

# SHEARMAN & STERLING

26 January 2023

Shearman & Sterling LLP has created this comparison of relevant sections of the Financial Services and Markets Act 2000 (FSMA) to show proposed changes to FSMA under the Financial Services and Markets Bill as tabled by Lord Lilley on 23 January 2023.

## Financial Services and Markets Act 2000

### 1A The Financial Conduct Authority

- (1) The body corporate previously known as the Financial Services Authority is renamed as the Financial Conduct Authority.
- (2) The Financial Conduct Authority is in this Act referred to as "*the FCA*".
- (3) The FCA is to have the functions conferred on it by or under this Act.
- (4) The FCA must comply with the requirements as to its constitution set out in Schedule 1ZA.
- (5) Schedule 1ZA also makes provision about the status of the FCA and the exercise of certain of its functions.
- (6) References in this Act or any other enactment to functions conferred on the FCA by or under this Act include references to functions conferred on the FCA by or under—
  - (a) the Insolvency Act 1986,
  - (b) the Banking Act 2009,
  - (c) the Financial Services Act 2012,
  - (cza) the Financial Guidance and Claims Act 2018,
  - (czb) the Civil Liability Act 2018,
  - [(czc) the Financial Services and Markets Act 2022,]<sup>1</sup>
  - (ca) the Alternative Investment Fund Managers Regulations 2013,
  - (d) a qualifying provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order, or
  - (e) regulations made by the Treasury under section 8 of the European Union (Withdrawal) Act 2018.

### 1B The FCA's general duties

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

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<sup>1</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 6 s.56(2) (Lords' Second Reading, January 10, 2023).

# SHEARMAN & STERLING

26 January 2023

- (a) is compatible with its strategic objective, and
  - (b) advances one or more of its operational objectives.
- (2) The FCA's strategic objective is: ensuring that the relevant markets (see section 1F) function well.
- (3) The FCA's operational objectives are—
- (a) the consumer protection objective (see section 1C);
  - (b) the integrity objective (see section 1D);
  - (c) the competition objective (see section 1E).
- (4) The FCA must, so far as is compatible with acting in a way which advances the consumer protection objective or the integrity objective, discharge its general functions in a way which promotes effective competition in the interests of consumers.
- [(4A) When discharging its general functions in the way mentioned in subsection (1) the FCA must, so far as reasonably possible, act in a way which, as a secondary objective, advances the competitiveness and growth objective (see section 1EB).]<sup>2</sup>
- [\(4B\) When discharging its general functions in the way mentioned in subsection \(1\) the FCA must, so far as reasonably possible, act in a way which, as a secondary objective, advances the predictability and consistency objective \(see section 1EC\).](#)
- (5) In discharging its general functions the FCA must have regard to—
- (a) the regulatory principles in section 3B; and
  - (b) the importance of taking action intended to minimise the extent to which it is possible for a business carried on—
    - (i) by an authorised person or a recognised investment exchange, or
    - (ii) in contravention of the general prohibition,to be used for a purpose connected with financial crime.
- (6) For the purposes of this Chapter, the FCA's general functions are—
- (a) its function of making rules under this Act (considered as a whole);
  - (aa) its function of making technical standards in accordance with Chapter 2A of Part 9A;
  - (b) its function of preparing and issuing codes under this Act (considered as a whole);
  - (c) its functions in relation to the giving of general guidance under this Act (considered as a whole); and

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<sup>2</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.3 s.24(2) (Lords' Second Reading, January 10, 2023).

26 January 2023

- (d) its function of determining the general policy and principles by reference to which it performs particular functions under this Act.
- (7) Except to the extent that an order under section 50 of the Financial Services Act 2012 (orders relating to mutual societies functions) so provides, the FCA's general functions do not include functions that are transferred functions within the meaning of section 52 of that Act.
- (8) "*General guidance*" has the meaning given in section 139B(5).

## **1C The consumer protection objective**

- (1) The consumer protection objective is: securing an appropriate degree of protection for consumers.
- (2) In considering what degree of protection for consumers may be appropriate, the FCA must have regard to—
  - (a) the differing degrees of risk involved in different kinds of investment or other transaction;
  - (b) the differing degrees of experience and expertise that different consumers may have;
  - (c) the needs that consumers may have for the timely provision of information and advice that is accurate and fit for purpose;
  - (d) the general principle that consumers should take responsibility for their decisions;
  - (e) the general principle that those providing regulated financial services should be expected to provide consumers with a level of care that is appropriate having regard to the degree of risk involved in relation to the investment or other transaction and the capabilities of the consumers in question;
  - (f) the differing expectations that consumers may have in relation to different kinds of investment or other transaction;
  - (h) any information which the scheme operator of the [ombudsman adjudication](#) scheme has provided to the FCA pursuant to section 232A.

## **1D The integrity objective**

- (1) The integrity objective is: protecting and enhancing the integrity of the UK financial system.
- (2) The "*integrity*" of the UK financial system includes—
  - (a) its soundness, stability and resilience;
  - (b) it's not being used for a purpose connected with financial crime;
  - (c) it's not being affected by [contraventions by persons of Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation];
  - (d) the orderly operation of the financial markets; and

# SHEARMAN & STERLING

26 January 2023

- (e) the transparency of the price formation process in those markets.

## **1E The competition objective**

- (1) The competition objective is: promoting effective competition in the interests of consumers in the markets for—
  - (a) regulated financial services, or
  - (b) services provided by a recognised investment exchange in carrying on regulated activities in respect of which it is by virtue of section 285(2) exempt from the general prohibition.
- (2) The matters to which the FCA may have regard in considering the effectiveness of competition in the market for any services mentioned in subsection (1) include—
  - (a) the needs of different consumers who use or may use those services, including their need for information that enables them to make informed choices;
  - (b) the ease with which consumers who may wish to use those services, including consumers in areas affected by social or economic deprivation, can access them;
  - (c) the ease with which consumers who obtain those services can change the person from whom they obtain them;
  - (d) the ease with which new entrants can enter the market; and
  - (e) how far competition is encouraging innovation.

## **1EB Competitiveness and growth objective**

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

- (a) the international competitiveness of the economy of the United Kingdom (including in particular the financial services sector), and
- (b) its growth in the medium to long term.]<sup>3</sup>

## **1EC Predictability and consistency objective**

- (1) The predictability and consistency objective is: acting predictably and consistently.
- (2) In subsection (1), "acting predictably and consistently" includes:
  - (a) that the FCA will apply without limitation its rules, technical guidance and codes, so far as is practical and appropriate, in a predictable and consistent manner, including (without limitation):
    - (i) having regard to the need for its decisions to be consistent between firms operating businesses of a similar size, scope and complexity, and which

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<sup>3</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.3 s.24(3) (Lords' Second Reading, January 10, 2023).

26 January 2023

undertake the same or similar activities and which may pose similar risks to consumers and the UK financial system, and

(ii) having regard to the need to write clear and predictable rules, technical guidance and codes; and

(b) that the FCA will not treat a firm or individual in an adverse manner because the firm or individual (or a connected firm or individual) has appealed or challenged any of the FCA or PRA's decisions or decision-making processes, or has expressed an intention to do so, including by means of a reference or appeal to the Tribunal.

## **1F Meaning of "relevant markets" in strategic objective**

In section 1B(2) "*the relevant markets*" means—

- (a) the financial markets;
- (b) the markets for regulated financial services (see section 1H(2)); and
- (c) the markets for services that are provided by persons other than authorised persons in carrying on regulated activities but are provided without contravening the general prohibition.

## **1G Meaning of "consumer"**

(1) In sections 1B to 1E "*consumers*" means persons—

- (a) [who ]use, have used or may use—
  - (i) regulated financial services, or
  - (ii) services that are provided by persons other than authorised persons but are provided in carrying on regulated activities;
- (b) [who ]have relevant rights or interests in relation to any of those services;
- (c) [who ]have invested, or may invest, in financial instruments;
- (d) [who ]have relevant rights or interests in relation to financial instruments; [...]
- (e) [who ]have rights, interests or obligations that are affected by the level of a regulated benchmark[; or]
- (f) in respect of whom a person carries on an activity which is specified in article 89G of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (seeking out etc. claims) whether that activity, as carried on by that person, is a regulated activity, or is, by reason of an exclusion provided for under the 2001 Order or the 2000 Act, not a regulated activity.

(2) A person ("*P*") has a "*relevant right or interest*" in relation to any services within subsection (1)(a) if *P* has a right or interest—

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

# SHEARMAN & STERLING

26 January 2023

- (b) which may be adversely affected by the use of the services by persons acting on P's behalf or in a fiduciary capacity in relation to P.
- (3) If a person is providing a service within subsection (1)(a) as trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or may use the service.
- (4) A person who deals with another person ("B") in the course of B providing a service within subsection (1)(a) is to be treated as using the service.
- (5) A person ("P") has a "*relevant right or interest*" in relation to any financial instrument if P has—
  - (a) a right or interest which is derived from, or is otherwise attributable to, investment in the instrument by others, or
  - (b) a right or interest which may be adversely affected by the investment in the instrument by persons acting on P's behalf or in a fiduciary capacity in relation to P.

## **1H Further interpretative provisions for sections 1B to 1G**

- (1) The following provisions have effect for the interpretation of sections 1B to 1G.
- (2) "*Regulated financial services*" means services provided—
  - (a) by authorised persons in carrying on regulated activities;
  - (c) by authorised persons in communicating, or approving the communication by others of, invitations[ or inducements]<sup>4</sup> to engage in investment activity or to engage in claims management activity;
  - (d) by authorised persons who are investment firms, or qualifying credit institutions, in providing relevant ancillary services;
  - (e) by persons acting as appointed representatives;
  - (f) by payment service providers in providing payment services;
  - (g) by electronic money issuers in issuing electronic money;
  - (h) by sponsors to issuers of securities;
  - (i) by primary information providers to persons who issue financial instruments.
- (3) "*Financial crime*" includes any offence involving—
  - (a) fraud or dishonesty;
  - (b) misconduct in, or misuse of information relating to, a financial market;

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<sup>4</sup> Words inserted by Financial Services and Markets Bill 2022-23 (HL Bill 80) Sch.5 para.2 (Lords' Second Reading, January 10, 2023).

# SHEARMAN & STERLING

26 January 2023

- (c) handling the proceeds of crime; or
- (d) the financing of terrorism.
- (4) "*Offence*" includes an act or omission which would be an offence if it had taken place in the United Kingdom.
- (5) "*Issuer*", except in the expression "*electronic money issuer*", has the meaning given in section 102A(6).
- (6) "*Financial instrument*" has the meaning given in section 102A(4).
- (7) "*Securities*" has the meaning given in section 102A(2).
- (7A) "*Regulated benchmark*" means a benchmark, as defined in section 22(6A), in relation to which any provision made under section 22(1A)(c) has effect.

(8) In this section—

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

"*electronic money issuer*" means a person who is an electronic money issuer as defined in regulation 2(1) of the Electronic Money Regulations 2011 other than a person falling within paragraph (f), (g) or (j) of the definition;

"*engage in claims management activity*" has the meaning given in section 21;

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

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

"*payment services*" has the same meaning as in the Payment Services Regulations 2017;

"*payment service provider*" means a person who is a payment service provider as defined in regulation 2(1) of the Payment Services Regulations 2017 other than a person falling within paragraph (i) or (j) of the definition;

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

"*relevant ancillary service*" means any service of a kind mentioned in Part 3A of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 the provision of which does not involve the carrying on of a regulated activity;

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

## II Meaning of "the UK financial system"

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

- (a) financial markets and exchanges;
- (b) regulated activities (including regulated claims management activities); and

26 January 2023

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

## **11A Modifications applying if core activity not regulated by PRA**

- (1) If and so long as any regulated activity is a core activity (see section 142B) without also being a PRA-regulated activity (see section 22A), the provisions of this Chapter are to have effect subject to the following modifications.

- (2) Section 1B is to have effect as if—

- (a) in subsection (3), after paragraph (c) there were inserted—

"(d) in relation to the matters mentioned in section 1EA(2), the continuity objective (see section 1EA).", and

- (b) in subsection (4), for "or the integrity objective," there were substituted ", the integrity objective or (in relation to the matters mentioned in section 1EA(2)) the continuity objective,".

- (3) After section 1E there is to be taken to be inserted—

### **"1EA Continuity objective**

- (1) In relation to the matters mentioned in subsection (2), the continuity objective is: protecting the continuity of the provision in the United Kingdom of core services (see section 142C).

- (2) Those matters are—

- (a) Part 9B (ring-fencing);

- (b) ring-fenced bodies (see section 142A);

- (c) any body corporate incorporated in the United Kingdom that has a ring-fenced body as a member of its group;

- (d) applications under Part 4A which, if granted, would result, or would be capable of resulting, in a person becoming a ringfenced body.

- (3) The FCA's continuity objective is to be advanced primarily by—

- (a) seeking to ensure that the business of ring-fenced bodies is carried on in a way that avoids any adverse effect on the continuity of the provision in the United Kingdom of core services,

- (b) seeking to ensure that the business of ring-fenced bodies is protected from risks (arising in the United Kingdom or elsewhere) that could adversely affect the continuity of the provision in the United Kingdom of core services, and

- (c) seeking to minimise the risk that the failure of a ring-fenced body or of a member of a ring-fenced body's group could adversely affect the continuity of the provision in the United Kingdom of core services.

- (4) In subsection (3)(c), "*failure*" is to be read in accordance with section 2J(3) to (4)."

# SHEARMAN & STERLING

26 January 2023

## **1J Power to amend objectives**

The Treasury may by order amend any of the following provisions—

- (a) in section 1E(1), paragraphs (a) and (b);
- (b) section 1G; and
- (c) section 1H(2) and (5) to (8).

## **1JA Recommendations by Treasury in connection with general duties**

- (1) The Treasury may at any time by notice in writing to the FCA make recommendations to the FCA about aspects of the economic policy of Her Majesty's Government to which the FCA should have regard when considering—
  - (a) how to act in a way which is compatible with its strategic objective;
  - (b) how to advance one or more of its operational objectives;
  - (c) how to discharge the duty in section 1B(4) (duty to promote effective competition in the interests of consumers);
  - (d) the application of the regulatory principles in section 3B; and
  - (e) the matter mentioned in section 1B(5)(b) (importance of taking action to minimise the extent to which it is possible for a business to be used for a purpose connected with financial crime).
- (2) The Treasury must make recommendations under subsection (1) at least once in each Parliament.
- [(2A) The FCA must respond to each recommendation made to it under subsection (1) by notifying the Treasury in writing of—
  - (a) action that the FCA has taken or intends to take in accordance with the recommendation, or
  - (b) the reasons why the FCA has not acted or does not intend to act in accordance with the recommendation.
- (2B) The notice under subsection (2A) must be given before the end of 12 months beginning with the date the notice containing the recommendation was given under subsection (1).
- (2C) Where the FCA has given notice under subsection (2A) in relation to a recommendation, the FCA must by notice in writing update the Treasury on the matters mentioned in subsection (2A)(a) and (b) before the end of each subsequent period of 12 months.
- (2D) Subsection (2C) does not apply if the Treasury have notified the FCA in writing that no update (or further update) is required.
- (2E) The FCA is not required under subsection (2A) or (2C) to provide any information whose

26 January 2023

publication would in the opinion of the FCA be against the public interest.]<sup>5</sup>

- (3) The Treasury must—
  - (a) publish in such manner as they think fit any notice given under [subsection (1), (2A) or (2C)]<sup>6</sup>, and
  - (b) lay a copy of it before Parliament.

## **1K Guidance about objectives**

- (1) The general guidance given by the FCA under section 139A must include guidance about how it intends to advance its operational objectives in discharging its general functions in relation to different categories of authorised person or regulated activity.
- (2) Before giving or altering any guidance complying with subsection (1), the FCA must consult the PRA.

## **1L Supervision, monitoring and enforcement**

- (1) The FCA must maintain arrangements for supervising authorised persons.
- (2) The FCA must maintain arrangements designed to enable it to determine whether persons other than authorised persons are complying—
  - (a) with requirements imposed on them by or under this Act, in cases where the FCA is the appropriate regulator for the purposes of Part 14 (disciplinary measures);
  - (aa) with requirements imposed on them by the Alternative Investment Fund Managers Regulations 2013; or
  - (b) with requirements imposed on them by any [qualifying provision] that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
- (3) The FCA must also maintain arrangements for enforcing compliance by persons other than authorised persons with relevant requirements, within the meaning of Part 14, in cases where the FCA is the appropriate regulator for the purposes of any provision of that Part.

## **1M The FCA's general duty to consult**

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

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<sup>5</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.3 s.33(2) (Lords' Second Reading, January 10, 2023).

<sup>6</sup> Words substituted by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.3 s.33(3) (Lords' Second Reading, January 10, 2023).

# SHEARMAN & STERLING

26 January 2023

## **1N The FCA Practitioner Panel**

- (1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as "*the FCA Practitioner Panel*") to represent the interests of practitioners.
- (2) The FCA must appoint one of the members of the FCA Practitioner Panel to be its chair.
- (3) The Treasury's approval is required for the appointment or dismissal of the chair.
- (4) The FCA must appoint to the FCA Practitioner Panel such—
  - (a) persons representing authorised persons; and
  - (b) persons representing recognised investment exchanges,as it considers appropriate.
- (5) The FCA may appoint to the FCA Practitioner Panel such other persons as it considers appropriate.

## **1O The Smaller Business Practitioner Panel**

- (1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as "*the Smaller Business Practitioner Panel*") to represent the interests of eligible practitioners.
- (2) "*Eligible practitioners*" means authorised persons of a description specified in a statement maintained by the FCA.
- (3) The FCA must appoint one of the members of the Smaller Business Practitioner Panel to be its chair.
- (4) The Treasury's approval is required for the appointment or dismissal of the chair.
- (5) The FCA must appoint to the Smaller Business Practitioner Panel such—
  - (a) individuals who are eligible practitioners; and
  - (b) persons representing eligible practitioners,as it considers appropriate.
- (6) The FCA may appoint to the Smaller Business Practitioner Panel such other persons as it considers appropriate.
- (7) In making the appointments, the FCA must have regard to the desirability of ensuring the representation of eligible practitioners carrying on a range of regulated activities.
- (8) The FCA may revise the statement maintained under subsection (2).
- (9) The FCA must—
  - (a) give the Treasury a copy of the statement or revised statement without delay, and

26 January 2023

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

## **1P The Markets Practitioner Panel**

- (1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as "*the Markets Practitioner Panel*") to represent the interests of practitioners who are likely to be affected by the exercise by the FCA of its functions relating to markets, including its functions under Parts 6, 8A and 18.
- (2) The FCA must appoint one of the members of the Markets Practitioner Panel to be its chair.
- (3) The Treasury's approval is required for the appointment or dismissal of the chair.
- (4) The FCA must appoint to the Markets Practitioner Panel such persons to represent the interests of persons within subsection (5) as it considers appropriate.
- (5) The persons within this subsection are—
  - (a) authorised persons;
  - (b) persons who issue financial instruments;
  - (c) sponsors, as defined in section 88(2);
  - (d) recognised investment exchanges; and
  - (e) primary information providers, as defined in section 89P(2).
- (6) The FCA may appoint to the Markets Practitioner Panel such other persons as it considers appropriate.

## **1Q The Consumer Panel**

- (1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as "*the Consumer Panel*") to represent the interests of consumers.
- (2) The FCA must appoint one of the members of the Consumer Panel to be its chair.
- (3) The Treasury's approval is required for the appointment or dismissal of the chair.
- (4) The FCA may appoint to the Consumer Panel such consumers, or persons representing the interests of consumers, as it considers appropriate.
- (5) The FCA must secure that membership of the Consumer Panel is such as to give a fair degree of representation to those who are using, or are or may be contemplating using, services otherwise than in connection with businesses carried on by them.
- (5A) If it appears to the Consumer Panel that any matter being considered by it is relevant to the extent to which the general policies and practices of the PRA are consistent with the PRA's general duties under sections 2B to 2H, it may communicate to the PRA any views relating to that matter.
- (5B) The PRA may arrange to meet any of the FCA's expenditure on the Consumer Panel which is attributable to the Panel's functions under subsection (5A).

26 January 2023

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

## **1QA The Listing Authority Advisory Panel**

- (1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as "*the Listing Authority Advisory Panel*") to represent the interests of practitioners who are likely to be affected by the exercise by the FCA of its relevant functions.
- (2) The reference in subsection (1) to the FCA's relevant functions is to its functions relating to the listing, issue or trading of products on recognised investment exchanges and other markets the operation of which is regulated by the FCA, including in particular—
- (a) the issuing of transferable securities, and
  - (b) the trading of transferable securities on regulated markets and multilateral trading facilities.
- (3) The FCA must appoint one of the members of the Listing Authority Advisory Panel to be the chair of the Panel.
- (4) The Treasury's approval is required for the appointment or dismissal of the chair.
- (5) The FCA must appoint to the Listing Authority Advisory Panel such persons to represent the interests of issuers and investors as it considers appropriate.
- (6) The FCA may appoint to the Listing Authority Advisory Panel such other persons as it considers appropriate.
- (7) Subsections (5) and (6) are subject to section 1MA.
- (8) In this section—

"*multilateral trading facility*", "*recognised investment exchange*" and "*regulated markets*" have the same meaning as in Part 18 (see section 313(1));

"*transferable securities*" has the meaning given by section 102A(3).<sup>7</sup>

## **1R Duty to consider representations made by the Panels**

- (1) The FCA must consider representations that are made to it in accordance with arrangements made under section 1M.
- (2) The FCA must from time to time publish in such manner as it thinks fit responses to the representations.

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<sup>7</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.3 s.39 (Lords' Second Reading, January 10, 2023).

26 January 2023

## **[1RA Statement of policy on panel appointments**

- (1) The FCA must prepare and publish a statement of policy in relation to the appointment of members of its statutory panels.
- (2) The statement must provide information about—
  - (a) the process adopted for making appointments,
  - (b) matters considered in determining who is appointed.
- (3) The statement may provide whatever other information in relation to the making of appointments that the FCA considers appropriate.
- (4) The FCA may alter or replace a statement published under this section.
- (5) The FCA must publish a statement as altered or replaced under subsection (4).
- (6) Before publishing a statement under this section the FCA must—
  - (a) consult the Treasury about the proposed statement, and
  - (b) have regard to any representations the Treasury make in response to the consultation.
- (7) Publication under this section is to be made in such manner as the FCA considers best designed to bring the statement to the attention of the public.
- (8) In this section "*statutory panel*" means a panel established under section 1N, 1O, 1P, 1Q, 1QA or 138IA.<sup>8</sup>

## **[1RB Requirements in connection with public consultations**

- (1) This section applies where the FCA issues a public consultation.
- (2) The FCA must include information in the consultation about any engagement by the FCA with the statutory panels of the FCA, the PRA or the Payment Systems Regulator in relation to the matters being consulted on.
- (3) The FCA is not required under subsection (2) to include any information whose publication would in the opinion of the FCA be against the public interest.
- (4) For the purposes of this section, the FCA issues a public consultation if it publishes the draft of any proposals for the purpose of bringing them to the attention of the public (whether or not under a duty to do so imposed by an enactment).
- (5) In this section "*statutory panel*"—
  - (a) in relation to the FCA, has the meaning given by section 1RA(8);
  - (b) in relation to the PRA, has the meaning given by section 2NA(8); and

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<sup>8</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.3 s.43(2) (Lords' Second Reading, January 10, 2023).

26 January 2023

- (c) in relation to the Payment Systems Regulator, means a panel established under section 103(3) of the Financial Services (Banking Reform) Act 2013.]<sup>9</sup>

## **1S Reviews**

- (1) The Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the FCA has used its resources in discharging its functions.
- (2) A review may be limited by the Treasury to such functions of the FCA (however described) as the Treasury may specify in appointing the person to conduct it.
- (3) A review is not to be concerned with the merits of the FCA's general policy or principles in complying with its general duties under section 1B(1) and (4).
- (4) On completion of a review, the person conducting it must make a written report to the Treasury—
  - (a) setting out the result of the review, and
  - (b) making such recommendations (if any) as the person considers appropriate.
- (5) A copy of the report must be—
  - (a) laid before Parliament, and
  - (b) published in such manner as the Treasury consider appropriate.
- (6) Any expenses reasonably incurred in the conduct of the review are to be met by the Treasury out of money provided by Parliament.
- (7) "*Independent*" means appearing to the Treasury to be independent of the FCA.

## **1T Right to obtain documents and information**

- (1) A person conducting a review under section 1S—
  - (a) has a right of access at any reasonable time to all such documents as the person may reasonably require for the purposes of the review, and
  - (b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.
- (2) Subsection (1) applies only to documents in the custody of or under the control of the FCA.
- (3) An obligation imposed on a person as a result of the exercise of the powers conferred by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

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<sup>9</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.3 s.34(1) (Lords' Second Reading, January 10, 2023).

# SHEARMAN & STERLING

26 January 2023

## **2A The Prudential Regulation Authority**

- (1) The "*Prudential Regulation Authority*" is the Bank of England.
- (2) The Bank's functions as the Prudential Regulation Authority—
  - (a) are to be exercised by the Bank acting through its Prudential Regulation Committee (see Part 3A of the Bank of England Act 1998), and
  - (b) are not exercisable by the Bank in any other way.
- (3) References in this Act or any other enactment to the Prudential Regulation Authority do not include the Bank of England acting otherwise than in its capacity as the Prudential Regulation Authority.
- (4) References in this Act to the Bank of England do not (unless otherwise provided) include the Bank acting in its capacity as the Prudential Regulation Authority.
- (5) Subsections (3) and (4) do not apply to this section.
- (6) Subsection (4) does not apply for the interpretation of references to the court of directors of the Bank of England, or to a Deputy Governor or committee of the Bank.
- (7) The Prudential Regulation Authority is referred to in this Act as the PRA.

## **2AB Functions of the PRA**

- (1) The PRA is to have the functions conferred on it by or under this Act.
- (2) Schedule 1ZB makes provision about functions of the PRA.
- (3) References in this Act or any other enactment to functions conferred on the PRA by or under this Act include references to functions conferred on the PRA by or under—
  - (a) the Insolvency Act 1986;
  - (b) the Banking Act 2009;
  - (c) the Financial Services Act 2012;
  - [(ca) the Financial Services and Markets Act 2022;]<sup>10</sup>
  - (d) a qualifying provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order; or
  - (e) regulations made by the Treasury under section 8 of the European Union (Withdrawal) Act 2018.

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<sup>10</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 6 s.56(3) (Lords' Second Reading, January 10, 2023).

# SHEARMAN & STERLING

26 January 2023

## **2B The PRA's general objective**

- (1) In discharging its general functions the PRA must, so far as is reasonably possible, act in a way which advances its general objective.
- (2) The PRA's general objective is: promoting the safety and soundness of PRA-authorized persons.
- (3) That objective is to be advanced primarily by—
  - (a) seeking to ensure that the business of PRA-authorized persons is carried on in a way which avoids any adverse effect on the stability of the UK financial system;
  - (b) seeking to minimise the adverse effect that the failure of a PRA authorised person could be expected to have on the stability of the UK financial system; and
  - (c) discharging its general functions in relation to the matters mentioned in subsection (4A) in a way that seeks to—
    - (i) ensure that the business of ring-fenced bodies is carried on in a way that avoids any adverse effect on the continuity of the provision in the United Kingdom of core services;
    - (ii) ensure that the business of ring-fenced bodies is protected from risks (arising in the United Kingdom or elsewhere) that could adversely affect the continuity of the provision in the United Kingdom of core services; and
    - (iii) minimise the risk that the failure of a ring-fenced body or of a member of a ring-fenced body's group could affect the continuity of the provision in the United Kingdom of core services.
- (4) The adverse effects mentioned in subsection (3)(a) and (b) may, in particular, result from the disruption of the continuity of financial services.
- (4A) The matters referred to in subsection (3)(c) are—
  - (a) Part 9B (ring-fencing);
  - (b) ring-fenced bodies (see section 142A);
  - (c) any body corporate incorporated in the United Kingdom that has a ring-fenced body as a member of its group;
  - (d) applications under Part 4A which, if granted, would result, or would be capable of resulting, in a person becoming a ringfenced body.
- (5) In this Act "*PRA-authorized person*" means an authorised person who has permission—
  - (a) given under Part 4A; or
  - (b) resulting from any other provision of this Act,  
  
to carry on regulated activities that consist of or include one or more PRA-regulated activities (see section 22A).

# SHEARMAN & STERLING

26 January 2023

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

## **2C Insurance objective**

- (1) In discharging its general functions so far as relating to a PRA regulated activity relating to the effecting or carrying out of contracts of insurance or PRA-authorized persons carrying on that activity, the PRA must, so far as is reasonably possible, act in a way—
- (a) which is compatible with its general objective and its insurance objective, and
  - (b) which the PRA considers most appropriate for the purpose of advancing those objectives.
- (2) The PRA's insurance objective is: contributing to the securing of an appropriate degree of protection for those who are or may become policyholders.
- (3) This section applies only if the effecting or carrying out of contracts of insurance as principal is to any extent a PRA-regulated activity.

## **2D Power to provide for additional objectives**

- (1) Subsection (2) applies to an order under section 22A which—
- (a) is made at any time after the coming into force of the first order under that section, and
  - (b) contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order is that an activity would become a PRA-regulated activity.
- (2) An order to which this subsection applies may specify an additional objective ("*the specified objective*") in relation to specified activities that become PRA-regulated activities by virtue of the order ("*the additional activities*").
- (3) In discharging its general functions so far as relating to the additional activities or PRA-authorized persons carrying on those activities, the PRA must, so far as is reasonably possible, act in a way—
- (a) which is compatible with its general objective and the specified objective, and
  - (b) which the PRA considers most appropriate for the purpose of advancing those objectives.

## **2E Strategy**

- (1) The PRA must—
- (a) determine its strategy in relation to its objectives, and
  - (b) from time-to-time review, and if necessary revise, the strategy.
- (2) Before determining or revising its strategy, the PRA must consult the court of directors of the Bank of England about a draft of the strategy or of the revisions.
- (3) The PRA must determine its strategy within 12 months of the coming into force of this section.

26 January 2023

- (4) The PRA must carry out and complete a review of its strategy before the end of each relevant period.
- (5) The relevant period is 12 months beginning with the date on which the previous review was completed, except that in the case of the first review the relevant period is the period of 12 months beginning with the date on which the strategy was determined under subsection (3).
- (6) The PRA must publish its strategy.
- (7) If the strategy is revised the PRA must publish the revised strategy.
- (8) Publication under subsection (6) or (7) is to be in such manner as the PRA thinks fit.

## **2F Interpretation of references to objectives**

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

- (a) so far as the function is exercisable in relation to the activity of effecting or carrying out contracts of insurance, or PRA authorised persons carrying on that activity, is a reference to its general objective and its insurance objective;
- (b) so far as the function is exercisable in relation to an activity to which an objective specified by order by virtue of section 2D(2) relates, or PRA-authorized persons carrying on that activity, is a reference to its general objective and the objective specified by the order.

## **2G Limit on effect of sections 2B to 2D**

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

## **2H Secondary [objectives]<sup>11</sup> and duty to have regard to regulatory principles**

- [(1) When discharging its general functions in a way that advances its objectives (see section 2F), the PRA must, so far as reasonably possible, act in a way that advances the following secondary objectives—
- (a) the competition objective, ~~and~~
  - (b) the competitiveness and growth objective, ~~and~~ [and](#)
  - (c) [the predictability and consistency objective.](#)
- (1A) The competition objective is: facilitating effective competition in the markets for services provided by PRA-authorized persons in carrying on regulated activities.
- (1B) The competitiveness and growth objective is: facilitating, subject to aligning with relevant international standards—

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<sup>11</sup> Words substituted by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.3 s.24(4)(a) (Lords' Second Reading, January 10, 2023).

26 January 2023

- (a) the international competitiveness of the economy of the United Kingdom (including in particular the financial services sector through the contribution of PRA-authorized persons), and
- (b) its growth in the medium to long term.]<sup>12</sup>

(1C) The predictability and consistency objective is: acting predictably and consistently.

(1D) In subsection (1C), "acting predictably and consistently" includes:

- (a) that the PRA will apply without limitation its rules, technical guidance and codes, so far as is practical and appropriate, in a predictable and consistent manner, including (without limitation):
  - (i) having regard to the need for its decisions to be consistent between firms operating businesses of a similar size, scope and complexity, and which undertake the same or similar activities and which may pose similar risks to consumers and the UK financial system, and
  - (ii) having regard to the need to write clear and predictable rules, technical guidance and codes; and
- (b) that the PRA will not treat a firm or individual in an adverse manner because the firm or individual (or a connected firm or individual) has appealed or challenged any of the PRA or FCA's decisions or decision-making processes, or has expressed an intention to do so, including by means of a reference or appeal to the Tribunal.

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

## **2I Guidance about objectives**

- (1) The PRA must give, and from time-to-time review, guidance about how it intends to advance its objectives in discharging its general functions in relation to different categories of PRA-authorized person or PRA regulated activity.
- (2) Before giving or altering any guidance complying with subsection (1), the PRA must consult the FCA.
- (3) The PRA must publish the guidance as for the time being in force.

## **2J Interpretation of Chapter 2**

- (1) For the purposes of this Chapter, the PRA's general functions are—
  - (a) its function of making rules under this Act (considered as a whole);
  - (b) its function of making technical standards in accordance with Chapter 2A of Part 9A;

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<sup>12</sup> S.2H(1), (1A), and (1B) substituted for s.2H(1) by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.3 s.24(4)(b) (Lords' Second Reading, January 10, 2023).

# SHEARMAN & STERLING

26 January 2023

- (c) its function of preparing and issuing codes under this Act (considered as a whole); and
  - (d) its function of determining the general policy and principles by reference to which it performs particular functions under this Act.
- (2) Except to the extent that an order under section 50 of the Financial Services Act 2012 (orders relating to mutual societies functions) so provides, the PRA's general functions do not include functions that are transferred functions within the meaning of section 52 of that Act.
- (3) For the purposes of this Chapter, the cases in which an authorised person ("P") is to be regarded as failing include those where—
- (a) P enters insolvency;
  - (b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to P; or
  - (c) P falls to be taken for the purposes of the compensation scheme to be unable, or likely to be unable, to satisfy claims against P.
- (3A) For the purposes of this Chapter, the cases in which a person ("P") other than an authorised person is to be regarded as failing include any case where P enters insolvency.
- (4) In [subsections (3)(a) and (3A)] "*insolvency*" includes—
- (a) bankruptcy;
  - (b) liquidation;
  - (c) bank insolvency;
  - (d) administration;
  - (e) bank administration;
  - (f) receivership;
  - (g) a composition between P and P's creditors; and
  - (h) a scheme of arrangement of P's affairs.

## **2K Arrangements for supervision of PRA-authorised persons**

The PRA must maintain arrangements for supervising PRA-authorised persons.

## **2L The PRA's general duty to consult**

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

26 January 2023

## **2M The PRA Practitioner Panel**

- (1) Arrangements under section 2L must include the establishment and maintenance of a panel of persons (to be known as "*the PRA Practitioner Panel*") to represent the interests of practitioners.
- (2) The PRA must appoint one of the members of the PRA Practitioner Panel to be its chair.
- (3) The Treasury's approval is required for the appointment or dismissal of the chair.
- (4) The PRA must appoint to the PRA Practitioner Panel such persons representing PRA-authorized persons as it considers appropriate.
- (5) The PRA may appoint to the PRA Practitioner Panel such other persons as it considers appropriate.

## **[2MA The Insurance Practitioner Panel**

- (1) Arrangements under section 2L must include the establishment and maintenance of a panel of persons (to be known as "*the Insurance Practitioner Panel*") to represent the interests of practitioners involved in the carrying on of the activity of effecting or carrying out of contracts of insurance.
- (2) The PRA must appoint one of the members of the Insurance Practitioner Panel to be the chair of the Panel.
- (3) The Treasury's approval is required for the appointment or dismissal of the chair.
- (4) The PRA must appoint to the Insurance Practitioner Panel at least one person representing PRA-authorized persons engaged in the activity of effecting or carrying out of contracts of insurance.
- (5) The PRA may appoint to the Insurance Practitioner Panel such other persons as it considers appropriate.
- (6) Subsections (4) and (5) are subject to section 2LA].<sup>13</sup>

## **2N Duty to consider representations**

- (1) The PRA must consider representations that are made to it in accordance with arrangements made under section 2L.
- (2) The PRA must from time to time publish in such manner as it thinks fit responses to the representations.

## **[2NA Statement of policy on panel appointments**

- (1) The PRA must prepare and publish a statement of policy in relation to the appointment of members of its statutory panels.
- (2) The statement must provide information about—

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<sup>13</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.3 s.40 (Lords' Second Reading, January 10, 2023).

# SHEARMAN & STERLING

26 January 2023

- (a) the process adopted for making appointments,
  - (b) matters considered in determining who is appointed.
- (3) The statement may provide whatever other information in relation to the making of appointments that the PRA considers appropriate.
- (4) The PRA may alter or replace a statement published under this section.
- (5) The PRA must publish a statement as altered or replaced under subsection (4).
- (6) Before publishing a statement under this section the PRA must—
- (a) consult the Treasury about the proposed statement, and
  - (b) have regard to any representations the Treasury make in response to the consultation.
- (7) Publication under this section is to be made in such manner as the PRA considers best designed to bring the statement to the attention of the public.
- (8) In this section "*statutory panel*" means a panel established under section 2M, 2MA or 138JA].<sup>14</sup>

## **[2NB Requirements in connection with public consultations**

- (1) This section applies where the PRA issues a public consultation.
- (2) The PRA must include information in the consultation about any engagement by the PRA with the statutory panels of the FCA, the PRA or the Payment Systems Regulator in relation to the matters being consulted on.
- (3) The PRA is not required under subsection (2) to include any information whose publication would in the opinion of the PRA be against the public interest.
- (4) For the purposes of this section, the PRA issues a public consultation if it publishes the draft of any proposals for the purpose of bringing them to the attention of the public (whether or not under a duty to do so imposed by an enactment).
- (5) In this section "*statutory panel*" has the meaning given by section 1RB(5)].<sup>15</sup>

## **3A Meaning of "regulator"**

- (1) This section has effect for the interpretation of this Act.
- (2) The FCA and the PRA are the "*regulators*", and references to a regulator are to be read accordingly.
- (3) Subsection (2) does not affect—

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<sup>14</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.3 s.43(3) (Lords' Second Reading, January 10, 2023).

<sup>15</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.3 s.34(2) (Lords' Second Reading, January 10, 2023).

26 January 2023

- (a) the meaning of the following expressions—
  - (i) "home state regulator";
  - (ii) "host state regulator";
  - (iii) "overseas regulator";
  - (iv) "Gibraltar regulator";
- (b) the meaning of "the appropriate regulator" in Part 18 ( [recognised investment exchanges, clearing houses and CSDs]); or
- (c) the meaning of "regulator" in sections 410A and 410B (fees to meet certain expenses of Treasury).

### **3B Regulatory principles to be applied by both regulators**

- (1) In relation to the regulators, the regulatory principles referred to in section 1B(5)(a) and 2H(2) are as follows—
  - (a) the need to use the resources of each regulator in the most efficient and economic way;
  - (b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
  - (c) [the need to contribute towards achieving compliance with section 1 of the Climate Change Act 2008 (UK net zero emissions target);].<sup>16</sup>
  - (d) the general principle that consumers should take responsibility for their decisions;
  - (e) the responsibilities of the senior management of persons subject to requirements imposed by or under this Act, including those affecting consumers, in relation to compliance with those requirements;
  - (f) the desirability where appropriate of each regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons (including different kinds of person such as mutual societies and other kinds of business organisation) subject to requirements imposed by or under this Act;
  - (g) the desirability in appropriate cases of each regulator publishing information relating to persons on whom requirements are imposed by or under this Act, or requiring such persons to publish information, as a means of contributing to the advancement by each regulator of its objectives;
  - (h) the principle that the regulators should exercise their functions as transparently as possible.

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<sup>16</sup> Substituted by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.3 s.25 (Lords' Second Reading, January 10, 2023).

# SHEARMAN & STERLING

26 January 2023

- (2) "*Consumer*" has the meaning given in section 1G.
- (3) "*Objectives*", in relation to the FCA, means operational objectives.
- (3A) "*Mutual society*" has the same meaning as in section 138K.
- (4) The Treasury may by order amend subsection (2).

## **3C Duty to follow principles of good governance**

In managing its affairs, [the FCA] must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

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

- (1) The regulators must co-ordinate the exercise of their respective functions conferred by or under this Act with a view to ensuring—
  - (a) that each regulator consults the other regulator (where not otherwise required to do so) in connection with any proposed exercise of a function in a way that may have a material adverse effect on the advancement by the other regulator of any of its objectives;
  - (b) that where appropriate each regulator obtains information and advice from the other regulator in connection with the exercise of its functions in relation to matters of common regulatory interest in cases where the other regulator may be expected to have relevant information or relevant expertise;
  - (c) that where either regulator exercises functions in relation to matters of common regulatory interest, both regulators comply with their respective duties under section 1B(5)(a) or 2H(1)(a), so far as relating to the regulatory principles in section 3B(1)(a) and (b).
- (2) The duty in subsection (1) applies only to the extent that compliance with the duty—
  - (a) is compatible with the advancement by each regulator of any of its objectives, and
  - (b) does not impose a burden on the regulators that is disproportionate to the benefits of compliance.
- (3) A function conferred on either regulator by or under this Act relates to matters of common regulatory interest if—
  - (a) the other regulator exercises similar or related functions in relation to the same persons;
  - (b) the other regulator exercises functions which relate to different persons but relate to similar subject-matter; or
  - (c) its exercise could affect the advancement by the other regulator of any of its objectives.

26 January 2023

- (4) "*Objectives*", in relation to the FCA, means operational objectives[, or the purpose for which the FCA must exercise its functions under Part 8B (see section 131U(1))].<sup>17</sup>

### **3E Memorandum of understanding**

- (1) The regulators must prepare and maintain a memorandum which describes in general terms—
- (a) the role of each regulator in relation to the exercise of functions conferred by or under this Act which relate to matters of common regulatory interest, and
  - (b) how the regulators intend to comply with section 3D in relation to the exercise of such functions.
- (2) The memorandum may in particular contain provisions about how the regulators intend to comply with section 3D in relation to—
- (a) applications for Part 4A permission;
  - (b) the variation of permission;
  - (c) the imposition of requirements;
  - (d) the obtaining and disclosure of information;
  - (e) cases where a PRA-authorized person is a member of a group whose other members include one or more other authorised persons (whether or not PRA-authorized persons);
  - (g) the making of rules;
  - [(ga) directions under section 71O (designated activities: directions);]<sup>18</sup>
  - (h) directions under section 138A (modification or waiver of rules);
  - (i) powers to appoint competent persons under Part 11 (information gathering and investigations) to conduct investigations on their behalf;
  - (j) functions under Part 12 (control over authorised persons);
  - (l) functions under Part 19 (Lloyd's);
  - (m) functions under section 347 (record of authorised persons etc.);
  - (n) functions under Part 24 (insolvency);
  - (o) fees payable to either regulator.
- (3) The memorandum must contain provision about the co-ordination by the regulators of—

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<sup>17</sup> Words inserted by Financial Services and Markets Bill 2022-23 (HL Bill 80) Sch.8(2) para.3 (Lords' Second Reading, January 10, 2023).

<sup>18</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.2 s.8(4) (Lords' Second Reading, January 10, 2023).

# SHEARMAN & STERLING

26 January 2023

- (a) their relations with regulatory bodies outside the United Kingdom, and
  - (b) the exercise of their functions in relation to the compensation scheme.
- (4) The regulators must review the memorandum at least once in each calendar year.
- (5) The regulators must give the Treasury a copy of the memorandum and any revised memorandum.
- (6) The Treasury must lay before Parliament a copy of any document received by them under this section.
- (7) The regulators must ensure that the memorandum as currently in force is published in the way appearing to them to be best calculated to bring it to the attention of the public.
- (8) The memorandum need not relate to any aspect of compliance with section 3D if the regulators consider—
- (a) that publication of information about that aspect would be against the public interest, or
  - (b) that that aspect is a technical or operational matter not affecting the public.
- (9) The reference in subsection (1)(a) to matters of common regulatory interest is to be read in accordance with section 3D(3).

## **3F With-profits insurance policies**

- (1) The regulators must prepare and maintain a memorandum which describes in general terms—
- (a) the role of each regulator in relation to the exercise of functions conferred by or under this Act so far as they relate to with-profits insurers, and
  - (b) how the regulators intend to comply with section 3D in relation to the exercise of those functions so far as they relate to the effecting or carrying out of with-profits policies by with-profits insurers.
- (2) The memorandum required by this section may be combined with the memorandum required by section 3E.
- (3) If the memorandum required by this section is contained in a separate document, the PRA and the FCA must publish the memorandum as currently in force in such manner as they think fit.
- (4) Subsections (1) to (3) apply only if the effecting or carrying out of with-profits policies is a PRA-regulated activity.
- (5) For the purposes of this section—
- (a) a "*with-profits policy*" is a contract of insurance under which the policyholder is eligible to receive a financial benefit at the discretion of the insurer,
  - (b) a "*with-profits insurer*" is a PRA-authorized person who has a Part 4A permission, or permission resulting from any other provision of this Act, relating to the effecting or

26 January 2023

carrying out of with-profits policies (whether or not the permission also relates to contracts of insurance of other kinds).

- (6) The Treasury may by order amend the definition of "*with-profits policy*" applying for the purposes of this section.

### **3G Power to establish boundary between FCA and PRA responsibilities**

- (1) The Treasury may by order specify matters that, in relation to the exercise by either regulator of its functions relating to PRA-authorized persons, are to be, or are to be primarily, the responsibility of one regulator rather than the other.
- (2) The order may—
  - (a) provide that one regulator is or is not to have regard to specified matters when exercising specified functions;
  - (b) require one regulator to consult the other.

### **3H Parliamentary control of orders under section 3G**

- (1) No order may be made under section 3G unless—
  - (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
  - (b) subsection (3) applies.
- (2) Subsection (3) applies if an order under section 3G contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (3) Where this subsection applies the order—
  - (a) must be laid before Parliament after being made, and
  - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).
- (4) The "*relevant period*" is a period of 28 days beginning with the day on which the order is made.
- (5) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

### **3I Power of PRA to require FCA to refrain from specified action**

- (1) Where the first, second and third conditions are met, the PRA may give a direction under this section to the FCA.
- (2) The first condition is that the FCA is proposing—
  - (a) to exercise any of its regulatory powers in relation to PRA-authorized persons generally, a class of PRA-authorized persons or a particular PRA-authorized person, or

# SHEARMAN & STERLING

26 January 2023

- (b) to exercise any of its insolvency powers in relation to—
  - (i) a PRA-authorised person;
  - (ii) an appointed representative whose principal, or one of whose principals, is a PRA-authorised person; or
  - (iii) a person who is carrying on a PRA-regulated activity in contravention of the general prohibition.
- (3) In subsection (2)—
  - (a) "*regulatory powers*", in relation to the FCA, means—
    - (i) its powers in relation to the regulation of authorised persons, other than its powers in relation to consent for the purposes of section 55F or 55I, a power conferred on it by sections 234I to 234M or its powers under Part 24; or
    - (ii) its powers in relation to designated activities under Part 5A;<sup>19</sup>
  - (b) "*insolvency powers*", in relation to the FCA, means its powers under Part 24.
- (4) The second condition is that the PRA is of the opinion that the exercise of the power in the manner proposed may—
  - (a) threaten the stability of the UK financial system;
  - (b) result in the failure of a PRA-authorised person in a way that would adversely affect the UK financial system; or
  - (c) threaten the continuity of core services provided in the United Kingdom.
- (5) The third condition is that the PRA is of the opinion that the giving of the direction is necessary in order to avoid the possible consequence falling within subsection (4).
- (6) A direction under this section is a direction requiring the FCA not to exercise the power or not to exercise it in a specified manner.
- (7) The direction may be expressed to have effect during a specified period or until revoked.
- (8) The FCA is not required to comply with a direction under this section if or to the extent that in the opinion of the FCA compliance would be incompatible with any international obligation of the United Kingdom.
- (9) The reference in subsection (4)(b) person is to be read in accordance with section 2J(3) and (4).

## **3J Power of PRA in relation to with-profits policies**

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

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<sup>19</sup> Existing text renumbered as s.3I(3)(a)(i), word and s.3I(3)(a)(ii) inserted by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.2 s.8(5) (Lords' Second Reading, January 10, 2023).

# SHEARMAN & STERLING

26 January 2023

- (2) The first condition is that the FCA is proposing to exercise any of its regulatory powers in relation to with-profits insurers, a class of with-profits insurers or a particular with-profits insurer.
- (3) In subsection (2) "*regulatory powers*", in relation to the FCA, means its powers in relation to the regulation of authorised persons, including its powers under Part 24 (insolvency) but not its powers in relation to consent for the purposes of section 55F or 55I.
- (4) The second condition is that the proposed exercise of the power relates to the provision of financial benefits under with-profits policies at the discretion of the insurer, or affects or may affect the amount, timing or distribution of financial benefits that are so provided or the entitlement to future benefits that are so provided.
- (5) The third condition is that the PRA is of the opinion that the giving of the direction is desirable in order to advance the PRA's general objective or its insurance objective.
- (6) A direction under this section is a direction requiring the FCA not to exercise the power or not to exercise it in a specified manner.
- (7) The direction may be expressed to have effect during a specified period or until revoked.
- (8) The FCA is not required to comply with a direction under this section if or to the extent that in the opinion of the FCA compliance would be incompatible with any international obligation of the United Kingdom.
- (9) Subsections (1) to (8) apply only if the effecting or carrying out of with-profits policies is a PRA-regulated activity.
- (10) In this section "*with-profits insurer*" and "*with-profits policy*" have the same meaning as they have for the purposes of section 3F.

## **3K Revocation of directions under section 3I or 3J**

- (1) The PRA may at any time by notice to the FCA revoke a direction under section 3I or 3J.
- (2) The revocation of a direction under section 3I or 3J does not affect the validity of anything previously done in accordance with it.

## **3L Further provisions about directions under section 3I or 3J**

- (1) Before giving a direction under section 3I or 3J, the PRA must consult the FCA.
- (2) A direction under section 3I or 3J must be given or confirmed in writing, and must be accompanied by a statement of the reasons for giving it.
- (3) A notice revoking a direction under section 3I or 3J must be given or confirmed in writing.
- (4) The PRA must—
  - (a) publish the direction and statement, or the notice, in such manner as it thinks fit, and
  - (b) where the direction or notice relates to a particular authorised person or a particular with-profits insurer, give a copy of the direction and statement, or the notice, to that person.

26 January 2023

- (5) The PRA must give the Treasury a copy of—
  - (a) a direction under section 3I;
  - (b) a statement relating to such a direction;
  - (c) a notice revoking such a direction.
- (6) The Treasury must lay before Parliament any document received by them under subsection (5).
- (7) Subsection (4) does not apply where the PRA, after consulting the Treasury, decides that compliance with that subsection would be against the public interest, and at any time when this subsection excludes the application of subsection (4) in relation to a direction under section 3I, subsection (6) also does not apply.
- (8) Where the PRA decides that compliance with subsection (4) would be against the public interest, it must from time-to-time review that decision and if it subsequently decides that compliance is no longer against the public interest it must—
  - (a) comply with that subsection, and
  - (b) in the case of a direction under section 3I, notify the Treasury for the purposes of subsection (6).

### **3M Directions relating to consolidated supervision of groups**

- (1) This section applies where one of the regulators ("*the supervising regulator*"), but not the other, is the competent authority for the purpose of consolidated supervision that is required in relation to some or all of the members of a group ("*the relevant group*") in pursuance of—
  - (a) any implementing provision contained in subordinate legislation (within the meaning of the Interpretation Act 1978<sup>3</sup>) made otherwise than by any of the following—
    - (i) statutory instrument, and
    - (ii) statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12));
  - (b) any other implementing provision (as amended from time to time);
  - (c) Part 9C rules;
  - (d) CRR rules; or
  - (e) rules made under section 192XA.
- (2) "*Consolidated supervision*" includes supplementary supervision.
- (2A) "*Implementing provision*" means an enactment that immediately before [IP completion day]<sup>7</sup> implemented provisions of any of the relevant directives.
- (3) The "*relevant directives*" are—
  - (a) the capital requirements directive;

# SHEARMAN & STERLING

26 January 2023

- (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 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);
  - (d) Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.
- (4) The supervising regulator may, if it considers it necessary to do so for the effective consolidated supervision of the relevant group, give the other regulator a direction under this section.
- (5) A direction under this section is a direction requiring the other regulator to exercise, or not to exercise, a relevant function in a specified manner in relation to authorised persons who are members of the relevant group.
- (6) The direction may relate to members of the relevant group other than the members in respect of which consolidated supervision is required.
- (7) A "*relevant function*", in relation to either regulator, is a function conferred by or under this Act which relates to the regulation of authorised persons, but does not include—
- (a) the regulator's function of making rules under this Act;
  - (b) its function of preparing and issuing codes under this Act;
  - (c) its function of determining the general policy and principles by reference to which it performs particular functions;
  - (d) the FCA's functions in relation to the giving of general guidance;
  - (e) the PRA's functions in relation to the giving of guidance under section 2I;
  - (f) the FCA's functions in relation to consent for the purposes of section 55F or 55I.
- (8) The direction may not require the regulator to which it is given ("*the directed regulator*") to do anything that it has no power to do, but the direction is relevant to the exercise of any discretion conferred on the directed regulator.
- (9) The directed regulator must comply with the direction as soon as practicable, but this is subject to subsections (10) and (11).
- (10) The directed regulator is not required to comply with a direction under this section if or to the extent that in its opinion compliance would be incompatible with any international obligation of the United Kingdom.
- (11) Directions given by the FCA under this section are subject to any directions given to the FCA under section 3I or 3J.

# SHEARMAN & STERLING

26 January 2023

## **3N Revocation of directions under section 3M**

- (1) The supervising regulator may at any time by notice to the other regulator revoke a direction under section 3M.
- (2) The revocation of the direction does not affect the validity of anything previously done in accordance with it.
- (3) Expressions defined for the purposes of section 3M have the same meaning in this section.

## **3O Further provisions about directions under section 3M**

- (1) Before giving a direction under section 3M, the supervising regulator must consult the other regulator.
- (2) A direction under section 3M must be given or confirmed in writing, and must be accompanied by a statement of the reasons for giving it.
- (3) A notice revoking a direction under section 3M must be given or confirmed in writing.
- (4) The regulator to which a direction under section 3M is given must give a copy of the direction and statement to each of the authorised persons to whom the direction relates.
- (5) The supervising regulator must publish the direction and statement, or the notice, in such manner as it thinks fit.
- (6) But subsection (4) or (5) does not apply in a case where the regulator on which the duty is imposed considers that compliance with that subsection would be against the public interest.
- (7) In a case where a regulator decides that compliance with subsection (4) or (5) would be against the public interest, the regulator must from time-to-time review that decision and if it subsequently decides that compliance is no longer against the public interest it must comply with the subsection.
- (8) Expressions defined for the purposes of section 3M have the same meaning in this section.

## **3P Consultation by regulator complying with direction**

- (1) If the directed regulator is required by this Act to consult any person other than the supervising regulator before exercising the relevant function to which the direction relates, the directed regulator must give the supervising regulator copies of any written representations received from the persons consulted.
- (2) Expressions defined for the purposes of section 3M have the same meaning in this section.

## **3Q Co-operation by FCA [...] with Bank of England**

- (1) [The FCA] must take such steps as it considers appropriate to cooperate with the Bank of England in connection with—
  - (a) the pursuit by the Bank of its Financial Stability Objective, and

# SHEARMAN & STERLING

26 January 2023

- (b) the Bank's compliance with its duties under sections 58 and 59 of the Financial Services Act 2012 (duty to notify Treasury of possible need for public funds and of subsequent changes).
- (2) Co-operation under subsection (1) may include the sharing of information that the [FCA]<sup>4</sup> is not prevented from disclosing.

## **3R Arrangements for provision of services**

- (1) The regulators may enter into arrangements with each other for the provision of services by one of them to the other.
- (2) The FCA may enter into arrangements with the Bank of England for the provision of services—
  - (a) by the Bank to the FCA, or
  - (b) by the FCA to the Bank.
- (3) Either regulator may enter into arrangements with any of the bodies specified in subsection (4) for the provision of services by the regulator to that body.
- (4) Those bodies are—
  - (a) the Money and Pensions Service (see Part 1 of the Financial Guidance and Claims Act 2018[...]);
  - (b) the scheme manager (see section 212(1)); and
  - (c) the scheme operator (see section 225(2)).
- (5) The FCA may enter into arrangements with—
  - (a) a local weights and measures authority in England, Wales or Scotland; or
  - (b) the Department of Enterprise, Trade and Investment in Northern Ireland,for the provision by the authority or department to the FCA of services which relate to activities to which this subsection applies.
- (6) Subsection (5) applies to activities that are regulated activities by virtue of—
  - (a) an order made under section 22(1) in relation to an investment of a kind falling within paragraph 23 or 23B of Schedule 2, or
  - (b) an order made under section 22(1A)(a).
- (7) Arrangements under this section are to be on such terms as may be agreed by the parties.

## **[3RA Duty of FCA and PRA to review rules**

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

26 January 2023

- (2) Subsection (1) does not apply to rules made for the purpose of complying with a direction or recommendation of the Financial Policy Committee of the Bank of England under—
  - (a) section 9H of the Bank of England Act 1998 (directions to FCA or PRA requiring macro-prudential measures), or
  - (b) section 9Q of that Act (recommendations to FCA and PRA).]<sup>20</sup>

### **[3RB Statement of policy relating to review of rules**

- (1) Each regulator must prepare and publish a statement of its policy with respect to its review of rules under section 3RA.
- (2) If a statement published under this section is altered or replaced by a regulator, the regulator must publish the altered or replaced statement.
- (3) A statement prepared under this section must be published by the regulator in the way appearing to that regulator to be best designed to bring it to the attention of the public.]<sup>21</sup>

### **[3RC Requirement to review specified rules**

- (1) The Treasury may by direction require a regulator to carry out a review of specified rules if—
  - (a) the rules have been in force for at least 12 months;
  - (b) the Treasury consider that it is in the public interest that the rules are reviewed; and
  - (c) it does not appear to the Treasury that—
    - (i) the regulator is carrying out, or proposes to carry out, a review of those rules, or
    - (ii) if the regulator proposes to carry out a review, the proposals are appropriate for the purposes of carrying out an effective review.
- (2) Subsection (1) only applies to rules falling within section 3RA(1).
- (3) The Treasury must consult the regulator concerned before giving a direction under subsection (1).
- (4) In exercising the power under this section, the Treasury must have regard to the desirability of minimising any adverse effect that the carrying out of the review may have on the exercise by the regulator of any of its other functions.
- (5) A direction under subsection (1) may—
  - (a) specify the period within which a review must be carried out;

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<sup>20</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.3 s.27(2) (Lords' Second Reading, January 10, 2023).

<sup>21</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.3 s.27(2) (Lords' Second Reading, January 10, 2023).

26 January 2023

- (b) determine the scope and conduct of a review;
- (c) require the provision of interim reports during the carrying out of a review.
- (6) Provision made in a direction under subsection (5)(b) may include a requirement—
  - (a) for a review to be carried out by a person appointed by the regulator who is independent of the regulator,
  - (b) for any such appointment to be made only with the approval of the Treasury.
- (7) As soon as practicable after giving a direction under subsection (1) the Treasury must—
  - (a) lay before Parliament a copy of the direction, and
  - (b) publish the direction in such manner as the Treasury think fit.
- (8) Subsection (7) does not apply where the Treasury consider that publication of the direction would be against the public interest.
- (9) A direction under subsection (1) may be varied or revoked by the giving of a further direction.]<sup>22</sup>

### **[3RD Report on certain reviews**

- (1) This section applies where the Treasury have given a direction to a regulator under section 3RC(1) to carry out a review.
- (2) The regulator must make a written report to the Treasury as to the opinion of the regulator in relation to the following matters—
  - (a) if the regulator is the FCA, whether the rules under review—
    - (i) are compatible with the FCA's strategic objective, and
    - (ii) advance one or more of the FCA's operational objectives;
  - (b) if the regulator is the PRA, whether the rules under review advance one or more of the PRA's objectives;
  - (c) whether and to what extent the rules are functioning effectively and achieving their intended purpose;
  - (d) whether any amendments should be made to the rules and, if so, what those amendments should be;
  - (e) whether any rules should be revoked (with or without replacement);
  - (f) whether any other action should be taken and, if so, what that action should be.
- (3) As soon as practicable after receiving the report the Treasury must—

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<sup>22</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.3 s.27(2) (Lords' Second Reading, January 10, 2023).

26 January 2023

- (a) lay before Parliament a copy of the report, and
  - (b) publish the report in such manner as the Treasury think fit.
- (4) When complying with subsection (3) the Treasury may withhold material from the report if the Treasury consider that publication of the material would be against the public interest.]<sup>23</sup>

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

- (1) The Treasury may by regulations require a regulator to exercise a power under this Act to make rules in relation to a specified activity or a specified description of person.
- (2) Regulations under this section may—
  - (a) specify matters that the rules must cover,
  - (b) specify a period within which the rules must be made.
- (3) But except so far as permitted by subsection (2), regulations under this section may not require rules to be made—
  - (a) in a specified form or with specified content, or
  - (b) to achieve or advance a specified outcome.
- (4) If no period is specified under subsection (2)(b) the rules must be made as soon as reasonably practicable after the coming into force of the regulations.]<sup>24</sup>
- (5) [Any rules made by a regulator in accordance with subsection \(2\) shall, where practical and appropriate, comply with the predictability and consistency objective.](#)

### **3T Interpretation**

In this Part "*enactment*" includes—

- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
- (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;
- (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.

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<sup>23</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.3 s.27(2) (Lords' Second Reading, January 10, 2023).

<sup>24</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 1 c.3 s.28(2) (Lords' Second Reading, January 10, 2023).

26 January 2023

## 66 Disciplinary powers

- (1) A regulator may take action against a person under this section (whether or not it has given its approval in relation to the person) if—
  - (a) it appears to the [regulator]<sup>3</sup> that he is guilty of misconduct, and
  - (b) the regulator is satisfied that it is appropriate in all the circumstances to take action against him.
- (1A) For provision about when a person is guilty of misconduct for the purposes of action by a regulator—
  - (a) see section 66A, in the case of action by the FCA, and
  - (b) see section 66B, in the case of action by the PRA.
- (3) If the regulator is entitled to take action under this section against a person, it may do one or more of the following—
  - (a) impose a penalty on him of such amount as it considers appropriate;
  - (aa) suspend, for such period as it considers appropriate, any approval of the performance by him of any function to which the approval relates;
  - (ab) impose, for such period as it considers appropriate, any conditions in relation to any such approval which it considers appropriate;
  - (ac) limit the period for which any such approval is to have effect;
  - (b) publish a statement of his misconduct.
- (3A) The period for which a suspension or condition is to have effect may not exceed two years.
- (3B) A suspension, condition or limitation may have effect in relation to part of a function.
- (3C) A condition may, in particular, be imposed so as to require any person to take, or refrain from taking, specified action.
- (3D) The regulator taking action under this section may—
  - (a) withdraw a suspension, condition or limitation;
  - (b) vary a suspension or condition so as to reduce the period for which it has effect or otherwise to limit its effect;
  - (c) vary a limitation so as to increase the period for which the approval is to have effect.
- (4) A regulator may not take action under this section after the end of the relevant period beginning with the first day on which the regulator knew of the misconduct, unless proceedings in respect of it against the person concerned were begun before the end of that period.
- (5) For the purposes of subsection (4)—

# SHEARMAN & STERLING

26 January 2023

- (a) a regulator is to be treated as knowing of misconduct if it has information from which the misconduct can reasonably be inferred, and
- (b) proceedings against a person in respect of misconduct are to be treated as begun when a warning notice is given to him under section 67(1).

(5ZA) "*The relevant period*" is—

- (a) in relation to misconduct which occurs before the day on which this subsection comes into force, the period of 3 years, and
- (b) in relation to misconduct which occurs on or after that day, the period of 6 years.

(5A) "*Approval*" means an approval given under section 59.

- (8) In relation to any time while a suspension is in force under subsection (3)(aa) in relation to part of a function, any reference in section 59 or 63A to the performance of a function includes the performance of part of a function.
- (9) If at any time a condition imposed under subsection (3)(ab) is contravened, the approval in relation to the person concerned is to be treated for the purposes of sections 59 and 63A as if it had been withdrawn at that time.

## 66A Misconduct: action by the FCA

- (1) ~~For~~ Subject to subsection (9), for the purposes of action by the FCA under section 66, a person is guilty of misconduct if any of conditions A to C is met in relation to the person.
- (2) Condition A is that—
  - (a) the person has at any time failed to comply with rules made by the FCA under section 64A, and
  - (b) at that time the person was—
    - (i) an approved person;
    - (ii) an employee of an authorised person; or
    - (iii) a director of an authorised person.
- (3) Condition B is that—
  - (a) the person has at any time been knowingly concerned in a contravention of a relevant requirement by an authorised person, and
  - (b) at that time the person was—
    - (i) an approved person in relation to the authorised person;
    - (ii) an employee of the authorised person; or
    - (iii) a director of the authorised person.

# SHEARMAN & STERLING

26 January 2023

- (4) In this section "*relevant requirement*" means a requirement—
- (a) imposed by or under this Act;
  - (aa) imposed by the Alternative Investment Fund Managers Regulations 2013;
  - (ab) imposed by the Undertakings for Collective Investment in Transferable Securities Regulations 2011; or
  - (b) imposed by any qualifying provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
- (5) Condition C is that—
- (a) the person has at any time been a senior manager in relation to an authorised person;
  - (b) there has at that time been (or continued to be) a contravention of a relevant requirement by the authorised person;
  - (c) the senior manager was at that time responsible for the management of any of the authorised person's activities in relation to which the contravention occurred; and
  - (d) the senior manager ~~did not take such steps as a person in the senior manager's position could reasonably be expected to take to avoid~~has contributed to the contravention ~~occurring (or continuing)~~of the relevant requirement by that authorised person.

- (7) For the purposes of subsection (5)—

"*senior manager*", in relation to an authorised person, means a person who has approval under section 59 to perform a designated senior management function in relation to the carrying on by the authorised person of a regulated activity.

- (8) In this section—

"*approved person*"—

- (a) means a person in relation to whom an approval is given under section 59, and
- (b) in relation to an authorised person, means a person in relation to whom such approval is given on the application of the authorised person;

"*director*", in relation to an authorised person, has the same meaning as in section 64A;

"*employee*", in relation to a person, has the same meaning as in section 64A.

- (9) A person shall not be liable under this section where they acted reasonably and in good faith at the time that any of conditions A to C is met in relation to that person, and a declaration to that effect has been provided under section 133C of this Act.

## 66B Misconduct: action by the PRA

- (1) ~~For~~Subject to subsection (8), for the purposes of action by the PRA under section 66, a person is guilty of misconduct if any of conditions A to C is met in relation to the person.

# SHEARMAN & STERLING

26 January 2023

- (2) Condition A is that—
- (a) the person has at any time failed to comply with rules made by the PRA under section 64A, and
  - (b) at that time the person was—
    - (i) an approved person;
    - (ii) an employee of a PRA-authorized person; or
    - (iii) a director of a PRA-authorized person.
- (3) Condition B is that—
- (a) the person has at any time been knowingly concerned in a contravention of a relevant requirement by a PRA-authorized person, and
  - (b) at that time the person was—
    - (i) an approved person in respect of the performance of a relevant senior management function in relation to the carrying on by the PRA-authorized person of a regulated activity;
    - (ii) an employee of the PRA-authorized person; or
    - (iii) a director of the PRA-authorized person.
- (4) In this section "*relevant requirement*" means a requirement—
- (a) imposed by or under this Act, or
  - (b) imposed by any qualifying provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
- (5) Condition C is that—
- (a) the person has at any time been a senior manager in relation to an authorized person;
  - (b) there has at that time been (or continued to be) a contravention of a relevant requirement by the authorized person;
  - (c) the senior manager was at that time responsible for the management of any of the authorized person's activities in relation to which the contravention occurred; and
  - (d) the senior manager ~~did not take such steps as a person in the senior manager's position could reasonably be expected to take to avoid~~has contributed to the contravention ~~occurring (or continuing)~~of the relevant requirement by that authorized person.
- (6) For the purposes of subsection (5)—

"*senior manager*", in relation to an authorized person, means a person who has approval under section 59 to perform a designated senior management function in relation to the carrying on by the authorized person of a regulated activity.

# SHEARMAN & STERLING

26 January 2023

(7) In this section—

"*approved person*"—

(a) means a person in relation to whom—

(i) the PRA has given its approval under section 59, or

(ii) the FCA has given its approval under section 59 in respect of the performance by the person of a relevant senior management function in relation to the carrying on by a PRA-authorized person of a regulated activity, and

(b) in relation to an authorised person, means a person in relation to whom approval under section 59 is given on the application of the authorised person;

"*director*", in relation to an authorised person, has the same meaning as in section 64A;

"*employee*", in relation to a person, has the same meaning as in section 64A;

"*relevant senior management function*" means a function which the PRA is satisfied is a senior management function as defined in section 59ZA (whether or not the function has been designated as such by the FCA).

[\(8\) A person shall not be liable under this section where they acted reasonably and in good faith at the time that any of conditions A to C is met in relation to that person, and a declaration to that effect has been provided under section 133C of this Act.](#)

## 133 Proceedings before Tribunal: general provision

(1) This section applies in the case of a reference or appeal to the Tribunal (whether made under this or any other Act) in respect of—

(a) a decision of the FCA or the PRA;

(b) a decision of the Bank of England; ~~or~~

(c) a decision of a person relating to the assessment of any compensation or consideration under the Banking (Special Provisions) Act 2008[, the Banking Act 2009 or the Financial Services and Markets Act 2022]<sup>25</sup>; ~~;~~ [or](#)

[\(d\) a decision of the Financial Services Chamber of the First Tier Tribunal.](#)

(1A) For the purposes of this section, in the case of a reference to the Tribunal under section 290(4A) (which relates to an application by a central securities depository under section 288A), the failure by the Bank of England to make a decision is treated as a decision to refuse the application (and accordingly is treated as falling within subsection (1)(b)).

(2) In this section—

"*relevant decision*" means a decision mentioned in subsection (1)(a), (b) ~~or~~, (c) [or \(d\)](#); ~~and~~

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<sup>25</sup> Words substituted by Financial Services and Markets Bill 2022-23 (HL Bill 80) Sch.11(10) para.160(4) (Lords' Second Reading, January 10, 2023).

# SHEARMAN & STERLING

26 January 2023

"*the decision-maker*", in relation to a relevant decision, means the person who made the relevant decision; ~~and~~

"Tribunal" means the Upper Tribunal.

- (3) Tribunal Procedure Rules may make provision for the suspension of a relevant decision which has taken effect, pending determination of the reference or appeal.
- (4) The Tribunal may consider any evidence relating to the subject-matter of the reference or appeal, whether or not it was available to the decision-maker at the material time.
- (5) In the case of a disciplinary reference or a reference under section 393(11), the Tribunal—
  - (a) must determine what (if any) is the appropriate action for the decision-maker to take in relation to the matter, and
  - (b) on determining the reference, must remit the matter to the decision-maker with such directions (if any) as the Tribunal considers appropriate for giving effect to its determination.
- (5A) In the case of a reference under paragraph 7 of Schedule 6A, the Tribunal—
  - (a) must determine what (if any) is the appropriate action that must be taken in relation to the matter, and
  - (b) on determining the reference, must give such directions (if any) to such persons as the Tribunal considers appropriate for giving effect to its determination.
- (6) In any other case, the Tribunal must determine the reference or appeal by either—
  - (a) dismissing it, or
  - (b) remitting the matter to the decision-maker with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal.
- (6A) The findings mentioned in subsection (6)(b) are limited to findings as to—
  - (a) issues of fact or law;
  - (b) the matters to be, or not to be, taken into account in making the decision; ~~and~~
  - (c) the procedural or other steps to be taken in connection with the making of the decision; ~~and~~
  - (d) such matters as the Tribunal thinks fit in order to assist the decision-maker to act in accordance with the predictability and consistency objective.
- (7) The decision-maker must act in accordance with the determination of, and any direction given by, the Tribunal.
- (7A) A reference is a "disciplinary reference" for the purposes of this section if it is in respect of any of the following decisions—
  - (a) a decision to impose a penalty under section 63A;

26 January 2023

- (b) a decision to take action under section 66;
  - (c) a decision to take action under section 87M;
  - (d) a decision to take action under section 88A;
  - (e) a decision to take action under section 89K;
  - (f) a decision to take action under section 89Q;
  - (g) a decision to take action under section 91;
  - (h) a decision to impose a penalty or publish a statement of censure under section 123, impose a prohibition under section 123A or impose a suspension or restriction under section 123B;
  - (i) a decision to take action under section 131G;
  - (1a) a decision to take action under section 142S;
  - (1b) a decision to take action under section 143W;
  - (j) a decision to take action under section 192K;
  - (k) a decision to publish a statement under section 205, impose a penalty under section 206 or suspend a permission or impose a restriction under section 206A;
  - (l) a decision to take action under section 249 or 261K;
  - [(1a) a decision to impose a penalty under section 309U;
  - (1b) a decision to take action under section 309Z2;]<sup>26</sup>
  - (m) a decision to publish a statement under section 312E or 312FA or impose a penalty under section 312F or 312FA;
  - (n) a decision to take action under section 345 or 345A;
  - (o) a decision to take action under section 83ZR of the Banking Act 2009.
- (8) An order of the Tribunal may be enforced—
- (a) in England and Wales, as if it were an order of the county court or, in Northern Ireland, as if it were an order of a county court; or
  - (b) in Scotland, as if it were an order of the Court of Session.

### **133A Proceedings before Tribunal: decision and supervisory notices, etc.**

- (1) In determining in accordance with section 133(5) [or 133\(6\)](#) a reference made (whether under this or any other Act) as a result of a decision notice given by a body, the Tribunal may not

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<sup>26</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Sch.10(2) para.6 (Lords' Second Reading, January 10, 2023).

# SHEARMAN & STERLING

26 January 2023

direct the body to take action which it would]<sup>3</sup> not, as a result of section 388(2), have had power to take when giving the notice.

(2) In determining a reference or appeal in respect of any decision of the FCA or the PRA, the Tribunal shall—

(a) under s.133(5) and (6) consider whether the decision-maker has acted in accordance with the predictability and consistency objective; and

(b) under s.133(5)(a) make determinations in accordance with the predictability and consistency objective.

(3) On any reference or appeal before the Tribunal the burden shall be on the decision-maker to establish that it has acted in accordance with the predictability and consistency objective.

(4) The action specified in a decision notice must not be taken—

(a) during the period within which the matter to which the notice relates may be referred to the Tribunal (whether under this or any other Act), and

(b) if the matter is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of.

(5) The Tribunal may, on determining a reference (whether made under this or any other Act) in respect of a decision of the FCA or the PRA, make recommendations as to its regulating provisions or its procedures.

## 133B Offences

(1) This section applies in the case of proceedings before the Upper Tribunal in respect of—

(a) a decision of the FCA or the PRA;

(b) a decision of the Bank of England; or

(c) a decision of a person relating to the assessment of any compensation or consideration under the Banking (Special Provisions) Act 2008[, the Banking Act 2009 or the Financial Services and Markets Act 2022]<sup>27</sup>.

(2) A person is guilty of an offence if that person, without reasonable excuse—

(a) refuses or fails—

(i) to attend following the issue of a summons by the Upper Tribunal, or

(ii) to give evidence; or

(b) alters, suppresses, conceals or destroys, or refuses to produce a document which he may be required to produce for the purposes of proceedings before the Upper Tribunal.

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<sup>27</sup> Words substituted by Financial Services and Markets Bill 2022-23 (HL Bill 80) Sch.11(10) para.160(5) (Lords' Second Reading, January 10, 2023).

# SHEARMAN & STERLING

26 January 2023

- (3) A person guilty of an offence under subsection (2)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) A person guilty of an offence under subsection (2)(b) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

## **133C A firm's application to the Tribunal for a declaration of reasonableness**

- (1) This section applies where a regulator has taken a supervisory decision which has the effect of overriding a decision of a firm.
- (2) Where this section applies, the firm may apply to the Upper Tribunal for a declaration that the firm's judgment is reasonable.
- (3) Any application for a declaration made under subsection (2) must be made within 3 business days of the regulator's decision.
- (4) The Upper Tribunal shall make a decision on an application for a declaration as soon as possible after receipt of a complete application.
- (5) In considering whether to grant the declaration, the Upper Tribunal shall consider whether, in all the circumstances, the decision was taken in good faith and was reasonable at the time the firm took it and at the time of the supervisory decision, but it shall only grant the application if the decision remains reasonable at the hearing of the application.
- (6) The circumstances that the Upper Tribunal must consider under subsection (4) include:
  - (a) the circumstances relating to the firm and its judgment;
  - (b) any relevant customer impacted by the firm's judgment;
  - (c) the relevant regulatory rules, standards and guidance; and
  - (d) the approach taken by the relevant regulator to the matter.
- (7) Where the Upper Tribunal grants a declaration pursuant to subsection (2), then neither the firm nor its senior managers shall be held liable for the exercise of such judgment in relation to such acts or decisions that were the subject of the supervisory decision referred to in subsection (1).
- (8) Where an application is made pursuant to subsection (2), the burden shall be on the firm to prove that its decision is reasonable and was taken in good faith.

## **134 Legal assistance scheme**

- (1) The Lord Chancellor may by regulations establish a scheme governing the provision of legal assistance in connection with proceedings before the Upper Tribunal.
- (2) If the Lord Chancellor establishes a scheme under subsection (1), it must provide that a person is eligible for assistance only if—

26 January 2023

- (a) he falls within subsection (3), and
  - (b) he fulfils such other criteria (if any) as may be prescribed as a result of section 135(1)(d).
- (3) A person falls within this subsection if he is an individual who has referred a matter to the [Upper Tribunal](#) under section 127(4).
- (4) In this Part of this Act "*the legal assistance scheme*" means any scheme in force under subsection (1).

## **135 Provisions of the legal assistance scheme**

- (1) The legal assistance scheme may, in particular, make provision as to—
- (a) the kinds of legal assistance that may be provided;
  - (b) the persons by whom legal assistance may be provided;
  - (c) the manner in which applications for legal assistance are to be made;
  - (d) the criteria on which eligibility for legal assistance is to be determined;
  - (e) the persons or bodies by whom applications are to be determined;
  - (f) appeals against refusals of applications;
  - (g) the revocation or variation of decisions;
  - (h) its administration and the enforcement of its provisions.
- (2) Legal assistance under the legal assistance scheme may be provided subject to conditions or restrictions, including conditions as to the making of contributions by the person to whom it is provided.

## **136 Funding of the legal assistance scheme**

- (1) The FCA must pay to the Lord Chancellor such sums at such times as he may, from time to time, determine in respect of the anticipated or actual cost of legal assistance provided in connection with proceedings before the Tribunal under the legal assistance scheme.
- (2) In order to enable it to pay any sum which it is obliged to pay under subsection (1), the FCA must make rules requiring the payment to it by authorised persons or any class of authorised person of specified amounts or amounts calculated in a specified way.
- (3) Sums received by the Lord Chancellor under subsection (1) must be paid into the Consolidated Fund.
- (4) The Lord Chancellor must, out of money provided by Parliament fund the cost of legal assistance provided in connection with proceedings before the Tribunal under the legal assistance scheme.

# SHEARMAN & STERLING

26 January 2023

- (5) Subsection (6) applies if, as respects a period determined by the Lord Chancellor, the amount paid to him under subsection (1) as respects that period exceeds the amount he has expended in that period under subsection (4).
- (6) The Lord Chancellor must—
  - (a) repay, out of money provided by Parliament, the excess to the FCA, or
  - (b) take the excess into account on the next occasion on which he makes a determination under subsection (1).
- (7) The FCA must make provision for any sum repaid to it under subsection (6)(a)—
  - (a) to be distributed among—
    - (i) the authorised persons on whom a levy was imposed in the period in question as a result of rules made under subsection (2), or
    - (ii) such of those persons as it may determine;
  - (b) to be applied in order to reduce any amounts which those persons, or such of them as it may determine, are or will be liable to pay to the FCA, whether under rules made under subsection (2) or otherwise; or
  - (c) to be partly so distributed and partly so applied.
- (8) If the FCA considers that it is not practicable to deal with any part of a sum repaid to it under subsection (6)(a) in accordance with provision made by it as a result of subsection (7), it may, with the consent the Lord Chancellor, apply or dispose of that part of that sum in such manner as it considers appropriate.
- (9) "*Specified*" means specified in the rules.

## **137A The FCA's general rules**

- (1) The FCA may make such rules applying to authorised persons—
  - (a) with respect to the carrying on by them of regulated activities; or
  - (b) with respect to the carrying on by them of activities which are not regulated activities,as appear to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives.
- (2) Rules made under this section are referred to in this Act as the FCA's general rules.
- (3) The FCA's general rules may make provision applying to authorised persons even though there is no relationship between the authorised persons to whom the rules will apply and the persons whose interests will be protected by the rules.

26 January 2023

- (4) The FCA's general rules may contain requirements which take into account, in the case of an authorised person who is a member of a group, any activity of another member of the group. [...]<sup>28</sup>
- (5) The FCA may make rules at differing levels of detail. When the FCA makes rules that are of a high level of generality, it must ensure that the rule meets the predictability and consistency objective. The FCA may only refer to rules that are of a high level of generality to assist in interpreting specific rules, and not as a stand-alone basis for enforcement, unless—
- (a) the standard that has been breached can be derived from the high-level rule itself, or
- (b) the FCA has issued formal guidance making clear the FCA's interpretation of the relevant high-level rule before the date of the relevant conduct in issue.

## 137G The PRA's general rules

- (1) The PRA may make such rules applying to PRA-authorised persons—
- (a) with respect to the carrying on by them of regulated activities; or
- (b) with respect to the carrying on by them of activities which are not regulated activities, as appear to the PRA to be necessary or expedient for the purpose of advancing any of its objectives.
- (2) Rules made under this section are referred to in this Act as the PRA's general rules.
- (3) The PRA's general rules may make provision applying to PRA-authorised persons even though there is no relationship between the PRA-authorised persons to whom the rules will apply and the persons whose interests will be protected by the rules.
- (4) The PRA's general rules may contain requirements which take into account, in the case of a PRA-authorised person who is a member of a group, any activity of another member of the group. [...]<sup>29</sup>
- (5) The PRA may make rules at differing levels of detail. When the PRA makes rules that are of a high level of generality, it must ensure that the rule meets the predictability and consistency objective. The PRA may only refer to rules that are of a high level of generality to assist in interpreting specific rules, and not as a stand-alone basis for enforcement, unless—
- (a) the standard that has been breached can be derived from the high-level rule itself, or
- (b) the PRA has issued formal guidance making clear the PRA's interpretation of the relevant high-level rule before the date of the relevant conduct in issue.

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<sup>28</sup> Repealed by Financial Services and Markets Bill 2022-23 (HL Bill 80) Sch.1(4) para.1(a) (Lords' Second Reading, January 10, 2023).

<sup>29</sup> Repealed by Financial Services and Markets Bill 2022-23 (HL Bill 80) Sch.1(4) para.1(b) (Lords' Second Reading, January 10, 2023).

26 January 2023

## 137GA The PRA's general rules: Gibraltar

- (1) The PRA's general rules may not make provision prohibiting a Gibraltar-based person from carrying on, or holding itself out as carrying on, an activity which it has a Schedule 2A permission to carry on in the United Kingdom.
- (2) The Treasury may by regulations impose other limitations on what provision applying to Gibraltar-based persons with a Schedule 2A permission to carry on a regulated activity may be made in the PRA's general rules.
- (3) Before making regulations under subsection (2), the Treasury must consult the PRA.

## 137GB Interpretation of FCA and PRA rules

Rules made by the FCA and the PRA under this Act must be interpreted in accordance with common law methods of interpretation in such a way that results in a clear and predictable meaning for those rules.

## 137T General supplementary powers

- (1) Rules made by either regulator—
  - (a) may make different provision for different cases and may, in particular, make different provision in respect of different descriptions of authorised persons, activity or investment;
  - [(aa) may make provision for any reference in the rules to an enactment (including an enactment comprised in subordinate legislation) to be read as a reference to that enactment as it has effect from time to time;]<sup>30</sup>
  - (b) may make provision by reference to rules made by the other regulator, as those rules have effect from time to time; and
  - (c) may contain such incidental, supplemental, consequential and transitional provision as the regulator making the rule considers appropriate.

## 138D Actions for damages

- (1) A rule made by the PRA may provide that contravention of the rule is actionable at the suit of a ~~private~~qualifying person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (2) A contravention by an authorised person of a rule made by the FCA is actionable at the suit of a ~~private~~qualifying person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (3) If rules made by the FCA so provide, subsection (2) does not apply to a contravention of a specified provision of the rules.
- (4) In ~~prescribed~~ cases prescribed by order of the Treasury, a contravention of a rule which by virtue of subsection (1) or (2) would be actionable at the suit of a ~~private~~qualifying person is

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<sup>30</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Pt 6 s.62(2) (Lords' Second Reading, January 10, 2023).

# SHEARMAN & STERLING

26 January 2023

actionable at the suit of a person who is not a ~~private~~qualifying person, subject to the defences and other incidents applying to actions for breach of statutory duty.

- (5) In subsections (1), (2) and (3) "rule" does not include—
- (za) rules under section 64A (rules of conduct);
  - [(zaa) rules under Part 5A;]<sup>31</sup>
  - (a) Part 6 rules;
  - (b) rules under section 137O (threshold condition code);
  - (c) rules under section 192J (provision of information by parent undertakings);
  - (d) a rule requiring an authorised person to have or maintain financial resources.
- (6) ~~(8) "Private~~In this section, "qualifying person" has such meaning as may be prescribed.~~means~~
- (a) a person who is an "eligible complainant" for the purposes of the adjudication scheme established under Part XVI of this Act or any successor scheme; and
  - (b) such persons provided for in reg. 3 of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001/2256 or such persons as may be prescribed by the Treasury from time to time.
- (7) Actions brought by a qualifying person or a firm in respect of rights enjoyed by qualifying persons under subsection (1) and (2) above, including any matter on which an adjudicator has issued an interim-binding decision under the adjudication scheme under Part XVI, shall be commenced in the Financial Services Chamber of the First Tier Tribunal.
- (8) The First Tier Tribunal shall apply to the actions before it—
- (a) the rules under subsections (1) and (2), save that the First Tier Tribunal shall treat the rules in the PRIN section of the FCA Handbook as being actionable at the suit of any eligible complainant;
  - (b) any relevant legislation of any part of the United Kingdom and Northern Ireland; and
  - (c) the relevant common law.
- (9) The powers of the First Tier Tribunal in disposing of any action before it shall be those enjoyed by adjudicators under section 229 of this Act and shall be subject to the same limits set by the FCA in that section.
- (10) The Treasury by order under this subsection makes alternative provision to that in subsection (9) above. The Treasury shall enjoy the powers of the FCA under section 229 of this Act for that purpose.

26 January 2023

(11) Notwithstanding (7) above, persons provided for in reg. 3 of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001/2256 may bring actions in the courts under subsections (1) and (2) for so long as those regulations remain in force.

## **138IA FCA Cost Benefit Analysis Panel**

- (1) The FCA must establish and maintain a panel of persons (to be known as the "*FCA Cost Benefit Analysis Panel*") to provide advice in relation to cost benefit analyses for the purposes of section 138I.
- (2) Except as provided by subsection (3), the FCA must consult the FCA Cost Benefit Analysis Panel about the following matters—
  - (a) the preparation of a cost benefit analysis under section 138I(2)(a) or (5)(a);
  - (b) the preparation of its statement of policy under section 138IB.
- (3) The requirement to consult under subsection (2)(a) does not apply in such cases as may be set out in the statement of policy maintained under section 138IB.
- (4) Arrangements made by the FCA under subsection (1) for the establishment and maintenance of the FCA Cost Benefit Analysis Panel must include arrangements for the Panel to—
  - (a) keep under review how the FCA is performing generally in carrying out its duties under section 138I(2)(a) and (5)(a), and
  - (b) provide to the FCA whatever recommendations the Panel thinks appropriate as a result of such review.
- (5) The FCA must appoint one of the members of the FCA Cost Benefit Analysis Panel to be the chair of the Panel.
- (6) The Treasury's approval is required for the appointment or dismissal of all members of the ~~chair~~FCA Cost Benefit Analysis Panel .
- (7) The FCA must appoint to the FCA Cost Benefit Analysis Panel ~~such~~independent persons who are not employees of the FCA with appropriate knowledge or experience of the preparation of cost benefit analyses ~~as it considers appropriate~~.
- (8) The FCA may appoint to the FCA Cost Benefit Analysis Panel such other persons as it considers appropriate.
- (9) Subsections (7) and (8) are subject to section 1MA.
- (10) The FCA must consider representations that are made to it by the FCA Cost Benefit Analysis Panel.
- (11) The FCA must from time to time publish in such manner as it thinks fit responses to the representations.

# SHEARMAN & STERLING

26 January 2023

## 138JA PRA Cost Benefit Analysis Panel

- (1) The PRA must establish and maintain a panel of persons (to be known as the "*PRA Cost Benefit Analysis Panel*") to provide advice in relation to cost benefit analyses for the purposes of section 138J.
- (2) Except as provided by subsection (3), the PRA must consult the PRA Cost Benefit Analysis Panel about the following matters—
  - (a) the preparation of a cost benefit analysis under section 138J(2)(a) or (5)(a);
  - (b) the preparation of its statement of policy under section 138JB.
- (3) The requirement to consult under subsection (2)(a) does not apply in such cases as may be set out in the statement of policy maintained under section 138JB.
- (4) Arrangements made by the PRA under subsection (1) for the establishment and maintenance of the PRA Cost Benefit Analysis Panel must include arrangements for the Panel to—
  - (a) keep under review how the PRA is performing generally in carrying out its duties under section 138J(2)(a) and (5)(a), and
  - (b) provide to the PRA whatever recommendations the Panel thinks appropriate as a result of such review.
- (5) The PRA must appoint one of the members of the PRA Cost Benefit Analysis Panel to be the chair of the Panel.
- (6) The Treasury's approval is required for the appointment or dismissal of [all members of the ~~chair~~PRA Cost Benefit Analysis Panel](#) .
- (7) The PRA must appoint to the PRA Cost Benefit Analysis Panel ~~such~~[independent](#) persons [who are not employees of the PRA](#) with [appropriate](#) knowledge or experience of the preparation of cost benefit analyses ~~as it considers appropriate~~.
- (8) The PRA may appoint to the PRA Cost Benefit Analysis Panel such other persons as it considers appropriate.
- (9) Subsections (7) and (8) are subject to section 2LA
- (10) The PRA must consider representations that are made to it by the PRA Cost Benefit Analysis Panel.
- (11) The PRA must from time to time publish in such manner as it thinks fit responses to the representations.
- (12) The reference in subsection (1) to section 138J includes a reference to that section as applied in relation to the Bank of England by paragraph 10(1) of Schedule 17A.

## PART XVI THE ~~OMBUDSMAN~~[ADJUDICATION](#) SCHEME

### [The scheme](#)

26 January 2023

## 225 The scheme and the scheme operator

- (1) This Part provides for a scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person.
- (2) The scheme is to be administered by a body corporate ("*the scheme operator*").
- (3) The scheme is to be operated under a name chosen by the scheme operator but is referred to in this Act as "*the ~~ombudsman~~ adjudication scheme*".
- (4) Schedule 17 makes provision in connection with the ~~ombudsman~~ adjudication scheme and the scheme operator.
- (5) The FCA, acting in conjunction with the scheme operator, may make further rules relating to the procedures applicable to the adjudication scheme and the powers of the adjudicator under the adjudication scheme, including for the adjudicator to adopt adversarial or inquisitorial procedures in the determination of a complaint as they consider appropriate.

## 225A Transitional provisions

- (1) The adjudication scheme established under section 225 of this Act shall come into force in accordance with provision made by the Secretary of State by order (the "*FAS commencement date*").
- (2) Where a dispute or proceedings relevant to this Part arises prior to the FAS commencement date, it is to be dealt with under the ombudsman scheme as previously established under this Part.
- (3) Where a dispute or proceedings relevant to this Part arises on or after the FAS commencement date, it is to be dealt with under the adjudication scheme in accordance with this Part.
- (4) Where the acts or omissions to which a complaint relates took place both prior to and on or after the FAS commencement date, any dispute or proceedings brought under this Part is to be dealt with under the adjudication scheme in accordance with this Part.

## 226 Compulsory jurisdiction

- (1) A complaint which relates to an act or omission of a person ("*the respondent*") in carrying on an activity to which compulsory jurisdiction rules apply is to be dealt with under the ~~ombudsman~~ adjudication scheme if the conditions mentioned in subsection (2) are satisfied.
- (2) The conditions are that—
  - (a) the complainant is eligible and wishes to have the complaint dealt with under the scheme;
  - (b) the respondent was an authorised person or an electronic money issuer within the meaning of the Electronic Money Regulations 2011, or a payment service provider within the meaning of the Payment Services Regulations 2017, at the time of the act or omission to which the complaint relates; and
  - (c) the act or omission to which the complaint relates occurred at a time when compulsory jurisdiction rules were in force in relation to the activity in question.

# SHEARMAN & STERLING

26 January 2023

- (3) "Compulsory jurisdiction rules" means rules—
- (a) made by the FCA for the purposes of this section; and
  - (b) specifying the activities to which they should apply.
- (3A) "Compulsory jurisdiction rules" shall have the effect that the consumer is able effectively to have his complaint determined under the scheme without the need for legal representation and shall include within them provision for—
- (a) the scheme operator to refer any complaint to an adjudicator within seven days of its receipt by the scheme operator;
  - (b) the adjudicator to make his determination within 56 days of a complaint being referred to him or such longer period as is agreed by the parties after the complaint was referred to the adjudicator;
  - (c) the adjudicator to extend the period of 56 days by up to 56 days with the consent of the complainant;
  - (d) impose a duty on the adjudicator to act impartially; and
  - (e) enable the adjudicator to take the initiative in ascertaining the facts and the law and rules.
- (4) Only the following activities may be specified:
- (a) ~~(4) Only~~ activities which are regulated activities, ~~or;~~
  - (b) activities which could be made regulated activities by an order under section 22, ~~may be specified;~~
  - (c) unregulated lending activities which are carried on by authorized persons; or
  - (d) activities which are carried on by payment service providers which are not payment services, each as defined in the Payment Services Regulations 2017.
- (5) Activities may be specified by reference to specified categories (however described).
- (5A) If the FCA specifies activities which are account information services provided by authorised payment institutions or EEA authorised payment institutions, the FCA must specify to the same extent account information services provided by registered account information service providers or, as the case may be, EEA registered account information service providers.
- (5B) Expressions used in subsection (5A) and in the Payments Services Regulations 2017 have the same meaning in that subsection as they do in those Regulations.]
- (6) A complainant is eligible, in relation to the compulsory jurisdiction of the ~~ombudsman~~ adjudication scheme, if he falls within a class of person specified in the rules as eligible.

[Rest of section unamended]

26 January 2023

## 227 Voluntary jurisdiction

- (1) A complaint which relates to an act or omission of a person ("*the respondent*") in carrying on an activity to which voluntary jurisdiction rules apply is to be dealt with under the [ombudsman adjudication](#) scheme if the conditions mentioned in subsection (2) are satisfied.
- (2) The conditions are that—
  - (a) the complainant is eligible and wishes to have the complaint dealt with under the scheme;
  - (b) at the time of the act or omission to which the complaint relates, the respondent was participating in the scheme;
  - (c) at the time when the complaint is referred under the scheme, the respondent has not withdrawn from the scheme in accordance with its provisions;
  - (d) the act or omission to which the complaint relates occurred at a time when voluntary jurisdiction rules were in force in relation to the activity in question; and
  - (e) the complaint cannot be dealt with under the compulsory jurisdiction.
- (3) "*Voluntary jurisdiction rules*" means rules—
  - (a) made by the scheme operator for the purposes of this section; and
  - (b) specifying the activities to which they apply.
- (4) The only activities which may be specified in the rules are activities which are, or could be, specified in compulsory jurisdiction rules.
- (5) Activities may be specified by reference to specified categories (however described).
- (6) The rules require the [FCA's] approval.
- (7) A complainant is eligible, in relation to the voluntary jurisdiction of the [ombudsman adjudication](#) scheme, if he falls within a class of person specified in the rules as eligible.
- (8) The rules may include provision for persons other than individuals to be eligible.
- (9) A person qualifies for participation in the [ombudsman adjudication](#) scheme if he falls within a class of person specified in the rules in relation to the activity in question.
- (10) Provision may be made in the rules for persons other than authorised persons to participate in the [ombudsman adjudication](#) scheme.
- (11) The rules may make different provision in relation to complaints arising from different activities.
- (12) The jurisdiction of the scheme which results from this section is referred to in this Act as the "*voluntary jurisdiction*".
- (13) In such circumstances as may be specified in voluntary jurisdiction rules, a complaint—

26 January 2023

- (a) which relates to an act or omission occurring at a time before the rules came into force, and
  - (b) which could have been dealt with under a scheme which has to any extent been replaced by the voluntary jurisdiction, is to be dealt with under the ~~ombudsman~~adjudicator scheme even though paragraph (b) or (d) of subsection (2) would otherwise prevent that.
- (14) In such circumstances as may be specified in voluntary jurisdiction rules, a complaint is to be dealt with under the ~~ombudsman~~adjudicator scheme even though—
- (a) paragraph (b) or (d) of subsection (2) would otherwise prevent that, and
  - (b) the complaint is not brought within the scheme as a result of subsection (13), but only if the respondent has agreed that complaints of that kind were to be dealt with under the scheme.

## 228 Determination under the compulsory jurisdiction

- (1) This section applies only in relation to the compulsory jurisdiction.
- (2) A complaint that relates to an activity specified under sections 226(4)(a) and 226(4)(b) of this Act is to be determined by the adjudicator through application of—
- (a) rules of the PRA and the FCA referred to in s.138D, save that the adjudicator shall treat the rules in the PRIN section of the FCA Handbook as being actionable at the suit of any eligible complainant;
  - (b) any relevant legislation of the United Kingdom and Northern Ireland or any part thereof, including the Consumer Rights Act 2015; and
  - (c) the relevant common law (together "the law and rules").
- (2A) A complaint that relates to an activity specified under sections 226(4)(c) and 226(4)(d) of this Act is to be determined ~~reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case.~~by the adjudicator through application of the rules in the PRIN section of the FCA Handbook, as if the activity complained about were a regulated activity.
- (3) When the ~~ombudsman~~adjudicator has determined a complaint he must give a written statement of his determination to the respondent and to the complainant.
- (4) The statement must in at least summary form—
- (a) set out the parties' contentions;
  - (b) set out the relevant law and rules;
  - (c) decide contested issues of fact so far as is necessary;
  - (d) apply the law and rules to the facts as found so far as is necessary;
  - (e) ~~(a)~~ give the ~~ombudsman's~~adjudicator's reasons for his determination;

# SHEARMAN & STERLING

26 January 2023

- (f) ~~(b)~~ be signed by him; and
  - (g) ~~(e)~~ require the complainant to notify him, before a date specified in the statement, whether he accepts or rejects the determination.
- (5) If the complainant notifies the ~~ombudsman~~adjudicator that he accepts the determination, it is binding on the respondent and the complainant ~~and final.~~until
  - (a) either party has applied for a final determination of the complaint before the First Tier Tribunal; and
  - (b) the First Tier Tribunal has determined it.
- (5A) A complainant shall be entitled to apply to the First Tier Tribunal for a final determination of an interim-binding determination under (2) and (5) above as of right.
- (5B) A respondent shall be entitled to apply to the First Tier Tribunal for a final determination of an interim-binding determination under (2) and (5) above upon permission of the First Tier Tribunal and upon satisfying such conditions as the First Tier Tribunal thinks fit for the protection of the complainant in all the circumstances of the case including, without limitation:
  - (a) requiring the respondent to pay such costs of the complainant as the First Tier Tribunal thinks fit;
  - (b) requiring undertakings from the respondent, including that the complainant retains the benefit of the interim-binding award at (4) above; and
  - (c) inviting a suitable party to intervene to argue the matter before it.
- (6) If, by the specified date, the complainant has not notified the ~~ombudsman~~adjudicator of his acceptance or rejection of the determination he is to be treated as having rejected it.
- (6A) But the complainant is not to be treated as having rejected the determination by virtue of subsection (6) if—
  - (a) the complainant notifies the ~~ombudsman~~adjudicator after the specified date of the complainant's acceptance of the determination,
  - (b) the complainant has not previously notified the ~~ombudsman~~adjudicator of the complainant's rejection of the determination, and
  - (c) the ~~ombudsman~~adjudicator is satisfied that such conditions as may be prescribed by rules made by the scheme operator for the purposes of this section are satisfied.
- (7) The ~~ombudsman~~adjudicator must notify the respondent of the outcome.
- (7A) Where a determination is rejected by virtue of subsection (6), the notification under subsection (7) must contain a general description of the effect of subsection (6A).
- (8) A copy of the determination on which appears a certificate signed by an ~~ombudsman~~adjudicator is evidence (or in Scotland sufficient evidence) that the determination was made under the scheme.

# SHEARMAN & STERLING

26 January 2023

- (9) Such a certificate purporting to be signed by an ~~ombudsman~~adjudicator is to be taken to have been duly signed unless the contrary is shown.

## 229 Awards

- (1) This section applies only in relation to the compulsory jurisdiction.
- (2) If a complaint which has been dealt with under the scheme is determined in favour of the complainant, the determination may include— ~~(a) an award against the respondent of such amount as the ombudsman considers fair~~ compensation for loss or damage ~~(of a kind falling within subsection (3))~~ suffered by the complainant ("*a money award*")~~;~~  
~~(b) a direction that the respondent take such steps in relation to the complainant as the ombudsman considers just and appropriate (whether or not a court could order those steps to be taken).~~
- (2) A money award may compensate for—
- (a) financial loss; or
  - (b) any other loss, or any damage, of a specified kind.
- (3) The FCA may specify for the purposes of the compulsory jurisdiction the maximum amount which may be ~~regarded as fair~~awarded as compensation for a particular kind of loss or damage specified under subsection (3)(b).
- (4) A money award may not exceed the monetary limit; but the ~~ombudsman~~adjudicator may, if he considers that ~~fair~~ compensation according to the rules and law requires payment of a larger amount, recommend that the respondent pay the complainant the balance.
- (5) The monetary limit is such amount as may be specified.
- (6) Different amounts may be specified in relation to different kinds of complaint.
- (7) A money award—
- (a) may provide for the amount payable under the award to bear interest at a rate and as from a date specified in the award; and
  - (b) is enforceable by the complainant in accordance with Part III of Schedule 17.
- (8) Compliance with a direction under subsection (2)(b)—
- (a) is enforceable by an injunction; or
  - (b) in Scotland, is enforceable by an order under section 45 of the Court of Session Act 1988.
- (9) Only the complainant may bring proceedings for an injunction or proceedings for an order.
- (10) "*Specified*" means specified in compulsory jurisdiction rules.

# SHEARMAN & STERLING

26 January 2023

## 230 Costs

- (1) The scheme operator may by rules ("*costs rules*") provide for an ~~ombudsman~~adjudicator to have power, on determining a complaint under the compulsory jurisdiction, to award costs in accordance with the provisions of the rules.
- (2) Costs rules require the approval of the FCA.
- (3) Costs rules may not provide for the making of an award against the complainant in respect of the respondent's costs.
- (4) But they may provide for the making of an award against the complainant in favour of the scheme operator, for the purpose of providing a contribution to resources deployed in dealing with the complaint, if in the opinion of the ~~ombudsman~~adjudicator—
  - (a) the complainant's conduct was improper or unreasonable; or
  - (b) the complainant was responsible for an unreasonable delay.
- (5) Costs rules may authorise an ~~ombudsman~~adjudicator making an award in accordance with the rules to order that the amount payable under the award bears interest at a rate and as from a date specified in the order.
- (6) An amount due under an award made in favour of the scheme operator is recoverable as a debt due to the scheme operator.
- (7) Any other award made against the respondent is to be treated as a money award for the purposes of paragraph 16 of Schedule 17.

## 230A Reports of determinations

- (1) The scheme operator must publish a report of any determination made under this Part.
- (2) But if the ~~ombudsman~~adjudicator who makes the determination informs the scheme operator that, in the ~~ombudsman's~~adjudicator's opinion, it is inappropriate to publish a report of that determination (or any part of it) the scheme operator must not publish a report of that determination (or that part).
- (3) Unless the complainant agrees, a report of a determination published by the scheme operator may not include the name of the complainant, or particulars which, in the opinion of the scheme operator, are likely to identify the complainant.
- (4) The scheme operator may charge a reasonable fee for providing a person with a copy of a report.

### *Information*

## 231 ~~Ombudsman's~~Adjudicator's power to require information

- (1) An ~~ombudsman~~adjudicator may, by notice in writing given to a party to a complaint, require that party—
  - (a) to provide specified information or information of a specified description; or

26 January 2023

- (b) to produce specified documents or documents of a specified description.
- (2) The information or documents must be provided or produced—
  - (a) before the end of such reasonable period as may be specified; and
  - (b) in the case of information, in such manner or form as may be specified.
- (3) This section applies only to information and documents the production of which the [ombudsman adjudicator](#) considers necessary for the determination of the complaint.
- (4) If a document is produced in response to a requirement imposed under this section, the [ombudsman adjudicator](#) may—
  - (a) take copies or extracts from the document; or
  - (b) require the person producing the document to provide an explanation of the document.
- (5) If a person who is required under this section to produce a document fails to do so, the [ombudsman adjudicator](#) may require him to state, to the best of his knowledge and belief, where the document is.
- (6) If a person claims a lien on a document, its production under this Part does not affect the lien.
- (7) "*Specified*" means specified in the notice given under subsection (1).

## **232 Powers of court where information required**

- (1) If a person ("*the defaulter*") fails to comply with a requirement imposed under section 231, the [ombudsman adjudicator](#) may certify that fact in writing to the court and the court may enquire into the case.
- (2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and, in the case of a body corporate, any director or other officer) as if he were in contempt <sup>F26</sup>; and "*officer*", in relation to a limited liability partnership, means a member of the limited liability partnership.
- (3) "*Court*" means—
  - (a) the High Court;
  - (b) in Scotland, the Court of Session.

### *Funding*

## **234 Industry funding**

- (1) For the purpose of funding—
  - (a) the establishment of the [ombudsman adjudication](#) scheme (whenever any relevant expense is incurred), and
  - (b) its operation in relation to the compulsory jurisdiction,

26 January 2023

the FCA may make rules requiring the payment to it or to the scheme operator, by authorised persons or any class of authorised person, any electronic money issuer within the meaning of the Electronic Money Regulations 2011 or any payment service provider within the meaning of the Payment Services Regulations 2017 of specified amounts (or amounts calculated in a specified way).

- (2) "*Specified*" means specified in the rules.

### *Successors to businesses*

#### **234B Transfers of liability**

- (1) This section applies where a person (the "*successor*") has assumed a liability (including a contingent one) of a person (the "*predecessor*") who was, or (apart from this section) would have been, the respondent in respect of a complaint falling to be dealt with under the ~~ombudsman~~[adjudication](#) scheme.
- (2) The complaint may (but need not) be dealt with under this Part as if the successor were the respondent.

#### **395 The FCA's and PRA's procedures**

- (1) Each regulator must determine the procedure that it proposes to follow in relation to the following—
- (a) a decision which gives rise to an obligation to give a supervisory notice;
  - (b) in the case of the FCA, a decision which—
    - (i) gives rise to an obligation for it to give a warning notice or decision notice, or
    - (ii) gives rise to an obligation for the PRA to include a statement under section 387(1A) in a warning notice or a statement under section 388(1A) in a decision notice;
  - (c) in the case of the PRA, a decision which gives rise to an obligation for it to give a warning notice or decision notice, other than a decision which depends entirely on a decision of the FCA of the kind mentioned in paragraph (b)(ii); ~~and~~
  - (d) a decision under section 391(1)(c) to publish information about the matter to which a warning notice relates; ~~and~~
  - (e) a decision that is within the remit of the RDC or EDMC as established under sections 395A and 395L.
- (2) That procedure must be designed to secure, among other things, that—
- (a) a decision falling within any of paragraphs (a) to (c) of subsection (1) is taken—
    - (i) by a person not directly involved in establishing the evidence on which the decision is based, or
    - (ii) by 2 or more persons who include a person not directly involved in establishing that evidence;

# SHEARMAN & STERLING

26 January 2023

- (b) a decision falling within paragraph (d) of subsection (1) is taken—
  - (i) by a person other than the person by whom the decision was first proposed, or
  - (ii) by 2 or more persons not including the person by whom the decision was first proposed; ~~and~~
- (c) a decision falling within paragraph (d) of subsection (1) is taken in accordance with a procedure which is, as far as possible, the same as that applicable to a decision which gives rise to an obligation to give a warning notice and which falls within paragraph (b) or (c) of subsection (1); ~~and~~
- (d) a decision falling within paragraph (1)(c) that is taken by the RDC or EDMC is implemented by the regulators in such a way as to promote consistent and efficient decision-making.
- (3) But the procedure may permit a decision which gives rise to an obligation to give a supervisory notice to be taken otherwise than as mentioned in subsection (2) if the person taking the decision is of a level of seniority laid down by the procedure and—
  - (a) in the case of procedure proposed by the FCA, the FCA considers that, in the particular case, it is necessary in order to advance one or more of its operational objectives, or
  - (b) in the case of procedure proposed by the PRA, the PRA considers that, in the particular case, it is necessary in order to advance any of its objectives.
- (4) A level of seniority laid down by the procedure for the purposes of subsection (3)(b) must be appropriate to the importance of the decision.
- (5) Each regulator must issue a statement of its procedure.
- (6) The statement must be published in the way appearing to the regulator issuing the statement to be best calculated to bring it to the attention of the public.
- (7) The regulator issuing the statement may charge a reasonable fee for providing a person with a copy of the statement.
- (8) The regulator issuing a statement under this section must, without delay, give the Treasury a copy of the statement.
- (9) When a regulator gives a supervisory notice, or a warning notice or decision notice, other than a warning notice or decision notice relating to a decision of the PRA that is required by a decision of the FCA of the kind mentioned in subsection (1)(b)(ii) the regulator must follow its stated procedure.
- (9A) When the FCA takes a decision falling within subsection (1)(b)(ii), it must follow its stated procedure.
- (10) If a regulator changes its procedure in a material way, it must publish a revised statement.
- (11) A regulator's failure in a particular case to follow its procedure as set out in the latest published statement does not affect the validity of a notice given in that case.

# SHEARMAN & STERLING

26 January 2023

- (12) But subsection (11) does not prevent the Tribunal from taking into account any such failure in considering a matter referred to it.
- (13) "*Supervisory notice*" means a notice or notification given in accordance with section—
- (za) 55XA(1) or (5) (where subsection (6) applies);
  - (a) [55Y(4), (4A), (7) or (8)(b)]<sup>32</sup>;
  - (aa) 63ZC(4), (8) or (9)(b);
  - (ab) 71H(2), (3), (4), (9) or (11)(a);
  - (b) 78(2) or (5);
  - (bza) 78A(2) or (8)(b);
  - (bzb) section 88F(2), (5) or (6)(b);
  - (bzc) section 89V(2), (5) or (6)(b);
  - (bb) 87O(2) or (5);
  - (bbza) 122I;
  - (bbzb) section 122IA;
  - [(bbzc) 131W;]<sup>33</sup>
  - (bba) section 137S(5) or (8)(a);
  - (bbb) section 143O(3), (6) or (8)(b);
  - (bc) 191B(1);
  - (bd) section 192U(1), (7) or (8);
  - (c) 197(3), (6) or (7)(b);
  - (d) 259(3), (8) or (9)(b);
  - (da) 261Z1(3), (8) or (9)(b);
  - (ea) section 271M(3), (6) or (7)(b);
  - (f) 282(3), (6) or (7)(b);

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<sup>32</sup> Word inserted by Financial Services and Markets Bill 2022-23 (HL Bill 80) Sch.5 para.13 (Lords' Second Reading, January 10, 2023).

<sup>33</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Sch.8(2) para.8 (Lords' Second Reading, January 10, 2023).

26 January 2023

- (fa) 301J(1);
- [(fb) 309R(5), (8) or (10)(b);]<sup>34</sup>
- (g) 321(2) or (5).

## **395A Establishment of the Regulatory Decisions Committee**

- (1) The Treasury must establish a body corporate to exercise the functions conferred on the body by or under this Part.
- (2) The body established under subsection (1) is referred to in this Part as the Regulatory Decisions Committee.
- (3) The Regulatory Decisions Committee is in this Part referred to as "*the RDC*".
- (4) The Treasury must take such steps as are necessary to ensure that the RDC is, at all times, capable of exercising the functions referred to in subsection (1).
- (5) The RDC is to have the functions conferred on it by or under this Act.

## **395B Independence of the Regulatory Decisions Committee**

- (1) The RDC is not to be subject to direction by any person in relation to the exercise of its functions. In particular, the RDC and any person who is, or is acting as, a member, officer or member of staff of the RDC, is to be independent of the FCA and the PRA.
- (2) Subsection (1) does not prevent compliance with a direction or order of a court.
- (3) In relation to any of its functions—
  - (a) the RDC is not and should not be regarded as acting on behalf of the Crown or the FCA, and
  - (b) its members, officers and staff are not and are not to be regarded as Crown servants or employees or agents of the FCA.

## **395C Coordination of the Regulatory Decisions Committee with the FCA**

- (1) Notwithstanding section 395B, the RDC and FCA must co-ordinate the exercise of their respective functions conferred by or under this Act with a view to ensuring—
  - (a) that each consults the other (where not otherwise required to do so) in connection with any proposed exercise of a function in a way that may have a material adverse effect on the advancement by the other of any of its objectives;
  - (b) that where appropriate each obtains information and advice from the other in connection with the exercise of its functions in relation to matters of common regulatory interest in cases where the other may be expected to have relevant information or relevant expertise.

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<sup>34</sup> Added by Financial Services and Markets Bill 2022-23 (HL Bill 80) Sch.10(2) para.15 (Lords' Second Reading, January 10, 2023).

26 January 2023

## 395D Objectives and Duties of the Regulatory Decisions Committee

- (1) Notwithstanding section 395B, in discharging its functions under this Part, the RDC acts as if it was the FCA and must, so far as is reasonably possible, act in a way which—
  - (a) is compatible with the FCA's general duties under section 1B of this Act, and
  - (b) advances one or more of the consumer protection objectives under section 1C of this Act, the integrity objective under section 1D of this Act, the competition objective under section 1E of this Act, the competitiveness and growth objective under section 1EB of this Act and the predictability and consistency objective under section 1EC of this Act.
  
- (2) In discharging its functions under this Part, the RDC must have regard to—
  - (a) the regulatory principles in section 3B of this Act;
  - (b) such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it;
  - (c) the need for predictability, consistency and accountability in relation to its decision-making process; and
  - (d) the importance of taking action intended to minimise the extent to which it is possible for a business carried on—
    - (i) by an authorised person or a recognised investment exchange, or
    - (ii) in contravention of the general prohibition,
    - (iii) to be used for a purpose connected with financial crime.
  
- (3) Where, in discharging its functions under this Part, the RDC reviews or makes a decision in relation to—
  - (a) the FCA, or any act or decision made by the FCA; or
  - (b) the PRA, or any act or decision made by the PRA,

the RDC must consider whether the FCA or PRA (as applicable) has: (i) complied with the duties and statutory objectives imposed on it under this Act or otherwise when carrying out its decision-making process for the act or decision in question; and (ii) applied the applicable regulatory rules in accordance with the predictability and consistency objective.
  
- (4) Any decision made by the RDC in discharging its functions under this Part shall be accompanied by a reasoned account setting out—
  - (a) the reasons why that decision was made; and
  - (b) a statement that the decision has been made in accordance with the objectives and duties of the RDC as set out in this section.
  
- (5) The RDC may publish any reasoned account prepared under subsection (4), provided that:

26 January 2023

- (a) where the subject of the decision so requests, and the RDC agrees that this would be appropriate, this reasoned account will be published on an anonymised basis through the redaction of any personal data or otherwise relating to the subject and any other party; and
- (b) where paragraph (a) applies, the anonymisation of the reasoned account shall be final and irreversible, and shall be deemed to be in compliance with applicable data protection and privacy legislation.

## **395E. Composition and Functions of the Regulatory Decisions Committee**

- (1) The Treasury shall by order specify the composition and functions of the RDC under this Part.
- (2) An order under subsection (1) may—
  - (a) confer powers on the RDC;
  - (b) authorise the making of rules or other instruments by the RDC for purposes of, or connected with, any relevant provision;
  - (c) make provision in respect of any information or document which in the opinion of the Treasury or the RDC is relevant for purposes of, or connected with, any relevant provision;
  - (d) make such consequential, transitional, or supplemental provision as the Treasury consider appropriate for purposes of, or connected with, any relevant provision.
- (3) Provision made as a result of subsection (2)(d) may amend any primary or subordinate legislation, including any provision of, or made under, this Act.
- (4) "Relevant provision" means this section or any provision made under this section.

## **395F. Making of Rules by the Regulatory Decisions Committee**

- (1) The RDC may make rules applying to its functions and procedures.
- (2) Before making any rules under subsection (1), the RDC must consult the Treasury and publish a draft of the proposed rules in accordance with section 138J(1) of this Act, with references in that section to the PRA being replaced by a reference to the RDC mutatis mutandis.

*[NTD: The key provisions from the existing rules governing the RDC have been set out in this new series of sections 395A-H. However, more detailed provisions for the processes and rules of the RDC would be set out in a separate statutory instrument, rather than here. This would, amongst other things, include the provision that the RDC can meet in private and that a reasoned account will accompany any decision.]*

## **395G. Consultation by the Regulatory Decisions Committee**

- (1) The RDC must make and maintain effective arrangements for consulting practitioners and authorised firms on the extent to which its general policies and practices are consistent with its duties under section 395D.

26 January 2023

## **395H Immunity from Damages of the Regulatory Decisions Committee**

- (1) None of the following is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the RDC's functions—
  - (a) the RDC;
  - (b) any person ("P") who is, or is acting as, a member, officer or member of staff of the RDC; or
  - (c) any person who could be held vicariously liable for things done or omitted by P, but only in so far as the liability relates to P's conduct.
- (2) Sub-paragraph (1) does not apply—
  - (a) if the act or omission is shown to have been in bad faith, or
  - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

## **395I Establishment of the Enforcement Decision Making Committee**

- (1) The Treasury must establish a body corporate to exercise the functions conferred on the body by or under this Part.
- (2) The body established under subsection (1) is referred to in this Part as the Enforcement Decision Making Committee.
- (3) The Enforcement Decision Making Committee is in this Part referred to as "*the EDMC*".
- (4) The Treasury must take such steps as are necessary to ensure that the EDMC is, at all times, capable of exercising the functions referred to in subsection (1).
- (5) The EDMC is to have the functions conferred on it by or under this Act.

## **395J Independence of the Enforcement Decision Making Committee**

- (1) The EDMC is not to be subject to direction by any person in relation to the exercise of its functions. In particular, the EDMC and any person who is, or is acting as, a member, officer or member of staff of the EDMC, is to be independent of the FCA and the PRA.
- (2) Subsection (1) does not prevent compliance with a direction or order of a court.
- (3) In relation to any of its functions—
  - (a) the EDMC is not and should not be regarded as acting on behalf of the Crown or the PRA, and
  - (b) its members, officers and staff are not and are not to be regarded as Crown servants or employees or agents of the PRA.

26 January 2023

## **395K Coordination of the Enforcement Decision Making Committee with the PRA**

- (1) Notwithstanding section 395J, the EDMC and PRA must co-ordinate the exercise of their respective functions conferred by or under this Act with a view to ensuring—
- (a) that each consults the other (where not otherwise required to do so) in connection with any proposed exercise of a function in a way that may have a material adverse effect on the advancement by the other of any of its objectives;
  - (b) that where appropriate each obtains information and advice from the other in connection with the exercise of its functions in relation to matters of common regulatory interest in cases where the other may be expected to have relevant information or relevant expertise.

## **395L Objectives and Duties of the Enforcement Decision Making Committee**

- (1) Notwithstanding section 395J, in discharging its functions under this Part, the RDC acts as if it was the PRA and must, so far as is reasonably possible, act in a way which—
- (a) is compatible with the PRA's general objective under section 2B of this Act, and
  - (b) advances the insurance objective under section 2C of this Act, any additional objectives specified under section 2D of this Act, and the secondary objectives and duties under section 2H of this Act.
- (2) In discharging its functions under this Part, the EDMC must have regard to—
- (a) the regulatory principles in section 3B of this Act;
  - (b) such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it;
  - (c) the need for predictability, consistency and accountability in relation to its decision-making process; and
  - (d) the importance of taking action intended to minimise the extent to which it is possible for a business carried on—
    - (i) by an authorised person or a recognised investment exchange, or
    - (ii) in contravention of the general prohibition,to be used for a purpose connected with financial crime.
- (3) Where, in discharging its functions under this Part, the EDMC reviews or makes a decision in relation to—
- (a) the FCA, or any act or decision made by the FCA; or
  - (b) the PRA, or any act or decision made by the PRA,
- the EDMC must consider whether the FCA or PRA (as applicable) has: complied with the duties and statutory objectives imposed on it under this Act or otherwise.

26 January 2023

- (4) Any decision made by the EDMC in discharging its functions under this Part shall be accompanied by a reasoned account setting out—
- (a) the reasons why that decision was made; and
  - (b) a statement that the decision has been made in accordance with the objectives and duties of the EDMC as set out in this section.

## **395M Composition and Functions of the Enforcement Decision Making Committee**

- (1) The Bank of England may by order, policy statement or similar publication specify the composition and functions of the EDMC under this Part.
- (2) An order under subsection (1) may—
- (a) confer powers on the EDMC;
  - (b) authorise the making of rules or other instruments by the EDMC for purposes of, or connected with, any relevant provision;
  - (c) make provision in respect of any information or document which in the opinion of the Bank of England or the EDMC is relevant for purposes of, or connected with, any relevant provision;
  - (d) make such consequential, transitional, or supplemental provision as the Bank of England consider appropriate for purposes of, or connected with, any relevant provision.
- (3) Provision made as a result of subsection (2)(d) may amend any primary or subordinate legislation, including any provision of, or made under, this Act.
- (4) Policy Statement PS/EDMC2018 'Enforcement Decision Making Committee' published by the Bank of England in August 2018 shall be treated as a policy statement specifying the composition and functions of the EDMC pursuant to subsection (1), other than to the extent that Policy Statement is subsequently amended, modified, replaced or otherwise superseded from time to time.
- (5) "Relevant provision" means this section or any provision made under this section.

## **395N Making of Rules by the Enforcement Decision Making Committee**

- (1) The EDMC may make rules or publish policy statements applying to its functions and procedures.
- (2) Before making any rules or publishing any policy statement under subsection (1), the EDMC must consult the Treasury and publish a draft of the proposed rules or policy statement in accordance with section 138J(1) of this Act, with references in that section to the PRA being replaced by a reference to the EDMC mutatis mutandis.
- (3) Policy Statement PS/EDMC2018 'Enforcement Decision Making Committee' published by the Bank of England in August 2018 shall be treated as a policy statement applying to the functions and procedures of the EDMC pursuant to subsection (1), other than to the extent that Policy Statement is subsequently amended, modified, replaced or otherwise superseded from time to time.

26 January 2023

## 395O Consultation by the Enforcement Decision Making Committee

- (1) The EDMC must make and maintain effective arrangements for consulting practitioners and authorised firms on the extent to which its general policies and practices are consistent with its duties under section 395L.

## 395P Immunity from Damages of the Enforcement Decision Making Committee

- (1) None of the following is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the EDMC's functions—

- (a) the EDMC;
- (b) any person ("P") who is, or is acting as, a member, officer or member of staff of the EDMC; or
- (c) any person who could be held vicariously liable for things done or omitted by P, but only in so far as the liability relates to P's conduct.

- (2) Sub-paragraph (1) does not apply—

- (a) if the act or omission is shown to have been in bad faith, or
- (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

## **396 Statements under section 395: consultation**

- (1) Before issuing a statement of its procedure under section 395, the regulator must publish a draft of the proposed statement in the way appearing to it to be best calculated to bring the draft to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the regulator publishing the draft within a specified time.
- (3) Before a regulator issues the proposed statement of its procedure, it must have regard to any representations made to it in accordance with subsection (2).
- (4) If the regulator issues the proposed statement of its procedure, it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2); and
  - (b) its response to them.
- (5) If the statement of the regulator's procedure differs from the draft published by it under subsection (1) in a way which is, in its opinion, significant, it must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The regulator publishing a draft under subsection (1) may charge a reasonable fee for providing a person with a copy of the draft.
- (7) This section also applies to a proposal to revise a statement of policy.

26 January 2023

*Part XXVIII MISCELLANEOUS*

## **404D Applications to Tribunal to quash rules or provision of rules**

- (1) Any person may apply ~~to the~~ [to the Upper](#) Tribunal for a review of any ~~rules~~ [rule](#) made under section 404.
- [\(1A\) An authorized person may apply to the Upper Tribunal for a review of any rule made by the PRA or the FCA under this Act.](#)
- (2) [The Tribunal may—](#)
  - (a) dismiss the application; or
  - (b) make an order (a "*quashing order*") quashing any rules made under section 404 or [by the PRA or FCA under this Act](#) or any provision of those rules.
- (3) An application may be made only if permission to make it has first been obtained from the Tribunal.
- (4) The Tribunal may grant permission to make an application only if it considers that the applicant has a sufficient interest in the matter to which the application relates.
- (5) The general rule is that, in determining an application, the Tribunal is to apply the principles applicable on an application for judicial review.
- (6) If (or so far as) an application relates to an example set out in the rules as a result of section 404A(1)(b), the Tribunal may determine whether the example constitutes a failure to comply with the requirement in question.
- (7) If (or so far as) an application relates to a matter set out in the rules as a result of section 404A(1)(c), the Tribunal may determine whether the matter should be taken into account as mentioned in that provision.
- (8) In the case of an application within subsection (6) or (7), the Tribunal's jurisdiction under that subsection is in addition to its jurisdiction under subsection (5).
- (9) A quashing order may be enforced as if it were an order made, on an application for judicial review, by the High Court or, in Scotland, the Court of Session.
- (10) The Tribunal may award damages to the applicant if—
  - (a) the application includes a claim for damages arising from any matter to which the application relates; and
  - (b) the Tribunal is satisfied that an award would have been made by the High Court or, in Scotland, the Court of Session if the claim had been made in an action begun in that court by the applicant when making the application.
- (11) An award of damages under subsection (10) may be enforced as if it were an award made by the High Court or, in Scotland, the Court of Session.

# SHEARMAN & STERLING

26 January 2023

- (12) In the case of any proceedings under this section, the judge presiding at the proceedings must be—
- (a) a judge of the High Court or the Court of Appeal or a judge of the Court of Session; or
  - (b) such other person as may be agreed from time to time by—
    - (i) the Lord Chief Justice, the Lord President or the Lord Chief Justice of Northern Ireland (as the case may be); and
    - (ii) the Senior President of Tribunals.
- (13) Section 133 does not apply in the case of an application under this section, but—
- (a) Tribunal Procedure Rules may make provision for the suspension of rules made under section 404 or of any provision of those rules, pending determination of the application; and
  - (b) in the case of an application within subsection (6) or (7), the Tribunal may consider any evidence relating to the application's subject-matter, whether or not it was available at the time the rules were made.
- (14) If—
- (a) the Tribunal refuses to grant permission to make an application under this section, and
  - (b) on an appeal by the applicant, the Court of Appeal grants the permission,
- the Court of Appeal may go on to decide the application under this section.