EXPLANATORY NOTES

Financial Services Act 2021

Chapter 22

£23.85

FINANCIAL SERVICES ACT 2021

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What these notes do

These Explanatory Notes relate to the Financial Services Act 2021 (c. 22) which received Royal Assent on 29 April 2021.

- These Explanatory Notes have been prepared by HM Treasury in order to assist the reader and to help inform debate on the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

1 The Financial Services Act ensures the UK's regulatory framework continues to function effectively following the UK's withdrawal from the EU, and makes important updates to the regulatory framework.

2 The Act enhances the UK's world-leading prudential standards and promote financial stability by enabling the implementation of the full set of Basel III standards, a new prudential regime for investment firms, and giving the Financial Conduct Authority (FCA) the powers it needs to oversee an orderly transition away from the LIBOR benchmark.

3 The Act promotes openness between the UK and international markets by introducing a new mechanism to simplify the process whereby overseas investment funds can be marketed in the UK and delivers a ministerial commitment to provide long-term access between the UK and Gibraltar for financial services firms.

4 Finally, the Act includes a number of measures to maintain the effectiveness of the financial services' regulatory framework and sound capital markets.

Policy background

Prudential regulation of credit institutions and investment firms

5 Prudential regulation aims to ensure investment firms, credit institutions (banks and building societies), and other financial institutions have adequate financial resources and risk management processes in place to continue providing vital services throughout economic and financial cycles.

Investment Firms Prudential Regime

6 Investment firms provide a range of services which give investors access to securities and derivatives markets. Investment firms differ from credit institutions in that they do not typically accept deposits or grant traditional loans; instead, investment firms provide investment services and perform investment activities. This means that, whilst there is some overlap, the risks posed and faced by investment firms, and the impact of those risks, are different from those of credit institutions. The current prudential regulatory framework does not adequately cater for these differences. The consequence is that the current prudential framework for investment firms:

a. can be disproportionate – the requirements do not account for differences in size or business models of investment firms;

b. can be inappropriate – the requirements are currently based on risks to which investment firms may not be exposed, whilst insufficiently addressing the risks to which they are exposed, the risks they may pose to consumers and to the integrity of the UK financial system, and the potential harms they could cause;

c. may impose unnecessary administrative and compliance burdens – this is as a result of having to comply with a regime for which much of the administration, compliance, and reporting is not designed for investment firms.

7 The Act enables the introduction by the FCA of a tailored Investment Firms Prudential Regime (IFPR) that aims to address the issues set out above. The IFPR will apply to investment firms prudentially regulated by the FCA and their holding companies. In contrast, investment firms that are systemically important to the financial system will continue to be prudentially regulated by the Prudential Regulation Authority (PRA) and will continue to be subject to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (the Capital Requirements Regulation or CRR). The PRA will continue to designate the investment firms that will be regulated under the CRR consistent with the PRA designation framework (Bank of England, Statement of Policy, 'Designation of investment firms for prudential supervision by the Prudential Regulation Authority', March 2013).

8 The IFPR will ensure that the UK has a more effective prudential regime for investment firms. This is in the context of the EU having adopted legislation for a new investment firm regime (Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms (EU IFR), and Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms (EU IFD)) in 2019. The UK played an instrumental role in designing this regime and the Government and the FCA remain supportive of its intended outcomes. The EU IFR/EU IFD legislation did not apply in the EU at the end of the Transition Period, and therefore does not form part of retained EU law in the UK.

9 The Act enables the majority of the IFPR to be specified through rules made by the FCA. In a discussion paper published in June 2020 (FCA Discussion Paper, 'Prudential requirements for MiFID investment firms', June 2020), the FCA solicited views on its proposed rules. This approach will mean that the FCA is responsible for designing and setting the detailed firm-level requirements that apply to FCA-regulated investment firms, as well as supervising those firms. It will also mean that the UK's prudential regulation regime for FCA-regulated investment firms is flexible, with the FCA able to update its rules to reflect industry changes. The FCA's rules will be made using its existing rule-making powers under the Financial Services and Markets Act 2000 (FSMA) and the new rule-making powers introduced in the Act in relation to unauthorised parent companies of FCA-regulated investment firms.

10 As this regime is entirely new, the Act places an obligation on the FCA to introduce prudential rules for FCA investment firms. The Act details the areas for which the FCA must introduce rules – for capital, liquidity, exposure to concentration risk, reporting, public disclosure, governance arrangements and remuneration policies. Taken together, these are key prudential requirements relevant to investment firms. For the purposes of this regime, an "FCA investment firm" is an investment firm that— (a) has a Part 4A permission to carry on one or more regulated activities; (b) is not designated by the PRA; and (c) has its registered office or, if it has no registered office, its head office in the UK.

11 To reflect the increased rule-making responsibilities of the FCA in this area, this Act introduces an enhanced accountability framework for the FCA. This framework imposes additional requirements on the FCA to enable greater scrutiny and transparency of its decision-making when implementing the IFPR. When making rules to implement and maintain parts of the IFPR, the FCA is required to have regard to a new list of matters. The matters relate to important public policy considerations, including: relevant international standards; the relative standing of the UK as a place for internationally active investment firms to carry on activities; the target for Net Zero emissions as set out in the Climate Change Act 2008; and financial services equivalence, granted by and for the UK, along with any further matters that HM Treasury may specify in regulations. These matters do not change the status of the FCA's strategic and operational objectives as established in FSMA.

12 In consultations, the FCA is required to publish an explanation of how having regard to the above matters have affected the proposed rules (aside from equivalence, where, instead, the FCA will consult the Treasury). When the FCA makes the final rules, it must publish an explanation complying with the above as well as a summary of the purpose of the new rules, in addition to fulfilling its existing FSMA publication requirements.

13 The Act includes further provisions to support the introduction of the IFPR and ensure that the FCA can regulate and supervise FCA investment firms effectively. The Act therefore amends the CRR to cease its application to investment firms, other than those designated by the PRA. It extends the FCA's investigative and supervisory powers to allow it to effectively supervise the IFPR and to amend rules to reflect changes to CRR, as instituted by the PRA.

14 As country-by-country reporting is relevant to the activities of FCA investment firms, the Act makes amendments to the Capital Requirements (Country-by-Country Reporting) Regulations 2013 (S.I. 2013/3118) to ensure their continued application to investment firms, now that these firms are subject to a bespoke regulatory regime. HM Treasury will introduce further amendments to existing legislation required by the introduction of the IFPR by a separate statutory instrument, made using powers contained in the Act.

The Basel III Standards

15 Coordinated international standards are critical to improving the resilience of the global banking system and encouraging a predictable and transparent regulatory environment. The Basel Committee on Banking Supervision (BCBS), of which the Bank of England and PRA are members, sets global prudential standards for internationally active banks (the Basel standards).

16 In response to the global financial crisis of 2007/08, the BCBS agreed the Third Basel Accord (Basel III standards), beginning in December 2010. These standards sought to strengthen the existing framework, notably by improving the quality and quantity of financial resources banks are required to maintain and expanding requirements to cover a wider set of risks that banks are exposed to. The BCBS also agreed some entirely new prudential measures, including macroprudential capital buffers, additional capital buffers for global systemically important banks, a minimum leverage ratio, and liquidity requirements, to help ensure banks are able to meet both short-term and long-term financial obligations.

17 During the global financial crisis, significant variations in the calculation of risk weighted assets (RWAs) across institutions led to stakeholders losing confidence in risk-weighted capital ratios reported by banks. From 2017 onwards, the BCBS finalised a package of reforms to the Basel III standards (this is sometimes referred to as Basel 3.1). The finalised reforms aim to restore credibility in the calculation of RWAs and to improve the comparability of banks' capital ratios, without significantly increasing capital requirements at a global level. The internationally agreed deadline for Basel 3.1 implementation is currently 1 January 2023.

18 The UK played an active role in negotiating and agreeing Basel III, as finalised by Basel 3.1, and remains committed to its full, timely and consistent implementation alongside other major jurisdictions. This Act enables HM Treasury and the UK Regulators to implement those remaining Basel standards that have were not yet incorporated into the UK prudential framework at the time the Act was passed.

Implementation of the Basel standards in the UK

19 Most Basel standards in effect in the UK at the time of introduction of this Act were implemented through Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (the EU Capital Requirements Regulation or EU CRR) and Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (the Fourth Capital Requirements Directive or EU CRD IV).

20 Some of the Basel III standards finalised between 2010 and 2017 are implemented in the EU through Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements (the Second Capital Requirements Regulation or EU CRR II) and Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (the Fifth Capital Requirements Directive or EU CRD V). EU CRD V has been transposed into UK law through the Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1406) and UK regulator rules, and therefore applies in the UK. Some parts of EU CRR II already applied in the UK and formed part of retained EU law at the end of the Transition Period with the necessary changes made under the EUWA to ensure that it continues to operate effectively.

21 Some remaining EU CRR II provisions will apply in the EU from 28 June 2021. As this is after the end of the Transition Period, these parts of EU CRR II will not apply directly in the UK and do not form part of retained EU law.

22 Most of the Basel 3.1 revisions agreed between 2017 and 2019 are not included in EU CRR II or EU CRD V, nor were they the subject of an EU legislative proposal at the time of introduction of this Act.

23 The Government and the PRA remain committed to the UK's implementation of the Basel standards. This Act will enable the implementation of the outstanding Basel III and 3.1 standards by giving HM Treasury the power to repeal the elements of CRR that need to be updated to reflect the latest Basel standards.

24 Following repeal, many of the updates will be implemented through rules made by the PRA. This will primarily involve technical changes to the UK prudential framework as it relates to credit risk, market risk, counterparty credit risk, operational risk, large exposures, collective investment units, liquidity standards, reporting and disclosures, as well as other areas specified in the Basel standards.

25 As for the IFPR, the Act also establishes an accountability framework to apply when the PRA makes rules to implement the Basel standards. The new requirements set under the accountability framework for Basel implementation are largely the same as for IFPR (see paragraphs 11 - 12), except the PRA must also consider the likely effect of their rules on the ability of firms to provide finance to UK businesses and consumers on a sustainable basis in the medium and long-term. This is to reflect the key role and importance of credit institutions who, unlike investment firms, hold and onward lend business and consumer deposits as the core of their business activities.

26 As with the implementation of the IFPR by the FCA, the provision of rule-making responsibilities to the PRA – subject to an enhanced accountability framework – makes the UK's prudential regulation regime more flexible, by enabling the PRA to update rules to reflect the nature of UK firms and the structure of UK markets.

27 The Act provides the legal power needed to revoke some provisions of CRR. This ensures that the PRA can subsequently make the relevant rules, to ensure continuity, and minimise disruption for firms as elements of the regime transition from CRR to PRA rules.

28 The Act provides powers for the PRA to make rules which apply to approved holding companies for the purposes of CRR and CRD, including sub-consolidated and consolidated prudential requirements and rules regarding matters such as governance and group-risk. This power is designed to ensure the approved holding companies' provisions, which have been introduced through the transposition of EU CRD V, can be maintained effectively over time, including for the purpose of the implementation of Basel standards and ensures the application of the accountability framework contained in this Act wherever this power is exercised.

29 The Act also provides for the Financial Policy Committee (FPC) to make directions or recommendations that apply to approved holding companies, ensuring a coherent regime now that approved holding companies are responsible for consolidated and sub-consolidated requirements.

Benchmarks

LIBOR transition

30 Benchmarks are indices that are used in a wide range of markets to help set prices, measure performance, or work out amounts payable under financial contracts. They play a key role in the financial system's core functions of allocating capital and risk.

31 Major interest rate benchmarks, such as LIBOR, EURIBOR and TIBOR (generically known as the "IBORs"), are widely used in the global financial system for a large volume and broad range of financial products and contracts.

32 LIBOR seeks to measure the average costs at which banks can borrow from the unsecured wholesale lending market. It is produced by ICE Benchmark Administration Limited (IBA) and is calculated based on submissions that are made to IBA each day by a number of major global banks (the "panel banks"). They use a methodology which requires, to the greatest extent possible, submissions to be based on (or derived from) actual transactions (the rates at which panel banks have been able to borrow in certain currencies over particular time periods) and the expert judgement of the panel banks, which is to be used only when sufficient prescribed data are not available.

33 LIBOR is internationally available and systemically important. It is available in five currencies (Sterling, US Dollar, Swiss Franc, Euro and Japanese Yen). LIBOR is published over seven time periods (known as tenors), ranging from overnight up to one year. These five currencies and seven tenors are paired to form 35 individual LIBOR rates.

34 As of April 2021, it is estimated that approximately US$265 trillion of financial contracts globally reference LIBOR. The vast majority of exposure to LIBOR is in the derivatives markets, but these also include mortgages, consumer and commercial loans, structured products, money market instruments, and fixed income products.

35 The FCA has regulated LIBOR since 2013, initially under FSMA and subsequently under Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (the EU Benchmarks Regulation or EU BMR). The EU BMR aims to ensure the accuracy, robustness and integrity of financial benchmarks, providing market participants with confidence in the benchmarks they use. The EU BMR places requirements on administrators, supervised entities, and supervised contributors (see paragraphs 250–252) to benchmarks relating to governance, transparency and methodology requirements.

36 Following the end of the Transition Period, the EU Regulation forms part of retained EU law and therefore continues to apply in the UK, with the necessary changes made under the EUWA to ensure that it operates effectively following the end of the Transition Period. The EU Regulation as amended and forming part of retained EU law in the UK is referred to as the Benchmarks Regulation (BMR).

37 As a result of its use in a significant volume of transactions LIBOR is classified and regulated as a 'critical benchmark' under the BMR (see paragraphs 253-254 for more detail). The cessation of a critical benchmark, such as LIBOR, could incur financial losses to consumers and impact market stability if not managed appropriately. The BMR therefore gives the FCA the power to mandate administration of a critical benchmark in order to ensure its orderly wind-down and prevent threats to market integrity, financial stability, consumers, the real economy, or the financing of households and businesses.

38 The BMR stipulates that a benchmark needs to be 'representative' of the underlying market or economic reality that it is intended to measure. Withdrawal of submissions from contributors could undermine the ability of a critical benchmark to reflect its underlying market or economic reality. The regulation therefore gives the FCA power to mandate contribution from supervised entities to a critical benchmark in order to maintain the representativeness of the benchmark.

39 In 2014, in response to cases of attempted manipulation of IBORs and the decline in liquidity in interbank unsecured funding markets, the Financial Stability Board (FSB) made clear that continued use of major interest rate benchmarks such as LIBOR represented a potentially serious source of systemic risk. This is because the underlying market that these rates intend to measure is no longer sufficiently active and panel banks are increasingly reliant on 'expert judgement' for submissions. The FSB recommended a long-term transition away from IBORs, with regulators signalling that firms should use alternative "Risk-Free Rates."

40 In 2017, the FCA secured voluntary agreement from the LIBOR panel banks to continue making contributions to the rate until the end of 2021. The FCA has publicly stated that, after 2021, it is not minded to use its current regulatory powers to compel panel banks to continue contributions. This means that from the end of 2021 panel banks will be free to cease their contributions to LIBOR if they wish to do so.

41 In the absence of compulsion by the FCA to ensure panel banks continue contributing to LIBOR, there is a heightened risk that LIBOR will be found unrepresentative as a result of panel bank withdrawal. In this scenario, there is a strong possibility that LIBOR could cease to exist in its current form at the end of 2021 or shortly thereafter. This would likely leave parties to contracts which determine payments by reference to LIBOR without a workable means of determining those payments.

42 However, the BMR does not currently provide the FCA with the appropriate powers necessary to manage the orderly 'wind-down' of a critical benchmark, such as LIBOR, before its eventual cessation, where the benchmark has become unrepresentative and it will not be practical or desirable to restore its representativeness.

Tough Legacy Contracts

43 In addition to the issues set out in the previous section, there is a particular problem with contracts that cannot transition away from LIBOR. In anticipation of the potential withdrawal of panel bank submissions to LIBOR after the end of 2021, the FCA expects firms to actively transition financial contracts and financial instruments referencing LIBOR to alternative benchmarks before the end of 2021.

44 However, some contracts, particularly in cash markets (i.e. loans, securitisations, mortgages and commercial contracts), face significant barriers to moving off LIBOR. These contracts are called 'tough legacy' contracts. There are also some LIBOR-referencing 'non-financial contracts', such as leases or consumer loans, that face the same problems.

45 Furthermore, some of these tough legacy contracts do not have "fallbacks", which are provisions that could be activated in the event that LIBOR were to cease to be available, such as switching to a specified alternative benchmark. Without a fallback, these contracts therefore would be at risk of claims of frustration, which means that contractual obligations could end if the obligations were found to have been fundamentally altered. Some tough legacy contracts contain inappropriate fallbacks as they are designed to cater for the short-term unavailability of LIBOR instead of its permanent cessation and can lead to impracticable results.

46 Often, tough legacy contracts are multilateral and involve obtaining the consent of multiple parties before a change to the contract can be enabled. In some cases, achieving consensus on the changes is likely to be difficult or impossible due to the number of parties involved, or due to the threshold of consent that must be achieved for the contract to be changed.

47 Given these challenges, UK regulators believe that there will be an irreducible core of tough legacy contracts that cannot transition away from the use of LIBOR by end-2021. These contracts could be at risk of frustration in the event of LIBOR cessation. Cessation could result in widespread legal disputes between parties to these contracts, including where a party is dissatisfied with the operation of an inappropriate fallback.

48 The Working Group on Sterling Risk-Free-Rates issued a 'Tough Legacy Report' (Working Group on Sterling Risk-Free Reference Rates, 'Paper on the identification of Tough Legacy issues', May 2020) in May 2020 which recommended that a legislative solution would be needed to assist these contracts.

49 On 23 June 2020, in a written statement (Chancellor of the Exchequer, 'Financial Services Regulation', 23 June 2020) to Parliament the Government announced its intention to bring forward measures to amend the BMR.

Amending the Benchmarks Regulation

50 As outlined in the previous sections, the FCA's existing powers under the BMR are limited in a way that would prove unhelpful for LIBOR's likely wind-down. The FCA has powers to deal with critical benchmarks that are at risk of becoming unrepresentative in order to restore their representativeness. The BMR also requires that an unrepresentative benchmark be ceased within a reasonable time period. As outlined above, however, there are circumstances

in which it might not be possible to restore or maintain the representativeness of a critical benchmark. Furthermore, in such a situation, the benchmark's sudden cessation could lead to risks of widespread claims of frustration and financial instability, particularly where there are "tough legacy" contracts.

51 The Act amends the BMR to provide the FCA with additional powers to manage an orderly wind-down of a critical benchmark, such as LIBOR. The impacts of these changes are outlined in the following paragraphs.

52 Amendments made by this Act expand the circumstances in which the FCA can conduct a formal assessment of a benchmark's representativeness. Following a representativeness assessment, if the FCA considers that representativeness of a critical benchmark cannot reasonably be restored and maintained, or that there are not good reasons for taking steps to do so, the FCA will have the power to "designate" the benchmark.

53 Once the FCA has designated a benchmark, it will have the power to require that the administrator changes the benchmark's methodology, rules, or code of conduct. In the case of LIBOR, this could allow a change so that LIBOR is no longer reliant on panel bank submissions. Where the FCA exercises this power, it will also be required to carry out a review of this power at least every two years. It must also determine which provisions of the BMR should cease to apply to the administrator of a designated benchmark, where the FCA has exercised its powers to require that the administrator changes its benchmark's methodology, rules, or code of conduct.

54 The Act also grants the FCA powers to prohibit some or all use of a specific benchmark by supervised entities. Where the FCA designates a benchmark through the process described in paragraph 52, under the proposed amendments, all use of the benchmark will be prohibited once the designation comes into force in order to stop the pool of contracts referencing the benchmark from growing. The FCA will have the ability to postpone the prohibition on use by a period of up to four months, and will have the power to exempt "legacy use" of the benchmark from the prohibition (i.e. use of the benchmark in contracts and other instruments that pre-dates the prohibition imposed under Article 23B). The FCA will have discretion to specify the scope of any permitted legacy use and the length of the permission period. In the case of LIBOR wind-down, this could prevent contract frustration by permitting parties to "tough legacy" contracts to continue to use LIBOR.

55 Where the administrator of a benchmark intends to cease provision of a benchmark, it is required to notify the FCA under the BMR. Under the existing BMR, the FCA can compel the administrator of a critical benchmark to continue publication of the benchmark until either it has been transitioned to a new administrator, it can be ceased in an orderly fashion or the benchmark is no longer deemed critical.

56 The Act increases the maximum time period over which the FCA can compel the administrator of a critical benchmark to continue its publication from 5 years to 10 years, subject to annual reviews of this power. Subject to the FCA's use of these powers, this would provide for LIBOR's availability for tough legacy contracts exempted from the prohibition on its use for a longer period. The FCA will also have the power, where an administrator proposes to cease publication of a benchmark, to prohibit new use of that benchmark, with the same exemption powers for legacy use of the benchmark outlined in paragraph 54 for a "designated" benchmark.

57 The Act also extends existing requirements under the BMR that administrators of all benchmarks must publish a robust procedure outlining the actions that they will take in the event of changes to, or the cessation of a benchmark. It gives the FCA the power to review and approve a critical benchmark administrator's procedure.

58 The amendments made by this Act require the FCA to issue statements of policy about the exercise of some of its new powers, including before the FCA directs a change in the methodology of a critical benchmark. The FCA is required to exercise some of the enhanced powers to advance its statutory objectives of securing an appropriate degree of consumer protection and/or protecting and enhancing the integrity of the UK financial system. The FCA may also consider international impacts before exercising some of its powers.

59 The Act also provides for HM Treasury or the Secretary of State to make, by regulations, transitional, transitory or saving provisions in order to provide continuity with respect to decisions made or powers exercised by the FCA in accordance with the BMR before this legislation is commenced. This is to cater for a scenario where either a benchmark administrator informs the FCA of its intention to cease publication of a critical benchmark, or where contributors to the benchmark have notified the administrator of their intention to withdraw submissions to the benchmark before the relevant provisions in this Act are commenced.

Extension of the transitional period for benchmarks with non-UK administrators

60 Many benchmarks are administered outside the UK and are not therefore subject to the UK's regulatory regime for benchmarks.

61 The BMR provides a transitional period for UK firms to continue using benchmarks administered in third countries (i.e. any country other than the UK) while third country benchmark administrators seek to demonstrate compliance with UK benchmark rules. Through the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/1212), the transitional period for third country benchmarks has been extended to the end of 2022 to provide additional time for third country benchmark administrators to apply for continued market access.

62 Once the transitional period for third country benchmarks ends, UK firms will not be able to use benchmarks provided by an administrator located outside the UK unless that benchmark can be shown to follow similar rules. There are three ways to meet this requirement:

a. HM Treasury can conclude that the relevant third country has equivalent rules to the BMR;

b. the benchmark administrator can appoint a UK representative which can be recognised by the FCA;

c. a UK benchmark administrator can endorse the third country benchmark and be held accountable for that benchmark's compliance.

63 As outlined in the Policy Statement (HM Treasury, Policy Statement, 'Amending the transitional period for third country benchmarks under the UK benchmarks regulation', July 2020) published by HM Treasury on 22 July 2020, the Government is concerned that many third country benchmark administrators may be unwilling or unable to apply for continued market access under the existing third country regime. Many jurisdictions do not have regulatory frameworks for benchmarks, making it hard for HM Treasury to make a finding of

equivalence. Also, many third country benchmark providers lack an economic incentive to apply for access through recognition or endorsement where their benchmarks are provided on a non-commercial basis.

64 This Act extends the transitional period for third country benchmarks under the BMR from 31 December 2022 to 31 December 2025. This is intended to provide economic and legal certainty for UK market participants. The Government intends to also consider any necessary changes to the BMR, to ensure an appropriate third country benchmarks regime is in place in the longer term.

Access to Financial Services Markets

Market access arrangements for financial services between the UK and Gibraltar

65 Gibraltar is a British Overseas Territory which has its own institutions of self-government. Gibraltar enjoys legislative autonomy under its own constitution, brought into effect by the Gibraltar Constitution Order 2006. Gibraltar's Parliament has the power to pass internal legislation, including on financial services, while the UK remains responsible for Gibraltar's external relations and defence.

66 The financial services industry plays an important role in Gibraltar's economy and Gibraltar-based firms have made extensive use of the existing market access arrangements between the UK and Gibraltar. Currently firms based in Gibraltar service a large retail consumer base in the UK, particularly in the insurance sector, where more than 20% of motor policies in the UK are written by Gibraltar-based insurers.

67 As the common EU membership of the UK and Gibraltar has ended, the Government is committed to creating a new legal and institutional framework that provides for mutual market access and aligned standards in financial services between both jurisdictions. The UK and Gibraltar have a historic and unique relationship in financial services, and the UK does not have the same level of market access arrangements with any other jurisdiction. During the Transition Period, the UK and Gibraltar continued to enjoy reciprocal access to each other's markets through a passporting regime similar to that available to EU firms. The Government introduced the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/589) and the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/680) to prevent Gibraltar-based firms accessing the UK market from suddenly losing their access rights at the end of the Transition Period. These arrangements are however temporary and do not provide an effective long-term legislative regime for market access.

68 The Act enables the establishment a new permanent market access regime, the Gibraltar Authorisation Regime (GAR). This new framework will ensure that Gibraltarian financial services firms can access the UK's wholesale and retail markets on the basis of alignment of relevant law and practice, and close cooperation between the UK and Gibraltarian governments and regulators. The Act also makes provisions to facilitate the access of UK-based firms to the Gibraltarian market.

The Gibraltar Authorisation Regime

69 The GAR will allow certain Gibraltar-based financial services firms to access the UK markets as "authorised persons" under FSMA, without having to apply for authorisation from the UK regulators if they intend to carry on GAR-approved activities in the UK.

70 HM Treasury will specify by statutory instrument the UK regulated activities for which market access is available (approved activities), and the corresponding activities in Gibraltar's law that a firm wishing to participate in the UK market must be authorised to carry on by the Gibraltar Financial Services Commission (GFSC). It is expected that the approved and corresponding activities will reflect the regulated activities that are carried on by Gibraltarian firms under the transitional UK market access arrangements which the GAR will replace. The list of approved activities can be amended by statutory instrument based on the findings of a review process that HM Treasury will operate as part of the GAR. HM Treasury will also agree with the UK regulators, the Government of Gibraltar and GFSC the appropriate split of rule-making responsibilities between the regulators in the two jurisdictions, taking into account arrangements that existed before the end of the Transition Period, and define it by statutory instrument.

71 Gibraltar-based firms in the GAR will continue to remain subject to Gibraltarian law and will be supervised by the GFSC. Within certain sectors, they may also be subject to further UK requirements, as is already the case now.

72 The access of Gibraltar-based firms to the UK market will be based on three conditions that HM Treasury will need to periodically reassess: compliance with the objectives set out in the Act; alignment of law and practice of Gibraltar with that in the UK; and cooperation of Gibraltar entities with UK entities (all discussed below).

The condition of compliance with the objectives

73 HM Treasury will be able to designate a regulated activity as an approved activity if it is satisfied that doing so is compatible with the specified objectives designed to support the UK's financial services regulation and supervision.

The condition of alignment

74 The GAR will be underpinned by the principle of alignment under which the relevant law and practice of the UK and Gibraltar are sufficiently aligned. This will ensure that regulatory and supervisory standards are applied in a consistent manner both in the UK and Gibraltar.

75 The new framework respects Gibraltar's regulatory autonomy by giving the Government of Gibraltar the choice as to whether to remain aligned with the UK's law and practice in the areas where market access is of interest to the territory. In those areas, Gibraltar-based firms' market access will be dependent on Gibraltar's law, regulatory standards, supervision, authorisation and enforcement practices being sufficiently aligned with those of the UK in relation to that activity and any related areas of relevance, such as data protection law and insolvency law.

76 In considering whether the relevant law and practice of Gibraltar and the UK remains aligned, HM Treasury will consider the alignment of law and practice as regards to both its effect and text and the alignment of supervision, authorisation and enforcement practices. HM Treasury will also have regard to the advice of the UK financial services regulators.

77 The principle of alignment under the GAR reflects the historic relationship between Gibraltar and the UK and the uniquely broad scope of market access available. It is therefore a more exacting test than exists under the equivalence regimes intended for more distant and narrower relationships.

The condition of cooperation

78 In order to designate an activity as approved, HM Treasury will also need to satisfy itself that adequate cooperation between the Gibraltarian and UK authorities in respect of the GAR is taking place. 'Adequate cooperation' covers both the framework for cooperation and its practical implementation. Under the condition of cooperation, HM Treasury, the Government of Gibraltar, the UK's Financial Services Compensation Scheme (FSCS) (also referred to in the Act as the 'compensation scheme' or 'scheme manager'), and the appropriate financial services regulators in the two jurisdictions (FCA and PRA on the UK side and GFSC for Gibraltar) will work together to coordinate their regulatory, supervisory, and, if need be, insolvency activity to support the delivery of a well-functioning GAR.

79 The terms of the cooperation among HM Treasury, the UK regulators and the FSCS, on the one hand, and the Government of Gibraltar and GFSC, on the other hand, will be set out in agreements, including in the form of memoranda of understanding, which will include, among other things, arrangements for the exchange of information. When assessing whether cooperation exists, HM Treasury will look at both the existence and the practical implementation of these agreements.

80 To complement the condition of cooperation put on Gibraltar entities, the Act sets out a number of duties on UK regulators and FSCS to adequately cooperate with Gibraltar entities (i.e. both the Government of Gibraltar and GFSC) and HM Treasury for the purpose of the good functioning of the core mechanisms and principles of the GAR and to enable HM Treasury to fulfil statutory reporting duties to Parliament.

81 Mutual obligations on cooperation between the UK and Gibraltar regulators for the purposes of the cooperation condition will cover both business-as-usual supervision of Gibraltar-based firms, and circumstances where the UK regulators intend to use their powers of intervention, which are described below.

Accessing the UK market

82 Under the new regime, Gibraltar-based firms intending to operate in the UK will have to notify the GFSC of their intention and obtain the GFSC's consent to carry on an approved activity in the UK. Firms will not be able to carry on regulated activities in the UK for which they do not have authorisation in Gibraltar, or those for which the GFSC withholds consent to carry them out in the UK. Any restrictions on permissions that the GFSC applies to Gibraltar-based firms will equally apply to the activities they intend to carry out in the UK. Those limitations will act as a safeguard to ensure that firms are compliant with domestic obligations.

83 Firms already operating in the UK through arrangements that the GAR will replace will also be required to notify the GFSC of their intention to continue operating in the UK. The GFSC will then convey this information to the relevant UK regulator, enabling them to update the public register of firms operating in the UK.

Changes to market access and reporting duties to Parliament

84 As part of the GAR, the Government will operate a periodic review process to ensure that compliance with the objectives, alignment and cooperation conditions is sustained. HM Treasury will conduct the review process using the information received from the government of Gibraltar, duly verified by an independent entity, and the views of the UK financial services regulators.

85 HM Treasury will engage with the government of Gibraltar to resolve any emerging issues bilaterally, as a failure to maintain alignment and cooperation between both jurisdictions will be detrimental to Gibraltar-based firms and could limit the market choices for UK consumers. During the preparation of the report detailed below, HM Treasury must consult the FCA and the PRA.

86 The Act places a duty on the Government to lay before Parliament a report on the operation of the GAR every two years. The report will set out, in particular, whether the three conditions underlying the regime of compliance with the objectives, alignment of law and practice, and cooperation continue to be satisfied in respect of approved activities or are achieved in respect of new activities. During the preparation of the report, HM Treasury is required to consult the FCA and the PRA. Based on these reports, HM Treasury could propose to adjust the regulations setting out the approved activities, for example, by expanding or reducing the list of regulated activities which are approved for market access.

Regulatory supervision

87 Gibraltarian firms will continue to remain subject to the laws of Gibraltar and will be supervised by the GFSC. However, as is already the case currently, the UK regulators have certain powers available, for example, to protect UK consumers and/or the UK's financial stability if concerns arise in respect of an incoming Gibraltar-based firm. The Act provides powers in relation to individual firms for the UK regulators to ensure necessary levels of protection for financial stability and consumer protection.

88 The Act constrains the use of the UK regulators' intervention powers to a limited set of circumstances. They will only be able to use those powers on their own initiative if certain conditions specified in the Act are met.

89 The Act requires the UK regulators and FSCS to cooperate among themselves and with the GFSC and update their memoranda of understanding accordingly to set out adequate procedures and approaches to resolving possible supervisory concerns under the GAR.

90 The UK regulators will also have powers over Gibraltar-based firms by virtue of these firms being 'authorised persons' under FSMA. This reflects the current position in relation to FSMA being applicable to Gibraltar-based firms 'passporting' into the UK.

91 In order to provide sufficient procedural safeguards, the Act also sets out a Gibraltar-based person's right to make representations and refer a matter to the Upper Tribunal.

Consumer protection

92 The Government is committed to ensuring that UK customers of Gibraltar-based firms continue to enjoy an adequate level of protection under the FSCS, in line with protection provided by UK-based firms. The Act gives HM Treasury the power to set out in regulations the types of firms which are not eligible to participate in the FSCS.

93 The Government will work with the FCA to ensure that, once the GAR comes into force, individuals and eligible small businesses using financial services sold in the UK by Gibraltar-based firms can refer disputes to the UK Financial Ombudsman Service (FOS). Customers of Gibraltar-based firms that are already voluntarily subject to the FOS scheme will continue to be covered, with no loss of eligibility for their customers in respect of actions occurring before the GAR takes effect. The FCA will be responsible for providing for this change in its rules.

Transitional arrangements in the event of market access withdrawal

94 If market access were withdrawn for an approved activity, the Government would ensure that this does not create a cliff edge for Gibraltar-based firms operating in the UK, which could otherwise result in disruption for UK business and consumers.

95 The Act provides for transitional arrangements so that Gibraltar-based firms can continue to undertake the relevant activity in the UK for a temporary period of time after market access is withdrawn. Gibraltar-based firms would not need to apply to be covered by this mechanism and they would be able to use this period of time to apply for authorisation from the UK regulators or exit the market in an orderly fashion. The Government will be able to specify on an activity-by-activity basis the specific duration for the winding-down arrangements. The UK regulators will also be able to restrict the extent of business under the transitional arrangements, so that a Gibraltar-based person carrying on an activity for which access has been withdrawn is limited to the performance of existing contracts or to transferring property, rights or liabilities to an authorised person or to complying with requirements imposed by the UK regulators.

Market access for UK firms

96 As market access is a sovereign matter, it will be the responsibility of the Government of Gibraltar to legislate in their own domestic legislation for the reciprocal market access for UK-based firms. In order to facilitate the access of UK-based firms to the Gibraltarian market, the Act makes provision for the procedure that UK-based firms should follow as a precondition for accessing the Gibraltarian market, and requires a UK-based firm wishing to carry on activity in Gibraltar to have domestic authorisation to carry on regulated activities in the UK and to notify the UK regulators of their intention if such market access is available. The appropriate UK regulator would then notify the GFSC. Ultimately, the Government of Gibraltar will decide the scope of inward market access.

Further legislative regimes encompassing Gibraltar-specific rights

97 The core of the new GAR intends to create a market access gateway based on approving 'regulated activities' which will replace the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 (S.I. 2001/3084) (the Gibraltar Order). However, certain Gibraltar-specific regimes conferring rights on Gibraltar-based persons in UK markets and UK-based persons in the Gibraltarian markets are set outside the remit of the Gibraltar Order, and therefore need to be addressed separately to ensure continued market access.

98 Given their differing characteristics and functioning, and that they mostly encompass activities that are non-regulated activities under FSMA, these regimes cannot simply be brought under the core mechanism of GAR. Yet, the size of these regimes does not justify the creation of a parallel legislative regime effectively mirroring the core mechanisms of GAR.

99 Therefore, the Act includes powers for HM Treasury to preserve access for the economic activities which currently exist between the UK and Gibraltar, and to subject Gibraltar-specific regimes outside the scope of the GAR to principles and mechanisms similar to those in the GAR.

Overseas Funds Regime

100 The UK investment management industry manages the savings and pensions of millions of UK citizens. They raise capital from investors into collective investment schemes (also commonly referred to as 'investment funds' or simply 'funds') and allocate it across the wider global economy. 75% of UK households use an asset manager's services either directly or indirectly, for example through workplace pensions.

101 Asset management is a highly internationalised industry and it is common practice for asset managers based in one country to establish or 'domicile' their collective investment schemes in another country and sell these schemes to investors around the world.

102 Many of the schemes which are currently marketed to UK investors, including retail investors, and for which UK firms provide portfolio management services, are established in the EEA. The term 'retail investors' refers to ordinary people when they invest their personal savings and pensions, rather than professional, experienced investors or financial companies. Many of the schemes established in the EEA that are marketed to retail investors are classified as 'UCITS.' In the UK, 'Undertakings for Collective Investment in Transferable Securities' (UCITS) are schemes that have been authorised by the FCA as such. In the EEA, UCITS are schemes that are authorised by their national competent authority under Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (the UCITS Directive). The UCITS Directive also created the 'passporting' regime for UCITS, allowing them to be marketed to retail investors across the EEA.

103 As of 2019, there were around 2,600 UK-domiciled UCITS authorised by the FCA which can market to retail investors. By comparison, in 2019 the FCA had received passporting notifications for around 9,000 UCITS that are domiciled in the EEA, which enables them to market to UK investors.

104 Data from the Investment Association, the trade body for the UK asset management industry, indicates that around a quarter of their members do not operate any UK domiciled schemes, and instead exclusively market EEA-domiciled schemes, most of which are EEA UCITS, to UK investors through the passporting regime.

Existing approach to recognising third country collective investment schemes

105 Prior to the introduction of the Act, an overseas scheme had to be 'recognised' before it was able to be promoted to the general public in the UK. EEA UCITS that market into the UK via the passporting regime automatically become recognised when the appropriate regulator in the relevant EEA member state notifies the FCA of the scheme's intention to market to investors in the UK. Schemes domiciled outside the EEA must apply for recognition through a process that requires a detailed assessment by the FCA of the scheme, its operator and its trustee and depositary, if there is one. This process is set out in section 272 of FSMA. To become recognised, the FCA must be satisfied that each scheme, its operator and its trustee and depositary, if there is one, meets several tests in legislation and that adequate protection is afforded to investors in the scheme.

106 The passporting regime under the UCITS Directive ended at the end of the Transition Period. In recognition of the important role EEA schemes play in the UK market, the Government established a 'temporary marketing permissions regime' (TMPR). The TMPR enables EEA UCITS to continue marketing into the UK for a temporary period, provided they had exercised their right to do so under the passporting regime before the end of the Transition Period. Existing legislation states that schemes wishing to continue marketing in the UK beyond the end of the TMPR must be recognised under section 272. The TMPR is currently scheduled to end at the end of 2023 but may be extended by one year at a time via statutory instrument. The Act will extend the TMPR to the end of 2025.

107 The existing process of recognition, in section 272, is not suitable for the number of schemes that the Government expects will want to continue marketing into the UK beyond the end of the TMPR. Applications through this process are resource intensive for scheme operators and for the FCA, creating a significant operational challenge. The existing process also operates on a scheme-by-scheme basis, which is not well suited to dealing with potential changes to regulation or requirements that impact on a large number of schemes. Overall, the existing process is not fit for the purpose of recognising a potentially large number of overseas schemes.

108 The Act introduces a new Overseas Funds Regime (OFR) to allow overseas collective investment schemes to be marketed to all investors, including retail investors, in the UK market on appropriate terms. It introduces two new mechanisms; one for retail collective investment schemes, and one for money market funds (MMFs), which are a type of collective investment scheme that invests in liquid assets (such as cash, government bonds and corporate debt) and represent a low risk, short term and high liquidity investment often used as an alternative to cash. Through the OFR, HM Treasury has the power to grant 'equivalence' to a specified category of schemes from an overseas country or territory. The Act also extends the TMPR to ensure sufficient time for the OFR to be established.

Outcomes based equivalence

109 Regulation in other countries will not be identical to that in the UK, but the overall effect of their rules may combine to achieve similar outcomes. Under the OFR equivalence will be judged on outcomes. Assessments of outcomes will be underpinned by compliance with internationally agreed standards and through different combinations of rules for MMFs and retail collective investment schemes if these practices provide an equivalent outcome to the corresponding UK legal framework.

110 Retail collective investment schemes in a particular country or territory must offer at least equivalent investor protection. When assessing overseas schemes and comparable UK schemes, HM Treasury will consider the UK legislation and FCA rules that apply to the kind of UK authorised scheme that is most similar to the category of overseas schemes being considered.

111 For MMFs, law and practice in a particular country or territory must offer equivalent effect to Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (MMFR).

Additional requirements

112 As the concept of outcomes-based equivalence means that the UK and overseas regulatory frameworks do not need to be identical, there may be circumstances where a country meets the standard of equivalent investor protection, but it is desirable to specify additional requirements as a condition of marketing in the UK.

113 Additional requirements may also be applied to MMFs wishing to market to retail investors through the OFR, which meet the MMFR equivalence standards and the standard of equivalent investor protection. MMFs which meet the MMF equivalence standards, but market to UK investors through section 272 of FSMA or by notifying through the National Private Placement Regime (NPPR), as explained below, will not be subject to additional requirements.

114 Additional requirements can only be applied to schemes which already meet the equivalent investor protection test and MMFR equivalence, in the case of MMFs. Therefore, it will not be possible to use these additional requirements to address fundamental shortcomings in the overseas regime, because a country's regime must offer equivalent investor protection, and MMF equivalence in the case of MMFs, as a precondition of an equivalence determination. Additional requirements may be used to provide consistency with the UK regime where necessary.

115 Additional requirements may not be necessary in all cases and would be based on aspects of the UK framework which were judged to be important to ensure consistency or comparability between overseas schemes and those on offer in the UK. Examples may include the requirement for schemes to have independent directors or complete value assessments.

116 If additional requirements are necessary, they will be set out in the statutory instrument used to give effect to the equivalence determination. The FCA will have the power to make rules in relation to the additional requirements as specified by HM Treasury, to the extent that these may be necessary to provide further clarity to schemes on how they may be expected to comply. This power will not permit the FCA to establish new additional requirements which go beyond what is specified by HM Treasury.

Recognition and notification

117 Once an equivalence determination is granted, individual schemes wishing to market in the UK will need to be recognised by the FCA.

118 Retail collective investment schemes from a country which fall within an equivalence determination will need to apply to the FCA to gain recognition. The FCA will not be responsible for verifying scheme's compliance with the overseas regulatory framework, reflecting the fact that the equivalence determination has already confirmed that schemes in the specified category offer equivalent investor protection. The FCA will have the power to require scheme operators to provide it with such information as is reasonably considered necessary for the purpose of determining the application. This would include information which confirms that the scheme is eligible for recognition and meets any additional requirements, where they have been specified as part of an equivalence determination. The Act also disapplies the notification requirements under the NPPR for schemes which are recognised under the retail equivalence regime of the OFR. This is because there are already sufficient reporting requirements under the OFR, such as the FCA power described above, as well as a requirement for a cooperation agreement.

119 The process for MMFs gaining market access will depend on whether they intend to market to retail or professional clients. MMFs that wish to market to both retail and professional clients must either:

a. be located in a country or territory with equivalence determinations for both MMFs and retail schemes and apply for recognition under the OFR; or

b. be located in a country or territory with an equivalence determination for MMFs and be recognised as suitable for marketing to retail investors under section 272 of FSMA.

120 In order to market solely to professional investors in the UK, MMFs must provide MMF equivalence and notify with the NPPR. The NPPR is a mechanism that allows some types of non-UK authorised or recognised schemes to market to professional investors in the UK, that are not allowed to do so through domestic marketing or passporting regimes.

121 The Act also specifies that the OFR and section 272 of FSMA apply to both a collective investment scheme and a part of a collective investment scheme. This makes it clear that the regimes can recognise, if appropriate, schemes from other countries or territories where these are structured as umbrella funds and sub-funds. Umbrella funds and sub-funds are a way of structuring collective investment schemes: an umbrella fund is effectively a legal entity which groups together different sub-funds, with each sub-fund having its own pool of assets, typically to provide a range of different investment strategies for investors. Market practice has evolved considerably since FSMA gained Royal Assent in 2000 and it is now common for funds to use this structure. Where countries or territories allow schemes to be structured in this way, HM Treasury can therefore ensure it is the sub-fund that can gain recognition for marketing to UK investors. HM Treasury has the power to make modifications where appropriate to clarify how Part 17 and provisions made under Part 17 have effect in relation to parts of schemes recognised or seeking recognition under the OFR and section 272. To ensure that legislation outside of Part 17 FSMA is sufficiently clear, the Act gives HM Treasury the power to modify or amend legislative provisions in FSMA and other parts of the statute book, so that HM Treasury can clarify whether and how provisions, relating to schemes recognised or seeking recognition under the OFR or section 272, have effect for parts of schemes. HM Treasury is only permitted to use these powers in relation to legislation that was made before the OFR and the amendments to the section 272 regime under section 25 are commenced.

Modifying or withdrawing equivalence

122 It may be necessary to revise the additional requirements from time to time, to account for material changes in the relevant regulatory regimes. For example, HM Treasury will consider adding further additional requirements in response to new FCA rules that apply to UK authorised schemes.

123 Similarly, it may also be necessary to modify the category of schemes specified in an equivalence determination. Any changes would be made by way of secondary legislation, amending the statutory instrument that gave effect to the equivalence determination.

124 If it becomes apparent that the required standard of equivalent outcomes is unlikely to be or is no longer met, HM Treasury and the FCA will engage with the overseas regulator and finance ministry with a view to rectifying the situation or outlining next steps. If it has not been possible to remedy the situation within an appropriate amount of time, it may be necessary for HM Treasury to withdraw an equivalence determination.

125 The withdrawal of an equivalence determination will be undertaken in an orderly and controlled manner to ensure that investors are protected, and businesses have time to adjust. In such circumstances, the Government will engage with industry and stakeholders as appropriate to ensure the process is predictable.

Suspension or revocation of individual schemes

126 There may be instances, including where there is the potential for harm to investors, where it is necessary to temporarily suspend or revoke a scheme's recognition. The OFR will therefore provide the FCA with a power to suspend or revoke recognition of an individual retail scheme or market access for an MMF.

127 Scheme operators (and, in certain circumstances trustees and depositories of a scheme), will have the opportunity to make representations to the FCA following the receipt of notification of the proposed suspension or revocation of the scheme. Following a decision by the FCA to suspend or revoke the recognition of the scheme, the operator may refer the matter to the Upper Tribunal.

Amendments to section 272

128 Section 272 of FSMA is not repealed but will continue to be available for individual retail schemes that are not eligible to be recognised through the OFR because they are not covered by an equivalence determination for retail schemes. Section 272 will also remain for MMFs that still wish to market to both retail and professional investors, and which are assessed as MMF equivalent but not eligible to be recognised under the OFR.

129 The Act makes minor amendments to section 272 to make it more efficient for the industry and the FCA, but this does not change the fundamental features of the in-depth assessments required for schemes accessing the UK market through this route.

Markets in Financial Instruments Regulation

130 EU Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments ('MiFIR') allows third country investment firms to provide cross-border investment services and activities to certain professional clients and eligible counterparties in the EU as long as they come from jurisdictions which have been determined to have equivalent rules.

131 At the end of the Transition Period, this equivalence regime (sometimes referred to as the "Title 8 Regime") formed part of retained EU law and therefore continues to apply in the UK, with the necessary changes made under the EUWA to ensure that it operates effectively following the end of the Transition Period. Under this regime, HM Treasury has the necessary powers to assess whether a third country is equivalent for the purposes of the Title 8 Regime, as such allowing cross-border market access for that jurisdiction's investment firms. This Act updates the Title 8 Regime to broadly reflect the changes the EU introduced to their own regime.

132 The Act provides the FCA with a power to specify reporting requirements for firms that register under the Title 8 Regime. The purpose of this change is to ensure that the FCA has an appropriate degree of oversight over firms that could register under the regime. It will also enable HM Treasury to, where appropriate, impose specific requirements on firms that have registered under the Title 8 Regime to address issues related to the firm's carrying on of business in the UK, as opposed to the home state.

133 The Act includes amendments to the equivalence assessment criteria to reflect the changes to the UK's prudential rules as a result of provisions in this Act as set out in paragraphs 6-14. The FCA will have the power to make rules to operationalise the additional requirements as specified by HM Treasury, to the extent that these may be necessary to provide further clarity to firms on how they may be expected to comply. This power does not permit the FCA to establish new additional requirements which go beyond what is specified by HM Treasury.

134 The Act also introduces additional powers for the FCA to impose temporary restrictions or prohibitions on, or withdraw the registration of, firms that register under the Title 8 Regime. It finally includes further amendments to clarify the scope of the reverse solicitation exception, which allows third country firms to service UK clients at the client's own initiative, without relying on the Title 8 Regime.

Cancellation of permission to carry on regulated activity

Changes to the Financial Conduct Authority's cancellation of authorisation process

135 Firms carrying on a "regulated activity," as defined in section 22 of FSMA must be authorised to do so in the UK by either the FCA or the PRA or be exempt from authorisation. The FCA keeps a public record of authorised firms, individuals and other bodies that are, or have been, regulated by the PRA and/or the FCA. This is known as the Financial Services Register (the Register).

136 The Register allows consumers to check that firms offering financial products and services are authorised. It provides those firms' contact details and the products and services they are authorised to provide, and whether those firms, or certain individuals at the firms, have been sanctioned or had other action taken against them.

137 The accuracy of the Register is integral to ensuring consumers considering a financial product or service have the required information to take informed decisions about who they deal with. If the Register is inaccurate, there is a risk that fraudulent individuals or firms will clone inactive firms to scam consumers. Improving the speed with which the FCA can cancel the authorisation of a firm that is no longer carrying on regulated activities, and reflecting this on the Register, will help to manage that risk. It will also allow the FCA to use resources more efficiently to better and more swiftly deliver in the public interest.

138 In July 2020, the Government published a policy statement (HM Treasury, Policy paper, 'Changes to the FCA's cancellation of authorisation process', July 2020) in which it sought views on proposed changes to the FCA's cancellation or variation of authorisation process. The Act makes amendments to provide the FCA with the mechanism to cancel or vary authorisation more quickly when firms stop carrying on regulated activities. The Act also provides for the FCA's annulment of the cancellation or variation of a firm's authorisation.

139 The grounds for the FCA to cancel a firm's authorisation are set out in Part 4A of FSMA. Authorised firms are required to give the FCA prompt notice if they intend to cease carrying on one or more regulated activities permanently. Where a firm has not provided such a notification but the FCA believe that it is no longer carrying on a regulated activity, the FCA must demonstrate that one of the grounds set out in statute is met in order to cancel the firm's authorisation. This takes considerable time and resource, delaying the process of cancelling the authorisation of inactive firms.

140 The Act provides an additional process to sit alongside the existing cancellation procedure, to allow the FCA to streamline those cases where it appears to the FCA that a firm is no longer carrying on a regulated activity and cancel or vary their authorisation. This could be where the firm has failed to pay its fees or levies or provide information to the FCA as is required in the FCA Handbook. The Act provides the FCA with the mechanism to restore a firm's authorisation or varied permission upon a firm's application, where it considers it just and reasonable to do so. This application falls within the scope of the FCA's power to provide for the payment of fees in paragraph 23 of Schedule 1ZA FSMA.

141 The FCA may annul the cancellation or variation of a firm's authorisation unconditionally, subject to conditions, with one or more regulated activities described differently or removed, or refuse to restore a firm's authorisation or varied permission. Where the FCA refuses to annul the cancellation or variation of a firm's authorisation or permission, the firm may refer the matter to the Upper Tribunal. The Upper Tribunal may give directions and make

provision for placing the firm, and other persons, in a similar position, as if the authorisation had not been cancelled or the permission had not been varied. The Act also provides the FCA with the ability to refer to the Upper Tribunal an FCA decision to annul the cancellation or variation of a firm's authorisation or permission.

142 The change only applies to firms both authorised and regulated solely by the FCA. Firms regulated by the PRA, often described as dual regulated firms, are not in scope of the changes.

Rules about the level of care provided by authorised persons

FCA rules about the level of care provided to consumers by authorised persons

143 Authorised UK financial services firms' treatment of their customers is governed by the FCA through its Principles for Businesses, as well as specific requirements in the FCA Handbook. The FCA's Principles require firms to conduct their business with due skill, care and diligence, and to pay due regard to the interests of their customers and treat them fairly. The FCA can take action against firms which breach the Principles, including through financial penalties.

144 The FCA is considering options for addressing consumer harm in relevant markets, including the introduction of a duty of care. The FCA published a Discussion Paper on a duty of care and potential alternative approaches in July 2018, which was followed by a Feedback Statement in April 2019. This Feedback Statement committed the FCA to undertaking a consultation on options for change to address potential deficiencies in consumer protection. This consultation is due to be published in May 2021.

145 The Act formalises the next steps of the FCA's work by requiring the FCA to carry out a public consultation about whether it should make general rules providing that authorised persons owe a duty of care to consumers, or other provision on the level of care that must be provided to consumers by firms. The Act specifies that the consultation must be carried out, and an analysis of responses published before 1 January 2022, with any subsequent rules made before 1 August 2022.

Insider dealing and money laundering etc.

Amendments to the Market Abuse Regulation

146 Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse ('EU MAR'), the UK's civil market abuse regime, contains prohibitions on insider dealing, unlawful disclosure of inside information and market manipulation, and provides the FCA with the necessary information to prevent and detect such abuses via its reporting and notification obligations. Following the end of the Transition Period, the EU Regulation forms part of retained EU law and therefore continues to apply in the UK, with the necessary changes made under the EUWA to ensure that it continues to operate effectively following the end of the Transition Period. The EU Regulation as amended and forming part of retained EU law in the UK is referred to as the Market Abuse Regulation ('MAR'). The Act makes two amendments to MAR intended to strengthen the regulation, and reduce the administrative burden associated with compliance.

Inside Information and Insider Lists

147 Inside information is information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers (an issuer is a legal entity which issues or proposes to issue financial instruments) or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or the price of related derivative financial instruments. The unlawful disclosure of inside information increases the risk of insider dealing which undermines the integrity of the market and investors' confidence.

148 Insider lists are lists maintained by issuers or persons acting on their behalf or on their account (such as advisers and consultants) Such lists must contain details of all persons who have access to inside information and who are working for the issuer under a contract of employment, or otherwise performing tasks through which they have access to inside information. Insider lists are critical to enable the FCA to investigate the unlawful disclosure of inside information and insider dealing. Insider lists also act as a control for issuers to appropriately manage their flows of inside information.

149 MAR currently requires issuers or any person acting on their behalf or on their account to maintain an insider list. The use of "or" has caused confusion as some issuers' advisers are not sure whether they are required under MAR to draw up their own insider list (i.e. separate to the issuer's insider list). This creates the risk that some of the parties are not maintaining insider lists, which increases the risk of the unlawful disclosure of inside information and persons' insider dealing on that information.

150 The Act makes an amendment to MAR to remove confusion by clarifying who is required to maintain an insider list, establishing that issuers *and* any person acting on their behalf or on their account are all required to maintain such a list.

Transactions by senior managers

151 MAR also requires persons discharging managerial responsibilities, and those closely associated with them, to notify the issuer and the FCA of their transactions in financial instruments related to that issuer. Currently, the notifications should be made to the issuer no later than three business days after the date of the transaction. The issuer is then also required to notify the public of such transactions no later than three business days after the transaction.

152 This timetable for both notifications running concurrently from the date of the transaction creates a tight timetable for issuers to notify the public. In some cases, the issuer may only receive the notification from the senior manager or closely associated person on the day they are also required to publish the transaction, creating a challenging administrative burden for the issuer.

153 The Act amends MAR to adjust the timetable within which issuers are required to disclose transactions by their senior managers to the public so that all issuers will now be required to disclose transactions within two working days of those transactions being notified to them by the senior managers or the persons closely associated with them. This is a more practical and sensible timetable, which preserves the timely and transparent disclosure of these transactions to markets but does not disproportionately burden issuers.

154 These changes are closely aligned with changes recently made to the EU MAR.

Extending the maximum criminal sentence for market abuse

155 Criminal market abuse is split into two different areas: insider dealing and market manipulation. An example of insider dealing is where a person in possession of inside information uses that information for personal gain, for example, by buying or selling a share to which the information relates.

156 The criminal market abuse regime in the UK is primarily composed of the insider dealing offences in the Criminal Justice Act 1993 and the market manipulation offences in the Financial Services Act 2012. These offences are currently punishable by up to seven years in prison.

157 In terms of seriousness and the harm caused to society, market abuse is comparable to other economic crimes such as fraud or bribery, which carry a maximum sentence of ten years. The maximum sentence length for crimes of this nature has been identified as one factor in deterring individuals from committing criminal market abuse.

158 The 'Fair and Effective Markets Review 2015' (Bank of England, FCA, 'Fair and Effective Markets Review 2015', June 2015), published by the Bank of England, FCA and HM Treasury, identified a culture of impunity in parts of the market, coloured by a perception that misconduct would go either undetected or unpunished. Increasing the maximum sentence for market abuse to ten years was one of a number of recommendations made by the review.

159 Furthermore, with a current maximum sentence of seven years, there is less scope for judges to impose an increased sentence in particularly serious cases when compared to other economic crimes. Increasing the maximum sentence will allow a greater level of flexibility in particularly serious cases where there are a larger number of aggravating factors, for example a very significant breach of trust by senior individuals or sophisticated criminality by organised criminal groups.

160 The Act increases the maximum sentence for criminal market abuse from seven to ten years, bringing it into line with comparable economic crimes.

Amendments to the Proceeds of Crime Act 2002 and Anti-Terrorism, Crime and Security Act: Payment and E-Money Institutions

'Money laundering offences: electronic money institutions, payment institutions and deposit-taking bodies'

161 The Proceeds of Crime Act 2002 (POCA) provides the statutory basis for the principal money laundering offences in the UK. These offences are set out in sections 327, 328 and 329 POCA. In certain circumstances, a person can seek consent from the National Crime Agency (NCA), or other specified officers, to deal with property in a way which would otherwise constitute one of the principal money laundering offences. Such consents must be sought by making an authorised disclosure as specified in section 338 POCA. Authorised disclosures are commonly referred to as Defence Against Money Laundering Suspicious Activity Reports, or "DAMLs". If the person or firm gets appropriate consent, they do not commit a principal money laundering offence in POCA when dealing with that property in a way that is covered by the consent.

162 Additionally, sections 327, 328, 329 and 339A of POCA include provisions that currently allow deposit-taking bodies only, in certain circumstances, to process transactions where there is a suspicion of money laundering, if the transaction is below a threshold amount, without having to submit a DAML to the NCA and without committing a principal money laundering offence. The threshold amount for acts done by a deposit-taking body in operating an account is £250 unless a higher amount is specified in accordance with section 339A POCA. The threshold amount provisions only apply in relation to activity undertaken in operating an account maintained with a deposit-taking body; they do not apply in relation to transactions related to the opening or closing of an account, or when a deposit-taking body first suspects that the property is criminal.

163 Currently, the threshold amount provisions in sections 327, 328, 329 and 339A of POCA only apply to deposit-taking bodies. Payment institutions and e-money institutions authorised or registered under the Payment Services Regulations 2017 or Electronic Money Regulations 2011 respectively (payment and e-money institutions) are not covered by these provisions. As such, payment and e-money institutions will in practice need to submit DAMLs for all transactions where there is suspicion of money laundering in order to avoid committing one of the principal money laundering offences, regardless of the amount. This expends significant amounts of time and resources by payment and e-money institutions as well as law enforcement who are required to process the requests.

164 The Act amends POCA to bring payment and e-money institutions within scope of these threshold provisions.

'Forfeiture of money: electronic money institutions and payment institutions'

165 The Criminal Finances Act 2017 created new account freezing and account forfeiture powers under POCA and the Anti-Terrorism, Crime and Security Act 2001 (ATCSA). These powers enable certain law enforcement officers to apply for an account freezing order (AFO) from the court to freeze a bank or building society account if there is reason to believe that money present in the account is the proceeds of crime or that the money is intended by any person for use in unlawful conduct, or in the case of ATCSA, they have reasonable grounds for suspecting that money held in such an account is related to terrorism in a manner specified in that Act. Once the money is subject to an AFO, then law enforcement may seek to have it forfeited.

166 AFOs, and subsequent forfeitures, can be used to quickly deny access to funds that are suspected of being the proceeds of crime, or used to fund criminality, where it may not be feasible or practicable to undertake a criminal investigation into the holder of the funds, or to use other mechanisms in POCA. They can likewise be equally effectively used under ATCSA in the context of countering terrorism financing.

167 Currently, these powers can be exercised in respect of accounts held at banks and building societies. This Act extends the AFO and forfeiture provisions in POCA (in England and Wales and Scotland) and ATCSA (across the UK) to ensure that these powers can also be applied to accounts held at payment and e-money institutions.

Application of money laundering regulations to overseas trustees

168 A trust is a way of managing assets that involves a trustee holding the assets placed in the trust for the benefit of a specified person, or class of persons, known as the beneficiary or beneficiaries.

169 Since 2017, overseas trustees that pay tax in the UK in relation to the assets or the income of an express trust have been required to register with Her Majesty's Revenue and Customs (HMRC). Changes to the registration of trusts made by the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/991) will mean that in future HMRC will also need to register certain overseas express trusts that acquire land or enter into a business relationship in the UK. Future money laundering regulations will need to be able to apply to overseas trusts in those sorts of cases.

170 The Sanctions and Anti-Money Laundering Act 2018 (SAMLA) creates the framework for implementing post-Brexit sanctions and anti-money laundering policy. SAMLA will replace the European Communities Act 1972 (ECA) as the statutory power the Government uses to impose and make changes to requirements in the UK's money laundering regulations, currently the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692).

171 The Act introduces amendments to SAMLA to ensure HMRC will still be able to access information on who owns and benefits from UK-linked overseas trusts. It ensures that the extra-territorial application permitted by SAMLA is fully effective in relation to overseas trustees with links to the UK.

Debt Respite Scheme

Statutory Debt Repayment Plan

172 There are an estimated 9 million overindebted people in the UK (Money Advice Service, 'Independent Review of the Funding of Debt Advice in England, Wales, Scotland and Northern Ireland', 2018), of which only around 1.1 million receive debt advice each year. The Government wants to incentivise more people to access professional debt advice and to access it sooner, helping them reach sustainable debt solutions.

173 The Financial Guidance and Claims Act 2018 (FGCA) made provision for the creation of a debt respite scheme by regulations. The scheme consists of two parts: Breathing Space and the Statutory Debt Repayment Plan (SDRP).

174 The first part of the scheme is Breathing Space. It offers people in problem debt a 60-day moratorium on enforcement action, fees and certain forms of interest while they engage with professional debt advice. The Government is delivering this part of the scheme for England and Wales through the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (S.I. 2020/1311), which have been approved by Parliament and Senedd Cymru and came into force on 4 May 2021.

175 The second part of the scheme is the SDRP. The SDRP could be offered to people in problem debt and would provide a revised agreement between the debtor and their creditors as to the amount owed on their debts and the timetable over which they have to be repaid. There is currently only a statutory debt solution focused entirely on repayment in Scotland. There is no similar model for other parts of the United Kingdom. The Government believes that providing a solution with the same legal protections from creditor action as apply in Breathing Space should encourage more people to access debt advice sooner and repay their debts to a manageable timetable.

176 The Government issued a call for evidence (HM Treasury, 'Breathing space: call for evidence, June 2018) on the design of the scheme, and published a response on 18 June 2018. The Government subsequently sought views on a detailed policy proposal for the scheme and published a response (HM Treasury, 'Breathing space scheme: response to policy proposal), which was accompanied by an oral statement by the Economic Secretary to the Treasury on 19 June 2019. The Government received advice from the Money and Pensions Service on the establishment of the scheme, in accordance with the FGCA, and this advice was published (HM Treasury, Guidance, 'Breathing Space Scheme – Money and Pensions Service Advice', September 2019).

177 The Act amends the FGCA to ensure that the Government has the appropriate powers to implement the SDRP, in particular so that the SDRP can include debts owed to Government; and in England and Wales can be funded by a charging mechanism; and creditors can be compelled to accept amended repayment terms.

Help-to-Save

Successor accounts for Help-to-Save savers

178 In September 2018, the Government launched the Help-to-Save scheme to promote and encourage saving among people on low incomes. The scheme is open to new accounts until September 2023. Help-to-Save accounts close four years after opening.

179 Help-to-Save accounts are available to individuals on low incomes and in receipt of Working Tax Credit or Universal Credit, with weekly earnings equivalent to working at least 16 hours per week earning the National Living Wage rate (£617.73/month for 2021-22). Account holders may deposit up to £50 per calendar month over a four-year term from opening an account in order to receive Government bonuses.

180 The terms and conditions supporting Help-to-Save require the account holder to nominate a bank account into which the bonus will be paid but neither the terms and conditions nor the legislation have made provision for the balance of funds remaining in the account when the account matures at the end of the four-year term. Without instruction from the account holder, the effect of the current legislation and terms and conditions would mean that those funds must remain in the matured Help-to-Save account, earning neither interest nor bonus. NS&I and HMRC are amending the terms and conditions supporting Help-to-Save accounts to make clear that, in the absence of instruction from the account holder, upon maturity the balance in a Help-to-Save account may be transferred to the nominated bank account to which the government bonuses are paid during the scheme.

181 The Act provides HM Treasury with a power to make regulations, which would enable the transfer of the balance in a Help-to-Save account into a standard savings account (a successor account) automatically when the account matures after four years, in the absence of instruction from the account holder. This would ensure the remaining funds continue to be accessible while they await instructions from the account holder. The Act specifies that the successor account must be an account in the National Savings Bank, which is operated by National Savings and Investments (NS&I). NS&I currently and separately operate the Help-to-Save accounts.

Miscellaneous

Regulated activities and application of Consumer Credit Act 1974

182 Buy-Now-Pay-Later products are credit products which charge no interest and are repayable in twelve or fewer instalments in less than twelve months. Currently, these products do not fall within the scope of regulation under FSMA. This is because they make use of an exemption in article 60F(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("the Regulated Activities Order"). The Regulated Activities Order defines the scope of regulated activities.

183 The material effect is that Buy-Now-Pay-Later products do not currently benefit from the consumer protections that regulated credit agreements are subject to. Regulated credit agreements must comply with the relevant provisions of the Consumer Credit Act 1974 and secondary legislation made under it, such as providing certain information to borrowers in a prescribed format. Firms offering regulated credit agreements must be authorised by the FCA and comply with relevant FCA rules, such as undertaking affordability and creditworthiness assessments.

184 This exemption was originally designed to exempt firms undertaking low risk, day-to-day business activities, such as deferring payment for goods and services, from the burdens of regulation.

185 The Government has been following the growth of currently unregulated, interest-free Buy-Now-Pay-Later products as their use and prominence in online transactions has grown.

186 On 16 September 2020, the FCA announced that its former interim-CEO, Chris Woolard, would undertake a review into the unsecured credit market. The final report of this review was published on 2 February 2021. The review found that currently unregulated Buy-Now-Pay-Later products could give rise to consumer detriment, and recommended that the necessary amendments to legislation be made to bring Buy-Now-Pay-Later products within the scope of regulation before any widespread consumer detriment could crystallise.

187 The Government noted the evidence in the review, and agreed with its conclusion that Buy-Now-Pay-Later products should be brought within the scope of regulation under FSMA. However, the Government also recognises the utility that these products can have for consumers in managing their finances that the Act therefore gives HM Treasury the ability to bring interest-free Buy-Now-Pay-Later products into the scope of FCA regulation in a proportionate way.

188 The Government will bring forward secondary legislation to bring currently unregulated Buy-Now-Pay-Later products into regulation when Parliamentary time allows. The final approach to regulation will be determined following a public consultation.

Amendments to the PRIIPs Regulation

189 Packaged Retail and Insurance-based Investment Products (PRIIPs) are a category of financial assets regularly provided to retail investors. PRIIPS are defined in Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (the EU PRIIPs Regulation) as investments where, regardless of their legal form, the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets that are not directly purchased by the retail investor; or an insurance-based investment product which offers a maturity or surrender value that is wholly or partially exposed, directly or indirectly, to market fluctuations. Examples of PRIIPs include Undertakings for Collective Investment in Transferable Securities

(UCITS) Retail Schemes, Foreign Exchange Transitions, Exchange Traded Derivatives and Over the Counter Derivatives.

190 The EU PRIIPs Regulation aims to increase the transparency and comparability of investment products, and sets the requirements for a disclosure document, known as the Key Information Document (KID), that must be provided to retail investors when they purchase, or receive advice on, PRIIPs.

191 Before the end of the Transition Period, the EU PRIIPs Regulation was a directly applicable EU Regulation, and in order to ensure that the Regulation had full effect in the UK, HM Treasury made the Packaged Retail and Insurance-Based Investment Products Regulations 2017 (S.I. 2017/1127), which entered into force on 1 January 2018.

192 Following the end of the Transition Period, the PRIIPs Regulation forms part of retained EU law and therefore continues to apply in the UK, with the necessary changes made under the EUWA to ensure that it continues to operate effectively.

193 The PRIIPs Regulation is supplemented by a Delegated Regulation (regulatory technical standards, or RTS) that sets out further detail of the requirements under PRIIPs. The RTS also form part of retained EU law, and the FCA is empowered to update and amend the RTS in the UK.

194 The PRIIPs Regulation requires that a KID must contain certain information on the product in question, including the potential risks and returns associated with the product, the costs associated with investing in the product and performance scenarios illustrating the potential return of the product under a range of assumed market conditions. The methodologies for calculating transaction costs, producing performance scenarios and assessing Summary Risk Indicators (a numerical scale from 1 to 7 which indicates the investment risk associated with a product), along with detailed requirements on how information is to be presented in the KID, are set out in the RTS.

195 The Government supports the objectives of the PRIIPs Regulation, which seeks to enhance investor protection by standardising the disclosure document provided to retail investors when they purchase PRIIPs. However, serious concerns about the unintended consequences of the PRIIPs Regulation have been raised extensively by governments, regulators and industry across Europe ever since it came into force in the EU in 2014. In particular, the Regulation has been criticised for requiring the disclosure of potentially misleading information to retail investors and for the lack of clarity surrounding its scope, which may have caused a reduction in the investment products made available to retail investors, reducing consumer choice.

196 In the longer term, the Government intends to undertake a more wholesale review of the disclosure regime for UK retail investors, but in the meantime, the Act makes targeted amendments to the PRIIPs Regulation to avoid consumer harm and provide the appropriate certainty to industry.

197 These amendments enable the FCA to clarify the scope of the Regulation, replace 'performance scenario' with 'appropriate information on performance' and enable HM Treasury to further extend the exemption currently in place for UCITS retail schemes.

198 The amendments to the PRIIPs made by the Act will address significant uncertainty among industry as to the precise scope of PRIIPs, without changing the definition of a PRIIP. They also remove the obligation for PRIIPs manufacturers to produce performance scenarios, the methodology for which has been criticised for producing misleading predictions; and provide UCITS retail schemes with an extended transitional period to comply with the Regulation, up to a maximum of five years.

Retention of personal data under the Market Abuse Regulation

199 Under MAR, there are certain reporting requirements firms must comply with, to provide the FCA with the information they need to identify, prevent and tackle cases of market abuse. When complying with their reporting obligations, firms will often share personal data with the FCA. Personal data is information that relates to an identified or identifiable individual.

200 For example, some firms have a responsibility to report suspicious transactions to the FCA. When reporting the transactions, firms will provide the FCA with personal data such as names or account numbers, in order to identify the individual that carried out the transaction.

201 Currently, Article 28 of MAR limits the amount of time the FCA can hold personal data processed for the purposes of tackling market abuse to five years. The Act amends MAR to remove the limit on the FCA holding MAR personal data for more than five years. This allows the FCA to hold personal data in line with the General Data Protection Regulation (GDPR).

202 The UK General Data Protection Regulation (UK GDPR) is part of the UK's data protection landscape that includes the Data Protection Act 2018 (the 'DPA 2018'). The UK GDPR sets out requirements for how organisations, including the FCA, need to handle personal data.

203 The GDPR specifies the data minimisation principle, where data held by organisations must be, among other things, limited to what is necessary.

204 In some circumstances, the FCA needs to retain personal data for longer than five years, for example to investigate complex market abuse, to prosecute those cases and to enable the FCA to discharge its disclosure duties in certain prosecution cases by providing relevant information to the defendants which may support their case. This can occur over a prolonged period of time, which can be longer than five years.

Over the counter derivatives: clearing and procedures for reporting

205 In 2009, the G20 committed to reform 'over-the-counter' (OTC) derivatives markets to improve their transparency and enable authorities to monitor systemic risks. This commitment was implemented in the EU through Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (the 'European Market Infrastructure Regulation' or 'EMIR'). Following the end of the Transition Period, EMIR forms part of retained EU law and therefore continues to apply in the UK, with the necessary changes made under the EUWA to ensure that it operates effectively following the end of the Transition Period.

206 The Act makes two technical updates to EMIR as part of retained EU law to further improve the functioning of the UK's regulatory regime for derivatives.

207 The first update aims to enhance the accessibility of 'clearing services' for firms subject to the clearing obligation under EMIR. Some OTC derivatives (contracts agreed bilaterally between counterparties on tailor-made terms) must be "cleared" by central counterparties (CCPs), which are entities that reduce the risks arising from some trades by placing themselves between the buyers and sellers to the contracts traded on one or more financial markets. While EMIR imposes an obligation to clear certain trades, access to clearing can be problematic for certain firms, especially smaller ones.

208 There are two main access routes to clearing: counterparties can become a 'clearing member' of a CCP or establish indirect clearing arrangements with a clearing member or a client of a clearing member. Given the costs linked to becoming a clearing member of a CCP, smaller counterparties with a limited volume of activity normally favour indirect clearing

arrangements. However, such arrangements are difficult to access, are often complex, and their terms can vary widely, meaning there is little competition to improve prices and services. Barriers to accessing clearing may cause market participants to cease transacting derivatives or to engage in non-cleared OTC derivatives trading, thereby increasing risk in financial markets.

209 The Act requires firms offering clearing services to do so in accordance with Fair, Reasonable, Non-Discriminatory and Transparent (FRANDT) terms. The FCA is delegated the power to make rules outlining the grounds on which commercial terms will be considered to satisfy FRANDT requirements. The implementation of FRANDT requirements will promote transparency and accessibility in the clearing of derivatives, making it easier for firms to fulfil their clearing obligations.

210 The Act also requires an enhancement of the quality of data collected by Trade Repositories (TRs). TRs are financial market infrastructures which receive and store derivative transaction data from reporting counterparties in a continuously updated database and all derivatives trades must be reported to a TR. TRs' data is primarily used by financial regulators to better monitor risks associated with derivative markets and it is important to safeguard data quality so that the FCA and the Bank of England are able to monitor risks to financial markets effectively.

211 The Act requires TRs to put in place procedures to improve data quality and policies to ensure the orderly transfer of data between TRs, where necessary. The FCA is also delegated the power to adopt rules for this update to EMIR as retained EU law.

Regulations about financial collateral arrangements

212 The Financial Collateral Arrangement (No.2) Regulations 2003 (S.I. 2003/3226) (FCARs) transposed Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (FCAD), which simplified the process of taking financial collateral. The Act introduces an amendment to ensure that the existing legislation is valid and fully effective.

213 Financial collateral is provided by a borrower to a lender to minimise the risk of financial loss to the lender if the borrower fails to meet their financial obligations. The FCARs provide a regime for the taking of financial collateral, in the form of cash, financial instruments or credit claims. Typical arrangements which fall within the scope of the FCARs are charges over shares, charges over cash deposits, and stock lending and repo arrangements.

214 Subsequent litigation, though it has not invalidated the FCARs, has raised the issue of whether the UK's 2003 transposition went beyond the implementing powers in the ECA, given the provisions within the FCARs were applied to a broader class of persons than the underlying EU directive.

215 The Act puts the issue beyond doubt and ensure that the FCARs stand on a sound statutory footing by stating that the FCARs are, and always were, valid and fully effective. The Act also introduces an amendment to the Banking Act 2009, to ensure that the appropriate Parliamentary procedure and levels of scrutiny are applied where HM Treasury makes future secondary legislation in this area.

Appointment of the Chief Executive of the FCA

216 The FCA is the UK's conduct regulator for financial services. It is headed by a Chief Executive appointed by HM Treasury. Currently, legislation does not specify a fixed term length for the FCA Chief Executive, and HM Treasury instead has the power to specify a term length of its

choosing when making the appointment. This differs from the equivalent provisions for similar appointments, such as Deputy Governors of the Bank of England, whose terms lengths are specified in statute. The Act establishes a statutory limit on the term length for the FCA Chief Executive.

217 The Government committed to making this change to the Treasury Select Committee during the passage of the Bank of England and Financial Services Act 2016 through the House of Commons.

218 The Act amends relevant legislation to make the appointee to the role of the FCA Chief Executive subject to a fixed five-year term. The term may be renewed once, so that an appointee may be in the role for a maximum of 10 years.

219 This is consistent with guidance from the Office of the Commissioner for Public Appointments (Cabinet Office, Governance Code on Public appointments, December 2016) which states that "there is a strong presumption that no individual should serve more than two terms or serve in any one post for more than ten years."

Payment services and the provision of cash

220 In recent years, the ongoing trend in payments in the UK has been away from cash (i.e. banknotes and coins) and towards card payments and other digital payment methods. However, cash remains important to the daily lives of millions of people across the United Kingdom, with UK Finance reporting that 23% of all payments were carried out using cash as of 2019.

221 At the March 2020 Budget, the Government announced that it will bring forward legislation to protect access to cash and ensure that the UK's cash infrastructure is sustainable in the longer term.

222 To progress this work, the Government published the Access to Cash: Call for Evidence on 15 October 2020 seeking views on the key considerations associated with cash access, including deposit and withdrawal facilities, cash acceptance, and regulatory oversight of the cash system.

223 As part of this Call for Evidence, the Government invited views on the potential for cashback to play a greater role in providing cash and how this can be facilitated. It noted that cashback, where a purchase was made using a debit card, was the second most frequently used method for withdrawing cash in the UK behind ATMs in 2019. There were 123 million cashback transactions amounting to a total value of £3.8 billion. It also noted that cashback without a purchase has the potential to be a valuable facility to cash users in future and play an important role in the UK's cash infrastructure.

224 The provision of cash, where it is provided alongside the purchase of goods or services ("cashback with a purchase"), is exempted from the definition of a payment service for the purposes of the Payment Services Regulations 2017 (PSRs). As a result, the person providing the cash alongside a purchase of goods or services, for example a shop, does not need to be authorised by or registered with the FCA in order to provide this service.

225 The Act amends the PSRs, so that, in certain circumstances, the provision of cash where there is no corresponding purchase of goods and services, is also exempted from the definition of a payment service. This will mean that "cashback without a purchase" can be offered on the same basis as cashback with a purchase. Before the Act, relevant persons had to be authorised by, or be registered with, the FCA, or act as an agent of a payment service provider to do so. This was a significant barrier to widespread provision of purchase-free cashback.

226 The change therefore allows for the widespread offering of cashback without a purchase by shops and other businesses; meanwhile the Government is continuing to progress legislation for access to cash more broadly.

227 Where the service is offered, a local business, such as a corner shop, café or pub, will be able to provide cash to a customer without them having to make an accompanying purchase.

Legal Background

Prudential regulation of credit institutions and investment firms

Investment Firms Prudential Regime

228 The current prudential requirements applicable to credit institutions and investment firms in the UK are largely contained in the EU CRR, which applies directly, EU CRD IV, which was transposed through UK regulators' rules, the Capital Requirements Regulations 2013 (S.I. 2013/3115), the Capital Requirements (Country-by-Country Reporting) Regulations 2013 (S.I. 2013/3118) and the Capital Requirements (Capital Buffers and Macro-Prudential Measures) Regulations 2014 (S.I. 2014/894). They are also contained in delegated acts and implementing and technical standards that have direct effect in the UK.

229 The EU CRR and EU CRD IV were a major EU legislative package that intended to address issues arising from the global financial crisis of 2008/9 following publication of the Basel III standards. Investment firms are subject to CRR and CRD IV, with several exceptions to account somewhat for the specific nature and activities of investment firms. The EU CRR provides much of the detail setting out how prudential requirements should be defined and calculated. In addition to implementing parts of the Basel III standards, CRD IV also introduced EU-specific requirements, including on remuneration and bonuses.

230 The Capital Requirements (Amendment) (EU Exit) Regulations (S.I. 2018/1401) ("the Capital Requirements Regulations 2018") amend the CRR, which forms part of retained EU law by virtue of section 3 of the EUWA and therefore continues to apply in the UK following the end of the Transition Period.

231 The Capital Requirements Regulations 2018 also amend two pieces of delegated legislation made under the CRR: Commission Delegated Regulation (EU) 2015/61 regarding liquidity coverage requirements for Credit Institutions; and Commission Delegated Regulation (EU) 1222/2014 with regard to the methodology for the identification of global systemically important institutions (G-SIIs).

232 The Capital Requirement Regulations 2018 also make amendments to the following pieces of domestic legislation:

a. the Regulated Covered Bonds Regulations 2008 (S.I. 2008/346);

b. the Capital Requirements Regulations 2013 (S.I. 2013/3115);

c. the Capital Requirements (Country-by-Country-Reporting) Regulations 2013 (S.I. 2013/3118); and

d. Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014 (S.I. 2014/894).

233 Those amendments are made to address deficiencies of the retained EU law to operate effectively and other deficiencies arising from the UK's departure from the EU. The Capital Requirements Regulations 2018 were revised in September 2019 by the Capital Requirements (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1232). This reflected applicable amendments to the CRR made by CRR II in 2019 and, to a lesser extent, by Regulation (EU) 2019/630 of the European Parliament and of the Council of 17 April 2019 amending Regulation (EU) No 575/2013 as regards minimum loss coverage for non-performing exposures.

234 More recently, the EU has updated the CRR package through Regulation (EU) 2020/873 of the European Parliament and of the Council of 24 June 2020 amending Regulations (EU) No 575/2013 and (EU) 2019/876 as regards certain adjustments in response to the COVID-19 pandemic, which provides a number of specific prudential amendments to support banks and lending to the real economy through the Covid-19 pandemic. This was directly applicable in the UK. Some further parts of EU CRR II applied as of 28th December 2020, and these parts therefore form part of retained EU law, since they were in effect before the end of the Transition Period. Deficiencies in this retained EU law arising as a result of EU withdrawal have been fixed via the Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020 (S.I. 2020/1385). A number of EU CRR II provisions will apply in the EU from June 2021. As this is after the end of the Transition Period, these elements do not form part of retained EU law and will not apply in the UK.

The FCA's general rule-making power and objectives

235 Section 137A of FSMA provides the FCA with a general rule-making power to make requirements applying to FCA authorised persons to advance the FCA's operational objectives. Section 1B(2) of FSMA specifies the strategic objective of the FCA, which focuses on ensuring that relevant markets function well. Sections 1C to 1E of FSMA also set out three further 'operational' objectives of the FCA, focused on consumer protection; protecting the integrity of the UK financial system; and promoting effective competition. When discharging its obligations, the FCA must act in a way that is compatible with the strategic objective and that advances one or more of the operational objectives.

236 The Act requires the FCA to make rules with respect to the prudential regulation of investment firms. The FCA will rely in part on its existing general FSMA rule-making power to do so.

General functions of the FCA and regulatory principles

237 The FCA is required to have regard to regulatory principles in section 3B of FSMA when discharging its general functions. The general functions of the FCA are set out in section 1B(6) of FSMA and include making rules.

238 The Act requires the FCA to take into account additional considerations when making rules to implement the IFPR.

Consultation and reporting requirements for FCA rulemaking

239 Section 138I of FSMA sets out the FCA's consultation requirements and requires the FCA to consult the PRA and to issue a public consultation before making rules. Section 138F requires the FCA to give written notice of any rules it makes, amends or revokes to HM Treasury and the Bank of England without delay. The Act applies additional consultation and reporting requirements for the FCA when making rules to implement the IFPR.

The Basel III Standards

240 As explained in paragraphs 19-20, most of the current prudential requirements for credit institutions and investment firms in the UK are derived from the EU CRR and EU CRD IV. In addition to elements of CRR II applying before the end of the Transition Period, EU CRD V has been transposed through the Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020) (S.I. 2020/1406) and UK regulator rules.

The PRA's general rule-making power

241 Section 137G of FSMA sets out a general rule-making power allowing the PRA to make rules applying to PRA-authorised persons to advance the PRA's objectives. Section 2B of FSMA specifies the general objective for the PRA: promoting the safety and soundness of PRA-authorised persons. Sections 2C and 2H of FSMA also set out two further objectives for the PRA: contributing to the securing of an appropriate degree of protection for those who are or may become policyholders (the insurance objective), and facilitating effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities (the secondary competition objective).

242 The Act allows for substantial parts of the CRR to be revoked and for the PRA to replace it, with updates, in PRA rules, to implement changes relating to the outstanding Basel standards. In order to do so, the PRA will rely on its existing general FSMA rule-making power and the rule-making power for holding companies in section 192V of FSMA, which is being replaced by this Act, as explained in paragraph 28 above.

General functions of the PRA and regulatory principles

243 The PRA is currently required to have regard to the regulatory principles in section 3B of FSMA when discharging its general functions. The general functions of the PRA are set out in section 2J(1) of FSMA and include making rules. The Act specifies new considerations the PRA must have regard to when making rules implementing the outstanding Basel standards.

Consultation and reporting requirements for PRA rulemaking

244 Similar to consultation requirements for the FCA, section 138J of FSMA requires the PRA to consult the FCA and to issue a public consultation before making rules. Section 138F requires the PRA to give written notice of any rules it makes, amends or revokes to HM Treasury without delay. This Act also applies additional consultation and reporting requirements for the PRA when making rules relating to the implementation of Basel.

Benchmarks

LIBOR transition

245 In 2012, the Government accepted all recommendations of the Wheatley Review and amended FSMA through the Financial Services Act 2012. Under the Financial Services Act, the administration of and contribution to LIBOR became "regulated" activities. From 1 April 2015, the FCA began applying regulatory requirements to seven additional major UK-based financial benchmarks following the recommendations of the Fair and Effective Markets Review.

246 The UK regulatory regime for these eight benchmarks (including LIBOR) was replaced by the EU BMR on 1 January 2018. The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135) (which implemented aspects of the EU BMR in the UK), provided for the dual operation of the pre-and post-EU BMR regulatory regimes for benchmarks.

247 The EU BMR introduced a regulatory framework to ensure the accuracy, robustness and integrity of benchmarks used in the EU. The EU BMR significantly widened the scope of benchmark regulation in the UK. It places requirements on administrators of benchmarks, supervised contributors to benchmarks and supervised entities that use benchmarks. These requirements relate to benchmark methodology, governance and transparency.

248 Following the end of the Transition Period, the EU Regulation forms part of retained EU law and therefore continues to apply in the UK. In order to ensure that the regime continued to work effectively after the end of the Transition Period, the BMR was amended via the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657). The EU Regulation as amended and forming part of retained EU law in the UK is referred to as the BMR.

Key Definitions

249 Under the BMR, a benchmark is defined, broadly speaking, as an index referenced to determine the amount payable under a financial instrument or a financial contract, the value of a financial instrument, or the performance of an investment fund. For the purposes of the BMR, an index is a figure which is published or made available to the public and that is regularly determined through assessment or calculation and based on the value of one or more underlying assets or prices.

250 The BMR applies to supervised contributors to benchmarks, supervised entities that use benchmarks and benchmark administrators. Generally speaking, a supervised contributor is a supervised entity regulated by the FCA that contributes input data to an administrator located in the UK. For the purposes of the BMR, 'supervised entities' covers a wide range of financial service entities as outlined in Article 3(17)(a)-(m).

251 The definition of "use of a benchmark" is set out in Article 3(7) and covers the use of indices in financial instruments and contracts, including in connection with the issuance of a financial instrument, where a party uses a benchmark to determine the amount payable under a financial instrument or a financial contract or to determine the value of a financial instrument or measure the performance of an investment fund.

252 A benchmark administrator is a natural or legal person that has control over the provision of a benchmark.

Critical Benchmarks

253 Title III of the BMR places different requirements on supervised entities that use benchmarks, supervised contributors to benchmarks, and benchmarks administrators based on the classification of a benchmark. Benchmarks which are classified as "critical" are subject to the most stringent regulatory requirements. LIBOR is classified as a critical benchmark.

254 Under the BMR, a benchmark is deemed critical where it meets certain qualitative and quantitative criteria stipulated in Article 20. Where certain thresholds are met, the benchmark triggers the necessary criteria to be designated a critical benchmark by HM Treasury. Where certain other listed criteria are met, or where a combination of these criteria are met, a benchmark can also be designated as critical if the FCA has recommended that the benchmark is recognised as critical and HM Treasury considers that the FCA's assessment in this regard complies with Article 20(3). Administrators of critical benchmarks must apply for authorisation by the FCA by 31 December 2021 for their benchmarks to continue to be used by UK supervised entities after this date.

FCA existing supervisory powers for critical benchmarks

255 Under the BMR, the FCA has an existing set of powers that apply where the administrator intends to cease providing a critical benchmark, or where that benchmark is at risk of becoming unrepresentative of the underlying market or economic reality the benchmark is intended to measure.

256 Where an administrator of a critical benchmark intends to cease providing the benchmark, the BMR requires the administrator to immediately notify the FCA, and submit an assessment within four weeks as to how the benchmark can either be transitioned to an alternative administrator or cease to be provided. The BMR also requires administrators of all categories of benchmark to publish the actions to be taken by the administrator in the event of changes to, or the cessation of, a benchmark.

257 Upon receipt of the assessment, the FCA must make its own assessment of how the critical benchmark is to be transitioned to a new administrator or cease to be provided. Following completion of this assessment, the FCA can compel the administrator to continue to publish the benchmark until it has been transitioned to a new administrator, it can be ceased in an orderly fashion or the benchmark is no longer deemed critical.

258 The FCA can compel the administrator to publish the benchmark for an "appropriate period", not exceeding a term of 12 months, which can be extended in further 12 month increments up to a maximum of five years.

259 Where a contributor to a critical benchmark intends to withdraw its submissions, the BMR also empowers the FCA to compel mandatory contributions to a critical benchmark, where the majority of contributors to the benchmark are UK supervised entities. If a supervised contributor to a critical benchmark intends to cease its submissions, it must notify the benchmark administrator, which is then required to inform the FCA without delay. The FCA can compel the supervised contributor to continue submitting input data to the benchmark for an initial period of up to four weeks from the date it is notified of the contributor's intention to withdraw. The benchmark administrator is then required to submit an assessment to the FCA on the capability of the benchmark to measure the underlying market or economic reality it seeks to measure, i.e. its representativeness, within fourteen days of the contributor sharing its intention to withdraw.

260 Upon receipt of the administrator's assessment, the FCA must then make its own assessment of the benchmark's representativeness. If the FCA considers that the representativeness of a critical benchmark is put at risk, it can compel a supervised entity, (including entities that do not contribute to the relevant benchmark), to contribute input data to the administrator for an appropriate period of time not exceeding 12 months, which be extended in further 12 months increments up to a maximum of five years. It can also require the administrator to change the methodology, code of conduct, or other rules of a critical benchmark in order to restore the representativeness of the benchmark where it assesses the benchmark's representativeness is "at risk." The BMR requires a benchmark administrator to cease providing an unrepresentative benchmark within "a reasonable time period."

261 Benchmark administrators of one or more critical benchmarks are also required to conduct a review of a critical benchmark's representativeness every two years and submit this assessment to the FCA. Upon receipt of this assessment, the FCA conducts its own biennial assessment of the critical benchmark. Where the FCA determines that the representativeness of the benchmark is at risk, then it has access to the same powers as described in paragraph 260.

262 Under Title IV, the BMR also empowers the FCA to suspend or withdraw the authorisation or registration of an administrator under specific circumstances. Where the FCA withdraws or suspends the authorisation of a benchmark administrator, it will update the FCA Benchmarks Register accordingly. UK supervised entities are only permitted to use UK-administered benchmarks in financial contracts or financial instruments, or to measure the performance of an investment fund where that benchmark is listed on the FCA Benchmarks Register, or is provided by an administrator who is listed on the FCA Benchmarks Register and is located in the UK.

Extension of Transitional Period for benchmarks with non-UK administrators

263 The EU BMR is a regulatory framework which places requirements on administrators, supervised contributors and supervised users of benchmarks. These requirements relate to benchmark methodology, governance and transparency. Most of the EU BMR has directly applied in the UK since 1 January 2018.

264 The UK made the necessary amendments under the EUWA to ensure the EU Regulation continued to operate effectively in the UK through the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/657). This legislation made amendments to the EU Regulation to address deficiencies and ensure that the existing regime could continue to operate effectively following the end of the Transition Period. The EU Regulation as amended and forming part of retained EU law is referred to as the BMR. The BMR took effect at the end of the Transition Period.

265 Article 51(5) of the BMR stipulates that benchmarks provided by an administrator located in a third country may not be used in new financial instruments, financial contracts or to measure the performance of an investment fund by UK supervised entities after the expiration of an initial transitional period unless they are approved through equivalence, recognition or endorsement and listed on the UK Benchmarks Register.

266 In September 2019, HM Treasury amended Article 51(5) to extend the transitional period for third country benchmarks from 31 December 2019 to 31 December 2022 through the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/1212). The Government is seeking a further extension to the transitional period for third country benchmarks through primary legislation. The Act will make further amendments to Article 51 to extend the transitional period for third country benchmarks to the end of 2025.

Access to Financial Services Markets

Market access arrangements for financial services between the UK and Gibraltar

267 Gibraltar is an Overseas Territory with internal self-government. Gibraltar was not a Member State of the EU in its own right. In EU law, Gibraltar was classified as a European Territory, whereby a Member State (the UK) was responsible for its external relations (Article 355(3) of the TFEU). It is through the UK's responsibility for its external relations that the TFEU applied to Gibraltar. EU law applied to Gibraltar by virtue of Gibraltar's own European Communities Act 1972 and, under the Withdrawal Agreement, EU law was applicable during the Transition Period. Gibraltar was also part of the EEA by virtue of Article 126 of the EEA Agreement.

Section 409 of FSMA regime under which Gibraltar firms and UK firms exercise deemed passport rights

268 Section 19 of FSMA prohibits the carrying on of regulated activities in the UK unless a person is an "authorised person" or is exempt. Normally, permission is granted by the FCA or the PRA under Part 4A of FSMA. Section 31(1) of FSMA lists other routes to authorised person status. While the UK was a member of the EU, and during the Transition Period, this included a route for EEA firms qualifying for authorisation under Schedule 3. This route has now been removed following the end of the Transition Period.

269 The EU passporting rights that Schedule 3 provided for did not apply between the UK and Gibraltar. To accommodate Gibraltar's unique situation, provision was made in FSMA in the form of section 409 to deal with matters concerning Gibraltar's status within the EEA.

270 The Gibraltar Order was subsequently made under the powers conferred on HM Treasury by section 409(1) and section 428(3) of FSMA. It allows certain types of authorised firms in Gibraltar to passport into the UK, as well as allowing the same types of authorised UK firms to passport into Gibraltar.

EU withdrawal

271 The Government made the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 to protect Gibraltar firms accessing the UK market from suddenly losing their access rights as a result of EU exit.

272 The preservation of market access rights under the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 was extended by 12 months by the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1274). These latter Regulations extend the transitional arrangements under Parts 2 and 3 of the 2019 Regulations, which enable specified categories of Gibraltar-based firms to provide financial services in the UK and facilitate the access by similar types of UK-based firms to Gibraltar's financial services market. The temporary arrangements will be in place until the permanent arrangements are delivered. The GAR is intended to supersede the temporary EU exit arrangements as a new permanent arrangement.

Gibraltar-specific regimes falling outside the Gibraltar Order

273 Not all Gibraltar-related legislative regimes are captured by the Gibraltar Order. For instance, the market access rights for Gibraltar payment service providers, payment institutions, authorised e-money institutions and registered account information service providers were provided for separately in domestically implemented EU legislation in the UK.

274 The preservation of Gibraltar-specific rights not captured by the Gibraltar Order was ensured through specific fixes made by a large number of EUWA statutory instruments, and by the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019. Of particular relevance is regulation 11 of this latter instrument, which sets out a 'general' or 'horizontal' fix by preserving the treatment of Gibraltar-based persons throughout a large number of pieces of legislation as it was at the end of the Transition Period.

275 Gibraltar-related legislative regimes not captured by the Gibraltar Order will fall outside the scope of the GAR. The Government seeks to deal with them through a delegated power for HM Treasury, which is described in the policy background section and in the commentary on provisions of the Act sections.

Overseas funds regime

276 Collective investment schemes are defined in section 235 under Part 17 of FSMA, and Part 17 also makes provision for the promotion of collective investment schemes in the UK.

277 Presently, authorised persons, as defined by section 31 of FSMA, are restricted from promoting participation in a collective investment scheme under section 238 of FSMA unless an exemption applies. There is an exemption for "recognised schemes" which are those overseas collective investment schemes recognised under either section 264 or section 272 of FSMA. Both section 264 of FSMA and section 272 therefore provide the current basis for authorised persons to promote participation in overseas collective investment schemes in the UK.

278 Section 264 of FSMA implemented the passporting regime under the UCITS Directive so that an EEA UCITS could be recognised to market in the UK, provided that the appropriate notice had been given to the FCA.

279 With the end of the Transition Period, section 264 of FSMA is repealed by the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/325) (Collective Investment Schemes (EU Exit) Regulations). EEA UCITS recognised under section 264 are no longer recognised schemes and the restriction on promotion under section 238 of FSMA applies.

280 However, Part 6 of the Collective Investment Schemes (EU Exit) Regulations provides for temporary recognition for EEA UCITS (or sub-funds of EEA UCITS) already marketing in the UK under section 264, including MMFs which use a UCITS structure, which will last for five years from the end of the Transition Period.

281 Temporary recognition can be granted to EEA UCITS which have given notice to the FCA and that satisfy the applicable conditions. If the applicable conditions are satisfied, an EEA UCITS will be a "recognised scheme" for the purposes of Part 17 of FSMA and therefore the exemption to the restriction on marketing under section 238(4) will continue to apply for the temporary period.

282 The Act contains a new category of recognised scheme which will be contained within Part 17 of FSMA for overseas collective investment schemes, established in both EEA and non-EEA, countries or territories.

283 The Act creates a new power for HM Treasury to make regulations approving a country or territory and to specify a description of schemes, subject to certain conditions. Collective investment schemes within those regulations can then apply for recognition to the FCA, following which they will be recognised schemes. The exemption to the restriction in marketing under section 238(4) will apply to these schemes as the definition of 'recognised schemes' under section 237(3) will be expanded to include schemes recognised through this new process.

284 Under the current legislative framework, overseas MMFs, which are a type of collective investment scheme, are not permitted to market in the UK unless the scheme falls within one of the exemptions set out in Article 4(1)(a) to (c) of Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds ('MMFR').

285 This Act inserts Article 4(1)(aa) into the MMFR to provide an exemption to overseas MMFs from a country or territory that have been approved by HM Treasury under the new Article 4A of the MMFR.

286 Article 4A sets out the test for equivalence, whereby HM Treasury by regulations under paragraph 1 determines that the law and practice of a country or territory imposes requirements on MMFs which have equivalent effect to the requirements imposed by the MMFR.

287 An individual MMF that is authorised and supervised in a country or territory that has been approved under Article 4A of the MMFR will be permitted to market in the UK once the financial promotion restriction under section 238 of FSMA has been lifted by recognition under section 271A or 272 or notification under the NPPR.

288 Section 272 allows the FCA to recognise individual schemes. This Act makes some amendments to the process for collective investment schemes recognised under section 272.

Markets in Financial Instruments Regulation

289 In 2018, the UK implemented Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments ("MiFID II"), which came into effect alongside MiFIR. MiFID II replaced Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, and together with MiFIR established a new framework for the regulation of investment firms and trading venues.

290 MiFIR Title 8 contains a market access regime, which enables investment firms from equivalent jurisdictions to provide cross-border services to per se professional clients and eligible counterparties.

291 Following the end of the Transition Period, MiFIR forms part of retained EU law and therefore continues to apply in the UK. HM Treasury has made the necessary changes under the EUWA to ensure that Title 8 continues to operate effectively following the end of the Transition Period in regulation 33 of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403). Under Title 8, HM Treasury is empowered to make an equivalence determination in favour of a third country. Following this determination, once certain other criteria have been met, firms from that third country which register with the FCA are permitted to provide investment services to per se professional clients and eligible counterparties in the UK without needing to be authorised to provide those investment services under Part 4A of FSMA.

Cancellation of permission to carry on regulated activity

Changes to the FCA's deauthorisation procedure

292 Firms are granted authorisation by the FCA to carry out a range of financial services activities through Part 4A of FSMA. The grounds for the FCA to cancel a firm's authorisation are set out in section 55J(1) of FSMA. This measure will add a new section 55JA of FSMA which introduces a new Schedule 6A, with the effect of providing the FCA with a new power to cancel or vary an authorisation.

Rules about the level of care provided by authorised persons

FCA rules about the level of care provided to consumers by authorised persons

293 The FCA has the power to make general rules applying to authorised persons. Under section 137A of FSMA the FCA may make such rules as appear to it to be necessary or expedient for the purpose of advancing one or more of its operational objectives.

294 In connection with these powers the Act requires the FCA to consult on the extent to which a duty of care, or other provision, would advance the FCA's consumer protection objective. The FCA's consumer protection objective, set out in section 1C of FSMA, is one of the FCA's three operational objectives. The consumer protection objective is defined as securing an appropriate degree of protection for consumers.

295 Other relevant provisions of FSMA are section 138D (action for damages) and section 206 (financial penalties).

Insider dealing and money laundering etc.

Amendments to the Market Abuse Regulation

296 The EU MAR is an EU regulation which came into effect on 3 July 2016, repealing and replacing Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse). The EU MAR broadened the scope of instruments covered by the market abuse framework, strengthening in particular the regime for commodity and related derivative markets. It explicitly bans the manipulation of benchmarks (such as the LIBOR) and reinforces the investigative and sanctioning powers of regulators.

297 Following the end of the Transition Period the EU Regulation forms part of retained EU law, by operation of the EUWA. The Market Abuse (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/310) deliver the necessary amendments to ensure that the EU Regulation continues to function appropriately and effectively following the end of the Transition Period. The EU Regulation as amended and forming part of retained EU law is referred to as the Market Abuse Regulation ('MAR').

298 The Act makes amendments to MAR. These mirror some of the changes the EU has made in EU Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets (known as the SME Growth Markets Regulation). The relevant changes took effect in EU law on 1 January 2021.

299 Article 18 of MAR contains the requirements on the preparation and maintenance of insider lists. The Act amends Article 18 to make clear that both issuers and any person acting on their behalf or on their account (such as advisers) are required to maintain their own insider lists.

300 Article 19 of MAR regulates transactions by persons discharging managerial responsibilities and those closely associated with them. The Act amends Article 19 to change the deadline by which issuers have to publicly disclose such transactions. The deadline will now be two working days after those transactions have been notified to the issuer, rather than three business days after the transaction itself.

Extending the maximum criminal sentence for market abuse

301 The criminal regime for insider dealing is in Part 5 of the Criminal Justice Act 1993. It contains three separate offences relating to (a) dealing in price-affected securities, (b) encouraging another to deal in price-affected securities, and (c) unlawful disclosure of inside information.

302 The penalty for conviction on indictment for the above insider dealing offences is set out at section 61(1)(b) of the Criminal Justice Act 1993. Each offence can be tried summarily or by indictment. Currently, the maximum sentence following conviction on indictment is seven years; the Act amends this to ten years.

303 The criminal regime for market manipulation is in sections 89-91 of the Financial Services Act 2012. It also contains three separate offences related to (a) making false or misleading statements, (b) creating false or misleading impressions, and (c) making false or misleading statements or creating a false or misleading impression in relation to specified benchmarks.

304 The penalty for conviction on indictment for the above market manipulation offences is set out at section 92(1)(b) of the Financial Services Act 2012. Each offence can be tried summarily or by indictment. Currently, the maximum sentence following conviction on indictment is seven years; the Act amends this to ten years.

Amendments to the Proceeds of Crime Act 2002 and Anti-Terrorism, Crime and Security Act 2001: Payment and E-Money Institutions

305 POCA provides the statutory basis for money laundering offences in the UK as well as the statutory basis for asset freezing, confiscation and civil recovery in the context of criminal finance. In regard to asset freezing and forfeiture, ATCSA provides for equivalent regimes in the context of terrorism financing.

306 The Act amends Part 7 of POCA to extend the threshold amount provisions to payment and e-money institutions. This will allow payment and e-money institutions in certain circumstances to continue to operate accounts by executing transactions below the threshold amount in certain circumstances without the need to seek consent in each case and without committing a principal money laundering offence.

307 The Act also amends POCA and ATCSA to ensure that accounts maintained by payment and e-money institutions are subject to the account freezing and forfeiture powers in Chapter 3B of Part 5 of POCA (in England and Wales and Scotland) and Part 4B of Schedule 1 to ATCSA (across the UK).

Amendments to the Sanctions and Anti-Money Laundering Act 2018

308 Section 49 of SAMLA has replaced section 2(2) of the ECA as the statutory power that will be used to impose and make changes to requirements in the UK's regulations on money laundering. This Act amends paragraph 22 of Schedule 2 to SAMLA to ensure that section 49 of SAMLA can be used to make regulations that relate to conduct by certain overseas trustees.

Debt Respite Scheme

Statutory debt repayment plan

309 Provision for the creation of a debt respite scheme (including Breathing Space and the Statutory Debt Repayment Plan (SDRP)) was made through sections 6 and 7 of the Financial Guidance and Claims Act 2018 (FGCA). Regulations to deliver the SDRP will be made under the FGCA.

310 The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 deliver the Breathing Space part of the scheme. These regulations came into force on 4 May 2021.

Help-to-Save

Successors accounts for Help-to-Save

311 The Help-to-Save scheme was established under the Savings (Government Contributions) Act 2017. Further details of the operation of Help-to-Save accounts, eligibility for an account and other matters were set out in the Help–to–Save Accounts Regulations 2018 (S.I. 2018/87) and in arrangements made between HM Treasury and HMRC, and the Director of Savings as the account provider.

312 Section 36 provides for HM Treasury to make regulations which set out the arrangements for successor accounts to matured Help-to-Save accounts. It specifies that the successor account can be a new or existing account, and sets out certain rights that Help-to-Save account holders will have in relation to the Director of Savings' power to transfer the balance in their matured Help-to-Save account to a successor account.

Miscellaneous

Regulated activities and application of Consumer Credit Act 1974

313 Prior to the transfer of consumer credit regulation to the FCA, consumer credit activities were subject to a licensing regime under the Consumer Credit Act 1974, and so required a licence from the Office of Fair Trading unless the activities were exempt.

314 When consumer credit was transferred to the FCA, a power was conferred on HM Treasury by section 107(6) of the Financial Services Act 2012 to allow the consumer protection regime imposed under the Consumer Credit Act to be amended to "fit" with the new regime under FSMA. This power is available in relation to activities for which a licence from the Office of Fair Trading was required under the previous regime, or those which were subject to a limited set of exemptions.

315 While this power is therefore available in relation to the vast majority of consumer credit activities currently regulated by the FCA, it is not currently available in relation to activities which were exempt under other provisions of the Consumer Credit Act 1974.

316 Section 37 modifies this power to extend it, and gives HM Treasury power to exclude provisions of the Consumer Credit Act 1974 from applying to activities which currently fall within the relevant exemptions in the Regulated Activities Order, either when they are brought within the scope of regulation or at any point thereafter.

317 The provisions of the Consumer Credit Act 1974 would otherwise apply to such activities, once brought within the scope of regulation, by virtue of section 8 of that Act (which defines consumer credit agreements by reference to those credit agreements regulated by the FCA as set out in Chapter 14A of Part 2 of the Regulated Activities Order).

Amendments to the PRIIPS Regulations

318 The EU PRIIPs Regulation is an EU Regulation that, where not directly applicable, was implemented into UK law by the Packaged Retail and Insurance-based Investment Products Regulations 2017 which entered into force on 1 January 2018. Following the end of the Transition Period, the PRIIPs Regulation forms part of retained EU law in the UK. The Government made the necessary amendments to ensure that the Regulation continues to operate effectively in the UK, in the Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019, using powers under the EUWA.

319 The PRIIPs Regulation is supplemented by Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents. Following the end of the Transition Period, the FCA is empowered to update and amend the regulatory technical standards.

Retention of personal data under the Market Abuse Regulation

320 The legal background relevant to MAR more broadly is explained in paragraphs 296 and 297.

321 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ('EU GDPR') is an EU regulation which came into effect from 25

May 2018, repealing and replacing Directive 95/46/EC of the European Parliament and of the Council of 24 October 2005 (General Data Protection Regulation). The EU GDPR set out the key principles, rights and obligations for most processing of personal data in the EU.

322 Following the end of the Transition Period the EU GDPR forms part of retained EU law, by operation of the EUWA. The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419) deliver the necessary amendments to ensure that the EU Regulation continues to function appropriately and effectively following the end of the Transition Period. The EU Regulation as amended and forming part of retained EU law is referred to as the GDPR.

323 Alongside the GDPR, the DPA 2018 sets out the data protection framework in the UK. It contains three separate data protection regimes: a general processing regime (the GDPR); a separate regime for law enforcement authorities; and a separate regime for the three intelligence services.

324 The Act amends Article 28 of MAR. Article 28 of MAR appears in Chapter Four of MAR, which makes provision for co-operation, professional secrecy and data protection by the FCA. Article 28 provides that nothing in MAR authorises the FCA to disclose personal data in a way that would contravene any provision of the GDPR or theDPA2018.

325 In particular, Article 5(1)(c) of the GDPR requires that personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed: this is known as the principle of 'data minimisation'.

326 Personal data is not defined in MAR, but the Government considers that the correct definition of personal data for these purposes is that contained within the GDPR Article 4(1), that is "any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person".

Over the counter derivatives: clearing and procedures for reporting

327 EMIR, as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (EMIR REFIT) and Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs (EMIR 2.2), is the main measure regulating the OTC derivatives market. EMIR is further implemented through technical standards.

328 EMIR was in most part a directly applicable piece of EU legislation in UK law. Where not directly applicable, EMIR was implemented in UK law through primary and secondary legislation. The main pieces of UK legislation implementing EMIR are the FSMA, the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 and the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013. By operation of the EUWA, following the UK's withdrawal from the EU, and at the end of the Transition Period, EMIR formed part of retained EU law. Five main statutory

instruments made under the EUWA have further addressed deficiencies in EMIR arising from the UK's withdrawal from the EU (the Central Counterparties (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1184); the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2019/1318); the Over the Counter Derivatives; Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335); The Securitisation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/660); the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1416)).

329 These include passing the whole of the supervision and regulation of EMIR-regulated entities to the UK regulators, which are also delegated the power to adopt technical standards implementing the EMIR framework whose adoption is delegated in EMIR to the European Commission (see Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115) and Chapter 2A of Part 9A of FSMA). The Act measure adds to the EMIR framework by introducing two technical improvements. The FCA is empowered to adopt implementing rules for both provisions.

Regulations about financial collateral arrangements

330 HM Treasury made the FCARs in order to implement FCAD. Such regulations were made using the powers in section 2(2) of the ECA. HM Treasury applied the FCARs to a broader class of persons than FCAD.

331 The question of the ability of HM Treasury to make the FCARs in the way it did has been raised in litigation on two occasions: R(on the application of Cukurova Finance International Limited and Cukurova Holding AS) v HM Treasury and Alfa Telecom Turkey Limited [2008] EWHC 2567 (Admin) (29 September 2008) and *The United States of America v Nolan* [2015] UKSC 63. This raised the prospect of a UK Court determining that HM Treasury had exceeded its powers under section 2(2)(b) of the ECA when making the FCARs. Such a decision would put in question the lawfulness of the FCARs and in turn the validity of certain financial collateral arrangements made in reliance on the FCARs.

332 Section 38 confirms the validity of the FCARs and the financial collateral arrangements made in reliance on them. By confirming the validity of the legislation in this way, Parliament will remove any question around the lawfulness of the FCARs and such financial collateral arrangements. This retrospective effect removes doubt for existing contracts which were outside the scope of FCAD.

333 A secondary part of the Section looks at the Parliamentary procedure for making future regulations in this area. At present, such regulations would be made pursuant to section 256 of the Banking Act 2009. This requires that the "made affirmative" procedure is used. This means that any regulations would be legally in force once made but would require approval by both Houses of Parliament within 28 days of the making of the regulations, to keep them in force. This procedure is usually associated with urgent legislation. Accordingly, this section will amend the procedure to the more common "draft affirmative" procedure, which means any regulations will be in force once approved by resolution of both Houses of Parliament.

Appointment of the Chief Executive of the FCA

334 Currently, the statute law governing regulatory appointments does not state a fixed term period for the FCA Chief Executive. Paragraph 2(2) of Schedule 1ZA to FSMA provides that the FCA Board shall be comprised of various persons, including at sub-paragraph (2)(b) "a chief executive appointed by HM Treasury."

335 Paragraph 3(1) of Schedule 1ZA provides that the terms of service of the "appointed members" – including, courtesy of paragraph 2(6), the FCA Chief Executive – are to be determined by HM Treasury. Paragraph 3(1) provides HM Treasury with clear express power to specify a term length for the chief executive.

336 Section 39 makes an amendment to Schedule 1ZA to insert a provision to make the appointee to the role of the FCA Chief Executive subject to a fixed five-year term.

337 The provision makes express that the term may be renewed, but not more than once (so that an appointee may be in role for a maximum of 10 years).

Payment services and the provision of cash

338 Part 1 of Schedule 1 to the PSRs sets out the activities that constitute payment services for the purposes of those regulations, when carried out as a regular occupation or business activity. This includes services enabling cash withdrawals from a payment account and all of the operations required for operating a payment account. Cashback without purchase is therefore a payment service under these regulations.

339 Part 2 of Schedule 1 to the PSRs sets out activities which do not constitute payment activities for the purposes of those regulations. This includes services where cash is provided by the payee to the payer as part of a payment transaction for the purchase of goods and services. This is commonly known as 'cashback with a purchase'.

Territorial extent and application

340 Section 48 sets out the territorial extent of the Act, that is the jurisdictions which the Act forms part of the law of; application refers to where it has practical effect. Financial services is a reserved matter in the UK and the majority of the Act extends to England and Wales, Scotland and Northern Ireland, with two exceptions. First, section 35 (1), (2) and () (debt respite scheme) extend to England and Wales only and section 35(3) extends to England and Wales and Northern Ireland only; Scotland has its own statutory debt respite scheme. Second, paragraph 14(4) of Schedule 12 extends only to Northern Ireland, as provided in section 48(3). The application of all sections is the same as their extent.

341 Section 33 and Schedule 12 (forfeiture of money: e-money institutions and payment institutions) make amendments to POCA regarding civil recovery, asset freezing and forfeiture. The amendments cover the proceeds of both reserved and devolved offences. For Scotland, such provision falls within devolved legislative competence to the extent that it relates to the proceeds of devolved offences. While the territorial extent and application of the amendments to POCA in Schedule 12 includes Northern Ireland, those amendments do not substantively change the legal position that will apply in Northern Ireland under the relevant POCA provisions once they are commenced in Northern Ireland. As such, the amendments do not fall within the legislative competence of the Northern Ireland Assembly.

342 Section 44 provides that the power under section 79(10) of the Criminal Justice Act 1993 may be used to extend to British overseas territories the amendments to the Act made by section 30, and the power under section 430(3) of FSMA may be used to extend FSMA amendments or repeals to the Channel Islands or Isle of Man.

343 See the table in Annex A for a summary of the position regarding territorial extent and application in the UK.

Commentary on provisions of Act

Part 1: Prudential regulation of credit institutions and investment firms

Section 1: Exclusion of certain investment firms from the Capital Requirements Regulation

344 This section limits the CRR's application to credit institutions and PRA-designated investment firms, thereby removing non-designated investment firms from the scope of the CRR, such that they can then be within scope of the IFPR.

345 The section defines "designated investment firm" and "FCA investment firm". Through its designation procedure, the PRA will continue to be able to bring an FCA investment firm under PRA supervision, to be subject to the CRR. This section however specifies that procedure cannot be used for the categories of firms described in point (2AA) (a)-(c) of Article 4 of the CRR who, from implementation of the IFPR regime, will only therefore be supervised and regulated by the FCA.

Section 2: Prudential regulation of certain investment firms by FCA rules

346 This section gives effect to Schedule 2 which sets out requirements on the FCA when making rules for the IFPR transitional provisions, and amendments to FSMA.

Section 3: Transfer of certain prudential regulation matters into PRA rules

347 This section enables HM Treasury to revoke existing prudential regulation contained in the CRR, thereby allowing the PRA to make rules on these matters.

348 Subsection (1) provides HM Treasury with the power to revoke provisions of the CRR through regulations. This includes the ability to revoke instruments made under the CRR such as EU tertiary legislation and associated UK legislation, to which the necessary changes have been made under the EUWA to ensure that the legislation continues to operate effectively following the end of the Transition Period.

349 Subsection (2) restricts the extent to which this power to revoke can be exercised, by listing the matters which can be revoked in subsection (2)(a) - (p). This list of matters includes areas of the CRR that need to be updated to reflect the latest Basel reforms (including large sections where the changes stemming from the current Basel standards are substantial).

350 Subsection (2)(a) relates to Common Equity Tier 1. Common Equity Tier 1 is the highest quality of regulatory capital as it absorbs losses immediately when they occur. It is mainly made up of common shares issued by a credit institution, retained earnings and/or other income and disclosed reserves.

351 Subsection (2)(b) relates to the Standardised Approach to Credit Risk (SACR). Credit risk is the risk of a loss resulting from a borrower failing to repay a loan or meet contractual obligations. Credit risk accounts for the majority of most credit institutions' exposure to potential losses, and therefore is usually the largest component of their regulatory capital requirements. SACR is one of the methods that credit institutions can use to calculate credit

risk capital requirements. It typically does not require credit institutions to estimate the level of risk associated with an individual exposure – instead, they apply standard risk weightings (i.e. percentages of exposure). The risk weightings in SACR are set out in law for each exposure type (e.g. residential mortgages).

352 Subsection (2)(c) relates to classification of off-balance sheet items. Off-balance sheet items refer to activities that are effectively assets or liabilities of a credit institution but do not appear on that credit institution's balance sheet. Annex I of the CRR currently sets out the level of risk that should be associated with different off-balance sheet items. These may need to be revoked to allow the PRA to implement the latest Basel standards for SACR.

353 Subsection (2)(d) relates to the Internal Ratings Based (IRB) Approach to Credit Risk. The IRB approach allows credit institutions to use their own estimates of risk parameters (e.g. the probability that a borrower may default), for the purpose of calculating credit risk capital requirements. The IRB approach was introduced as part of Basel II, but the global financial crisis highlighted a number of shortcomings in its use, which Basel III and 3.1 seek to address.

354 Subsection (2)(e) relates to credit risk mitigation (CRM). CRM techniques allow credit institutions to reduce the credit risk of exposures, and therefore reduce the amount of capital required to be maintained against such exposures. Government guarantees supporting Bounce Back Loans are an example of CRM.

355 Subsection (2)(f) relates to counterparty credit risk. Counterparty credit risk (CCR) is the risk that a counterparty to a transaction might not perform its contractual obligations before the transaction's cash flows are settled. CCR capital requirements cover both current exposures and estimates of potential future exposures on these transactions. Post-financial crisis, the BCBS strengthened its framework for CCR for securities financing transactions (e.g., repos and reverse repos) and derivatives.

356 Subsection (2)(g) relates to operational risk, which is the risk of loss resulting from inadequate or failed processes, people and systems or from external events. The financial crisis highlighted two main shortcomings with the existing operational risk framework. First, capital requirements for operational risk proved insufficient to cover operational risk losses incurred by some credit institutions. Second, the nature of these losses – covering events such as misconduct, and inadequate systems and controls – highlighted the difficulty associated with using internal models to estimate capital requirements for operational risk. The BCBS has streamlined the operational risk framework to address these shortcomings (which the PRA have previously addressed through additional capital requirements).

357 Subsection (2)(h) and (i) relates to market risk. Market risk is the possibility of credit institutions experiencing losses due to adverse price movements (e.g. in equity, bond or commodity prices, interest rate moves or exchange rates). Market risk is the third largest contributor to RWAs for a typical commercial bank, after credit risk and operational risk, but is typically a larger contributor of RWA for investment banks and investment firms. Credit institutions are able to use standardised or internal model-based approaches. The BCBS changes address deficiencies in the design and calibration of market risk calculations, which were identified following the financial crisis.

358 Subsection (2)(j) relates to credit valuation adjustment risk (CVA): the risk of loss on counterparty exposures that occur as a result of a deterioration in the credit worthiness of the counterparty. This was a major source of losses for firms during the global financial crisis, exceeding losses arising from outright defaults in some instances. The initial phase of Basel III reforms introduced a capital requirement for CVA risk. This approach has since been revised

by BCBS to enhance its risk sensitivity, strengthen its robustness by removing the use of internal models for this risk, and improve its consistency with approaches used in the revised market risk framework.

359 Subsection (2)(k) relates to large exposures: these requirements are intended to address concentrated exposures, which could result in credit institutions suffering significant losses caused by the sudden default of a large individual counterparty or a group of connected counterparties. In April 2014, the BCBS published a final standard for measuring and controlling large exposures.

360 Subsection (2)(l) relates to liquidity requirements: adequate liquidity helps ensure credit institutions are able to meet both short-term and long-term financial obligations when shocks occur. The difficulties experienced by some credit institutions during the global financial crisis arose from failures to observe the basic principles of liquidity risk management. In response, in 2008 the BCBS published Principles for Sound Liquidity Risk Management and Supervision ('Sound Principles'), which has since been supplemented by specific measures:

a. the Liquidity Coverage Ratio (LCR) which aims to ensure that credit institutions have sufficiently high-quality liquid assets to survive a significant stress scenario lasting for 30 days; and

b. the Net Stable Funding Ratio (NSFR) which requires credit institutions to fund their activities with sufficiently stable sources of funding, measured over a one-year timeframe, in order to mitigate the risk of future funding stress.

361 Subsection (2)(m) relates to the leverage ratio. An underlying cause of the global financial crisis was the build-up of excessive on- and off-balance sheet leverage in the banking system. The ensuing deleveraging process at the height of the crisis created a vicious circle of losses and reduced availability of credit in the real economy. The Basel III framework introduced a simple, transparent, non-risk-based leverage ratio, designed to reduce the risk of such periods of deleveraging in the future (and the damage they inflict on the broader financial system and economy). The leverage ratio supplements the risk-based capital requirements, by acting as a non-risk-based backstop: in essence, the leverage ratio limits a credit institution's capital to a proportion of its on-balance sheet assets and certain off-balance sheet exposures.

362 Subsection (2)(n) relates to reporting requirements. Credit institution are required to provide information to the PRA regarding their assets, risks and exposures, enabling it to assess and supervise appropriately, including assessing risks in the credit institutions' internal models. Basel III and 3.1 include a number of updates to prudential rules, which will flow through to changes in the data/outputs that competent authorities collect from credit institutions, and therefore to reporting requirements.

363 Subsection (2)(o) relates to disclosure requirements: another core component of the Basel framework is the requirement for credit institutions to publicly disclose relevant financial information, in order to support effective market discipline, often referred to as "Pillar 3". This disclosure of information enhances transparency, thereby acting as an incentive on credit institutions to conduct their business in a safe, sound and efficient manner. Since Basel II, the BCBS have released four updates to the disclosure framework, in 2015, 2017 and two in 2018. These updates are required to align disclosure requirements with the latest Basel standards.

364 Subsection (2)(p) allows HM Treasury to revoke other matters in the CRR that are contained in the "CRR Basel standards", meaning outstanding Basel standards that have not yet been implemented in the UK, as defined in section 4. This power is subject to specific conditions as set out in subsections (8)-(9). This is designed to safeguard the Government against the small

risk that the concepts defined in subsection (2)(a)-(o) do not adequately capture all outstanding elements of the Basel Framework, for example if the BCBS publish new standards which are not listed in section 4.

365 Subsections (3) and (5) allow HM Treasury to revoke further areas of the CRR if they are connected to the matters listed in subsection (2), where they consider it necessary or desirable to do so in order to maintain or improve the coherence of the prudential regime. This will help HM Treasury and the PRA to minimise the impacts on credit institution having to refer to both retained EU law and the PRA rulebook, by enabling HMT to revoke other Articles of the CRR, which are not strictly the subject of the matters specified in subsection (2), where it would help ensure a more coherent rulebook.

366 Subsection (4) sets out the conditions required in order for any revocations made in regulations by HM Treasury to become effective. The provisions can be revoked if either a) the provision will be replaced in PRA rules or b) it is appropriate for the provision not to be replaced. This aims to avoid any possibility of a gap in the prudential framework between the application of the deletions and the PRA exercising its general rule-making power.

367 Subsection (6) enables HM Treasury to make different provision for different purposes, for example different provision in relation to different classes of person or transaction.

368 Subsection (7) ensures that regulations made by HM Treasury are subject to the affirmative procedure.

369 Subsection (8) requires HM Treasury to demonstrate to Parliament how revocations that rely on subsection (2)(p) are connected to the CRR Basel standards, which are explained in section 4.

370 Subsection (9) ensures revocations made under (2)(p) can be made by virtue of the subject matter contained in the CRR Basel Standards, including where the application of that subject matter is an adapted version of the subject matter. This is intended to account for the fact that the BCBS sets standards for internationally active banks but in the UK, prudential requirements stemming from Basel are currently applied to all credit institutions, including e.g. smaller banks and building societies that focus on domestic lending. Therefore, subsection (9) allows for revocations of CRR requirements to be made which apply to firms that are not strictly the subject of Basel, e.g. smaller banks and building societies.

371 Subsection (10) is self-explanatory

372 Subsection (11) is self-explanatory.

Section 4: CRR Basel standards

373 Subsection (1) defines the concept of a "CRR Basel Standard", which means those Basel standards relevant to this Act. Since 2010, the BCBS has published the Basel III framework, as finalised by Basel 3.1. Some of the standards from these publications have been partially implemented in the UK.

374 The standards in scope of the CRR Basel Standards, and therefore relevant to this Act, are those contained in the publications listed in subsection (2) which have not yet been implemented in the UK.

375 Subsection (3) ensures that future BCBS publications fall in scope of the CRR Basel standards. Currently, the latest recommended implementation date of the finalised Basel standards is 1 January 2023, which has been postponed by one year. Any forthcoming publications by the

BCBS that share this implementation date, or any later implementation date if it is postponed again, are also included in the definition of CRR Basel standards. This would, for example, include publications by the BCBS on the capital treatment of securitisation of non-performing loans, which are expected to be forthcoming.

376 Subsection (4) explains that a recommended standard is not a CRR Basel standard if it has already been implemented in statute or through PRA rules immediately before the day on which this Schedule comes into force. This contributes to the intention of this Act that it is for the implementation of outstanding Basel standards only.

377 Subsection (5) is self-explanatory.

Section 5: Prudential regulation of credit institutions etc. by PRA rules

378 Subsection (1)(a) inserts a new Part 9D into FSMA, which is set out in Part 1 of Schedule 3. More specifically, Part 9D sets out the enhanced accountability framework that the PRA must have regard to when implementing the outstanding elements of the Basel standards in its rules, as well as additional obligations on the PRA. In Schedule 3, HM Treasury also has a specific power to make amendments to primary and secondary legislation that is consequential on the rules made by the PRA.

379 Subsection (1)(b) deals with amendments to the PRA's power to make rules over approved holding companies in Part 12B FSMA. Subsection (1)(c) deals with minor and consequential amendments to legislation made in relation to this rule-making power, as set out in Part 3 of Schedule 3.

380 Subsection (1)(d) deals with the transitional treatment of PRA rules made before these new requirements come into effect (as set out in Part 4 of Schedule 3).

381 Subsections (2), (3) and (4) support the integration of PRA rules with the CRR and support additional transparency in relation to how revoked provisions relate to PRA rules.

382 Subsections (5) to (7) are self-explanatory.

Section 6: Power to amend the Credit Rating Agencies Regulation

383 Subsection (1) provides a specific power to HM Treasury to make regulations to amend Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (the Credit Rating Agencies Regulation) in order to implement changes to the use and issuance of credit ratings in line with CRR Basel standards, as defined in section 4.

384 Subsection (2) ensures that regulations may also include consequential amendments.

385 Subsection (3) applies the affirmative procedure to the regulations.

386 Subsection (4) is intended to account for the fact that the BCBS sets standards for internationally active banks but, in the UK, prudential requirements stemming from Basel are applied to all credit institution, including e.g. smaller banks and building societies that focus on domestic lending. Therefore, subsection (4) allows for any requirements which may be set as a consequence of amendments to the Credit Rating Agencies Regulation to continue to apply not just to those firms which are the subject of Basel.

387 Subsection (5) is self-explanatory.

Section 7: Amendments of the Capital Requirements Regulation

388 This section gives effect to Schedule 4 which makes limited amendments to the CRR relating to requirements contained in the Basel III standards.

Part 2: Benchmarks

Section 8: Review of which benchmarks are critical benchmarks

389 This Section makes changes to Article 20 (critical benchmarks: conditions and other matters and Article A20 (review of critical benchmarks) of the BMR.

390 Subsection (1) provides that Article 20 is amended in accordance with subsections (2)-(5).

391 Subsection (6) makes amendments to Article 20(1) regarding the criteria for determining critical benchmarks. The changes have the effect of enabling the designation of a benchmark as critical where the benchmark has appropriate market-led substitutes, but where it is not reasonably practicable for one or more users of the benchmark to switch onto such appropriate market-led substitutes, and the benchmark also meets the criterion for a critical benchmark established in Article 20(1)(c)(iii). Subsection (6) also contains additional consequential changes.

392 Subsections (2)-(5) make consequential changes to Article A20, which concerns the review of critical benchmarks which the FCA is required to conduct in line with criteria set out in Article 20.

Section 9: Mandatory administration of a critical benchmark

393 This section makes changes and introduces new provisions under Article 21(3) of the BMR in relation to the FCA powers to mandate an administrator to continue providing a critical benchmark under certain conditions where the administrator gives notice to cease providing the benchmark.

394 It amends Article 21(3) to extend the maximum period for which the FCA may compel the administrator to continue to publish the benchmark to 10 years.

395 It introduces new paragraphs 3A, 3B and 3C under Article 21. These provisions require the FCA to conduct an assessment of the benchmark's capability to measure the underlying market and economic reality, once the FCA decides to mandate administration of a critical benchmark under Article 21(3). The FCA is required to conduct the assessment and issue a written notice on the outcome of its assessment to the administrator within the time period specified in this paragraph.

Section 10: Prohibition on new use where administrator to cease providing critical benchmark

396 This section introduces new Article 21A of the BMR. It gives the FCA power to prohibit "new use" of a critical benchmark where the FCA has completed its assessment of the administrator's plans to cease providing the benchmark under Article 21(2).

397 The FCA may, by publishing a notice, prohibit some, or all new use of the benchmark by supervised entities. Paragraph (2) defines what constitutes "new use". What constitutes "new use" is different for different categories of use of the benchmark. Broadly however, "new use" consists of creating new financial instruments or contracts that reference the benchmark after the date of the prohibition, or using the benchmark in existing contracts, instruments or funds after the date of the prohibition where the contract, instrument or fund did not reference the benchmark before the date of the prohibition.

398 Paragraph (3) requires that the FCA can only exercise this power if it advances either or both of its statutory objectives of consumer protection and market integrity. Paragraph (4) allows the FCA to consider the effect the exercise of this power outside the UK (among other things).

399 Paragraphs (5)-(9) set out requirements for the content and publication of the FCA's notice. The FCA will need to give reasons for the prohibition in the notice and may make different provisions for different purposes. The FCA is also required to publish its notice in the way best calculated to bring it to the attention of supervised entities and the public. Paragraph (8)(b) also permits the FCA to charge a reasonable fee for providing a person with a copy of a notice published under this Article.

Section 11: Assessment of representativeness of critical benchmarks

400 This section introduces new definitions and provisions in the BMR. Subsection (1) introduces new definitions to Article 3. Subsection (2) introduces two new provisions: Article 22A and Article 22B, which relate to the assessments of critical benchmarks conducted by the administrator and the FCA respectively.

401 Article 3 provides definitions for the purpose of the BMR. This includes the definition of a 'supervised entity'. Subsection (1) of this section introduces two new definitions, 'supervised third country contributor' and 'supervised third country entity'. These definitions capture specified kinds of third country contributors and entities. They are then brought within the scope of certain BMR provisions.

402 Subsection (2) of this section introduces new Article 22A. This sets out requirements which apply to administrators to assess the representativeness of certain kinds of critical benchmarks (which are not Article 23A benchmarks as provided for in section 14 in certain circumstances as specified in Article 22A).

403 Article 23 of the BMR contains provisions relating to the assessment of the representativeness of critical benchmarks by administrators and the FCA. Article 23 applies to critical benchmarks which are based on submissions from contributors, the majority of which are supervised entities. New Article 22A largely replicates Article 23 (with some amendments) and introduces new provisions. It requires the administrator of a critical benchmark based on contributions from supervised entities or supervised third country entities (and which is not an Article 23A benchmark) to conduct an assessment of the representativeness of the benchmark at least biennially; upon written notice from the FCA (where the FCA have concerns with the representativeness of the benchmark); and where a supervised contributor or a supervised third country contributor gives notice of its intention to cease contributing input data. The period between a contributor providing notice and ceasing to contribute input data should be no less than 15 weeks. The administrator will need to submit its assessment to the FCA within a time period specified in Article 22A, if the assessment is triggered by a contributor's notice to cease contribution.

404 Article 22A(9) requires that during the assessment period (as defined), the administrator must not change the market or economic reality intended to be measured by the benchmark, unless the FCA gives its written permission to do so.

405 Subsection (2) of this section also introduces new Article 22B, which sets out requirements which apply to the FCA, to assess the representativeness of critical benchmarks in the circumstances specified in this Article.

406 Article 22B replicates and amends relevant provisions in Article 23 as well as introducing new provisions. It requires the FCA to conduct its own assessment upon receiving the administrator's assessment under Article 22A and to issue a written notice to the administrator setting out the outcome of its assessment. The FCA may conduct its own assessment if it does not receive the administrator's assessment within the time period specified under Article 22A. In the circumstances where a supervised contributor gives notice of its intention to cease contributing input data under Article 22A, the FCA must complete its assessment, and issue a notice to the administrator within a time period specified under Article 22B(4).

Section 12: Mandatory contribution to critical benchmarks

407 This section makes several amendments to Article 23 of the BMR regarding the mandatory contribution to critical benchmarks.

408 Subsection (2) omits those provisions under existing Article 23 that are replicated, with amendments, in section 11 (assessment of representativeness of critical benchmarks).

409 Subsection (3) introduces new paragraphs 5A and 5B under Article 23. Paragraph 5A clarifies that a contributor which gives notice to cease contributing under Article 22A may not cease contribution until the end of its notice period (which is a minimum of 15 weeks) unless the FCA gives its written permission to do so. Paragraph 5B clarifies that the imposition of the notice period does not require the relevant contributor to trade or commit to do so during the notice period.

410 Subsections (4)-(9) amend existing Article 23(6) and introduce new provisions. Subsection (4) clarifies that the FCA may use its existing compulsion power under Article 23(6) over contributors if the FCA gives a notice to the administrator of a critical benchmark under Article 21(3B)(a) or Article 22B(3)(a). Subsection (7) introduces new paragraph 6A which clarifies that, in exercising its power to mandate contribution to a critical benchmark under Article 23(6), the FCA may only do so in order to maintain, restore or improve the representativeness of the benchmark. These amendments also provide that the FCA can exercise its compulsion power over a supervised third country entity. Subsection (10) introduces new paragraph 9A under Article 23. It clarifies that once a benchmark is designated by the FCA as an Article 23A benchmark, contributors to that benchmark are no longer subject to the FCA's compulsion power under Article 23(6) in order to restore the representativeness of the benchmark.

411 Subsection (11) clarifies the calculation of the five-year period under Article 23, which is the maximum period that the FCA can mandate contribution to a critical benchmark.

Section 13: Designation of certain critical benchmarks

412 This section gives the FCA the power to designate a critical benchmark under new Article 23A of the BMR, where the FCA has given notice to an administrator under Article 21(3B)(a) or Article 22B(3)(a) that the benchmark is unrepresentative, or its representativeness is at risk. The FCA may not designate a benchmark as an Article 23A benchmark if the conditions specified in paragraph 2 of Article 23A are met.

413 Paragraph 3 of new Article 23A requires the FCA's notice of its intention to designate a benchmark under this Article to set out the reasons for its decision, and to give the administrator the option to make representations. The administrator may make representations to the FCA within a time period specified in this paragraph.

414 Paragraph 4 requires the FCA to give written notice to an administrator once it decides to designate a benchmark under Article 23A. Paragraph 5 sets out what the notice must contain. These include the reasons for the designation and when the designation takes effect.

415 Paragraph 6-7 allow the FCA to change the date that the designation takes effect to a later date, provided that the designation has not come into force, and what information the FCA must provide by way of notice if it decides to change the date of the designation.

416 Paragraph 8 allows the FCA to withdraw the designation notice issued under paragraph 5 if the designation has not come into effect and the FCA wishes to issue another designation notice. Paragraph 9 sets out what the FCA's notice of withdrawal of designation must include.

417 Paragraph 10 provides that the FCA may take into account different processes, including that of the Upper Tribunal, when determining the effective date of the designation. It also requires the FCA to publish its designation notice before it comes into effect. Paragraph 11 requires the FCA to provide a copy of its notice to HM Treasury, and permits the FCA to charge a reasonable fee for providing a person with a copy of a notice published under this Article.

418 Paragraph 12 allows the administrator to refer the FCA's designation decision under paragraph 4 to the Upper Tribunal. Paragraph 14 clarifies what the reference to an 'Article 23A benchmark' means in the BMR.

Section 14: Use of Article 23A benchmarks

419 This section introduces two new provisions in the BMR, Articles 23B and 23C, which relate to the use of a benchmark once it is designated as an Article 23A benchmark.

420 Paragraph 1 of Article 23B provides that all use by supervised entities of an Article 23A benchmark will be prohibited, except where the FCA makes exemptions under paragraph 2 of Article 23B(2) or Article 23C.

421 Paragraph 2 requires the FCA to publish a notice before the Article 23A designation takes effect, if it intends to delay the prohibition in paragraph 1 until a specified date. The specified date must be before the end of the period of four months beginning with the day on which the Article 23A designation takes effect.

422 Paragraph 4 requires that the FCA must publish the notice in a way that is best calculated to bring it to the attention of supervised entities, as well as the public.

423 Paragraph 5 permits the FCA to charge a reasonable fee for providing a person with a copy of a notice published under this Article.

424 Article 23C paragraphs 1-3 grant the FCA the power to specify and permit certain legacy use by supervised entities of an Article 23A benchmark. The FCA may alter or withdraw its permission by issuing a notice.

425 Paragraph 4 requires that the FCA may only give, alter or withdraw permission for legacy use if it advances either or both of its statutory objectives of consumer protection and market integrity. The FCA may also consider the likely effect outside the UK of the exercise of the power, as per paragraph 5.

426 Paragraphs 6-9 sets out requirements regarding the content and publication of the notice. Paragraph 10 defines what "legacy use" is, which is use of the benchmark that is not "new use", which has the same meaning as under Article 21A(2), in connection with a prohibition that has been imposed under Article 23B.

427 Article 23C(9)(b) also permits the FCA to charge a reasonable fee for providing a person with a copy of a notice published under this Article.

Section 15: Orderly cessation of Article 23A benchmarks

428 This section introduces a new provision, Article 23D of the BMR, which gives the FCA the powers to wind down a critical benchmark in an orderly fashion once it has been designated as an Article 23A benchmark. This section also introduces a new provision Annex 4 which gives the FCA the power to modify certain provisions of the BMR as they apply to the administrator of an Article 23A benchmark once it has been designated as such.

429 Paragraph 2 of Article 23D sets out that the FCA may, by issuing a notice, require the administrator to change how a critical benchmark is determined, including in relation to input data and the rules of the benchmark. Paragraph 8 further clarifies that the administrator may not change anything described in paragraph 2 unless it is required or permitted to do so by the FCA.

430 Paragraph 3 sets out the conditions under which the FCA may exercise its powers under paragraph 2. The FCA may only exercise its powers if the FCA considers it appropriate to do so, having regard to the desire to secure an orderly wind-down of a critical benchmark and if it advances one or both of the FCA's statutory objectives of consumer protection and market integrity. Paragraph 4 allows the FCA to consider the likely effect of the FCA's exercise of the power outside the UK.

431 Paragraph 5 further specifies the scope of the FCA's powers under paragraph 2. This includes a power to vary or withdraw a requirement on the administrator from time to time.

432 Paragraph 6 makes clear that the FCA's powers under paragraph 2 are not limited by the market or economic reality that was intended to be measured by the benchmark immediately before it became an Article 23A benchmark, but the FCA may have regard to that when exercising its powers.

433 Paragraphs 7, 9 and 10 set out requirements for the content and publication of the notice under paragraph 2 and permits the FCA to charge a reasonable fee for providing a person with a copy of a notice. The notice must give reasons for the FCA's decision to exercise its Article 23D(2) power and how the FCA will exercise its power.

434 Paragraph 11 provides that the BMR applies to Article 23A benchmarks with modifications referred to in Annex 4.

435 Annex 4, paragraph 2, specifies how Article 11(1) regarding input data and Article 27(1) regarding the content of the benchmark statement will be modified for the purposes of administrators of Article 23A benchmarks.

436 Annex 4, paragraph 3, grants the FCA the power to apply the BMR to an Article 23A benchmark (with further, specific modifications) where it considers it appropriate to do so having regard to the effects of the designation under Article 23A, or the FCA's exercise of its powers under Article 23D(2) (or both).

437 Annex 4, paragraph 4, requires the FCA to inform the administrator by written notice of any modifications it proposes to apply. Paragraph 5 sets out requirement for the notice. It must allow the administrator to make representations to the FCA within the time period specified in paragraph 5.

438 Annex 4, paragraph 6, requires the FCA to issue a written notice to the administrator regarding its final decision to apply any modifications, having engaged with the administrator, as provided under paragraph 5. Paragraphs 7-9 set out requirements as to the content and publication of the FCA notice as required under paragraph 6.

439 Annex 4, paragraph 9(b) also permits the FCA to charge a reasonable fee for providing a person with a copy of a notice published under this Article.

440 Annex 4, paragraph 10 clarifies that paragraphs 11 – 13 apply where the FCA gives the administrator of an Article 23A benchmark a notice under Article 23D(2) or (8)(b).

441 Annex 4, paragraph 11, requires the FCA to consider whether to use its power under Annex 4, paragraph 3, within a specified time period after receiving a notice as described in paragraph 10. During the 'interim period' as defined by paragraph 13, the administrator is required under paragraph 12 to comply with the BMR to the extent that it remains reasonably practicable to do so.

Section 16: Review of exercise of powers under Article 23D

442 This section introduces new provision Article 23E of the BMR which requires the FCA to conduct a biennial review of its exercise of powers under Article 23D(2) and publish a report on its findings.

443 Paragraph 2 clarifies the calculation of the two-year review period. Paragraphs 3-4 require the FCA to publish a report as soon as reasonably practicable setting out the outcome of its review.

444 Paragraphs 5-8 set out further requirements for the review and the publication of the FCA's report on its findings. The FCA must consider in its review whether the exercise of its powers has advanced or is likely to advance its statutory objectives of consumer protection and market integrity. It must also take into account the statements of policy as set out in new Article 23F as introduced by section 18.

445 Paragraph 9(b) permits the FCA to charge a reasonable fee for providing a person with a copy of a report published under this Article.

Section 17: Policy statements relating to critical benchmarks

446 Subsection (1) introduces a new provision, Article 23F of the BMR, which places an obligation on the FCA to publish statements of policy and have regard to them when deciding to exercise certain powers.

447 These are in relation to the FCA's exercise of powers under:

a. new Article 21A where the FCA prohibits new use of a critical benchmark where the administrator has notified the FCA of its intention to cease providing the critical benchmark;

b. new Article 23A where the FCA determines that the representativeness of a critical benchmark cannot be restored or maintained and whether it is to be designed as an Article 23A benchmark;

c. new Article 23C where the FCA exercises the power to permit certain legacy use of an Article 23A benchmark by supervised entities;

d. new Article 23D where the FCA imposes requirements on administrators to change the methodology for determining a critical benchmark, or specify the relevant rules of the benchmark and the code of conduct once the benchmark is designated as an Article 23A benchmark.

448 Article 23F allows the FCA to alter or replace a statement of policy and publish an altered or replacement statement. It also requires the FCA to publish statements of policy in a way that is best calculated to bring them to the attention of the public.

449 Article 23F paragraph 4(b) permits the FCA to charge a reasonable fee for providing a person with a copy of a statement published under this Article.

450 Subsection (2) provides that the FCA can satisfy its duty to prepare and publish statements under Article 23F by way of publishing such statements either before or after the requirement to produce such statements under new Article 23F(1) comes into force.

Section 18: Critical benchmarks provided in different currencies etc.

451 This section introduces new Article 23G and new paragraph 2A under Article 49 of the BMR.

452 Article 23G clarifies how the FCA may apply certain powers to a version of a critical benchmark that is provided in different currencies or for different maturities or tenors, known as 'umbrella benchmarks.' Article 23G(2) defines what constitutes a 'version' of an umbrella benchmark.

453 Paragraph 3 sets out the relevant provisions of the BMR that apply in relation to the umbrella benchmark. The relevant provisions are to apply as if each version of the benchmark were a separate critical benchmark and intended to measure the market or economic reality defined in the benchmark statement for the umbrella benchmark (or its versions), subject to the modifications set out in paragraph 4.

454 Paragraph 6 further clarifies that the FCA may exercise certain powers as specified in this paragraph in different ways in relation to different versions of the umbrella benchmark.

455 Paragraph 8 provides HM Treasury with the power to make further regulations about the operation of the BMR in relation to umbrella benchmarks including provision amending or revoking provisions of Article 23G. New paragraph 2A is inserted into Article 49 of the BMR to make consequential changes reflecting HM Treasury's power to make regulations under Article 23G(8).

Section 19: Changes to and cessation of a benchmark

456 Subsections (1)-(2) of this section make amendments to Article 28 of the BMR to require that a benchmark administrator must publish a robust procedure outlining the actions it will take in the event of changes to, or the cessation of, a benchmark.

457 Subsection (3) inserts new paragraphs 1A-1E into Article 28. These provisions set out requirements on administrators with regard to procedures for making changes to or the cessation of critical benchmarks. The FCA is required to approve the content of, and any updates to, the change and cessation procedures for critical benchmarks.

Section 20: Extension of transitional period for benchmarks with non-UK administrators

458 This section amends Article 51(5) of the BMR. The section extends the expiration of the transitional period for third country benchmarks from 31 December 2022 to 31 December 2025. It also extends the provision which permits continued legacy use of a third country benchmark beyond 31 December 2025 where that benchmark is used in an existing contract or financial instrument on or before 31 December 2025. UK supervised entities will only be permitted to use third country benchmarks which have demonstrated compliance with UK law on and after 1 January 2026.

Section 21: Benchmarks: minor and consequential amendments

459 This section inserts Schedule 5 to set out minor and consequential amendments to the BMR.

Part 3: Access to Financial Services Markets

Section 22: Regulated activities and Gibraltar

460 This section amends Part 3 of FSMA to reflect the new authorisation regime for Gibraltar-based persons wishing to operate in the UK and makes provision for outbound UK-based persons wishing to operate in Gibraltar.

461 Section 31 of FSMA sets out the categories of persons who are authorised persons for that Act. Subsection (2) of this section inserts a new paragraph into section 31(1) of FSMA providing that a Gibraltar-based person with a Schedule 2A permission to carry on one or more regulated activities is an authorised person for the purposes of that Act.

462 Subsection (3) inserts a new section 32A after section 32 of FSMA. Section 32A provides that HM Treasury must carry out a review of the operation of Schedule 2A, within two years of the Financial Services Act having come into force and then within each subsequent reporting period of two years. The review will address in particular the continued fulfilment in the reporting period of the three conditions for the access of Gibraltar-based persons to the UK financial markets: the objectives set out in paragraph 7; the alignment of law and practice enshrined in paragraph 8, and cooperation in paragraph 9. HM Treasury will be under a duty to consult the FCA and PRA during the preparation of this report. Upon completion of the review, the relevant Minister must lay a copy of the report before Parliament.

463 Subsection (4) of this section inserts a new section 36A into FSMA to make provision for new Schedule 2B in relation to the carrying on by UK-based persons of activities in Gibraltar. While the right to carry on these activities in Gibraltar will be subject to the law of Gibraltar, Schedule 2B provides for the conditions that UK-based persons must meet under UK law in order to carry on activities in Gibraltar.

464 Subsections (5) to (7) insert Schedules 6 to 8. Schedule 6 inserts Schedule 2A to FSMA and Schedule 7 inserts Schedule 2B to FSMA. Schedule 8 to this Act contains minor and consequential amendments.

465 Subsections (8) to (10) confer a power on HM Treasury to amend Parts 7 and 18A of FSMA and make further provision in other enactments as regards EEA firms that are Gibraltar-based persons. This is in addition to the general power under the Act to make consequential amendments, and it ensures that the relevant legislation continues to operate effectively in relation to cases involving a Gibraltar-based person and that the relevant provisions are consistent with the new regime.

466 Subsection (11) defines the concept of a "Gibraltar-based person" to be given the same meaning as in Schedule 2A.

Section 23: Power to make provision about Gibraltar

467 This section delegates to HM Treasury certain powers to deliver the Government's commitment to preserve the rights of Gibraltar-based persons in UK markets and of UK-based persons in Gibraltar markets in relation to legal regimes falling outside the Gibraltar Order, and which are thus not captured by the regimes set out in Schedules 2A and 2B to FSMA. Subsections (2)-(4) and (13) set out the scope of these powers, defining the meaning of 'relevant Gibraltar provisions.'

468 Subsections (2)-(4) and (13) provide that the scope of the powers delegated to HM Treasury can be exercised:

a. in relation to a 'Gibraltar' provision, i.e. a provision or set of provisions in an enactment relating to (i) the carrying on of activities in the UK by persons based in Gibraltar; (ii) the carrying on of activities in Gibraltar by persons based in the UK, or (iii) interaction of any other kind between the UK and Gibraltar, whether relating to persons, activities, financial instruments, other property or other matters;

b. when the provision is a 'relevant' provision, i.e. (i) it is a provision of, or applied or modified by, regulations listed in the following subsection (3); (ii) it was inserted, amended or otherwise modified by regulations listed in the following subsection (4); (iii) it is, or is the subject of, saving provision included in regulations listed in the following subsection (4); or (iv) in the case of a set of provisions, it includes provision falling within the previous sub-paragraph (ii) or (iii), and was made by regulations under the powers set out in subsection (1)(b), (c) or (d) or, in the case of a set of provisions, it includes provision made under those powers;

c. the regulations referred to in subsection (2)(b)(i) are the following, as amended from time to time—

   i. the Electronic Money Regulations 2011 (S.I. 2011/99);

   ii. the Payment Services Regulations 2017 (S.I. 2017/752);

   iii. the Data Reporting Services Regulations 2017 (S.I. 2017/699).

d. the enactments referred to in subsection (2)(b)(ii) and (iii) are the following, as amended from time to time—

   i. the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/680);

   ii. regulation 3 of the Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1187);

   iii. Parts 2 and 3 of the Credit Transfers and Direct Debits in Euros (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1199);

   iv. Part 2 of the Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/107);

   v. Chapters 1 and 2 of Part 2 of the Alternative Investment Fund Managers (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/328).

469 Subsection (1) confers on HM Treasury the following powers to do the following by regulation:

a. repeal or revoke relevant Gibraltar provision and make the changes set out in subsection (5) (subsection (1)(a)), i.e. to provide that the same provision is made in connection with Gibraltar as is made in connection with most or all other countries or territories outside the UK;

b. make provision with the same effect as relevant Gibraltar provision repealed or revoked under the powers described immediately above (subsection (1)(b)). Subsection (9) provides, in case of repeal or revocation of relevant Gibraltar provisions under subsection (1)(a), the power under subsection (1)(b) includes power to make provision with the same effect as the provision that was the subject of the saving or modification, read with the saving or modification;

c. amend relevant Gibraltar provisions restoring any aspect of the effect the provision had immediately before the end of the Transition Period (subsection (1)(c));

d. when exercising the power in subsection (1)(d) (replace or supplement relevant Gibraltar provision with provision substantially similar to, or to a provision of, section 32A of, or Schedule 2A or 2B to, the Financial Services and Markets Act 2000 (inserted by section 22 of, and Schedules 6 and 7 to, this Act respectively) the power to make provisions applying the mentioned provisions with or without modifications.. This will ensure a coherent regulation of Gibraltar-related activities in the UK markets. This power is complemented by the further provision that HM Treasury may apply the existing mechanisms and principles of the new section 32A of, or Schedule 2A or 2B to, FSMA to the relevant Gibraltar provisions, with or without modifications (subsection (10));

e. when exercising the powers under subsections (1)(b) to (d), make such modifications as HM Treasury consider appropriate having regard to changes in the law of any part of the UK since the relevant regulations listed in subsections (3) and (4) were made (subsection (8)(a)). HM Treasury is also delegated the power to restate relevant Gibraltar provision in a clearer or more accessible way (subsection (8)(b)). A power similar to this latter one is found in paragraph 21(b) of Schedule 7 to EUWA;

f. make different provision in relation to different cases; amend, revoke, repeal or otherwise modify an enactment; make consequential, incidental, supplementary, transitional, transitory, or saving provision; confer functions on a person, including functions involving the exercise of a discretion (subsection (11).

470 The power of HM Treasury to make regulations is limited:

a. in scope, by the definition of 'relevant Gibraltar provision' in subsections (2)–(4) and (13) in relation to which HM Treasury may exercise their powers in subsection (1);

b. by the pre-condition to the making of the regulations in the exercise of these powers that the regulations made in the exercise of this power are compatible with the objectives set out in subsection (6);

c. procedurally, as the regulations made by HM Treasury in the exercise of the powers in this section will be subject to the affirmative procedure (subsection (12));

d. also procedurally, in relation to the powers to make regulations applying certain mechanisms of section 32A of, and Schedules 2A and 2B to, FSMA (subsection 1(d)), by the duty of HM Treasury to consult the FCA, the PRA, and the Government of Gibraltar before exercising that power (subsection (7)).

Section 24: Collective investment schemes authorised in approved countries

471 Subsection (1) amends the definition of a "recognised scheme" in section 237(3) of FSMA so that it includes schemes recognised under section 271A of FSMA and refers to section 271S, which sets out (amongst other things) that the definition in section 237(3) also includes a part of a scheme recognised under section 271A.

472 Subsection (2)(a) introduces Schedule 9 which inserts sections 271A to 271S (the "OFR provisions") into Chapter 5 of Part 17 of FSMA. Subsection (2)(b) then sets out that Part 2 of the Schedule is related to minor and consequential amendments arising from the new OFR provisions.

Section 25: Individually recognised overseas collective investment schemes

473 This section makes amendments to FSMA. Sections (3) to (5) set out amendments to Chapter 5 of Part 17, which relate to the process for recognising overseas schemes under section 272 of FSMA.

474 Section 272 will be available for individual overseas schemes that do not have the benefit of recognition under section 271A. This may be because a scheme is authorised in a country or territory that is not subject to an equivalence determination for retail investment schemes or is not a specific category of scheme that has been described in such an equivalence determination.

475 The following amendments to section 272 are made:

a. amending section 272(1) of FSMA so that schemes that are capable of being recognised under section 271A of the OFR cannot be recognised under section 272 of FSMA. section 272(1A) has then been added to define a scheme having 'the benefit of section 271A' as a scheme that is authorised in a country or territory approved by, and falling within the descriptions set out in, regulations made under section 271A of FSMA;

b. section 272(5) of FSMA required the FCA to consider any rule of law and any matters which are or could be the subject of rules, in relation to UK authorised schemes, when assessing an application from an overseas scheme to be recognised under section 272. Section 272(5)(b) is amended so that the FCA will only need to consider what is currently the subject of rules, not what could be the subject of rules.

476 The following amendments to section 277 are made:

a. amending section 277(1) of FSMA so that for FCA approval, scheme operators no longer have to provide written notice for all changes to the scheme's operation or management. Instead, they only have to provide notice for changes which would be a material alteration. The FCA may make rules specifying when a proposed alteration is a material alteration;

b. amending section 277(3) of FSMA to remove the requirement for a scheme operator to provide written notice to the FCA at least one month prior to any replacement of the operator, trustee or depositary. Section 277(3A) has then been added so that, instead, the scheme operator has to tell the FCA at least one month before the replacement, or if that is not possible, it must tell the FCA as soon as possible in the period of one month before the replacement is made. Section 277(3B) has also been added so that the scheme operator must give written notice of any changes to the name or address of the scheme operator or representative of the operator in the UK, the name and address of any trustee or depository of the scheme, and the address of a place in the UK for the service of notices or other documents which need to be served under FSMA.

477 The following amendments are made:

a. an addition of section 282A is made, which states the obligations on the operator if the scheme's recognition is revoked or suspended. This states that, if the FCA gives a decision notice that a scheme is revoked, or a direction that the scheme is suspended, then the scheme operator must notify such persons as the FCA may direct. The form and manner of this notification may be decided by the FCA and must contain such information as the FCA directs;

b. an addition is made to create section 282B on public censure. This section states that if the FCA believes any rules and requirements set out in subsection (1)(a)-(c) have been contravened, then it may publish a statement to that effect. If the FCA proposes to publish such a statement, it must give the scheme operator a warning notice. If the FCA then decides to publish the statement, it must also give a decision notice, which will set out that the operator has the right to refer the matter to the Upper Tribunal;

c. an addition is made to create section 282C, which clarifies that recognition under section 272(1) applies to parts of collective investment schemes (also called 'sub-funds') as it does to schemes. Subsection (2) makes it clear that the definition of a 'recognised scheme' in Part 17 of FSMA includes a part of a scheme recognised under section 272, and that other references in or made under Part 17 to schemes recognised under section 272 include parts of schemes. Subsection (3) sets out that provisions made under or of Part 17 have effect in relation to parts of schemes recognised, or seeking recognition under section 272 with appropriate modifications, and subsection (4)(a) allows HM Treasury to make provision by way of regulations as to what are, or what are not such appropriate modifications. Subsections (4)(b) and (c) also give HM Treasury powers to make, by regulations, provision so that relevant enactments have effect with appropriate modifications, or do not have effect, in relation to parts of schemes recognised or seeking recognition under section 272. Relevant enactments are defined as any legislation relating to schemes recognised or seeking recognition under section 272, which were passed or made before the day on which section 282C(1) comes into force. In making regulations under, and for the purposes set out in subsections (4)(b) and (c), HM Treasury can amend, repeal or revoke legislation. Subsection (8) then inserts 282C in the list in section 429(2), so that HM Treasury's power under 282C is exercisable by the affirmative procedure.

Section 26: Money market funds authorised in approved countries or territories

478 This section makes the following amendments to Article 4 of the MMFR, which sets out the regulations for MMFs in the UK:

a. sub-paragraph (aa) is added to paragraph 1 in Article 4 (authorisation of MMFs). This sets out that an MMF may be marketed in the UK if it is authorised and supervised in a country or territory that is approved under Article 4A and meets the conditions in paragraph 1ZA;

b. paragraphs 1ZA,1ZB and 1ZC are added, which set out the condition that needs to be satisfied for an MMF to be marketed in the UK. This condition is that the FCA must have received a written notification that the MMF intends to be marketed in the UK. This notification must be made by such a person and in such a form and manner as the FCA directs. The FCA may also direct what information is contained in or accompanied by the notification.

479 After Article 4, a new 'Article 4A – Approval of country or territory' is inserted:

a. this Article gives HM Treasury the power to make regulations approving a country or territory as being equivalent in respect of MMFs. In order to do this, HM Treasury may not make such regulations unless it is satisfied that the law and practice of the country or territory imposes requirements on its MMFs that have an equivalent effect to the requirements under the MMFR. In making such regulations, HM Treasury may also have regard to any matter they consider relevant;

b. paragraph 4 sets out that HM Treasury may request the FCA to prepare a report on the law and practice of the country or territory in question, when it is considering whether to make, vary or revoke an approval of its MMFs. This request must be made in writing. If HM Treasury asks for a report, the FCA must provide the report.

480 In Article 6(1) (aa) is inserted after point (a). This allows UCITS or AIFs, which are authorised and supervised in a country or territory approved by regulations under the new Article 4A, to be designated as an MMF.

Section 27: Provision of investment services etc. in the UK

481 This section introduces Schedule 10 which amends the mechanism under which the UK may assess third countries to be equivalent for the purposes of Article 47(1) of MiFIR.

482 It is consistent with the intention of the Act that the validity, meaning or effect of the Title 8 Regime (as amended by the Act) is to be interpreted in accordance with any retained case law and any retained general principles of EU law, as provided for in section 6(3) of the EUWA.

Part 4: Cancellation of permission to carry on regulated activity

Section 28: Part 4A permissions: cancellation on initiative of FCA

483 This section introduces Schedule 11 which amends Part 4A of FSMA by inserting section 55JA and a new Schedule 6A to FSMA.

Part 5: Rules about level of care provided by authorised persons

Section 29: FCA rules about level of care provided to consumers by authorised persons

484 Subsection (1) requires the FCA to carry out a public consultation about whether it should make rules providing that authorised persons owe a duty of care to consumers.

485 Subsection (2) details three considerations that this consultation must include. First, the consultation should consider the introduction of other provisions in the FCA's rules on the level of care that must be provided to consumers by firms, either instead of or in addition to a duty of care. Second, the consultation should consider whether a duty of care or other provision in its rules should apply to all consumers or to particular classes of consumer. Third, the consultation should consider the extent to which a duty of care, or other provision, would advance the FCA's consumer protection objective.

486 Subsection (3) requires the FCA to carry out this consultation, and publish its analysis of responses, before 1 January 2022. It also requires the FCA to make general rules about the level of care provided to consumers following this consultation before 1 August 2022, having regard to its analysis of the consultation's responses.

487 Subsection (4) provides that the requirement to consult may be satisfied by a consultation, undertaken by the FCA, that is carried out between 1 January 2021 and the commencement date for this section (as well as consultations which are carried out after the section's commencement date).

488 Subsection (5) specifies the meaning of the terms 'authorised person', 'consumer', and 'general rules' according to the definitions given in FSMA.

Part 6: Insider dealing and money laundering etc

Section 30: Insider lists and managers' transactions

489 This section amends Article 18 of the MAR to make clear that both issuers and any person acting on their behalf or on their account (such as advisers) are required to maintain their own insider lists. It also clarifies that if an issuer asks someone else to prepare or update their insider list (on their behalf), the issuer remains fully responsible for complying with the requirements under Article 18.

490 This section also amends Article 19 of the MAR to change the deadline by which issuers have to publicly disclose transactions notified to them by senior managers and persons closely associated with senior managers. The deadline will now be two working days after those transactions have been notified to the issuer, rather than three business days after the transaction itself. The period for calculating the deadline is now counted in "working days" rather than "business days", to ensure a consistent term is used throughout MAR. The section adds a definition of "working day" – any day not a Saturday, Sunday, Good Friday, Christmas Day, or a bank holiday in England and Wales – to Article 19.

Section 31: Maximum sentences for insider dealing and financial services offences

491 This section amends section 61(1)(b) of the Criminal Justice Act 1993 and section 92(1)(b) of the Financial Service Act 2012. The effect of the amendment is to increase from seven to ten years the maximum sentence for conviction on indictment for insider dealing offences under sections 52(1), 52(2)(a) and 52(2)(b) of the Criminal Justice Act 1993, and market manipulation offences under sections 89, 90 and 91 of the Financial Services Act 2012.

492 The Section provides that this higher maximum will not apply to offences committed before the amendment takes effect, including offences committed over a period of time which began before the amendment takes effect.

Section 32: Money laundering offences: electronic money institutions, payment institutions and deposit-taking bodies

493 Section 32 amends Part 7 of POCA, sections 327 to 329, 339A, 340 and 459 to bring payment and e-money institutions within the threshold amount provisions. Where the value of criminal property falls below the threshold amount, a payment or e-money institution will be able to do certain specified acts in relation to that property when operating an account maintained by it, without committing an offence. Subsection (6) of section 32 also defines, for the purposes of POCA, e-money institutions to have 'the same meaning as in the Electronic Money Regulations 2011 (S.I. 2011/99) (see regulation 2 of those Regulations)' and payment institutions as an 'authorised payment institution or a small payment institution (each as defined in regulation 2 of the Payment Services Regulations 2017 (S.I. 2017/752))'.

Section 33: Forfeiture of money: electronic money institutions and payment institutions

494 Section 33 introduces Schedule 12 which amends ATCSA and POCA provisions about the forfeiture of money so they apply to money held in accounts maintained with electronic money and payment institutions. It provides for the amendments in the Schedule to have retrospective effect, except for the amendments to Part 5 of POCA as it extends to Northern Ireland, as the relevant provisions of that Part are not yet in force there.

Section 34: Application of money laundering regulations to overseas trustees

495 This section amends SAMLA. It will ensure the continued ability of the Government to enforce and continue to make changes to regulations with extra-territorial application to overseas trustees of trusts with links to the UK.

Part 7: Debt Respite Scheme

Section 35: Debt Respite Scheme

496 This section amends sections 6 and 7 of the FGCA. These amendments are self-explanatory. They will allow regulations to be made which can:

a. compel creditors to accept amended repayment terms;

b. provide for a charging mechanism through which creditors will contribute to the cost of running the scheme and repayment plans; and

c. include debts owed to central government departments.

497 Section 35(1), (2) and (4) (debt respite scheme) extend to England and Wales only and section 35(3) extends to England and Wales and Northern Ireland only. Regulations under section 7 of the FGCA will need to be laid before and approved by a motion of Senedd Cymru in order for them to apply in Wales and the Northern Ireland Assembly in order for them to apply in Northern Ireland.

Part 8: Help-to-Save

Section 36: Successor accounts for Help-to-Save savers

498 This section inserts a new paragraph 13A into Schedule 2 to the Savings (Government Contributions) Act 2017. Paragraph 13A provides the powers for the making of regulations which allow for the balance in a matured Help-to-Save account, at the end of the four-year term when it ceases to be a Help-to-Save account, to be transferred to an alternative savings account (the successor account) in the National Savings Bank. This would occur in instances where the account holder has not provided instructions to the Director of Savings to inform them where the balance should be paid.

499 Sub-paragraph (4) restricts the regulation-making powers where instructions have been received from the account holder. The Director of Savings may not transfer a balance from a Help-to-Save account to a successor account in instances where the account holder, or a person acting on their behalf, has provided instructions to the Director of Savings to transfer the balance to another account and those instructions are received in sufficient time for them to be acted on.

500 Sub-paragraph (5) permits the regulations to make provision for balances in existing accounts, opened prior to the regulations being made.

501 Sub-paragraph (6) specifies that the successor account may be a new or existing account and that the transfer of a Help-to-Save balance to a successor account will not result in a charge to the account holder. There are currently no fees charged to account holders for holding money with NS&I, including the existing savings account product currently planned to be used for the intended successor account.

Part 9: Miscellaneous

Section 37: Regulated activities and application of Consumer Credit Act 1974

502 Section 37 extends an existing power in section 107(6) of the Financial Services Act 2012, which provides that HM Treasury may disapply provisions of the Consumer Credit Act 1974 in relation to an activity previously licensed under the Consumer Credit Act 1974, or exempted under specified provisions of that Act, where the activity has become a regulated activity for the purposes of FSMA. Subsection (2) effects this extension.

503 Subsection (3) defines the types of activity to which the extension of the power in section 107(6), effected by subsection (2), applies.

Section 38: Amendments of the PRIIPs Regulation etc.

504 This section delegates a power to the FCA to clarify the scope of PRIIPs through their rule-making powers in Part 9A of FSMA. A new Article 4A will be inserted into the PRIIPs Regulation which will allow the FCA to make rules specifying whether particular products or categories of products fall within the scope of the definition of a PRIIP.

505 The new Article 4A applies modified sections 137T as to the FCA's general supplementary powers, 138F as to the requirement to give notice of rules to HM Treasury, 138G regarding rule-making instruments, 138I and 138L as to FCA consultation and 141A regarding the power for HM Treasury to make consequential amendments.

506 This will enable the FCA to address existing, and potentially future, ambiguities in relation to certain types of investment product. The definition of a PRIIP will remain unchanged.

507 The PRIIPs Regulation obliges PRIIPs manufacturers to include performance scenarios in the KID. The methodology for calculating these scenarios is set out in the PRIIPs RTS.

508 Subsection (4) amends Article 8(3) of the PRIIPs Regulation to replace the term 'performance scenarios and the assumptions made to produce them' with 'appropriate information on performance'. The FCA will then be able to amend the RTS to clarify what information should be provided in the KID by virtue of the power given by the Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019, in accordance with Chapter 2A of Part 9A of FSMA.

509 This information will not necessarily take the form of performance scenarios.

510 Subsections (5) and (6) allow HM Treasury to extend the UCITS exemption, in regulation 32(1) of the PRIIPs Regulation, to a date no later than 31 December 2026.

511 UCITS Retail schemes are currently exempted from the requirements of the PRIIPs Regulation until 31 December 2021. Instead, UCITS funds must produce a Key Investor Information Document under requirements of the UCITS Directive which were implemented via FCA rules. At present the Government considers that the current rules for UCITS disclosure are satisfactory.

512 Subsections (5) and (6) contain an amendment which delegates a power to HM Treasury to further extend the exemption for UCITS if required, up to a maximum of five years. This will enable HM Treasury to make regulations at a later date to amend the exemption date in the PRIIPs Regulation, if necessary. This amendment will enable HM Treasury to consider the most appropriate timing for the transition of UCITS funds into the PRIIPs regime, or any domestic successor that may result from the planned review of the UK framework for

investment product disclosure. It will also allow HM Treasury to provide both UK and EEA UCITS with a transitional period to comply with the PRIIPs Regulation requirements, as amended by subsections (5) and (6) of the measure.

Section 39: Retention of personal data under the Market Abuse Regulation

513 This section removes a provision in Article 28 of MAR which restricts the FCA from holding personal data collected for the purposes of MAR for more than five years.

514 By removing the provision requiring the FCA to delete MAR personal data after five years, MAR personal data must be held in general compliance with the GDPR personal data retention standards, which requires personal data to be held only as long as is necessary. In some circumstances this could mean that the FCA holds the data for a period of longer than five years. This will allow the FCA to investigate and prosecute cases of complex market abuse which span more than five years.

515 This section relates only to the FCA. It does not affect the position for businesses performing other functions under MAR.

Section 40: Over the counter derivatives: clearing and procedures for reporting

516 This section inserts two new provisions into EMIR.

517 Subsection (2) sets out an obligation for providers of clearing services to provide their services under FRANDT commercial terms and empowers the FCA to make rules to specify the content of those terms.

518 Subsection (3) provides that Trade Repositories must establish procedures and policies to enhance data quality on OTC transactions and empowers the FCA to determine further detail through rules.

519 Subsection (4) defines the rule-making powers of the FCA for the implementation of the FRANDT and TR measures described above.

520 Subsection (5) allows the FCA to consult on the proposed implementing rules before the Act received Royal Assent.

Section 41: Regulations about financial collateral arrangements

521 This section relates to the legal basis for the FCARs and also amends the Banking Act 2009.

522 Subsections (1) and (2) confirm that the FCARs as originally made, including all amendments, and any financial collateral arrangements entered into which rely on them, are effective regardless of any question about the scope of the powers available to HM Treasury under the ECA, when the FCARs were originally made. This underpins the legal effect of the FCARs, without taking the more disruptive course of revoking and remaking them. The section has retrospective effect.

523 Subsection (3) amends the Banking Act 2009 in accordance with subsections (4) to (6), which amend the power to make secondary legislation in relation to financial collateral arrangements, contained in section 256 of the Banking Act 2009. This provision makes such secondary legislation subject to the draft affirmative procedure as opposed to the made affirmative procedure, given that the made affirmative procedure is more appropriate for urgent legislation. Amending this power will still allow HM Treasury to make amendments to the FCARs through appropriate secondary legislation.

Section 42: Appointment of Chief Executive of FCA

524 This section makes an amendment to Schedule 1ZA to FSMA to insert a provision to make the appointee to the role of the FCA Chief Executive subject to a fixed, once renewable five-year term.

Section 43: Subordinate legislation made under retained direct EU legislation

525 This section makes two amendments to FSMA in respect of powers to make subordinate legislation under retained direct EU legislation.

526 Subsection (2) amends the definition of "qualifying provision" in section 425C of FSMA to include regulations made by HM Treasury and rules made by the regulators under new powers contained in retained direct EU legislation. This will allow HM Treasury to specify such regulations or rules for the purposes of other provisions in FSMA, so that various regulatory powers and functions under FSMA apply to provision made in those regulations or rules. This is consistent with the treatment of the equivalent regulation-making and technical standards powers which HM Treasury and the regulators will have under retained direct EU legislation as a result of the EUWA.

527 Subsection (3) amends the definition of "legislative function" in paragraph 8 of Schedule 1ZA to FSMA. It adds the rule-making powers which the Act's amendments to retained direct EU legislation will confer on the FCA to the existing list of legislative functions. This, in turn, will require the FCA to discharge those powers through its governing body. This is consistent with the treatment of existing FCA rule-making powers under FSMA and FCA powers to make technical standards as a result of the EUWA.

Section 44: Payment services and the provision of cash

528 This section inserts a new paragraph 3 into Schedule 1 to the PSRs. Paragraph 3 introduces the provision of cash, in certain circumstances, where there is no corresponding purchase of goods and services into the list of activities that do not constitute a payment service under those Regulations.

529 Sub-paragraph (1) specifies that the activity does not include the provision of cash through an automatic teller machine. Sub-paragraph (1)(a) sets out that the provision of cash must be accompanied by a transfer of corresponding amount from a payment account, as defined by the PSRs, held by the recipient of the cash to a relevant person. Sub-paragraph (1)(b) sets out that where cash is being provided by a relevant person, that person cannot also be the one who provides the recipient's payment account from which the transfer in sub-paragraph (1)(a) is being made.

530 Sub-paragraph (2) specifies that the relevant person may be a person acting on their own behalf, for example a shop, or through other persons acting on behalf of the relevant person, such as a shop providing cash on behalf of a third-party provider.

531 Sub-paragraph (3) confirms that the execution of the transfer specified in sub-paragraph (1), and other services enabling that transfer, are not excluded from the meaning of payment services by the new section. They will therefore continue to constitute a payment service for the purpose of Part 1 of Schedule 1 to the PSRs.

Part 10: General

Section 45: Power to make consequential provision

532 This section gives HM Treasury power to make regulations making provision consequential on the provisions of the Act and the Secretary of State power to make regulations consequential on sections 31 and 32 and Schedule 12. Regulations making consequential amendments are to be subject to the negative procedure, except where they amend primary legislation of a sort listed in subsection (4). In that case, the regulations are to be subject to the affirmative procedure.

Section 46: Regulations

533 This section makes provision about the procedure which is to apply in respect of powers to make regulations conferred by the Act.

Section 47: Interpretation

534 This section explains key terms for the purposes of this Act.

Section 48: Extent

535 This section sets out the territorial extent of the Act.

Section 49: Commencement and transitional provision

536 This section sets out that the provisions of the Act, other than those listed in subsections (1) to (4), will commence on the day appointed by HM Treasury by regulations. Subsection (1) lists provisions which will commence on Royal Assent and subsection (2) lists provisions which will commence two months after Royal Assent. Subsection (4) makes provision for section 34 to be commenced on the day appointed by either HM Treasury or the Secretary of State by regulations.

Section 50: Short title

537 This section provides that the Act may be cited as the Financial Services Act 2021.

Schedule 1: Exclusion of certain investment firms from Capital Requirements Regulation: consequential amendments

Part 1: Amendments of the Capital Requirements Regulation

538 Schedule 1, Part 1 sets out the consequential amendments necessary to remove FCA investment firms from the scope of the CRR and include them within the scope of the IFPR.

Part 2: Consequential amendments of the Capital Requirements (Country-by-Country Reporting) Regulations 2013

539 Schedule 1, Part 2 makes consequential amendments to the Capital Requirements (Country-by-Country Reporting) Regulations 2013 (SI 2013/3118) which are necessary for the purpose of ensuring FCA investment firms adhere to specific country-by-country reporting requirements related to the provision of tax information as part of IFPR, rather than subject to the reporting requirements under CRD IV and CRD V.

Schedule 2: Prudential regulation of FCA investment firms

Part 1: New Part 9C of the Financial Services and Markets Act 2000

540 Section 143A defines what is and is not an FCA investment firm. This is for the purpose of ensuring that the new rules apply to the appropriate range of FCA investment firms, and not investment firms designated by the PRA or exempt investment firms.

541 Section 143B, subsection (1) relates to the interpretation of other terms in Part 9C of FSMA.

542 Subsection (2) gives powers to HM Treasury to further specify by regulations the meaning of "on a consolidated basis", "group", of "parent undertaking" and of "subsidiary undertaking".

543 Section 143C, subsection (1) details the prudential requirements on which the FCA has a duty to make rules for FCA investment firms. These prudential requirements relate to capital and liquid assets, exposure to concentration risk, reporting, public disclosure, governance arrangements and remuneration policies. Taken together, these are the key prudential requirements relevant to investment firms. Paragraphs (a), (e) and (f) of this subsection are all requirements relating to the risks in subsection (2).

544 Subsection (2) specifies the types of risks relevant to the setting of these prudential requirements. These risks are self-explanatory. This subsection covers the risks posed by FCA investment firms (to consumers and to the integrity of the UK financial system) and risks to which they are themselves exposed. HM Treasury has a power to add to the list of risks.

545 Subsection (3) specifies that FCA investment firm rules can be imposed on investment firms at a range of levels of an FCA investment firm's organisational structure. Subsection (3)(e) explains that the rules may make provisions by referencing the CRR, an instrument made under the CRR, and the law of the United Kingdom which was relied on immediately before IP completion day to implement the capital requirement directive. This is because concepts within the CRR may still be relevant for the purpose of making FCA investment firm rules. This is also the case in relation to section 143D(4)(e) in relation to rules made for parent undertakings. The remaining elements of subsection (3) are self-explanatory.

546 Section 143D specifies the duty on the FCA to make prudential rules in relation to parent undertakings, authorised under FSMA, of FCA investment firms for the purpose of complying with group prudential requirements. This duty is engaged only when the FCA chooses to exercise its general rule-making power under section 137A of FSMA. This section also introduces the FCA's new duty to make rules for unauthorised parent undertakings where necessary or expedient for advancing the FCA's operational objectives, which are set out in sections 1C, 1D and 1E of FSMA.

547 Subsection (2) specifies the types of risks relevant to the setting of these prudential requirements. These are risks posed by FCA investment firms, parent undertakings of FCA investment firms and by FCA investment firms belonging to a group (to consumers and to the integrity of the UK financial system), and risks to which FCA investment firms are themselves exposed through their parent undertakings. HM Treasury has a power to add to the list of risks. Subsection (4) reflects section 143C(3). Subsection (5) extends sections 137A(6) and 137A(7) of FSMA to the rules made for unauthorised parent undertakings. Subsection (6) disapplies the prohibition in s.137A(6) of FSMA to allow the FCA, in making rules, to modify the CRR or instruments made under it. Subsection (7) applies section 137H of FSMA where the FCA makes rules relating to non-authorised parent undertakings of FCA investment firms. This will allow remuneration provisions in employment contracts issued by non-authorised parent undertakings in breach of rules to be voided, and payments made under the void provision to be clawed back. Subsection (8) will give HM Treasury the power to direct the

FCA to consider whether the remuneration policies of those non-authorised parent undertakings comply with the regulator's rules. HM Treasury will be obliged to consult with the regulator before issuing them with a direction to undertake a review. Subsection (9) applies s.141A FSMA to the exercise of the FCA's power under s.143D(3). Subsection (10) is self-explanatory.

548 Section 143E gives the FCA powers to make rules in relation to parent undertakings (whether authorised or not). Subsections (1) and (2) set out that the FCA is not generally required to make rules where a group includes a UK credit institution or a PRA-designated investment firm, but it may do so. Subsection (3) allows the FCA to make rules to require parent undertakings to disclose information about the group's branches or subsidiaries outside the UK. Subsections (5) and (6) specify that section 143D(4) and (6) of FSMA also apply to rules made under this section, and section 143D(5), (7), (8) and (9) applies to rules made under this section applying to non-authorised parent undertakings as it applies to rules made under section 143D(3).

549 Section 143F requires the FCA to publish a list of all of its Part 9C rules.

550 Sections 143G and 143H introduce new accountability requirements for the FCA (taken together, these two sections will be referred to as 'the accountability framework'). The accountability framework reflects the increased responsibility given to the FCA for setting prudential requirements for investment firms which is granted to them through this Act and provides structure to its rule-making power. It ensures the FCA considers additional policy priorities that HM Treasury has identified as relevant to the IFPR, and which are not currently captured within the FCA's statutory obligations. It also aims to increase transparency of how these policy priorities will impact rulemaking by the FCA through the reporting requirement.

551 Section 143G requires the FCA to have regard to a new list of matters specified in this section when making Part 9C rules. When having regard to the likely effect of the FCA's Part 9C rules on these matters, the FCA should consider both their positive and negative effects. Subsections (3) and (4) include a further matter for the FCA to consider when making Part 9C rules – the effect of these rules on equivalence decisions specified as relevant by HM Treasury, including decisions made by the UK, and for, the UK by any international jurisdiction. The Government retains responsibility for international relations, which includes equivalence arrangements between the UK and other international jurisdictions. Therefore, the matter of equivalence is treated differently to the others, with a requirement for the FCA to consult HM Treasury in this area. The Government has been clear that financial services equivalence will be judged on outcomes and therefore the FCA's considerations of equivalence will follow this.

552 Section 143H imposes a new obligation on the FCA when it a) publishes consultations on draft Part 9C rules and b) makes final Part 9C rules. In both these scenarios, the FCA will be required to publish an explanation of the way in which having regard to the new matters listed in section 143G(1) has affected their draft or final rules. When the FCA makes final Part 9C rules, it must also publish a summary of their purpose. This is intended to increase transparency about FCA rulemaking when it implements prudential rules for investment firms and any further material updates to this regime.

553 Section 143I sets out the situations in which the accountability framework in sections 143F and 143G does not apply. Subsection (1) notes that the accountability framework does not apply where the FCA makes Part 9C rules following a direction or recommendation given by the Financial Policy Committee (FPC) of the Bank of England. This is because the FPC has an existing secondary objective to support the economic policy of the Government, and so they are already required to consider public policy priorities set by the Government.

554 Subsection (2) is self-explanatory.

555 The accountability framework is intended to apply on an ongoing basis, including to material rule changes where the FCA updates Part 9C rules in the future. Subsections (3), (4) and (5) exempt immaterial modifications to these rules from the accountability framework.

556 Section 143J allows the FCA to require two or more FCA investment firms, who are subsidiaries of the same parent undertaking with its head office outside the UK, to secure the establishment of a parent undertaking with its head office within the UK. Such a requirement may be imposed when the FCA determines that the third country supervision of the parent undertaking does not impose requirements which have equivalent effect to Part 9C rules.

557 Section 143K allows the FCA to impose, vary or cancel additional requirements on parent undertakings which are not authorised under FSMA, either on its 'own initiative' or on the application of a parent undertaking. This mirrors the existing powers the FCA has for authorised parent undertakings under section 55L FSMA. The FCA's own initiative powers may only be exercised by the FCA to address the risks in section 143D(2) where it is desirable to do so in order to advance any of its operational objectives.

558 Section 143L relates to the form and manner of applications of unauthorised parent undertakings for the imposition or variation of additional requirements under section 143K.

559 Section 143M imposes an obligation on the FCA to determine an application under section 143K.

560 Section 143N clarifies that if the FCA proposes or decides to refuse an applicant, the FCA is under the obligation to notify the applicant appropriately (either through a warning or a decision notice).

561 Section 143O relates to the FCA's exercise of its powers under section 143K without an application from an unauthorised parent undertaking. Section 143O imposes an obligation on the FCA to notify by written notice the unauthorised parent undertaking when the FCA proposes or exercises its own-initiative powers under 143K. Subsection (4) sets out what the written notice must cover.

562 Section 143P explains the unauthorised parent undertaking's rights to refer matters which relate to section 143K to the Tribunal.

563 Section 143Q makes provision where requirements are imposed under section 143K which prohibit the disposal or dealing of the unauthorised parent undertaking's assets, or require assets (including those of customers) to be transferred to a trustee approved by the FCA. Under subsection (7), a person will commit a criminal offence if assets held by a trustee are released or dealt with without the consent of the FCA.

564 Section 143R aims to ensure that managers of parent undertakings of FCA investment firms which are not authorised under FSMA are fit for the role they occupy, by requiring non-authorised parent undertakings to ensure managers are of sufficiently good repute, and have the appropriate knowledge, skills and experience.

565 Section 143S relates to prohibition of individuals performing an activity in relation to unauthorised parent companies. It sets out the scope of prohibition orders, which the FCA is given power to make, should an individual not possess the appropriate knowledge, skills and experience described in section 143R.

566 Section 143T sets out how the FCA may issue a warning notice – in cases where the FCA proposes to make a prohibition order – or a decision notice – in cases where the FCA decides to make a prohibition order – to an individual.

567 Section 143U sets out that a recipient of a prohibition order can apply to have their prohibition order changed or revoked. The FCA must inform the applicant of its decision in the appropriate way (either by written notice, warning notice or decision notice).

568 Section 143V specifies that if an individual breaches a prohibition order, they have committed an offence. Subsection (2) specifies the penalty for committing the offence. Subsection (3) specifies that if an individual took all reasonable precautions and exercised due diligence to avoid committing the offence, this is a defence.

569 Section 143W relates to disciplinary measures for unauthorised parent undertakings. It sets out the extent of disciplinary powers at the FCA's disposal should an unauthorised parent undertaking breach a provision of Part 9C rules, a requirement imposed under section 143K or section 143R and section 143S(6).

570 Section 143X specifies the procedure for disciplinary measures against unauthorised parent undertakings. It sets out that the FCA must issue a warning notice and if it decides to take action must issue a decision notice to individuals, as well as specifying the required contents of the warning notice or decision notice.

571 Section 143Y relates to the statement of policy for penalties under section 143W, including with respect to the issuance, and the amount, of penalties; and the matters the FCA must have regard to when setting out its statement.

572 Section 143Z specifies the procedure for the statements of policy under section 143Y and is self-explanatory.

Part 2: Further amendments of the Financial Services and Markets Act 2000

573 Part 2 of Schedule 2 makes further amendments to FSMA to ensure that matters relating to disciplinary, enforcement and other procedures work as intended in law.

Part 3: Transitional provision

574 Part 3 of Schedule 2 concerns rules made, and consultations conducted prior to the provisions in new Part 9C of FSMA coming into force. It specifies that the FCA may fulfil its duty to make rules for FCA investment firms through existing rules, and that these existing rules are not retroactively subject to the accountability framework described in sections 143G and 143H. After this Schedule comes into force, the FCA must publish a list of such rules and a statement which explains how the FCA has considered the risks in sections 143C(2) and 143D(2) as well as the matters in section 143G(1) and the likely effect of the rules on equivalence decisions, when determining that such rules should be Part 9C rules. The FCA may also rely on consultations conducted prior to the commencement of Part 9C. Paragraph 21 specifies what counts as a relevant equivalence decision and paragraph 22 sets out that the carbon target described in section 143G(1) applies to Part 9C rules made after 1 January 2022. Paragraph 23 is self-explanatory.

Schedule 3: Prudential regulation of credit institutions etc.

Part 1: New Part 9D of the Financial Services and Markets Act 2000

575 Part 1 of Schedule 3 inserts a new Part 9D into FSMA.

576 Section 144A defines "CRR rules" as rules made under the new power for holding companies in section 192XA, as well as general rules by the PRA about a matter that is the subject of a) a provision of the CRR that has been or may be revoked under subsection (1) in section 3, or b) a CRR Basel standard, as defined in section 4. This is intended to include all rules made by the PRA to implement outstanding elements of the Basel III standards, and any other rules which are made as a result of revocations made under section 3 (which captures where more of the CRR has been revoked e.g. for coherence reasons).

577 Subsection (5) of section 144A sets out that CRR rules includes matters adapted from the CRR Basel standards. This is intended to account for the fact that the BCBS sets standards for internationally active banks but, in the UK, prudential requirements stemming from the Basel Framework are applied to all credit institutions, including e.g. smaller banks and building societies that focus on domestic lending. CRR rules also includes rules on the subject matter contained in EU tertiary legislation made under the CRR.

578 Section 144B contains definitions used in Part 9D.

579 Sections 144C and 144D introduce new accountability requirements for the PRA (taken together, these two sections will be referred to as 'the accountability framework'). The accountability framework reflects the increased responsibility given to the PRA for setting prudential requirements which is granted to it through this Act. It ensures the PRA considers additional policy priorities HM Treasury has identified as relevant to the implementation of the Basel standards, and which are not currently captured within the PRA's statutory obligations. It also aims to increases transparency of how these policy priorities impact rulemaking of the PRA through the reporting requirement.

580 Section 144C requires the PRA to have regard to a new list of matters, specified in this section, when making CRR rules. When having regard to the likely effect of the PRA's CRR rules on these matters, the PRA should consider both their positive and negative effects. Subsections (3) and (4) include a further matter for the PRA to consider when making CRR rules – the effect of these rules on equivalence decisions specified as relevant by HM Treasury, including decisions made by, and for, the UK by any international jurisdiction. The Government retains responsibility for international relations, which includes equivalence arrangements between the UK and other international jurisdictions. Therefore, the matter of equivalence is treated differently to the others, with a requirement for the PRA to consult HM Treasury in this area. The Government has been clear that financial services equivalence will be judged on outcomes and therefore the consultation between the PRA and HM Treasury will reflect this.

581 Section 144D imposes a new obligation on the PRA when it a) publishes consultations on draft CRR rules and b) makes final CRR rules. In both these scenarios, the PRA will be required to publish an explanation of the way in which having regard to the new matters listed in section 144C(1) has affected their draft or final rules. When the PRA makes final CRR rules, it must also publish a summary of their purpose. This is intended to increase transparency about PRA rulemaking when it implements the remaining Basel III changes and any further material updates to these regimes.

582 Section 144E sets out exemptions from when the accountability framework applies.

583 Subsection (1) specifies that the accountability framework does not apply where the PRA makes CRR rules following a direction or recommendation given by the Financial Policy Committee (FPC) of the Bank of England. This is because the FPC has an existing secondary objective to support the economic policy of the Government, and so they are already required to consider public policy priorities set by the Government.

584 Taken together, subsections (2) and (3) mean that the accountability framework does not apply where the PRA makes CRR rules which do not differ materially from the CRR. This is because some sections of the CRR may be revoked by HM Treasury for coherence reasons. For example, where a substantial number of articles within a chapter need to change to implement Basel, the whole chapter may be revoked to avoid the regime being split between the CRR and PRA rules in a way that is very difficult to understand as a whole. In this case, the PRA rules which replace the revoked chapter of CRR will include some new rules and some rules that are restated without material modification. The accountability framework (as well as current FSMA consultation and reporting requirements) do not apply to these restated rules if they are copied over from the CRR without material modification. However, the PRA will be required to continue to consult the FCA.

585 Subsection (4) is self-explanatory.

586 The accountability framework is intended to apply on an ongoing basis, including to material rule changes where the PRA updates CRR rules in the future. Subsections (5), (6) and (7) exempt immaterial modifications to these rules from the accountability framework.

587 Section 144F provides HM Treasury with a power to amend legislation as a consequence of the PRA making CRR rules. This includes the power to amend retained direct EU legislation as well as legislation made by the devolved legislatures. The CRR, as well as other legislation that references it, may need to be amended as a result of the PRA making CRR rules to ensure the regime as a whole is workable. For instance, cross-references in the CRR may need to be amended to refer to CRR rules made by the PRA.

588 Section 144G gives the PRA the power to permit firms not to apply a certain CRR rule or to apply it with modifications. This is intended to ensure the PRA can provide permissions to enable firms to use different approaches within CRR rules, for example IRB approaches to credit risk (as explained in paragraph 314) rather than the SACR (as explained in paragraph 312.

589 Subsection (1) of section 144H allows the PRA to make rules by reference to the CRR, instruments made under the CRR and to the retained EU law version of the CRD, as defined in subsection (3).

590 Subsection (2) of section 144H allows for CRR rules to modify (but not amend or revoke) the provisions contained in CRR or associated EU tertiary legislation. This is necessary to make sure that the PRA can make new CRR rules in areas that are currently occupied by the CRR.

Part 2: PRA's powers in relation to certain holding companies

591 Part 2 of Schedule 3 provides the PRA with a power to make rules in relation to holding companies approved or designated under Part 12B of FSMA (as introduced through the Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020) and includes these rules within the accountability framework in sections 144C and 144D.

592 Section 192XA (which replaces the rule-making power in section 192V inserted into FSMA for the purpose of the transposition of CRD V) sets out which holding companies the PRA can make rules in relation to and the subject matter to which these rules must relate.

593 Subsection (1) sets the scope of the PRA's power to only those holding companies which are approved or designated under part 12B of FSMA, and that the PRA can exercise this power only where it is necessary or expedient to advance any of its objectives (safety and soundness being the PRA's primary objective).

594 Subsection (2) restricts the use of the power to several subject areas. Subsection (2)(a) sets out the focus of the power, which is to secure the application of prudential requirements on a consolidated or sub-consolidated basis, as defined in the CRR to mean requirements which apply at a certain level of a firm's group structure as if the entirety of that element of the group were one firm. Subsections (b) to (f) are self-explanatory and ensure that the PRA can effectively make rules to impose necessary requirements for the implementation of Basel standards indulging rules needed to mitigate risks that could affect the group beyond consolidated and sub-consolidated requirements.

595 Subsections (3), (4) and (5) replicate section 144H for rules made in relation to approved holding companies.

596 Subsection (6) applies section 137H of FSMA where the PRA makes rules relating to holding companies. This will allow remuneration provisions in employment contracts issued by holding companies in breach of rules to be voided, and payments made under the void provision to be clawed back.

597 Subsection (7) gives HM Treasury the power to direct the PRA to consider whether the remuneration policies of those holding companies comply with the regulator's rules. HM Treasury is obliged to consult with the regulator before issuing them with a direction to undertake a review.

598 Subsection (8) ensures that consequential amendments of references to rules as under section 141A can be made in relation to rules made under section 192XA.

599 Subsection (9) sets out definitions to be used in this section, in particular, that group risk relates to risk that adversely affect the financial position of a holding companies arising from the relationships between the holding company and other members of its group and other matters.

600 Section 192XB sets out that, where section 192XA rules are CRR rules, Part 9D applies, and that where these rules are not CRR rules (i.e. they do not relate to a CRR revocation or a CRR Basel Standard) the accountability framework set out in section 144C, the reporting requirements in section 144D, and some of the exemptions from the accountability framework in section 144E continue to apply. The elements of these sections which do not apply are those which are specific to CRR rules, i.e. that are only triggered where a section of the CRR is revoked, which cannot occur where the rules are not CRR rules.

601 Section 192XC replicates section 144G for section 192XA rules.

602 Paragraph 8 of Part 2 amends section 192Y of FSMA in order to allow the PRA to take disciplinary action against a holding company for contravention of any Part of the CRR or instruments made under that Regulation, rather than just breaches of certain parts of the CRR.

Part 3: Minor and consequential amendments of other enactments

603 Part 3 of Schedule 3 includes minor and consequential amendments to FSMA that are a consequence of the changes to FSMA in Schedule 3.

604 In particular, paragraph 9 includes approved holding companies within the FPC's power of direction and recommendation, now that they are responsible for group consolidated and sub-consolidated requirements.

605 Part 3 also includes an amendment to the Capital Requirements Regulations 2013 (S.I. 2013/3115) to apply the current procedural requirements for CRR permissions to permissions granted under new section 144G FSMA.

Part 4: Transitional provision

606 Part 4 of Schedule 3 allows for consultation requirements in relation to CRR rules and 192XA rules that are not CRR Rules, to be satisfied by things done by the PRA before, as well as after, Royal Assent. Paragraph 24 specifies what counts as a relevant equivalence decision. Paragraph 25 sets out that the carbon target described in section 143G(1) applies to CRR rules and 192XA rules made after 1 January 2022.

607 To ensure continuity paragraph 26 also provides that rules made under section 192V of FSMA as inserted by the Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020, are to be deemed as section 192XA rules and that breaches of section 192V rules can continue to be enforced against following their repeal and replacement.

Schedule 4: Amendments of the Capital Requirements Regulation

608 Schedule 4 makes limited amendments to the CRR relating to requirements contained in the Basel III standards. This is for amendments where HM Treasury considers revoking the whole article for the PRA to update in their rules is disproportionate because the amendment is minor. Paragraph 2 allows for references to the PRA rulebook as amended from time to time, rather than as it had effect at the end of the Transition Period.

609 Paragraph 3 amends the rules regarding how capital requirements are calculated.

610 Paragraph 4 removes third-country clearing houses from the list of entities that may be treated as institutions. This reflects the fact that CRR II now applies the revised Basel treatment of exposures to CCPs.

611 Paragraph 5 updates a cross-reference to the reporting requirements from Article 99 to Article 430.

612 Paragraph 6 specifies that only those central counterparties that qualify under new requirements can be used by institutions as eligible providers of unfunded credit protection.

613 Paragraph 7 requires firms to use one of the revised approaches for CCR to calculate exposure value for derivatives when using the Financial Collateral Comprehensive Method (a method for taking account of price volatility in the valuation of financial collateral).

614 Paragraph 8 clarifies that a combination of non-modelled approaches may be used for OTC derivative transactions and long settlement transactions for which an institution has not received permission to use the Internal Model Method.

615 Paragraph 9 removes provisions relating to the recognition of netting practices from the section of the CRR on Credit Risk Mitigation (CRM). Instead, netting recognition requirements will be contained within relevant sections on counterparty credit risk. Netting is a method for reducing risk by aggregating multiple obligations to achieve a net obligation.

616 Paragraph 10 deletes the current treatment of two types of trading book derivatives (total return swap credit derivatives and credit default swap credit derivatives). This reflects the fact that individual sections on counterparty credit risk will define how potential future exposure is calculated for these items.

617 Paragraph 11 replaces the definition of total exposure at default (EAD) used in the standard method for CVA risk. This is updated to reflect the new references to counterparty credit risk approaches.

618 Paragraph 12 removes the time limit on the availability of the derogation under Article 500d of the CRR. Article 500d brings forward an alternative calculation of the exposure value of regular-way purchases and sales awaiting settlement. This was implemented by the EU in view of the COVID-19 pandemic but is set to expire on 27 June 2021 when the EU's CRR II comes into force. Paragraph 12 provides for the derogation to continue after that date in the UK.

619 Paragraph 13 removes the word "purchased" from interest rate and currency options, and updates cross-references to MiFID II.

Schedule 5: Benchmarks: minor and consequential amendments

620 Paragraph 2 of Schedule 5 makes several amendments to definitions under Article 3(1) of the BMR. It expands the definition of an 'administrator' so that it includes those administrators that would have control over the provision of the benchmark but for the exercise of the FCA's powers under Article 23D. It also inserts a definition for 'Article 23A benchmark'.

621 Paragraph 3 inserts a new paragraph 1A after Article 3(1). It clarifies that references in the BMR to the capability of a benchmark to measure the underlying market or economic reality are references to both its current capability to do so and its capability to do so in the future.

622 Paragraph 4 inserts two new paragraphs 4A and 4B under Article 11. Article 11(4) currently requires that an administrator, where it considers that input data is unrepresentative of the market or economy reality that a benchmark is intended to measure, either make changes to the input data to restore the benchmark's representativeness, or cease to provide the benchmark, within a reasonable period of time. New paragraph 4A clarifies that the administrator is not under an obligation to cease the provision of the benchmark where the FCA exercises its powers under Article 21 to mandate the administration of the benchmark. New paragraph 4B further provides that the administrator is also not under an obligation to cease provision of the benchmark where the FCA exercises its power under Article 23(6), and the administrator shall only make changes to the operation of the benchmark insofar as such changes are compatible with the exercise of its powers under Article 23(6).

623 Paragraph 6 makes several consequential changes to Article 20 regarding the conditions and criteria for critical benchmarks to reflect amendments made under section 8.

624 Paragraph 7 clarifies that the FCA could exercise its powers under Article 21 to mandate administration of a critical benchmark to supplement any exercise of the new provision Article 23D.

625 Paragraph 8 introduces new Article 26A which requires supervised entities and supervised third country entities to comply with prohibitions and other requirements that are imposed by the FCA under the BMR.

626 Paragraph 9 inserts two new paragraphs 1A and 1B under Article 29 to clarify use of a benchmark under Article 29, and the validity of contracts, where the FCA has exercised its powers to prohibit the use of that benchmark under Article 21A or 23B.

627 Paragraph 10 introduces a new point (e) under Article 36(1). It requires that the FCA Benchmark Register should also contain any critical benchmarks that are subject to FCA's prohibition notices under Article 21A or 23B, and any benchmarks that are Article 23A benchmarks.

628 Paragraph 11 introduces new Articles 48A and 48B into the BMR. Article 48A provides HM Treasury with the power to make regulations about the provision of information and documents under the BMR. Article 48B outlines provisions on the operation of time under the BMR.

Schedule 6: Gibraltar-based persons carrying on regulated activities in the UK

629 This Schedule inserts a new Schedule 2A into FSMA.

Part 1: Interpretation

630 Paragraph 1 defines a Gibraltar-based person as a person with a head office and, if it has one, a registered office in Gibraltar. It also provides that a person for the purposes of Schedule 2A can be an individual, body corporate, partnership or unincorporated association.

631 Paragraph 2 defines 'UK regulator' as the PRA or the FCA. It also defines 'the Gibraltar regulator' as the GFSC, while sub-paragraph (2) confers a power on HM Treasury to amend by regulations the definition of the Gibraltar regulator to reflect changes in the law of Gibraltar.

632 Paragraph 3 defines "approved activity" under Schedule 2A as a regulated activity approved under regulations made by HM Treasury under paragraph 4. It also defines "corresponding activity" and "branch". Sub-paragraph (3) confers a power on HM Treasury to specify by regulations other categories of place as part of the definition of 'branch'.

633 Paragraph 4 provides that, when the powers of the FCA and the PRA under Schedule 2A can be exercised to advance their objectives, the regulators may use their powers in relation to one person to protect another person even if there is no relationship between the two persons.

Part 2: Approved activities

634 The GAR will be based on the concept of "approved activity" whereby Gibraltar-based persons will only be able to carry on a regulated activity under Schedule 2A if the activity is approved by HM Treasury. This Part is fundamental to the GAR in defining an approved activity and defining the circumstances in which HM Treasury may approve an activity for market access. Paragraph 5, sub-paragraph (1) confers a power on HM Treasury to designate by regulations a regulated activity as an "approved activity" under the new Schedule 2A, thus enabling a Gibraltar-based person to carry on this activity in the UK.

635 Sub-paragraph (2) of paragraph 5 clarifies the scope of the delegated power and provides that, when approving a regulated activity, HM Treasury may approve a regulated activity only to the extent that it is carried on by types of persons specified in the regulations or subject to other limitations. Sub-paragraph (3) recognises that, when making regulations, HM Treasury may take account of any matter it considers relevant, subject to the restrictions included in subsequent paragraphs in respect of objectives (paragraph 7), alignment of law and practice (paragraph 8), cooperation (paragraph 9), and the consultation requirement in paragraph 10.

636 The GAR will enable Gibraltar-based persons to carry on an approved activity only if and to the extent that, among other things, the person has permission from the Gibraltar regulator to carry on the corresponding activity in Gibraltar (paragraph 13(1)(c)). As a consequence, paragraph 6 requires HM Treasury to show how each approved activity in the new Schedule 2A matches a corresponding activity regulated in Gibraltarian law. The purpose of designating corresponding activities in Gibraltar is to ensure that Gibraltar-based persons carrying on a particular activity in the UK also meet similar requirements in their domestic jurisdiction. Sub-paragraphs (2) and (3) of paragraph 6 make similar provision to sub-paragraph (2) and (3) of paragraph 5. Sub-paragraph (2) clarifies the scope of the delegated power. Sub-paragraph (3) gives HM Treasury discretion in deciding what to take into account when designating corresponding activities subject to the restrictions in paragraphs 7 and 8 and the consultation requirement in paragraph 10.

637 Paragraph 7 imposes a restriction on HM Treasury whereby it may not approve a regulated activity under paragraph 5 or a corresponding activity under paragraph 6, unless it is satisfied that doing so is compatible with certain objectives. Sub-paragraph (2) defines the concepts of consumers, financial crime, public funds and relevant markets, which are all relevant to the list of objectives.

638 Before an activity is approved or identified as a corresponding activity, paragraph 8 places a restriction on HM Treasury that it should be satisfied that the relevant law and practice of Gibraltar in respect of that activity is sufficiently aligned with that of the UK, whilst also taking into account the objectives under paragraph 7. Sub-paragraph (2) offers a definition of the relevant law and practice. Sub-paragraph (3) provides that alignment is to include the effect of law and practice as well as the alignment of the text of law and of the documents relating to practice.

639 Paragraph 9 places a restriction on the discretion of HM Treasury to approve activities under paragraph 5, providing that HM Treasury should be satisfied that there is or will be in the future adequate cooperation between the relevant UK and Gibraltar entities. Sub-paragraphs (2) and (3) define what is meant for UK and Gibraltar entities. Sub-paragraph (4) provides a list of criteria that HM Treasury must have regard to in assessing whether adequate cooperation for the purposes of Schedule 2A to FSMA exists. These criteria encompass formal and informal arrangement for cooperation among UK and Gibraltar entities, including for the provision and verification of information to be provided by Gibraltar entities to UK entities, as well as a catch-all provision that HM Treasury have regard to any other matter that they consider relevant.

640 Paragraph 10 places a duty on HM Treasury to consult the FCA and the PRA (if PRA-regulated activities are involved) and the government of Gibraltar before designating a regulated activity as an approved activity under paragraph 5 and identifying the corresponding activity under paragraph 6.

641 Paragraph 11 clarifies that HM Treasury may withdraw the approval of a regulated activity under paragraph 5 even if it is satisfied that the approval continues to be compatible with the conditions of the objectives in paragraph 7, alignment in paragraph 8, and cooperation in paragraph 9. Similarly, sub-paragraph (2) clarifies that HM Treasury may revoke a corresponding activity (whether by amending or revoking regulations made under paragraph 6) even if it is satisfied that the identification of a corresponding activity continues to be compatible with the objectives in paragraph 7 and the alignment condition in paragraph 8 continues to be met.

Part 3: Permission to carry on an approved activity

642 The GAR will introduce a notification process which Gibraltar-based person will be required to follow in order to obtain permission to carry on an approved activity under the GAR. As a result, paragraph 12 provides that a Gibraltar-based person will automatically obtain a Schedule 2A permission to carry on an approved activity in the UK once the Gibraltar regulator notifies the appropriate UK regulator of the person's intention and the period to consider the notification by the UK regulator has expired. However, sub-paragraph (2) explains that a Gibraltar-based person will not gain permission if the appropriate UK regulator rejects the notification under a circumstance contemplated in paragraph 17 of Part 3 or if the Gibraltar regulator withdraws the notification. Sub-paragraphs (3) and (4) are self-explanatory.

643 Paragraph 13 sets out the scope of a Schedule 2A permission: a Gibraltar-based person has a Schedule 2A permission to carry on an approved activity only if and to the extent that it is authorised by the Gibraltar regulator to carry on the corresponding activity in Gibraltar. A Schedule 2A permission is also subject to the limitations and restrictions described in sub-paragraph (2) and (3). If market access for an activity is withdrawn by HM Treasury or a permission cancelled by the UK or Gibraltar regulators, transitional arrangements under Part 9 and 10 will restrict what a Gibraltar-based person can do in the UK, for example, by limiting a person to the performance of protected contracts only. Therefore, a permission under the transitional arrangements is subject to the restrictions set out in Parts 9 and 10.

644 Paragraph 14 sets out the cases in which the FCA or PRA is the appropriate regulator to consider a notification.

645 Paragraph 15, sub-paragraph (1) sets out the required contents of a notification. Sub-paragraph (2) provides that a notification may relate to more than one approved activity. Sub-paragraph (3) provides that HM Treasury may modify the list of items in sub-paragraph (1) by regulations, although subject to the limitation in sub-paragraph (4). As per sub-paragraph (5), HM Treasury must consult the UK regulators and the government of Gibraltar before modifying the contents of a Schedule 2A notification. Sub-paragraph (6) defines what managing the affairs of a Gibraltar-based person encompasses.

646 Paragraph 16 sets out the process that the appropriate UK regulator should follow when considering a notification sent by the Gibraltar regulator in relation to market access. A notification must be acknowledged without delay, and the UK regulator has a period of time to consider the notification. Sub-paragraph (2) provides that the period is two months if the Gibraltar-based person wants to operate through a UK branch; 1 month in other cases. A UK regulator may confirm market access by issuing a confirmation notice before the consideration period has come to an end, as per sub-paragraph (3). The confirmation notice will be issued by the UK regulator to the Gibraltar-based person to act as an expedited procedure to obtain a Schedule 2A permission. Sub-paragraphs (4) and (5) are self-explanatory.

647 Paragraph 17, sub-paragraph (1) prohibits the UK regulators from rejecting a notification, unless they must do so under any of the circumstances set out in paragraph 18 or unless they can do so under paragraphs 19 or 20. Sub-paragraph (2) explains that a notification is rejected when the UK regulator notifies the Gibraltar regulator of this fact. The Gibraltar regulator may send future notices relating to the person and an activity which has previously been turned down.

648 Paragraph 18 imposes a duty on the UK regulators to reject a notification:

a. if the notification does not comply with the requirements in paragraph 15;

b. if the activity has ceased to be approved under Schedule 2A; or

c. if the Gibraltar-based person does not have permission to carry on the corresponding activity in Gibraltar.

649 Paragraph 19, sub-paragraph (1) enables the UK regulators to reject a notification if a senior manager of the Gibraltar-based person is prohibited from performing a function by a prohibition order under section 56 or 143S of FSMA or equivalent order under the law of Gibraltar. Sub-paragraph (2) defines the concepts of managing the person's affairs, prohibition order and senior management function for the purposes of rejecting a notification.

650 Paragraph 20 enables the UK regulators to reject a notification if the Gibraltar-based person has lost a 'relevant access right' to carry on regulated activities at any time and the person poses a serious threat to the interests of consumers or the UK financial system. By extension, sub-paragraph (2) enables the UK regulators to reject a notification if (i) the Gibraltar-based person in question is a member of the same group as a person that has lost a relevant access right, or has close links to a person that has lost relevant market access right at any time and (ii) due to that relationship, the Gibraltar-based person poses a serious threat to the interests of consumers or the UK financial system. Sub-paragraph (3) defines the loss of a relevant access right: this is to be understood as the cancellation of a Part 4A permission (the domestic financial services authorisation), a Schedule 2A permission or authorisation under Schedule 3 (a passporting permission previously available to EEA firms) (other than by virtue of the repeal of Schedule 3). Sub-paragraph (4) places a duty on the UK regulators to consider the reasons why a person lost the relevant access right before rejecting a notification.

Part 4: Variation of permission

651 Paragraph 21, sub-paragraph (1) provides for the Gibraltar regulator or the UK regulator to be able to vary a Schedule 2A permission, and Part 4 subsequently sets out the process and circumstances where this would be possible. Sub-paragraphs (2) and (3) define what a variation of a Schedule 2A permission is.

652 Paragraph 22 provides for the Gibraltar regulator to be able to vary a Schedule 2A permission by sending the appropriate UK regulator a notification requesting a variation. The variation becomes effective once the period for consideration of the notification has come to an end, or later, if a later date is specified in the notification. However, sub-paragraph (2) provides that the variation does not take effect if the appropriate UK regulator rejects the notification (as set out in paragraph 26) or the Gibraltar regulator withdraws the notification. Sub-paragraph (3) clarifies that notifications in this paragraph relate to notifications on the variation of a Schedule 2A permission.

653 Paragraph 23 defines who the appropriate UK regulator to consider a notification under Part 4 is.

654 Paragraph 24 sets out the contents that a notification relating to a variation of permission must contain.

655 Paragraph 25 sets out the process that the appropriate UK regulator should follow to consider a notification relating to a variation of a Schedule 2A permission. The consideration period is two months if the Gibraltar-based person wants to operate through a UK branch; 1 month in other cases. Sub-paragraphs (1), (4), (5) are self-explanatory. Sub-paragraph (3) provides that the period for considering the notification ends earlier if the appropriate UK regulator gives a confirmation notice to the person concerned.

656 Paragraph 26 sets out the circumstances where the UK regulators must or may reject a notification relating to a variation of permission. The UK regulators must reject a notification if the notification does not comply with the requirements in paragraph 2 (sub-paragraph (3)), if the activity has ceased to be approved under this Schedule or if the Gibraltar based person does not have permission to carry on the corresponding activity in Gibraltar (sub-paragraph (4)). The UK regulator may reject a notification for a variation of permission on the same grounds as those set out in paragraphs 19 and 20 in respect of senior managers, loss of access rights and serious threat to the UK (sub-paragraph (5)). Sub-paragraph (6) allows the Gibraltar regulator to submit a further notification in respect of the variation of a Schedule 2A permission if the initial notification of variation is rejected.

657 Paragraph 27 confers a power on the UK regulators to vary a Schedule 2A permission on their own initiative if one out of a series of "own-initiative conditions" in paragraph 28 is satisfied. The FCA may vary a permission in respect of any person with a Schedule 2A permission, and the PRA may only do so in respect of a PRA-authorised person with a Schedule 2A permission (sub-paragraphs (2) and (3)). However, the PRA may vary the Schedule 2A permission of a person who is not a PRA-authorised person by adding a PRA-regulated activity to the permission and, having added the activity, by subsequently varying the permission in respect of that activity (sub-paragraphs (4) and (5)).

658 Paragraph 28 sets out the own-initiative conditions that will enable the UK regulators to vary a Schedule 2A permission on their own initiative. Conditions A to D are self-explanatory. Sub-paragraph (6) clarifies references to the FCA's objectives.

659 Paragraph 29 sets out the process for a UK regulator to vary a permission on their own initiative. This paragraph explains when a variation of the permission takes effect (sub-paragraphs (1) and (2)); it provides for certain procedural requirements to ensure that a person affected by a decision can express their views and challenge the decision (sub-paragraphs (3) to (11)).

660 Paragraph 30 provides that a Gibraltar-based person has the right to refer to the Upper Tribunal a decision by the UK regulators to vary its permission of their own initiative.

Part 5: Cancellation of permission

661 Paragraph 31 sets out the process for a Schedule 2A permission to be cancelled either on the initiative of the Gibraltar regulator or on the initiative of the UK regulators.

662 Paragraph 32 provides for the Gibraltar regulator to request the cancellation of a permission by giving a notification to the appropriate UK regulator. The cancellation comes into force once the consideration period has come to an end, unless as per sub-paragraph (2) the appropriate UK regulator rejects the notification for any of the reasons set out in paragraph 36 or the Gibraltar regulator withdraws the notification on the cancellation. Sub-paragraph (3) is self-explanatory.

663 Paragraph 33 defines the appropriate UK regulator to consider a cancellation of a permission in each case.

664 Paragraph 3 sets out the contents that a cancellation notification issued on the Gibraltarian regulator's initiative must contain.

665 Paragraph 35 sets out the process and timescale for the appropriate UK regulator to consider a notification relating to a cancellation of permission. The consideration period is the same as set out in paragraph 16(2) for a market access notification. Sub-paragraphs (1) and (4) are self-explanatory. Sub-paragraph (3) provides for the consideration period to end earlier if the UK regulator gives the person concerned a confirmation notice.

666 Paragraph 36 sets out the limited circumstances where the UK regulators must or can reject a notification. Sub-paragraph (2) provides for a rejection to be communicated in writing to the Gibraltar regulator. Sub-paragraph (3) requires the UK regulators to reject a notification of cancellation issued by the Gibraltar regulator if the notification does not comply with the notification requirements in paragraph 3. Sub-paragraphs (4) and (5) enable the UK regulators to reject a notification of cancellation if it is desirable to do so to advance one or more of their objectives. If a notification is rejected, sub-paragraph (6) allows the Gibraltar regulator to submit a further notification.

667 Paragraph 37 confers a power on the UK regulators to cancel a Schedule 2A permission if one of the own initiative conditions under paragraph 28 is satisfied. The conditions A to D at paragraph 28 are self-explanatory. Sub-paragraph (3) directs the UK regulators to cancel a person's Schedule 2A permission if the permission no longer enables a person to carry on an activity and if the UK regulator is satisfied the permission no longer needs to remain in force. Sub-paragraph (4) details which UK regulator should lead in each case.

668 Paragraph 38 sets out the process that the UK regulator should follow if it proposes or decides to cancel a person's Schedule 2A permission. The provisions are self-explanatory.

669 Paragraph 39 provides a Gibraltar-based person with the right to refer to the Upper Tribunal a cancellation of permission decided by the UK regulators of their own initiative.

Part 6: Requirements

670 Paragraph 40 confers a power on the UK regulators to impose, vary or cancel requirements on a Gibraltar-based person at different stages. For example, a UK regulator may impose requirements when a notification under Part 3 or 4 of Schedule 2A is being considered (sub-paragraph (1)(a)), or on the initiative of the Gibraltar regulator or the UK regulator (sub-paragraphs (1)(b) and (c)).

671 Paragraph 41 clarifies that the UK regulators can impose a requirement in connection with a notification to seek permission to carry on an activity (Part 3 of Schedule 2A) or a notification in respect of a variation of permission (Part 4 of Schedule 2A). Sub-paragraph (2) provides that the FCA and the PRA may impose requirements under this paragraph if satisfied that it is desirable to do so in order to advance one or more of their objectives. Sub-paragraphs (3) and (4) specify which UK regulator has power to impose requirements in different cases. Sub-paragraph (5) prohibits the UK regulators from imposing a requirement under this paragraph after the period for consideration of a notification has expired. The same sub-paragraph also prevents the UK regulator from imposing a requirement which takes effect before the end of the period for considering the notification. Sub-paragraph (6) is self-explanatory.

672 Paragraph 42, sub-paragraph (1) provides that, if a UK regulator proposes to impose a requirement under paragraph 41, it must give the person concerned a warning notice and give the Gibraltar regulator notice of the proposed requirement. The UK regulator must also consider any representations made by the Gibraltar regulator. Sub-paragraph (2) requires the UK regulator to give the person a decision notice if it decides to impose the proposed requirement.

673 Paragraph 43 enables a Gibraltar-based person to refer to the Upper Tribunal a decision by the UK regulators in respect of a requirement imposed in connection with Part 3 and 4.

674 Paragraphs 44-48 set out the arrangements that the UK regulators must follow when they receive a notification from the Gibraltar regulator asking for the imposition, variation or cancellation of a requirement on a Gibraltar-based person with a Schedule 2A permission.

Under paragraph 44, if a UK regulator receives from the Gibraltar regulator a notification in relation to a requirement, this requirement will take effect once the consideration period by the UK regulator comes to an end, unless the UK regulator rejects the notification during that period, or the Gibraltar regulator withdraws the notification relating to the requirement. Sub-paragraph (3) is self-explanatory.

675 Paragraph 45 clarifies which UK regulator is the appropriate regulator to consider a notification in each case.

676 Paragraph 46 defines the contents that a notification from the Gibraltar regulator asking the UK regulators to impose, cancel or vary a requirement should have.

677 Paragraph 47 sets out the process that the UK regulator should follow when considering a notification with a requirement requested by the Gibraltar regulator. Sub-paragraphs (1) and (4) are self-explanatory. Sub-paragraph (2) sets a consideration period from the day on which the notification was received. Sub-paragraph (3) provides for the consideration period to end earlier if the UK regulator issues a notice of confirmation to the Gibraltar-based person.

678 Paragraph 48 prohibits the UK regulator from rejecting a notification from the Gibraltar regulator unless they must do so because the notification does not meet the requirements in paragraph 46 (sub-paragraph (3)) or it is desirable to reject the notification to advance the regulator's objectives (sub-paragraphs (4) and (5)). Sub-paragraph (2) clarifies that a notification is rejected when the appropriate UK regulator gives written notice of the rejection to the Gibraltar regulator. Sub-paragraph (6) clarifies that a rejection at this stage does not prevent the Gibraltar regulator from sending a further notification in connection to requirements in the future.

679 Paragraph 49, sub-paragraph (1) provides that the UK regulators may only exercise their power to impose, vary or cancel requirements of their own initiative if one of the own-initiative conditions set out in paragraph 28 is met. Conditions A to D in paragraph 28 are self-explanatory. Sub-paragraph (2) and (3) clarify the persons in relation to which the FCA and the PRA may impose, vary or cancel requirements.

680 Paragraph 50 sets out the arrangements for the UK regulators to impose or vary requirements on a person of their own initiative. It explains when a requirement takes effect (sub-paragraphs (1) and (2)); and provides for certain procedural requirements to ensure that a person affected by a decision can express their views and challenge the decision (sub-paragraphs (3) to (11)).

681 Paragraph 51 directs the UK regulators to provide written notice to the Gibraltar-based person if they propose to cancel a requirement, including the date the requirement comes into effect.

682 Paragraph 52 confers a right on a Gibraltar-based person to refer to the Upper Tribunal the imposition, variation or cancellation of a requirement by the UK regulators under paragraph 49.

683 Paragraph 53 enables the UK regulator to impose a requirement on a Gibraltar-based person prohibiting or restricting the disposal of any of the person's assets or a requirement that those assets are transferred to a trustee approved by the UK regulators. Asset requirement restrictions are an important tool to tackle financial crime. If an asset requirement is imposed on a Gibraltar-based person and the UK regulators give notice of this fact to an institution with whom the person keeps an account, sub-paragraphs (2) and (3) protect the institution from contractual liability if it refuses to transfer a payment out of the person's account in line with the asset restrictions imposed.

684 If, by contrast, the institution makes the payment, the same provisions will make the institution liable to pay the UK regulator an amount equal to the sum transferred. Sub-paragraph (4) prohibits the release of any assets held by a trustee while the requirement is in force, except with the consent of the UK regulator. Sub-paragraph (5) voids any charges which the Gibraltar-based person creates in respect of its assets. Sub-paragraph (6) defines the circumstances when assets held by a trustee are to be considered as held in accordance with the asset requirement. Sub-paragraph (7) makes releasing assets in contravention of an asset requirement under sub-paragraph (1)(b) an offence under the law of England and Wales, Scotland and Northern Ireland. Sub-paragraph (8) provides that, in this paragraph, references to imposing a requirement also include varying an existing requirement. Sub-paragraph (9) defines the meaning of 'charge' for the purposes of this Schedule. Sub-paragraph (10) provides that sub-paragraphs (4) and (6) do not affect the equitable interest of the beneficiary of a trust resulting from an asset requirement under sub-paragraph (1)(b).

685 Paragraph 54, sub-paragraph (1) gives two examples of the requirements that may be imposed on a Gibraltar-based person under Schedule 2A, namely, requiring the person to take specific action or to refrain from specific actions. Sub-paragraph (2) notes that the requirements may extend to activities which are not approved activities. Sub-paragraph (3) clarifies that a requirement may be imposed on a person due to its relationship with a wider group of financial services firms. Sub-paragraph (4) enables the regulators to set an expiry period for a requirement, and sub-paragraph (5) clarifies that a requirement may take into consideration past conduct.

686 Paragraph 55, sub-paragraph (1) provides that contravening a requirement imposed by the UK regulators does not a make person guilty of an offence, make a transaction void or allow a right of action for breach of a statutory duty. Sub-paragraphs (2), (3) and (4) set out the circumstances where a private person may take legal action when a requirement is contravened, and they suffer loss as a result. Sub-paragraph (5) provides that the concept of private person may be defined in regulations made by HM Treasury.

Part 7: Changes – Duty to notify UK regulators of changes

687 Paragraph 56, sub-paragraph (1) confers a power on the UK regulators to issue a direction to specify the changes to information that a Gibraltar-based person must notify.

688 Sub-paragraph (2) provides that the UK regulators can issue a direction only in relation to a change about information in notifications under paragraphs 15 and 24. Under sub-paragraph (3), the change must be notified to the appropriate UK regulator and the Gibraltar regulator

689 Sub-paragraph (4) provides that a direction under this paragraph may specify the time when a change must be notified. Sub-paragraphs (5) to (10) provide for procedural requirements connected with the issuance of a direction under this paragraph.

Part 8: UK regulators' directions about information

690 Paragraph 57 confers a power on the UK regulators to issue a direction to specify the particular information that must be included in notifications for the purposes of paragraphs 12, 22, 32 and 44.

691 Under sub-paragraph (2), the UK regulators may only specify information that is reasonably necessary for the fulfilment of functions under FSMA and have the power to vary or revoke a previous direction.

692 Sub-paragraphs (3) to (7) provide for procedural requirements connected with the issuance of a direction under this paragraph.

Part 9: Transition on withdrawal of approval of regulated activity

Transition on withdrawal of approval of regulated activity

693 Paragraph 58 sets out the transitional arrangements that will apply to Gibraltar-based persons with a Schedule 2A permission in the event that HM Treasury withdraws the approval of a regulated activity.

694 Sub-paragraph (1) explains that the transitional arrangements will only apply to a Gibraltar-based person who was carrying on an activity immediately before HM Treasury withdraws approval, thus setting out the scope of those to benefit from the arrangements.

695 Following on from this, sub-paragraph (2) sets out how, once approval has been withdrawn, regulated activities will be treated as approved for a limited period of time of a duration to be specified by HM Treasury if they continue to be carried on by the same Gibraltar-based person. These arrangements will minimise economic disruption and legal risks emerging from the withdrawal of permissions and enable Gibraltar-based persons to seek other permissions or exit the market in an orderly fashion. HM Treasury will have the flexibility to adapt the duration of the temporary arrangements to the types of persons affected. Sub-paragraph (2) also provides that, if the UK regulators impose a restriction under paragraph 60, the regulated activity is treated as approved subject to that restriction.

696 An activity ceases to be treated as temporarily approved if any of the events detailed at sub-paragraph (4) occur before the expiry of the period specified by HM Treasury, which are:

a. if the Gibraltar-based person ceases to carry on that activity in the UK;

b. if the Gibraltar-based person ceases to have permission from the Gibraltar regulator to carry on the corresponding activity in Gibraltar;

c. if the Gibraltar-based person ceases to have Schedule 2A permission in respect of that activity;

d. if the Gibraltar-based person is granted Part 4A permission under FSMA, that is, they successfully secure domestic authorisation from the UK regulators; or

e. if HM Treasury approves again the activity in question under Schedule 2A.

697 Sub-paragraphs (5) and (6) provide that any limitations applicable to the approved activities before or at the time the approval is withdrawn will also apply to the activities treated as approved under the transitional arrangements. Sub-paragraph (7) clarifies that a Gibraltar-based person does not cease to have permission in relation to an activity under sub-paragraph (4)(b) and (c) while the person is in a transitional arrangement under Part 10.

Transition on Gibraltar activity ceasing to be corresponding activity

698 Paragraph 59 sets out the transitional arrangements that will apply if HM Treasury decides that the corresponding activity no longer corresponds to the approved activity. Once again, sub-paragraph (1) also explains that the transitional arrangements will only apply to a Gibraltar-based person who was carrying on an activity immediately before access was withdrawn.

699 Sub-paragraph (2) explains that the transitional arrangements available under Part 9 will treat the Gibraltar activity as corresponding to the approved activity for a temporary period to the extent that the approved activity is carried on by the person in the UK, and subject to any restrictions imposed during the temporary arrangements.

700 Under sub-paragraph (3), an activity ceases to be treated as temporarily corresponding to an approved activity if any of the events detailed at sub-paragraph (4) occur before the expiry of the period specified by HM Treasury.

701 Sub-paragraphs (5) and (6) confirm that any limitations applicable to corresponding activities will continue apply once those activities are treated as corresponding to the approved activities under this paragraph for a limited period of time. Sub-paragraph (7) provides that a Gibraltar-based person does not cease to have permission in relation to an activity under sub-paragraph (4)(b) and (c) while the person is in a transitional arrangement in Part 10.

Restricting transitional permission to protected contracts etc.

702 Paragraph 60 allows the UK regulators to restrict the scope of a transitional permission through a "restriction notice" so that a Gibraltar-based person carrying on an activity for which access has been withdraw is confined to the performance of protected contracts and/or the other aims set out in sub-paragraph (2), such as: to reduce the financial risks to beneficiaries of a protected contract, to transfer property, rights or liabilities under to a person authorised to carry on a regulated activity or to comply with requirements imposed by enactments. Sub-paragraph (1) clarifies that the UK regulators may restrict the scope of the transitional arrangements that come into operation by virtue of paragraphs 59 and 60.

703 Sub-paragraphs (3) to (7) and (9) to (10) of paragraph 60 make provision, including about relevant procedural requirements, connected with the process the UK regulator must follow to restrict transitional arrangements under this paragraph. Sub-paragraph (8) confers a power on HM Treasury to make regulations to specify a period within which restriction notices could not take effect.

704 Paragraph 61, sub-paragraph (1) confers a power on the UK regulators to issue a direction to specify the contracts which are protected contracts for the purposes of Part 9. Sub-paragraphs (2) to (4) sets out the procedure for the issuance of a direction under this paragraph.

705 Paragraph 62 provides for a right to refer matters to the Upper Tribunal should the appropriate UK regulator limit a Gibraltar-based person to the performance of a protected contract or one of the other objectives under paragraph 60(2).

706 Paragraph 63 confers powers on HM Treasury to make regulations in a number of circumstances related to the consideration of UK authorisation with the intent of avoiding a cliff edge for persons moving from the temporary arrangements to a new authorisation. Sub-paragraph (1) gives HM Treasury a power to make regulations which extend the time period set out for the consideration of Part 4A applications from Gibraltar-based person under section 55V(1) and (2) of FSMA. Sub-paragraph (2) allows HM Treasury to make an amendment to section 55V of FSMA in respect of the determination of Part 4A applications. Sub-paragraph (3) allows HM Treasury to extend the period for consideration of applications under section 59 of FSMA. Sub-paragraph (4) clarifies that the powers in this paragraph also enable HM Treasury to make amendments to sections 61 and 63ZA of FSMA in respect of the determination of applications and the variation of senior manager's approval at request of a relevant authorised person, respectively.

Part 10: Transition on cancellation of UK or Gibraltar permission

707 Paragraph 64 sets out the transitional arrangements that will apply to a Gibraltar-based person in the event that their individual Schedule 2A permission is varied or cancelled, preventing them from carrying on a specified regulated activity. This section deals with instances where a UK regulator cancels or varies (by removing an activity) a Schedule 2A

permission of an individual person, in contrast with a set of circumstances where HM Treasury has withdrawn access for an activity as a whole. Under these transitional arrangements, as set out in sub-paragraph (2), a person is automatically deemed to continue to have a Schedule 2A permission for a limited period of time and for limited purposes only in order to carry on activities in relation to the performance of a protected contract and/or one of the other purposes in sub-paragraph (3). Sub-paragraph (4) provides that, in relation to a person subject to an arrangement under Part 10 as a result of this paragraph, the UK regulators could exercise the power under paragraph 49(1) if satisfied that it is desirable to do so in order to advance one or more of their objectives. Sub-paragraph (5) provides that the regulators' duty under section 33 of FSMA arises when the transitional arrangement comes to an end. Sub-paragraph (6) to (8) define key terms relevant to this paragraph

708 Paragraph 65 sets out the transitional arrangements that will apply to a Gibraltar-based person in the event that their permission to carry on a corresponding activity in Gibraltar is cancelled by the Gibraltar regulator or that their permission is varied to remove such an activity. Under the new Schedule 2A, a person wishing to carry on in the UK an approved activity must have a permission to carry on the corresponding activity in Gibraltar. Sub-paragraph (2) provides for that Gibraltar-based person to continue to have a permission from the Gibraltar regulator to perform for a limited period of time any of the activities set out in sub-paragraph (3), including the performance of protected contracts and the transfer of protected contracts to authorised persons. Sub-paragraph (4) makes provision similar to sub-paragraph (4) of paragraph 64. Sub-paragraphs (5)–(7) make provisions similar to sub-paragraphs (6)–(8) of paragraph 64.

709 Paragraph 66 defines who the appropriate UK regulator is for the purposes of exercising the functions under Part 10.

710 Paragraph 67, sub-paragraph (1) confers on UK regulators a power to direct that a contract is a 'protected contract' under paragraph 64, 65 or both for the purposes of transitional arrangements following the cancellation of a Schedule 2A or Gibraltar permission. Sub-paragraph (2) provides for the UK regulators to be able to give a direction modifying the definition of 'existing contract' in paragraph 64 and 65. Sub-paragraphs (3) to (5) provide for procedural requirements connected with a direction under this paragraph.

711 Paragraph 68 defines the circumstances after which the transitional arrangements come to an end. Under sub-paragraph (1), a transitional arrangement under Part 10 comes to an end when an event listed in sub-paragraph (2) occurs on or on an earlier date (if any) specified by the appropriate UK regulator for this purpose. Sub-paragraph (3) confers on the UK regulators power to extend the date.

712 Sub-paragraph (4) defines the concept of "the regulated activity" in paragraph 67 as referring to both the Schedule 2A approved activity and the corresponding activity in Gibraltar. Sub-paragraph (5) clarifies the meaning of one of the events – under sub-paragraph (2)(c) – that brings the transitional arrangement under Part 10 to an earlier end.

713 In the event that the UK regulators propose to set an end date for the transitional arrangements set out in Part 10, paragraph 69 directs the UK regulator to give an initial warning note and, when a decision is made, a subsequent decision notice to the relevant Gibraltar-based person.

714 Paragraph 70 provides for a Gibraltar-based person to have the right to refer matters to the Upper Tribunal in respect of a decision notice from the UK regulators setting out the duration of the transitional arrangements under Part 10.

Part 11: Policy statements

715 Paragraph 71 requires each UK regulator to issue a statement of its policy on its powers in Schedule 2A to vary or cancel a Schedule 2A permission under Parts 4 and 5; to impose, vary or cancel requirements under Part 6 and to give directions under Part 7.

716 Paragraph 72 makes provision for the procedure for the issuance of policy statements.

Part 12: Consultation etc by UK regulators

717 Part 12 imposes particular duties on the UK regulators to inform, consult and obtain consent in specific cases connected with the discharge of their functions under Schedule 2A.

718 Paragraphs 73 to 75 set out the FCA's duties to the PRA while paragraphs 7 to 76 provide for the PRA's duties to the FCA. Paragraph 79 requires the UK regulators to inform the Gibraltar regulator in specific cases.

Part 13: Cooperation and assistance

719 Paragraph 80 places a duty on the UK regulators and the FSCS to cooperate with each other, as well as with HM Treasury and Gibraltar entities under sub-paragraph (1), in order to secure that they and HM Treasury are able to perform their functions under Schedule 2A and section 32A, and to secure that, so far as is reasonably possible, there is cooperation between the UK entities and the Gibraltar entities (sub-paragraph (2)). The steps taken by the UK regulators and the FSCS to cooperate with each other, as well as with HM Treasury and Gibraltar entities may include information sharing agreements (sub-paragraph (5)). Sub-paragraph (3) provides that, to achieve these purposes, the UK regulators and the FSCS should take into consideration any guidance published by HM Treasury, the biannual reports to Parliament laid by HM Treasury, as well as the memoranda and arrangements in paragraph 9(4)(a) to (d). Sub-paragraph (4) places a duty on the UK regulators and the FSCS to agree and maintain memoranda of understanding setting out how they intend to meet their cooperation duties. Sub-paragraph (6) provides that when carrying out functions under Schedule 2A, the FCA and the PRA must, among other things, have regard to any relevant arrangements in force at the time for cooperation between the UK entities or for cooperation between those entities and the Gibraltar entities.

720 Paragraph 81(1) requires the UK regulators and the FSCS to provide to HM Treasury the recorded arrangements in which they will enter with the Gibraltar entities (unless HM Treasury themselves are part of those arrangements). The UK regulators and the FSCS are also under a duty to publish memoranda of understanding recording cooperation agreements, and reviewing such arrangements on a biannual basis, in correspondence with the bi-annual reporting period in section 32A of FSMA. Sub-paragraph (2) places an obligation upon HM Treasury to publish the memoranda of understanding concluded with the UK regulators, the FSCS, the government of Gibraltar or the GFSC to bring them to the public's attention and review them at least at the end of each bi-annual reporting period in section 32A of FSMA. Sub-paragraph (3) creates a duty on HM Treasury to lay before Parliament a copy of any memoranda of understanding set out in sub-paragraphs (1) and (2)(a).

721 Paragraph 82 places a duty on the UK regulators and FSCS to prepare and send to HM Treasury, upon their request, reports relating to matters connected to their functions under Schedule 2A or the biannual review in the new section 32A of FSMA. It is expected that these reports will be used by HM Treasury when deciding whether to expand or withdraw market access for Gibraltar-based persons to UK markets. Sub-paragraph (3) provides that any such requests for reports on the part of HM Treasury must be made in writing and may specify a deadline for the delivery of the reports.

Part 14: Special cases

722 Paragraph 83 makes provision for special cases in Schedule 2A. Among other things, Schedule 2A provides that a person must have a head office in Gibraltar in order to operate in the UK under the new regime. However, paragraph 83, sub-paragraph (1) provides that individuals authorised to carry on insurance distribution activities in Gibraltar without a head office in Gibraltar will be able to operate in the UK provided they are resident in Gibraltar.

723 Sub-paragraph (2) of paragraph 83 makes provision in connection to the notification for the purposes of paragraph 12 in relation to an individual authorised to carry on insurance distribution activities. Sub-paragraph (3) confers on HM Treasury power to make regulations to replace the residence requirement in sub-paragraph (1). Sub-paragraph (4) defines 'insurance distribution activity'.

Schedule 7: UK-based persons carrying on activities in Gibraltar

724 This Schedule adds new Schedule 2B to FSMA.

Part 1: Interpretation

725 As market access is a sovereign matter, it will be up to the government of Gibraltar to legislate for market access arrangements for UK-based firms ("UK-based persons"), and it will ultimately decide which regulated activities UK-based persons will be able to carry on in Gibraltar. Schedule 2B will facilitate the market access of UK-based persons that wish to carry on activities in Gibraltar. Paragraph 1 sets out the definition of a "UK-based person" that can carry on activities in Gibraltar, that is, a person with a head office or registered office in the UK. Paragraph 2 identifies the Gibraltar regulator ("the GFSC") and the appropriate UK regulators ("the PRA" and "the FCA").

726 Paragraph 3 provides the meaning of "restricted activity" for the purposes of UK-based persons operating in Gibraltar. It will be up for the government of Gibraltar to make provision about the approval of regulated activities by UK-based persons in Gibraltar provided those persons are authorised in the UK. Schedule 2B supplements that arrangement by requiring UK-based persons to have a permission to carry on restricted activities in Gibraltar. Paragraph 3(1) lists three types of "restricted activities":

a. an activity which would be a regulated activity if carried on in the UK;

b. marketing a UCITS; or

c. marketing an AIF.

727 Sub-paragraphs (2) to (6) make provision in relation to the marketing of UCITS and AIFs.

728 Paragraph 4 defines key terms under this Schedule.

729 Paragraph 5 provides that, when the powers of the FCA and the PRA under Schedule 2B can be exercised to advance their objectives, the regulators may use their powers in relation to one person to protect another person even if there is no relationship between the two persons

Part 2: Permission to carry on activities in Gibraltar

730 Paragraph 6, sub-paragraph (1) prohibits UK-based persons from carrying on a restricted activity in Gibraltar unless they are permitted to do so under Schedule 2B. Sub-paragraph (2) makes the carrying on of a restricted activity an offence if the activity is carried on by a person who is not an authorised person and does not have a permission under this Schedule.

731 Paragraph 7 sets out the conditions that a UK-based person must meet in order to obtain permission to carry on activities in Gibraltar (a "Schedule 2B permission" as defined by sub-paragraph (6)). Sub-paragraphs (2) to (5) set out the conditions, which are as follows: the UK-based person must give the appropriate UK regulator notice of its intentions by way of a "Gibraltar notice." Following this, the UK regulator must give a "consent notice" to the Gibraltar regulator. A Schedule 2B permission is automatically granted after a period elapses from the day on which the UK regulator gave the Gibraltar regulator the consent notice. This period is two months for a UK-based person seeking to carry on a restricted activity through a branch in Gibraltar, and one month in other cases. A person could obtain a Schedule 2B permission earlier if the consent notice specifies a shorter period.

732 Paragraph 8 clarifies that a UK-based person must hold a relevant Part 4A permission while holding a Schedule 2B permission. Sub-paragraph (2) defines a 'relevant Part 4A permission' in this context.

733 Paragraph 9, sub-paragraph (1) sets out the contents of a "Gibraltar notice" that will be given by interested UK-based persons to the UK regulators. This includes information specified in a direction by a UK regulator. Sub-paragraph (2) provides that a Gibraltar notice may relate to more than one activity. Sub-paragraph (3) provides that a Gibraltar notice may ask the UK regulator to specify a start date for a Schedule 2B permission earlier than the default period under paragraph 7. Sub-paragraph (4) enables the UK regulators to vary or revoke a direction under this paragraph. Under sub-paragraph (5), a direction may make different provision for different purposes. Sub-paragraph (6) provides for a publication requirement.

734 Paragraph 10 describes the process that the appropriate UK regulator should follow upon receiving a Gibraltar notice, unless it intends to refuse to give a consent notice for the request. According to sub-paragraph (1), the UK regulator must give a consent notice to the Gibraltar regulator and confirm to the UK-based person in writing that a consent notice was sent to the Gibraltar regulator. Sub-paragraph (2) to (4) provides for certain requirements connected with notices under sub-paragraph (1).

735 Paragraph 11, sub-paragraph (1) allows the appropriate UK regulator to refuse to give a consent notice to the Gibraltar regulator if the notice does not meet the requirements under paragraph 9, or it appears to the UK regulators that it is desirable to refuse in order to advance one or more of their objectives (which, for the FCA, are defined by sub-paragraph (2)). Sub-paragraphs (3) and (4) require the UK regulator to give a warning notice or decision notice to the person affected by the decision. Sub-paragraph (5) confers a right on UK-based persons to refer the matter to the Upper Tribunal if the UK regulator refuses to give a consent notice.

Part 3: Variation of permission

736 Paragraph 12 provides for both a UK-based person to request a variation of a Schedule 2B permission or for a UK regulator to vary a person's Schedule 2B permission. Sub-paragraph (2) defines a variation of permission as adding or removing an activity or varying the description of an activity.

737 Paragraph 13 provides for a Schedule 2B permission to be varied on the initiative of the UK-based person if the conditions specified in sub-paragraphs (2) to (6) are met.

738 Paragraph 14 sets out the contents that a variation notice must contain and makes further provision related to such notice.

739 Paragraph 15, sub-paragraph (1) sets out the process for the appropriate UK regulator to give a consent to variation notice to the Gibraltar regulator and confirm to the UK-based person in writing that it has done so. Sub-paragraphs (2) to (4) provide for certain requirements connected with notices under sub-paragraph (1).

740 Paragraph 16, sub-paragraph (1) sets out the circumstances where a UK regulator may refuse to give a consent to variation notice. Sub-paragraphs (3) and (4) direct the UK regulators to give the UK-based person a warning notice or decision notice if they intend or have decided to refuse to give a consent to variation notice. Sub-paragraph (5) gives the UK-based person a right to refer a refusal to consent to variation to the Upper Tribunal. Sub-paragraph (2) is self-explanatory.

741 Paragraph 17, sub-paragraphs (1) and (2) confer a power on the FCA to vary a Schedule 2B permission if this would be desirable to advance the FCA's operational objectives. Sub-paragraphs (3) to (6) confer a power on the PRA to vary the Schedule 2B permission of certain persons if it desirable to do so to advance the PRA's objectives.

742 Paragraph 18 sets out the process for a UK regulator to vary a Schedule 2B permission of their own initiative. It explains when a variation of the permission takes effect (sub-paragraphs (1) and (2)); and provides for certain procedural requirements to ensure that a person affected by a decision can express their views and challenge the decision (sub-paragraphs (3) to (11)).

743 Paragraph 19 gives UK-based persons the right to refer a decision to the Upper Tribunal.

Part 4: Cancellation of permission

744 Paragraph 20, sub-paragraphs (1) and (2) provide that the UK regulators may cancel a Schedule 2B permission if (a) they receive a written request from the UK-based person, or (b) on their own initiative, if they are satisfied that it is desirable to cancel a permission in order to advance one or more of their objectives.

745 Sub-paragraphs (3) and (4) require the UK regulator to give a warning notice and eventually, a decision notice, to the UK-based person if the regulator intends to cancel a Schedule 2B permission on its own initiative under this paragraph and subsequently decides to do so. In the event of a cancellation occurring, sub-paragraph (5) provides for a right to refer the matter to the Upper Tribunal. Sub-paragraph (6) requires a UK regulator to inform the Gibraltar regulator of the cancellation of a Schedule 2B permission.

Part 5: Public record, consultation and consent

746 Paragraph 21 provides that the FCA must include in its public record information whether a UK-based person has Schedule 2B permission to carry on restricted activities in Gibraltar and whether the person has a branch in Gibraltar.

747 Paragraph 22 requires the FCA to consult, or obtain consent from, the PRA in specified cases.

748 Paragraph 23 requires the PRA to consult, or obtain consent from, the FCA in specified cases.

Part 6: Special cases

749 Part 6 makes provision for special cases. Under paragraph 24, sub-paragraph (1), an individual without a head office in the UK is treated as having a head office in the UK for the purposes of Schedule 2B if the individual has a Part 4A permission to carry on an insurance distribution activity in the UK. Under sub-paragraph (2) a notification given for the purposes of paragraph 9 must state the individual's main address where the insurance distribution activity is carried on in the UK. Sub-paragraph (3) makes similar provision for a variation notice under paragraph 14. Sub-paragraph (4) defines "insurance distribution activity".

Schedule 8: Gibraltar: minor and consequential amendments

750 This Schedule introduces consequential amendments to FSMA for the primary purpose of ensuring the legal operability of the Act once the new Schedules 2A and 2B come into force.

751 Paragraph 4 inserts a new provision applying Part 5 of FSMA to Gibraltar-based persons. The effect of this is that (i) Gibraltar-based persons with a Schedule 2A permission that operate through a branch in the UK and (ii) Gibraltar-based persons with both Schedule 2A and Part 4A permissions will be required to comply with the Senior Managers Certification Regime. The Senior Managers Certification Regime for financial services firms is an accountability framework focused on senior managers, and employees performing certain functions and aims to improve standards in the financial services sector.

752 Paragraphs 5 and 6 insert new provisions after sections 137A and 137G of FSMA. Under new sections 137AA(1) and 137GA(1) the UK regulators' general rules may not prohibit a Gibraltar-based person with a Schedule 2A permission from carrying on an approved activity in the UK. This prohibition does not apply to FCA's rules described in sections 137C, 137D and 137FD. New sections 137AA(3) and 137GA(2) confer on HM Treasury power to limit by regulations the general rule-making powers of the UK regulators in respect of Gibraltar-based persons with a Schedule 2A permission except for the FCA's power under sections 137C, 137D and 137FD. Under new sections 137AA(4) and 137GA(3), HM Treasury must consult the UK regulators before limiting their general rule-making powers.

753 Paragraphs 7 to 9 amend sections 213, 214 and 224 of FSMA in relation to the FSCS, to adapt the provisions to the new framework for Gibraltar-based persons. A Gibraltar-based person with a Schedule 2A permission will be regarded as a relevant person and thus be FSCS-participating, unless it falls into a prescribed category which HM Treasury has set out in regulations. Paragraph 8 provides for the FSCS to differentiate depending on whether a relevant person is a member of a compensation scheme in the UK and another comparable scheme. Amendments to section 224 introduce a carve out that complements that being added to section 213, for categories of Gibraltar-based persons prescribed by regulations.

754 Paragraph 10 inserts a prohibition after section 367 of FSMA in relation to insolvency proceedings. The provisions set out that the UK regulators cannot present a winding up petition to the Court in respect of a Gibraltar-based person with a Schedule 2A permission unless the Gibraltar regulator has asked them to do so. This provision replicates the existing arrangements for Gibraltar-based persons under section 368 of FSMA and ensures clarity in relation to the responsibilities of each regulator in an insolvency case.

755 Paragraphs 11–16 make amendments to ensure the legal operability of the new Schedules 2A and 2B.

756 Paragraphs 17 and 18 enable the PRA and the FCA to charge fees in relation to the operation of the new regime, however they may not charge fees for considering a notification from a Gibraltar-based person intending to carry on approved activities in the UK, and they may not charge fees for considering and refusing a notification from a UK-based person intending to operate in Gibraltar. The appropriate fee levels will be consulted on by the PRA and the FCA through their annual fees' consultations.

757 Paragraph 19 revokes the Financial Services and Markets Act 2000 (Gibraltar) Order 2001, which currently grants UK market access rights to specified types of Gibraltar-based firms.

Schedule 9: Collective investment schemes authorised in approved countries

Part 1: Provisions to be inserted in Chapter 5 of Part 17 of the Financial Services and Markets Act 2000

758 This Schedule adds the following sections in Chapter 5 of Part 17 of FSMA.

271A Schemes authorised in approved countries

759 Section 271A(1)(a)-(e) sets out the conditions which must be met before an overseas collective investment scheme authorised in a country or territory outside the UK can be a "recognised scheme" under the OFR.

760 Section 271A(1)(a) gives HM Treasury a power to approve countries or territories outside the UK subject to certain restrictions. "Approving" a country or territory means making an equivalence determination. The way HM Treasury will exercise the power to approve countries and territories is by regulations.

761 Section 271A(1)(b) sets out that HM Treasury has the power to describe in the regulations the category or type of collective investment schemes that are within the scope of HM Treasury's equivalence determination.

762 Section 271A(1)(c)-(d) are concerned with the FCA's role. Collective investment schemes, within an approved country or territory, and which fall within a category of scheme in the regulations approving that country or territory, must apply to the FCA for recognition of the scheme. If the FCA has made an order granting a scheme's recognition, and has not revoked or suspended it, the collective investment scheme is a recognised scheme for the purposes of marketing into the UK pursuant to section 271A(1).

763 Section 271A(2) explains that HM Treasury can consider any matter that they consider relevant when deciding whether to approve a country or territory, subject to the restrictions set out in sections 271B and 271C.

271B Approval of country: equivalent protection afforded to participants

764 This section sets out one of the restrictions of HM Treasury exercising the powers to approve a country or territory under section 271A.

765 Section 271B(1)-(2) describes the equivalent protection test which must be met for HM Treasury to approve a country or territory. "Equivalent protection" means that overseas collective investment schemes do not have to be subject to exactly the same law and practice as UK schemes, but the law and practice of that country or territory must provide at least equivalent protection to investors or potential investors as that afforded to investors or potential investors in comparable UK schemes, by the law and practice of the UK under which such schemes are authorised and supervised.

766 Section 271B(3) sets out what HM Treasury can consider to be a 'comparable authorised scheme' when considering whether a description of schemes within a country or territory provides equivalent protection for UK investors. The definition of 'comparable authorised scheme' sets out an exhaustive list of the types of comparable schemes that are authorised in the UK by the FCA.

271C Approval of country: regulatory co-operation

767 This section also sets out a further restriction of HM Treasury exercising powers to make an equivalence determination under section 271A, specifically that HM Treasury may not approve a country or territory through section 271A unless it is satisfied that there are adequate arrangements for co-operation between the FCA and the overseas regulator. The arrangements may not have to be in place when an equivalence determination is made, but HM Treasury must be satisfied in that case that they will exist.

768 Section 271C(2) then defines an 'overseas regulator' as the authority of the country or territory responsible for the authorisation and supervision of the schemes described in the equivalence determination in the country or territory.

271D Report by the FCA in relation to approval

769 This section sets out the power for HM Treasury to ask the FCA to prepare a report on a country or territory's regulatory regime. If HM Treasury asks for a report, this will help HM Treasury to decide whether to approve a country or territory under section 271A.

770 HM Treasury can ask that the FCA's report, which must be made in writing, includes information on the law and practice of an overseas country or territory under which a scheme is authorised and supervised and whether there are any existing or proposed cooperation agreements between the FCA and the overseas regulator.

771 This is a discretionary power for HM Treasury, meaning that it can decide whether or not to ask the FCA for a report. If HM Treasury does ask for a report, the FCA is required to provide it.

271E Power to impose requirements on schemes

772 Section 271E(1) sets out the power for HM Treasury to impose additional requirements on schemes recognised under section 271A,including schemes which are granted MMF equivalence and wish to market to retail investors. Additional requirements are intended to be used by HM Treasury in addition to an equivalence determination, where it is necessary to ensure a greater level of comparability and consistency with the regulation of schemes in the UK. Additional requirements will be set out in regulations made by HM Treasury.

773 Section 271E(2) sets out that HM Treasury must have regard to requirements imposed on comparable authorised schemes in the UK by or under FSMA when making regulations imposing additional requirements on overseas schemes. Section 271E(3) sets out that HM Treasury also has the power to describe additional requirements in the regulations by referring to current or future FCA rules or other enactments as amended from time to time. The definition of 'enactment' in section 271E(10) sets out what is included.

774 Section 271E(5) gives the FCA the power to make, amend or revoke rules if it considers it necessary or appropriate to do so for the purpose of a requirement imposed, or varied or withdrawn, by regulations made by HM Treasury under this section.

775 If HM Treasury considers it necessary or appropriate for the FCA to make, amend or revoke a rule for the purpose of a requirement imposed by its regulations, then under section 271E(6) HM Treasury may direct the FCA to do so. References to rules which are amended or revoked in paragraphs (5) and (6) are to FCA rules made by the FCA.

776 Section 271E(7) provides that the direction given in the previous subsection must be complied with in a time set by HM Treasury.

777 Section 271E(9) applies section 141A of FSMA to rules made, amended or revoked by the FCA under section 271E.

271F Application for recognition to the FCA

778 Section 271F(1) delegates power to the FCA to determine the manner and form in which applications for recognition are to be made by schemes. The legislation also requires that an application for recognition be accompanied by a UK address for service of notices, or other documents to be served on the scheme's operator. The application must contain information, or be accompanied by this information, which the FCA may reasonably require for the purpose of determining the application.

779 Section 271F(2) sets out that the application must provide the FCA with an explanation of how the scheme or its operator will satisfy any additional requirements if its application is granted, as these will not be a condition of the regulatory regime in the country or territory where the scheme is authorised and supervised.

780 Section 271F(3)-(5) gives the FCA the power to require the applicant to provide further information relating to their application; to require that any additional information provided under section 271F be set out in a certain form, and to require different information for different applications.

271G Determination of applications

781 This section sets conditions for the FCA's power to determine applications and make an order granting a scheme recognition for the purposes of marketing into the UK pursuant to section 271A(1).

782 Section 271G(1)(a) sets out that the conditions in section 271G(2) must be met, including that the scheme must be authorised in a country or territory approved by HM Treasury under section 271A, in order for the FCA to grant recognition to a scheme under section 271A. Section 271G(1)(b) provides that the FCA must grant recognition to the scheme, unless it is permitted or required to refuse an application due to the conditions set out in section 271G(3)-(4).

783 Sections 271G(3) sets out the conditions under which the FCA is permitted to refuse an application under section 271A, including if the operator of the scheme has contravened requirements under FSMA. This may include an additional requirement. The FCA may also refuse a scheme's application if the operator has given the FCA false or misleading information in purported compliance with such a requirement. Subsection (4) then sets out that even if the scheme has not contravened a requirement, the FCA must refuse an application if it is desirable for the protection of UK investors.

784 Section 271G(5)-(6) sets out that the FCA must either issue a written notice granting recognition or a warning notice that it is proposing to refuse the application under section 271A within two months of the FCA receiving a complete application, containing all the information it requires, from the scheme operator in question. Section 271G(7) sets out that if the FCA receives an application which is not complete, it must notify the scheme operator that it does not consider that application complete and identify what further information it may need to be considered so.

271H Procedure when determining an application

785 This sets out the procedure the FCA must follow when determining an application for recognition, including issuing a written notice if recognition is granted or a warning notice within a two month period, as set out in 271G(5) if it is proposing to refuse an application under section 271A. If after giving a warning notice, the FCA decides to refuse an application, it must give the applicant a decision notice.

786 Section 271H also allows for an applicant to go the Upper Tribunal if it receives a decision notice from the FCA indicating that its application has been refused. This is with the exception of when the FCA has refused an application on the grounds that the scheme is not authorised in an approved country or territory or that there are not adequate arrangements for co-operation between the FCA and overseas regulator.

271I Obligations on operator of a section 271A scheme

787 This section requires operators of schemes that have been recognised under the OFR to tell the FCA if they become aware that they have or will contravene a requirement imposed on it by or under FSMA. This includes any additional requirements imposed on schemes under section 271E.

788 Section 271I (2) sets out that the operator of a scheme must notify the FCA of any changes to its name and address, the name or address of its representative in the UK, and the name and address of the depositary and trustee. The operator must also notify the FCA of any changes to the address of the place in the UK for the service of notices and other documents relating to the scheme.

271J Provision of information to the FCA

789 This section gives a power to the FCA to ask for information from a scheme operator, after the scheme is recognised, and to direct how and when the information should be given. The FCA can use this power only for the purpose of checking that the conditions for a scheme's recognition and any additional requirements are met. The FCA can require the operator to present information or verify information as the FCA directs. Under this power, the FCA can require different information from different schemes or different descriptions of schemes.

271K Rules as to scheme particulars

790 This section gives the FCA the power to make and impose new rules about scheme particulars of schemes under the OFR. The FCA can make these rules for the same purposes as they are made for authorised unit trust schemes as set out in section 248 of FSMA.

271L Suspension of recognition

791 This section gives the power to the FCA to suspend a scheme's recognition under section 271A, subject to certain restrictions. Revocation is permanent, while suspension is temporary. The FCA can also use its powers in sections 271L and 271N (revocation of recognition on the FCA's initiative) in succession, so that revocation may follow a suspension. However, suspension is not a necessary prerequisite for revocation.

792 Section 271L sets out that this suspension may be for a period of time specified by the FCA or until a specific event has happened or until a specific condition is met. It lists the reasons under which the FCA can use its power to suspend a scheme's recognition, including if the FCA is no longer satisfied that the conditions for its recognition are met. Under section 271L(2)(d) the FCA may also suspend the scheme if it considers it is desirable to protect the interests of UK investors, even if none of the other reasons for suspension apply.

271M Procedure when suspending recognition

793 This section sets out the procedure that the FCA must follow when suspending the recognition of a scheme under the OFR and the timelines for the suspension to take effect.

794 Section 271M(1)(a)–(c) sets out that a suspension may take place immediately, on a day specified in the written notice or when the matter is no longer open to review. A direction may take effect immediately or on a specified day only if the FCA reasonably considers it necessary.

795 Section 271M(3) and (4) set out that the FCA must give written notice to the operator and the trustee or depository of the scheme, if there is a trustee or depositary, setting out the details and reasons for the suspension, the timeline for it taking effect, the reasons for the timeline and the recipient's right to take the matter to the Upper Tribunal. It also sets out the right for the recipients to make representations to the FCA within a given period. A 'representation' provides the recipient of the notice an opportunity to make a case to the FCA as to why the scheme should not be suspended. The notice will advise the recipients of their right to refer the matter to the Upper Tribunal. Section 271M(5) then explains that the FCA may extend the timeline for making representations, as set out in the written notice.

796 Section 271M(6) and (7) set out that, depending on the decision by the FCA on the direction after it has considered any representations in accordance with subsection (4)(d), the FCA must give written notice to the scheme operator and, if any, the trustee or depository. If the FCA has decided to give the direction or, if it has been given, and the FCA has not revoked it, the written notice must set out the recipient's right to refer the matter to the Upper Tribunal and the procedure for doing so. Section 271M applies to the variation of a direction as it applies to the giving of a direction by the FCA.

271N Revocation of recognition on the FCA's initiative

797 This section gives a power to the FCA to revoke the recognition of a scheme under the OFR.

798 Section 271N(1)(a)-(d) states that a revocation order can be made by the FCA when it is no longer satisfied that conditions for recognition, set out in section 271G(2)(a)-(c), or any requirements by or under FSMA (including additional requirements) are met, or it appears to the FCA that the scheme operator has given false or misleading information. Even if none of these reasons apply, a scheme's recognition can be revoked if the FCA considers it desirable in order to protect the interests of UK investors.

799 Section 271N(2)-(3) sets out that the FCA must provide a warning notice to the operator (and trustee and depository, if any) of the scheme if it proposes to revoke scheme's recognition and, without delay, a decision notice if it then decides to revoke the scheme's recognition. If the FCA does decide to revoke the recognition of a scheme, the operator and trustee, or depository, if there is one, can refer the matter to the Upper Tribunal.

271O Requests for revocation of recognition

800 Section 271O sets out that the FCA may also revoke the recognition of a scheme at the request of the scheme's operator and that it must give a written notice to the operator, and trustee and depositary (if any) if it decides to revoke the scheme or refuse a request to revoke the scheme.

801 Section 271O(3)(a)-(b) sets out the reasons why the FCA may refuse a request from the scheme's operator, including that it is in the public interest to investigate before a decision is made or that revocation would not be in the interest of investors in the scheme. In circumstances where the FCA refuses to revoke a scheme's recognition it may nevertheless suspend recognition of the scheme under section 271L where the conditions for exercising the power are engaged.

802 Section 271O(5) sets out the steps that the FCA must take if it decides to refuse a request under 271O, including giving a decision notice to the operator and trustee and depositary (if any) and letting them know that they may refer the matter to the Upper Tribunal.

271P Obligations on operator where recognition is revoked or suspended

803 Section 271P sets out the obligations on the scheme operator, where the scheme's recognition is revoked or suspended, under section 271N(3), 271O(2) or 271L(1).

804 Section 271P(2) sets out that the operator must notify such persons as the FCA may direct about the scheme's suspension or revocation without delay. This notification must be made in the form and manner the FCA may direct and must contain information as the FCA may direct.

271Q Effect of variation or revocation of HM Treasury regulations under section 271A

805 Section 271Q applies to schemes that cease to be recognised as a result of HM Treasury varying or revoking regulations under section 271A. Under this section, when regulations under section 271A are varied or revoked, and a scheme ceases to be recognised, then the order given by the FCA under section 271A, granting recognition to a scheme, is automatically revoked.

806 Section 271Q(3) gives HM Treasury the power in regulations to modify the time limits for applications under section 272 for schemes that have had their recognition revoked as a result of HM Treasury varying or revoking regulations under section 271A. The power allows HM Treasury to require an application under section 272 of FSMA to be made during a period either set out in the regulations or set out in a direction given by the FCA, and to modify the overall time limit for an application under section 272 as set out under section 275(1) and (2) for such schemes.

271R Public censure

807 This section sets out that if the FCA considers that any rules or requirements set out in section 271R(1)(a)-(d) have been contravened, then the FCA may publish a statement to that effect.

808 The FCA must give the scheme operator a warning notice if it intends to publish such a statement and set out what it intends to say in the statement. The FCA must also give a decision notice if it decides to publish a statement, which states that the operator may take the matter to the Upper Tribunal.

271S Recognition of parts of schemes under section 271A

809 This section mirrors new section 282C of FSMA, inserted by section 25 of this Act.

810 Section 271S(1) clarifies that recognition under section 271A(1) applies to parts of collective investment schemes (also called 'sub-funds') as it does to schemes. Subsection (2) makes it clear that the definition of a 'recognised scheme' in Part 17 of FSMA includes a part of a scheme recognised under section 271A, and that other references in or made under Part 17 to schemes recognised under section 271A include parts of schemes. Subsection (3) sets out that provisions made under or of Part 17 have effect in relation to parts of schemes recognised, or seeking recognition under section 271A with appropriate modifications, and subsection (4)(a) allows HM Treasury to make provision by way of regulations as to what are, or what are not such appropriate modifications.

811 Subsection (4)(b) and (c) also give HM Treasury powers to make by regulations, provision so that relevant enactments have effect with appropriate modifications, or do not have effect, in relation to parts of schemes recognised or seeking recognition under section 271A. Relevant enactments are defined as any legislation relating to schemes recognised or seeking recognition under section 271A, which were passed or made before the day on which section 271S(1) comes into force. In making regulations under, and for the purposes set out in subsection (4)(b) and (c), HM Treasury can amend, repeal or revoke legislation.

812 A consequential amendment is also made in Part 2 of Schedule 9, paragraph 8 to add section 271S to section 429(2) of FSMA, which means that the powers under section 271S will be exercised by the affirmative procedure.

Part 2: Minor and consequential amendments

813 This Part makes amendments that are consequential on the introduction of the Overseas Funds Regime.

Financial Services and Markets Act 2000 c.8

814 Paragraphs 2 to 8 in Part 2 of Schedule 9 relate to consequential amendments to FSMA. The key amendments are:

a. in section 138I of FSMA, regarding consultation by the FCA, a new subsection (9A) is inserted so that this section does not apply to rules made by the FCA under section 271E relating to additional requirements. Therefore, the FCA will not be required to consult on new or amended rules made under section 271E;

b. in section 165(7)(b) of FSMA, regarding the FCA's powers to require specified information or documents, or information or documents of a specified description, from recognised schemes, recognised schemes under section 271A are added. Therefore, the FCA may require such information and documents from schemes recognised under the OFR. Section 165(7)(b) also clarifies that the reference to a scheme that is recognised includes a part of a scheme;

c. in section 237(2) of FSMA, paragraph (ba) is added to the definition of 'the operator' in relation to a recognised scheme, so that it means the legal entity with overall responsibility for the management and performance of the functions of the scheme;

d. in section 392 of FSMA, regarding the application of sections 393 and 394 of FSMA which relate to third party rights and access to FCA material in the context of warning notices and decision notices, an amendment is made to include notices given under sections 271N and 271R;

e. in section 395(13) of FSMA, regarding the meaning of supervisory notice, an amendment is made to include written notices given under section 271M relating to the suspension of a scheme's recognition.

The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773)

815 Paragraphs 9 to 12 in Part 2 of Schedule 9 amend Part 6 of the Alternative Investment Fund Managers (AIFM) Regulations 2013 in accordance with the following paragraphs. Part 6 relates to the marketing of AIFs. These amendments will switch off the NPPR notification obligations for schemes which are recognised under section 271A.

816 In regulation 57, after paragraph 1, new paragraph (1A) is inserted so that an AIF, which is recognised under section 271A, is not recognised under paragraph 1. This means that an AIFM, which manages an AIF recognised under section 271A, does not have to give written notification to the FCA before marketing in the UK.

817 In regulation 58(1), the line "except where the AIF is recognised under section 271A of the Act" is added. This means that a small third country AIFM, which manages an AIF recognised under section 271A, also is not required to give written notification to the FCA before marketing in the UK.

818 In regulation 59(1), the line "except where the AIF is recognised under section 271A of the Act" is added. This means that a third country AIFM that is not a small AIFM, which manages an AIF recognised under section 271A, also is not required to give written notification to the FCA before marketing in the UK. In addition, regulation 59(4A) is amended to refer to 'AIF' rather than 'collective investment scheme' for consistency.

The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/325)

819 Paragraphs 13 to 16 in Part 2 of Schedule 9 relate to the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 and set out that schemes will be able to apply for recognition, either through section 271A or section 272 of FSMA, at the end of the temporary permissions regime.

820 In paragraph 14(f), a substitution is also made in order to extend the TMPR from three to five years.

821 Paragraph 15 removes regulation 67(2). This removes the requirement that HM Treasury may only make regulations to extend the TMPR if the FCA has submitted an assessment on the effects of extending at least six months before the end of period which is to be extended.

822 Applications under section 271A of FSMA:

a. the new regulation 67A requires that applications under section 271A must be made during a time period specified by the FCA. This is for the purposes of allowing the FCA to create 'landing slots' for funds applying to the OFR at the end of the TMPR, to allow them to manage workflow;

b. the new regulation 67A(3) sets out that the obligation in section 271G(5) for the FCA to either issue a written notice granting recognition or a warning notice that it is proposing to refuse the application under section 271A, within two months, does not apply for applications from schemes transitioning from the TMPR to the OFR. However, the application must be determined by the FCA before the period specified in regulation 62(3)(d).

Schedule 10: Amendments of the Markets in Financial Instruments Regulation

823 This Schedule amends the mechanism under which the UK may assess third countries to be equivalent for the purposes of Article 47(1) of MiFIR.

824 Paragraph 2 of Schedule 10 specifies that Chapter 1 of Title 7 of MiFIR (supervisory measures relating to interventions) applies to third country firms providing investment services or performing investment activities in the UK.

825 Paragraph 3 is self-explanatory.

826 Paragraph 4 is self-explanatory.

827 Paragraph 5 makes amendments to Article 46 of MiFIR, including a change to the registration criteria for third country firms, to include a requirement that firms seeking registration have established the necessary arrangements and procedures to provide the information specified by the FCA under the FCA's new rule-making power in Article 46, paragraph 6B.

828 Paragraph 6 amends Article 47 of MiFIR. It sets out the assessment criteria in relation to an equivalence determination, as well as the coordination and monitoring requirements of the FCA in relation to third countries which are subject to an equivalence determination.

829 Paragraph 7 enables HM Treasury to impose specific requirements on firms that have registered under the Title 8 Regime.

830 Paragraph 8 amends Article 49 of MiFIR (withdrawal of registration). Paragraph 8, sub-paragraphs (1) and (2) are self-explanatory. Sub-paragraph (3) sets out the circumstances in which the FCA may place temporary restrictions on a third country firm providing investment services in the UK.

831 Paragraph 8, sub-paragraph (4) sets out the circumstances in which the FCA may withdraw the registration of a third country firm.

832 Paragraph 8, sub-paragraph (5) provides that upon the FCA taking action to withdraw registration, it must take account of the seriousness of the risk posed to investors and orderly functioning of markets. It also specifies the considerations the FCA must have regard to when deciding appropriate action.

833 Paragraph 9 details the procedure for temporary prohibitions and restrictions, as well as for the withdrawal of registration of a third country firm. It also enables HMT to specify the timings and content of the FCA's written notice to the firm and the avenues available to the third country firm in response.

834 Paragraphs 10 – 13 concern FCA directions and rules. Paragraphs 10 and 11 are self-explanatory. Paragraph 12 specifies that the FCA can make different provisions under Articles 46(4) and (5) in relation to different applications and cases (noting that these specific provisions relate to applications made by third country firms to register with the FCA and information such firms are required to provide to clients, respectively). It also sets out the procedural rules that apply to the FCA's exercise of its rule-making power under Article 46(6B) (i.e. to specify reporting requirements for third country firms that register under the regime) or Article 48A (i.e. regarding specific requirements). Paragraph 13 ensures that FCA consultation requirements, as specified in section 138I of FSMA, may be satisfied by actions taken both before and after paragraph 12 comes into force.

Schedule 11: Variation or cancellation of Part 4A permission on initiative of FCA: additional power

835 Schedule 11 amends FSMA to insert section 55JA and Schedule 6A. Section 55JA introduces Schedule 6A which provides the FCA with an additional power to vary or cancel a firm's Part 4A permission. Schedule 6A provides that the FCA may cancel or vary a firm's Part 4A permission on specific grounds. Those grounds are where the FCA has given a notice to the authorised person— (i) stating that it appears to the FCA that the person is not carrying on a regulated activity, (ii) inviting the person to attest to the FCA that the person is in fact carrying on a regulated activity, and (iii) warning of the consequences of a failure to do so; the authorised person fails to satisfy the FCA that the person is carrying on a regulated activity within 14 days of the notice being issued; and that the FCA has issued a further notice.

836 Paragraph 1(3) sets out the circumstances in which the FCA may form the view that an authorised person is not carrying on a regulated activity which include where the authorised person fails to (a) pay fees, or (b) provide such information to the FCA as is required by the FCA Handbook.

837 Paragraphs 4 to 6 set out a procedure by which an aggrieved person can apply to annul a decision to cancel or vary its Part 4A permission. Paragraph 7 creates a right to refer the matter to the Upper Tribunal subsequently.

Schedule 12: Forfeiture of money: electronic money institutions and payment institutions

838 This Schedule amends Chapter 3B of Part 5 of POCA (as it applies to England and Wales and Scotland) and Part 4B of Schedule 1 of ATCSA (across the UK) to ensure that provisions for the freezing and forfeiture of money held in accounts apply in relation to accounts maintained with payment and e-money institutions. The definition of a 'relevant financial institution' in Schedule 12 differs between Northern Ireland and the rest of the UK. The definition for England & Wales and Scotland includes, banks, building societies, e-money institutions and payment institutions. The definition for Northern Ireland includes banks and building societies. There will therefore be no substantive change to the provisions of Chapter 3B of Part 5 of POCA so far as they apply to Northern Ireland.

Commencement

839 Section 49(5) sets out that the provisions of the Act, other than those listed in subsections (1) to (4), will commence on the day appointed by HM Treasury by regulations. Subsection (1) lists provisions which will commence on Royal Assent and subsection (2) lists provisions which will commence two months after Royal Assent. Subsection (4) makes provision for section 32 to be commenced on the day appointed by either HM Treasury or the Secretary of State by regulations.

Related documents

840 The Government has published online a number of related documents: https://www.gov.uk/government/collections/financial-services-bill-consultations

841 In addition, the following documents are relevant to the Act and can be read at the stated locations:

- Written Ministerial statement, June 2020, https://questions-statements.parliament.uk/written-statements/detail/2020-06-23/HCWS307
- Amendments to the Packaged Retail Investment and Insurance-based Products regulation, policy statement, https://www.gov.uk/government/publications/amendments-to-the-priips-regulation
- Amending the regulation for third country benchmarks in the UK, policy statement https://www.gov.uk/government/publications/amending-the-transitional-period-for-third-country-benchmarks-in-the-uk
- Changes to the FCA's cancellation of authorisation process, policy statement, https://www.gov.uk/government/publications/changes-to-the-fcas-cancellation-of-authorisation-process
- Impact assessment, https://publications.parliament.uk/pa/bills/lbill/58-01/162/Impact-Assessment.pdf
- Delegated Powers Memorandum, https://publications.parliament.uk/pa/bills/lbill/58-01/162/Delegated-Powers-Memorandum.pdf
- Supplementary Delegated Powers Memorandum, https://bills.parliament.uk/Publications/40934/Documents/85/FinancialServicesBillSupplementaryDPM.pdf
- ECHR memo, https://publications.parliament.uk/pa/bills/lbill/58-01/162/ECHR-Memorandum.pdf

Annex A – Hansard References

842 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons		
Introduction	21 October 2020	Vol. 682 Col. 1078
Second Reading	9 November 2020	Vol. 683 Col. 656
Public Bill Committee	17 November 2020 19 November 2020 24 November 2020 26 November 2020 1 December 2020 3 December 2020	PBC (Bill 200) 2019 - 2021
Report and Third Reading	13 January 2021	Vol. 687 Col. 344
House of Lords		
Introduction	14 January 2021	Vol. 809 Col. 976
Second Reading	28 January 2021	Vol. 809 Col. 1810
Grand Committee	22 February 2021 24 February 2021 1 March 2021 3 March 2021 8 March 2021 10 March 2021	Grand Committee (Bill 162) 2019 - 2021
Report	24 March 2021 14 April 2021 19 April 2021	Vol. 811 Col. 857 Vol. 811 Col. 1314 Vol. 811 Col. 1656
Third Reading	19 April 2021	Vol. 811 Col. 1709
Commons Consideration of Lords Amendments	26 April 2021	Vol. 693 Col. 173
Lords Consideration of Commons Reason and Amendment in lieu	28 April 2021	Vol. 811 Col. 2203
Royal Assent	29 April 2021	House of Commons Vol. Vol. 693 Col. 520 House of Lords Vol. 811 Col. 2413

Annex B – Progress of Bill Table

843 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 6	Clause 6	Clause 6	Clause 6	Clause 6
Section 7	Clause 7	Clause 7	Clause 7	Clause 7
Section 8	Clause 8	Clause 8	Clause 8	Clause 8
Section 9	Clause 9	Clause 9	Clause 9	Clause 9
Section 10	Clause 10	Clause 10	Clause 10	Clause 10
Section 11	Clause 11	Clause 11	Clause 11	Clause 11
Section 12	Clause 12	Clause 12	Clause 12	Clause 12
Section 13	Clause 13	Clause 13	Clause 13	Clause 13
Section 14	Clause 14	Clause 14	Clause 14	Clause 14
Section 15	Clause 15	Clause 15	Clause 15	Clause 15
Section 16	Clause 16	Clause 16	Clause 16	Clause 16
Section 17	Clause 17	Clause 17	Clause 17	Clause 17
Section 18	Clause 18	Clause 18	Clause 18	Clause 18
Section 19	Clause 19	Clause 19	Clause 19	Clause 19
Section 20	Clause 20	Clause 20	Clause 20	Clause 20
Section 21	Clause 21	Clause 21	Clause 21	Clause 21
Section 22	Clause 22	Clause 22	Clause 22	Clause 22
Section 23	Clause 23	Clause 23	Clause 23	Clause 23
Section 24	Clause 24	Clause 24	Clause 24	Clause 24
Section 25	Clause 25	Clause 25	Clause 25	Clause 25
Section 26	Clause 26	Clause 26	Clause 26	Clause 26
Section 27	Clause 27	Clause 27	Clause 27	Clause 27
Section 28	Clause 28	Clause 28	Clause 28	Clause 28
Section 29	-	-	-	*Inserted during ping-pong*
Section 30	Clause 29	Clause 29	Clause 29	Clause 29

These Explanatory Notes relate to the Financial Services Act 2021 (c. 22) which received Royal Assent on 29 April 2021.

Section of the Act	Bill as introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended on Report in the Lords
Section 31	Clause 30	Clause 30	Clause 30	Clause 30
Section 32	-	-	Clause 31	Clause 31
Section 33	-	-	Clause 32	Clause 32
Section 34	Clause 31	Clause 31	Clause 33	Clause 33
Section 35	Clause 32	Clause 32	Clause 34	Clause 34
Section 36	Clause 33	Clause 33	Clause 35	Clause 35
Section 37	-	-	-	Clause 36
Section 38	Clause 34	Clause 34	Clause 36	Clause 37
Section 39	-	-	-	Clause 38
Section 40	Clause 35	Clause 35	Clause 37	Clause 39
Section 41	Clause 36	Clause 36	Clause 38	Clause 40
Section 42	Clause 37	Clause 37	Clause 39	Clause 41
Section 43	Clause 38	Clause 38	Clause 40	Clause 42
Section 44	-	-	-	Clause 43
Section 45	Clause 39	Clause 39	Clause 41	Clause 44
Section 46	Clause 40	Clause 40	Clause 42	Clause 45
Section 47	Clause 41	Clause 41	Clause 43	Clause 46
Section 48	Clause 42	Clause 42	Clause 44	Clause 47
Section 49	Clause 43	Clause 43	Clause 45	Clause 48
Section 50	Clause 44	Clause 44	Clause 46	Clause 49
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3
Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4
Schedule 5	Schedule 5	Schedule 5	Schedule 5	Schedule 5
Schedule 6	Schedule 6	Schedule 6	Schedule 6	Schedule 6
Schedule 7	Schedule 7	Schedule 7	Schedule 7	Schedule 7
Schedule 8	Schedule 8	Schedule 8	Schedule 8	Schedule 8
Schedule 9	Schedule 9	Schedule 9	Schedule 9	Schedule 9
Schedule 10	Schedule 10	Schedule 10	Schedule 10	Schedule 10
Schedule 11	Schedule 11	Schedule 11	Schedule 11	Schedule 11
Schedule 12	-	-	Schedule 12	Schedule 12

Annex C – Glossary

General

Legislation-related references

Affirmative procedure: A type of Parliamentary procedure that applies to statutory instruments (SIs) and describes the form of scrutiny that the SI received from Parliament. Both Houses of Parliament must actively approve an SI laid under the affirmative procedure before it can become law.

Chapter: A grouping of Sections under a subheading within a Part of an Act.

Section: The basic unit of an Act, divided into subsections, then paragraphs, then sub-paragraphs.

Commencement: The coming into effect of legislation. In the absence of a commencement provision, the Act comes into force from the beginning of the day on which Royal Assent was given (at midnight).

Delegated legislation: Legal instruments (including regulations and orders) made under powers delegated to Ministers or other office holders in Acts of Parliament. They have the force of law but can be disapplied by a court if they do not comply with the terms of their parent Act. Also called subordinate or secondary legislation.

Negative procedure: An SI laid under the negative procedure becomes law on the day the Minister signs it (when it is made) and remains law unless a motion, or 'prayer', to reject it is agreed by either House within 40 sitting days.

Part: A grouping of Sections under a heading in the body of a Act. Also, a subdivision of a Schedule.

Regulations: A form of subordinate legislation made by the government under the authority of Acts of Parliament.

Retained EU law: The EUWA converts the body of directly applicable EU law that was operative immediately before the end of the implementation period into domestic law and preserves the body of laws we made in the UK to implement our EU obligations as they applied up to the end of the implementation period. "Retained EU law" refers to the overall body of laws converted or preserved by the EUWA in this way.

Retrospective effect: A provision is retrospective if either it takes effect from a date before it comes into force, or it takes effect from the date that it comes into force – i.e. it is formally prospective – but it changes the previously definite and predictable consequences of past transactions, actions or events in a way which could not have been reasonably expected by those who are affected.

Royal Assent: The Sovereign's agreement to an Act. The final stage in the legislative process and the moment a bill becomes an Act, subject to any specified provisions in the Act for the commencement of its operation.

Schedule: Acts may have Schedules that appear after the main Sections in the text. They are often used to spell out in more detail how the provisions of the Act are to work in practice.

Statutory instrument or SI: Statutory instruments contain delegated (or secondary) legislation. They can be used to make specific changes to the law under powers from an existing Act of Parliament, without Parliament having to pass a new Act.

Transition Period: The implementation period provided for by Part 4 of the Withdrawal Agreement between the UK and the EU, beginning with the UK's departure from the EU on 31 January 2020 and ending on 31 December 2020.

Legislation

ATCSA: Anti-terrorism, Crime and Security Act 2001

ECA: European Communities Act 1972.

EUWA: European Union (Withdrawal) Act 2018.

FGCA: Financial Guidance and Claims Act 2018.

FSMA: Financial Services and Markets Act 2000.

POCA: Proceeds of Crime Act 2002

SAMLA: Sanctions and Anti-Money Laundering Act 2018.

TFEU: Treaty on the Functioning of the European Union, OJ C 326, 26 October 2012, pp. 47–390.

UCITS Directive: Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (see UCITS directive).

Bodies, offices, institutions and international

CEO: Chief Executive Officer.

EEA: European Economic Area.

EU: European Union.

FCA: Financial Conduct Authority.

FSB: Financial Stability Board.

G20: The "Group of Twenty" (G20) is a forum for international economic cooperation

HMRC: Her Majesty's Revenue and Customs.

PRA: Prudential Regulation Authority.

General

Authorised persons: A person who is authorised for the purposes of section 31 of FSMA.

Derivative: A security which "derives" its value from the underlying asset or a reference price.

Financial Services Register: Authorised firms and individuals are recorded in the Financial Services Register, which is open to the public.

Liquidity: Liquidity refers to the amount of liquid assets, or cash, available to a market or company.

OTC: 'Over-the-counter' is the process of trading securities outside regulated market exchanges.

Retail investors: Individuals who invest their personal savings and pensions, rather than professional investors or financial companies who invest on someone else's behalf.

UCITS: In the UK, 'Undertakings for Collective Investment in Transferable Securities' (UCITS) are funds that have been authorised by the FCA as such. In the EU, UCITS are funds that are authorised by their national competent authority under the EU's UCITS Directive.

Prudential Measures

Additional capital buffers: Mandatory capital that some systemically important banks are required to hold in addition to other minimum capital requirements. These could be macroprudential capital buffers or applied to specific institutions.

Basel III: Third Basel Accord.

BCBS: The Basel Committee on Banking Supervision which sets global prudential standards for internationally active banks (the Basel framework).

Capital ratios: The percentage of a bank's capital to its risk weighted assets.

CCR: Counterparty credit risk is the risk to a firm that a counterparty to a transaction might not perform its contractual obligations before the transaction's cash flows are settled.

Common Equity Tier 1: The highest quality of regulatory capital as it absorbs losses immediately when they occur. It is mainly made up of common shares issued by a credit institution, the bank, retained earnings and/or other income and disclosed reserves.

Concentration risk: The actual or potential risks arising from the exposure to a single client or group of clients.

Credit institutions: A firm whose business is to take deposits or other repayable funds from the public and to grant credits for its own account. Credit institutions include banks and building societies.

Credit rating: A grade typically awarded by credit rating agency to a financial instrument or entity indicating the probability of default and creditworthiness.

Credit risk: The risk of loss that results from a borrower failing to repay a loan or meet its contractual obligations.

CRD IV: Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (see CRD IV).

CRD V: Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (see CRD V).

CRR Basel Standard: A standard published by the Basel Committee on Banking Supervision (BCBS) that is relevant for the purposes of this Act. The term is defined in the Act itself at Section 4.

CRR or Capital Requirements Regulation: Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms. The 'EU CRR' refers to the EU version of the Regulation. The 'CRR' is the Regulation as it has effect in the UK after IP completion day (see CRR and EU CRR).

CRR II: Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements. The 'EU CRR II' refers to the EU version of the Regulation. The 'CRR' is the Regulation as it has effect in the UK after IP completion day (see EU CRR II and CRR II).

CVA risk: Credit valuation adjustment risk is the risk of a change in the value of a bank's exposure to its counterparties in derivatives transactions.

EU IFD: Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms (see EU IFD).

FCA investment firm: An investment firm that— (a) has a Part 4A permission to carry on one or more regulated activities; (b) is not designated by the PRA; and (c) has its registered office or, if it has no registered office, its head office in the UK.

Financial obligations: Any outstanding debts or regular payments that must be made.

G-SIIs: Global systemically important institutions.

High-quality liquid assets: Assets with a high potential to be converted easily and quickly into cash.

IFPR: Investment Firms Prudential Regime.

IFR: Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms. The 'EU IFR' refers to the EU version of the Regulation (see EU IFR).

Investment firms: An investment firm provides a range of services which give investors access to securities and derivatives markets.

LCR: Liquidity coverage ratio refers to the proportion of highly liquid assets held by financial institutions, to ensure their ongoing ability to meet short-term obligations.

Leverage: The use of borrowed money (debt) to finance the purchase of assets with the expectation that the income or capital gain from the new asset will exceed the cost of borrowing.

Leverage ratio: The leverage ratio is the proportion of debts that a bank has compared to its equity/capital (more technically, the ratio of tier 1 capital to total non-weighted assets and off-balance sheet exposures).

Liquidity requirements: Liquidity is a measure of the cash and other assets banks have available to quickly pay bills and meet short-term business and financial obligations. The BCBS has introduced two standards setting out requirements for banks in the form of Liquidity Coverage Ratio and a Net Stable Funding Ratio.

Macroprudential capital buffers: Additional capital that banks are required to hold in addition to other minimum capital requirements, which reflect vulnerabilities and risks to the financial system.

Market risk: The risk of loss resulting from factors that affect the overall performance of the financial markets in which a bank may be involved. Common sources of market risk stem from buying and selling commodities, equity (i.e. shares or common stock) or foreign exchange as well as changes in the interest rate or credit spread.

Non-performing exposures: Also referred to as "bad debt" and are generally loans where more than 90 days have passed without the borrower paying the agreed instalments and interest.

NSFR: Net stable funding ratio requires banks to hold enough stable funding to cover the duration of their long-term assets. Where stable funding is the portion of capital and liabilities expected to be reliable over a specific time horizon.

Off-balance sheet exposures: Activities that are effectively assets or liabilities of a company but do not appear on the company's balance sheet

Operational risk: The risk of loss resulting from inadequate or failed processes, people and systems or from external events.

Prudential regulation: Financial regulation that requires firms to control risks and maintain sufficient capital to operate through periods of economic stress.

Parent undertakings: A parent business entity to a group of businesses, sometimes called a holding company.

RWAs: Risk-weighted assets. A bank's asset or off-balance sheet exposure, weighted according to risk.

SACR: Standardised Approach to Credit Risk.

"Sound Principles": Principles for Sound Liquidity Risk Management and Supervision.

Systemic risks: The possibility that an event at the company level could trigger severe instability or collapse an entire industry or economy.

Technical standards: Regulatory technical standards (RTS) or binding technical standards (BTS), which are delegated acts, prepared by a European Supervisory Authority. These specify particular aspects of an EU legislative text with the aim of ensuring consistency and harmonisation across the EU in specific areas.

Benchmarks

Benchmark: A benchmark is an index used in a financial product to determine amounts payable under the contract, the value of a product or to measure performance.

Benchmark administrator: A person that is responsible for the provision of a benchmark. In broad terms, this involves the creation of a benchmark on the basis of underlying data, for example as provided by benchmark contributors.

BMR/EU BMR: Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds. The 'EU BMR' refers to the EU version of the Benchmarks Regulation. The 'BMR' is the Benchmarks Regulation as it has effect in the UK after IP completion day. This is the UK's domestic regulatory framework for indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (see BMR and EU BMR).

Critical benchmark: A benchmark that is used in a significant volume of transactions, for which appropriate substitutes are lacking, and where discontinuation of the benchmark is likely to have a severe adverse impact. The BMR includes a number of tests for establishing where a benchmark is "critical".

Derivatives markets: A general term used to describe the activities of persons involved in creating and trading complex financial products called derivatives (see the definition of derivatives above). Derivatives may refer to specific benchmarks, such as LIBOR.

EURIBOR: Euro Interbank Offered Rate.

Fixed income products: A general term for categories of financial products that pay a fixed return. Bonds are generally referred to as fixed income products, as a bondholder under a traditional bond is entitled to fixed, periodic interest payments under the bond.

IBA: ICE Benchmark Administration Limited

IBORs: Refers to LIBOR, EURIBOR and TIBOR and other Interbank Offered Rates. These are widely used in the global financial system as benchmarks for a large volume and broad range of financial products and contracts.

LIBOR: A benchmark which seeks to measure the average costs at which banks can borrow from the unsecured wholesale lending market. It is produced by IBA and is calculated based on submissions that are made to IBA each day by a number of major global banks (the "panel banks").

Money market instruments: A category of financial instrument, typically debt securities, such as treasury bills and commercial paper, which have a short-term maturity period. The maturity period ends on the maturity date, which is the date when the principal amount under the instrument is due to the investor, and when interest payments under the instrument cease to be payable.

Panel bank: A term used to characterise a group of banks that contribute, or have contributed, data used to calculate benchmarks.

Risk-free rate: Risk-free rates are rates that are generally based on overnight deposits. Global regulators have proposed that risk free rates should be used as alternative rates to LIBOR. A proposed risk-free replacement rate for LIBOR has been identified by regulators in each currency for which LIBOR is published.

Structured products: A type of investment product where the interest paid out on the instrument is dependent on the performance of something else, such as a particular share or stock market index.

Supervised entities: A particular type of entity that is required to comply with certain rules under the BMR when using a benchmark. Generally speaking, this refers to regulated entities (i.e. firms authorised to carry on financial services activities).

TIBOR: Tokyo Interbank Offered Rate.

Tough legacy contracts: Contracts, particularly in cash markets (i.e. loans, securitisations, mortgages and commercial contracts), which genuinely have either no or inappropriate alternatives and face insurmountable barriers to moving off LIBOR.

UK Benchmarks Register: A public record of benchmark administrators and third country benchmarks which are compliant with the Benchmarks Regulation and have successfully applied to the FCA.

Market access arrangements for financial services between the UK and Gibraltar

Asset requirement restrictions: The UK regulator imposes a requirement on a Gibraltar-based person prohibiting or restricting the disposal of any of the person's assets or requirement that those assets are transferred to a trustee approved by the UK regulators.

FOS: Financial Ombudsman Service.

FSCS: Financial Services Compensation Scheme. The FSCS is also used as an abbreviation for the "scheme manager," defined in Part 15 of FSMA as the body corporate managing the Financial Services Compensation Scheme.

GAR: Gibraltar Authorisation Regime.

GFSC: Gibraltar Financial Services Commission (or "Gibraltar Regulator").

Gibraltar Order: Financial Services and Markets Act 2000 (Gibraltar) Order 2001 (S.I. 2001/3084).

Gibraltar-based person: A person listed in sub-paragraph (2) of paragraph 1 of Schedule 2A whose head office and registered office, if any, is in Gibraltar.

Part 4A permission: A domestic permission to carry on regulated activities given by the FCA or the PRA under Part 4A of FSMA.

Regulated activity: An activity specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544), for which a person requires a permission in order to carrying on such activity.

Schedule 2A permission: A permission for a Gibraltar-based person to carry on one or more regulated activities approved for the purposes of Schedule 2A.

Schedule 2B permission: A permission for a UK-based person to carry on restricted activities in Gibraltar, provided they have satisfied the three conditions set out in paragraph 6 of the Schedule.

UK-based persons: UK firms whose head office or registered office is in the United Kingdom.

Overseas Funds Regime

Asset management: Asset management firms manage the savings and pensions of millions of UK citizens. They raise capital from investors and allocate it across the wider economy. 75% of UK household use an asset manager's services either directly or indirectly, for example through workplace pensions.

Collective investment schemes: A collective investment scheme, as defined in section 235 of FSMA, is in summary:

(a) any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income; and

(b) which are not excluded by the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (S.I. 2001/1062).

Depositary: A depositary is any person to whom the fund property is entrusted for safekeeping.

Equivalence: Equivalence is a mechanism by which one jurisdiction can recognise relevant standards in another jurisdiction as equivalent to their own and is a principle that applies in many areas of Financial Services legislation

Investment Association: The trade body for the UK asset management industry.

Investors: An investor is a person or entity who puts their money into financial schemes with the expectation of receiving financial returns. An investor may range from a retail investor, or individual looking to invest their savings or pension, to an experienced institutional investor.

MMFs: Money Market Funds. An MMF is a type of collective investment scheme often used as a cash management tool by financial institutions, corporates and governments. They typically invest in cash and government or corporate debt.

MMFR: Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds, as it forms part of retained EU law.

National competent authority: The regulator responsible for regulating and supervising an investment fund in the country or territory where it is domiciled.

NPPR: National Private Placement Regime. The NPPR allows the marketing to professional clients in the UK of non-UK funds, or UK funds managed by a non-UK fund manager, that in either case are not UK-authorised or recognised funds.

OFR: Overseas Funds Regime.

Passporting rights: Rights for a firm authorised in one EEA state to carry on in any other EEA state activities that it has permission for, by either establishing a branch or agents in that other EEA state or providing cross-border services.

Pooled funds: Pooled funds are a number of funds from many individual investors that are grouped together for the purposes of investment. Examples include pension funds, hedge funds, mutual funds and exchange traded funds.

Retail schemes: Collective investment schemes which are marketed to retail investors, individuals when they invest their personal savings and pensions. Due to the target audience of retail schemes, they are more carefully regulated and have more strict requirements for consumer protection.

TMPR: Temporary marketing permissions regime. The TMPR allows EEA UCITS that have exercised their rights to market in the UK before the end of the Transition Period to continue to market to retail investors in the UK for a limited period.

UK-domiciled schemes: A 'domicile' is the country where a fund is set up legally. Any scheme that is legally set up in the UK, is a UK domiciled scheme.

Markets in Financial Instruments Regulation

Eligible counterparties: Considered to be the most sophisticated investors or capital market participants. They generally consist of investment firms, credit institutions, undertakings collective investment in transferable securities (UCITS) and their management companies, other regulated financial institutions and in certain cases, other undertakings.

MiFID II: Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (see MiFID II).

MiFIR: Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments. Encompasses the rules and guidelines on execution venues, transaction execution as well as pre- and post-trade transparency. The 'EU MiFIR' refers to the EU version of the Regulation. The 'MiFIR' is the Regulation as it has effect in the UK after IP completion day (see EU MiFIR and MiFIR).

Reverse solicitation: Where a client initiates the provision of a service by a third country firm on their own initiative, without any promotion or advertisement of the service by the third country firm.

Third-country firms: Firms incorporated outside the EU/UK (as the context requires), whether they do, or seek to do, business by way of a branch established in the EU/UK or on a cross-border basis i.e. by providing services to persons in one jurisdiction from a place of business in another jurisdiction without any establishment in the client's jurisdiction.

Title 8 Regime: A part of MiFIR relating to the provision of services and performance of activities by third-country firms following an equivalence decision with or without a branch.

Insider Lists and Managers' Transactions

DAML: A Defence Against Money Laundering Suspicious Activity Report. This is an authorised disclosure which a firm can submit to the National Crime Agency under Part 7 of POCA if the firm suspects that proceeding with a transaction risks them committing a principal money laundering offence. If the reporting firm gets consent, then it does not commit a principal money laundering offence in POCA when dealing with that transaction in a way that is covered by the consent.

AFO: An Account Freezing Order. POCA contains powers to freeze accounts through the use of Account Freezing Orders. Once an AFO is in place it is possible, certain law enforcement officers can seek to have that money forfeited, either by way of a court order, or by way of an administrative forfeiture procedure. These powers are mirrored in ATCSA for use in relation to terrorist property.

Inside information: Information of a precise nature which has not been made public, relating, directly or indirectly, to financial instruments or issuers of such instruments, and which, if it were made public, would be likely to have a significant effect on the price of the financial instruments in question or their derivatives.

Insider dealing: A range of behaviours which breach the MAR and/or constitute a criminal offence, including, for example, where a person in possession of inside information uses that information for personal gain by buying or selling a share to which the information relates.

Insider lists: Lists maintained by issuers and persons acting on their behalf or on their account (such as advisers and consultants) which contain details of each individual who has access to inside information and who is working for the issuer either under a contract of employment or otherwise performing tasks through which they have access to inside information.

Issuer: A legal entity which issues or proposes to issue financial instruments.

Market manipulation: A range of behaviours which breach the MAR, and/or constitute a criminal offence, including, for example, where a person knowingly gives out false or misleading information in order to influence the price of a share.

MAR: Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation). The 'EU MAR' refers to the EU version of the Regulation. The 'MAR' is the Regulation as it has effect in the UK after IP completion day (see EU MAR and MAR).

Debt respite scheme

Breathing Space: A period of time where enforcement action, fees and certain forms of interest are paused on the eligible debts of people in problem debt while they engage with professional debt advice (known as a moratorium).

Debt respite scheme: Consisting of two parts: 'Breathing Space' and the SDRP and referred to as 'the scheme' in these explanatory notes.

SDRP: Statutory Debt Repayment Plan. A revised agreement between the debtor and their creditors as to the amount owed on their eligible debts and the timetable over which they have to be repaid and which provides the same protections as Breathing Space for the debtor.

Help-to-Save

Director of Savings: A statutory officer who operates the business of the National Savings Bank and Help-to-Save accounts.

Help-to-Save: A saving scheme to promote and encourage saving among people on low incomes and in receipt of certain benefits.

National Savings Bank: An establishment that forms part of National Savings and Investments.

NS&I: National Savings and Investments.

Universal Credit: A benefit payment paid to individuals who are unemployed or on a low income. It replaces a number of existing benefits and tax credits.

Working Tax Credit: A benefit payment paid to those who are on a low income. It is being replaced by universal credit.

PRIIPs Regulation

KID: Key information document (in relation to a PRIIP).

PRIIPs: Packaged Retail and Insurance-based Investment Products.

PRIIPs Regulation: Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs). The 'EU PRIIPs Regulation' refers to the EU version of the Regulation. The 'PRIIPs Regulation' is the Regulation as it has effect in the UK after IP completion day (see EU PRIIPs Regulation and PRIIPs Regulation).

Over-the-Counter Derivatives: Clearing and Procedures for Reporting

CCPs: Central Counterparties are financial market infrastructures that interpose themselves between counterparties' trading contracts in one or more financial markets, becoming 'the buyer to every seller and the seller to every buyer'. The role of CCPs is to provide greater certainty that the obligations of those contracts will be fulfilled if the other party defaults.

Clearing: The process of establishing positions, including the calculation of net obligations, and ensuring that financial instruments, cash, or both, are available to secure the exposures arising from those positions.

Clearing member: An undertaking which participates in a CCP and which is responsible for discharging the financial obligations arising from that participation.

Client: An undertaking with a contractual relationship with a clearing member of a CCP which enables that undertaking to clear its transactions with that CCP.

EMIR: Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories. The 'EU EMIR' refers to the EU version of the Regulation. 'EMIR' is the Regulation as it has effect in the UK after IP completion day (see EU EMIR and EMIR).

EMIR 2.2: Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs. The 'EU EMIR 2.2' refers to the EU version of the Regulation. 'EMIR 2.2' is the Regulation as it has effect in the UK after IP completion day (see EU EMIR 2.2 and EMIR 2.2).

EMIR REFIT: Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories. The 'EU EMIR REFIT' refers to the EU version of the Regulation. 'EMIR REFIT' is the Regulation as it has effect in the UK after IP completion day (see EU EMIR REFIT and EMIR REFIT).

FRANDT: Fair, Reasonable, Non-Discriminatory and Transparent.

TR: Trade Repositories are financial market infrastructures operated by legal entities which centrally collect and maintain data about a variety of financial transactions, including trades in derivatives, securities lending and borrowing, repurchase agreements, and foreign exchange transactions. They ensure transaction transparency for both market participants and regulators.

Financial Collateral Arrangements

Credit claim: A claim arising out of an agreement whereby a credit institution, mortgage institution or any other entity that extends credit to consumers grants credit in the form of a loan. Credit claims are a form of financial collateral.

FCAD: Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (see FCAD).

FCARs: The Financial Collateral Arrangement (No.2) Regulations 2003 (S.I. 2003/3226) (see FCARs).

Financial collateral: Financial collateral is provided by a borrower to a lender to minimise the risk of financial loss to the lender if the borrower fails to meet their financial obligations.

Financial collateral arrangement: A form of security arrangement governed by FCAD. FCAD was designed to simplify the process of having recourse to financial collateral across the EU and implemented by FCARs in England and Wales.

Retention of personal data under MAR

GDPR: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. The 'EU GDPR' refers to the EU version of the Regulation. The 'GDPR' is the Regulation as it has effect in the UK after IP completion day (see EU GDPR and GDPR).

DPA 2018: the Data Protection Act 2018.

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

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Published by TSO (The Stationery Office), a Williams Lea company, and available from:

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www.tsoshop.co.uk

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ISBN 978-0-10-560251-4

9 780105 602514