetings: general) is amended as follows.

(2) In subsection (1), for "the Authority" substitute "each of the FCA and the PRA".

(3) After subsection (1), insert—

"(1A) The FCA must consult the PRA before exercising the power in subsection (1).

(1B) The PRA must consult the FCA before exercising the power in subsection (1)."

(4) In subsections (2) and (3) for "Authority", in each place, substitute "FCA or the PRA".

(5) In subsection (4), for "Authority" substitute "body exercising its powers under subsection (1)".

(6) In subsection (6), for "Authority", in each place, substitute "body to which the application was made".

(7) In subsection (7)—

(a) for "Before exercising" substitute "Before the FCA or the PRA exercises"; and

(b) for "the Authority"—

(i) in the first place, substitute "it"; and

(ii) in the second place, substitute "the body exercising its powers under subsection (1)".

(8) In subsection (8), for "Authority" substitute "FCA or the PRA".

(9) In subsection (10), for "Authority", in each place, substitute "body exercising its powers under subsection (1)".

22.—(1) Section 57(**d**) (inspections: supplementary provisions) is amended as follows.

(2) In subsection (1), omit "by the Authority".

(3) In subsection (7), (8), (8A), (9) and (10), for "Authority", in each place, substitute "body which appointed the inspectors".

23. In section 59(6)(**e**) (chief executive and secretary), for "Authority", in each place, substitute "FCA".

(**a**) Section 54 was amended by the Building Societies Act 1997 and S.I. 2001/2617.
(**b**) Section 55 was amended by the Building Societies Act 1997 and S.I. 2001/2617.
(**c**) Section 56 was amended by the Building Societies Act 1997 and S.I. 2001/2617.
(**d**) Section 57 was amended by the Building Societies Act 1997, the Youth Justice and Criminal Evidence Act 1999 and S.I. 2001/2617.
(**e**) Section 59(6) was amended by S.I. 2001/2617.

24.—(1) Section 61(**a**) (directors: supplementary provisions as to elections etc.) is amended as follows.

(2) In subsection (9), for "Authority" substitute "FCA".

(3) In subsection (13), for "Authority", in each place, substitute "FCA".

25. For section 68(5) (records of loans etc.), substitute—

"(5) The society must send two copies of the statement required to be made available under subsection (3) to the FCA and, if the society is a PRA-authorised person, one copy to the PRA, on the date on which the statement is required to be first made available to members.

(5A) The FCA must keep a copy of the statement in the public file of the society.".

26.—(1) Section 69(**b**) (disclosure and record of income of related businesses) is amended as follows.

(2) In subsection (8), for "Authority" substitute "FCA".

(3) For subsection (14), substitute—

"(14) The society must send two copies of the statement to the FCA and, if the society is a PRA-authorised person, one copy to the PRA, on the date on which the statement is required to be first made available to members.

(14A) The FCA must keep a copy of the statement in the public file of the society.".

27.—(1) Section 76(**c**) (summary financial statement) is amended as follows.

(2) In subsection (8), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, one copy to the PRA".

(3) In subsection (12), for "to the Authority" substitute "under section 81".

28.—(1) Section 78C(**d**) (names to be stated in copies of the auditor's report") is amended as follows.

(2) In subsection (1), omit "to the Authority".

(3) In subsection (3), for "Authority" substitute "FCA".

29.—(1) Section 78D(**e**) (circumstances in which names may be omitted) is amended as follows.

(2) In subsection (1), omit "to the Authority".

(3) In subsection (2)(b), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA".

30.—(1) Section 81(**f**) (laying and furnishing of accounts) is amended as follows.

(2) In subsection (2), for "Authority" substitute "FCA, and, if the society is a PRA-authorised person, one copy to the PRA,".

(3) In subsection (3), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA".

(4) In subsection (7), for "Authority" substitute "FCA".

(5) In the heading, for "and the Authority" substitute ", the FCA and the PRA".

31.—(1) Section 87(**g**) (dissolution by consent) is amended as follows.

(**a**) Section 61(9) and (13) were amended by S.I. 2001/2617.
(**b**) Section 69(8) was amended by S.I. 2001/2617.
(**c**) Section 76(8) and (12) were amended by S.I. 2001/2617.
(**d**) Section 78C was inserted by S.I. 2008/1519.
(**e**) Section 78D was inserted by S.I. 2008/1519.
(**f**) Section 81(2), (3) and (7) were amended by S.I. 2001/2617.
(**g**) Section 87 was amended by S.I. 2001/2617.

(2) In subsection (5), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA".

(3) In subsection (7), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA".

(4) In subsection (8), for "Authority" substitute "prudential regulator".

(5) In subsection (10), for "Authority" substitute "FCA".

32. In section 88(2)(**a**) (voluntary winding up)—

(a) for "to the Authority" substitute "to the FCA and, if the society is a PRA-authorised person, the PRA"; and

(b) for "Authority shall keep the copy" substitute "FCA must keep a copy".

33.—(1) Section 89(**b**) (winding up by court: grounds and petitioners) is amended as follows.

(2) In subsection (1), for "Part IV", in each place, substitute "Part 4A".

(3) For subsection (2)(a), substitute—

"(a) the FCA, after consulting the PRA,

(aa) if the society is a PRA-authorised person, the PRA, after consulting the FCA,".

34. In section 89A(2)(a)(**c**) (building society insolvency as an alternative order), for "Authority" substitute "prudential regulator".

35.—(1) Section 90D(**d**) (notice of preliminary steps) is amended as follows.

(2) In subsection (5), for "Authority has" substitute "FCA and, if the society is a PRA-authorised person, the PRA have".

(3) In subsection (7)(b)(i), for "Authority" substitute "PRA".

(4) In subsection (10), for "Authority", in each place, substitute "PRA".

(5) In the heading, for "Authority" substitute "FCA and the PRA".

36. In section 91(4)(**e**) (power of court to declare dissolution of building society void)—

(a) for "furnish the Authority" substitute "furnish the FCA and, if the society is a PRA-authorised person, the PRA"; and

(b) for "Authority shall keep the copy" substitute "FCA must keep a copy".

37.—(1) Section 93(**f**) (amalgamations) is amended as follows.

(2) In subsection (2)(d), for "the Authority"—

(a) in the first place, substitute "the prudential regulator"; and

(b) in the second place, substitute "the FCA and, if the society is a PRA-authorised person, the PRA".

(3) In subsection (3)—

(a) for "Authority" substitute "prudential regulator";

(b) before "is satisfied" insert "the FCA"; and

(c) for "it shall" substitute "the FCA must".

(4) In subsection (4), for "Authority" substitute "prudential regulator".

(5) In subsection (6)—

(**a**) Section 88(2) was amended by S.I. 2001/2617.
(**b**) Section 89(1) was amended by S.I. 2001/2617.
(**c**) Section 89A was inserted by S.I. 2009/805.
(**d**) Section 90D was inserted by S.I. 2009/805..
(**e**) Section 91(4) was amended by S.I. 2001/2617.
(**f**) Section 93 was amended by the Building Societies Act 1997 and S.I. 2001/2617.

(a) for “Authority”, in each place, substitute “prudential regulator”; and

(b) for “Part IV” substitute “Part 4A”.

(6) In subsection (6A), for “subsection (9) of section 52 of that Act by virtue of paragraph (a) of that subsection” substitute “subsection (5) of section 55V of that Act by virtue of paragraph (a) or (b) of that subsection”.

(7) In subsection (6B)—

(a) for “section 55” substitute “section 55Z1”; and

(b) for “Part IV” substitute “Part 4A”.

(8) In subsection (6C)—

(a) omit “the Authority from taking”; and

(b) after “decision notice” insert “from being taken”.

38.—(1) Section 94(**a**) (transfer of engagements) is amended as follows.

(2) In subsection (5)(b), for “Authority” substitute “prudential regulator”.

(3) In subsection (7)(a), for “Authority” substitute “prudential regulator”.

(4) In subsection (8)—

(a) for “Authority” substitute “prudential regulator”; and

(b) for “it shall” substitute “the FCA must”.

(5) In subsection (9), for “Authority” substitute “FCA”.

39.—(1) Section 95(**b**) (mergers: provisions supplementing sections 93 and 94) is amended as follows.

(2) For “Authority”, in each place, substitute “prudential regulator”.

(3) After subsection (6), insert—

“(6A) The PRA must consult the FCA before confirming an amalgamation or transfer, or giving a direction, under this section.

(6B) The PRA must—

(a) notify the FCA it if confirms an amalgamation or transfer; and

(b) send the FCA a copy of any direction it gives.”.

40. In section 96(6)(**c**) (mergers: compensation for loss of office and bonuses to members), for “Authority”, in each place, substitute “prudential regulator”.

41.—(1) Section 97(**d**) (transfer of business to commercial company) is amended as follows.

(2) In subsection (4)(d), for “Authority” substitute “prudential regulator”.

(3) In subsection (6), for “Authority” substitute “prudential regulator”.

(4) In subsection (8)—

(a) for “send to the Authority” substitute “send to each of the FCA and, if the society is a PRA-authorised person, the PRA”; and

(b) for “Authority shall” substitute “FCA must”.

(5) In subsection (12), for “Authority” substitute “prudential regulator”.

42.—(1) Section 98(**e**) (transfers of business: supplementary provisions) is amended as follows.

(**a**) Section 94(5), (7) and (8) were amended by S.I. 2001/2617.
(**b**) Section 95 was amended by the Building Societies Act 1997 and S.I. 2001/2617.
(**c**) Section 96(6) was amended by the Building Societies Act 1997 and S.I. 2001/2617.
(**d**) Section 97(4), (6), (8) and (12) were amended by the Building Societies Act 1997, S.I. 2001/2617 and S.I. 2009/1941.
(**e**) Section 98 was amended by the Building Societies Act 1997 and S.I. 2001/2617.

(2) In subsection (1A), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA".

(3) In subsection (2), for "Authority" substitute "prudential regulator".

(4) In subsection (3)—

(a) for "Authority" substitute "prudential regulator"; and

(b) for "Part IV" substitute "Part 4A".

(5) In subsections (4) and (5), for "Authority", in each place, substitute "prudential regulator".

(6) After subsection (8), insert—

"(9) The PRA must consult the FCA before confirming a transfer or giving a direction under this section.

(10) The PRA must—

(a) notify the FCA it if confirms a transfer; and

(b) send the FCA a copy of any direction it gives.".

43. In section 100(7)(**a**) (regulated terms etc.: distributions and share rights), for "Authority", in each place, substitute "prudential regulator".

44.—(1) Section 101(**b**) (protective provisions for specially formed successors) is amended as follows.

(2) In subsection (4), for "Authority", in each place, substitute "prudential regulator".

(3) After subsection (4), insert—

"(4A) The PRA must consult the FCA before confirming a transfer or giving a direction under this section.".

45.—(1) Section 103(**c**) (cancellation of registration) is amended as follows.

(2) For "Authority", in each place, substitute "FCA".

(3) In subsection (1), after "Where" insert ", having consulted the PRA,".

(4) In subsection (2)—

(a) after "Where" insert ", having consulted the PRA,"; and

(b) for "Part IV" substitute "Part 4A".

(5) In subsection (3), after "if it thinks fit" insert "after consulting the PRA".

46. In section 106(**d**) (public file of the society), for "Authority", in each place, substitute "FCA".

47. In section 107(**e**) (restriction of use of certain names and descriptions), for "Authority", in each place, substitute "FCA".

48.—(1) Section 111(**f**) (time limit for commencing proceedings) is amended as follows.

(2) In subsection (1)—

(a) after "under this Act", insert ", other than an offence in relation to which provision is made in subsection (1A),";

(b) for "by the Authority" substitute "by the FCA"; and

(c) for "in the opinion of the Authority" substitute "in its opinion".

(3) After subsection (1), insert—

(**a**) Section 100(7) was amended by S.I. 2001/2617.
(**b**) Section 101(4) was amended by the Building Societies Act 1997, the Bank of England Act 1998 and S.I. 2001/3649.
(**c**) Section 103 was amended by S.I. 2001/2617 and S.I. 2009/805.
(**d**) Section 106 was amended by S.I. 2001/2617.
(**e**) Section 107 was amended by S.I. 2001/2617 and S.I. 2009/1941.
(**f**) Section 111(1), (2) and (3) were amended by S.I. 2001/2617.

"(1A) Notwithstanding any limitation on the time for taking proceedings contained in any Act, summary proceedings for the offences under the provisions listed in subsection (1B), in the circumstances specified in that subsection in relation to those provisions, may also be commenced by the PRA, after notifying the FCA, or by the FCA, after notifying the PRA, at any time within the period mentioned in subsection (1C).

(1B) The provisions and the circumstances are—

(a) section 52 (powers to obtain information and documents etc.), if—

(i) the failure referred to in subsection (10) of that section is a failure to furnish any information or accountant's report, to produce any documents or material, or to provide any explanation or make any statement to the PRA, or

(ii) the information, explanation or statement referred to in subsection (11) or (12) of that section is furnished, provided or made to the PRA;

(b) section 55 (investigations), if the person appointed under subsection (1) of that section was appointed by the PRA;

(c) section 81 (laying and furnishing accounts), if the default referred to in subsection (4) of that section relates to a failure to send a copy of the accounts to the PRA in accordance with subsection (2) of that section;

(d) section 87 (dissolution by consent), if the failure referred to in subsection (5) or (7) of that section relates to a failure to give notice to the PRA;

(e) section 88 (voluntary winding up), if the failure referred to in subsection (4) of that section relates to a failure to send a copy of the resolution to the PRA in accordance with subsection (2) of that section;

(f) section 91 (power of court to declare dissolution of building society void), if the failure referred to in subsection (5) of that section relates to a failure to send a copy of an order to the PRA in accordance with subsection (4) of that section;

(g) section 95 (mergers: provisions supplementing sections 93 and 94), if the application referred to subsection (3) of that section was made, or should have been made, to the PRA;

(h) section 98 (transfers of business: supplementary provisions), if the application referred to subsection (2) of that section was made, or should have been made, to the PRA;

(i) Schedule 8A, paragraph 3(5) (directions under section 42B(3)), if the PRA has given a direction under section 42B(3);

(j) Schedule 8A, paragraph 9(5) (directions under section 42B(4)), if the PRA has given a direction under section 42B(4);

(k) Schedule 11, paragraph 3 (auditors: appointment), if the failure referred to in sub-paragraph (2) of that paragraph relates to a failure to give notice to the PRA in accordance with sub-paragraph (1) of that paragraph;

(l) Schedule 11, paragraph 6 (auditors: removal), if the failure referred to in sub-paragraph (3) of that paragraph relates to a failure to give notice to the PRA in accordance with sub-paragraph (2) of that paragraph;

(m) Schedule 11, paragraph 7 (auditors: resignation), if the default referred to in sub-paragraph (8) of that paragraph relates to a failure to send any notice or statement to the PRA in accordance with sub-paragraph (3) or (7) of that paragraph;

(n) Schedule 15, paragraph 21 (application of companies winding up legislation to building societies: winding up by the court), if the failure referred to in sub-paragraph (4) of that paragraph relates to a failure to give notice to the PRA in accordance with sub-paragraph (3) of that paragraph;

(o) Schedule 15, paragraph 48 (modified application of Insolvency (Northern Ireland) Order 1989: winding up by the High Court), if the failure referred to in sub-

paragraph (4) of that paragraph relates to a failure to give notice to the PRA in accordance with sub-paragraph (3) of that paragraph; and

(p) Schedule 16, paragraph 6 (mergers: penalty), if the default referred to in sub-paragraph (4) of that paragraph relates to a failure to send a copy of a statement or notification to the PRA in accordance with paragraph 5(1) of that Schedule.

(1C) The period is one year beginning with the earlier of—

(a) the date on which evidence sufficient in the opinion of the PRA to justify a prosecution for the offence comes to the knowledge of the PRA, and

(b) the date on which evidence sufficient in the opinion of the FCA to justify a prosecution for the offence comes to the knowledge of the FCA.".

(4) In subsection (2), after "(1)" insert "or (1A)",

(5) In subsection (3)—

(a) after "subsection (1)" insert "and subsection (1C)", and

(b) for "Authority" substitute "FCA or the PRA", and

(c) for "that subsection" substitute "the relevant subsection".

(6) In subsection (4), for "by the Authority" substitute "by the relevant authority".

49. In section 113(1)(**a**) (evidence), for "Authority" substitute "FCA".

50. In section 115(1)(**b**) (service of notices), for "Authority" substitute "FCA and the PRA".

51.—(1) Section 116(**c**) (form of documents) is amended as follows.

(2) In subsection (1), for "Authority" substitute "FCA and the PRA".

(3) After subsection (1), insert—

"(1A) The PRA and the FCA must consult each other before issuing a direction under this section if the document in question is required to be sent to both of them.".

52.—(1) Section 119(**d**) (interpretation) is amended as follows.

(2) In subsection (1)—

(a) omit the definition of "the Authority";

(b) in the definition of "officially notified", for "Authority" substitute "FCA";

(c) in the definition of "the public file", for "Authority" substitute "FCA"; and

(d) at the appropriate places, insert—

""the FCA" means the Financial Conduct Authority;";

""the PRA" means the Prudential Regulation Authority;";

""PRA-authorised person" has the meaning in section 2B of the Financial Services and Markets Act 2000;";

""the prudential regulator" means—

(a) in relation to a building society which is a PRA-authorised person, the PRA; and

(b) in relation to a building society which is not a PRA-authorised person, the FCA;"; and

""the relevant authority" means—

(a) in relation to a building society which is a PRA-authorised person, the FCA or the PRA; and

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(**a**) Section 113(1) was amended by S.I. 2001/2617.
(**b**) Section 115(1) was amended by S.I. 2001/2617.
(**c**) Section 116 was amended by S.I. 2001/2617.
(**d**) Section 119(1) was amended by the Building Societies Act 1997, S.I. 1996/1669, S.I. 2001/2617, S.I. 2001/3649, S.I. 2003/404, S.I. 2004/3380, S.I. 2008/948, S.I. 2009/805, S.I. 2009/1941. Subsection (1A) was inserted by S.I. 2001/2617.

(b) in relation to a building society which is not a PRA-authorised person, the FCA.".

(3) In subsection (1A)—

(a) for "Authority" substitute "FCA"; and

(b) for "Authority's" substitute "FCA's".

53.—(1) Schedule 2(**a**) (establishment, incorporation and constitution of building societies) is amended as follows.

(2) In paragraph 1, for "Authority", in each place, substitute "FCA".

(3) In paragraph 4(2), (4) and (7), for "Authority", in each place, substitute "FCA".

(4) In paragraph 9, for "Authority", in each place, substitute "FCA".

(5) In paragraph 10(5), for "Authority" substitute "FCA".

(6) In paragraph 10A(2), (3) and (4), for "Authority" substitute "FCA".

(7) In paragraph 11, for "Authority", in each place, substitute "FCA".

(8) In paragraph 15—

(a) for "Authority", in each place, substitute "FCA";

(b) in sub-paragraph (1), for "Part IV" substitute "Part 4A"; and

(c) after sub-paragraph (3), insert—

"(3A) The FCA must consult the PRA before giving a direction under sub-paragraph (2).".

(9) In paragraph 20, for "Authority", in each place, substitute "FCA".

(10) In paragraph 20A(12), for "Authority" substitute "prudential regulator".

(11) In paragraph 30(4), for "Authority" substitute "prudential regulator".

(12) After paragraph 30(4), insert—

"(4A) If the prudential regulator is the PRA, it must consult the FCA before giving a direction under sub-paragraph (5).".

(13) In paragraph 31(7), for "Authority" substitute "PRA".

54.—(1) Schedule 8A(**b**) (transfer directions: modifications of Part 10) is amended as follows.

(2) For "Authority", in each place, substitute "prudential regulator".

(3) After paragraph 3(2), insert—

"(2ZA) The PRA must consult the FCA before requiring any particulars under paragraph (2)(b).".

(4) After paragraph 9(2), insert—

"(2ZA) The PRA must consult the FCA before requiring any particulars under paragraph (2)(b).".

55.—(1) Schedule 11(**c**) (auditors) is amended as follows.

(2) In paragraph 3(1)—

(a) for "Authority", in each place, substitute "prudential regulator"; and

(b) for "give it notice" substitute "give notice to the FCA and, if the society is a PRA-authorised person, to the PRA".

(3) In paragraph 4(6)(b), (8) and (9), for "Authority", in each place, substitute "prudential regulator".

(**a**) Schedule 2 was amended by the Building Societies Act 1997, S.I. 2001/2617 and S.I. 2003/404.
(**b**) Section 8A was inserted by the Building Societies Act 1997.
(**c**) Section 11 was amended by S.I. 2001/2617, S.I. 2003/404 and S.I. 2008/1519.

(4) In paragraph 6(2), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA".

(5) For paragraph 6A(2)(b), substitute—

"(b) the FCA; and

(c) if the society is a PRA-authorised person, the PRA.".

(6) In paragraph 7, for "Authority"—

(a) in sub-paragraph (3)(a), substitute "FCA and, if the society is a PRA-authorised person, the PRA"; and

(b) in sub-paragraphs (4), (6) and (7), in each place, substitute "prudential regulator".

(7) In paragraph 8(6)(b), for "Authority", in each place, substitute "PRA".

56.—(1) Schedule 14(**a**) (settlement of disputes) is amended as follows.

(2) In the heading to paragraph 3, for "Authority" substitute "relevant authority".

(3) In paragraph 3—

(a) in sub-paragraph (1), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA"; and

(b) in sub-paragraph (3), for "Authority" substitute "relevant authority".

(4) In paragraph 6—

(a) for "Authority", in each place, substitute "FCA"; and

(b) after sub-paragraph (3), insert—

"(3) The FCA must consult the PRA before making any such award.".

57.—(1) Schedule 15(**b**) (application of companies winding up legislation to building societies) is amended as follows.

(2) In paragraph 3(1)(b), for "Financial Services Authority" substitute "Financial Conduct Authority".

(3) In paragraph 4, for "Authority", in each place, substitute "FCA".

(4) In paragraph 21(3)—

(a) for "to the Authority" substitute "to the FCA and, if the society is a PRA-authorised person, the PRA"; and

(b) for "Authority shall" substitute "FCA must".

(5) In paragraph 29, for "Authority" substitute "prudential regulator".

(6) In paragraph 31, for "Authority" substitute "FCA".

(7) In paragraph 32, for "Authority", in each place, substitute "FCA".

(8) In paragraph 48(3)—

(a) for "to the Authority" substitute "to the FCA and, if the society is a PRA-authorised person, the PRA"; and

(b) for "the Authority shall" substitute "the FCA must".

(9) In paragraph 55A, for "Authority" substitute "prudential regulator".

(10) In paragraph 55C, for "Authority" substitute "FCA".

(11) In paragraph 55D, for "Authority", in each place substitute "FCA".

58.—(1) Schedule 15A(**a**) (application of other companies insolvency legislation to building societies) is amended as follows.

(**a**) Paragraphs 3 and 6 of Schedule 14 were amended by S.I. 2001/2617.
(**b**) The relevant paragraphs of Schedule 15 were amended by S.I. 2001/2617.

(2) In paragraph 2(1)(b), for "Financial Services Authority" substitute "Financial Conduct Authority".

(3) In paragraph 3(1), for "Authority", in each place, substitute "FCA".

(4) In paragraph 9A, for "Authority", in each place, substitute "the FCA".

(5) In paragraphs 10, 11 and 15, for "Authority" substitute "relevant authority".

(6) In paragraph 23(1)(a), for "Authority" substitute "FCA, to the PRA".

(7) In paragraph 24, for "Authority", in each place, substitute "FCA, the PRA".

(8) In paragraph 31A—

(a) in sub-paragraph (a), for "the Authority" substitute "each of the Financial Conduct Authority and the Prudential Regulation Authority"; and

(b) in sub-paragraphs (c) and (d), for "Authority" substitute "Financial Conduct Authority or the Prudential Regulation Authority".

(9) In paragraph 32(1)(a), for "Authority" substitute "relevant authority".

(10) In paragraph 33—

(a) in sub-paragraph (1)(a), for "Authority" substitute "FCA, by the PRA"; and

(b) in sub-paragraph (2), for "Authority" substitute "FCA or, as the case may be, the PRA".

(11) In paragraph 37, for "the Authority" substitute "the FCA and the PRA".

(12) In paragraph 45(1)(a), for "Authority" substitute "FCA, to the PRA".

(13) In paragraph 46, for "Authority", in each place, substitute "relevant authority".

59.—(1) Schedule 16(**b**) (mergers: supplementary provisions) is amended as follows.

(2) Except in paragraph 5, for "Authority", in each place, substitute "prudential regulator".

(3) After paragraph 1(4), insert—

"(4A) The PRA must consult the FCA before approving a statement under sub-paragraph (3).".

(4) In paragraph 5—

(a) in sub-paragraph (1), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA"; and

(b) in sub-paragraph (2), for "Authority shall" substitute "FCA must".

60.—(1) Schedule 17(**c**) (transfers of business: supplementary provisions) is amended as follows.

(2) Except in paragraph 5D, for "Authority", in each place, substitute "prudential regulator".

(3) After paragraph 4(3), insert—

"(4) The PRA must consult the FCA before approving a statement under sub-paragraph (3).".

(4) In paragraph 5D—

(a) in sub-paragraph (1), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA"; and

(b) in sub-paragraph (2), for "Authority shall" substitute "FCA must".

(**a**) Schedule 15A was inserted by the Building Societies Act 1997. Paragraph 9A was inserted by the Insolvency Act 2000. Paragraph 31A was inserted by S.I. 2002/3152. The relevant paragraphs of Schedule 15A were amended by S.I. 2001/2617.

(**b**) Schedule 16 was amended by the Building Societies Act 1997, S.I. 2001/2617, S.I. 2003/404 and S.I. 2011/593.

(**c**) Schedule 17 was amended by the Building Societies Act 1997, S.I. 2001/2617 and S.I. 2003/404.

SCHEDULE 9

Amendments of the Friendly Societies Act 1992

1. The Friendly Societies Act 1992(**a**) is amended as follows.

2. In the heading to Part 1, for "Authority" substitute "Financial Conduct Authority and the Prudential Regulation Authority".

3.—(1) Section 1(**b**) (functions in relation to friendly societies) is amended as follows.

(2) In subsection (1), for "Financial Services Authority ("the Authority")" substitute "Financial Conduct Authority ("the FCA")".

(3) After subsection (1), insert—

"(1A) The function in subsection (1)(c) is also a function of the Prudential Regulation Authority ("the PRA").".

(4) In subsection (2)—

(a) for "Authority also has" substitute "FCA and the PRA each also have"; and

(b) for "it" substitute "them respectively".

(5) For the heading, substitute "Functions of the Financial Conduct Authority and the Prudential Regulation Authority in relation to friendly societies".

4. In section 5(3)(**c**) (establishment of incorporated friendly societies), for "Authority" substitute "FCA".

5. In section 6(**d**) (incorporation of registered friendly societies), for "Authority", in each place, substitute "FCA".

6. In section 11(5)(**e**) (group insurance), for "Authority" substitute "FCA or the PRA".

7.—(1) Section 14(**f**) (investment of funds) is amended as follows.

(2) In subsection (3)(a), for "Authority under section 138" substitute "prudential regulator under Part 9A".

(3) In subsections (5), (6) and (10), for "Authority", in each place, substitute "prudential regulator".

(4) After subsection (10), insert—

"(10A) The PRA must send to the FCA a copy of any notice it serves under subsection (6) or (10).".

(5) In subsection (12), for "Authority" substitute "FCA".

8.—(1) Section 20(**g**) (dissolution by consent) is amended as follows.

(2) In subsections (6) and (8), in each place, for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA".

(3) In subsection (10), for "Authority" substitute "prudential regulator".

(4) In subsection (12), for "Authority" substitute "FCA".

9. In section 21(2) (**h**) (voluntary winding up), for "Authority"—

(**a**) 1992 c.40.
(**b**) Section 1 was amended by S.I. 2001/2617.
(**c**) Section 5(3) was amended by S.I. 2001/2617.
(**d**) Section 6 was amended by S.I. 2001/2617.
(**e**) Section 11(5) was amended by S.I. 2001/2617.
(**f**) Section 14 was amended by S.I. 2001/2617.
(**g**) Section 20 was amended by S.I. 2001/2617.
(**h**) Section 21(2) was amended by S.I. 2001/2617.

(a) in the first place, substitute "FCA and, if the society is a PRA-authorised person, the PRA"; and

(b) in the second place, substitute "FCA".

10.—(1) Section 22(**a**) (winding up by court: grounds and petitioners) is amended as follows.

(2) In subsection (2), before "(3)" insert "(2A), (2B) or".

(3) In paragraph (a) of subsection (2), for "Authority" substitute "FCA".

(4) After paragraph (a) of subsection (2), insert—

"(aa) the PRA;".

(5) After subsection (2), insert—

"(2A) The FCA may only present a petition under subsection (2) in respect of a society which is a PRA-authorised person after consulting the PRA.

(2B) The PRA may only present a petition under subsection (2)—

(a) in respect of a society which is a PRA-authorised person; and

(b) after consulting the FCA.".

11. In section 24(6)(**b**) (continuation of long term business), for "Authority" in each place substitute "relevant authority".

12. In section 25(4)(**c**) (power of court to declare dissolution void), for "Authority"—

(a) in the first place, substitute "FCA and, if the society is a PRA-authorised person, the PRA"; and

(b) in second place, substitute "FCA".

13.—(1) Section 26(**d**) (cancellation of registration) is amended as follows.

(2) In subsections (1), (2), (3), (4), (8) and (9), for "Authority", in each place, substitute "FCA".

(3) After subsection (4) insert—

"(4A) The FCA must consult the PRA before cancelling under subsection (1), (2) or (3) the registration of a society which is a PRA-authorised person.".

14.—(1) Section 29(**e**) (notification of officers) is amended as follows.

(2) In subsections (1), (3) and (5), and in the heading, for "Authority", in each place, substitute "FCA".

15. In section 37(5), (6) and (7)(**f**) (restriction of combinations of business), for "Authority" in each place substitute "prudential regulator".

16. In the cross-heading before section 51, for "Authority" substitute "FCA and PRA".

17.—(1) Section 52(**g**) (applications to court) is amended as follows.

(2) For subsection (1), substitute—

"(1) If the FCA has reason to believe that any of the conditions mentioned in subsection (2) is satisfied, it may, after consulting the PRA if the society is a PRA-authorised person—

(a) present a petition to the High Court for the winding up of the society under the applicable winding up legislation;

(**a**) Section 22 was amended by S.I. 2001/2617.
(**b**) Section 24(6) was amended by S.I. 2001/2617.
(**c**) Section 25(4) was amended by S.I. 2001/2617.
(**d**) Section 26 was amended by S.I. 1996/1669 and S.I. 2001/2617.
(**e**) Section 29 was amended by S.I. 2001/2617.
(**f**) Section 37(5), (6) and (7) were amended by S.I. 2001/2617
(**g**) Section 52 was amended by the Financial Services and Markets Act 2000, S.I. 1994/1984, S.I. 2001/2617 and S.I. 2004/3379.

(b) make an application to the High Court for an order under subsection (5).

(1A) If the PRA has reason to believe that any of the conditions mentioned in subsection (2) is satisfied in relation to a society which is a PRA-authorised person, it may, after consulting the FCA—

(a) present a petition to the High Court for the winding up of the society under the applicable winding up legislation;

(b) make an application to the High Court for an order under subsection (5).".

(3) In subsection (2), for "subsection (1)" substitute "subsections (1) and (1A)".

(4) Omit subsection (3).

(5) In subsection (6), for "Authority" substitute "FCA".

(6) In subsection (7), for "Authority whether or not it" substitute "FCA and the PRA whether or not either of them".

18.—(1) Section 54(**a**) (supervision of activities of subsidiaries etc.) is amended as follows.

(2) In subsections (2) and (3), for "Authority" substitute "relevant authority".

(3) In subsection (6)—

(a) for "Authority" substitute "relevant authority"; and

(b) after "direction", in each place, insert "issued by it".

(4) After subsection (6), insert—

"(6A) The FCA must consult the PRA before issuing direction under this section to a PRA-authorised person or a varying a direction given under this section to a PRA-authorised person.

(6B) The PRA must consult the FCA before issuing or varying a direction under this section.".

(5) For subsection (7), substitute—

"(7) If a society requests the relevant authority which issued a direction to the society under this section to notify the society as to whether in the opinion of that authority it has complied with that direction, the relevant authority shall comply with the request.

"(7A) The PRA must send a copy to the FCA of any direction, notice, final notice or notification it issues under this section.".

(6) In subsection (9), for "Authority" substitute "FCA".

19. In section 55(2)(**b**) (supervision of group insurance business), for "Authority" substitute "relevant authority".

20.—(1) Section 58A(**c**) (notices, hearings and appeals) is amended as follows.

(2) In subsections (1), (2) in each place, (3) and (4), for "Authority" substitute "relevant authority".

(3) In subsection (8)(d), for "Authority" substitute "FCA or PRA".

21.—(1) In section 62(**d**) (powers to obtain information and documents) is amended as follows.

(2) In subsection (1), for "Authority" substitute "FCA or the PRA".

(3) In subsections (3), (3A), (4), (5) and (8), for "Authority", in each place, substitute "relevant authority".

(**a**) Section 54 was amended by S.I. 2001/2617.
(**b**) Section 55(2) was amended by S.I. 2001/2617.
(**c**) Section 58A was inserted by S.I. 2001/2617 and amended by S.I. 2010/22.
(**d**) Section 62 was amended by the Legal Services Act 2007, S.I. 1994/1984 and S.I. 2001/2617.

22. In section 62A(1)(**a**) (entry of premises under warrant), for "Authority" substitute "FCA or the PRA".

23.—(1) Section 63A(**b**) (disclosure of information) is amended as follows.

(2) For subsection (1)(b)(i), substitute—

"(i) the FCA;

(ia) the PRA;".

(3) In subsections (1)(b)(ii) and (iii) and (2)(b), for "Authority" substitute "FCA or the PRA".

24. In section 65(1)(**c**) (investigations) and in the heading to that section, for "Authority" in each each place substitute "relevant authority".

25. In sections 66(**d**) (inspections and special meetings: general), for "Authority" in each place substitute "relevant authority".

26. In section 67(**e**) (inspections: supplementary provisions), for "Authority", in each place, substitute "relevant authority".

27. In section 74B(1)(**f**), in each place, and (3) (names to be stated in copies of auditor's report), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA".

28. In section 74C(**g**) (circumstances in which names may be omitted), for "the Authority", in each place, substitute "the FCA and, if the society is a PRA-authorised person, the PRA".

29. In section 76(4) and (6) (**h**) (approval and signing of accounts), for "the Authority" "the FCA and, if the society is a PRA-authorised person, the PRA".

30. For section 77(1)(a) (information on appointed actuary to be annexed to balance sheet), subsitute—

"(a) is furnished to the FCA and, if the society is a PRA-authorised person, the PRA under section 78;

(aa) is furnished to either the FCA or the PRA at its request;".

31.—(1) Section 78(**i**) (laying and furnishing of accounts and reports) is amended as follows.

(2) In subsections (1)(b), (2)(b), (3) and (4), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA".

(3) In subsection (8), for "Authority" substitute "FCA".

32. In section 81(2) (**j**) (complaints by members of friendly societies), for "Authority" in each place substitute "FCA".

33.—(1) Section 85(**k**) (amalgamation of friendly societies) is amended as follows.

(2) In subsection (2)(d), for "the Authority" substitute "the prudential regulator".

(3) In subsection (3), for "the Authority"—

(a) in the first place, substitute "the FCA or the PRA"; and

(b) in the second place, substitute "the FCA".

(**a**) Section 62A was inserted by S.I. 2001/2617.
(**b**) Section 63A was inserted by S.I. 2001/2617.
(**c**) Section 65(1) and the heading to that section were amended by S.I. 2001/2617.
(**d**) Section 66 was amended by S.I. 2001/2617 and S.I. 2009/1941.
(**e**) Section 67 was amended by the Youth Justice and Criminal Evidence Act 1999, S.I. 1994/1984 and S.I. 2001/2617.
(**f**) Section 74B was amended by S.I. 2008/1140.
(**g**) Section 74C was amended by S.I. 2008/1140.
(**h**) Section 76 was amended by S.I. 2001/2617.
(**i**) Section 78 was amended by S.I. 2001/2617, S.I. 2008/1140 and S.I. 2011/593.
(**j**) Section 81(2) was amended by S.I. 2001/2617.
(**k**) Section 85 was amended by S.I. 2001/2617, S.I. 2001/3649 and S.I. 2010/22.

(4) For subsection (4A), substitute—

"(4A) If, on the transfer date, each of the societies whose amalgamation was confirmed has permission under Part 4A of the Financial Services and Markets Act 2000, the appropriate regulator (within the meaning of section 55A of that Act) must, with effect from that date, give their successor such permission under that Part as it considers appropriate, subject to such requirements as it considers appropriate, and must notify the successor of the permission by giving the successor a decision notice under that Act.".

(5) In subsection (4B), for "subsection (9) of section 52 of that Act by virtue of paragraph (a) of that subsection" substitute "subsection (5) of section 55V of that Act by virtue of paragraph (a) or (b) of that subsection".

(6) In subsection (4C)—

(a) for "section 55", substitute "section 55Z1"; and

(b) for "Part IV", substitute "Part 4A".

(7) In subsection (5), for "Authority" substitute "FCA".

34.—(1) Section 86(**a**) (transfer of engagements by or to friendly society) is amended as

(2) In subsection (2)(e), for "Authority" substitute "prudential regulator".

(3) In subsection (3)(b), for "Authority" substitute "prudential regulator".

(4) After subsection (3), insert—

"(3A) The PRA must consult the FCA before giving its consent under section (3)(b).".

(5) In subsection (4)—

(a) for "Authority" substitute "prudential regulator"; and

(b) for "it" substitute "the FCA".

(6) In subsections (6) and (7), for "Authority" in each place substitute "FCA".

(7) In subsection (12), for "Part IV" substitute "Part 4A".

35.—(1) Section 87(**b**) (actuary's report as to margin of solvency) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (b), for "Authority under section 138" substitute "prudential regulator under Part 9A"; and

(b) in the closing words of that subsection, for "Authority" substitute "prudential regulator".

(3) In subsection (3), for "Authority", in each place, substitute "prudential regulator".

36. In section 88(2) and (3)(**c**) (actuary's report on transfer of long term business), for "Authority", in each place, substitute "prudential regulator".

37.—(1) Section 89(**d**) (power to alter requirements for transfer by friendly society) is amended as follows.

(2) For "Authority", in each place, substitute "prudential regulator".

(3) After subsection (1), insert—

"(1A) The PRA must consult the FCA before giving a direction under this section.".

(4) After subsection (6), insert—

"(6A) The PRA must send to the FCA a copy of any direction it issues under this section.".

(5) In subsection (7), for "Authority" substitute "FCA".

(**a**) Section 86 was amended by S.I. 2001/2617, S.I. 2001/3649, S.I. 2009/1941 and S.I. 2010/22.
(**b**) Section 87(2) and (3) were amended by S.I. 1997/2849, S.I. 1999/1984 and S.I. 2001/2617.
(**c**) Section 88(2) and (3) were amended by S.I. 2001/2617.
(**d**) Section 89 was amended by S.I. 2001/2617.

(6) In the heading, for "Authority" substitute "prudential regulator".

38.—(1) Section 90(**a**) (power to effect transfer of engagements) is amended as follows.

(2) In subsections (1) to (7), for "Authority", in each place, substitute "prudential regulator".

(3) After subsection (2), insert—

"(2A) The PRA must consult the FCA before giving a direction under this section.".

(4) For subsection (8), substitute—

"(8) If the PRA gives a direction, it must send a copy of the direction to the FCA.

(8A) The FCA must—

(a) keep a copy of the direction; and

(b) issue a registration certificate to the transferee.

(8B) The registration certificate must specify a date as the transfer date for the transfer.".

(5) In subsections (10) and (11), for "Authority" in each place substitute "FCA".

(6) In the heading, for "Authority" substitute "prudential regulator".

39.—(1) Section 91(**b**) (conversion of friendly society into company) is amended as follows.

(2) In subsection (2), for "Authority" substitute "prudential regulator".

(3) After subsection (2), insert—

"(2A) The PRA must consult the FCA before giving a confirmation under this section.".

(4) In subsections (4) and (5), for "Authority", in each place, substitute "FCA".

(5) In subsection (6), for "Authority" substitute "prudential regulator".

40. In section 93(**c**) (registration of societies under the 1974 Act), for "Authority", in each place, substitute "FCA".

41.—(1) Section 103(**d**) (power to modify Part 6 in relation to particular friendly societies) is amended as follows.

(2) In subsections (1) and (3), for "Authority" in each place substitute "prudential regulator".

(3) After subsection (3), insert—

"(3A) The PRA must consult the FCA before making, varying or revoking a direction under this section.

(3B) The PRA must send the FCA a copy of any direction, variation or revocation made under this section.".

(4) For subsection (7), substitute—

"(7) The FCA must keep in a register kept by it for the purposes of this subsection a copy of any direction, variation or revocation made under this section.".

(5) In subsection (9)—

(a) for "Authority" substitute "FCA"; and

(b) in paragraph (a), omit "by it".

42. In section 104(**e**) (public file of a friendly society), for "Authority", in each place, substitute "FCA".

43. In section 105A(1)(c) (**a**) (stamp duty land tax), for "Authority" substitute "prudential regulator".

(**a**) Section 90 was amended by S.I. 2001/2617 and S.I. 2001/3649.
(**b**) Section 91 was amended by S.I. 2001/2617 and S.I. 2009/1941.
(**c**) Section 93 was amended by S.I. 1996/1188 and S.I. 2001/2617.
(**d**) Section 103 was amended by S.I. 1996/1188 and S.I. 2001/2617.
(**e**) Section 104 was amended by S.I. 2001/2617, S.I. 2001/3649 and S.I. 2011/593.

44.—(1) Section 107(**b**) (time limit for commencing proceedings) is amended as follows.

(2) In subsection (1)—

(a) after "under this Act", insert ", other than an offence in relation to which provision is made in subsection (1A),";

(b) for "by the Authority" substitute "by the FCA"; and

(c) for "the opinion of the Authority" substitute "its opinion".

(3) After subsection (1), insert—

"(1A) Notwithstanding any limitation on the time for taking proceedings contained in any Act, summary proceedings for the offences under the provisions listed in subsection (1B), in the circumstances specified in that subsection in relation to those provisions, may be commenced by the PRA, after notifying the FCA, or by the FCA, after notifying the PRA, at any time within the period mentioned in subsection (1C).

(1B) The provisions and the circumstances are—

(a) section 20 (dissolution by consent), if the failure referred to in subsection (6) or (8) of that section relates to a failure to give notice to the PRA;

(b) section 21 (voluntary winding up), if the failure referred to in subsection (4) of that section relates to a failure to send a copy of the resolution to the PRA in accordance with subsection (2) of that section;

(c) section 25 (power of court to declare dissolution of building society void), if the failure referred to in subsection (5) of that section relates to a failure to send a copy of an order to the PRA in accordance with subsection (4) of that section;

(d) section 62 (powers to obtain information and documents etc.), if—

(i) the failure referred to in subsection (9) of that section is a failure to furnish any information or report, to produce any documents or material, or to provide any explanation or make any statement to the PRA, or

(ii) the information, explanation or statement referred to in subsection (10) or (11) of that section is furnished, provided or made to the PRA;

(e) section 65(4) and (5) (investigations), if the person appointed under subsection (1) of that section was appointed by the PRA;

(f) section 87(6) (actuary's report), if the PRA directed the transferee to furnish it with a report under subsection (3) of that section;

(g) Schedule 10, paragraph 24 (winding up by the court), if the failure referred to in sub-paragraph (4) of that paragraph relates to a failure to give notice to the PRA in accordance with sub-paragraph (3) of that paragraph;

(h) Schedule 10, paragraph 54 (winding up by the High Court), if the failure referred to in sub-paragraph (4) of that paragraph relates to a failure to give notice to the PRA in accordance with sub-paragraph (3) of that paragraph;

(i) Schedule 14, paragraph 3 (auditors: appointment), if the failure referred to in sub-paragraph (2) of that paragraph relates to a failure to give notice to the PRA in accordance with sub-paragraph (1) of that paragraph;

(j) Schedule 14, paragraph 9 (power of prudential regulator to require second audit), if the failure referred to in sub-paragraph (5) of that paragraph relates to a direction given by the PRA under paragraph (1) of that paragraph or to send a copy of the report to the PRA in accordance with sub-paragraph (3) of that paragraph;

(k) Schedule 14, paragraph 10 (removal of auditors), if the failure referred to in sub-paragraph (3) of that paragraph relates to a failure to give notice to the PRA in accordance with sub-paragraph (2) of that paragraph;

(**a**) Section 105A was inserted by S.I. 2003/2867.

(**b**) Section 107 was amended by Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 and S.I. 2001/2617.

(l) Schedule 14, paragraph 12 (resignation of auditors), if the default referred to in sub-paragraph (5) of that paragraph relates to a failure to give a copy of the notice to the PRA in accordance with sub-paragraph (4) of that paragraph; and

(m) Schedule 14, paragraph 15 (offences of failing to comply with paragraph 14 (statement by person ceasing to hold office)), if—

(i) the default referred to in sub-paragraph (1) of that paragraph relates to a failure to send a copy of a notice to the PRA in accordance with paragraph 14(2) or (7) of that Schedule, or

(ii) the default referred to in sub-paragraph (2) is the default of a PRA-authorised person.

(1C) The period is one year beginning with the earlier of—

(a) the date on which evidence sufficient in the opinion of the PRA to justify a prosecution for the offence comes to the knowledge of the PRA, and

(b) the date on which evidence sufficient in the opinion of the FCA to justify a prosecution for the offence comes to the knowledge of the FCA.".

(4) In subsection (2), after "(1)" insert "or (1A)".

(5) In subsection (3)—

(a) for "subsection (1)" substitute "subsections (1) and (1C)",

(b) for "Authority" substitute "FCA or the PRA", and

(c) for "that subsection" substitute "the relevant subsection".

(6) For subsection (4), substitute—

"(4) In the application of this section to Scotland—

(a) in subsection (1), the words "by the FCA" are to be omitted,

(b) subsections (1A), (1B) and (1C) are to be omitted, and

(c) references to the FCA are to be read as references to the Lord Advocate.".

45. In section 111(**a**) (evidence), for "Authority", in each place, substitute "FCA".

46. In section 113(1)(**b**) (service of notices), for "Authority" substitute "FCA and the PRA".

47.—(1) Section 114(**c**) (forms of documents and power to prescribe fees) is amended as follows.

(2) In subsection (1), for "The Authority may" substitute "Each of the FCA and the PRA may".

(3) After subsection (1), insert—

"(1A) The PRA and the FCA must consult each other before issuing a direction under this section if the document in question is required to be sent to both of them.".

(4) In subsection (3), for "the Authority"—

(a) in the first place, substitute "it"; and

(b) in the second place, substitute "each of the FCA and the PRA".

(5) In subsection (4), for "the Authority" substitute "each of the FCA and the PRA".

(6) In subsection (5), for "the Authority" substitute "the FCA or the PRA".

48.—(1) Section 119(**d**) (general interpretation) is amended as follows.

(2) In subsection (1)—

(**a**) Section 111 was amended by S.I. 2001/2617.
(**b**) Section 113(1) was amended by S.I. 2001/2617.
(**c**) Section 114 was amended by S.I. 2001/3649 and S.I. 2011/593.
(**d**) Section 119 was amended by S.I. 1994/1948, S.I. 1996/1669, S.I. 2001/2617, S.I. 2001/3649, S.I. 2004/3379, S.I. 2005/2211, S.I. 2007/3253, S.I. 2008/1140, S.I. 2011/593 and S.I. 2011/1043.

(a) omit the definition of "the Authority";

(b) in the definition of "the public file", for "Authority" substitute "FCA"; and

(c) at the appropriate places, insert—

""the FCA" means the Financial Conduct Authority;";

""the PRA" means the Prudential Regulation Authority;";

""PRA-authorised person" has the meaning in section 2B of the Financial Services and Markets Act 2000;";

""the prudential regulator" means—

(a) in relation to a society which is a PRA-authorised person, the PRA; and

(b) in relation to a society which is not a PRA-authorised person, the FCA;"; and

""the relevant authority" means—

(a) in relation to a society which is a PRA-authorised person, the FCA or the PRA; and

(b) in relation to a society which is not a PRA-authorised person, the FCA;".

(3) In subsection (1AA)—

(a) for "Authority" substitute "FCA"; and

(b) for "Authority's" substitute "FCA's".

49. In section 119AB(**a**) (communication by means of a website), for "Authority" substitute "FCA and the PRA".

50.—(1) Schedule 3(**b**) (establishment, incorporation and constitution of incorporated friendly societies) is amended as follows.

(2) For "Authority", in each place, substitute "FCA".

(3) In paragraph 1(4), for "it" substitute "the prudential regulator".

51. In paragraph 2 of Schedule 4(**c**) (schemes under section 6(5)), for "Authority", in each place, place, substitute "FCA".

52.—(1) Schedule 10(**d**) (application of companies winding up legislation to incorporated friendly societies) is amended as follows.

(2) In paragraph 3(1)(c), for "Financial Services Authority" substitute "Financial Conduct Authority".

(3) In paragraph 4(1), for "Authority", in each place, substitute "FCA".

(4) In paragraph 24(3), for "Authority"—

(a) in the first place, substitute "FCA and, if the society is a PRA-authorised person, the PRA"; and

(b) in the second place, substitute "FCA".

(5) In paragraphs 32, 34 and 35, for "Authority", in each place, substitute "FCA".

(6) In paragraph 54(3), for "Authority"—

(a) in the first place, substitute "FCA and, if the society is a PRA-authorised person, the PRA"; and

(b) in the second place, substitute "FCA".

(7) In paragraph 62, for "Authority", in each place, substitute "relevant authority".

(**a**) Section 119AB was inserted by S.I. 2011/593.
(**b**) Schedule 3 was amended by S.I. 1996/1669, S.I. 2001/2617 and S.I. 2011/593.
(**c**) Paragraph 2 of Schedule 4 was amended by S.I. 2001/2617.
(**d**) The relevant paragraphs of Schedule 10 were amended by S.I. 2001/2617.

(8) In paragraphs 64 and 65, for "Authority", in each place, substitute "FCA".

53. In paragraph 3 of Schedule 12(**a**) (annual general meeting), for "Authority", in each place, substitute "FCA".

54.—(1) Schedule 14(**b**) (auditors: appointment, tenure, qualifications and remuneration) is amended as follows.

(2) In paragraph 3, for "Authority", in each place, substitute "prudential regulator".

(3) In paragraph 7(6) and (7), for "Authority", in each place, substitute "prudential regulator".

(4) In paragraph 9—

(a) in sub-paragraph (1), for "Authority" substitute "prudential regulator";

(b) in sub-paragraph (3), for "Authority shall" substitute "PRA must send a copy of the direction to the FCA and the FCA must";

(c) in sub-paragraph (3A), for "the Authority to be placed" substitute "the FCA and, if the society is a PRA-authorised person, the PRA and the FCA must place a copy of the report"; and

(d) in sub-paragraph (6), for "Authority" substitute "prudential regulator".

(5) In the cross-heading above paragraph 9, for "Authority" substitute "prudential regulator".

(6) In paragraph 10(2), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA".

(7) For paragraph 10A(2)(b), substitute—

"(b) the FCA provided that, if the society is a PRA-authorised person, it has consulted the PRA;

(c) if the society is a PRA-authorised person, the PRA provided that it has consulted the FCA.".

(8) In paragraph 12(4), for "Authority" substitute "FCA and, if the society is a PRA-authorised person, the PRA".

(9) In sub-paragraphs (2) and (7) of paragraph 14, for "Authority" substitute "FCA and the PRA".

(10) In paragraph 16, for "Authority", in each place, substitute "prudential regulator".

55.—(1) Schedule 15(**c**) (amalgamations, transfers of engagements and conversion: supplementary) is amended as follows.

(2) In paragraphs 1, 2 3 and 4, for "Authority", in each place, substitute "prudential regulator".

(3) Insert after paragraph 2(2)—

"(3) The PRA must consult the FCA before approving a statement under sub-paragraph (2).".

(4) After paragraph 4, insert—

"**4ZA.** The PRA must consult the FCA before approving a statement under paragraph 4.".

(5) In the heading of Part 2, for "Authority" substitute "prudential regulator".

(6) In paragraph 5—

(a) in sub-paragraphs (1), (3), and (5) for "Authority", in each place, substitute "prudential regulator";

(b) after sub-paragraph (5), insert—

(**a**) Paragraph 3 of Schedule 12 was amended by S.I. 2001/2617.
(**b**) The relevant paragraphs of Schedule 14 were amended by S.I. 2001/2617 and S.I. 2008/1140 .
(**c**) Schedule 15 was amended by S.I. 1994/1984, S.I. 1997/2849, S.I. 2001/2617, S.I. 2001/3679 and S.I. 2011/593.

"(5A) The PRA must send the FCA a copy of any direction, variation or revocation it makes under this paragraph.";

(c) in sub-paragraph (6), —

(i) for "Authority" substitute "prudential regulator"; and

(ii) for "it shall" substitute "the FCA must"; and

(d) in sub-paragraph (8)—

(i) for "Authority" substitute "FCA"; and

(ii) omit "by it".

(7) In paragraphs 6 and 7, for "Authority", in each place, substitute "prudential regulator".

(8) In the cross-heading above paragraph 8, for "Authority" substitute "prudential regulator".

(9) In paragraphs 8, 9 and 10, for "Authority", in each place, substitute "prudential regulator".

(10) In paragraph 11—

(a) for "Authority" substitute "prudential regulator"; and

(b) for "Part IV" substitute "Part 4A".

(11) After paragraph 11, insert—

"**11A.**—(1) The PRA must consult the FCA before confirming an amalgamation, transfer or engagements or a conversion.

(2) The PRA must notify the FCA if it makes any such confirmation.".

(12) In paragraph 12, for "Authority" substitute "prudential regulator".

(13) In paragraph 13—

(a) for "Authority", in each place, substitute "prudential regulator"; and

(b) for "Authority under section 138", in each place, substitute "prudential regulator under Part 9A".

(14) In paragraph 15—

(a) in sub-paragraph (1)(v), for "IV" substitute "4A", and

(b) for "Authority", in each place, substitute "prudential regulator".

(15) In paragraph 15A, for "Authority", in each place, substitute "prudential regulator".

SCHEDULE 10

Amendments of secondary legislation

PART 1

Amendments of legislation made under the Building Societies Act 1986

1. In the Schedule to the Building Societies (Deferred Shares) Order 1991(**a**), for "Authority" substitute "prudential regulator".

2.In paragraph 13 of Schedule 4 to the Building Societies (Accounts and Related Provisions) Regulations 1998(**b**), for "Authority" substitute "prudential regulator".

3.—(1) Regulation 3 of the Building Societies (Business Names) Regulations 1998(**c**) is amended as follows.

(**a**) S.I. 1991/701, as amended by S.I. 2001/3649.
(**b**) S.I. 1998/504, as amended by S.I. 2001/3649.
(**c**) S.I. 1998/3186, as amended by S.I. 2001/3649.

(2) For "Authority" substitute "FCA".

(3) In the heading to that regulation, for "Authority's" substitute "FCA's".

4.—(1) The Building Societies (Transfer of Business) Regulations 1998(**a**) are amended as follows.

(2) In regulation 2—

(a) in the definition of "date of the transfer notification statement", for "Authority" substitute "prudential regulator"; and

(b) in the definition of "date of the transfer statement", for "Authority" substitute "prudential regulator".

(3) In paragraph 28 of Part 1 of Schedule 1, for "Authority", in each place, substitute "prudential regulator".

(4) In paragraph 10(2) of Part 2 of Schedule 1—

(a) for "Part 4" substitute "Part 4A"; and

(b) for "the Authority" substitute "a regulator (within the meaning of section 417 of the Financial Services and Markets Act 2000)".

(5) In paragraph 1 of Schedule 3, for "Authority" substitute "prudential regulator".

(6) In paragraph 2 of Schedule 3, for "Authority" substitute "prudential regulator".

5.—(1) The Building Societies (Merger Notification Statement) Regulations 1999(**b**) are amended as follows.

(2) In the following provisions, for "Authority" substitute "prudential regulator"—

(a) regulation 2, in the definition of "date of the merger notification statement", and

(b) paragraphs 1 and 2 of the Schedule.

PART 2

Amendments of legislation made under the Friendly Societies Act 1992

6. In paragraph 12 of Schedule 3 to the Friendly Societies (Accounts and Related Provisions) Regulations 1994(**c**), for "Authority" substitute "prudential regulator".

PART 3

Amendments of legislation made under the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007

7.—(1) The Mutual Societies (Transfers) Order 2009(**d**) is amended as follows.

(2) In article 7(5), for "Financial Services Authority in accordance with section 81(2) of the 1986 Act (laying and furnishing accounts, etc., to members and the Authority)" substitute "FCA, and, if the society is a PRA-authorised person, to the PRA in accordance with section 81(2) of the 1986 Act (laying and furnishing accounts, etc., to members and the FCA and the PRA)."

(3) In article 18, for "Financial Services Authority" substitute "prudential regulator".

(**a**) S.I. 1998/212, as amended by S.I. 2001/3649.
(**b**) S.I. 1999/1215, as amended by S.I. 2001/3649.
(**c**) S.I. 1994/1983, as amended by S.I. 2001/3649.
(**d**) S.I. 2009/509.

SCHEDULE 11

Consequential amendments

PART 1

Consequential amendments to primary legislation

1.The Housing Associations Act 1985(**a**) is amended as follows.

(1) In section 84(5)(a)(**b**) (agreements to indemnify certain lenders), for "the Financial Services Authority" substitute "the Financial Conduct Authority, the Prudential Regulation Authority".

(2) In section 86(4)(**c**) (agreements to indemnify building societies: Scotland), for "the Financial Services Authority" substitute "the Financial Conduct Authority and the Prudential Regulation Authority".

2.—(1) In the provisions of the Insolvency Act 1986(**d**) listed in sub-paragraph (2), for "Financial Services Authority" substitute "Financial Conduct Authority".

(2) The provisions are—

(a) section 124(4AA)(**e**) (application for winding up);

(b) section 124C(1)(b) and (2)(b)(**f**) (petition for winding up a European cooperative society).

3.In section 229(4) of the Housing (Scotland) Act 1987(**g**) (local authority indemnities for building societies, etc.), for "Financial Services Authority" substitute "Financial Conduct Authority and the Prudential Regulation Authority".

4.—(1) In the provisions of the Housing Act 1996(**h**) listed in sub-paragraph (2), for "Financial Services Authority", in each place, substitute "Financial Conduct Authority".

(2) The provisions are—

(a) section 3(3)(b)(**i**) (registration);

(b) section 4(6)(b)(**j**) (removal from the register);

(c) section 6(3)(b)(**k**) (appeal against decision on removal);

(d) section 45(4)(d)(**l**) (effect of agreed proposals);

(e) section 48(3)(**m**) (powers of the manager: transfer of engagements); and

(f) paragraphs 9(1), 12(1) and 15H(5)(**n**) of Part 2 of Schedule 1 (registered social landlords: regulation).

5. In the provisions of the Housing (Scotland) Act 2001(**o**) listed in sub-paragraph (2), for "Financial Services Authority" substitute "Financial Conduct Authority".

(**a**) 1985 c.69.
(**b**) Paragraph (a) was amended by S.I. 2001/3649 and S.I. 2009/484.
(**c**) Subsection (4) was amended by S.I. 1996/2325 and S.I 2001/3649.
(**d**) 1986 c.45.
(**e**) Section 124(4AA) was inserted by S.I. 2006/2078.
(**f**) Section 124C was inserted by S.I. 2006/2078.
(**g**) 1987 c. 26. Section 229(4) was amended by S.I. 2001/3649.
(**h**) 1996 c.52.
(**i**) Section 3(3)(b) was amended by S.I. 2001/3649.
(**j**) Section 4(6)(b) was amended by S.I. 2001/3649.
(**k**) Section 6(3)(b) was amended by S.I. 2001/3649.
(**l**) Section 45(4)(d) was amended by S.I. 2001/3649 and Schedule 8 to the Charities Act 2006.
(**m**) Section 48(3) was amended by S.I. 2001/3649.
(**n**) Paragraphs 9(1) and 12(1) were amended by S.I. 2001/3649. Paragraph 15H(5) was amended by section 77 of the Housing (Wales) Measure 2011 (2100 nawm 5).
(**o**) 2001 asp 10.

(1) The provisions are—

(a) section 59(3) (registration);

(b) section 60(5) (removal from the register); and

(c) section 62(3) (appeal against decision on registration or removal).

6.In section 58(7)(b) of the Charities and Trustee Investment (Scotland) Act 2005(**a**), for "Financial Services Authority" substitute "Financial Conduct Authority".

7.—(1) In the provisions of the Housing and Regeneration Act 2008(**b**) listed in sub-paragraph (2), for "Financial Services Authority" substitute "Financial Conduct Authority"

(2) The provisions are—

(a) section 120(1)(b)(**c**);

(b) section 153(1)(c);

(c) section 157(5);

(d) section 163(2);

(e) section 165(2); and

(f) section 255(5).

8.—(1) The Co-operative and Community Benefit Societies and Credit Unions Act 2010(**d**) is amended as follows.

(2) In section 1(1) (registration of societies as co-operative or community benefit societies), in section 1 of the Industrial and Provident Societies Act 1965 which is inserted by that section 1(1), for "Authority", in each place, substitute "FCA".

(3) In section 3 (application of provisions relating to directors disqualification), in subsection (4)(d) of section 22E of the Company Directors Disqualification Act 1986 which is inserted by that section 3, for "Financial Services Authority" substitute "Financial Conduct Authority".

(4) In section 4(3)(a) (power to apply certain other provisions relating to companies), for "Authority" substitute "prudential regulator".

9.—(1) The Housing (Scotland) Act 2010(**e**) is amended as follows.

(2) In section 18(2) (co-operation with other regulators) for paragraph (f) substitute—

"(f) the Financial Conduct Authority,

(fa) the Prudential Regulation Authority,".

(3) In the provisions in sub-paragraph (4), for "Financial Services Authority", in each place, substitute "Financial Conduct Authority".

(4) The provisions are—

(a) section 30 (communication with other regulators);

(b) section 80(2)(d) (proposals: formulation);

(c) section 82(3)(d) (proposals: agreement);

(d) section 87(5) (manager of registered society: extra powers);

(e) section 94(2) (registered society's rules: supplementary);

(f) section 96(1)(b) (restructuring, winding up and dissolution of registered societies);

(g) section 97(1) (restructuring of society);

(h) section 98 (voluntary winding up of society); and

(**a**) 2005 asp 10.
(**b**) 2008 c.17.
(**c**) Section 120(1)(b) was amended by S.I. 2010/844.
(**d**) 2010 c.7.
(**e**) 2010 asp 17.

(i) section 99 (dissolution of society).

10. In section 230(2)(b) of the Charities Act 2011(**a**) (Commission to consult appropriate registrar and others), for "the Financial Services Authority" substitute "the Financial Conduct Authority and, if the society is a PRA-authorised person within the meaning of section 2B of the Financial Services and Markets Act 2000, the Prudential Regulation Authority".

PART 2

Consequential amendments to secondary legislation

11.—(1) The Friendly Societies (Life Assurance Premium Relief) (Change of Rate) Regulations 1980(**b**) are amended as follows.

(2) In regulation (2), at the appropriate place, insert—

""relevant authority" means—

(a) if the society is a PRA-authorised person within the meaning of section 2B of the Financial Services and Markets Act 2000, the Prudential Regulation Authority, and

(b) in any other case, the Financial Conduct Authority;".

(3) In regulations 3(3), 5 and 8, for "Chief Registrar of Friendly Societies" substitute "relevant authority".

12.—(1) The Industrial Assurance (Life Assurance Premium Relief) (Change of Rate) Regulations 1980(**c**) are amended as follows.

(2) In regulation (2), at the appropriate place, insert—

""relevant authority" means—

(a) if the industrial assurance company or collecting society is a PRA-authorised person within the meaning of section 2B of the Financial Services and Markets Act 2000, the Prudential Regulation Authority, and

(b) in any other case, the Financial Conduct Authority;".

(3) In regulations 3(3), 5 and 8, for "Friendly Societies Commission" substitute "relevant authority".

13. In the provisions of the Insolvency (Northern Ireland) Ordert 1989(**d**) listed in sub-paragraph (2), for "Financial Services Authority" substitute "Financial Conduct Authority".

(1) The provisions are—

(a) article 104(4AA)(**e**) (application for winding up);

(b) article 104C(1)(b) and (2)(b)(**f**) (petition for winding up a European cooperative society).

14. In regulation 2 of the Community Interest Company Regulations 2005(**g**), for "Financial Services Authority" substitute "Financial Conduct Authority".

15.—(1) In the provisions of the European Cooperative Society Regulations 2006(**h**) listed in sub-paragraph (2), for "Financial Services Authority" substitute "Financial Conduct Authority".

(2) The provisions are—

(a) regulation 3(1)(a),

(**a**) 2011 c.25.
(**b**) S.I. 1980/1947.
(**c**) S.I. 1980/1948.
(**d**) S.I. 1989/2405 (N.I. 19).
(**e**) Article 104(4AA) was inserted by S.I. 2006/2078.
(**f**) Article 104C was inserted by S.I. 2006/2078.
(**g**) S.I. 2005/1788, as amended by S.I. 2009/1942. Other amendments are not relevant for the purposes of this instrument.
(**h**) S.I. 2006/2078.

(b) regulation 8(1), and

(c) regulation 13(1).

16. In regulation 3(3)(d) of the Mutual Societies (Transfers of Business) (Tax) Regulations 2009(**a**), for "Financial Services Authority" substitute "prudential regulator".

SCHEDULE 12

Transitional Provisions

1. No restriction on the disclosure of information imposed by statute or otherwise prevents the FCA from providing the PRA with any information necessary for the exercise of functions transferred to the PRA by this Order.

2.The amendments made by this Order requiring accounts or a return to be sent or copied to the PRA do not have effect in respect of any year, financial year or accounting period ending before [1st April 2014].

3.The amendments made by this Order requiring any other information or matter to be notified, copied or sent to the PRA do not have effect if the information or matter was notified or sent to the FSA before the date on which this Order comes into effect.

4. The amendments made by this Order requiring the PRA to be consulted on or satisfied in relation to a matter, or requiring the PRA to inform another person of a matter, to confirm a matter to another person, or to consult another person in relation to a matter, do not have effect if the FSA was required to consider that or a similar matter before the date on which this Order comes into effect**.**

(**a**) S.I. 2009/2971.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for functions of the Financial Services Authority relating to mutual societies to be exercisable by the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA).

Schedule 1 makes applies various provisions of the Financial Services and Markets Act 2000 to functions made exercisable by the FCA and the PRA by this Order. Schedule 2 makes provision for the exercise by the FCA and the PRA of functions under the Industrial and Provident Societies Act 1965. Schedule 3 makes provision for the exercise by the FCA and the PRA of functions under the Industrial and Provident Societies Act 1967. Schedule 4 makes provision for the exercise by the FCA and the PRA of functions under the Friendly and Industrial and Provident Societies Act 1968. Schedule 5 makes provision for the exercise by the FCA and the PRA of functions under the Friendly Societies Act 1974. Schedule 6 makes provision for the exercise by the FCA and the PRA of functions under the Credit Unions Act 1979. Schedule 7 makes provision for the exercise by the FCA and the PRA of functions under the Credit Unions (Northern Ireland) Order 1985. Schedule 8 makes provision for the exercise by the FCA and the PRA of functions under the Building Societies Act 1986. Schedule 9 makes provision for the exercise by the FCA and the PRA of functions under the Friendly Societies Act 1992. Schedule 10 makes consequential amendments to secondary legislation made under legislation governing mutual societies. Schedule 11 makes consequential amendments to various primary and secondary legislation. Schedule 12 makes transitional provisions.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

E Parent undertakings Order

E.1 The following pages contain the draft statutory instruments for the Prescribed Financial Institutions Order.

STATUTORY INSTRUMENTS

201* No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 201*

Made - - - -	***
Laid before Parliament	***
Coming into force - -	***

The Treasury, in exercise of the powers conferred by sections 192B(4) and 428(3) of, and Part 2 of Schedule 17A to, the Financial Services and Markets Act 2000 (**a**), make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 201* and comes into force on [ ].

(2) In this Order—

"the Act" means the Financial Services and Markets Act 2000(**b**);

"credit institution" has the meaning given by Article 4 of the banking consolidation directive;

"financial holding company" means a financial institution which is not a mixed financial holding company, the subsidiary undertakings of which are either exclusively or mainly credit institutions, investment firms or financial institutions and which has at least one subsidiary undertaking which is a credit institution or investment firm;

"financial institution", in the definition of "financial holding company", means an undertaking other than a credit institution, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points 2 to 12 and 15 of Annex I to the banking consolidation directive;

"insurance holding company" means an undertaking which is not a mixed financial holding company the main business of which is to acquire and hold participating interests in subsidiary undertakings which are exclusively or mainly insurance undertakings, reinsurance undertakings, third-country insurance undertakings or third-country reinsurance undertakings, and which has at least one subsidiary undertaking which is an insurance undertaking or a reinsurance undertaking;

"insurance undertaking" means an undertaking which has received authorisation as an insurance undertaking in accordance with the first non-life directive or the life assurance consolidation directive;

(**a**) 2000 c.8. Section 192B was inserted by section [25] of the Financial Services Act 201*. Schedule 17A was inserted by Schedule 7 to that Act.
(**b**) 2000 c.8.

"mixed financial holding company" means an undertaking which is not a credit institution, an insurance undertaking or an investment firm which has at least one subsidiary undertaking which is a credit institution, an insurance undertaking or an investment firm and which, together with its subsidiary undertakings, constitutes a financial conglomerate (within the meaning given by Article 2.14 of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate(**a**)) (disregarding any decision taken under Article 3(3) of that Directive);

"reinsurance undertaking" means an undertaking which has received authorisation in accordance with the reinsurance directive;

"third-country insurance undertaking" means an undertaking which would require authorisation in accordance with the first non-life directive or the life assurance consolidation directive if it had its head office in the EEA;

"third-country reinsurance undertaking" means an undertaking which would require authorisation in accordance with the reinsurance directive if it had its head office in the EEA.

Prescribed financial institutions

2.—(1) All financial institutions are prescribed for the purposes of section 192B(4) of the Act, in so far as it applies—

(a) to parent undertakings of a recognised UK investment exchange (within the meaning of section 192B(5) of the Act); and

(b) for the purposes of Part 12A of the Act as that Part is applied in relation to the Bank of England by paragraph 17 of Schedule 17A to the Act (further provision in relation to exercise of Part 18 functions by Bank of England).

(2) Financial institutions of the following kinds are prescribed for the purposes of section 192B(4) of the Act in so far as it applies to parent undertakings of a qualifying authorised person (within the meaning of section 192A of the Act(**b**))—

(a) an insurance holding company;

(b) a financial holding company;

(c) a mixed financial holding company.

Name
Name

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prescribes kinds of financial institution for the purposes of Part 12A of the Financial Services and Markets Act 2000 (powers exercisable in relation to parent undertakings). The powers conferred by that Part may only be exercised in relation to parent undertakings of certain authorised persons, recognised investment exchanges or recognised clearing houses if the parent undertaking is a financial institution of a prescribed kind.

In relation to the parent undertakings of authorised persons, the Order prescribes those financial institutions which are within the scope of consolidated (or supplementary) supervision by virtue of

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(**a**) OJ L035, 11.02.2003, p.1.
(**b**) Inserted by section 25 of the Financial Services Act 201*.

EU law and which are primarily financial in nature: insurance holding companies; financial holding companies; and mixed financial holding companies. These terms, and related definitions, are defined in article 1. The definition of "financial institution" in article 1 applies only for the purposes of the definition of "financial holding company"; it does not apply for the purposes of Part 12A.

This Order also prescribes all financial institutions for the purposes of Part 12A in so far as that Part applies to the parent undertakings of recognised investment exchanges or to the Bank of England in the exercise of its functions in relation to recognised clearing houses.

F Financial Services Compensation Scheme Order

F.1 This annex contains the draft Order for the Financial Services Compensation Scheme.

Draft Order laid before Parliament under section 429(1) of the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

201* No.*

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Financial Services Compensation Scheme) Order 201*

Laid before Parliament in draft

In accordance with section 429(1) of the Financial Services and Markets Act 2000(**a**), a draft of this Order has been laid before Parliament and approved by a resolution of each House;

The Treasury make the following Order, in exercise of the powers conferred by sections 213(1A) and 428(3) of the Financial Services and Markets Act 2000(**b**):

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Financial Services Compensation Scheme) Order 201* and comes into force on *.

(2) In this Order—

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

"the Regulated Activities Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**c**).

PRA rule making

2.—(1) The PRA may make rules establishing a scheme for compensating persons in cases where relevant persons or successors are unable, or likely to be unable, to satisfy the following claims against them—

(a) claims for a deposit within the meaning of article 5 of the Regulated Activities Order (disregarding the effect of the exclusion in article 6), including repayment claims within the meaning of section 5 of the Dormant Bank and Building Society Accounts Act 2008(**d**);

(b) claims under a contract of insurance;

(c) claims in respect of the activity of managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's as specified in article 57 of the Regulated Activities Order; and

(**a**) 2000 c.8, section 429 was amended by section * of the Financial Services Act 201*.
(**b**) Section 213 was amended by section * of the Financial Services Act 201*.
(**c**) S.I. 2001/544, was amended by S.I. 2002/682, S.I. 2002/1310, S.I. 2002/1776, S.I. 2011/1043.
(**d**) 2008 c.31.

(d) claims in respect of the activity of arranging, by the society incorporated by Lloyd's Act 1871 by the name of Lloyd's, of deals in contracts of insurance written at Lloyd's as specified in article 58 of the Regulated Activities Order.

FCA rule making

3. The FCA may make rules establishing a scheme for compensating persons in cases where relevant persons or successors are unable, or likely to be unable, to satisfy claims against them except those claims set out in article 2.

Name
Name
Two of the Lords Commissioners of Her Majesty's Treasury

Date

EXPLANATORY NOTE

(This note is not part of the Order)

The Financial Conduct Authority (the FCA) and the Prudential Regulation Authority (the PRA) are both responsible for making rules for the Financial Services Compensation Scheme to enable it to compensate persons in circumstances where relevant persons (as defined in s. 213(9) of the Financial Services and Markets Act 2000) are unable, or likely to be unable, to satisfy claims against them; or, in cases where persons (successors) have assumed responsibility for acts or omissions of relevant persons, those successors are unable, or likely to be unable to satisfy claims based on those acts or omissions (s.213(1) Financial Services and Markets Act 2000).

This order specifies what the PRA may make rules for, and what the FCA may make rules for.

Article 2 enables the PRA to make rules to compensate persons in cases where relevant persons or successors are unable, or likely to be unable, to satisfy claims against them:

(a) for deposits including repayment claims within the meaning of section 5 of the Dormant Bank and Building Society Accounts Act 2008;

(b) under a contract of insurance;

(c) in respect of the activity of managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's; or

(d) in respect of the activity of arranging by Lloyd's deals in contracts of insurance written at Lloyd's.

Article 3 enables the FCA to make rules to compensate persons in cases where relevant persons or successors are unable, or likely to be unable, to satisfy claims against them (except those claims referred to in article 2).

Neither the PRA nor the FCA are obliged by this Order to make rules for the cases set out in Articles 2 and 3.

G Guidance for bodies seeking designation as super-complainants

Introduction

G.1 The Financial Services and Markets Act 2000[1] ("the Act") gives designated consumer bodies[2] the right to make a "super-complaint" to the Financial Conduct Authority (FCA) where they consider that there are features of a market in the United Kingdom for financial services, (such as the market structure or the conduct of firms operating within it) that are or which may be significantly damaging the interests of consumers. The market in question may be regional, national or supranational (where the UK forms part of that market). Individual consumers do not often have access to the kind of information necessary to make a judgement about market failure and so the aim of the procedure is to encourage groups who represent consumers to make relevant super-complaints on their collective behalf. The FCA will be obliged to respond to a super-complaint within 90 calendar days.

G.2 The Act enables the Treasury to designate a body only if it appears to them to represent the interests of consumers[3] of any description. In addition, the Treasury must publish criteria that they will apply in determining whether to make (or revoke) a designation.

G.3 This guidance is for consumer bodies that wish to apply to be designated as "super-complainants" for the purposes of the Act. Separate guidance on making super-complaints is available on the FCA's website.

G.4 The FCA super-complaints regime for financial services markets is distinct from the cross-sectoral super-complaints regime provided for in the Enterprise Act 2002. Separate guidance for consumer bodies that wish to be designated as "super-complainants" under the Enterprise Act regime is available on the website of the Department for Business Innovation and Skills.

The criteria

G.5 In addition to satisfying the Treasury that in accordance with section 234C of the Act that they represent the interests of consumers of any description, consumer bodies must also demonstrate that they fulfil the following additional criteria:

1 The body is so constituted, managed and controlled as to be expected to act independently, impartiality and with complete integrity.

2 The body can demonstrate considerable experience and competence in representing the interests of consumers of any description.

3 The body has the capability to put together reasoned super- complaints on a range of issues.

[1] Section 234C as inserted by s40 of the Financial Services Act 2012.

[2] "Designated consumer body" means a body designated by the Treasury by order.

[3] For these purposes "consumer" does not include authorised persons.

4 The body is ready and willing to co-operate with the FCA. In particular, the body agrees to take account of any guidance issued by the FCA on the making of super-complaints.

5 The fact that a body has a trading arm will not disqualify it from being designated provided that the trading arm does not control the body; any profits of the trading arm are only used to further the stated objectives of the body; and the body has established procedures to ensure that any potential conflicts of interest are properly dealt with.

6 Where it appears to the Treasury that a body primarily represents the interests of businesses in their capacity as consumers of financial services, the body must be able to demonstrate that it primarily represents the interests of small or medium-sized businesses.

Guidance on the criteria

G.6 Financial Services and Markets Act Section 234C "The Treasury may designate a body only if it appears to them to represent the interests of consumers of any description."

G.7 Section 234C (4) provides that the definition of consumers which applies for the purposes of this section is the definition provided for in sections 425A and 425B (meaning of "consumers") of the Act, but the references to consumers in this section do not include consumers who are authorised persons. The definition of consumer of financial services used in these Sections 425A and 425B is relatively broad. In particular, consumers of financial services may include both non-business and business consumers.

G.8 Where the body appears primarily to represent the interests of businesses which are consumers of financial services, the body must demonstrate that it primarily represents the category of business consumers set out in criteria 6.

G.9 This criterion at Section 234C is broad enough to include organisations that represent the interests of the public generally, including in their capacity as consumers of financial services, those who represent disadvantaged groups who might have special needs as consumers of financial services and those who represent consumers of specific products or services.

G.10 However the criterion will not be satisfied if the consumers which the body appears to represent are authorised persons.

G.11 Typically the kind of activities carried out by such organisations might include all or some of (but are not limited to):

- promoting high standards in the quality of goods and services provided to consumers;
- promoting public knowledge and understanding of consumer rights and how to get redress;
- providing help and advice to consumers on how to get redress when things go wrong;
- providing information and advice to help consumers decide which goods and services to buy, for example, through impartial product research and comparative surveys;
- encouraging businesses to present complex information clearly and simply so as to make it easier for consumers to assess options;

- promoting consumer self-confidence through the advancement of consumer education;
- promoting high standards of safety in goods and services;
- giving specific objective advice to individual consumers about any consumer problems they may encounter;
- representing the interests of socially or economically vulnerable consumers; and
- promoting the general welfare of disadvantaged groups who may have special needs as consumers.

Additional criteria

Criterion (1)

G.12 **The body is so constituted, managed and controlled as to be expected to act independently, impartially and with complete integrity.**

G.13 Bodies should be able to demonstrate that they have sufficient management and control structures to ensure that in pursuing a super-complaint they are motivated by the interests and detriment suffered by the group of consumers in the market being investigated and not, for example, by the wider interests of the organisation or a part of it. An example of the pursuit of a wider interest would be the bringing of a super-complaint solely for its publicity value rather than a realistic chance of improving the working of the market for the benefit of consumers.

G.14 Where a designated consumer body primarily represents the interests of small businesses, an example of the pursuit of the wider interest might be to damage the reputation of a participant in a market to gain a competitive edge for some or all of the businesses represented.

G.15 In order to be able to assess whether or not an organisation meets this criterion, applicants are required to provide the Treasury with the following information:

- details of the constitution of the body including its legal or statutory status, its board and/or management structure and affiliations to other bodies;
- the current list of directors (including non-executive directors), partners or principal officers of the organisation and any other person who could be said to exercise control of the body;
- Curriculum vitaes (CVs) of the directors, partners or principal officers of the organisation; where this is not included on the CVs, a current list of directorships, shareholdings and any other substantial interests in other companies held by directors, partners or principal officers of the organisation and any other person who could be said to exercise control of the body;
- at least two years accounts, or where this is not possible an explanation of why these accounts are not available;
- details of any shareholdings in the organisation or its trading arm; and
- details of the sources and extent of funding of the organisation by other bodies including private enterprises.

G.16 The past conduct of the individuals (directors, partners, or principal officers) who manage or control the organisation may impact on the way in which it would make super-complaints under the Act if it were to be designated. This will depend on the circumstances, including the degree of influence of the individual concerned. In appropriate cases the Treasury will take into

account evidence of the integrity of such individuals and of the extent to which the decisions that individual may take in relation to the organisation could be influenced by financial or other improper considerations. Applicant organisations should therefore disclose any information which they think may be relevant, particularly with regard to those issues listed below in paragraph G.17.

G.17 The Treasury will take into account all relevant circumstances in reaching a view including (but not necessarily limited to) where appropriate, whether the organisation, if it has separate legal personality, or the individuals who manage or control it:

- has committed any offence involving fraud or other dishonesty or, in the case of an individual, any offence which might cast doubt on the suitability of an organisation controlled or managed by that person and which is not a spent conviction under the Rehabilitation of Offenders Act 1974;
- is subject to winding up proceedings or, in the case of an individual, an undischarged bankrupt or disqualified director;
- has practised unlawful discrimination on grounds of, for example, sex, colour, race, or ethnic or national origins in, or in connection with, the carrying on of any business; and
- has engaged in business practices that appear to the Treasury to be deceitful or oppressive, or otherwise unfair or improper (whether lawful or not).

G.18 Designated consumer bodies will not be permitted to make super-complaints in areas where they have trading arms.

Criterion (2)

G.19 **The body can demonstrate considerable experience and competence in representing the interests of consumers of any description.**

G.20 This criterion builds on section 234C of the Act, which requires applicants to demonstrate that they represent the interests of consumers of any description. Applicant organisations should provide the Treasury with a comprehensive description of their purpose and activities, the sectors they cover, and evidence of how long the organisation has been in existence. This should be as concise as possible and is intended to ensure that the organisation has a track record demonstrating experience and competence in representing the interests of consumers.

G.21 In assessing this experience and competence the Treasury would expect the track record to be for a minimum of 2 years, but would consider a shorter period if it can be demonstrated by the applicant that it fulfils the other criteria. The Treasury will, therefore, require all applicants to provide evidence demonstrating:

- experience of acting in the interests of consumers – whether generally or particular groups of consumers, and over what period; and
- competence within, or available to, the organisation – for example, legal advisers or case officers familiar with consumer law and/or dealing with consumer problems.

Criterion (3)

G.22 **The body has the capability to put together reasoned super-complaints on a range of issues.**

G.23 In order to demonstrate this capability, organisations should submit examples of previous papers and research.

G.24 The range of issues required by the criterion might be across a number of markets or in relation to different features of a particular market.

G.25 Bodies will need to demonstrate that they are able to deal with any competition and economic issues involved in super-complaint cases, whether through in-house experience or using external advice.

G.26 Bodies wishing to be designated should also refer to FCA's guidance on how to make a super-complaint to ensure they are able to comply.

Criterion (4)

G.27 **The body is ready and willing to co-operate with the Financial Conduct Authority (FCA). In particular, the body agrees to take account of any guidance issued by the FCA.**

G.28 Applicants will be required to indicate a readiness and willingness to cooperate with the FCA. Failure to co-operate may result in the removal of designated status. This criterion also requires designated bodies to take account of any guidance issued by FCA on how to put together reasoned super-complaints. The Treasury will have regard to any representations from the FCA that a body has failed to co-operate with the FCA, or to take account of their guidance, in considering whether to withdraw designation.

Criterion (5)

G.29 **The fact that a body has a trading arm will not disqualify it from being designated provided that the trading arm does not control the body, and any profits of the trading arm are only used to further the stated objectives of the body and the body has established procedures to ensure that any potential conflicts of interest are properly dealt with.**

G.30 It is not intended that designated bodies with commercial interests should be able to use the super-complaints procedure to boost the competitive position of their trading arms. The Treasury wishes to prevent this happening without excluding organisations from designation simply because they have an ancillary trading arm. The Treasury will need to be satisfied that, in such cases, the trading arm does not control the organisation and that the profits of the trading arm are used to fund the main organisation's stated objectives. Applicants should submit a copy of the constitution of the trading arm and details of the sectors within which it operates. Additionally, applicants must present copies of accounts showing how the trading arm's profits are used and information about the procedures the body has established to identify and deal with conflicts of interest.

G.31 Designated bodies will have to agree not to make super-complaints about markets in which their trading arms have a commercial interest.

Criterion (6)

G.32 **Where it appears to the Treasury that a body primarily represents the interests of businesses in their capacity as consumers of financial services, the body must be able to demonstrate that it primarily represents the interests of small or medium sized businesses.**

G.33 The Treasury believes that individual small and medium-sized businesses may face the same challenges in obtaining information and identifying market failures as non-business consumers. Larger businesses do not face the same co-ordination challenges and are able to access the regulator efficiently by existing channels.

G.34 Where a body, such as a trade organisation, primarily represents the interests of businesses they must be able to demonstrate that they primarily represent small or medium sized businesses, i.e. businesses which:

a employ fewer than 250 persons; and

b whose annual turnover does not exceed €50m; or

c whose annual balance-sheet total does not exceed €43m

G.35 If the membership of an organisation which represents small or medium-sized businesses includes some authorised persons, the information supplied in support of an application must demonstrate that the body does not primarily represent the interest of those persons.

Review of designation

G.36 The Treasury may from time to time review the designation of any organisation as a designated consumer body under section 234C of the Act, in order to ensure that it continues to meet the criteria for designation.

G.37 If during the review and having consulted the body it is found that the organisation no longer meets the criteria then the Treasury will withdraw its designation.

G.38 Applicants should undertake to formally notify the Treasury of any material changes to the information supplied which could be relevant to meeting any of the criteria. This might include, for example, changes to directors, partners or principle officers of the organisation, or changes in the activities or sectors covered the organisation.

Withdrawal of designation

G.39 Designated status will be removed from any designated consumer body that the Treasury believe has abused the super-complaints process. This might be by using the super-complaints process for competitive advantage or commercial gain, or by making frivolous super-complaints.

G.40 In considering whether an organisation should have its designation withdrawn, any consequences of the breach will be taken into account.

G.41 Designation can also be withdrawn at the request of the organisation.

G.42 However, designated status will not be removed simply because a body does not submit any super-complaints. The emphasis is on ensuring that bodies put forward well thought out super-complaints rather than submitting them merely in an attempt to retain designation.

Changes to the criteria against which consumer bodies are assessed

G.43 It may be that experience will show that the criteria need to be amended. If it is proposed to change the criteria, the Treasury will consider how the changes affect the designation of bodies that then hold designated status and whether it would be appropriate to consult on the changes.

Application process

G.44 Applications should be sent to:

[*a named individual*]
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

G.45 Applicants may wish to refer to the checklist at the end of this guidance which summarises the information to be included in the application. An acknowledgement of the receipt of an application will be sent out within 5 working days.

G.46 To provide a transparent application process, all applications will be placed on the Treasury website for a period of 12 weeks. Personal information relating to Directors and other relevant individuals that would not normally be in the public domain will not be put on the website. Applicants should indicate on their applications any information which they consider ought not to be made public.

G.47 If an organisation considers there is any material information missing or that the information provided in the application is factually incorrect, they should inform the Treasury within the 12-week period.

G.48 Any questions about the designation process or individual applications should be directed to [a named individual] at the address in paragraph G.44, Tel: [xxx], e-mail: [xxx]

Summary of information applicant organisations should supply:

- Name and address of the organisation and a contact point for correspondence
- Nature of the organisation, purpose, activities and sectors covered and how long in existence (also for any trading arms) – **paragraph G.2**
- Details of the organisation's constitution (e.g. Memorandum and Articles of Association), including its legal or statutory status, its board and/or its management structure (also for any trading arms) – **paragraph G.15**
- The current list of directors (including non-executive directors), partners or principal officers of the organisation and any trading arms and any others who could be said to exercise control – **paragraph G.15**
- *Curriculum vitae* (CVs) of the directors, partners or principal officers of the organisation and any trading arms and any others who could be said to exercise control – **paragraph G.15**
- A current list of directorships, shareholdings and any other substantial interests in other companies held by directors, partners or principal officers of the organisation (including any trading arms) and any others who could be said to exercise control – **paragraph G.15**
- At least two years accounts, or where this is not possible an explanation of why two years accounts are not available. Where there is a trading arm, the accounts should show the sources of income and the purpose for which the income is used – **paragraph G.15**
- Any relevant information on the past conduct of the individuals who manage or control the organisation (including any trading arms) **– paragraph G.16**
- Evidence demonstrating experience of acting in the interests of consumers /particular groups, with examples and over what period **– paragraph G.21**
- Evidence of expertise within or available to the organisation – e.g. legal advisers or case officers familiar with consumer law/dealing with consumer problems – **paragraph G.21**
- Evidence of the capability to put together reasoned super-complaints on a range of issues (e.g. examples of previous papers and research**) – paragraph G.23**
- Evidence of being able to deal with any competition and economic issues involved in super-complaint cases **– paragraph G.25**
- A statement of willingness to co-operate as per criterion 4 – **paragraph G.28**

- If the organisation has a trading arm – an assurance that organisation will not make super-complaints about markets in which they have a commercial interest – paragraph G.31
- If the organisation primarily represents businesses, evidence that it primarily represents small or medium-sized businesses, for example details of its membership or relevant features of its constitution – paragraph G.35
- A formal undertaking to notify the Treasury of any material changes to the information supplied which could be relevant to meeting any of the criteria – paragraph G.39
- Information which is considered personal and not normally in the public domain, which the organisation wishes to be omitted when its application is placed on the Treasury website must be clearly identified – paragraph G.47
- Any information which the organisation considers is relevant to whether the organisation meets the criteria for designation.

H Impact assessment

H.1 The following pages contain the Government's impact assessment for the proposals contained in this consultation document.

Title:
A new approach to financial regulation: statutory instruments
IA No:

Lead department or agency:
HM Treasury
Other departments or agencies:

Impact Assessment (IA)

Date: 08/10/2012

Stage: Consultation

Source of intervention: Domestic

Type of measure: Secondary legislation

Contact for enquiries:
financial.reform@hmtreasury.gsi.gov.uk

Summary: Intervention and Options

RPC Opinion: AMBER

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, One-Out?**	**Measure qualifies as**
£540m	NA	NA	No	NA

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.

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 to take charge of macro-prudential regulation. The Bank of England will regulate settlement systems and central counterparty clearing houses. The PRA – a Bank of England subsidiary – 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)

Two options have been considered at this stage: "do nothing" (the base case option in which the proposed regulatory reforms would not be made) and the preferred two regulator model of the PRA and FCA. The preferred option is justified by the reduction in the probability of a serious financial crisis ocuring in the UK. A serious financial crisis would lead to substantial losses in output. The benefits of the preferred option (equal to the change in the expected net present value of lost output) will outweigh the costs (which comprise the transitional costs for the authorities and for firms which will be regulated by the PRA and the FCA and the additional ongoing administrative costs for the authorities and the additional compliance costs for these firms.

Will the policy be reviewed? It will not be reviewed. **If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** NA	**Non-traded:** NA	

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: 15/10/2012

Summary: Analysis & Evidence — Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 540	**High:** 10,370	**Best Estimate:** 540

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	185		68	**630**
High	245		93	**860**
Best Estimate	245		93	**860**

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				

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 and for the costs for regulators and affected firms. The main specific risks are: (1) that transitional costs are underestimated; (2) that there are significant additional costs for dual-regulated firms; and (3) 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 the incidence of financial crises.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: NA	**Benefits:** NA	**Net:** NA	No	NA

Evidence Base (for summary sheets)

Introduction

1. This assessment updates the impact assessment published in January 2012 in the policy document *A new approach to financial regulation: securing stability, protecting consumers* (Cm 8268) and accompanies the consultation on the main statutory instruments which are needed to complete the implementation of the reforms to the organisation of the UK's financial regulatory system as set out in the policy document and incorporated in the Financial Services Bill, now before Parliament. This section sets out the assumptions and analysis to support the assessment which have been refined where necessary to reflect further information from the Bank of England and the Financial Services Authority. It should be read in conjunction with the latest consultation document and previous documents regarding the Government's new approach to financial regulation. This impact assessment largely follows the structure of the impact assessments in those documents. As it updates previous assessments, the time periods covered and the base years for the calculations of present values of costs and benefits have not been changed.

2. The purpose of this assessment is to consider the package of measures as a whole. The statutory instruments now subject to consultation should be seen, therefore, as an integral part of the package of reforms and not as independent or separable measures. Accordingly, there are only two options: "do nothing" (the base case) and "proceed" (option 1). And this impact assessment does not include:
   a. an assessment of the costs and benefits of transferring consumer credit regulation to the FCA;
   b. an assessment of costs and benefits of other changes in FCA scope, including the conferring of certain competition powers and duties on the FCA.
   c. any other options or minor measures considered in previous impact assessments.

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.

4. The tripartite system failed in large part because of its inherent weaknesses and contradictions. It placed responsibility for financial regulation in the hands of a single authority which was expected to deal with all regulatory issues from the safety and soundness of large global banks to conduct of small financial advisers. The tripartite system also gave the Bank of England nominal responsibility for financial stability without the instruments to carry out that role or the regulatory relationship with the financial institutions whose activities could constitute the main threats to financial stability.

5. The Government's reforms will address these weaknesses by creating a system with properly focussed specialist regulators and institutions covering micro-prudential (firm-specific) regulation, conduct of business regulation and macro-prudential (systemic) regulation. The PRA (a subsidiary of the Bank of England) will be responsible for the prudential regulation of all deposit-taking firms, insurers and investment banks. The FCA will be a specialist regulator responsible for conduct of business regulation across the financial system covering the conduct of firms towards their retail customers as well as conduct in wholesale markets. A new Financial Policy Committee in the Bank of England will be responsible for identifying and addressing risks to the financial system as a whole while the Bank of England (rather than the PRA) will regulate systemically important financial infrastructure.

Overview of costs and benefits

Benefits

6. The key assumption for this impact assessment is that creation of 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). 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

7. There will be both transitional costs to change the regulatory organisation and some additional ongoing costs. Some regulated firms may incur transitional costs in making arrangements to deal with two regulators rather than one and may also incur additional 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.

Costs for public authorities

8. 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 have been updated as estimating improves and must be seen as the latest available "snapshot" of an ongoing process. The cost estimates cover the transfer of about a third of the FSA's regulatory staff to the Bank and the transitional costs of making the FSA into the FCA. There are relatively small costs to the Bank in setting up the FPC.

9. The Bank's approach to creating the PRA is founded on an expectation that costs of prudential regulation will fall in the medium term. This will flow 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.

10. 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.

11. The transitional costs therefore include the costs of preparing for and undertaking the transfer to the Bank of relevant FSA staff; acquiring and fitting out suitable accommodation for the PRA close to the Bank; delivery of Bank corporate IT to the PRA, 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.

12. 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 some IT system development work, although the FSA would obviously have been incurring IT expenditure in order to make improvements or upgrades to its systems. Such expenditure should not be seen as part of the cost of transition. However, there will be costs in 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.

13. 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.

Costs for regulated firms

14. The Government has sought views on the transitional and ongoing costs for all types of regulated person in previous consultations. 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 incur in making changes to their internal systems and processes.

Description of options considered

"Do nothing" option

15. 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 and carry out its other activities as now. The roles and responsibilities of other organisations would also continue as before.

16. "Do nothing" does not mean "no change in the regulatory environment". It only means that the reforms to the regulatory structure and organisation discussed in this consultation document would not be made. Other changes to the regulatory environment will continue to happen. These may include the implementation of changes to EU law or changes to domestic regulatory practice including the continuation of current FSA regulatory initiatives by the FCA or the PRA. Future changes to FCA or PRA rules will be subject to cost benefit analysis in essentially the same way as proposed changes to FSA rules currently are.

Preferred option – the proposed model of regulatory organisation

17. 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 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).

Analysis of costs and benefits

Introduction

18. 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 or organisation - would increase or decrease the costs and benefits of each option 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.

19. The costs and benefits of the "do nothing" option are therefore assumed to be zero and the costs and benefits of the preferred option are measured as differences from the amounts in the "do nothing" option. It would, of course, be double counting to treat something both as a cost (or benefit) of the "do nothing" option and as a benefit (or cost) in the preferred option.

Public authorities: transitional costs

20. 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 and transforming the FSA into the FCA, will be in the region of £135 million - £145 million. The range of transition costs has narrowed reflecting greater certainty about the costs for setting up the PRA. However, it will always be difficult to allocate precisely FSA costs between transitional costs for setting up the FCA and the ongoing costs of FSA/FCA operations.

Public authorities: ongoing administrative costs

21. The additional ongoing 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. However, it will always be difficult to attribute additional costs either to the regulatory reforms or to changes in regulatory practice or operations which might have occurred in any event.

Changes in supervisory practice etc.

22. 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.

23. 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

24. 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 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.

Increased specialisation and efficiency gains

25. Increased specialisation may result in some efficiency gains. 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.

Other matters

26. 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

27. 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 operational support, and in particular IT provision. But it is less likely that such savings could be made in the FCA which will retain a broad and enhanced set of responsibilities. In the short term the FCA will be operating with a similar fixed cost base inherited from the FSA, further hampering its ability to achieve savings. Overall, therefore, this impact assessment assumes that the incremental running costs of the regulators attributable to the creation of the FCA and PRA (and excluding any changes in supervisory practice and scope e.g. the transfer of responsibilities for consumer credit and the giving of certain competition powers and obligations to the FCA) will be about £45 million a year (or £43m at 2011 base year prices). This is the sum of the proposed 2013-14 estimates of the marginal running costs of the PRA, plus the costs of the conduct regulator component of the FSA less a hypothetical 2013-14 budget for the FSA constructed on the assumption that the FSA continued in being and the regulatory reforms did not take place.

Regulated firms: transitional costs

28. The estimates of transitional costs for regulated firms have not been changed in this impact assessment. Previous assessments took account of the views of the small number of consultees who commented on this issue. However, considerable uncertainty must remain in relation to these estimates.

29. Most of the approximately 19,000 UK firms regulated under the Financial Services and Markets Act 2000 will be regulated solely by the FCA. 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 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.

30. About 1,600 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 will 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.

31. 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.

32. 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.

33. It is difficult, therefore, to estimate the transitional costs that dual-regulated firms will face. It would also 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 to previous consultations who commented on transitional costs mainly 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. On the other hand, it seems unlikely that very small firms, which are not expected to have to make major adaptations to prepare for the PRA's more judgement-led approach to supervision, will incur significant transitional costs.

34. The Government sought views on the transitional for regulated persons in previous consultations and respondents' comments have been taken into account in the assumptions made for the transitional that firms are likely to incur in making changes to their internal systems and processes. However, the small number of responses received and the range of different sizes and circumstances of dual-regulated firms mean that it is not possible to produce more precise estimates of their transitional costs. The range of estimates is, therefore, unchanged at £50 million to £100 million.

Regulated firms: ongoing compliance costs

35. The estimates of ongoing compliance costs for regulated persons have not been changed in this impact assessment. Previous assessments took account of the comments received from a small number of consultees who commented on this issue. However, considerable uncertainty must remain in relation to these estimates.

36. Regulated firms and applicants for authorisation are only like to face significantly higher ongoing compliance costs 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. 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.

37. 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. Respondents to previous consultations and those who commented on this issue in response to the June 2011 White paper have been concerned that dual-regulated firms would face significantly higher costs and that these would fall disproportionately on smaller dual-regulated firms.

38. In practice, it seems unlikely that very small dual-regulated firms would face significantly higher ongoing compliance costs. Changes in PRA supervisory practice will mainly affect larger firms as a result of the move towards more judgement-led supervision and greater emphasis on high-impact firms. It is likely, therefore, that the overall supervisory effort directed towards the smallest firms will not increase significantly as a result of the introduction of a second regulator. The smallest firms are unlikely, therefore, to have to incur extra compliance costs as a result of

changes in supervisory practice. The smallest firms are also less likely to incur significant additional costs simply in dealing with two regulators rather than one. This reflects the fact that small firms will have fewer and less complex interactions with regulators and the introduction of a second regulator is unlikely to increase the burden of those interactions substantially.

39. 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 their existing internal systems and processes. The largest PRA firms are probably best placed to adapt to a move to more judgement-based supervision and other changes in supervisory practice and so may not face significantly higher compliance costs in comparison with the current position. Many of these firms are likely to be part of major international groups and so will already be dealing with a number of regulators internationally and they are unlikely therefore to face significant additional cost in interacting with on extra regulator in the UK.

40. However, it is much more difficult to gauge the effect on medium-sized PRA firms (which could include a broad range of smaller banks, building societies, insurers, friendly societies or proprietary trading firms). A great deal could depend on the complexity of their businesses and their individual circumstances and the nature of the business they undertake. Some medium-sized firms could be in a similar position to that of large firms (e.g. by being in a major international group). Others might be in a similar position to small firms. A wide range of possible cost impacts is likely.

41. The Government sought views on the ongoing compliance costs for regulated persons in previous consultations and respondents' comments have been taken into account in the assumptions made for additional ongoing compliance costs that firms would incur. However, the small number of responses received and the fact that firms can be expected to adapt over time to the new regulatory arrangements mean that additional ongoing compliance costs cannot be precisely estimated. This impact assessment therefore keeps the assumptions about additional ongoing compliance costs of between £25 million and £50 million a year used in previous assessments.

Benefits

Improvements in prudential regulation

42. The reforms are expected to deliver improvements to prudential regulation in two ways. First, the PRA will be a specialist prudential regulator able to focus exclusively on the safety and soundness of individual deposit-taking firms, insurers and investment banks – that is important proprietary trading firms that take significant risk on their own balance sheets. Second, the FPC will be able to take a better strategic overview of developments in the financial system and emerging systemic risks; as a result, it will be well-placed to anticipate potential problems and facilitate the taking of regulatory action by the PRA. The Financial Services Bill gives the FPC a power of direction to the PRA or FCA to take macro-prudential measures. (See separate consultation and impact assessment on macro-prudential tools.) The improvements in prudential regulation will deliver benefits in the form of a reduction in the likelihood of a financial crisis.

43. In principle, the these benefits 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 of financial crises. This is equivalent to estimating the change in the probability of 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.

44. 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 (e.g. in bank capital and liquidity requirements made to implement recommendations of the Basel Committee on Banking Supervision to strengthen global capital and liquidity rules) or of other reform measures such as those to implement the ICB recommendations.

45. 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 should be regarded as purely illustrative.

46. 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. 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).

47. 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.

48. It is impossible therefore to estimate the amount of any benefit that could be attributed to the preferred option but if it is assumed that the proposed regulatory reforms alone reduced the probability of a financial crisis by only 0.1 percentage points - equivalent to reducing the frequency of financial crises from (say) 5 a century to 4.9 a century or increasing the interval between financial crises from 20 years to 20 years 5 months. The Government considers that strengthening the regulatory system in the way proposed, allowing for more focussed and effective supervision of banks and similar financial institutions will result in significant changes in bank behaviour or allow the PRA to take appropriate supervisory action at an earlier stage to ensure that changes in bank behaviour take place. While it is not possible to give a definitive estimate of a change in probability of events of this kind, it is reasonable to conclude on this basis, that the proposed regulatory reforms will lead to a reduction in the probability of financial crises of at least the amount assumed in this impact assessment.

49. A reduction in the probability of financial crises of 0.1 percentage points 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.)

50. 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 cut-off period.

Improvements in consumer protection

51. The benefits in terms of consumer protection from a more proactive approach with greater emphasis on transparency and disclosure, to 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. This analysis will also be entirely dependent on the assumptions made.

52. 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.

53. 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.)

54. 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 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.

55. It is impossible, therefore, to estimate the amount of any benefit which could be attributable to the preferred option 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 the preferred option.

56. 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 OFT. 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 the preferred option. (This is also consistent with the exclusion of the costs arising from conferring certain competition powers and duties on the FCA.)

Assumptions, risks and sensitivities

57. 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.

58. 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). There is a risk that this assumption is not correct and that the benefits assumed in the impact assessment are overstated.

59. 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).

60. 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.

Wider impacts

Statutory equality duties

61. The Government has considered the proposed reforms 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

62. 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

63. 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 possible increase in compliance costs for dual-regulated firms does not appear large enough on its own to induce a dual-regulated firm to relocate elsewhere in the EEA and use an EU 'passport' to provide services in the UK. (Many dual-regulated firms such as credit unions and building societies could not relocate to another EEA state; the additional compliance costs arising from dual regulation will be only one of many UK and non-UK factors which would be considered in the location decisions of the largest dual-regulated firms.) The Government does not consider, therefore, that the proposed reforms will have any significant adverse effect on competition.

64. 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. Micro-businesses are not exempt but most micro-businesses will be regulated solely by the FCA in succession to the FSA and so will not be significantly affected by the reforms. Some micro-businesses will be regulated by both the FCA and the PRA but it is unlikely that these firms will face significantly higher compliance costs as the anticipated changes to supervisory practice will mainly affect much larger systemically important firms.

Summary and preferred option (with description of implementation plan)

65. The Government therefore proposes to proceed with the preferred option and to proceed therefore with the implementing secondary legislation covered by this consultation.

66. The main implementing measure will be primary legislation which is expected to be enacted in 2012. The secondary legislation is expected to be put in place in early 2013. .

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This document can be found in full on our website: http://www.hm-treasury.gov.uk

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