EXPLANATORY NOTES

Financial Services and Markets Act 2023

Chapter 29

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EXPLANATORY NOTES—FINANCIAL SERVICES AND MARKETS ACT 2023

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FINANCIAL SERVICES AND MARKETS ACT 2023

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Financial Services and Markets Act 2023 which received Royal Assent on 29 June 2023 (c. 29).

- These Explanatory Notes have been prepared by HM Treasury in order to assist the reader of the Act 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.

Table of Contents

Subject **Page of these Notes**

Overview of the Act 15

Policy background 15

Revocation of retained EU law 15

Comprehensive FSMA model for financial services 15

Revocation of retained EU law 16

Associated powers 17

Restating parts of retained EU law to create a comprehensive FSMA model 17

Regulator rule-making 17

Modifying retained EU law 18

Effective regulator rule-making 19

Targeted regulator exemption from complying with certain accountability requirements 19

Modifying and disapplying rules 20

Pre-commencement consultation 20

Permanent enhancements to FSMA 2000 20

Power to require the regulators to "have regard" to specified matters 21

Power to obligate the regulators to make rules in specified areas 21

Transitional amendments 21

Amendments to the Markets in Financial Instruments Regulation (MiFIR) and the European Market Infrastructure Regulation (EMIR) 21

Wholesale capital markets regulation 21

1. Removing the Share Trading Obligation (STO) 22

2. Replacing the pre-trade transparency waiver regime and removing the Double Volume Cap 22

3. Changing the definition of a systematic internaliser 24

4. Removing restrictions on midpoint crossing for trades 24

5. Aligning the Derivatives Trading Obligation with the EMIR Clearing Obligation 25

6. Exempting for post-trade risk reduction services from the DTO 25

7. Giving the FCA a permanent power to modify or suspend the DTO 26

8. Simplifying the transparency regime for fixed income and derivatives 26

9. Simplifying the position limits regime 27

Amendments to the EU Securitisation Regulation 2017 27

Simple, Transparent and Standardised (STS) Securitisations 28

Equivalence framework for STS securitisations 29

Amendments to the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 29

New regulatory powers 30

Designated activities regime 30

The FSMA model and the Regulated Activities Order 30

The regulation of financial markets 31

The Designated Activities Regime 31

Designation of activities 32

Financial market infrastructure: general rules and requirements 33

Financial market infrastructure 33

FMI and regulator rule-making 33

Regulation of CCPs and CSDs by the Bank of England 33

Bank of England rule-making powers 33

Regulation of FMI by the Financial Conduct Authority 34
Data Reporting Service Providers 34
Recognised Investment Exchanges 35
Financial market infrastructure: regulatory sandboxes 36
Powers in relation to critical third parties 39
Designating critical third parties 40
Oversight by the financial services regulators 40
Regulatory gateway for approving financial promotions 41
Sustainability disclosure in financial services 42
Sustainability disclosure requirements 42
Taking forward SDR in the financial services sector 43
Digital settlement assets 44
Stablecoins 44
Electronic money and payments legislation 45
Bringing digital settlement assets into the regulatory perimeter 45
Implementation of mutual recognition agreements 46
New objectives and regulatory principles 47
New international competitiveness and growth secondary objectives 48
Reporting requirements in relation to the new international competitiveness and growth secondary objectives 49
New regulatory principle that the regulators must have regard to the UK net zero emissions target and environmental targets 49
Exercise of Bank of England regulatory powers 50
Objectives and principles 50
Internal decision-making processes 50
Accountability of regulators 51
Regulator engagement with HM Treasury, external stakeholders, and Parliament 51
Regulators’ relationship with HM Treasury 51
Requirement of the regulators to respond to HM Treasury recommendations 52
Regulators’ review of their rules 52
Power of HM Treasury to require a rule review by the regulator 53
Power for HM Treasury to direct the regulator to report on performance 54
Mechanism to require the regulators to notify HM Treasury of actions affecting deference decisions 55
Mechanism to require the regulators to notify HM Treasury on actions affecting international trade obligations 56
Engagement with stakeholders 57
Strengthening the role of statutory panels 58
Regulators’ cost-benefit analysis process 60
Requirement for the regulators to establish CBA panels 60
Appointment of external persons to statutory panels 60
Publication of consultation respondents 61
Accountability to Parliament 62
Engagement with Parliamentary Committees 62
Requirement for the regulators to notify the relevant select committees when they publish a consultation 63
Requirement for the regulators to respond to Parliament 63
Relationship of the Bank of England with HM Treasury, Parliament and external stakeholders 63
Financial Ombudsman Service, FCA and FSCS co-operation on wider implications issues 64
Chair of the Payment Systems Regulator as member of FCA Board 65
Access to cash 66
Cash access services 67

Wholesale cash distribution 68
Ensuring an effective, resilient and sustainable wholesale cash infrastructure 68
Performance of functions relating to financial market infrastructure 69
Proposed Senior Managers & Certification Regime 70
Senior Managers Regime 71
Certification Regime 71
Conduct Rules 72
Central counterparties in financial difficulties 72
Failure of a CCP 73
Resolution 73
Expanding the UK regime 74
Insurers in financial difficulties 76
Section 377 of the Financial Services and Markets Act 2000 77
Contractual Termination Rights 79
Policyholder Surrender Rights 80
Miscellaneous 80
Disciplinary action against formerly authorised persons 80
Financial Services Compensation Scheme 81
The Ombudsman scheme 82
Unauthorised Co-ownership alternative investment funds (AIFs) 82
Control over authorised persons 84
Liability of payment service providers for fraudulent transactions 85
Cryptoassets 86
Cryptoassets: amendments to the FSMA 2000 86
Clarifying the scope of the Financial Promotions Order (FPO) 87
Clarifying the scope of the Regulated Activities Order (RAO) 87
Bank of England Levy 87
Background to the CRD scheme 87
Rationale for replacing the CRD scheme 87
Bank of England levy 88
Credit unions 89
Reinsurance for acts of terrorism 91
Requirements 92
Banking Act 2009: miscellaneous amendments 92
Arrangements for the investigation of complaints 93
Appointment of the Complaints Commissioner 93
Politically exposed persons: money laundering and terrorist financing 94
Amendment to the Money Laundering Regulations 95
Politically exposed persons: review of guidance 95
Forest risk commodities 95
Financing of forest risk commodities: review 96
Legal background 96
Revocation of retained EU law 96
Parts 9C and 9D of FSMA 2000 97
Transitional amendments 98

Amendments to the Markets in Financial Instruments Regulation (MiFIR) and the European Market Infrastructure Regulation (EMIR) 98
Wholesale capital markets regulation 98
Equity markets 99
Share Trading Obligation (STO) 99
Pre-trade transparency waiver regime 100
Systematic internalisers 101
Fixed income and derivatives markets 103
Transparency regime for fixed income and derivatives 105
Commodity derivatives 107
Position limits regime 107
Amendments to the EU Securitisation Regulation 2017 108
Amendments to the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 109
New regulatory powers 110
Designated activities regime 110
Replacement of revoked Retained EU law 110
Powers of the FCA under FSMA 2000 110
Financial Market Infrastructure: general rules and requirements 111
Regulation of FMI by the Bank of England 111
The existing statutory framework for the Bank's regulation of CCPs and CSDs 111
Current regulation of CCPs and CSDs 111
Regulation of FMIs by the Financial Conduct Authority 112
Data Reporting Service Providers 112
Recognised Investment Exchanges 113
Financial market infrastructure: regulatory sandboxes 114
Variation from the affirmative SI procedure 115
Powers in relation to critical third parties 116
Regulatory gateway for financial promotions 117
Sustainability disclosure in financial services 117
Digital settlement assets 117
The Banking Act 2009 118
Financial Services (Banking Reform) Act 2013 118
Special Administration Regimes 119
Implementation of mutual recognition agreements 119
New objectives and regulatory principles 119
FCA and PRA objectives and regulatory principles 119
Regulator engagement with HM Treasury, external stakeholders, and Parliament 121
Regulators' relationship with HM Treasury 121
Power for HM Treasury to direct the regulator to report on performance 123
Engagement with stakeholders 123
Appointment of external persons to statutory panels 125
Publication of consultation respondents 127
Treasury power to require annual reports by statutory panels 128
Accountability to Parliament 128
Financial Ombudsman Service, FCA and FSCS co-operation on wider implications issues 128
Chair of the Payment Systems Regulator as member of FCA Board 129
Access to cash 130
Cash access services 130
Wholesale cash distribution 130

These Explanatory Notes relate to the Financial Services and Markets Act 2023 which received Royal Assent on 29 June 2023 (c. 29).

Performance of functions relating to financial market infrastructure 131
Central counterparties in financial difficulties 133
Miscellaneous 134
Disciplinary action against formerly authorised persons 134
Financial Services Compensation Scheme 134
The Ombudsman scheme 134
Unauthorised Co-ownership AIFs 135
Control over authorised persons 136
Cryptoassets 136
Bank of England levy 136
Liability of payment service providers for fraudulent transactions 136
The Financial Services (Banking Reform) Act 2013 136
The Payment Services Regulations 2017 137
Credit unions 137
Reinsurance for acts of terrorism 137
Banking Act 2009: miscellaneous amendments 137
Arrangements for the investigation of complaints 138
Politically exposed persons 139
Forest risk commodities: review 139
Territorial extent and application 140
Commentary on provisions of the Act 140
Part 1: Regulatory Framework 140
Chapter 1: Revocation of retained EU law 140
Section 1: Revocation of retained EU law relating to financial services and markets 140
Section 2: Transitional amendments 141
Section 3: Power to make further transitional amendments 141
Section 4: Power to restate and modify saved legislation 142
Section 5: Power to replace references in EU directives 143
Section 6: Restatement in rules: exemption from consultation requirements 143
Section 7: Interpretation of Chapter 144
Chapter 2: New regulatory powers 144
Designated activities regime 144
Section 8: Designated activities 144
New section 71K: Designated activities 144
New section 71L: Restrictions on carrying out designated activities 145
New section 71M: Designated activity regulations: general 145
New section 71N: Designated activity: rules 145
New section 71O: Designated activities: directions 146
New section 71P: Designated activities: liability 146
New section 71Q: Designated activities: enforcement 146
New section 71R: Designated activities and rules: connected amendments 146
Section 71S: Designated activity regulations: Parliamentary control 147
Section 8: Designated activities: continued 147
Financial market infrastructure: general rules and requirements 148
Section 9: Rules relating to central counterparties and central securities depositories 148
Section 10: Central counterparties and central securities depositories: other requirements 149

Section 11: Rules relating to investment exchanges and other data reporting service providers 149
Section 12: Treasury directions to Bank of England: restrictions 150
Financial market infrastructure: piloting powers 150
Section 13: Testing of FMI technologies or practices 150
Section 14: Reports on FMI sandboxes 152
Section 15: Permanent implementation of arrangements tested under an FMI sandbox 152
Section 16: Regulations 152
Section 17: Interpretation 152
Powers in relation to critical third parties 153
Section 18: Critical third parties: designation and powers 153
Section 19: Critical third parties: related amendments 156
Regulatory gateway for financial promotions 157
Section 20: Financial promotion 157
Sustainability disclosure requirements 158
Section 21: Sustainability disclosure requirements 158
Digital settlement assets 159
Section 22: Digital settlement assets 159
Section 23: Digital settlement assets: power to make regulations 159
Mutual recognition 160
Section 24: Implementation of mutual recognition agreements 160
Chapter 3: Accountability of regulators 160
FCA and PRA objectives and regulatory principles 160
Section 25: Competitiveness and growth objective 160
Section 26: Competitiveness and growth objective: reporting requirements 161
Section 27: Regulatory principles 161
Section 28: sections 25 and 27: consequential amendments 161
FCA and PRA powers to make rules etc 162
Section 29: Review of rules 162
Section 30: Treasury power in relation to rules 163
New section 3RE 163
Section 31: Matters to consider when making rules 163
Section 32: Effect of rules etc on deference decisions 164
Section 33: Effect of rules etc on international trade obligations 165
Section 34: Power to disapply or modify rules 167
FCA and PRA engagement 167
Section 35: Responses to recommendations of HM Treasury 167
Section 36: Public consultation requirements 168
Section 37: Engagement with statutory panels 168
Section 38: Engagement with Parliamentary Committees 168
Section 39: Reporting requirements 169
Cooperation of FCA, PRA and others 169
Section 40: Duty to co-operate and consult in exercising functions 169
FCA and PRA panels and policy statements 170
Section 41: Listing Authority Advisory Panel 170
Section 42: Insurance Practitioner Panel 170
Section 43: Cost Benefit Analysis Panels 170
Section 44: Statement of policy on cost benefit analyses 170
Section 45: Statement of policy on panel appointments 170
Section 46: Composition of panels 170
Bank of England regulatory powers 171
Section 48: Exercise of FMI regulatory powers 171
Section 49: Bank of England: rule-making powers 172

Section 50: Application of FSMA 2000 to FMI functions 173
Payment Systems Regulator's powers 174
Section 51: Payment Systems Regulator 174
Section 52: Chair of the Payment Systems Regulator as member of the FCA Board 174
Consultation on rules 175
Section 53: Consultation on rules 175
Part 2: Access to Cash 176
Section 54: Cash access services 176
Section 55: Wholesale cash distribution 176
Part 3: Performance of functions relating to financial market infrastructure 176
Section 56: Recognised bodies: senior managers and certification 176
Part 4: Central counterparties in financial difficulties 176
Section 57: Central counterparties in financial difficulties 176
Part 5: Insurers in financial difficulties 176
Section 58: Insurers in financial difficulty 176
Part 6: Miscellaneous 176
Amendments to FSMA 2000 176
Section 59: Application of provisions to regulatory functions under this Act 176
Section 60: Formerly authorised persons 177
Section 61: Control over authorised persons 177
Section 62: Financial services compensation scheme 177
Section 63: The Ombudsman scheme 177
Section 64: Unauthorised co-ownership AIFs 178
Section 65: Power to amend enactments in consequence of rules 178
Section 66: Ambulatory references 178
Section 67: Power to amend or repeal certain provisions of FSMA 2000 179
Section 68: Power under FSMA 2000 to make transitional provisions 179
Section 69: Cryptoassets 179
Bank of England levy 180
Section 70: Bank of England levy 180
Section 71: Bank of England levy: consequential amendments 180
Other miscellaneous provisions 181
Section 72: Liability of payment service providers for fraudulent transactions 181
Section 73: Credit unions 181
Section 74: Reinsurance for acts of terrorism 181
Section 75: Banking Act 2009: miscellaneous amendments 182
Part 7: General 183
Section 80: Interpretation 183
Section 81: Pre-commencement consultation 183
Section 82: Financial provision 184
Section 83: Power to make consequential provision 184
Section 84: Regulations 184
Section 85: Extent 184
Section 86: Commencement 184
Section 87: Short title 184
Schedule 1: EU financial services legislation 184
Part 1 – Retained direct principal EU legislation 184
Part 2 – Subordinate legislation made under primary legislation 184
Part 3 – EU tertiary legislation 185
Part 4 – Primary legislation 185

These Explanatory Notes relate to the Financial Services and Markets Act 2023 which received Royal Assent on 29 June 2023 (c. 29).

Part 5 – Other retained EU law 185
Schedule 2: Transitional amendments 186
Part 1 – Amendments to the Markets in Financial Instruments Regulation 186
Paragraph 2: Transparency requirements for equities and equity-like instruments 186
Paragraph 3: Waivers for equity and equity-like instruments 186
Paragraph 4: Suspension of waivers 187
Paragraph 5: Double Volume Cap 187
Paragraph 6: Amendment to the obligation for systematic internalisers to make public firm quotes 187
Paragraph 7: Transparency requirements for fixed income instruments and derivatives etc 188
Paragraph 8: Systematic Internalisers (definition) 189
Paragraph 9: Systematic Internalisers (midpoint crossing) 190
Paragraphs 10 to 12: Systematic internalisers (pre-trade transparency requirements for fixed income instruments and derivatives etc) 190
Paragraphs 13 and 14: Share Trading Obligation 192
Paragraph 18: DTO exemptions for risk reduction services 193
Part 2 – Amendments to the European Market Infrastructure Regulation 194
Paragraphs 28 to 30: CO exemptions for risk reduction services 194
Part 3 – Amendments to the EU Securitisation Regulation 2017 195
Paragraph 33: Designation of countries or territories in relation to STS equivalent non-UK securitisations 195
Paragraphs 34 to 43: Minor and consequential amendments 195
Part 4 – Amendments to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 196
Paragraph 45: Position limits for commodity derivatives 196
Paragraph 46: FCA power to establish position limits 196
Paragraph 47: FCA power to require information on commodity derivatives 197
Paragraph 48: FCA power to intervene in setting position limits 197
Paragraphs 49: Interpretation 197
Paragraph 50: Consequential revocations 197
Part 5 – Amendments to the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 198
Part 6 – Amendments relating to critical third parties 198
Schedule 3: New Schedule 6B to FSMA 2000 198
Schedule 4: FMI sandboxes 198
Paragraph 1 – Participation 198
Paragraph 2 – Technology 199
Paragraph 3 – Practices 199
Paragraph 4 – Financial Instruments 199
Paragraph 5 – Settlement of Payments 199
Paragraph 6 – Requirements 199
Paragraph 7 – Co-operation 199
Paragraph 8 – Transparency and reporting 199
Paragraph 9 – Enforcement 199
Schedule 5: Financial promotion: related amendments 199
Schedule 6: Digital settlement assets 202
Part 1 – Amendments to the Banking Act 2009 202
Part 2 – Amendments to FSBRA 2013 203
Schedule 7: Accountability of the Payment Systems Regulator 203
Paragraph 3: Regulatory principles of the PSR 203
Paragraph 4: Recommendations by HM Treasury 204
Paragraphs 5 to 7: Corresponding provisions 204

These Explanatory Notes relate to the Financial Services and Markets Act 2023 which received Royal Assent on 29 June 2023 (c. 29).

Paragraph 8: International trade obligations for the PSR 204
Paragraphs 9 to 11: Ancillary adjustments to FSBRA 2013 204
Paragraph 12: Engagement with Parliamentary Committees for the PSR 205
Schedule 8: Cash access services 205
Part 1 – New Part 8B of FSMA 2000 205
Section 131M: Overview 205
Section 131N: Cash access services and coordination arrangements 205
Section 131O: Current accounts and relevant current account providers 206
Cash access policy statement 206
Designation 207
Supervision of designated persons 209
Part 2 – Consequential amendments to FSMA 2000 212
Schedule 9: Wholesale cash distribution 213
Part 1 – New Part 5A of the Banking Act 2009 213
Recognised persons 213
Regulation 215
Enforcement 217
Miscellaneous 219
Part 2 – Amendments to Part 6 of the Financial Services (Banking Reform) Act 2013 221
Part 3 – Consequential amendments 222
Schedule 10: Performance of functions relating to financial market infrastructure 224
Part 1 – New Chapter 2A of Part 18 of FSMA 2000 224
Part 2 – Related amendments 229
Schedule 11: Central counterparties 230
Part 1 – Introductory 230
Part 2 – Pre-resolution powers of the Bank of England 230
Removal of impediments to the exercise of stabilisation powers etc. 230
Safeguards relating to directions under paragraph 2 230
Part 3 – Resolution plans 230
Part 4 – Removal of directors and senior managers 230
Removal of directors and senior managers 230
Temporary manager 231
Paragraphs 5 and 6: conditions 231
Temporary manager: further provisions in relation to the appointment 231
Temporary manager: instrument of appointment 231
Right to refer matters to the Tribunal 231
Removal of directors and senior managers and appointment of temporary manager: procedure 231
Removal of directors and senior managers and appointment of temporary manager: notice requirements 232
Temporary restriction on remuneration 232
Restriction on remuneration: review and revocation 232
Part 5 – Special resolution action 232
Special resolution objectives 232
Code of Practice 233
General conditions 233
Effect on other group members 233
Specific conditions: financial assistance cases 233
Resolution liaison panel 233
Restrictions on use of certain resolution powers 234
Pre-resolution valuation 234
Replacement of Bank's provision valuation 234
Independent valuer: valuation under paragraph 22 or 23 234
Independent valuer: supplemental 234

Consequences of a replacement valuation 235
Private sector purchaser 235
Private sector purchaser: marketing 235
Bridge central counterparty 235
Transfer of ownership 235
Tear-up power 235
Cash call power 236
Power to reduce variation margin payments 236
Write-down power 236
Powers in relation to securities 236
Report on provisions in write-down instrument 237
Priority between creditors 237
Power to take control 237
Shadow directors etc 237
Interpretation: "securities" 237
Share transfer instrument 237
Effect 237
Continuity 237
Conversion and delisting 238
Directors and senior managers 238
Ancillary instruments: production, registration, etc 238
Incidental provision 238
Procedure: instruments 238
Supplemental instruments 238
Onward transfer 239
Reverse share transfer 239
Bridge central counterparties: share transfers 239
Bridge central counterparties: reverse share transfers 240
Property transfer instruments 240
Effect 240
Transferable property 240
Continuity 240
Directors and senior managers 241
Recognised central counterparty rules 241
Recognised central counterparty membership 241
Licenses 241
Foreign property 242
Incidental provision 242
Procedure 242
Property transfer instrument: delisting 242
Transfer of property subsequent to resolution instrument 242
Supplemental instruments 242
Private sector purchaser: reverse property transfer 243
Onward transfer 243
Bridge central counterparties: reverse property transfer 244
Transfer of ownership: property transfer 244
Transfer of ownership: reverse property transfer 244
Bridge central counterparty: supplemental property transfer powers 245
Bridge central counterparty: supplemental reverse property transfer powers 245
Restriction of partial transfers 245
Power to protect certain interests 245
Creation of liabilities 246
Regulation for safeguarding certain financial arrangements 246
Resolution instruments: effect and supplementary matters 246
Write-down instruments: supplementary 247

Resolution instruments: procedure 247
Supplemental resolution instruments 247
Directors and senior managers 247
Termination rights etc 247
Deferment 247
Recovery of expenses 248
Compensation scheme 248
Instruments: notification of members and creditors 248
General continuity obligation: property transfers 248
Special continuity obligations: property transfers 248
Continuity obligations: onward property transfers 249
General continuity obligation: share transfers 249
Special continuity obligations: share transfers 249
Continuity obligations: onward share transfers 249
Continuity obligations: consideration and terms 250
Continuity obligations: termination 250
Suspension of obligations 250
Restriction of security interests 250
Suspension of termination rights 250
Suspension: general provision 251
Stay on terminating membership 251
Restriction on remuneration 251
Pensions 251
Disputes 251
Tax 251
Stay or sist of legal proceedings 252
Insolvency proceedings 252
Recognition of transferee company 252
International obligation notice: general 252
International obligation notice: bridge central counterparty 252
Public funds: general 252
Public funds: bridge central counterparty 253
Private sector purchaser: report 253
Bridge central counterparty: report 253
Resolution instruments: report 253
Transfer of ownership: report 253
Sale to commercial purchaser, transfer to bridge central counterparty and transfer of ownership: conditions for group companies 254
Paragraph 117: Supplemental 254
Part 6 – Information, investigation and enforcement 254
Information 254
Reports by skilled persons 254
Appointment of persons to carry out general investigations 255
Appointment of persons to carry out investigations in particular cases 255
Investigations etc in support of foreign resolution authorities 255
Investigations: general 255
Powers of persons appointed under paragraph 121 255
Powers of persons appointed as a result of paragraph 122 256
Admissibility of statements made to the investigators 256
Information and document: supplemental provision 256
Protected items 256
Entry of premises under warrant 256
Retention of documents obtained under paragraph 130 257
Offences etc 257
Prosecution of offences under paragraph 132 257

Offences under paragraph 132 by bodies corporate etc 257
Injunctions: prevent failure to comply with relevant requirement 257
Regulatory sanctions 257
Determination of sanctions 258
Procedure: warning notice 258
Procedure: decision notice 258
Procedure: general 258
Appeals 258
Injunctions: failure to comply with certain paragraph 136 sanctions 258
Publication 258
Co-operation 259
Part 7 – Third-country resolution actions 259
Part 8 – General 259
Information 259
Restrictions on disclosure of confidential information 259
Remedies on judicial review 260
Giving of notices, documents etc under this Schedule 260
Financial assistance 260
Modifications to the law 260
Interpretation 260
Recognised central counterparty 260
Interpretation: CCP group company, etc 260
Part 9 – HM Treasury support for CCPs 260
Consolidated fund 260
National loans fund 261
Part 10 – Consequential etc provision 261
Schedule 12: Write-down orders 261
Part 1 – Write-down orders: main provisions 261
Part 2 – The manager of a write-down order 262
New Schedule 19A 262
Part 3 – Further provision about write-down orders 263
New Schedule 19B 263
Part 1 of new Schedule 19B: Restrictions on enforcement 263
Part 2 of new Schedule 19B: Dealing with assets etc 263
Part 3 of new Schedule 19B: Treatment of written-down liabilities for certain purposes 263
Part 4 of new Schedule 19B: Interest 264
Part 4 – Write-down orders: financial services compensation scheme 264
Part 5 – Consequential amendments 264
Schedule 13: Insurers in financial difficulties: enforcement of contracts 265
Part 1 – New Schedule 19C TO FSMA 2000 265
New Schedule 19C 265
Part 1 of new Schedule 19C: introductory 265
Part 2 of new Schedule 19C: policyholder surrender rights 265
Part 3 of new Schedule 19C: termination of relevant contracts 265
Part 4 of new Schedule 19C: exclusions and disapplication of this Schedule 266
Part 5 of new Schedule 19C: powers to amend this Schedule 266
Part 2 – Consequential amendments 266
Schedule 14: Credit unions 266
Commencement **268**

These Explanatory Notes relate to the Financial Services and Markets Act 2023 which received Royal Assent on 29 June 2023 (c. 29).

Statement on environmental principles **268**

Related documents **268**

Annex A – Territorial extent and application in the United Kingdom **270**

Annex B – Hansard References **271**

Annex C – Progress of Bill Table **272**

Overview of the Act

1 The Financial Services and Markets Act 2023 makes important updates to the UK's regulatory framework for financial services.

2 The Act implements the outcomes of the Future Regulatory Framework (FRF) Review. The Act therefore revokes retained EU law relating to financial services and enables HM Treasury and the financial services regulators to replace it with legislation designed specifically for UK markets, in a way that builds on the UK's existing approach to financial services regulation.

3 The Act also enhances the UK's existing regulatory regime by updating the objectives of the financial services regulators to ensure a greater focus on long-term growth and international competitiveness.

4 The Act also seeks to secure and enhance the UK's position as an open and global financial hub by providing for the implementation of mutual recognition agreements (MRAs) with the UK's global partners, and for the UK to recognise equivalent Simple, Transparent and Standardised (STS) securitisations issued by entities outside of the UK.

5 The Act brings stablecoins, a type of cryptoasset, into the scope of regulation when used as a form of payment, paving their way for use in the UK as a recognised form of payment. It also enables technological innovation in financial services by allowing financial market infrastructure (FMI) firms to explore new technologies in temporary pilot schemes and reduces the risk of an incident at a third-party provider which has a systemic impact on the UK financial services sector.

6 The Act maintains the UK's position as a competitive marketplace with robust regulatory standards by reforming the UK's wholesale capital markets regime; giving the Bank of England new tools to mitigate the risks of failure of critical financial institutions; enhancing the UK's insolvency arrangements for insurers to help authorities to better manage insurers in financial distress; and creating a senior managers and certification regime for a number of types of systemically important firms, similar to the existing regime for bank, insurers and other financial services firms.

7 Finally, the Act introduces measures that support financial inclusion by ensuring people across the UK can continue to access cash with ease; enabling credit unions to offer more products; introducing a regulatory gateway designed to improve the quality of financial promotions; and enhancing protection for victims of authorised push payment scams.

Policy background

Revocation of retained EU law

Comprehensive FSMA model for financial services

8 The current model of financial services regulation was introduced by the Financial Services and Markets Act 2000 (FSMA 2000). The FSMA model delegates the setting of regulatory standards to the independent financial services regulators, the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA), that work within an overall policy framework set by government and Parliament.

9 During the UK's membership of the European Union (EU), and particularly following the global financial crisis, the majority of new financial services regulation was developed and delivered at an EU level. When the UK left the EU, the body of EU legislation that applied directly in the UK at the point of exit was transferred onto the UK statute book by the European Union (Withdrawal) Act 2018 (EUWA 2018). This is known as retained EU law.

10 HM Treasury undertook a significant programme of secondary legislation to ensure that the body of retained EU law relating to financial services would operate effectively following the UK's withdrawal from the EU, using powers in EUWA 2018 to make the necessary amendments to address any deficiencies arising as a result of exit at the end of the transition period.

11 This approach provided stability and continuity in the immediate period after EU exit, but it was never intended to provide the optimal, long-term approach for UK regulation of financial services. It has led to a complicated patchwork of regulatory requirements across domestic primary and secondary legislation, retained EU law, and regulator rulebooks. And it means that the regulators are restricted in how they can pursue their statutory objectives through their rules, as they are not able to make changes to rules that are set out directly in retained EU law, except in very limited cases.

12 Financial services regulations need to be updated regularly to take account of new products and markets, and emerging risks and opportunities. The FSMA model supports this by delegating the setting of regulatory requirements to the regulators, working within an overall policy framework set by government and Parliament.

13 The government considers that the FSMA model remains the most appropriate way to regulate financial services in the UK.

14 That means that a large number of detailed regulatory requirements which currently sit in retained EU law should, under a FSMA approach, generally be in the regulators' rules.

15 The government's overall policy objective is to establish a comprehensive FSMA model for financial services regulation. That means applying the FSMA model to areas currently covered by retained EU law, so that the government and Parliament establish the framework and objectives for the regulators, and the regulators design the detailed rules that apply to firms.

16 The government published two consultations, in October 2020 and November 2021, outlining the aim of establishing a comprehensive FSMA model. Respondents demonstrated overwhelming support for the establishment of a comprehensive model of regulation based on FSMA 2000, agreeing that the FSMA model is world-leading.

Revocation of retained EU law

17 Delivering a comprehensive FSMA model of regulation requires the revocation of retained EU law relating to financial services.

18 The Act revokes the following types of retained EU law, which are all captured by Schedule 1 to the Act:

a. All direct principal EU legislation, such as Regulations;

b. Secondary legislation made under primary legislation, such as instruments made to implement EU obligations under the European Communities Act 1972, and instruments made under the European Union Withdrawal Act 2018 which addressed deficiencies in EU law;

c. All EU tertiary legislation, such as Delegated Regulations, Commission Decisions, and Implementing Acts; and

d. Some parts of primary legislation;

19 The revocation of retained EU law will not extend to Acts of Parliament, except to the parts which are listed in Schedule 1, which are necessary to remove as they will not function effectively when retained EU law is revoked.

20 Where revoked legislation amends domestic legislation, including primary legislation, (for example, where a statutory instrument made under section 2(2) of the European Communities Act 1972 amends FSMA 2000), the amendments to that other legislation will remain in force despite the revocation. This is necessary in order to ensure that domestic legislation continues to function effectively.

21 Retained EU law is a broad category and includes some domestic legislation like the Regulated Activities Order. Some of these domestic instruments which contain elements of retained EU law are an essential part of the FSMA model of regulation that needs to be maintained. Therefore, HM Treasury will have the means to exclude instruments which are not intended to be revoked.

22 Retained EU law which is already part of the regulators' rulebooks will not be revoked through the Act, because these rules can be updated by the regulators themselves according to their normal processes established in FSMA 2000.

23 The Act commences the revocation of retained EU law in a way which facilitates a smooth transition to a comprehensive FSMA model. This means that where the government feels that it is necessary, the government does not expect to commence the revocation of individual parts of the Schedule unless the regulators have drafted and consulted on rules that are ready to be enforced, where it is appropriate that these provisions are replaced.

Associated powers

24 The Act introduces a number of provisions to allow retained EU law to be replaced in a way that creates a comprehensive FSMA model of regulation.

Restating parts of retained EU law to create a comprehensive FSMA model

25 Under the FSMA model, Parliament through legislation sets the overall approach to financial services regulation including the regulators' objectives. Parliament also establishes the parameters within which HM Treasury sets the 'regulatory perimeter' through secondary legislation, specifying which financial activities should be regulated.

26 There are some elements of retained EU law that carry out similar functions, and will need to be maintained under a comprehensive FSMA model. The Act gives HM Treasury the ability to "restate" any part of retained EU law into either primary or secondary domestic legislation, with any necessary or desirable modifications.

27 Examples of provisions which HM Treasury expects to restate in part include:

a. Key definitions that make up elements of the financial services regulatory framework and therefore what activities are being regulated. For example, definitions of different types of financial market infrastructure. This will ensure that the government continues to be responsible for determining what activities are regulated.

b. Existing powers for the regulators to supervise and enforce their rules effectively, and processes concerning competitiveness or other forms of registration or notification.

c. The ability for HM Treasury to assess whether other jurisdictions have regulatory requirements equivalent to those in the UK, and to give effect to those findings. This is consistent with the government's responsibility for deference arrangements.

Regulator rule-making

28 To establish a comprehensive FSMA model, the regulators need to have the appropriate powers to make rules when retained EU law is revoked. In many instances, FSMA 2000 already provides the necessary powers, or will do so through the Designated Activities

Regime (DAR) which is introduced by section 8 of the Act. There are also additional general rule-making powers for the Bank of England and the FCA, which are covered in the "New Regulatory Powers" section of these Notes.

29 In other instances, the regulators do not have sufficient regulatory rule-making powers to replace the rules that are currently in retained EU law. The restatement power will allow HM Treasury to address this by enabling the:

a. Restatement into domestic legislation of any existing regulator rule-making powers that are set out in retained EU law;

b. Modification of existing regulator rule-making powers; and

c. Creation of new regulator rule-making powers in areas which are currently covered by retained EU law.

30 There are appropriate limitations to this restatement power. For example, the power has not been designed to create entirely new general rule-making powers, such as those in sections 137A and 137G of FSMA 2000.

Modifying retained EU law

31 The government expects that it will take a number of years to complete the process of revoking retained EU law. Therefore, it is likely that some elements or specific provisions within retained EU law will become ineffective or out-of-date before the revocation is commenced.

32 During this transitional period before revocation has fully taken effect, the regulators will be restricted in how they are able to pursue their statutory objectives. For example, a regulator may consider that disclosure requirements should be enhanced to protect consumers against an emerging risk. If the relevant requirements are set out in retained EU law whose revocation has not yet been commenced, however, they may be unable to give effect to this.

33 The Act therefore provides HM Treasury with a power to make targeted modifications to retained EU law during this transitional period.

34 The Act enables HM Treasury to make modifications in relation to the following purposes:

a. Protecting and enhancing the stability and integrity of the UK financial system;

b. Promoting the safety and soundness of financial services firms;

c. Promoting the effective functioning of financial markets;

d. Promoting effective competition in the interests of consumers;

e. Facilitating the international competitiveness of the economy of the United Kingdom and its growth in the medium to long term;

f. Protecting consumers and insurance policy holders, or those who may become policy holders;

g. Providing for effective rule-making, enforcement, investigation, and supervision;

h. Providing for the effective arrangements in relation to resolution;

i. Protecting public funds;

j. Implementing international standards and practices;

k. Providing for efficient and effective regulatory, enforcement, investigatory and supervisory arrangements;

l. Removing provisions that are yet to be commenced or changing the timing of their commencement.

35 These purposes closely relate to the regulators' statutory objectives and, as described above, while retained EU law remains in force, the regulators will be constrained in how they further these objectives.

36 In addition, the power to amend retained EU law may also be used for technical purposes, such as making retained EU law clearer.

37 An example of where modification might be necessary is to enable provision to ensure the regulators have the right enforcement and supervisory powers in relation to restated law (including fee-raising and information-sharing powers) and the necessary statutory immunities.

38 The Act also gives HM Treasury the power to make modifications to retained EU law when restating it. The purposes for which HM Treasury may modify retained EU when restating it are the same as those set out in paragraph 27. HM Treasury will have the ability to modify any element of retained EU law that has been restated in future. This will ensure that the legislation can remain up-to-date in light of developments in financial markets.

Effective regulator rule-making

39 As set out above, the government envisages that many of the provisions in retained EU law will be replaced by the regulators in their rulebooks, rather than in legislation.

40 When retained EU law is revoked, the regulators will need to replace the regulatory requirements contained in that retained EU law with the appropriate rules, reflecting their objectives. The government expects this to take a number of years and will be a significant programme of work for the financial services regulators.

41 The Act makes a small number of technical changes to ensure that the regulators are able to replace retained EU law effectively, and to generally improve the effectiveness and agility of regulator rule-making

Targeted regulator exemption from complying with certain accountability requirements

42 When deciding what rules to make, the regulators will need to follow their usual process for making rules – including considering how to further their objectives, having regard to the regulatory principles, and any additional "have regards" set by HM Treasury. The regulators are also required to consult publicly on rule changes, and to conduct a cost benefit analysis, unless an exemption applies.

43 The Act introduces some exemptions from the statutory consultation requirements imposed by FSMA in relation to the FCA, the PRA, and the Bank of England, and by the Financial Services (Banking Reform) Act 2013 in relation to the Payment Systems Regulator (PSR). This will give the regulators discretion as to whether to consult, and enable them to take a proportionate approach to consultation when creating rules tailored to the UK to replace EU-derived regulation or EU-derived rules which are already in their rulebooks.

44 The Act introduces an exemption from the regulators' statutory requirements to consult and conduct cost benefit analysis where the regulator is deleting, without replacing, rules in their rulebooks which contain a retained EU obligation. This will allow the regulators to quickly remove unnecessary rules which they were required to make in order to fulfill EU obligations where the regulator determines that those rules should not be replaced.

45 The Act also enables HM Treasury to specify in regulations parts of retained EU law where the regulators are exempt from the same requirements, in circumstances where the regulators are: restating retained EU law revoked through this Act in their rulebooks without material

changes; replacing revoked retained EU law with material changes but the only material effect is to reduce a regulatory burden; or amending their own rules that currently contain retained EU law obligations to make material changes but the only material effect is to reduce a regulatory burden. Where changes also have other material effects, which may include impacts on the regulators' objectives, for example on market integrity, competition, or consumer protection, it is appropriate to require the regulators to consult, to allow affected parties to participate in a consultation. Therefore, the exemption does not apply where this is the case.

46 This exemption will allow the regulators to more easily replicate in their rules important provisions currently in retained EU law which HM Treasury and the regulators agree work well for the UK and are already familiar to stakeholders. It will also allow the regulators to more easily remove unnecessary regulatory burdens inherited from the EU, and focus time and resource on the areas where reform will unlock the greatest benefits.

47 When making or amending rules in accordance with the provisions of section 6 on the basis that they reduce regulatory burden, the FCA, the PRA and the PSR are required to publish a statement alongside the final rules which explains how any changes are compatible with their duties (for example, their duties in relation to statutory objectives). In relation to the Bank of England, the statement must explain how any changes are compatible with the Bank's financial stability objective under section s2A of the Bank of England Act 1998.

Modifying and disapplying rules

48 Under Section 138A of FSMA 2000, the FCA and the PRA are able to disapply or modify their rules for individual firms, with the consent of the firm, or at its request, where compliance with the unmodified rules is unduly burdensome or unworkable for a firm.

49 The current process to enable the modification and disapplication of rules is an important tool in regulator rule-making, as it enables rules to be properly calibrated to the firms to which they apply. Retained EU law also contains a number of different provisions that also allow for disapplication or modification of rules for individual firms. Not all of these regimes would currently be possible under FSMA 2000.

50 Therefore, this Act introduces a power for HM Treasury to introduce different modification and disapplication regimes, as well as appropriate procedural requirements surrounding these regimes. This is intended to sit alongside the existing provisions in FSMA 2000, which will continue to apply.

Pre-commencement consultation

51 The Act changes the objectives and other matters that the regulators are required to consider when consulting and making rules, such as "have regards" and obligations. The Act therefore includes a provision which makes it clear that these requirements can be met by consultations made before commencement, to ensure appropriate use of resources and avoid delay to necessary reforms.

Permanent enhancements to FSMA 2000

52 The Act makes enhancements to the FSMA 2000 framework, to ensure that important public policy priorities can continue to be appropriately factored into financial services regulation.

53 While the UK was a member of the EU, and a significant amount of legislation was negotiated in Brussels, the government could ensure that such issues were considered, and EU institutions would also consider these issues. Under the FSMA model, the regulators must act as they consider appropriate to advance their statutory objectives – limiting the extent to which any wider public policy issues, not covered by their statutory objectives, can be considered.

Power to require the regulators to "have regard" to specified matters

54 The Act gives HM Treasury the power to require the regulators to "have regard" to things specified by HM Treasury when they are making rules, and to explain how this has influenced their rules.

55 The regulators must continue to act in a way that furthers their objectives, and must have regard to these additional matters insofar as that is compatible with their objectives, and their existing rule-making powers.

56 The purpose of this power is to enable the government to ensure that more specific public policy priorities can be reflected in regulator rule-making, where it considers that appropriate

Power to obligate the regulators to make rules in specified areas

57 The Act also enables HM Treasury to place obligations on the regulators to make rules in relation to specific areas of regulation. For example, in the Financial Services Act 2021, HM Treasury required that the FCA make rules applying to FCA-regulated investment firms which imposed a variety of prudential requirements, including requirements relating to types and amounts of capital and liquid assets such firms must hold to manage risk.

58 In making rules to comply with any obligations, the regulators must continue to act in a way that furthers their objectives and must comply with these obligations insofar as that is compatible with their objectives, and their existing rule-making powers.

Transitional amendments

Amendments to the Markets in Financial Instruments Regulation (MiFIR) and the European Market Infrastructure Regulation (EMIR)

Wholesale capital markets regulation

59 Wholesale capital markets regulations govern the buying, selling and organised trading of financial instruments, such as shares, bonds and derivatives, between professional investors and companies.

60 Wholesale capital markets are where a range of firms and investors from across the financial services sector come together to raise short- and long-term finance to grow. This includes, but is not limited to, market infrastructure providers and exchanges, data providers and investment firms, such as investment banks and asset managers.

61 Many of the rules that directly govern the buying, selling and organised trading of transferable financial instruments are set out in the Markets in Financial Instruments Regulation (MiFIR). MiFIR is one of two pieces of EU legislation (the other being the second Markets in Financial Instruments Directive (MiFID II)) which together underpin what is referred to as the MiFID II framework. As part of the onshoring process, the MiFID II framework was amended to address deficiencies arising as a result of the UK's withdrawal from the EU and the end of the Transition Period.

62 The UK played a significant role in designing the MiFID II framework, and the government believes that the resilience and effectiveness of the UK's capital markets has been significantly strengthened by the post-crisis reforms that it implemented. Although the regime is working well in many areas, the EU approach to regulation - where the same rules apply across member states in order to facilitate a single market in financial services - means that MiFID II framework requirements are not calibrated solely for UK markets. In some areas, it has not

delivered its intended benefits, has led to duplication and excessive administrative burdens for firms, or has stifled innovation. Following the UK's exit from the EU, in July 2021, the government launched the Wholesale Markets Review (WMR) consultation with the aim of creating a simpler and less prescriptive regime that meets the needs of UK markets while maintaining high regulatory standards.

63 The Act delivers the priority measures identified through the WMR consultation and aims to improve competitiveness and increase the flexibility of wholesale markets regulation by making nine sets of changes to the MiFID II framework.

1. Removing the Share Trading Obligation (STO)

64 Shares can be traded over-the-counter (OTC), where contracts are traded directly between two parties, or on a trading venue. Trading venues help to ensure fair and orderly trading as they communicate price information for the instruments that are available to trade on the venue. This helps investors to make well informed decisions and increases market transparency.

65 The MiFID II framework includes two types of trading venues where shares can be traded: regulated markets (RMs) and multilateral trading facilities (MTFs). Both are multilateral systems where multiple third-party buying and selling interests in financial instruments interact in accordance with non-discretionary rules.

66 The onshored Share Trading Obligation (STO) requires firms to trade shares admitted to trading on a UK RM, MTF, systematic internaliser or an overseas venue assessed as equivalent. It had been implemented by the EU with the aim of increasing transparency in share trading, however there is no evidence that it has achieved this. In fact, evidence suggests that it can prevent firms from accessing the most liquid markets and therefore achieving the best price for investors.

67 In December 2020, the FCA announced that it would use its Temporary Transitional Power (TTP) under Part 7 of FSMA 2000 (Amendment) (EU Exit) Regulations 2019 to give a transitional direction modifying the STO. This allows firms to continue trading shares on EU trading venues or systematic internalisers from the end of the implementation period in the absence of an equivalence determination. This approach has allowed firms operating in the UK to continue to access the most liquid markets and get the best outcomes for themselves and their clients when trading European Economic Area (EEA) shares (regardless of the currency they are seeking to trade in).

68 The Act removes the STO so that firms can trade shares on any trading venue in the UK or overseas with any counterparty or on an OTC basis. This is intended to ensure that investors can get the best price for their trade.

2. Replacing the pre-trade transparency waiver regime and removing the Double Volume Cap

69 The MiFID II framework requires trading venues and systematic internalisers to publish details about bids and offers before a trade has been completed. This is known as pre-trade transparency. Pre-trade transparency helps ensure an efficient price discovery process, but in some instances, it can impair liquidity. For example, market participants can use pre-trade information to increase their prices or create a shortage of shares, which can result in false indications of liquidity. This can have a negative impact on price formation.

70 To mitigate this, MiFIR includes four pre-trade transparency waivers for equity and equity-like instruments, which firms can use to avoid publishing offered, executable quotes before a trade has been completed. These are:

a. the reference price (RP) waiver, which can be used where a trading venue matches orders for an equity instrument based on the midpoint between current bid and offer prices[1] of the trading venue where that instrument was first admitted to trading or the most relevant market in terms of liquidity[2];
b. the negotiated trade (NT) waiver, for transactions that are negotiated bilaterally but are reported on venues;
c. the large in scale (LIS) waiver, for orders considered large-in-scale against normal market size; and
d. the order management facilities waiver, for orders held in an order management facility of a trading venue pending disclosure.

71 MiFIR also introduced a mechanism to limit the amount of trading that happens under the reference price and negotiated trade waivers: the Double Volume Cap (DVC).

72 The Act revokes the existing system of waivers from pre-trade transparency requirements and instead gives the FCA new rule-making powers to determine under which circumstances waivers are available and any conditions that are to be attached to their use. This will allow the FCA to make evidence-based decisions about the circumstances in which waivers should apply.

73 As part of this change, the Act removes the DVC from the MiFID II framework.

74 Research on the impact of trading without pre-trade transparency on the integrity and efficiency of markets suggests that the relationship between price formation and execution costs is complex and variable. It also shows that banning trading happening without pre-trade transparency can result in volumes moving into hybrid, trading mechanisms that do not operate under full transparency. When this happens, it is unlikely that volumes will return to transparent public markets. Furthermore, evidence shows that the use of so-called dark pools can reduce the transaction costs of large institutional orders. Removing the DVC will therefore give firms greater choice over where they trade to get the best prices for investors.

75 The FCA will be required to monitor UK markets in order to continue its own research into assessing the impacts of trading with no pre-trade transparency. The FCA can only intervene to limit the availability of a waiver if it considers that market integrity is impacted and must only do so having first consulted with HM Treasury. When considering intervention, the FCA must consider evidence from across the globe as to the impact of trading without pre-trade transparency.

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[1] The midpoint is the price midway between the lowest price at which any participant on the market is willing to sell and the highest price at which any participant on the market is willing to buy.

[2] The FCA has the power under Article 4(6)(b) to make technical standards to specify the most relevant market in terms of liquidity. Pre-Brexit, the Commission exercised this power in Article 4 of Commission Delegated Regulation (EU) 2017/587.

3. Changing the definition of a systematic internaliser

76 Systematic internalisers are investment firms that deal on their own account (i.e., use their own capital) when executing clients' orders outside of a trading venue on a "organised, frequent, systematic and substantial basis". Because they use proprietary capital rather than that of clients or counterparties, they are considered a counterparty of the trade and therefore take on risk.

77 The scope of the systematic internaliser regime was originally determined on a qualitative basis. Its objective was to ensure that OTC trading in the form of systematic internalisation of order flows by investment firms could contribute to price formation. Internalisation of orders occurs when a firm executes a trade for a client using inventory the firm already has as opposed to going outside of the firm to another firm or a trading venue. The systematic internaliser regime ensured that these 'internalised' transactions were made transparent to the market. In 2018 the definition was amended, and a number of quantitative thresholds were introduced. The thresholds are calculated at different levels for each asset class and investment firms are expected to perform calculations for each financial instrument they deal in on a quarterly basis, covering the previous 6-month period, to determine if they are a systematic internaliser. The intention behind moving to a quantitative based regime was to ensure consistency across all EU member states. It has instead resulted in a very burdensome regime and to avoid the calculations, which are costly, many firms simply opt into the regime and comply with the obligations of being a systematic internaliser.

78 The Act therefore reverts to a qualitative definition of systematic internaliser and gives the FCA the power to specify how the new definition should be interpreted. This will ensure that the regime is flexible, better able to account for market evolutions, and that it achieves its aim of increasing transparency and price formation, while removing unnecessary burdens on firms.

4. Removing restrictions on midpoint crossing for trades

79 The tick size regime sets minimum increments ("ticks") by which prices for equity and equity-like instruments can change and limits the ability of trading venues and systematic internalisers to cross at the midpoint (i.e., halfway between the buying and selling prices).

80 A harmonised tick size regime was introduced under the MiFID II framework to reduce the ever-decreasing increments in price seen on different trading venues. Prior to the introduction of the tick size regime under the MiFID II framework venues competed against each other with smaller and smaller price spreads to the detriment of the price formation process.

81 The tick size regime was originally limited to trading venues but was extended to systematic internalisers in 2020 in an attempt to create a fair balance between systematic internalisers and trading venues. It currently prohibits systematic internalisers from crossing orders at the midpoint except for orders that are large in scale (LIS)[3].

82 The government supports the tick size regime but believes that the extension of the regime to systematic internalisers does not account for the difference between systematic internalisers and trading venues, as systematic internalisers take on counterparty risk. Therefore, limiting systematic internalisers' ability to cross at the midpoint does not benefit price formation and can in some cases limit firms' ability to offer the best prices to their clients.

[3] The FCA calculates and publishes thresholds for large in scale trades.

83 The Act removes the restriction on midpoint crossing for systematic internalisers for all trades. As midpoint crossing can offer price improvements for investors, this will allow systematic internalisers to achieve the best outcome for their clients.

5. Aligning the Derivatives Trading Obligation with the EMIR Clearing Obligation

84 The Derivatives Trading Obligation (DTO) requires financial counterparties and some non-financial counterparties (counterparties being entities which take up opposite sides in a financial transaction) to trade certain classes of derivatives on UK authorised trading venues, or overseas trading venues that have been recognised as equivalent.

85 The Clearing Obligation (CO) requires certain OTC derivative contracts (as defined in the European Market Infrastructure Regulation (EMIR)) to be cleared by an authorised central counterparty.

86 The scope of the counterparties which are subject to the CO and DTO were intended to be aligned. In 2019 EMIR was amended to alter the counterparties in scope of the CO, but the DTO was not updated to reflect that change. This has created unintentional misalignment which has led to uncertainty and complications for firms because the scope of counterparties subject to the DTO references the definition in EMIR. To mitigate this, the FCA has been using a transitional relief to address the issue.

87 The Act formally realigns the counterparties (including financial, non-financial and analogous third country entities) in scope of the DTO with those in scope of the CO in EMIR.

88 To ensure that misalignment is not an issue in the future, the scope of the DTO explicitly, and accurately, cross-references EMIR, so that a counterparty is within scope of the DTO if it is subject to CO (or, in the case of non-financial counterparties, if it is subject to the CO in respect of derivative contracts pertaining to the same asset classes).

6. Exempting for post-trade risk reduction services from the DTO

89 Post-trade risk reduction services are types of trades that are made to reduce risks in derivatives portfolios without changing the market risk of those portfolios.

90 For example, portfolio compression is where counterparties simplify derivative portfolios by terminating derivative contracts and replacing them with other derivative contract(s) of equivalent value to reduce exposure and lower costs.

91 Currently, transactions resulting from portfolio compression are exempt from complying with the DTO; the best execution requirement (which obliges firms carrying out investment business to obtain the best possible deal for their clients); transparency obligations; and a requirement in the FCA's Market Conduct sourcebook about the operation of multilateral systems. Although the last requirements are unrelated to the DTO, they are also contained in Article 31 of MiFIR.

92 Exempting more post-trade risk reduction services from the DTO, and the other obligations that portfolio compression trades are currently exempt from, could encourage their use and help reduce systemic risk. Doing so should not negatively impact price formation, because these trades are non-price forming. The Act therefore expands the exemptions that currently apply to portfolio compression to other risk reduction services. To ensure that the right services are covered by the exemption, the Act gives the FCA a new rule-making power to specify which post-trade risk reduction services can benefit from the exemptions listed above as well as the conditions attached to their use.

93 The Act also gives the Bank of England (the Bank) a similar rule-making power, so that the same types of services can, if appropriate, be exempted from the CO as well. The Bank will be able to specify the post-trade risk reduction services that are to benefit from an exemption

from the CO. The Bank and the FCA will be required to consult each other before making changes to their respective exemptions. This change aims to incentivise the uptake of post-trade risk reduction services and is intended to support market stability.

7. Giving the FCA a permanent power to modify or suspend the DTO

94 In December 2020, the FCA announced that it would use its TTP to modify the DTO. The FCA used the TTP to allow UK firms, EU firms using the UK's temporary permissions regime and branches of overseas firms in the UK to use EU venues when trading with an EU client who does not have access to a venue that both the UK and EU have granted equivalence to. This has limited disruption for market participants and prevented liquidity fragmentation that would have arisen from conflicting UK and EU DTOs after the end of the transition period.

95 The Act gives the FCA a new, permanent power to modify or suspend the DTO, subject to HM Treasury approval, to prevent or mitigate disruption to markets. This power will allow the FCA to make changes to the DTO in respect of which counterparties it is imposed upon; which derivatives come within its scope; and the venues on which transactions must be concluded by counterparties in scope of the DTO.

8. Simplifying the transparency regime for fixed income and derivatives

96 The MiFID II framework includes several requirements for trading venues and systematic internalisers to provide information about pricing and volume before a trade would be completed (this is known as pre-trade transparency) and publicly disclose certain details about executed trades (this is known as post-trade transparency). These requirements apply to bonds, structured finance products, emission allowances and derivatives. An EU-wide transparency regime for fixed income and derivatives markets was only introduced in 2018 and was modelled on the transparency regime for equity markets that existed pre-2018.

97 Although it was amended to accommodate for the specific characteristics of non-equity markets, the way that it is calibrated does not go far enough in accounting for fundamental differences between equity and fixed income and derivatives markets, and the different instruments that make up the latter. This has resulted in a number of bespoke illiquid instruments (where transparency does not always aid price formation and is therefore unnecessarily burdensome) falling within scope of the regime, while some liquid and standardised contracts (where more transparency would aid price formation) are not subject to transparency requirements.

98 The current regime also includes a number of exemptions from post-trade transparency requirements which have made the regime overly complex and costly and resulted in it being difficult for the market to view actual traded prices.

99 The Act aims to reduce the complexity of the current regime and ensure that the right instruments fall within scope by delegating responsibility for calibrating the scope and firm-facing transparency requirements to the FCA.

100 To achieve this, the Act removes the current regime which is set out in primary legislation and gives the FCA new rule-making powers to:

a. develop a qualitative and quantitative assessment to ensure that the right instruments are in scope of the pre- and post-trade fixed income and derivatives transparency regimes;

b. specify the circumstances where pre-trade transparency requirements should apply, and what those requirements are; and

c. develop a post-trade transparency regime.

9. Simplifying the position limits regime

101 Commodity derivatives are derivatives whose value is derived from the price of an underlying commodity (for example, crude oil or metals).

102 The MiFID II framework position limits regime restricts the maximum size of a net position that a person can hold in a commodity derivative contract that is traded on a trading venue, or in economically equivalent OTC contracts. Position limits were introduced with the objective of protecting against market volatility and preventing market abuse. They were intended to align with the G20's 2011 commitment to give market regulators effective intervention powers to mitigate against market abuse in commodity derivatives markets.

103 MiFID II also requires trading venues to establish and operate their own position management controls (for example, to monitor positions and require a person to terminate or reduce a position, if necessary, to ensure that markets function with integrity).

104 Although the government supports the objective of position limits and remains signed up to the G20 commitment to promote fair and effective commodities markets, it is the government's position that the scope of the current regime is disproportionate, duplicative, overly complicated, and unnecessarily prevents the build-up of liquidity.

105 To simplify the regime and ensure that position limits apply to the correct contracts, the Act revokes the requirement for the FCA to apply position limits to all commodity derivative contracts that are traded on a trading venue and economically equivalent OTC contracts, and transfers responsibility for setting position limits from the FCA to trading venues.

106 To ensure that appropriate regulatory oversight is maintained, the Act grants the FCA a power to develop a framework to outline how trading venues should apply position limits and position management controls. This will provide guidance on factors that venues should take account of when setting limits and granting exemptions, for example, under which conditions they should review the case for position limits in particular contracts. It also gives the FCA the ability to require trading venues to set position limits on contracts which pose a clear threat to market integrity, and the ability to intervene directly, where absolutely necessary.

107 This approach is similar to the regime that was in place prior to the introduction of strict position limits in MiFID II. These changes will ensure a return to a model under which position limits are set more flexibly, as venues will have full visibility of all market positions and can respond accordingly. This is intended to enable liquidity to develop in these contracts, as well as making it easier for non-financial firms to find counterparties to accept the other side of hedging trades and therefore manage commercial risk. The changes will also ensure that protections which are necessary to protect market integrity can be kept in place, and that there will be a consistent approach to position limits governance across trading venues.

Amendments to the EU Securitisation Regulation 2017

108 Securitisation is the process of pooling various financial exposures (such as mortgages, car loans, or other consumer loans) to create a financial instrument that can be marketed to investors. These financial instruments are 'tranched', to reflect the fact that they carry different levels of risk and return to suit the appetite of different investors. This process allows lenders (such as banks) to transfer the risks of loans or other assets to other banks or investors (such as insurance firms or asset managers). This process can help free up lenders' balance sheets to allow for further lending to the economy.

109 The key entities typically involved in securitisations are an originator and/or sponsor, a securitisation special purpose entity ('SSPE'), and investors. The originator is responsible for creating or acquiring the exposures (for example, loans or receivables) to be securitised. The sponsor typically establishes and manages a securitisation programme by purchasing exposures from another entity (for example, an original lender) and transferring them to the SSPE.[4] The SSPE purchases the exposures, packages them up, and issues securities in the market for investors to invest in. These securities are backed by payments generated by the underlying exposures.

Simple, Transparent and Standardised (STS) Securitisations

110 Under the UK Securitisation Regulation, certain securitisations can be designated as Simple, Transparent and Standardised (STS). Such STS securitisations are designed to make it easier for investors to understand and assess the risks of a securitisation investment by excluding more complex features. The UK STS framework is in line with international standards for Simple, Transparent, and Comparable (STC) securitisation, set by the Basel Committee on Banking Supervision (BCBS) and International Organization of Securities Commissions (IOSCO).

111 Some firms who invest in securitisations (in particular banks, building societies, investment firms and insurance firms) are subject to prudential regulation. Prudential regulation seeks to ensure that financial institutions have adequate financial resources and risk management processes so they can continue to provide vital services to the real economy throughout economic and financial cycles. Banks, building societies, and PRA-designated investment firms are subject to prudential requirements in the Capital Requirements Regulation and relevant PRA rules ('CRR firms'), and some insurance firms are subject to prudential requirements under the Solvency II regime ('Solvency II firms'). These two regimes require firms to hold capital against their exposures, including exposures to securitisations, dependent on the risk attached to them.

112 CRR firms and Solvency II firms who invest in STS securitisations can benefit from preferential capital treatment for these investments, compared to investing in non-STS securitisations. Preferential treatment means they can be eligible for lower capital requirements compared to other securitisations, reflecting their adherence to simple, transparent, and standardised criteria.

113 In order for a securitisation to be designated as STS, the UK Securitisation Regulation currently requires the originator and sponsor of an STS securitisation to be established in the UK.[5] In addition, securitisations designated as STS under the EU Securitisation Regulation (with the originator and sponsor in the EU) before 31 December 2024 are also recognised as STS in the UK for the lifetime of the securitisation. This approach was adopted as part of the process of addressing deficiencies in retained EU law, to ensure that legislation continued to operate effectively at the point at which the UK left the EU.

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[4] Sponsors are more commonly involved in certain short-term securitisations called Asset-Backed Commercial Paper (ABCP). The securities issued by an ABCP securitisation have an original maturity of one year or less.

[5] This applies to non-ABCP securitisations. For ABCP STS securitisations, only the sponsor is required to be established in the UK, because they are the key entity on the sell-side of an ABCP securitisation.

114 Under the UK Securitisation Regulation, securitisations with originators and sponsors established outside the UK (or the EU until 31 December 2024) cannot be designated as STS. As a result, CRR firms and Solvency II firms cannot get preferential capital treatment for investing in those securitisations originated overseas, even if this is appropriate to reflect their adherence to STS criteria. This limits the availability of STS securitisations for UK investors, which can have a negative impact on their liquidity and on the STS securitisation market as a whole.

Equivalence framework for STS securitisations

115 Article 46 of the UK Securitisation Regulation placed an obligation on HM Treasury to review the functioning of the Regulation. As part of that review, HM Treasury was required to assess whether, in the area of STS securitisations, an equivalence regime could be introduced for overseas originators, sponsors and SSPEs. Industry respondents to HM Treasury's call for evidence, as part of the review process, were supportive of the creation of such a regime to provide more choice for UK investors.

116 As a result, the Act aims to increase choice for UK investors in the market for STS securitisations, by allowing for STS equivalent non-UK securitisations to be recognised in the UK, with appropriate safeguards, provided they are originated in a jurisdiction that has an equivalent framework for STS securitisations to the UK. Therefore, the Act creates a framework under which HM Treasury can designate other jurisdictions as having an STS securitisation framework equivalent to that of the UK.

Amendments to the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018

117 In financial markets, there are various processes that need to be performed to complete each transaction. These processes are performed by several different types of entity, many of which are collectively referred to as financial market infrastructure (FMI).

118 Each type of FMI performs a vital function in supporting financial markets. This ranges from collecting data on financial transactions, to performing unique services to enable firms active in financial markets to meet their regulatory obligations.

119 Central counterparties (CCPs) are a type of financial market infrastructure (FMI) used by firms to reduce certain risks that arise when entering into financial transactions with other parties, such as derivative transactions or buying and selling securities. CCPs sit between the buyers and sellers of financial contracts, providing assurance that the obligations under those contracts will be fulfilled. Instead of holding the contract with each other, the buyer and seller each hold their side of the contract with the CCP. The process of transacting through a CCP is known as "clearing".

120 The European Market Infrastructure Regulation (EMIR) is the core EU legislation relating to CCPs. Following the end of the Transition Period, the EU Regulation forms part of retained EU law and is referred to as UK EMIR.

121 Article 25 of UK EMIR establishes that an overseas CCP may provide clearing services to clearing members (or access trading venues) established in the UK where HM Treasury has made an equivalence decision in relation to the CCP's home jurisdiction under Article 25(6), and the overseas CCP has been recognised by the Bank of England (the Bank). The Bank can only grant recognition to a CCP if the regulatory and supervisory frameworks of the CCP's home jurisdiction have been declared, under Article 25(6), to be equivalent to that provided for in EMIR.

122 When the UK left the EU, the Government did not incorporate into domestic UK law the equivalence decisions for CCPs that the EU had made under Article 25 of EMIR. Instead, to enable UK firms to continue to access overseas CCPs whilst equivalence and recognition assessments are taking place, HM Treasury established the Temporary Recognition Regime (TRR).

123 The TRR is accompanied by a 'run-off regime', intended to ensure that CCPs that leave the TRR without gaining recognition from the Bank, and can slowly and safely unwind transactions with UK members before exiting the UK market. As it stands, under the run-off regime, the Bank can determine that a CCP that has left the TRR can continue to offer services to UK firms, as if it were recognised, for a period of up to one year.

124 Remaining within the TRR requires CCPs to take a number of steps, including submitting an application for recognition to the Bank by 30 June 2022. While the majority of CCPs in the TRR did this, a small number did not apply for recognition by this deadline, or applied after the deadline, and have consequently entered the run-off regime. UK firms therefore stood to lose access to these CCPs at the end of June 2023 under the current arrangements.

125 Part 5 of Schedule 2 to this Act allows the Bank to extend the length of a CCP's run-off period from a maximum period of one year to a maximum period of 3 years and 6 months, and to determine that the run-off period for a CCP that has exited the run-off regime is to be treated as not having expired from the making of the determination onwards. The ability to provide for this extended period is intended to allow CCPs in the run-off regime who wish to apply for recognition to do so, and to ensure that the relevant CCPs can continue to offer services to UK firms during that period.

New regulatory powers

Designated activities regime

The FSMA model and the Regulated Activities Order

126 FSMA 2000 splits responsibilities for financial services policy and regulation across Parliament, HM Treasury, and the regulators as follows:

a. Parliament, through primary legislation, sets the overall approach and institutional architecture for financial services regulation, including the regulators' objectives;

b. Parliament establishes the parameters within which HM Treasury sets the 'regulatory perimeter' through secondary legislation, specifying which financial activities should be regulated and the circumstances in which regulation should apply;

c. The regulators have the statutory responsibility for setting the direct regulatory provisions that apply to firms which carry out regulated activities, using the powers given to them by FSMA 2000, and following the processes established by it;

d. Parliament, through FSMA 2000, sets the statutory objectives for the regulators, with requirements set in legislation to ensure appropriate accountability to Parliament, HM Treasury, and the general public.

127 FSMA 2000 also establishes a framework whereby any person (whether an individual or firm) can only carry out a regulated activity if that person is authorised by the appropriate regulator (i.e. is an "authorised person") or is exempt (exemptions as specified in FSMA 2000). Under this framework, HM Treasury determines which activities are regulated activities, by specifying activities to be regulated in FSMA 2000 (Regulated Activities) Order 2001 (RAO).

Regulated activities include many of the kinds of activities which are carried out exclusively by banks, insurers, and investments firms, and involve providing financial services to the public, such as accepting deposits or offering investment services.

128 Firms wishing to carry out a regulated activity must apply to the appropriate regulator for authorisation to do so, and the regulator must assess applications in line with the requirements established in FSMA 2000, which can include considerations of suitability and business models.

129 FSMA 2000 gives the PRA and the FCA general rule-making powers, which allow them to make rules which apply to authorised persons, for the purpose of advancing one or more of their statutory objectives. The regulators are required to maintain arrangements for supervising authorised persons, and also have powers to monitor and enforce compliance with the rules.

130 Many activities which are currently regulated directly in retained EU law are already regulated activities under FSMA 2000. When retained EU law is revoked, these 'regulated activities' will continue to be regulated, in line with the existing FSMA model described above.

The regulation of financial markets

131 Financial markets represent the intersection between financial services firms and the wider economy. Engaging with these markets can include activities like listing a company's shares on an exchange, entering into a derivative contract, or engaging in market activities such as short selling. These activities are carried out by a wide range of persons, many of whom are not typically considered to be financial services firms, and who are not authorised by the regulators.

132 As an example, a large number and wide range of businesses across the economy enter into derivatives contracts. They are often used by businesses to manage the risk of price fluctuations. These businesses can be complex financial services firms or non-financial businesses operating in the real economy. For example, a car manufacturer may enter into metal derivative contracts as a way of protecting itself against a rise in the price of the metals that it needs to purchase at a later date.

133 Many activities related to financial markets came to be subject to EU law as a response to the global financial crisis. These activities need to continue to be subject to rules when retained EU law has been revoked. Bringing these activities inside the current framework for regulated activities through the RAO would not be appropriate, as it would require all businesses and individuals engaging in those activities to become authorised persons, and to be supervised as if they are offering financial services directly in the way described above. This would be a disproportionate burden on those firms.

134 Therefore, this Act enhances the financial services regulatory framework in FSMA 2000 by ensuring that activities relating to financial markets can continue to be regulated in a manner which is suited to these kinds of activities.

The Designated Activities Regime

135 The Act creates the Designated Activities Regime (DAR) to allow activities related to financial markets to be regulated within a framework which is compatible with a comprehensive FSMA model.

136 The Act:

a. Establishes a framework within FSMA 2000 which sets the overall structure and powers for regulation and applies the relevant regulatory objectives and principles.

b. Sets a prohibition against carrying out 'designated' activities, or stipulates that they must take place in accordance with the relevant rules;

c. Provides a power for HM Treasury to designate activities relating to financial markets, exchanges, instruments, products, or investments, in secondary legislation, so that relevant activities can be brought inside this framework. This is modelled on the RAO but this power will also enable HM Treasury to set some requirements directly, and to indicate where the activities must be performed in line with rules made by the FCA;

d. Provides a rule-making power for the FCA, which will enable them to make rules in relation to designated activities within the accountability and objectives framework for financial services regulators set by Parliament.

Designation of activities

137 The DAR will enable HM Treasury to designate activities related to financial markets exchanges, instruments, products, or investments, in order to bring them into regulation. Where an activity has been designated, anyone conducting that activity will be required to follow the rules for that activity, unless they are exempt.

138 Initially, the government expects most designated activities to be activities which are currently regulated through retained EU law. This is an ongoing power similar to the power to bring activities in the RAO, and so the Act enables HM Treasury to designate any activity that relates, or is connected to, financial markets or exchanges of the United Kingdom, or to financial instruments, financial products, or financial investments issued or, or sold, to persons in the United Kingdom (which can include cryptoassets).

139 When designating an activity, HM Treasury will be able to make regulations relating to the performance of that activity, including prohibiting the activity in its entirety, or setting direct requirements.

140 As part of these regulations, HM Treasury will have the ability to stipulate where the FCA may make rules relating to the performance of a designated activity. Where the FCA is empowered to make rules, the FCA can make rules relating to the designated activity, or to specified matters relating to the designated activity, and not the wider unrelated activities of those carrying out the designated activity. When making rules relating to a designated activity the FCA will be required to do so within a wider overall policy framework set by government and Parliament.

141 This differs from the rule-making powers over authorised persons in section 9A of FSMA 2000, which enables the FCA and the PRA to make any rules over authorised persons, including in relation to activity which is not a regulated activity, provided that they consider this necessary or expedient to advance their objectives.

142 When making designated activity regulations, HM Treasury will also have the power to set the appropriate monitoring and enforcement framework to allow for the effective regulation of each activity. This will include the ability to confer monitoring and enforcement powers on the FCA for each designated activity, including the power to require the supply of information. HM Treasury may make such provision for enforcement by applying the existing provisions of FSMA 2000 (with or without modifications), including any existing criminal offences within FSMA 2000. This includes the ability to widen the scope of such offences.

Financial market infrastructure: general rules and requirements

Financial market infrastructure

143 In financial markets, there are various processes that need to be performed to complete each transaction. These processes are performed by several different types of entity, many of which are collectively referred to as financial market infrastructure (FMI).

144 Each type of FMI performs a vital function in supporting financial markets. This ranges from collecting data on financial transactions, to performing unique services to enable firms active in financial markets to meet their regulatory obligations.

145 These entities are regulated in a way that reflects these unique functions, recognising the significant impact that their failure or malfunction could have on the financial markets that they support. Many of the regulatory frameworks for FMI currently sit, in whole or in part, in retained EU law.

FMI and regulator rule-making

146 In order to establish a comprehensive FSMA model, the regulators need the appropriate powers to make rules when retained EU law is revoked. That includes the ability to make rules for FMI and the appropriate powers to supervise and oversee them.

147 The Act therefore introduces a general rule-making power for the Bank of England (the Bank) in relation to two types of FMI, CCPs and central securities depositories (CSDs), so that it can take on primary responsibility for setting regulatory requirements for these entities.

148 The Act also gives the FCA general rule-making powers over another two types of FMI, Data Reporting Services Providers (DRSPs) and Recognised Investment Exchanges (RIEs).

Regulation of CCPs and CSDs by the Bank of England

149 Firms use CCPs to reduce certain risks that arise when entering into financial transactions with other parties, such as derivative transactions or buying and selling securities. CCPs sit between the buyers and sellers of financial contracts, providing assurance that the obligations under those contracts will be fulfilled. Instead of holding the contract with each other, the buyer and seller each hold their side of the contract with the CCP instead. The process of transacting through a CCP is known as "clearing".

150 CSDs hold financial instruments (securities), such as shares, and play a key role at the center of financial markets by enabling securities to be issued (through creating the record of a security on their ledgers), settled (by updating their records to reflect the transfer of securities between market counterparties) and maintained (performing administrative tasks relating to securities, such as the processing of dividend payments).

Bank of England rule-making powers

151 At present, the Bank has limited powers to set direct regulatory requirements on these firms as these requirements sit in retained EU law. The most relevant pieces of retained EU law in this area are the European Market Infrastructure Regulation (EMIR) and the Central Securities Depositories Regulation (CSDR). These regulations implemented international standards within EU law and set out a comprehensive regime for these entities.

152 The Act introduces a general rule-making power for the Bank over CCPs and CSDs so that it can take on primary responsibility for setting regulatory requirements for these entities. This sits alongside an adjusted set of statutory objectives and principles to ensure that the Bank considers the appropriate public policy objectives when exercising this power. The Act updates the framework that sits around the power in order to strengthen the Bank's

accountability to Parliament, its relationship with HM Treasury and its engagement with stakeholders. The Act also provides the Bank with a power to impose requirements on individual CCPs and CSDs (which is similar to the FCA's and the PRA's ability to impose requirements on the firms they regulate under sections 55L and 55M of FSMA 2000).

153 The Act also establishes the concept of a "systemic third country CCP". It enables the Bank to establish whether an overseas CCP is a systemic third country CCP, in accordance with the criteria of general application that HM Treasury has set out in secondary legislation, as well as any detailed provisions that the Bank sets out in a statement of policy which specify further how the HM Treasury criteria will be applied. HM Treasury intends for the criteria it sets out in secondary legislation on what constitutes a systemic third country CCP to be high-level and not more detailed or prescriptive than the current framework set out in Article 25(2a) of UK EMIR. The Bank will then be able to set out more detailed considerations in a statement of policy as it does now. This could include, where appropriate, more detailed quantitative or qualitative criteria. This would allow the Bank to continue to operate its tiering framework as set out in its policy statement of 30 June 2022.

154 Where the Bank has determined a firm to be a systemic third country CCP, the Act provides the Bank with the power to apply its domestic rulebook, in part or entirely, to these firms. These powers allow for the Bank to maintain the effect of the existing framework where certain CCPs headquartered outside the UK may be subject to UK rules if they are deemed systemically important.

155 The Act also allows for HM Treasury to grant the Bank further powers to apply domestic rules to non-systemic overseas CCPs and CSDs, should it deem it necessary in the future.

Regulation of FMI by the Financial Conduct Authority

Data Reporting Service Providers

156 Data Reporting Services Providers (DRSPs) are a type of FMI. They are commercial entities that allow investment firms to fulfil their regulatory reporting obligations. There are three types of DRSPs:

a. Approved publication arrangements (APAs): APAs publish trade reports on behalf of investment firms, which are required to publish information, such as price and size of executed trades they perform, so that market participants can use such information to make informed investment decisions. They are required to publish this information as near to "real time" as possible. If a trade occurs on a trading venue, then the information is automatically made public. If a trade happens off-exchange, then an investment firm must disclose the trading information themselves or use an APA to do so.

b. Approved Reporting Mechanisms (ARMs): ARMs report details about transactions to the FCA on behalf of investment firms, for market surveillance purposes. This information is not made public.

c. Consolidated tape providers (CTPs): CTPs collate trading data for financial instruments from a variety of sources, including APAs and trading venues, and consolidate them into a continuous electronic live data stream. This data stream provides price and volume information for each financial instrument. This data can help market participants to make informed investment decisions.

157 Many of the rules that govern DRSPs are set out in the Data Reporting Services Regulations 2017 (DRSRs), which were introduced to transpose parts of the second Markets in Financial Instruments Directive (MiFID II), an EU Directive, into UK law. The DRSRs include rules that

apply directly to the DRSPs themselves, including those relating to authorisation and operating requirements (for example how DRSPs collect and disseminate data, and the need for effective governance procedures). The DRSRs also establish the FCA's supervision and enforcement powers in relation to DRSPs. As part of the onshoring process, the DRSRs were amended to address deficiencies arising as a result of the UK's withdrawal from the EU and the end of the transition period.

158 DRSPs currently sit outside of the core FSMA 2000 authorisation regime and the FCA does not have any rule-making powers over them, except for some limited powers in respect of technical standards, which are not sufficient to replace the rules currently in retained EU law.

159 The Act therefore gives the FCA a general rule-making power in relation to DRSPs to enable the FCA to replace the provisions in retained EU law relating to the regulation of DRSPs, and to ensure that the FCA has an effective way of upholding and enhancing standards in the future. This will allow the FCA to act as the market evolves, including through the trading of new types of asset classes and trading that uses new forms of technology.

160 The rule-making power will also help ensure that the FCA has the necessary tools to facilitate the development of a consolidated tape.

Recognised Investment Exchanges

161 A Recognised Investment Exchange (RIE) is a multilateral system which brings together multiple third-party buying and selling interests in financial instruments in accordance with non-discretionary rules. They are managed and/or operated by a market operator.

162 RIEs are one of three types of trading venue. The other types are multilateral trading facilities (MTFs) and organised trading facilities (OTFs)

a. MTFs: Like RIEs, MTFs are multilateral systems which bring together multiple third-party buying and selling interests in financial instruments via a system with non-discretionary rules. Whereas RIEs are managed and/or operated by a market operator, MTFs can be operated by an investment firm or a market operator.

b. OTFs: OTFs are also multilateral systems that facilitate the bringing together of multiple third-party buying and selling interests and can also be operated by an investment firm or market operator. Unlike RIEs and MTFs, the execution of orders on an OTF is carried out on a 'discretionary basis', where the market operator takes an active role in managing trades.

163 RIEs currently sit outside of the core FSMA 2000 authorisation regime and the FCA has limited rule-making powers over them because, prior to EU exit, the regulations relating to them were largely set at EU level through the Markets in Financial Instruments Regulation (MiFIR). MiFIR is one of two pieces of EU legislation (the other being MiFID II) which together underpin what is sometimes referred to as the MiFID II framework. As outlined above, as part of the onshoring process, the MiFID II framework was amended to address deficiencies arising as a result of the UK's withdrawal from the EU and the end of the Transition Period.

164 The lack of wider rule-making powers over RIEs is a problem because as part of the Future Regulatory Framework (FRF) Review the government intends, as a general approach and over time, to revoke the direct regulatory requirements in EU-derived regulation that apply to firms to enable the appropriate regulator to set their own rules. This is to ensure that the regime is proportionate and flexible. Without these proposed new powers, it will not be possible for the FCA to adequately replace the regulatory requirements that relate to these entities.

165 This Act therefore gives the FCA a general rule-making power over RIEs to enable the FCA to:

a. replace the provisions in retained EU law relating to the regulation of RIEs; and

b. ensure that the FCA has an effective way of upholding and enhancing standards in the future.

166 This is important to future-proof the regime and mitigate risks as the market evolves, including as the market continues to incorporate the trading of new types of asset classes and embrace new forms of technology.

Financial market infrastructure: regulatory sandboxes

167 The Act enables HM Treasury to set up one or more Financial Market Infrastructure (FMI) sandboxes, which will enable participating firms to test and adopt new technologies and practices. An FMI sandbox will do this by enabling participating firms to be subject to temporary modifications to legislation, where that legislation does not currently accommodate such activities or is ambiguous as to whether or not it can be accommodated. HM Treasury will also be able to make permanent changes to legislation, via statutory instrument (subject to the affirmative procedure where primary legislation is being changed), on the basis of what is learned in each FMI sandbox, having first reported back to Parliament.

168 FMI play a crucial role at the center of financial markets, providing the platforms, networks and processes that facilitate the trading, clearing, settling, reporting and administration of securities transactions. A number of FMI are considered systemically important, meaning their failure could lead to financial instability and/or disrupt the effective functioning of the market, with subsequent negative impacts on the real economy (for example, if a transaction fails to settle in time, this can add cost and inconvenience to both financial and real economy participants). It is therefore crucial that there is a robust, regulatory framework that ensures risks are properly managed, but that is also able to be flexible in the face of technological change.

169 At the same time, it is important that FMI can innovate and adopt new technologies or practices, which could enable both FMI and the firms which use them to reduce their operating costs and perform in new and more efficient ways. It could also improve the resilience of FMI, to the benefit of financial stability. Effective competition and innovation can enable more agile companies to better meet customer needs and challenge incumbents by providing improved services.

170 A particular example of a new technology is Distributed Ledger Technology (DLT), which is a form of database technology that digitally records transactions across multipleledgers at the same time. The data on these ledgers is replicated simultaneously or in rapid succession, shared and synchronised to achieve a form of decentralised consensus across the network. The ledger is an immutable record of all the transactions that have taken place within the network previously and is therefore capable of providing a high degree of certainty in transactional data, which is a key legal requirement of FMI.

171 Technology, such as DLT, could potentially provide greater efficiency, transparency and overall resilience in the performance of FMI. It could fundamentally change the role of intermediaries operating within the securities trading, clearing, and settlement cycle, for instance, particularly if activities currently performed by separate FMI can all be performed on the same ledger.

172 This may not always have desirable policy outcomes, given that intermediaries provide useful checks and balances that protect investors, maintain regulatory compliance and preserve the resilience of FMI. The benefits and suitability of DLT in financial markets has not yet been

proven, particularly when compared to more conventional IT systems. The role of FMI will need to evolve with new technology, like DLT, to safeguard the benefits of the current system, while also ensuring that the potential benefits of innovation are captured.

173 It is not always clear what legislative changes will most effectively support FMI in their safe use of new and developing technologies or practices. In 2021, HM Treasury conducted a Call for Evidence to examine the application of DLT to FMI. A key issue identified in responses to the Call for Evidence was that the UK legislative framework is not designed to support the use of DLT in FMI, and that an-evaluation of the legislative framework would be needed to enable the use of DLT and to realise its potential benefits while ensuring regulatory objectives around their safety and robustness are met. While responses identified many areas of legislation that may need changing in future, it is not fully clear what legislative and regulatory changes are needed and how these should be made. Responses to the Call for Evidence identified a need to experiment with the use of DLT in markets, so that HM Treasury, regulators, and industry can better understand the impacts of emerging technologies, like DLT, to ensure that regulatory objectives are met, and in particular to understand what changes should be made to the FMI legislative framework to support the effective and safe adoption of DLT.

174 The use of sandboxes was highlighted as a key method of doing this. The term "sandbox" has been applied in different ways, both in and outside of financial services. Broadly, it is a term used to refer to a safe space in which to experiment and learn, and in some circumstances test new technology. In 2016, the FCA launched its "Regulatory sandbox", which allows businesses to test new technologies and products in financial markets, in a controlled manner and with close regulatory oversight, within existing legislative frameworks. In addition to helping firms navigate the authorisations process, the FCA provides firms in the sandbox with informal steers to help them understand the potential regulatory implications of their business model.

175 After the Call for Evidence, the government committed in April 2021 that HM Treasury in conjunction with the Bank of England (the Bank) and the FCA would develop an FMI sandbox to allow technology to be trialed by FMI. These measures are intended to allow FMI to test whether and how they can use new technology or new practices to perform specific activities and to test its compatibility within the existing legislative framework in an effective, efficient, and safe way.

176 The Act provides HM Treasury with powers to set up an FMI sandbox for the purposes of testing the carrying on of FMI activities with new technology or practices. FMI entities (i.e., the type of entity allowed to participate in an FMI sandbox) include, for example, existing recognised CSDs, and operators of multilateral trading facilities (MTFs), though it could include other categories of FMI in future. The scope of the FMI sandbox powers is intended to be sufficiently flexible to enable different FMI sandboxes to be established in future to test different technologies and practices for different entities and activities.

177 HM Treasury will be able to temporarily disapply or modify relevant legislation relating to the regulation of FMI (defined as 'relevant enactments' in the Act) and to allow FMI entities to innovate, within the scope of the activities they have been authorised to carry out, in an FMI sandbox. The full list of legislation in scope, which can be amended, is included on the face of the Act in section 17(3), and includes retained EU law before it is revoked. This includes:

a. elements of retained EU law, such as the UK Central Securities Depositories Regulation 2014 (CSDR), the Markets Abuse Regulation 2016 (MAR) and the UK Markets in Financial Instruments Regulation 2014 (UK MiFIR);

b. legislation implementing UK law, such as the Settlement Finality Regulations 1999 (SFRs); and

c. other UK legislation, such as the FSMA 2000 and the Uncertificated Securities Regulations 2001 (USRs).

178 HM Treasury will have the ability to add to the legislation in scope of the FMI sandbox using secondary legislation. HM Treasury intends to consult industry on the proposed temporary modifications to legislation which would be tested in the FMI sandbox. FMI entities will be required to apply to the regulators in order to participate in the FMI sandbox, and a limited number of FMI entities would be selected to participate. An FMI sandbox will be created by a statutory instrument, and a full impact assessment will be provided as and when that occurs. It is intended that each statutory instrument will set out:

a. The relevant legislation to be modified or disapplied.

b. The activities that FMI are permitted to undertake in an individual FMI sandbox. For example, HM Treasury may choose to include securities issuance, settlement and maintenance in scope of an FMI sandbox, activities currently performed by CSDs. Temporary modifications to legislation could enable participants of an FMI sandbox to perform these activities using DLT. HM Treasury could also allow certain activities that are currently performed by separate FMI to be combined into one entity within an FMI sandbox. For instance, an FMI sandbox could potentially allow a trading venue to perform securities issuance, settlement and maintenance (in addition to trading), while under current legislation these activities may only be performed by a CSD.

c. Requirements and restrictions for participants in an FMI sandbox. This could include the types of securities that FMI participants will be allowed to issue/trade/settle, and in what quantities.

d. The role of the regulators in running an FMI sandbox and what enforcement powers they will have.

e. The duration of an FMI sandbox. The powers enable HM Treasury to set the desired timeline in secondary legislation. HM Treasury will have the power to terminate an FMI sandbox sooner at its discretion and ensure there is a smooth transition for participating firms between being subject to the temporary modifications to relevant enactments within an FMI sandbox and provisions adopted permanently outside an FMI sandbox in general legislation.

f. What processes participants in an FMI sandbox will have to put in place to either wind-down its activities by the end of a sandbox or what process they will need to put in place to continue their activities outside an FMI sandbox on a permanent basis, to the extent that they are authorised to do so.

179 Aside from where legislation has been modified or disapplied to accommodate new technology and new practices, participants in an FMI sandbox would otherwise be required to comply with all other existing, relevant legislation and regulator rules that apply to the activity they are undertaking.

180 For each FMI sandbox, the regulators will provide information and assistance to enable HM Treasury to produce a report assessing whether technology and practices tested in the sandbox had been successful. The performance of an FMI sandbox will be reported to Parliament and, if deemed successful, HM Treasury may make permanent legislative changes in general law, via statutory instrument subject to the affirmative procedure, to enable FMI to use that new technology or new practices outside of an FMI sandbox. HM Treasury may consider whether further consultation is needed with industry when making legislation

permanent. It is possible that permanent legislative changes may be broader or vary from the modified legislation within an FMI sandbox, subject to the technology or practices being tested and assessed as intended.

181 HM Treasury will be able to ensure that transitional arrangements are in place which would allow successful FMI participants, with appropriate authorisation, to transition from an FMI sandbox to providing the same or similar authorised services outside of the FMI sandbox as part of the permanent FMI regulatory framework under general law. This will provide continuity and will prevent the risk that FMI participants would need to stop providing services until permanent legislative changes are made. HM Treasury and the regulators will be able to put in place arrangements to ensure the successful wind-down of a participant, where that participant does not intend to or will not be permitted to operate outside an FMI sandbox.

182 The success of any FMI sandbox will be contingent on a high level of cooperation between the regulators, in large part because an FMI sandbox could entail FMI entities regulated by one regulator engaging in activities that are regulated by another regulator. For example, operators of MTFs proposing to use DLT for settlement, are currently supervised by the FCA but the performance of CSD-type settlement activities within an FMI sandbox are currently supervised by the Bank. Critical to the success of the FMI Sandbox will be ensuring that there is neither duplication nor gaps in the legal and regulatory oversight of FMI entities.

183 The government's approach to establishing FMI sandboxes is intended to strike a balance between providing a sufficiently flexible, yet secure, environment to identify how emerging technologies (such as DLT) and new practices can operate within a particular framework of legislation. It will enable permanent changes to legislation to be made where appropriate. This measure will also ensure an appropriate level of Parliamentary scrutiny is maintained.

Powers in relation to critical third parties

184 Regulated financial services firms and financial market infrastructures are increasingly outsourcing important services to third parties outside the financial services regulatory perimeter. For example, many firms are frequently using a small number of third parties to provide cloud services. Cloud services are digital platforms infrastructure that are hosted by a third party that firms use to support their own business. Where many firms use the same third party to support services that are important to the economy, failure of this 'critical' third party could result in significant negative impacts on the functioning of the financial services sector – for example, by disrupting the ability of businesses and individuals to make payments or withdraw funds. The Bank, the PRA and the FCA have powers that are designed to allow them to mitigate serious risks to the financial services sector, but these powers are largely restricted to regulated financial services firms. The regulators can impose requirements on regulated financial services firms designed to limit their risk of failure or disruption, and improve resilience. However, the regulators have no equivalent powers in relation to critical third parties.

185 The Bank, the PRA and the FCA can impose *indirect* obligations on third parties, by requiring firms to incorporate resilience requirements in contracts with these entities. But the nature of the relationship between firms and critical third parties mean indirect contractual obligations are often difficult to enforce, as a small number of critical providers are dominant in the market, so firms may find it difficult to influence these providers, or to find an alternative provider that is more resilient. The Bank and the PRA can also impose *direct* requirements on third parties, but these are insufficient because they only relate to third parties to payment systems.

Designating critical third parties

186 The Act addresses the issue by enabling HM Treasury to designate certain third parties as 'critical' and giving the Bank, PRA and FCA the ability to directly oversee critical services provided to regulated firms and financial market infrastructures by designated critical third parties. This will allow the regulators to intervene to raise the resilience of these services and reduce the risk of systemic disruption in the finance sector.

187 The Act enables HM Treasury to designate third parties as critical on the basis of the following criteria:

a. the materiality of the services which a third party provides to firms; and

b. the number and type of firms which use a third party.

188 HM Treasury will have to consult the Bank, the PRA or the FCA before designating a critical third party. In practice, designation will generally follow a recommendation from the regulators. Before designating critical third parties, HM Treasury must take representations from potential critical third parties and may consult others with an interest. Designation will itself be made by secondary legislation as the list of critical third parties will change over time.

Oversight by the financial services regulators

189 The Act gives the Bank, the PRA and the FCA powers to make rules, gather information, and take limited enforcement actions in respect of the services that critical third parties provide to regulated finance firms and financial market infrastructures. All three of the Bank, PRA and FCA will be granted these powers because critical third are relevant to each of their objectives. To ensure alignment, the regulators will be required to consult one another before issuing rules, gathering information or taking enforcement action. The Bank, the PRA and the FCA will shortly publish a Discussion Paper setting out how they would exercise these new oversight powers in practice, and how they would make recommendations to HM Treasury on potential critical third parties.

190 The rule-making powers granted to the Bank, the PRA and the FCA will enable them to introduce resilience standards and resilience testing for the services critical third parties provide to regulated finance firms and financial market infrastructure. Resilience standards will enable minimum levels of resilience to be set, and resilience testing will allow the regulators to evaluate whether resilience standards are met in practice. The information-gathering powers granted to the Bank, the PRA and the FCA will enable them to request documents and appoint an independent third party to provide a view on services critical third parties provide to regulated finance firms, as well as to undertake investigations of potential contraventions.

191 The enforcement powers granted to the Bank, the PRA and the FCA under the Act enables them to take action if rules or information-gathering requests are not complied with. The Act provides for a range of enforcement actions appropriate to the nature of this new regime. This will include the ability to direct a critical third party to remediate failings or publish a statement noting the critical third party has failed to comply with requests. As an ultimate sanction, the Bank, the PRA and the FCA will have the disciplinary power to prevent a critical third party from providing new or current services to the financial services sector, or set conditions on the provision of those services, where such action will not harm the UK's financial stability or any of the regulators' objectives.

Regulatory gateway for approving financial promotions

192 A financial promotion is a communication that contains an invitation or inducement to engage in a financial product or service. Such communications can take a wide variety of forms, including advertisements placed through print, broadcast or online media; marketing brochures; direct mail; or use of social media. Financial promotions are often consumers' first contact with an investment opportunity and so can have a significant influence over the financial decisions they make.

193 The financial promotions regulatory regime in the UK seeks to ensure that consumers are provided with clear and accurate information that enables them to make appropriate decisions for their individual circumstances. Under the current regime, financial promotions communicated by unauthorised firms (i.e., firms that are not authorised to carry out a regulated activity by the FCA or the PRA) must be approved by firms that are authorised by the FCA or the PRA, unless the promotion is otherwise subject to an exemption.

194 Authorised firms have a responsibility to ensure that any financial promotions they approve are compliant with relevant FCA rules, helping to protect consumers from potentially harmful promotions.

195 Currently, any authorised firm can approve any financial promotion of an unauthorised firm and there is no specific suitability test or assessment that the authorised firm has to meet in order to do so. This gives rise to three risks:

a. An authorised firm can approve the financial promotion of another firm operating in an area in which the authorised firm has no specific expertise;

b. Some authorised firms may approve the financial promotions of unauthorised firms without undertaking sufficient due diligence around the firm or the promotion; and

c. It acts as an obstacle to the FCA in exercising appropriate regulatory oversight of those firms that are approving the financial promotions of unauthorised firms. For example, firms are not currently required to notify the FCA when they are approving the financial promotions of unauthorised firms. The FCA therefore often only finds out about financial promotions that do not meet its rules via complaints or reports. This means that the FCA often only becomes aware of the potential for harm after it has occurred.

196 These risks can result in significant harm to consumers, including investor loss, re-direction of investment away from more appropriate products, and a loss of consumer confidence in the financial services sector.

197 To address this, the Act establishes a regulatory "gateway", which authorised firms must pass through before being able to approve the financial promotions of unauthorised firms. Any authorised firm wishing to approve the financial promotions of unauthorised firms will first need to obtain the permission of the FCA. The FCA will also be able to place limitations on the types of promotions authorised firms will be able to approve, for example, restricting firms to approving financial promotions in their field of expertise.

198 The regulatory gateway aims to improve the quality of financial promotions communicated by unauthorised firms, by allowing only those authorised firms that the FCA assesses as suitable and with sufficient expertise to approve the promotions of unauthorised firms. It will also give the FCA greater oversight of the approval of financial promotions and reduce the number of authorised firms that are able to undertake such approvals.

Sustainability disclosure in financial services

199 Green finance is an essential part of the government's vision for the UK financial system and is seen as a fundamental part of the government's strategy to achieve Net Zero. Mobilising Green Investment: 2023 Green Finance Strategy sets out the government's policy to strengthen the UK's position at the forefront of the rapidly growing global green finance market, while driving private investment to deliver our energy security, net zero and environmental objectives.

200 Robust, comparable sustainability information is required to enable informed and efficient capital allocation that can support the UK's climate and environmental goals. Investors and other stakeholders are demanding more and better information to better assess long term risks and returns, and whether their investments will support their sustainability preferences.

201 Claims about sustainability are made by a growing number and range of financial firms about their products, and many UK companies are making commitments to transition their activities to net-zero. In 2021, 49% of UK assets under management integrated environmental, social and governance (ESG) factors into their investment decisions, up from 37% in 2020. The number of 'sustainable funds' available in the UK has grown from under 50 in 2005 to 167 in 2020.

202 This growth, however, has also led to an increased risk of "greenwashing", which is when misleading or unsubstantiated claims about environmental sustainability are made by organisations about their products or activities. Greenwashing and transparency were frequently cited concerns amongst respondents to the 2021 Schroders Institutional Investor Study.[6] This can lead to the wrong products being bought, potentially harming consumers, undermining trust in the market and frustrating investors' efforts to support the transition to net zero through their investments. It can also undermine the government's efforts in the public interest to support the transition to a low carbon economy.

Sustainability disclosure requirements

203 In 2020, the government announced in its Interim Report and Roadmap on the UK's Taskforce on Climate-related Financial Disclosures (TCFD) that the UK intended to introduce mandatory requirements for organisations to disclose information about their climate-related financial risks, in line with the recommendations of the TCFD.

204 Since then, disclosure requirements for organisations have been introduced across the economy:

a. The FCA introduced requirements for listed companies, asset managers, life insurers and FCA-regulated pension providers;

b. The Department for Work and Pensions has introduced requirements for occupational pension schemes;

[6] Institutional Investor Study 2021, Schroders.

c. The government laid regulations in Parliament[12] and published associated guidance covering UK publicly quoted companies, large private companies and Limited Liability Partnerships; and

d. Supervisory expectations for banks and insurers on the management of climate-related financial risks also became part of the Bank of England's supervisory processes in 2022.

205 The government's approach to Sustainability Disclosure Requirements (SDR) was established in the July 2021 document: '*Greening Finance: A Roadmap to Sustainable Investing*' (the Greening Finance Roadmap). This set out the foundations of SDR and an indicative pathway to introducing proportionate sectoral requirements that would be taken forward by the relevant departments and regulators.

206 SDR aims to address the concerns around transparency, comparability, accountability and efficiency of capital allocation by improving the quality and availability of information to enhance business and financial decision making and organisational risk management. This is intended to support businesses and consumers to make decisions in a more sustainable manner.

207 It is also intended to promote financial market integrity by improving transparency about organisations' sustainability risks, opportunities and impacts, and their approach to managing them. It is designed to reduce the potential harms to investors arising from incomplete or inaccurate information, and help these risks and opportunities to be appropriately priced into markets.

Taking forward SDR in the financial services sector

208 The *Greening Finance Roadmap* identified the FCA as the main regulator for introducing SDR in the financial services sector. The PRA also requires prudential disclosure in connection with matters relating to sustainability, for example through implementation of any Pillar 3 Disclosure requirements of the Basel Committee on Banking Supervision[7].

209 The FCA has already begun taking SDR forward for relevant authorised firms under its existing objectives and rulemaking powers, which are sufficiently broad for the purpose, with its consultation on SDR and investment labels CP22/20 which builds on its earlier Discussion Paper DP21/4. The SDR provisions introduced in the Act will not affect these in-flight FCA consultations.

210 SDR has strong links to wider climate and environmental policy, and so the government has an important role to play in shaping SDR policy.

211 The Act therefore requires the FCA and the PRA to "have regard" to any policy statement on SDR made by HM Treasury when making rules or issuing related guidance on disclosure in connection with matters relating to sustainability.

212 The SDR policy statement may be published by HM Treasury in any manner it considers appropriate, and any published statement must be kept under review.

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[7] https://www.bis.org/press/p230323a.htm

213 The Act requires HM Treasury to consult the FCA and the PRA, as relevant, ahead of making any such policy statement, and requires the regulators to prepare a report for HM Treasury on any matters in connection with the policy statement if HM Treasury asks for such a report. Any requests made by HM Treasury must be made in writing, and reports from regulators must be submitted within a reasonable period as is specified or agreed. This supports information gathering for HM Treasury, whilst facilitating effective cooperation between the government and the regulators.

214 In addition, the Act requires the FCA and the PRA to report on how they have satisfied the requirement that their relevant rule-making has had regard to the SDR policy statement in their annual reports. This creates an ongoing process of accountability with respect to the SDR policy statement that enhances scrutiny of regulatory action on SDR.

Digital settlement assets

215 Cryptoassets are a digital representation of value or contractual rights that can be transferred, stored or traded electronically, which may (though do not necessarily) utilise cryptography or distributed ledger technology. No internationally agreed definition, taxonomy or classification currently exists.

216 In January 2021, HM Treasury launched a consultation and call for evidence on the UK's regulatory approach to cryptoassets. This sought views on how the government and regulators can ensure that the UK's regulatory framework is equipped to harness the benefits of new technologies, supporting innovation and competition, whilst mitigating risks to consumers, market integrity and financial stability.

217 This consultation proposed a staged and proportionate approach to regulation, which is sensitive to risks posed and responsive to new developments in the market. In particular, it highlighted that certain forms of cryptoassets, known as "stablecoins" had the potential to develop into a widespread means of payment, and potentially deliver improvements for payment transactions.

218 HM Treasury's response to the consultation, published in April 2022, outlined the government's intention to bring stablecoins, where used as a means of payment, into the regulatory perimeter.

Stablecoins

219 Stablecoins are a form of cryptoasset which aim to maintain a stable value relative to other assets. Design features vary, including how the stablecoin is backed or stabilised (for example, with financial assets or using an algorithm to increase or decrease the supply as needed to maintain a stable price).

220 Stablecoins which reference their value in relation to fiat currencies can be seen as more akin to traditional payment instruments, than other types of cryptoassets such as those used primarily as a means of investment (for example, Bitcoin). Depending on the specific way that they are designed, stablecoins may already be subject to UK financial services regulation, though many currently are not in scope.

221 This Act brings activities facilitating the use of certain stablecoins, where used as a means of payment, into the UK regulatory perimeter primarily by amending the existing electronic-money and payment system regulatory frameworks. Through this approach, the government has sought to reflect the Financial Stability Board's recommendations on the regulation, supervision and oversight of global stablecoin arrangements, and the CPMI-IOSCO consultation report on the application of the Principles for Financial Market Infrastructures to stablecoin arrangements, and will leave room to update the regulatory framework as international standards are developed.

222 Separately, the government intends to launch a consultation on its regulatory approach to wider cryptoassets beyond stablecoins used for payments, including those primarily used as a means of investment (such as Bitcoin) later in 2022.

Electronic money and payments legislation

223 Electronic money is, broadly, monetary value as represented by a claim on the issuer which is: stored electronically, including magnetically; issued on receipt of funds; and used for the purposes of making payment transactions. Although stablecoins have similar characteristics to electronic money, they often, due to their characteristics, fall outside of scope of the payments regulatory regime. This is out of step with the government's stated objective of ensuring that activities that involve the same risk have the same regulatory outcome.

224 Electronic money is currently regulated by the FCA under the Electronic Money Regulations 2011 (EMR 2011), which includes authorisation and supervision of the business of electronic money institutions. There are other forms of payment services regulated under the Payments Services Regulations 2017 (PSR 2017), such as money remittance. Together, this legislation provides powers to the FCA to regulate and supervise firms engaged in relevant payment activities. The FCA regulates payment and electronic money institutions, and is responsible both for conduct and prudential regulation of these institutions.

225 The Banking Act 2009 and Financial Services (Banking Reform) Act 2013 (FSBRA 2013) provide the Bank of England (the Bank) with power and responsibility for regulation of systemically important payment systems and service providers to those payment systems, and the Payment Systems Regulator (PSR) with power and responsibility for the economic regulation of payment systems, respectively. In the case of the Banking Act 2009, the Bank regulates and supervises systemic payment systems following a recognition decision made by HM Treasury. Similarly, in the case of the FSBRA 2013, the PSR regulates payment systems following a designation process made by HM Treasury.

Bringing digital settlement assets into the regulatory perimeter

226 This Act gives HM Treasury a power to bring digital settlement assets used for payments into the UK regulatory perimeter. It introduces a definition of "digital settlement asset", a new concept which has not been previously defined in legislation. Given the nascent nature of the cryptoasset market, the Act gives HM Treasury a power to amend this definition in the event that there are changes in the features, underlying technology or usage of these assets, so that the regulation can continue to have effect as intended.

227 As mentioned above, the government's staged and proportionate approach will begin by focusing on stablecoins which reference their value from fiat currency (such as Pound Sterling), where used as a means of payment, because the government believes that such tokens share characteristics with existing forms of electronic money. This will ensure that fiat-linked stablecoins, where used for payments, are subject to the same requirements and protections as other similar payment methods.

228 A feature of the current design of the UK payments and electronic money legislation is a degree of regulatory overlap between the authorities, where responsibilities are distributed across the regulators and they set requirements and oversee firms pursuant to their differing statutory objectives. By extending the existing frameworks to cover fiat-referenced stablecoins used as a means of payment, further regulatory overlaps will apply between the Bank of England and the FCA for a small number of systemic firms. The Act therefore puts in place a regime that allows for the clear identification of the applicable regulatory requirements (for example, in relation to prudential rules) where a payment system using digital settlement assets or digital settlement asset service provider is recognised as being systemic by HM Treasury.

229 Specifically, the Act:

a. Provides the power for HM Treasury to establish an FCA authorisation and supervision regime, drawing broadly on existing electronic money and payments regulation, to mitigate conduct, prudential and market integrity risks for issuers of, and payment service providers using, stablecoins.

b. Enables HM Treasury to recognise the operators of systemic payment systems and systemic service providers using digital settlement assets for regulation by the Bank, subject to meeting relevant thresholds and following HM Treasury's publication of a recognition order. This will enable the Bank to regulate and supervise systemically important stablecoin payment systems and related service providers to mitigate financial stability risk.

c. Enables the PSR to regulate payment systems using digital settlement assets, following HM Treasury's publication of a designation order, to address issues relating to competition innovation, user interests and access.

d. Enables HM Treasury to apply the Financial Markets Infrastructure Special Administration Regime (FMI SAR), which is a bespoke administration regime for recognised payment and settlement systems and recognised service providers, to stablecoin firms that have been recognised by HM Treasury, with appropriate modifications. This will ensure appropriate tools are in place to mitigate the risks to financial stability associated with a systemic stablecoin firm's failure.

e. Amends or disapplies existing FCA or PRA rules in areas relating to financial stability to avoid relevant systemic stablecoin firms being subject to conflicting requirements. HM Treasury intends to establish this mechanism through secondary legislation.

Implementation of mutual recognition agreements

230 Outside of the EU, the UK is able to negotiate its own international trade agreements, including Mutual Recognition Agreements (MRAs) related to financial services. These MRAs are intended to provide recognition of rules and practices in other jurisdictions to allow both the UK and its MRA partners to defer to each other in respect of the regulation and supervision of both UK and overseas firms undertaking cross border financial services activity. MRAs therefore offer a practical way to promote openness and mutual market access between jurisdictions, supported by regulatory and supervisory cooperation. The UK is in the process of negotiating a financial services MRA with Switzerland. The UK hopes, in the future, to enter into MRAs with other jurisdictions.

231 The UK has a dualist legal system. This means that a treaty ratified by the government does not alter the laws of the State unless and until it is incorporated into domestic law by legislation. As a consequence, international agreements, such as MRAs, must be implemented in domestic law in order to ensure that the UK can meet its international obligations under such agreements. Not all obligations within an MRA will require a change to domestic law, but it is a convention in the UK that an international treaty is not ratified until it has been fully implemented.

232 The Act provides for HM Treasury to make changes to domestic legislation necessary to ensure that MRAs can be fully implemented, using secondary legislation subject to the affirmative procedure. This includes the ability to grant any additional powers to the financial services regulators that are required to give effect to MRAs. It is intended that this provision will be used to implement the MRA on financial services which is currently being negotiated with Switzerland, and any future financial services MRAs.

233 Currently in financial services regulation, market access between the UK and other jurisdictions is generally delivered through the UK's equivalence framework for financial services, which is operated by HM Treasury as set out in more detail in the guidance document for the UK's Equivalence Framework for Financial Services, published on 9 November 2020. The equivalence framework provides mechanisms for HM Treasury to determine that, in specific areas of regulation, another jurisdiction's regulatory and supervisory framework are equivalent to the UK's. This serves to facilitate cross-border financial services activity in relation to that equivalent jurisdiction by permitting market access and reducing regulatory frictions or costs to firms. These mechanisms are primarily found in retained EU law (by virtue of the European Union (Withdrawal) Act 2018) and were previously operated by the European Commission. The MRAs negotiated by the government may in some cases go further than, or function differently to, these existing equivalence mechanisms. The power that the Act provides to HM Treasury to implement MRAs therefore includes the power to modify the application of existing equivalence mechanisms or create new mechanisms to reflect what has been agreed in the relevant MRA.

234 It may also be appropriate to adjust the powers and functions of the financial services regulators set out primarily in FSMA 2000 in order to ensure that they are equipped to give effect to MRAs, including ensuring that they have appropriate rule-making powers. The regulators must continue to act in a way that furthers their statutory objectives.

235 The MRAs are intended to be "living agreements" such that the scope may evolve or expand over time in accordance with the desire of the parties. This could include amending or expanding their scope to take account of new developments in financial services sectors and possible future legislative changes. Taking account of this possibility, the Act allows for the implementation of any amendments to or extension of the scope of MRAs as and when the UK and its MRA partners agree to such changes.

236 As with most international treaties, any MRAs for financial services made in the future will be subject to parliamentary scrutiny before ratification, as set out in the Constitutional Reform and Governance Act 2010 (CraG). As part of the process, the government will set out in the explanatory memorandum accompanying any MRA how it intends to implement its terms in domestic law. Only once an MRA has both been scrutinised by Parliament pursuant to the CraG process and all necessary domestic implementation has been completed will an MRA be ratified and enter into force.

New objectives and regulatory principles

237 Having left the EU, the government wants to ensure that the framework of objectives and principles that guide the regulators' actions, particularly given their additional rule-making responsibilities, continues to set the right strategic considerations.

238 As set out in the strategy document published alongside the Chancellor's Mansion House speech in July 2021, the UK will continue to remain a global leader in promoting high international standards. Alongside this commitment, the government's intention is to ensure that the financial services sector is delivering for businesses and consumers across the UK.

239 The government considers that the regulators' current objectives are each important in helping to deliver these outcomes. Robust regulatory standards encouraged by these objectives are the cornerstone of the UK market's attractiveness, and the stability and soundness of the UK's market remains an important priority for the government.

240 The government therefore considers that the regulators' existing objectives set broadly the right strategic considerations and wants to maintain the regulators' focus on these objectives.

New international competitiveness and growth secondary objectives

241 The government recognises that the financial services sector is not just an industry in its own right but an engine of growth for the wider economy. As the regulators take on responsibility for setting detailed rules in areas currently covered by retained EU law, the government considers that it is right that the regulators' objectives reflect the need to support the competitiveness and medium to long-term growth of the UK economy, including the financial services sector.

242 The Act introduces a new secondary objective for the FCA and the PRA to provide greater focus on international competitiveness and medium to long-term growth. The government wants to ensure that giving the regulators a legal basis for advancing international competitiveness and medium to long-term growth and does not detract from their existing objectives of: ensuring that UK firms remain safe and sound; that the UK's markets function well; that there is healthy competition in the interests of consumers, and, that consumers and users of financial services receive an appropriate degree of protection.

243 The Act enables the FCA and the PRA to act only in a way which facilitates international competitiveness and growth and in the medium to long-term. The government does not want the PRA and the FCA to act in a way which benefits short-term competitiveness at the cost of long-term growth.

244 The government is committed to maintaining high regulatory standards in the UK so the new objectives provide for the regulators to facilitate competitiveness and medium to long-term growth subject to aligning with relevant international standards.

245 International standards are set by standard setting bodies, such as the Basel Committee on Banking Supervision. These standards are typically endorsed at a political level through international fora such as the G7 and G20. However, given the need to enable implementation across multiple jurisdictions, in some cases, the standards may not fully take account of the law or market of individual countries. National governments or regulators are then responsible for deciding how best to implement these standards in their jurisdictions.

246 Since the UK left the EU, the regulators have been generally responsible for making the judgment on how best to align with relevant standards when making detailed rules that apply to firms. The Financial Services Act 2021 also followed this approach in relation to the UK's implementation of Basel standards for bank regulation and of the UK's Investment Firms Prudential Regime. This approach is consistent with the overarching approach set out in the two Future Regulatory Framework Review consultations, which delegates the setting of regulatory standards to operationally independent regulators that work within an overall policy framework set by government and Parliament.

247 When making judgements on how to implement standards, the regulators will consider how best to advance their statutory objectives. In future, this will include the new secondary competitiveness and growth objectives. The wording in the secondary objectives therefore provides flexibility for the regulators to tailor international standards appropriately to UK markets to facilitate growth and international competitiveness, whilst demonstrating the government's ongoing commitment for the UK to remain a global leader in promoting high international standards.

248 Financial Services regulation is a reserved matter. As such, the new objectives for the PRA and the FCA are designed to advance the competitiveness and medium to long-term growth and of the entire UK economy, including the devolved nations and English regions.

249 No changes are made to the statutory objectives of the PSR, which is an economic regulator with specific and differing objectives to the financial services regulators.

Reporting requirements in relation to the new international competitiveness and growth secondary objectives

250 Section 25 introduces new secondary objectives for the FCA and the PRA to facilitate the international competitiveness and growth of the UK economy in the medium to long-term.

251 The government expects that there will be a step-change in the regulators' approach to growth and competitiveness following the introduction of the new objectives, while maintaining high regulatory standards. It will therefore be important to have detailed information available to scrutinise how the regulators embed their new objectives.

252 Section 26 therefore requires the FCA and the PRA to produce a report within 12 months and a second report within 24 months of the new objectives coming into force. This does not preclude the regulators from including information on actions taken prior to the objectives coming into force as they consider appropriate.

253 These reports must, in particular, explain the action taken by the regulators to ensure the new objectives have been embedded in their operations, processes and decision making, and how any rules and guidance made by the regulators have advanced the new objectives.

New regulatory principle that the regulators must have regard to the UK net zero emissions target and environmental targets

254 The government wants to further strengthen the UK's regulatory regime relating to climate and the environment. Therefore, alongside the new secondary objectives, the government will embed consideration of the UK's climate and environmental targets across the full breadth of the regulators' general functions on a statutory basis.

255 The government consulted on strengthening the UK's regulatory regime relating to the climate target in its November 2021 consultation on the FRF Review and received significant support from respondents.

256 The regulatory principles set out in FSMA 2000 aim to promote regulatory good practice across the range of the regulators' policymaking. The November 2021 consultation proposed amending the regulators' existing sustainable growth regulatory principle to incorporate the UK's statutory climate target. Following feedback to the consultation, and given that the FCA and the PRA will have new secondary objectives to facilitate international competitiveness and growth in the medium to long-term, the Act removes the existing sustainable growth principle for the FCA and the PRA from the regulatory framework to avoid unnecessary duplication.

257 The Act therefore introduces a new regulatory principle for the FCA and the PRA. The principle will require the regulators, when discharging their general functions to have regard to the need to contribute towards achieving compliance by the Secretary of State with section 1 of the Climate Change Act 2008 (UK net zero emissions target) and section 5 of the Environment Act 2021 (environmental targets), where each regulator considers the exercise of its functions to be relevant to the making of such a contribution. This regulatory principle seeks to cement the government's long-term commitment to transform the economy in line with its target to reach net zero by 2050 , and to make progress towards the government's long-term environmental goals, by ensuring the regulators must have regard to the government's commitment to achieve these targets when discharging their functions.

258 The PSR has a similar set of regulatory principles to the FCA and the PRA (including sustainable growth). As the PSR's objectives are not changing, the PSR's existing sustainable growth principle will be maintained, and the climate and environmental targets will be incorporated into its sustainable growth principle. This will be done in a way that ensures that the achievement of the net zero and environmental targets should be understood as being only one element of the sustainable growth principle.

Exercise of Bank of England regulatory powers

Objectives and principles

259 The additional regulatory powers over CCPs and CSDs granted to the Bank of England by this Act are set out elsewhere in these Notes. Alongside this expansion of the Bank's responsibilities and powers, the Act puts in place a framework to ensure that the Bank is set the right overall public policy objectives and is fully accountable and transparent in pursuing them.

260 The Bank's function as regulator and supervisor of CCPs and CSDs is currently subject to its Financial Stability Objective as set out in section 2A of the Bank of England Act 1998, which is as follows:

> *2A Financial Stability Objective*
>
> *(1) An objective of the Bank shall be to protect and enhance the stability of the financial system of the United Kingdom (the "Financial Stability Objective").*
>
> *(2) In pursuing the Financial Stability Objective the Bank shall aim to work with other relevant bodies (including HM Treasury and the Financial Conduct Authority).*

261 This financial stability objective will remain the sole primary objective for the Bank in its regulation of CCPs and CSDs. The Act specifies that when the Bank acts to advance this objective, it should also have regard to:

a. The effects generally that its regulation of CCPs and CSDs will or may have on the financial stability of countries or territories (other than the UK) where CCPs and CSDs are established or provide services.

b. Regulating CCPs and CSDs in a manner that is not determined by whether the users of their services are located in the UK or elsewhere.

262 The Act introduces a secondary objective for the Bank so that as it advances its primary objective for financial stability it must, so far as is reasonably possible, facilitate innovation in the clearing and settlement services provided by the CCPs and CSDs it regulates with a view to improving the quality, efficiency and economy of the services they provide.

263 The Act also introduces regulatory principles for the Bank, similar to those set out in FSMA 2000 for the PRA and the FCA. This includes a sustainable growth principle incorporating the government's commitment to achieving net zero emissions by 2050 and to meeting the environmental targets provided for in the Environment Act 2021. The Act introduces a new regulatory principle for the Bank to have regard to the desirability of facilitating fair and reasonable access to services provided by CCPs and CSDs.

Internal decision-making processes

264 Currently, the Bank largely undertakes its decision-making for its regulation of CCPs and CSDs through its FMI Board. This is an internal, non-statutory executive committee constituted by the Governor of the Bank of England to exercise the Bank's powers in relation

to the FMI it regulates. It is chaired by the Deputy Governor for Financial Stability and includes senior Bank executives, as well as three external members. The Governor has reserved limited decisions to himself; the Governor can also be consulted on important decisions that would otherwise fall within the Board's remit (and resolve to take such decisions himself). The Board can also delegate matters to Bank officials if it deems it appropriate to do so.

265 The Act places the Bank's decision-making processes for CCPs and CSDs onto a statutory footing by creating a new FMI Committee. The intention of this is to increase transparency and accountability around the Bank's internal decision-making processes as it exercises its new rule-making power for CCPs and CSDs. The constitution of this Committee will be left largely to the Bank's judgment; but the Act specifies that there should be at least three independent members on the Committee, and that the Committee should be chaired by either the Governor or a Deputy Governor of the Bank. The Act allows the FMI Committee to, as it sees fit, arrange for any of its functions to be carried out by the Governor or after consultation with the Governor. It also continues to provide for matters to be delegated within the Bank where appropriate, with the exception of its rule-making functions.

266 The Act leaves the Committee's procedures largely to the judgment of the Bank. The Bank will be required to publish a statement on a number of matters relating to the Committee. This includes its membership, arrangements for meetings, voting and decision taking procedures, arrangements for any decisions to be taken by, or in consultation with, the Governor and arrangements for matters to be delegated within the Bank.

Accountability of regulators

Regulator engagement with HM Treasury, external stakeholders, and Parliament

Regulators' relationship with HM Treasury

267 As the regulators will receive new responsibilities following the revocation of retained EU law, it is important that the mechanisms underpinning the regulators' relationship with HM Treasury are strengthened. This will ensure there continues to be appropriate democratic input into, and public oversight of, the regulators' activities.

268 There are already many provisions in the UK's domestic framework for HM Treasury to hold the regulators to account. HM Treasury ministers have overall responsibility for the UK's financial services regulatory framework and the continued effective operation of the financial services regulators as part of that framework.

269 Existing domestic legislation already provides for a number of formal accountability mechanisms between the regulators and HM Treasury in specific circumstances, including:

a. HM Treasury appoints the Chair and Chief Executive of the FCA, as well as members of the FCA board and Prudential Regulation Committee (the governing committee of the PRA).

b. The Governor and Deputy Governors of the Bank of England are appointed by the Crown. HM Treasury is responsible for advising the Prime Minister who makes a recommendation to the Crown.

c. HM Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness of the PRA's and the FCA's use of resources.

d. HM Treasury may direct the PRA or the FCA to carry out investigations into specific events if that is in the public interest (under section 77 of the Financial Services Act 2012).

e. HM Treasury may direct the PRA or the FCA to take action, or refrain from taking action, in relation to specified matters in order to ensure that the UK meets its international obligations.

270 In addition, FSMA 2000 provides HM Treasury with the ability to make recommendations to the regulators through open 'recommendations letters' on issues related to matters of economic policy which the regulators should take into account when exercising their general duties. The most recent recommendations for both the PRA and the FCA were issued on 23 March 2021 and supplemented by a further update issued on 7 April 2022.

271 When the UK was a member of the EU, the government, through ministerial engagement in the European Council and via MEPs in the European Parliament, had a formal role in the EU system of regulatory policymaking. Following the revocation of retained EU law, the regulators will have greater responsibility to set the regulatory requirements which apply to firms in areas previously covered by retained EU law.

272 The government considers that the existing mechanisms governing the regulators' relationship with HM Treasury are effective. The government considers that the greater responsibility being given to the regulators should be balanced with effective policy input from, and appropriate accountability to, government. The government consulted in November 2021 on proposals to strengthen the engagement mechanisms between HM Treasury and the regulators. These proposals were broadly supported by respondents.

273 The Act creates analogous provisions to the above in relation to the PSR, where these do not exist already, namely the ability for HM Treasury to send letters of recommendation. The approach set out here will also apply to the Bank of England in its regulation of CCPs and CSDs.

Requirement of the regulators to respond to HM Treasury recommendations

274 The Act introduces a requirement for the regulators to respond annually to the recommendations made by HM Treasury in the recommendation letters under existing provisions in FSMA 2000. The regulator's response should outline the action the regulator has taken or intends to take, or the reasons the regulator has not taken and does not intend to take action on the basis of the recommendations. The response will be laid before Parliament by HM Treasury**.** This is intended to increase HM Treasury's and wider stakeholders' ability to understand how the regulators have taken into account the recommendations. An analogous provision is made for the PSR, inserted into FSBRA 2013.

275 In future, to ensure that it is clear which recommendations are in force, and so need to be included in the response, HM Treasury will make clear in its recommendations letters whether the recommendations replace previous recommendations or are in addition to them

Regulators' review of their rules

276 It is important to review policy interventions after implementation to ensure they remain appropriate and have had the desired effect. This can range from monitoring to wider evaluation of the impact of a rule after a certain period.

277 There is currently no formal requirement for the regulators to conduct reviews of their existing rules. The Act introduces a requirement for the regulators to keep their rules under review. The government expects this would cover all approaches to assessing the effect of rules, from monitoring to wider evaluation.

278 This requirement to keep rules under review is intended to provide for more effective regulation by ensuring there is a legislative duty for the regulators to review their rules. In addition, more systematic reviews should improve regulation, as potentially outdated rules will be removed or revised more consistently.

279 Alongside this requirement, the Act requires the regulators to publish a statement of policy for how they conduct rule reviews. The requirement for the regulators to publish a statement of policy is to provide clarity and transparency for stakeholders on how and when rules are reviewed. This should allow stakeholders to be confident that reviews are happening in a consistent manner, increasing confidence in regulation.

280 The statement of policy must provide information about how stakeholders, including the regulators' statutory panels, can make representations to the regulator to review its rules. The statement of policy must also set out how these representations will be considered by the regulators.

281 The government expects that the statements of policy would, additionally, cover at least the following aspects of review:

a. The different methods of reviews regulators may conduct, including any differences in purpose and scope between them.

b. The process for determining the methods of review to be applied.

c. The process for determining the timing of different methods of review.

Power of HM Treasury to require a rule review by the regulator

282 There is currently no formal mechanism for HM Treasury, or anyone else, to require the regulators to conduct reviews of their existing rules. This power is intended to provide for more effective regulation by ensuring there is such a mechanism for the regulator to review its rules where HM Treasury considers it is in the public interest.

283 In general, HM Treasury expects that it may be in the public interest to exercise the power to direct the regulator to review its rules where:

a. significant developments in the relevant markets give rise to the possibility that the current rules may no longer be appropriate; or

b. substantial evidence gives rise to the possibility that the rules are not achieving their purpose, considering:

i. in relation to the FCA, its explanation of how the rules were compatible with its strategic objective and advanced one or more of its operational objectives when the rules were made;

ii. in relation to the PRA, its explanation of how the rules advanced one or more of its objectives when the rules were made;

iii. in relation to the PSR, its explanation of how the requirements advanced one or more of its payment systems objectives;

iv. in relation to the Bank as it exercises its FMI functions, its explanation of how the rules advanced its Financial Stability Objective when the rules were made.

284 HM Treasury is required to consult the regulator before directing a review under this section. Matters to be consulted on may include:

a. the regulator's current plans for review

b. the quality of the evidence on which a direction is being considered

c. the timing of a review; and

d. whether an independent reviewer is necessary.

285 There may be situations where it would not be appropriate for the regulator itself to conduct the review. In such a situation, HM Treasury would expect to include in its direction that the regulator should appoint an independent reviewer.

Power for HM Treasury to direct the regulator to report on performance

286 FSMA 2000 and the Financial Services (Banking Reform) Act 2013 establish multiple ways for the regulators to report on their performance to support scrutiny and accountability. These include a requirement for the regulators to report annually, setting out, amongst other things, how they have advanced and acted compatibly with their objectives and had regard to the regulatory principles. Within their annual reports, HM Treasury may also direct the FCA and the PRA to include 'such other matters' as HM Treasury considers appropriate.

287 In addition, on a voluntary basis, the FCA annually publishes 'operating service metrics.' These are metrics relating to how the FCA carries out routine customer service functions, including authorisations, timeliness of responses to stakeholders, and regulatory permissions requests. In April 2022 the FCA published a comprehensive set of Outcomes and Metrics which it will use to measure and publicly report on its performance. The PRA also annually publishes data on its performance of authorisation processes.

288 On 1 December 2022, the government published an exchange of letters setting out its commitment to ensuring the UK has world-leading levels of regulatory operational effectiveness. In response, the regulators have committed to publishing more detailed performance data in relation to authorisation processes on a quarterly basis in future. Given the regulators' new responsibilities following the repeal of retained EU law, and the introduction of new growth and competitiveness objectives for the FCA and the PRA, the government considers that there is an increased need for the regulators to publish further information about their performance, to support their scrutiny by Parliament and government and engagement with stakeholders.

289 The Act introduces a power of direction for HM Treasury to direct the regulator to publish a report on such matters, at specific intervals, as HM Treasury considers necessary to support scrutiny of their performance in discharging their general functions. This will enable HM Treasury to direct the regulators to publish additional information to support the review and scrutiny of their discharge of their general functions. This includes how the regulators have acted compatibly with and advanced their objectives, and had regard to the regulatory principles, as well as wider operational effectiveness. HM Treasury will be required to lay any direction in Parliament, to notify it of the use of the power.

290 HM Treasury expects that this power will only be used in exceptional circumstances, in cases where existing forms of engagement have been exhausted. It provides a backstop to ensure that the regulators can be directed to provide further information on their performance where required while respecting their operational independence and expertise. This will support their accountability to Parliament and the public.

291 HM Treasury will only be able to exercise the power where it has determined that:

a. publication of the information is necessary for scrutiny of the regulator's discharge of its functions; and

b. that any information already published is insufficient for effective scrutiny.

292 HM Treasury will not be able to issue a direction that would require publication of the relevant information more than once a quarter. Given the requirement for information to relate to the discharge of the regulator's functions, HM Treasury expects that directions will only relate to matters within the regulator's remit.

293 HM Treasury will be required to consult the regulator before exercising this power. This will allow for HM Treasury and the regulator to consider factors such as whether the information can reasonably be collected, recorded, and published by the regulator, ahead of the direction being issued. HM Treasury will also be required to have regard to the desirability of minimising adverse effects on the regulators' other functions when exercising the power.

294 This power cannot be used to require the regulator to publish information that is confidential for the purposes of Part 23 of FSMA 2000 in relation to the FCA and the PRA, section 91(2) of FSBRA in relation to the PSR and Part 23 of FSMA 2000 as it applies in relation to the Bank of England.

295 The regulator will be required to publish the report. However, there is an exemption from publishing information where doing so would be against the public interest in the regulator's opinion.

296 This power will apply to the FCA, the PRA, the PSR, and the Bank of England in its regulation of certain financial market infrastructure.

Mechanism to require the regulators to notify HM Treasury of actions affecting deference decisions

297 Deference, as it is applied to financial services, is a process endorsed by the Group of Twenty (G20) where jurisdictions defer to each other when it is justified by the quality of their respective regulatory, supervisory and enforcement regimes.[8] Deference provides for preferential treatment for market participants conducting cross border activity; however, the form of preferential treatment varies across deference provisions. For example, some provisions allow overseas firms to export financial services into the UK, and others remove duplicative requirements on cross-border business. Within the UK's system, equivalence, which is an autonomous form of deference, is assessed on an outcomes basis, and (where applicable) in compliance with internationally agreed standards. These assessments generally focus on whether the overseas jurisdiction's regulatory, supervisory and enforcement framework provides an equivalent outcome to the corresponding UK legal framework.

298 Deference serves to facilitate cross border financial services activity by permitting market access and reducing regulatory frictions/costs to firms. Deference is, therefore, an important policy tool for promoting the UK as a global financial centre. The government is responsible for managing, granting, and (where relevant) agreeing deference arrangements with overseas jurisdictions. This includes nearly all of the EU equivalence decisions for overseas jurisdictions that were incorporated into UK law at the end of the implementation period.[9] The government also intends to agree deference arrangements as part of Mutual Recognition

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[8] September 6, 2013 St Petersburg Summit G20 Leaders' Declaration.

[9] The Government did not onshore equivalence decisions for Central Counterparties (CCPs) that the EU made under Article 25 of the European Market Infrastructure Regulation (EMIR - EU Regulation 648/2012).

Agreements with our overseas partners. In fulfilling this function, the government will monitor these arrangements and keep them under review such that it would be aware if the relevant regulatory and supervisory frameworks are no longer equivalent.

299 As noted earlier, once the UK moves to a comprehensive FSMA model of regulation, the UK's financial services regulators will set the direct regulatory requirements which apply to firms in their rulebooks. This will have a bearing on HM Treasury's responsibilities in managing the UK's deference framework. For example, if new firm facing rules made by the regulators mean that overseas jurisdictions may no longer be regarded as equivalent on an outcomes basis, HM Treasury may launch a review of the relevant existing deference decision and ultimately revoke that decision.

300 Sections 144C(3) and (4) of FSMA 2000 require the PRA to consider and consult HM Treasury on the impact on relevant equivalence decisions when making rules relating to the Capital Requirements Regulation (CRR) or CRR Basel standards. Sections 143G (3) and (4) of FSMA 2000, contain a similar requirement for the FCA when making rules relating to the prudential regulation of investment firms regulated by the FCA. However, beyond considering the impact on deference when making rules in these areas, there is no statutory requirement for the regulators to consider the impact of their rule changes on the remainder of HM Treasury's deference framework nor to consult HM Treasury on these impacts. The provisions of this mechanism are intended to improve the quality of information available to regulators when exercising their regulatory powers.

301 The Act places a statutory requirement on the PRA and the FCA to consider, when setting rules or supervisory policies and practices, the effect of their proposed action on notified deference decisions (HM Treasury will notify certain deference decisions to the PRA and the FCA as relevant to this requirement). Only actions where there is a duty to carry out a public consultation will trigger this requirement. If, following that consideration, the PRA or the FCA consider that there is a material risk that their actions are incompatible with a notified deference decision, then the PRA or the FCA must consult HM Treasury prior to their public consultation.

302 This mechanism will also apply to the Bank of England in relation to its regulation of CCPs and CSDs. This will ensure consistency with the changes taken forward in the Act regarding the Bank of England's regulation of FMI following the FRF Review.

Mechanism to require the regulators to notify HM Treasury on actions affecting international trade obligations

303 Following the UK's withdrawal from the EU, the UK has assumed responsibility for its own trade policy. This includes negotiating and entering into new international trade agreements and ensuring the compatibility of domestic policies and rules with our obligations in international trade agreements. Previously, the EU was responsible for managing any claims made by trading partners under trade agreement dispute settlement mechanisms. The UK government is now responsible for managing dispute settlement with trading partners and must therefore ensure that it has appropriate visibility over the regulators' setting of domestic financial services policies and rules to fulfil this duty.

304 As noted earlier, moving to a comprehensive FSMA model of regulation will give the regulators significant new rule-making responsibilities. These rule-making responsibilities interact with obligations in the UK's trade agreements in a number of ways, such as the need to ensure that regulatory rules and supervisory policy are not discriminatory and that they are consulted upon and published in a transparent manner. As the extent of the regulators' rule-making responsibilities expands, the number of interactions with the UK's international trade agreements is also likely to increase.

305 Currently, HM Treasury and the regulators work together closely to ensure that the rules and supervisory policy overseen by the regulators are compliant with obligations in the proposed trade agreements when they come into force. This mechanism seeks to ensure that, in the years following the conclusion of each international trade agreement, regulatory rules and supervisory policy/practice remain consistent with the UK's obligations arising from those agreements.

306 The Act introduces a statutory requirement to require the regulators to consider, when setting rules or supervisory policies and practices, the effect of their proposed action on international trade obligations. The regulators need only consider those international trade obligations which relate to financial services and markets. Where the regulators see a material risk of incompatibility between their action and international trade obligations, they must notify HM Treasury. Where there is a duty to consult in relation to the action, the regulator must notify HM Treasury prior to their public consultation.

307 This mechanism is intended to sit alongside existing HM Treasury powers in Section 410 of FSMA 2000, that allows HM Treasury to direct the FCA, the PRA and the Bank in exercising certain functions to take action (or refrain from taking action) in order to ensure that the UK meets its international obligations. While this power will remain the means by which HM Treasury could ultimately ensure UK compliance with its obligations in trade agreements, this mechanism seeks to ensure earlier, proactive consideration by the regulators of how their actions interact with the UK's international trade obligations.

308 This mechanism will also apply to the Bank of England in relation to its regulation of CCPs and CSDs. This is to be consistent with the scope of the wider FRF Review changes taken forward in the Act regarding the regulation of FMI by the Bank.

309 A separate analogous mechanism will also apply to the PSR by amendment to the Financial Services (Banking Reform) Act 2013 (see paragraph 8 of Schedule 7).

Engagement with stakeholders

310 It is vital that there are opportunities for consumers, relevant stakeholders and firms to engage with and scrutinise the development of regulatory proposals.

311 Engagement with stakeholders is embedded in the regulators' policymaking process through the application of statutory requirements and public law principles. The PRA and the FCA are subject to statutory requirements in FSMA 2000 which, in general, require them to consult with the public on draft rules. These PRA and FCA consultations are generally open for three months, though this can change depending on the issue. The PSR's consultation obligations are largely derived from those of the FCA.

312 As part of these consultation requirements, the regulators must explain why making the proposed rules advances, and is compatible with, their objectives as set by Parliament in legislation. The regulators must also explain how the proposals are compatible with their obligation to have regard to the regulatory principles. They must also produce a cost-benefit analysis (CBA) of the draft rules unless an exemption applies

313 The government considers that this statutory general requirement for the regulators to consult on proposals remains fit for purpose and the key mechanism for stakeholder engagement.

314 In addition to the duty to consult publicly on proposals, the FCA has a general duty to "make and maintain effective arrangements for consulting practitioners and consumers." The PRA has a similar general duty to "make and maintain effective arrangements for consulting PRA-authorised persons or, where appropriate, persons appearing to the PRA to represent the interests of such persons", on the extent to which the PRA's general policies and practices are

consistent with its general duties. The PSR has a similar general duty to "make and maintain effective arrangements for consulting relevant persons" on the extent to which its general policies and practices are consistent with its general duties, and how its payment systems objectives may best be achieved. As part of these duties, the regulators are required to maintain stakeholder panels.

315 The regulators have regular meetings and discussions with the stakeholder panels, in which most major policy and regulatory proposals are presented for comment at an early stage. The panels' contributions to policy development as part of this process are confidential to ensure both the regulator and panel members can share ideas and feedback openly. This confidentiality allows the regulators to engage the panels when policy is in the early stages of development ahead of public consultation. The panels publish annual reports on a voluntary basis, dealing with their work and their views on the regulators' work.

316 Greater rule-making responsibilities will increase the opportunities for the regulators to consult the panels from the outset of policy and regulatory development in more policy areas, which was not possible to the same extent while the UK was a member of the EU. The government and the regulators consider this will strengthen the panels' important ability to provide stakeholder input into the development of policy and regulation.

317 The government's November 2021 consultation proposed a number of measures that seek to ensure that there is appropriate transparency of regulators' operations for stakeholders to be confident in them; and that there is appropriate systematisation of important practices relating to the regulators' statutory panels, the production of CBA, and the regulators' review of rules. Respondents to the November 2021 consultation were broadly supportive of these proposals. These measures will apply to the PRA, the FCA and the PSR.

Strengthening the role of statutory panels

Placing the Listing Authority Advisory Panel and the PRA Practitioner Panel's insurance sub-committee on a statutory footing

318 The Act puts the FCA's Listing Authority Advisory Panel and the PRA Practitioner Panel's insurance sub-committee on a statutory footing. This is intended to ensure consistency across all panels and seeks to provide confidence for stakeholders that the currently voluntary practices of operating these panels will endure. The Act also seeks to clarify that the minimum requirements for the regulators in relation to both of these panels will be the same as for other statutory panels, including the appointment of a chair and the appointment of members.

Requirement for regulators to publish information on their engagement with stakeholder panels

319 The Act introduces a new statutory requirement for the regulators to publish clear and consistent public communication on how they have engaged with the panels across all of the regulators' work. This seeks to increase transparency of the regulators' operations, improving the ability of Parliament to scrutinise them, and of stakeholders to comment on them.

320 The statutory requirement will require the regulators:

a. to provide information in their annual reports on their engagement with the statutory panels over the reporting period

b. to provide information on how their appointment of panel members has complied with their statement of policy on panel appointments, in relation to the processes for making appointments and the matters considered

c. to provide, as part of public consultation, information on any engagement with panels before the consultation.

321 The form and detail of the information provided will be for the regulators (working with the panels as appropriate) to decide. This seeks to ensure the regulators can find the appropriate balance between transparency and the confidentiality crucial to ensure an open exchange of views as part of the policymaking process, which is fundamental to the panels' role as a 'critical friend'.

Requirement for regulators to publish a statement of policy on the processes they use to appoint members to their stakeholder panels

322 Ensuring the right membership of the panels is crucial to their success in providing challenge, a range of expertise, and differing perspectives to the regulator. Panels that have members from diverse backgrounds, with wide-ranging expertise and a variety of different perspectives will be better placed to ensure the regulators receive the most comprehensive appraisal of their policy. In order to ensure that the membership of panels represents the full diversity of stakeholders, both amongst practitioners and amongst consumers, there should be a clear and transparent process for appointing members.

323 The FCA has recognised the importance of improving diversity in the membership of the panels and is already undertaking a review to identify ways to improve diversity so the composition of the panels appropriately reflects the range of practitioners and stakeholders in financial services. The government welcomes the work the regulators are doing to move recruitment of panel membership in this direction and expects the regulators will take this opportunity to commit to open and fair recruitment practices to ensure a diverse range of qualified candidates are appointed to panels.

324 Building on this work, and to improve transparency, the Act introduces a requirement for the regulators to each maintain statements on their processes for appointing members to panels. The regulators will need to consult HM Treasury on the statement before it is published. This measure seeks to increase transparency of regulator operations which will improve the ability of Parliament to scrutinise them, and of stakeholders to comment on them.

325 The government also recognises that consultation respondents raised concerns regarding the composition of panel membership. These included suggestions that there may be a bias towards large firms and established sectors, and suggestions that there may be a lack of representation of some groups; for example, vulnerable consumers.

326 As part of their ongoing work to improve the diversity of panels, the regulators should also continue to consider the diversity of the sectoral composition of membership. In the context of emerging technologies, changing business models, and evolving consumer choices (for example, the transition towards digital payments), it is particularly important that a representative balance of stakeholder types and views are included.

Treasury power to require annual reports by statutory panels

327 There has been significant interest in increasing the visibility of the work of the statutory panels. The panels already produce annual reports on their work on a voluntary basis, but given the important role the panels play as a "critical friend" to the regulators, it is important that these reports continue to be produced and are available to Parliament to support their scrutiny of the regulators.

328 Section 47 therefore provides a power for HM Treasury, by regulations, to require the panels to produce annual reports; and to make provision about the content of the reports. HM Treasury will then be required to lay these reports in Parliament. HM Treasury is not able to require the panel to report on issues outside of their work.

329 In the first instance, HM Treasury intends to exercise the power to require the FCA's Consumer Panel and the new Cost Benefit Analysis panels for the FCA and the PRA to produce annual reports.

Regulators’ cost-benefit analysis process

Requirement for the regulators to publish a statement of policy for their approach to cost-benefit analysis (CBA)

330 The Act seeks to provide transparency of the regulators’ CBA processes going forward and support robust regulatory policymaking by introducing a requirement for the regulators to publish a statement of policy detailing their approach to CBA. A clear and publicly available description of the regulators’ CBA processes will provide further assurance to stakeholders that the regulators are seeking to understand the effect of their regulatory policymaking. This will also support stakeholders in considering effectively whether the regulators’ CBA assessments are accurate.

Requirement for the regulators to establish CBA panels

331 In response to the October 2020 FRF Review consultation, several respondents expressed support for enhanced external challenge as a way to improve the quality of the regulators’ CBA. The regulators’ existing panels can be, and are, asked for early, qualitative comment on the policy aims and CBA.

332 The Act requires the PRA and the FCA to establish new statutory panels dedicated to supporting the development of the regulators’ CBAs. The PRA’s CBA panel will also be used by the Bank of England (for CCP and CSD supervision) and the FCA’s CBA panel will be used by the PSR. The creation of the CBA Panel seeks to improve the overall quality of rule-making by improving the CBA underpinning it. The government also considers that it can increase stakeholders’ confidence that there is regular, independent input into the regulators’ CBA.

333 The CBA panels are intended to support the regulators’ development of CBAs. Each regulator must seek the CBA panel’s input as part of the development of CBA before they publish a CBA as part of a public consultation. The government recognises there may be instances where it is disproportionate for a regulator to consult with the CBA Panel before it publishes a consultation. The regulators will be required to publish a CBA framework, which will specify, amongst other things, when the CBA Panel does not need to be consulted before publication of an individual consultation.

334 This measure also seeks to ensure that the CBA panels can periodically review the regulators’ CBA methodology and processes by examining a collection of past CBAs following implementation of rule changes. This seeks to enable the CBA panels to provide recommendations for how the regulators can improve their overall methodology and approach to CBA. Where appropriate, these recommendations may form the basis for updating the regulators’ statement of policy on their approach to CBA.

335 It is important that CBA reflects, as accurately as possible, the costs and benefits to firms and consumers of implementing and following regulation. In assessing this, the experience of regulated firms themselves is vital. The Act therefore requires that at least two members of the FCA’s CBA panel and the PRA’s CBA panel must be from firms authorised by the respective regulator. The regulators will be responsible for putting in place appropriate policies to manage conflicts where required.

Appointment of external persons to statutory panels

336 The Act introduces a requirement for the FCA, PRA and PSR, when appointing persons to their statutory panels, to ensure all members are external to the FCA, the PRA, the PSR, the Bank of England, or HM Treasury. The legislation describes ‘external’ as those who do not receive remuneration from the regulators or HM Treasury.

337 This requirement is intended to maintain the practice that the regulators' statutory panels are comprised entirely of external members, which is crucial to each panel's success in providing challenge, expertise, differing perspectives and fulfilling their role as a 'critical friend' to the regulator.

338 This requirement will be applied to all the existing regulator statutory panels and new panels created or placed on a statutory footing by the Act, save for where HM Treasury provides exemptions via regulations.

339 In some cases, while remaining external, it is appropriate for panel members to receive remuneration. For example, to ensure that the panels continue to attract a diverse range of experts, it may be appropriate for panel members to receive remunerations for their work on the panel or other ad hoc work on specific projects. Therefore, the Act provides for HM Treasury to make regulations specifying exemptions to this condition, where appropriate.

340 This requirement does not disqualify someone who is serving on a statutory panel from receiving expenses.

341 This requirement is intended to maintain the general practice that the regulators' statutory panels are comprised entirely of external members, which is crucial to each panel's success in providing challenge, expertise, differing perspectives and fulfilling their role as a 'critical friend' to the regulator.

342 This requirement will be applied to all the existing regulator statutory panels and new panels created or placed on a statutory footing by the Act, save for where HM Treasury provides exemptions via regulations.

343 The FCA statutory panels in scope of this requirement will be: the FCA's Practitioner Panel, the Smaller Business Practitioner Panel, the Markets Practitioner Panel, the Consumer Panel, the Listing Authority Advisory Panel and the Cost Benefit Analysis Panel.

344 The PRA statutory panels in scope will be: the PRA Practitioner Panel, the Insurance Practitioner Panel, and the Cost Benefit Analysis Panel.

345 The PSR statutory panel in scope will be the Payment Systems Regulator Panel.

346 The Bank of England (the Bank) does not maintain statutory panels for the exercise of its FMI functions, so this requirement does not apply to them.

Publication of consultation respondents

347 This measure applies to the FCA, PRA, PSR, and the Bank in its regulation of certain financial market infrastructures.

348 The scope of this measure is limited to the financial services regulators, reflecting the existing specific requirements in FSMA 2000 and the Financial Services (Banking Reform) Act 2013 in relation to how they must conduct consultations.

349 The Act introduces a new statutory requirement for the regulators to include a list of respondents to their public consultations as part of their response to the consultation. This requirement is intended to enhance transparency around who responded to the consultation, and whose views the regulators have taken into account when making new rules. This is expected to enable more effective scrutiny of the regulators' operations.

350 Respondents will be required to opt-in to having their name published. This maintains the ability for individual respondents to respond confidentially if they wish to, so as not to deter potential respondents.

Accountability to Parliament

Engagement with Parliamentary Committees

351 Revoking retained EU law in order to move to a comprehensive FSMA model of regulation, where the independent regulators set the direct regulatory requirements which apply to firms in their rulebooks, will give the regulators significant new rule-making responsibilities.

352 Given these new responsibilities, it is important that the mechanisms by which Parliament holds the regulators to account are strengthened. This will ensure there continues to be appropriate democratic input into, and oversight of, the regulators' activities.

353 As Parliament sets the regulators' objectives and gives them the powers to pursue those objectives, Parliament has a unique and special role in relation to the scrutiny and oversight of the financial services regulators.

354 The system of Parliamentary select committees is particularly important in financial services policy and in relation to the scrutiny of the work of the regulators. Relevant select committees, and the Treasury Select Committee (TSC) in particular, provide scrutiny of financial services policy in the following ways:

a. **Select committee inquiries**: Committees choose their own subjects of inquiry and decide the duration and approach that will be used for each inquiry. The committees have the power to send for "persons, papers and records" which they decide will be relevant, as per the House of Commons Standing Order No. 152. Other committees, such as the former House of Lords EU Financial Affairs Sub Committee and the House of Commons European Scrutiny Committee, have also played a key role in scrutinising financial services policy.

b. **Regular hearings to scrutinise the work of the financial services regulators**: the TSC routinely examines the regulators' approaches to policy and administration.

c. **Pre-commencement hearings**: Parliament, through the TSC, conducts pre-commencement hearings following the appointment of the Chair and Chief Executive of the FCA and the Chief Executive of the PRA.

355 There are also long-established scrutiny arrangements in place for Parliament to hold Ministers of the Crown accountable for the work of HM Treasury and the UK's financial services regulators. These arrangements include:

a. Government ministers regularly responding to oral and written questions in both Houses of Parliament.

b. Government policy being scrutinised through a range of Parliamentary debates.

c. Legislation is debated and scrutinised according to the procedures for primary and secondary legislation.

d. Both Houses of Parliament being kept informed of policy and regulatory initiatives through the making of ministerial statements and by the laying of important documents before Parliament, including the annual reports of the financial services regulators.

356 The FRF Review proposed two measures building on these existing arrangements that seek to ensure that Parliament has the appropriate tools to conduct scrutiny of regulators' rule-making and other functions in the manner that Parliament sees fit. The requirements introduced by the Act are set out below. The measures will apply to the FCA, the PRA and the PSR, as well as the Bank in its regulation of central counterparties and central securities depositories.

Requirement for the regulators to notify the relevant select committees when they publish a consultation

357 The Act requires the regulators to notify the relevant select committees when they publish a consultation. The measure aims to ensure that the relevant select committees have access to the information needed to best scrutinise the work of the regulators. This is intended to support more effective accountability and scrutiny of the regulators by Parliament.

358 The relevant select committees are the Treasury Select Committee, a committee of the House of Lords that has been charged with responsibility for being notified by the regulator when a relevant consultation is issued, and any joint committee that has also been charged with this responsibility.

359 The obligation to notify the relevant select committees will apply when the regulators consult publicly on proposed rules (or, in the case of the PSR, generally applicable requirements that they impose on regulated entities); when the regulators publish proposals about how they exercise any of their general regulatory functions; or if the regulators publish proposals under a duty imposed by legislation.

360 This measure includes a requirement for the regulator to draw the relevant select committees' attention to the section of its consultation dealing with how the proposals advance its objectives. The regulator will also need to draw attention to the section of their consultation which deals with how they have had regard to their regulatory principles and any other relevant considerations that the regulators must have regard to, including in the recommendation letters from HM Treasury.

Requirement for the regulators to respond to Parliament

361 The regulators will be required to respond in writing to formal responses to relevant consultations from Parliamentary committees. This will formalise an approach that is currently taken informally and seeks to ensure that there are clear expectations for how the regulators must respond to any representations from Parliamentary committees. The measure has been designed to support more effective accountability and scrutiny of the regulators by Parliament.

362 The government considers that such an approach is appropriate due to the unique circumstances of the financial services regulators' wide remits, and their position as independent public bodies which are accountable to Parliament. Parliament therefore plays a unique role, alongside government, setting the policy framework within which the regulators operate.

363 There can often be a significant period of time between an initial consultation and final rules being published. Therefore, section 53 also requires the regulators to explain, when making final rules, how they have considered representations by Parliamentary committees. This ensures that the regulators provide a public explanation for how the views of Parliamentary committees have been considered. Where a committee has made an explicit recommendation in its representation, the government expects that the regulator would explain its response to that recommendation.

Relationship of the Bank of England with HM Treasury, Parliament and external stakeholders

364 Currently, the Bank is subject to several mechanisms which promote accountability and transparency in its regulation of CCPs and CSDs. These include notifying HM Treasury if it makes, alters or revokes any rules, and undertaking consultation and cost-benefit analysis prior to introducing any changes. The current mechanisms are appropriate for the Bank's limited existing rule-making powers.

365 The Act introduces a range of measures designed to strengthen the Bank's relationship with HM Treasury, accountability to Parliament and stakeholder engagement to ensure these aspects are appropriate for the new general rule-making power. These mechanisms are very similar to the measures being introduced in the Act for the PRA and the FCA, and in many cases the Act simply applies those measures directly to the Bank.

366 There are two measures in the Act which are slightly different to those the Act introduces for the PRA and the FCA. Firstly, the Act introduces the ability for HM Treasury to make recommendations to the Bank about matters to which it should have regard when advancing its objectives and principles for its new rule-making power. The Act sets out that HM Treasury must do so at least once every Parliament, publish the recommendations, and lay them before Parliament. This measure aligns the Bank with the existing ability for HM Treasury to make recommendations to the PRA and the FCA. The Act also applies the new requirement for the PRA and the FCA to respond to recommendations made by HM Treasury to the Bank.

367 Secondly, the Act introduces a requirement for the Bank to report annually on the efforts it has made to engage with industry stakeholders aside from those that it directly regulates (i.e. the CCPs and CSDs themselves) and to give a summary of that engagement. This measure is intended to increase transparency around the Bank's engagement with the wider market such as the firms who use CCP and CSD services. The Act does not specify exactly how the Bank should conduct this engagement, the exact stakeholders it should engage with or the frequency of the engagement, leaving these aspects to the Bank's judgment.

Financial Ombudsman Service, FCA and FSCS co-operation on wider implications issues

368 The FCA is the conduct regulator for the financial services sector. A key part of its role is to set rules that financial services firms must adhere to. It is responsible for the conduct of around 51,000 financial services firms, the prudential regulator for 49,000, and sets specific standards for 18,000 in the UK.

369 The Financial Ombudsman Service is an alternative dispute resolution service for financial services complainants such as consumers and smaller businesses which have a complaint about a financial services firm or claims management company – it is provided free to complainants at the point of use. Its statutory purpose is to provide for the resolution of disputes quickly and with minimum formality by an independent person.

370 The Financial Services Compensation Scheme (FSCS) exists to provide protection for eligible customers of financial services firms authorised by the FCA. It protects consumers that incur financial losses when authorised firms are unable, or likely to be unable, to pay claims against them.

371 Whilst the FCA, the Financial Ombudsman Service and the FSCS have distinct roles, the work of each organisation will often be relevant to, or have implications for, the other. Given this, the FCA and the Financial Ombudsman Service are subject to a statutory requirement to take such steps as they consider appropriate to co-operate with each other in the exercise of their functions. The FCA and the Financial Ombudsman Service are required by statute to maintain a memorandum of understanding (MoU) describing how they intend to comply with this requirement to cooperate. The FSCS and the FCA are also subject to a statutory requirement to cooperate with each other and maintain an MoU describing how they do so.

372 In some cases, issues being considered by the Financial Ombudsman Service, the FCA or the FSCS will have significant implications for the other, and/or for the wider financial services sector. For example, if the Financial Ombudsman Service receives complaints from a large

number of consumers in relation to potential wide-spread misconduct (e.g. mis-selling) this may have implications for the FCA's regulation or supervision of those financial services firms, or may lead to claims for FSCS compensation in the event that firms fail. The FCA, the Financial Ombudsman Service and the FSCS may need to cooperate to determine the optimal way of delivering redress to the affected consumers. Similarly, the development of new regulatory rules by the FCA could have implications for the number and nature of complaints brought to the Financial Ombudsman Service, for example if they impose significant new requirements on firms. When issues with wider implications emerge, it is beneficial for the organisations to work together to ensure timely, collaborative discussions to determine the most appropriate approach to managing such issues.

373 To promote effective cooperation on wider implications issues, the FCA, the Financial Ombudsman Service and the FSCS (together with the Money and Pensions Service and the Pensions Regulator) voluntarily operate a Wider Implications Framework, which was formally launched in January 2022. This framework provides a transparent structure for collaboration between these organisations, and ensures appropriate information is shared with stakeholders through the publication of minutes of meetings, an annual report and a central log of the issues identified. The Terms of Reference for the Wider Implications Framework are published on the Financial Ombudsman Service's website.

374 The Act makes it a statutory requirement for the FCA, the Financial Ombudsman Service and the FSCS to cooperate on issues with wider implications, to ensure that these existing arrangements will endure over time. Requiring the FCA, the Financial Ombudsman Service and the FSCS to maintain arrangements to cooperate in respect of these issues seeks to ensure increased coordination on wider implications issues to support better outcomes for financial services firms and consumers.

375 In addition, the Act requires the FCA, the Financial Ombudsman Service and the FSCS to publish a statement of policy setting out how they will comply with this duty to cooperate on wider implications issues. It also requires them to put in place arrangements for stakeholders to provide representations on their compliance with the duty, and requires the publication of an annual report on compliance with the duty including any representations received from stakeholders.

Chair of the Payment Systems Regulator as member of FCA Board

376 The FCA is the conduct regulator for financial services in the UK. The FCA Board is the governing body of the FCA. The composition of the FCA Board is set out in FSMA 2000 and consists of:

a. A chair appointed by HM Treasury (the FCA Chair);

b. A chief executive appointed by HM Treasury;

c. The Bank's Deputy Governor for prudential regulation;

d. Two members jointly appointed by the Secretary of State and HM Treasury;

e. At least one other member appointed by HM Treasury.

377 The PSR is the economic regulator for payment systems in the UK. It is an independent subsidiary of the FCA, and the FCA is responsible for appointing the chair of the PSR Board (the PSR Chair), with the approval of HM Treasury.

378 From the establishment of the PSR in 2014 until May 2022, the same individual was appointed to the offices of FCA Chair and PSR Chair. As a result, the PSR Chair was effectively a member of the FCA Board, without being expressly referred to in the legislation as a member of that board.

379 Following the resignation of the previous FCA Chair, HM Treasury decoupled the FCA Chair and PSR Chair roles to have them performed by separate individuals.

380 Continued effective cooperation between the FCA and the PSR is important given that the PSR's powers apply to users of payment systems, many of which are firms regulated by the FCA. In addition, the FCA is responsible for the regulation of payment services. The PSR is also subject to a statutory duty to coordinate the exercise of its functions with the FCA. Given these respective roles, duties and the link between the UK payments sector and the wider financial services sector, the government considers it is important that the PSR Chair continues to be represented on the FCA Board, now that the PSR Chair and FCA Chair are held by separate individuals.

381 The Act ensures the PSR Chair is included in the FCA Board as an ex-officio member, by providing a statutory basis for the PSR Chair to join the FCA Board.

382 In addition, the Act ensures the existing FSMA 2000 provisions which apply to the Bank's Deputy Governor for prudential regulation will also apply to the PSR Chair. This includes providing for the FCA to pay them expenses and prohibiting them from taking part in Board discussions on the FCA's exercise of its powers in relation to a particular firm or person.

Access to cash

383 Access to cash remains important to the daily lives of many people across the UK. In its Financial Lives 2020 survey, the FCA found that there are an estimated 5.4 million adults (10%) who report as reliant on cash to a very great or great extent in their day-to-day lives. Meanwhile the use of alternatives, such as cards and digital payments, is not yet a realistic option in some situations or for many people who still rely on notes and coins.

384 The use of cash by individuals and businesses is enabled through access to suitable cash withdrawal and deposit facilities. Examples of these may include, but are not limited to, a cash withdrawal from an ATM or cash machine, cashback, or an over-the-counter cash withdrawal or deposit at a bank branch or Post Office. Therefore, the government wants to ensure that the provision of cash access facilities continues to provide appropriate coverage across the UK to meet the cash needs of consumers and businesses.

385 To date, the market has provided sufficient cash access to support people's use of cash. Over the past decade the UK has witnessed a decline in the use of cash towards card and other digital payment methods. This has made it relatively more expensive for firms to maintain the existing infrastructure needed for current levels of access to cash to continue. In response, firms have consolidated their cash facilities in recent years.

386 Whilst the current level of access to cash coverage across the UK is extensive, the government considers the decline in cash usage and the number of cash facilities to pose risks to the future provision of access to cash.

387 At present, there is no existing substantive legislative framework relating to minimum or reasonable levels of access to cash, and no single authority has overall responsibility for overseeing the maintenance of a well-functioning UK cash system for the benefit of customers. Furthermore, no regulator currently has express powers to ensure that a cash withdrawal or deposit facility is in place to support access to cash.

388 At Budget 2020, the government committed to introduce a legislative framework to protect access to cash for those who need it. The government issued a Call for Evidence in October 2020 on the key considerations associated with cash access, including deposit and withdrawal facilities, cash acceptance, and regulatory oversight of the cash system. On 1st July 2021, the government published its response to the Call for Evidence alongside a consultation which sought views on legislative proposals to protect access to cash.

389 On 19 May 2022, the government published a [summary of responses to the consultation] confirming its approach to legislating. This set out the government's intention to establish the Financial Conduct Authority (FCA) as the lead regulator for retail cash access and provide it with appropriate powers for ensuring that specified firms, i.e. banks and building societies as designated by HM Treasury, continue to ensure the reasonable provision of deposit and withdrawal facilities across the UK. The FCA's powers will allow it to address cash access issues at both a national and local level.

390 Since the government's consultation, significant steps have been taken by industry to improve coordinated efforts by firms to meet cash access needs. In December 2021, the financial services sector announced that it had developed a voluntary industry model for the provision of cash access facilities, including initiatives to provide shared services. Under the model, an industry coordination body assesses the cash needs of local communities with a view to ensuring appropriate cash services are in place. In light of these developments, and the significant role that such coordination arrangements may play in the future of cash provision, the summary of responses to the consultation also set out the government's intention to also enable HM Treasury to designate the operators of such arrangements for FCA oversight.

Cash access services

391 The Act intends to protect access to cash by ensuring the reasonable provision of cash withdrawal and deposit facilities.

392 The Act appoints the FCA as the lead regulator for access to cash. HM Treasury will be empowered to designate firms to be subject to FCA oversight for the purpose of ensuring the reasonable provision of cash access (i.e., cash withdrawal and deposit) services across the UK, or parts of the UK. HM Treasury will consider the following factors for designation decisions: a firm's geographic coverage; distribution of customers; and market share. On the basis of these criteria HM Treasury expects the firms it will designate will be larger banks and building societies. HM Treasury will also be empowered to designate operators of cash coordination arrangements for FCA oversight.

393 The FCA will be granted monitoring, supervision and enforcement powers to regulate the provision of cash facilities by designated banks and building societies. These powers will also apply to any designated operators of cash coordination arrangements. Organisations that are involved in the provision of cash facilities but are not designated by HM Treasury will be subject to FCA powers relating to obtaining information only.

394 The FCA's powers will equip it with the ability to address cash access at both a national and local level. This includes seeking to ensure there is reasonable provision of free cash access services for relevant personal current accounts. The Act provides the FCA with the ability to impose requirements (including both rules and directions) on one or multiple designated banks and building societies, or designated operators of cash coordination arrangements, to require them to take such action as needed to ensure that there is reasonable provision of cash access services (including free access to relevant personal current accounts). This is in order to support the ongoing use of cash. The Act enables the FCA to take account of the impact on persons, even where there is no relationship between the designated firm and the person. By way of example, it does not make FCA activity dependent upon whether a designated firm has customers residing in any given area, in recognition of factors such as that customers may access cash as they travel or change provider. The actions that the FCA requires firms to take may include refraining from the closure of a cash access service where there is no suitable alternative.

395 The Act requires HM Treasury to prepare a policy statement on cash access services(to include policies concerning free cash access services for holders of relevant personal current accounts,)] and enables HM Treasury to structure its policy statement on the basis of baselines for withdrawal and deposit facilities, rural and urban areas, and for different types of current account such as those for personal and non-personal customers. The FCA will be required to have regard to the policy statement in carrying out its functions. The Act also allows the FCA to take other matters that it thinks appropriate into account. This could include, for example: the type of service, and associated factors such as hours of availability; where the services should be provided; and cost, both in terms of provision and charges to end users.

Wholesale cash distribution

396 To support continued access to cash, a sustainable and resilient wholesale cash system is needed. This is the UK's infrastructure, including a system of cash centres, that is integral to the sorting, storing and distribution of coins and notes.

397 The wholesale cash industry purchases banknotes from the Bank of England (the Bank) and coins from the Mint at face value. Wholesale Cash in Transit (CiT) providers then move cash from where it has been printed or minted to cash centres for distribution. Cash centres then receive, store and prepare cash for circulation to the public.

398 The wholesale cash network is split across a number of cash centre operators. The decline in the transactional use of cash has put pressure on the business models of the wholesale cash network. While some operators have rationalised their cash centre estates and closed cash centres, utilisation of cash centres nevertheless remains low in some parts of the UK and there is little ability to reduce the fixed costs associated with running cash centres on an individual basis.

399 None of the current operators within the wholesale cash industry are currently considered to be systemic, as others are able to step in, in the event of a failure of one of the networks. The government expects the industry will transition to a smaller overall network in the coming years. This transition could be through rationalisation of the existing networks, or consolidation of the number of networks and operators. If this restructuring happens in a disorderly way it could pose a potentially significant risk to the wholesale cash infrastructure's effectiveness and sustainability, and consequently its ability to supply cash as and when required to the retail network across the UK. These risks need to be managed and it is the government's view that it is not possible to do that through voluntary arrangements alone.

Ensuring an effective, resilient and sustainable wholesale cash infrastructure

400 HM Treasury's principal policy aim is to support access to cash through ensuring that the wholesale cash infrastructure is effective, resilient, and sustainable in the long-term. In this respect sustainability means viability of the system over time. Furthermore, this policy also seeks to ensure that risks to financial stability and/or confidence in the UK financial system that would arise through the creation of a systemic entity in the event of a failure or wider disruption in the wholesale cash network are effectively managed. The government has also designed the regime so that it can accommodate commercial solutions to the challenges faced by the industry, as these emerge over time, whilst protecting the effectiveness, resilience, and sustainability of the wholesale cash distribution system.

401 The Act provides the Bank with the powers to oversee the wholesale cash industry. There are two levels to the regime. Firstly, the Bank will be enabled to regulate the market activities of the wholesale cash industry (the market oversight regime) to ensure it remains effective, resilient and sustainable. Secondly, the Bank will have the ability to prudentially regulate a

systemic entity in the market, should one form in the future (the prudential regime). HM Treasury, after consultation with the Bank and the industry, would designate entities as within scope of either or both parts of the regime. HM Treasury will also have a similar power to un-designate entities if required. HM Treasury may only recognise an entity as having systemic significance, and therefore being in scope of the prudential regime, if they are satisfied that a deficiency or disruption to their wholesale cash distribution activities would threaten the stability of or confidence in the UK financial system.

402 For the market oversight regime, all entities which provide wholesale cash activities or provide financial support in relation to these activities, could be brought under the regime. HM Treasury will also have the power to designate a service provider to the industry under the regime, if required.

403 Under the market oversight regime, the Bank will be given the power to require the provision of information. This is for the purpose of allowing the Bank to form an aggregate picture of the overall health of the industry and identify emerging risks. The Bank would also have the power to give directions to designated firms. This would be to require or prohibit taking of actions or to set standards firms must meet. There would also be powers given to the Bank to enable them to publish principles and codes of practice industry must follow. The Bank would also be given powers of inspection, powers to enforce the regime, and would be enabled to levy fees for the operation of the scheme and to levy penalties for non-compliance. For the fees, these must relate to a scale of fees approved by HM Treasury and Parliament. Industry will be consulted on the development of this fee scale.

404 In relation to prudential regulation, the Bank would exercise the same powers used in the market oversight regime, but towards the objective of managing risks to financial stability, and to maintain confidence in the UK financial system. The failure of a systemic entity could threaten the stability or confidence in the financial system through a loss or severe reduction of access to cash as a means of payment for consumers as well as a potential loss of confidence in cash as a payment method. Therefore, the Bank would have the power to mitigate such a failure by applying an appropriate Special Administrative Regime (SAR) to the entity in the event of its failure or impending failure.

405 Given the nature of governance and financial support for wholly owned state entities, there is a power for HM Treasury to either not apply or apply with modifications any of the regulatory and enforcement provisions in relation to companies wholly owned by the Crown. Wholly owned state entities would also not be in scope of the prudential regime.

406 The Bank will publish a statement on its regulatory approach before exercising its powers. This will set out how the Bank intends to use its powers. The Bank will consult with industry on the development of its regulatory approach and this statement.

Performance of functions relating to financial market infrastructure

407 As noted earlier, CCPs and CSDs provide critically important functions which underpin the safe and effective functioning of global financial markets. These critically important functions mean that disruption at, or failure of, any of these entities could threaten the financial stability of the UK or cause significant disruption to the wider UK economy and to consumers. As such, encouraging effective governance and incentivising good behaviour within these entities supports the effective functioning of UK markets, and protects consumers and the economy.

408 The existing regulatory regime for CCPs and CSDs makes very limited provision for the oversight of individual conduct within these firms, as most supervisory and enforcement powers are focused on the entity itself. The Act addresses this by introducing a senior managers and certification regime (SM&CR) which can be applied to CCPs and CSDs. The key features of the SM&CR for CCPs and CSDs are similar to the existing SM&CR for banks, insurers and other authorised persons, which is set out in Part 5 of FSMA 2000.

409 The Act also provides HM Treasury with a power to apply the regime to two other systemically important types of firms that promote market integrity, should the government determine that is appropriate following consultation with industry. These are Credit Rating Agencies (CRAs) and Recognised Investment Exchanges (RIEs). CRAs perform an integral role within global financial markets by providing judgments on the creditworthiness of a wide variety of financial instruments. RIEs are marketplaces where equities, commodities, derivatives and other financial instruments are traded. The core function of an exchange is to ensure fair and orderly trading and the efficient dissemination of price information for any securities trading on that exchange. By providing that the regime can be applied to CRAs and RIEs, the Act aims to deliver greater regulatory consistency across the financial services sector.

410 CCPs and CSDs are regulated by the Bank, whilst RIEs and CRAs are regulated by the FCA. The Bank or the FCA (as appropriate) will make rules that will apply to these entities within the SM&CR.

411 The government will be able to decide when to apply the regime to any one of the entities within scope of the regime. The Act also allows the government to tailor the regime to each type of firm. For example, CRAs are subject to a stand-alone regulatory regime separate to the Part 18 of FSMA 2000 regime for CCPs, CSDs and RIEs and the regime will need to account for those differences.

412 The Act provides supervisory, disciplinary and other powers for the Bank and the FCA, including the power to impose financial penalties, to take action against misconduct, and to make prohibition orders. The Act includes further provisions to ensure that the SM&CR can be introduced as intended, and the relevant regulators (Bank or FCA) can regulate and supervise these entities effectively.

Proposed Senior Managers & Certification Regime

413 The key features of the SM&CR are similar to the existing SM&CR for banks, insurers and other authorised persons, which is set out in Part 5 of FSMA 2000. Upon HM Treasury applying the regime to a particular type of firm, the relevant regulator will be granted new powers to implement, supervise and enforce the following:

a. **A Senior Managers Regime.** This gives the regulators the power to determine whether individuals who perform roles that pose a potential risk to the firm or to business or other interests in the UK have the appropriate competence, expertise and personal characteristics (such as integrity) to carry out their roles.

b. **A Certification Regime.** This requires firms to certify as fit and proper any employee (including contractors and secondees) who performs a "specified function" that could cause significant harm to the entity or its consumers.

c. **Conduct rules.** These apply to all employees (including contractors and secondees), and set minimum, high-level requirements regarding the conduct of individuals at these systemically important entities.

414 The Bank and the FCA will have the power to impose penalties where an individual performs a senior management function without approval, and the individual knew, or could reasonably be expected to have known, that they were doing do so without approval. The Bank and the FCA would also have the power to take action against an individual for misconduct.

415 As a complement to the SM&CR, the Bank and the FCA will have the power to make prohibition orders, analogous to the existing powers that the FCA and the PRA have to make prohibition orders under Part 5 of FSMA 2000. If it appears to the Bank or the FCA that an individual is not a fit and proper person to perform a function in relation to an activity carried out by a type of firm that they regulate and which is within scope of this SM&CR, they will be able to make an order prohibiting that individual from performing any function in a particular firm, type of firm or any firm covered by the new SM&CR. The Bank and the FCA can also, where appropriate, make provision under this section preventing an individual from performing regulated activities at an authorised person, exempt person, or person to whom the general prohibition does not apply as a result of Part 20 of FSMA 2000. This will allow, for example, the Bank to issue a prohibition order that prevents an individual not only from performing functions in respect of activities carried out by a CCP, CSD, RIE or CRA, but also within any other type of entity subject to the SM&CR in Part 5 of FSMA 2000.

416 The Act makes it a criminal offence for an individual to perform a function in breach of a prohibition order. Other criminal offences that already apply to individuals in these firms under existing legislation would also be extended to encompass the SM&CR. For example, individuals would be guilty of an offence if they knowingly or recklessly provide false or misleading information to the regulator in relation to the regime.

Senior Managers Regime

417 The Act sets out a senior managers regime for these entities, which will, in essence, be very similar to the regime that already applies to banks, insurers and other authorised persons. It will place obligations on firms as well as the people who carry out senior management functions. The firm must ensure that senior management functions are only carried out by people who have been approved by the relevant regulator, and individuals have an obligation not to perform senior management functions without approval.

418 The Act also provides powers for the Bank and the FCA to make rules and directions relating to a number of elements of the regime, including:

a. specifying which functions are to be considered “designated senior management functions”, and therefore require approval;

b. the form in which applicants may be required to submit and verify information; and

c. defining the types of characteristics, qualifications and competencies that the entity must consider before making an application.

Certification Regime

419 The Certification Regime applies to employees performing “specified functions”, meaning those who are not carrying out senior management functions, but whose roles have been deemed capable of causing significant harm to the firm or its consumers. The Act provides that firms must take reasonable care to ensure that specified functions are only performed by a person if they have a valid certificate issued by the regulated firm. The purpose of the certificate is to confirm that the person is considered to be a “fit and proper” person to carry out the function.

420 The Act provides power for the Bank and the FCA to define specific functions within the entity for which a person must be certified by the entity to be "fit and proper" to perform the role. The types of roles that fall in scope of the Certification Regime would be determined by the relevant regulator, following public consultation.

Conduct Rules

421 Conduct Rules set minimum, high-level expectations regarding the conduct of individuals and provide a framework against which firms and regulators can form judgements about an individual's behaviour and actions.

422 The Act provides powers for the Bank and the FCA to make conduct rules which apply to all employees of the entity, as well as to require firms to ensure that all employees understand how those rules apply in relation to them. Conduct rules would be determined by the regulators following public consultation.

Central counterparties in financial difficulties

423 Central counterparties (CCPs) are institutions that sit between the buyers and sellers of financial contracts, providing assurance that the obligations under those contracts will be fulfilled. This reduces risks to the financial system associated with counterparty default. The process of transacting through a CCP is known as "clearing". Firms can access CCPs' clearing services either by becoming a "clearing member" of a CCP, or a client of a clearing member. Clearing members are typically large international institutions, such as banks, who can then offer clearing services to individual clients. Clients tend to be medium and large sized financial and non-financial firms.

424 Following the global financial crisis starting in 2007, the "clearing obligation" was introduced to increase the use of CCPs for clearing and reduce the overall counterparty risk in the market. Firms subject to the clearing obligation are legally required to access clearing services for certain transactions. Since the introduction of this requirement, the volume of clearing at CCPs, both in the UK and abroad, has increased significantly. UK CCPs have consistently shown resilience during times of market stress but, due to the systemic nature of CCPs and the interconnectivity and increased volume of trades cleared through them, the government considers that it is important to ensure that the UK has a robust regime to manage the failure of a CCP in the event that it did occur, in a way that minimises risks to the wider financial system, the economy, and public funds.

425 The UK's existing resolution regime for CCPs was introduced in 2014. It provides the Bank with a limited set of powers which allow it to transfer the property or ownership of a CCP. After the use of these powers, the Bank remains reliant on the powers available under the CCP's own rulebook to allocate losses and ensure the continued operation of the CCP.

426 CCPs have various resources, tools and plans in place to help mitigate against the risk of a clearing member defaulting. In order to clear through a CCP, clearing members must provide collateral to cover their transactions, known as initial margin (IM), which the CCP will use to meet payment obligations to the other side of the contract in the event that a clearing member defaults. How much IM a clearing member is required to provide is calculated based on a number of factors, including the riskiness of the clearing member's portfolio.

427 All clearing members are also required to contribute to a further mutualised pool of financial resources, known as the default fund. In the event that a defaulting clearing member's initial margin is insufficient to cover the loss resulting from their default, then the default fund is used to absorb the loss. The defaulter's own contribution is exposed first, followed by part of the CCP's own capital (known as "skin in the game"), and then default fund contributions from other clearing members are used.

428 In 2017 the Financial Stability Board (FSB) published guidance for recovery and resolution of CCPs. The FSB is an international body that promotes international financial stability and works towards developing strong regulatory, supervisory and other financial sector policies. The guidance sets out the tools and powers that should be provided to resolution authorities. As the UK's current regime was introduced in 2014, it is not aligned with the FSB's most recent guidance. The Act therefore brings the UK in line with the most recent FSB guidance, which seeks to ensure that resolution authorities have the appropriate flexibility needed to a resolve a CCP in the most effective way.

Failure of a CCP

429 UK CCPs must calibrate their IM and default fund requirements such that they are large enough to cover the losses resulting from the default of two of their largest clearing members. If a default loss exceeds this amount, the CCP has recourse to a number of tools and powers in its rulebook, which sets out the contractual agreements the CCP has with its clearing members, to mitigate against the loss. If a CCP began to experience a deterioration in its financial situation as a result of clearing member default, the CCP would use these tools to stop it from failing. These are known as "recovery actions". If the CCP is unable to cover the loss using these recovery actions, it may have to close the clearing service and allocate outstanding losses to clearing members.

430 The continuity of critical clearing services may also be threatened as a result of the CCP experiencing a loss which arises not as a result of a clearing member default (e.g. as a result of a cyber-attack). This is known as a "non-default loss".

431 The closure of a CCP's critical clearing services, either because of a default loss or non-default loss scenario, would constitute the failure of a CCP. Typically, when a financial institution fails, it would be subject to normal or modified insolvency proceedings. In the case of CCPs, due to their systemic importance, this approach would be likely to have a significant negative impact on financial stability, disrupting the provision of critical clearing and settlement functions to the economy, and having severe knock-on effects on other market participants. The failure of a CCP could cause considerable disruption to the markets it serves, with these markets potentially needing to close, which could expose market participants to significant losses. The scale of the losses and impact on financial markets could be similar to that of a financial system-wide crisis, or even cause such a crisis. The failure of a CCP could therefore undermine the stability of the entire financial system.

432 Given this, the use of normal or modified insolvency procedures are generally not considered appropriate for managing the failure of a CCP, and alternative arrangements are needed.

Resolution

433 A resolution regime exists for circumstances where a CCP's recovery actions are either not successful or are deemed unlikely to be successful, or where continued recovery actions are considered inappropriate (for example, where continuing with those actions could itself have significant adverse impacts on financial markets). It provides a resolution authority with legal powers to intervene in advance of the CCP entering into insolvency, either to restore it to health or to manage its failure in an orderly way.

434 The objectives of the existing CCP resolution regime include:

a. Maintaining the critical clearing services of a CCP

b. Protecting public confidence in the UK's financial system

c. Avoiding interference with property rights

d. Limiting contagion to wider markets, and more broadly, protecting financial stability

e. Protecting public funds.

435 A resolution regime requires a resolution authority which is responsible for planning for and executing a resolution. This resolution authority creates 'resolution plans' which consider the scenarios in which a market participant may fail, and set out the preferred strategy and powers and tools that the resolution authority will use in resolution. The UK's resolution authority is the Bank of England (the Bank), which is also the authority responsible for protecting and enhancing the resilience of the UK financial system. The Resolution Directorate at the Bank which would oversee any CCP resolution is organisationally distinct from the part of the Bank responsible for the ongoing regulation and supervision of CCPs (which has oversight of CCP recovery). The FRF Review measures within this Act which look to reform the Bank's role as CCP regulator will not apply to the Bank in its capacity as resolution authority.

Expanding the UK regime

436 The expanded resolution regime implemented by the Act seeks to provide the Bank, as the UK resolution authority, with the necessary powers to stabilise a CCP, so that it can continue to provide its critical clearing services, preventing contagion spreading across the financial system; whilst ensuring CCPs and clearing members bear the losses arising from the failure, thereby protecting public funds.

437 The Act provides the Bank of England with the following powers, to successfully perform a resolution:

a. **Removal of material impediments to resolvability.** This power would enable the Bank to require a CCP to make changes to remove potential barriers to its resolvability identified by the Bank;

b. **Conditions and timing for entry into resolution and engagement between authorities.** The Act sets the conditions that must be assessed before a CCP can be placed into resolution. This includes the power to enable the Bank to place a CCP into resolution before the CCP's own recovery measures have been exhausted, on the condition that continued recovery actions by the CCP would likely 'compromise financial stability'. The Bank will be required to consult HM Treasury on whether this new resolution condition is met;

c. **Lockdown or deferral on the payment of dividends, buybacks or variable remuneration.** This power would enable the Bank to temporarily restrict or prohibit any remuneration of equity for CCP shareholders or variable remuneration for the CCP's senior staff in severe circumstances, including if there is a rapid deterioration in the financial situation of the CCP, and it was therefore at risk of failing. It would be available as an early intervention measure, but also after the CCP has entered resolution to ensure that all resources are directed to compensation payments and replenishing public funds where these have been used as a last resort, should either be necessary;

d. **Power to suspend termination rights.** This power would give the Bank the ability to temporarily stop any right to early termination of participation by a clearing member that arises as a result of a CCP being placed in resolution. This would help stabilise the clearing services offered by the CCP and ensure that the Bank has access to the largest possible pool of resources for loss absorbency, thereby limiting risks to public funds;

e. **Power to take control of the CCP.** This power would enable the Bank to take control of a CCP without having to rely on its existing property or share transfer powers. This would allow the Bank to enforce the CCP's rulebook more easily to stabilise the CCP and ensure continuity of the critical clearing service in resolution without the legal and operational risk of conducting a property or ownership transfer;

f. **Power to remove and replace directors.** This would provide the Bank with the power to direct a CCP to remove or replace directors and senior managers and appoint temporary managers in severe circumstances, as the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) are already able to do for other types of financial services firms. Pre-resolution, it would only be used subject to a number of conditions, including if there was a rapid deterioration in the financial situation of the CCP and it was at risk of failing, or if there was a regulatory infringement by the directors or senior managers at the CCP;

g. **Power to return the CCP to a matched book.** The Bank will have the power to return a failing CCP to a 'matched book' to ensure that it does not continue to be exposed to losses generated by the positions of the defaulting clearing member(s)[10]. The Bank would have the flexibility to perform a full or partial termination of contracts, depending on the scenario and the potential wider impacts on financial stability. To provide clearing members and end users with greater certainty of how these powers would work in practice, the Bank will be required to set out how it intends to use these powers in the event of a CCP failure;

h. **Power to perform variation margin gains haircutting (VMGH).** This gives the Bank the ability to reduce (potentially to zero) the payments that a CCP would otherwise be required to make to clearing members whose positions have gained value. It will allow the Bank to go beyond what is permitted by the CCP's own rulebook when doing this. This tool would only be available for use where the CCP's losses are caused by clearing member default;

i. **Further powers to generate additional loss absorbing capacity and replenish a CCP's resources.** The Bank will be given powers to write down unsecured liabilities (which can only be used in the case of non-default scenarios) and a statutory cash call power which enables the Bank to collect contributions from clearing members (in the case of both default loss and non-default loss scenarios). The Bank will be able to allocate losses and replenish a CCP's resources through the mechanism that it judges least disruptive. There will be safeguards to stop the Bank writing down certain liabilities (e.g. initial margin) when using its write-down power. To enable clearing members to be aware of the level of resources that they might have to pay under the cash call power, the Act confers powers on HM Treasury to cap an individual clearing member's contribution. The government currently envisage this cap to be at two times an individual member's prefunded contribution to the default fund in a default-loss scenario, and three times in a non-default loss scenario;

[10] A matched book ensures that the CCP has a buyer and seller for every trade that they are a part of.

j. **Power to delay enforcement of a clearing member's obligation in resolution.** The Act confers a power on HM Treasury to make regulations enabling the Bank to delay enforcement of a clearing member's obligations in resolution should such enforcement during the resolution of a CCP present a risk to financial stability. It is expected that the Bank would have the ability to enforce outstanding obligations resulting from a delay in enforcement at any time up to 18 months after the resolution, if at the relevant time the reasons for refraining from their enforcement no longer exist. If the Bank does not enforce an outstanding obligation within this 18-month period, the obligation will lapse at the end of it;

k. The Act also provides for a **"no creditor worse off" (NCWO) safeguard.** This safeguard ensures that creditors of the CCP have the right to compensation should they be worse off in resolution than they would have been in the absence of resolution action had the CCP entered insolvency.

438 As part of their prefunded resources, UK CCPs are already required to hold a ring-fenced tranche of their own capital often referred to as "skin in the game" (SITG). HM Treasury intends for the Bank to be able to require CCPs to hold a second tranche of SITG sitting after the prefunded default fund, which would mean CCPs holding a greater amount of their own capital for loss absorption. The new powers granted to the Bank and HM Treasury under this Act could be used to introduce such a requirement.

439 Together, the proposed powers and tools are intended to provide the Bank with a set of options to resolve a CCP in the most effective way, limiting risks to financial stability and public funds.

Insurers in financial difficulties

440 A company is insolvent when it can no longer meet its financial obligations to those parties to whom it owes money (known as its 'creditors').[11] When a company is insolvent, or in danger of becoming insolvent, the law sets out the procedures available for managing the company's affairs with a view to rescuing the company or, if the company ceases to trade, establishing how the company's assets will be realised and divided between its creditors. These procedures, and the rules surrounding their use, can broadly be referred to as a jurisdiction's insolvency arrangements.

441 The UK's insolvency arrangements for insurers are a modified version of the UK's standard corporate insolvency arrangements, augmented in some places with bespoke provisions. This framework is primarily contained in the Insolvency Act 1986, FSMA 2000, and associated secondary legislation.

442 Insurer insolvency is rare, with only 11 UK insurers having become insolvent since the year 2000.[12] When it does occur, it can be detrimental both for individual policyholders (who may rely on life insurance policies for a primary source of income), and for businesses left unable to operate without insurance cover. As such, robust insolvency arrangements that promote

[11] For insurers, the large majority of these creditors will typically be the insurer's policyholders.

[12] Over this time period 27 insurers operating in the UK have become insolvent, but in only 11 of these cases was the Financial Services Authority (until 2013) or Prudential Regulation Authority (since 2013) the home-state regulator.

good outcomes for policyholders and other creditors are essential. While the current arrangements have generally been effective, some elements have become outdated as related international standards have developed. This creates shortcomings that could increase the risk of adverse outcomes for policyholders and other creditors when an insurer becomes insolvent.

443 The Act makes a series of targeted amendments to the existing arrangements, in order to clarify certain elements, and to expand the protections available to an insurer and its policyholders where an insurer is undergoing insolvency or write-down procedures. The government consulted on these amendments in 2021, and published a response in April 2022. These amendments cover three broad areas.

Section 377 of the Financial Services and Markets Act 2000

444 Section 377 of FSMA 2000 currently provides a power for the court to reduce the value of one or more of the contracts of an insurer which has been 'proved to be unable to pay its debts,' as an alternative to making a winding-up order (which would place the insurer into liquidation). This reduction is referred to as a 'write-down' of liabilities. The power in FSMA 2000 has never been used, and is only described at a high level in legislation.[13] As such, significant uncertainties around its application exist, and may limit its usability, even where it could provide a better outcome for the creditors and policyholders of an insurer in financial distress; for example, by ensuring continuity of cover. The Act clarifies aspects of this power, including:

a. The liabilities in scope. Broadly, all unsecured liabilities will be in scope, including liabilities to policyholders. The Act creates a number of exemptions, including debts to employees and pension schemes, and sums owed in respect of financial contracts.

b. The parties eligible to apply to the court for use of the power; and

c. The test the court must apply when considering such applications.

445 The Act also makes the power available when an insurer is, or is likely to become, unable to pay its debts, rather than solely in the event that it is proved unable to pay its debts.[14]

446 The Act introduces a new position of 'write-down manager', an officer of the court tasked with monitoring a court-ordered write down. In practice, we expect the write-down manager will help design the write-down order. Unlike an insolvency practitioner, a write-down manager would not be 'in possession' of an insurer, as managers will retain control of the firm. The write-down manager will be empowered to make recommendations to the insurer's directors, and there is provision for the write-down manager to apply to the court for orders and directions. The role of write-down manager continues until a write-down is terminated or the insurer is wound-up.

[13] An attempt to use the power was made in 1978 in the matter of re Capital Annuities Ltd [1978] 3 All ER 704. It was eventually determined that the company in question was not insolvent, and so the power was not used.

[14] This test matches the established test for entry into administration, as set out in section 11, Schedule B1 to the Insolvency Act 1986.

447 The Act also makes provision for the rules relating to the Financial Services Compensation Scheme (FSCS) to require the FSCS to make payments in relation to protected policyholders whose payments are reduced under a write-down.[15] Currently, while protected policyholders would be eligible for FSCS compensation in the event that their insurer became insolvent, they would not be eligible for FSCS compensation in the event of a write-down under section 377 of FSMA 2000. This mismatch in available protection creates a situation in which protected policyholders may be better off if their insurer fails (given that FSCS protection would apply) than if the court orders a write-down under section 377 of FSMA 2000 to avoid that failure (whereby FSCS protection would not currently apply). The government's intent is to align the protection available following a write-down with the protection available in insolvency, to better protect policyholders. As the FSCS operates within rules set by the Prudential Regulation Authority (PRA), in its Rulebook, the Act establishes a legislative framework to ensure the PRA is able to make rules facilitating the protection described above.

448 The Act also empowers the court to (partially or fully) reverse a write-down if an insurer's financial position improves, and it is deemed able to pay a greater proportion of its debts. This would result in the value of the insurer's liabilities being increased.

449 The Act additionally sets out that written-down liabilities (and the potential for a future reversal of the write-down) will be disregarded for the purposes of section 123 of the Insolvency Act 1986 (to ensure that an insurer cannot be deemed 'unable to pay its debts' on the basis of liabilities which have been written-down), and for the of purposes of Art. 11 of the Solvency 2 Regulation (*Recognition of contingent liabilities*) and purposes of the PRA's prudential rules governing insurers. This is to ensure that written-down liabilities are treated as extinguished for these purposes, for so long as the write-down is in force. Without this, an insurer could still meet the statutory test for insolvency following its liabilities being written-down or have the potential for a future reversal of the write-down reflected on its balance sheet as a contingent liability, contrary to the intended effect of the write-down which is to restore an insurer's balance sheet. The Act gives HM Treasury a power to amend the provisions for which purposes written-down liabilities are disregarded (through statutory instrument under the draft affirmative procedure) (Paragraph 9(3) of new Schedule 19B to FSMA 2000). This power allows HM Treasury to keep the list of provisions in paragraph 9(2) of that Schedule up-to-date, ensuring HM Treasury can address potential future changes in prudential rules and insolvency legislation.

450 In addition, the Act introduces a statutory moratorium on certain types of legal action taken against an insurer which is undergoing a write-down. While the moratorium is in place, creditors will not be able to take legal action to recover their debts or to enforce security.[16] In this way, the new moratorium has similarities to the moratorium which currently applies while a firm is in administration. The Act sets out that certain processes, including any actions taken by the PRA or Financial Conduct Authority (FCA), actions to enforce financial awards made by the Financial Ombudsman Service (FOS), and employment tribunals, will be exempt from the effect of the moratorium. Certain arrangements in financial contracts are also

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[15] Protected policyholders are policyholders who would currently be eligible for FSCS compensation if their insurer became insolvent and was declared in default by the FSCS.

[16] Secured creditors are creditors with claims backed by some form of collateral. Secured creditors have a right, in certain circumstances, to 'enforce' their security, generally by taking possession of certain assets or by appointing administrators in respect of the company.

excluded from the moratorium to protect parties' risk management practices. The Act gives HM Treasury a power to alter these exclusions by regulation made by statutory instrument under the draft affirmative procedure (Paragraph 3(4) of Schedule 19B to FSMA 2000). Other types of legal action against the firm or its assets will still be available with the permission of the court. The Act also introduces certain restrictions on an insurer subject to a write-down disposing of its assets without consent from the PRA.

Contractual Termination Rights

451 Insurers will typically hold both supply contracts (contracts to supply the firm with goods or services), and financial contracts, such as bank loans. Both types of contracts can include 'ipso facto' clauses, which allow counterparties to terminate the contract if the insurer enters insolvency, restructuring or similar proceedings, or otherwise comes under financial distress, even if the insurer continues to meet its obligations to that counterparty (such as making payments on time).[17] Entry into the write-down process (or other procedures that are likely to be under consideration around the same time, such as administration or winding-up) may thus allow a firm's suppliers and financial counterparties to terminate contracts. Early termination of supply contracts could disrupt the ongoing viability of a struggling insurer, hindering attempts to avoid a disorderly failure. Early termination of financial contracts could suddenly expose an insurer to significant risks, leading to further financial deterioration. In both cases, these termination rights could increase the risk of adverse outcomes for an insurer's policyholders and other creditors.

452 The Act introduces a new 'moratorium' which will temporarily prevent suppliers and some financial contract counterparties from using this type of termination clause, while an insurer is undergoing certain insolvency or write-down procedures. The moratorium will apply during administration, during a write-down process under the new provisions replacing section 377 of FSMA 2000 (for an initial six-month period, with the possibility of extensions by the court), and while there is an outstanding petition for winding-up in relation to the insurer (but not once a winding-up order is granted by the court). In the write-down context, the moratorium will not prevent counterparties terminating for non-performance (e.g., where the insurer fails to make payments or meet any of its other obligations under the contract). The scope of the write-down is also designed to ensure that financial counterparties are generally not written-down at all, and suppliers are not written-down in respect of ongoing supplies, ensuring that parties 'locked-in' by the moratorium are generally able to expect payment and ongoing performance from the firm. The Act also empowers the court to grant exemptions from the effect of the moratorium where it would otherwise be likely to cause hardship for affected parties.

453 The moratorium will apply by default to all supply contracts and most financial contracts; certain arrangements in financial contracts will be excluded to protect parties' risk management practices. In particular, the moratorium will not affect 'protected arrangements' as defined in section 48P Banking Act 2009. In individual cases, the court will be able to narrow the scope of the moratorium, to remove contracts from its scope where the court is

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[17] The Insolvency (Protection of Essential Supplies) Order 2015 (SI 2015/989) created a statutory override of 'ipso facto' clauses pertaining to certain insolvency procedures (although, these provisions only applied to supplies of utilities and IT goods). The Corporate Insolvency and Governance Act 2020 (CIGA) extended these protections to cover all types of supplies. Supplies to insurers (among other categories of financial services firms) were explicitly excluded under CIGA, meaning that insurers are still vulnerable to the termination of certain supply contracts.

satisfied that not doing so will cause hardship, or where to do so will lead to a better outcome for creditors (or, where relevant, promote the purpose of administration). The Act also gives HM Treasury a power to alter the scope of the moratorium by regulation made by statutory instrument under the draft affirmative procedure (Paragraph 12 of Schedule 19C to FSMA 2000). This will allow the government to update the scope of the moratorium as needed, in response to market practice and any corresponding developments in insolvency law.

Policyholder Surrender Rights

454 Certain life insurance policies include an investment element and accrue cash value over time. These policies typically include 'surrender' clauses allowing policyholders to terminate their contract early in return for a proportion of its cash value. Examples include unit-linked policies and with-profits policies, which are economically similar to managed funds. Unit linked insurance policies offer both insurance coverage and investment exposure (usually to equities, bonds or an index), allowing policyholders to make regular premium payments which build up additional units. In effect, these products act as a savings/investment vehicle for policyholders. With-profit policies serve a similar purpose, but rather than policyholders buying units representing specific underlying assets (or asset classes/indexes), policyholders share in the overall profits and losses of a firm's with-profits fund. This allows the insurer to 'smooth' investment returns to with-profits policyholders.

455 In both cases (unit-linked and with-profits), the policies have a surrender value which policyholders are generally able to convert to cash at will, or switch between different funds in order to reduce investment exposure. When a life insurer is known to be in financial distress, policyholders may choose to surrender their contracts over concern that they will lose value, creating a situation similar in motivation and effect to a 'run' on a bank. Widespread policy surrenders could make it more difficult to estimate an insurer's liabilities or force an insurer to rapidly sell assets in order to meet demands for payment. This could exacerbate an insurer's financial difficulties, potentially leading to worse outcomes for its policyholders and other creditors.

456 The Act introduces a temporary moratorium on life insurance policyholder surrender and switching rights, which will apply in the same circumstance as the moratorium on contractual termination rights described above. The stay will last for an initial 6-month period, with the possibility of extension if granted by the court (or the period the insurer is in administration or a winding up petition has been presented but not withdrawn or determined). The stay will prevent life insurance policyholders from surrendering their policies, although small withdrawals (or 'partial surrenders'), of up to 5% of the value of the policy in any 12-month period, will still be allowed. The Act also provides HM Treasury with a power to amend this percentage limit through statutory instrument under the draft affirmative procedure (Paragraph 12 of new Schedule 19C to FSMA 2000). As with the moratorium described above, the Act makes available hardship exemptions where the stay would otherwise be likely to cause hardship to policyholders. Such hardship exemptions can be granted by certain parties, including the write-down manager (as well as by the court), making the process less expensive and more rapid, whilst protecting the firm from widespread surrenders.

Miscellaneous

Disciplinary action against formerly authorised persons

457 Firms performing regulated financial services activities in the UK must generally be authorised by the FCA, or where relevant, the PRA. A firm must apply to obtain authorisation and once authorised, must comply with the relevant rules and requirements set out by the regulators.

458 The FCA and the PRA have a broad range of powers to supervise firms and enforce rules and regulatory requirements. For example, they can carry out investigations, and where a firm fails to adhere to a requirement or rule, the FCA and the PRA have the ability to take disciplinary action against the firm. These disciplinary actions include the publication of a statement detailing the misconduct ('public censure') or the issuing of fines.

459 Except in some specific circumstances, the FCA and the PRA are unable to take disciplinary action against firms which are no longer authorised, if they committed misconduct whilst they were authorised.

460 The Act allows the FCA and the PRA to take action against firms that are no longer authorised (provided they become unauthorised on or after the introduction of this Act), for misconduct while they were authorised. This will enable the regulators to appoint a person to carry out an investigation into potential misconduct, issue a public censure, issue a financial penalty, and require the payment of compensation to victims of misconduct. This will ensure that any firms committing misconduct are held to account, and that they cannot escape appropriate disciplinary action by applying to cancel their authorisation before their misconduct is identified by the regulators.

Financial Services Compensation Scheme

461 The Financial Services Compensation Scheme ('FSCS') is the scheme for compensating persons, such as consumers, in cases where authorised financial services firms are unable, or likely to be unable, to satisfy claims. The FSCS is administered by the 'FSCS manager', a body corporate established under FSMA 2000.

462 The Office for National Statistics ('ONS') is responsible for compiling the National Accounts – core accounts for the UK economy as a whole that describe production, income, consumption, accumulation and wealth across different parts of the economy. In order to provide accurate National Accounts, the ONS classifies the entities making up the UK's economy by reference to certain sectors and subsectors.

463 The FSCS manager was classified by the ONS in 2020 as a 'supervisory authority' and part of the 'public financial auxiliaries' subsector within the broader 'public financial corporations' sector which means it is not part of central government nor an Arm's Length Body (ALB) of HM Treasury. This decision was based on its view that the FSCS manager carries out supervisory actions with regard to paying compensation and is able to freely take decisions to ensure it has sufficient resources.

464 The decision has the following implications:

a. the FSCS manager's new status as a 'public financial auxiliary' for ONS purposes means that it is now treated by the ONS in a similar way to the PRA and the FCA; and

b. given the FSCS manager is no longer regarded as an ALB of HM Treasury, its accounts will no longer be consolidated within HM Treasury accounts.

465 The Act makes two changes to the legislative framework as set out in FSMA 2000 to ensure that it properly reflects the FSCS manager's new status.

466 Firstly, the Act removes the requirement that the FSCS manager has an accounting officer. Retaining the accounting officer requirement for the FSCS manager would not be appropriate given the level of independence of bodies classified as public financial auxiliaries. Requirements in FSMA 2000 that the FSCS manager must ensure efficiency and effectiveness in the discharge of its functions and minimise public expenditure attributable to financial assistance will be retained to ensure that Parliament's interests, including the FSCS manager's use of public funds, continue to be protected.

467 Second, the Act removes HM Treasury's power to require certain information from the FSCS Manager in connection with accounts. Since the FSCS manager accounts are no longer consolidated within HM Treasury accounts, the information sharing requirement is unnecessary.

The Ombudsman scheme

468 The Financial Ombudsman Service (FOS) was established by FSMA 2000 to provide for the proportionate, prompt and informal resolution of disputes between consumers or small businesses and financial services firms regulated by the FCA. The FOS offers a cost-free service for consumers, which is fundamental to its purpose.

469 The FOS is able to charge case fees to "respondents", meaning firms which are subject to a complaint, and is responsible for making case fees rules. This may include when firms should be charged, for example from the first case or after a certain number of cases. Changes to these rules are subject to approval by the FCA.

470 Claims management companies (CMCs) and other professional representatives bring complaints to the FOS on behalf of eligible complainants, including consumers. As these firms are acting on behalf of complainants, they are not classified as respondents and cannot be charged fees by the FOS under the current arrangements. However, CMCs and other professional representatives are not themselves eligible complainants, and are able to gain financially from bringing cases to the FOS as they charge eligible complainants for their services. There is currently minimal financial risk to CMCs in bringing large numbers of complaints to the FOS, regardless of the merits of those cases.

471 Section 63 enables HM Treasury, by regulations, to add further categories of persons to the list of those to whom the FOS can charge case fees. HM Treasury intends to amend the list to allow the FOS to charge case fees to CMCs and other professional representatives engaged in claims management activities relating to the FOS.

472 By specifying who can be charged by the FOS in regulations, the government intends to ensure that the full range of claims management models can be effectively captured. It also provides flexibility to amend this list if different models emerge in future, to maintain the original policy intent. It will also allow government to ensure that bodies which play a valuable role in offering support to vulnerable people – for example charities and law centres – will not be charged case fees by the FOS.

473 This new power cannot be used by HM Treasury to add eligible complainants to the list of those to whom the FOS can charge case fees. This will ensure that the FOS remains a free service for consumers.

474 Regulations made under this power will be subject to the affirmative procedure and HM Treasury has a duty to consult the FOS prior to making regulations. The FOS is required by legislation to consult on changes it makes to its case fee rules, which are also subject to approval by the FCA.

Unauthorised Co-ownership alternative investment funds (AIFs)

475 Since March 2020, the government has been conducting a review of the UK's funds regime to identify options to make the UK a more attractive location to set up funds and to support a wider range of more efficient investments that are better suited to investor needs. This review encompasses the fund structures available in the UK, their legal form, their regulation and their taxation.

476 In January 2021, the government sought stakeholder views on the wider components of the review by publishing *Review of the UK funds regime: A call for input (“Call for Input”)*. The *Call for Input* set out the objectives and scope of the review and requested feedback on which reforms should be taken forward and how they should be prioritised.

477 Prior to the launch of the *Call for Input*, the asset management sector had made representations to the government pointing out that there is a gap in the range of fund structures offered by the UK for which FCA authorisation is not required. Stakeholders argued that there is demand for a flexible, tax-efficient, unauthorised fund structure that can invest in asset classes other than stocks and bonds (“alternative asset classes”) , aimed only at professional investors. These funds cannot currently be set up in the UK. The government sought views on this potential gap as part of its *Call for Input*.

478 A significant proportion of the respondents to the *Call for Input* on these areas called for the creation of a new fund structure: the unauthorised contractual scheme. The unauthorised contractual scheme was proposed to be a contractual scheme, as per section 235A of FSMA 2000, that is: unauthorised, unlisted, closed-ended[18], only available to professional investors, unconstrained in terms of investment approach, tax transparent for income[19], and has tradeable units.

479 In February 2022, the government published *Review of the UK funds regime: a call for input - Summary of responses (“Summary of Responses”)*. This publication summarised the responses the government received following the *Call for Input*, set out the government’s response to respondents’ feedback, and the next steps the government proposed to take to ensure that the UK funds regime review delivers on its objectives. In the *Summary of Responses*, the government committed to further explore options for the introduction of the unauthorised contractual scheme.

480 At present, the rights and liabilities of participants under sections 261M to 261O and section 261P(1) and (2) of FSMA 2000 only applies to a contractual scheme, that is structured as a co-ownership scheme and which benefits from an authorisation order (typically abbreviated to CoACS). As a result, if a new investment vehicle that is similar to the unauthorised contractual scheme was introduced in statute, it would not benefit from the same provisions in relation to the contracts in the scheme, statutory rights and limitation and segregation of liability as a CoACS does. The absence of these provisions means that if an unauthorised contractual scheme was introduced in statute it is unlikely to be commercially viable and may present inappropriate risk to participants.

481 The Act provides HM Treasury with a power to essentially apply relevant rights and liabilities that a CoACS would already benefit from, to the proposed unauthorised contractual scheme in order to ensure its commercial viability (in the event that such an investment vehicle were to be introduced).

[18] An “open-ended fund” is one in which the participants have a right to redeem or sell their interest in the fund at a price related to the net value of the assets held by the fund. In contrast, a “closed-ended fund” is broadly any fund that is not open-ended. Closed-ended funds have a fixed number of units or shares that may be issued subject to company law or other constraints in the fund's constitution. Once issued, unitholders or shareholders are not entitled to have their units or shares redeemed on demand and the units or shares are usually only traded in the secondary market or redeemed on the winding up of the fund.

[19] Tax transparency means that the fund’s income is treated as arising directly to investors for UK tax purposes.

482 Before making the unauthorised contractual scheme available in the UK, the government must ensure that it is subject to the appropriate legal, regulatory and tax treatment. That work continues, however it is clear that this scheme will not be a commercially viable product without having the appropriate rights and liabilities in place, especially for participants. Therefore, the government is legislating for this power now to ensure that – should it decide to proceed with this fund structure in the future – it can do so successfully.

Control over authorised persons

483 Where a person ("controller") decides to acquire control of a UK authorised firm (defined as taking an ownership stake of 10% or more), the proposed controller will need to seek approval from the relevant regulator before the interest is acquired. This is done by the means of giving notice in line with section 178 of FSMA 2000. The regulators will then make a decision about whether to approve or reject the change in control based on a number of criteria:

a. The reputation of the section 178 notice-giver;

b. The reputation and experience of any person who will direct the business;

c. The overall financial soundness of the section 178 notice-giver;

d. Whether the UK financial services firm will be able to comply with its prudential requirements (including the threshold conditions – the minimum requirements for the financial services firm to be authorised and stay authorised - in relation to its regulated activities);

e. Whether, if the UK financial services firm is to become part of a group as a result of the acquisition, that group has a structure which makes it possible to exercise effective supervision, exchange information among regulators and determine the allocation of responsibly among regulators.

f. Whether there are reasonable grounds to suspect that the new controller is connected with money laundering or terrorist financing or that the risk of this activity could increase.

484 In making an assessment, the appropriate regulator must disregard the economic needs of the market.

485 Currently, the PRA and the FCA can approve or reject an application for a change in control, and they can also impose conditions, but only where they would otherwise reject the application. This limit to the scenarios where the regulators can impose conditions was introduced through the EU Acquisitions Directive (2007/44/AC).

486 There are some situations where the evidence may not reach the "reasonable grounds" threshold needed to reject a decision, but the relevant regulator still has significant concerns. For example, an investigation may be ongoing while the change-in-control process is taking place and may conclude in due course in a finding that adversely impacts the reputation of the new controller. This situation may therefore warrant a condition on a change-in-control.

487 The Act provides for the regulators to apply conditions to new controllers where they have concerns which affect their ability to advance the regulators' objectives, rather than in the narrower set of existing circumstances.

Liability of payment service providers for fraudulent transactions

488 The value and volume of "authorised push payment" (APP) scams has increased significantly in recent years. An APP scam occurs when someone is tricked into making a payment to a fraudster under false pretences, for example, where someone is deceived into authorising a payment to a person for something they believe at the time is a legitimate purchase.

489 APP scams are different to unauthorised payment fraud, where money is taken from someone's account without their knowledge or consent. Victims of unauthorised payment fraud are protected by legislation, with statutory requirements on payment service providers (for instance, a payer's bank) to reimburse victims for the losses they incur under such circumstances.

490 Although no statutory reimbursement requirement exists for APP scams, some payment service providers have made voluntary commitments to reimburse APP scam victims in certain circumstances, including by signing up to a voluntary contingent reimbursement model code that sets a framework for how liability should be apportioned when a scam occurs. The varying approaches to reimbursement by payment service providers have led to inconsistent levels of protection for APP scam victims, based on which payment service provider they use, and how the payment service provider interprets any voluntary commitments to a customer when an APP scam occurs.

491 The Payment Systems Regulator (PSR) regulates designated payment systems and their participants (including banks and other payment service providers). In 2021, the PSR published a Call for Views, and subsequent Consultation, on APP scams. In these documents, the PSR proposed options to address the problem, including requiring participants in the Faster Payments Service to reimburse APP scam victims. The vast majority of APP scams occur over the Faster Payments Service, as it is the principal payment system which payers use to make instant credit transfers.

492 The PSR has stated that there is at present a legislative barrier in the Payment Services Regulations 2017 preventing it from using its regulatory powers to implement mandatory reimbursement. Specifically, regulation 90(1) of the Payment Services Regulations 2017 provides that where a payment service provider (for example, a bank) has executed a payment in accordance with the unique identifier (for example, the sort code and account number) provided by the payer, then the payment is deemed to have been correctly executed, and so the payment service provider cannot be liable for defective execution.

493 In November 2021, the Economic Secretary to HM Treasury made a statement that the government would legislate to address any barriers to regulatory action on this matter. In May 2022, the government published a policy statement setting out further detail on this policy approach.

494 This Act amends the Payment Services Regulations to clarify that nothing in regulation 90 affects the liability of a payment service provider where the PSR has exercised its regulatory powers in relation to APP scams. This will enable the PSR to use its regulatory powers (whether in relation to payment system operators, payment service providers, or in combination), to require mandatory reimbursement by payment service providers in cases of APP scams.

495 The Act also places a duty on the PSR to take regulatory action on APP scam reimbursement by participants in the Faster Payments Service, by requiring the regulator to consult on a draft regulatory requirement, and impose a regulatory requirement, within two and six months respectively of the legislation coming into force.

Cryptoassets

496 The government's view is that cryptoasset technologies could have a profound impact across the financial services sector. At present most cryptoasset activities in the UK are not subject to comprehensive financial services regulation. This gives rise to a range of risks, including to consumers, market integrity and potentially to financial stability. It may also prevent UK firms and consumers from realising the possible benefits of cryptoasset technologies, including new products and services.

497 The government has proposed a staged approach to regulation, which is sensitive to risks posed and responsive to new developments in the market. HM Treasury's response to its consultation, published in April 2022, outlined the government's intention to bring stablecoins, where used as a means of payment, into the regulatory perimeter. Alongside, the government confirmed that the market has developed sufficiently to move ahead with regulating a broader set of cryptoasset activities.

498 Section 69, alongside new section 71K(7) of FSMA 2000 as inserted by section 8 of this Act, clarifies that HM Treasury has the necessary powers to regulate a range of cryptoasset activities, particularly those relating to the trading and investment of cryptoasset tokens.

499 In due course and ahead of using these powers, HM Treasury will consult on an approach which enables firms to innovate, while maintaining financial stability and clear regulatory standards so that people can use new technologies both reliably and safely.

Cryptoassets: amendments to the FSMA 2000

500 Section 69 ensures that cryptoassets are within scope of sections 21 and 22 of FSMA 2000 relating to regulated activities, and inserts a definition of "cryptoassets" which may be amended by HM Treasury.

501 The changes complement section 71K(7) of FSMA 2000, as inserted by section 8 of this Act, which clarifies that cryptoassets are within scope of the designated activities regime. It also complements changes introduced by sections 22 and 23, and Schedule 6 of this Act to enable the regulation of cryptoassets used for payments, including so-called stablecoins (amongst any other digital assets used for payments, where these are within scope of the new concept of "digital settlement asset").

502 The combined effect of sections 8 and 69 is to ensure that cryptoassets may be regulated within the framework established by FSMA 2000 (as extended by this Act).

503 This will ensure that HM Treasury is equipped to respond to developments in cryptoassets more quickly, and deliver regulation in an agile, risk-based way consistent with our approach to the broader financial services sector. For instance, HM Treasury's ability to amend the definition of "cryptoasset" by regulation allows HM Treasury to respond quickly to developments in the technology that underlies these cryptoassets.

504 Given the fast-moving nature of the sector it is vital that the government has the flexibility to introduce regulation in an agile way using secondary legislation. This is an existing feature of the FSMA framework, in which HM Treasury sets the regulatory perimeter through secondary legislation.

505 This section will also ensure that HM Treasury and the regulators can update the cryptoasset regulation as international standards are developed. For example, the government's proposals will take account of the Financial Stability Board's consultative proposals for the Regulation, Supervision and Oversight of Crypto-Asset Activities and Markets published in October 2022.

Clarifying the scope of the Financial Promotions Order (FPO)

506 Section 69(2) amends the definition of "investment" contained in section 21(14) of FSMA. The existing definition is '"investment" includes any asset, right or interest.' Section 69(2) ensures that this includes where an asset, right or interest is, or comprises or represents, a cryptoasset.

Clarifying the scope of the Regulated Activities Order (RAO)

507 Under the FSMA framework, HM Treasury determines which activities are regulated activities, by specifying activities to be regulated in the RAO.

508 Section 69(3) amends the definition of "investment" contained in section 22(4) of FSMA 2000 to clarify that this includes where an asset, right or interest is, or comprises or represents, a cryptoasset.

Bank of England Levy

Background to the CRD scheme

509 The Cash Ratio Deposit (CRD) scheme funds the Bank of England's (the Bank's) monetary policy and financial stability functions. Under the scheme, deposit-taking institutions (i.e., banks and building societies) with eligible liabilities above a minimum threshold are required to place non-interest bearing deposits at the Bank. The Bank invests these deposits into interest bearing assets (currently only UK gilts), with the income generated used to fund the Bank's monetary policy and financial stability operations.

510 The Bank's expenditure on policy functions, as currently funded by the CRD scheme, includes Monetary Analysis and the Monetary Policy Committee (MPC), Markets and Banking, Research and statistics, Financial Stability Strategy and Risk, Resolution, International policy, the elements of FMI supervision not funded by the FMI levy and elements of PRA activity not funded by the PRA levy.

511 The CRD scheme does not fund the following functions of the Bank:

a. its remunerated activities - including its banking services, services to HM Treasury (such as the management of the note issue and the Exchange Equalisation Account) and lending operations for the Bank's own account,

b. its operations acting as the PRA, which are funded by the PRA levy, and

c. its FMI supervision, which is funded by the FMI levy.

512 The CRD scheme runs in five-year cycles. The scheme was last calibrated in 2018 to deliver for the 2018-23 period a fixed income target of £169 million per annum. In 2018, an indexation-based approach was introduced to make the CRD scheme responsive to changes in gilt yields and to provide a smoother income profile. In effect, this means that when gilt yields decrease, participants are required to increase their deposits at the Bank, so that the Bank can invest in more gilts, in an attempt to meet the income target. As of June 2021, the overall size of the cash ratio deposits were £12.1 billion. The largest 20 institutions accounted for 83% of the total deposits, eight of which each contributed more than £200 million in deposits under the scheme.

Rationale for replacing the CRD scheme

513 The CRD scheme has resulted in cash ratio deposit sizes significantly higher than originally forecast and a lack of predictability for CRD payers as the required cash ratio deposit sizes change in line with gilt yields, which have been lower than anticipated since the 2018 review. This has resulted in the CRD scheme not being able to generate its target income from the investment of deposits and therefore failing to fully fund the Bank's policy functions. The shortfall to date has been funded from the Bank's capital and reserves.

514 Since the introduction of the indexation approach, gilt yields have persistently fallen below the Bank's downside scenario. The CRD scheme in its current form has resulted in significant volatility in cash ratio deposit sizes and a lack of predictability for CRD payers as their required contribution changes in line with gilt yields, which have been lower than anticipated since CRD was last reviewed in 2018.

515 Consistent with global trends, the market expects the low returns on UK gilts to persist. If CRD is unchanged and low UK gilt yields were to persist, then the CRD scheme's income would continue to not meet the costs of the Bank's policy functions and the Bank would have to continue to fund the income shortfall through its own capital and reserves. This would inhibit the Bank from discharging its functions in pursuit of its statutory objectives in respect of monetary policy and financial stability. For the eligible institutions within the CRD scheme, keeping the CRD scheme in its current form would mean that the CRD balances would remain elevated and volatile, resulting in an ongoing lack of predictability for those institutions. Recalibration of the current CRD scheme would require either leaving the Bank exposed to under-recovery of costs in low yield conditions, or making the CRD scheme more volatile and imposing additional uncertainty and cost on CRD payers.

516 In 2021, HM Treasury ran a public consultation on the CRD scheme and proposals for an alternative funding arrangement. This confirmed that stakeholders are overall supportive of the proposal to replace the CRD scheme with a new Bank of England levy.

Bank of England levy

517 The Act repeals the provisions in the Bank of England Act 1998 that provide for the CRD scheme and replace these with a new levy on eligible financial institutions. Replacing the CRD scheme with a levy is intended to ensure that the Bank receives income in line with its forecast policy expenditure and conserve its current capital position. In line with the intention of the existing CRD scheme, the levy will cover the costs of the Bank's monetary policy and financial stability functions. It is also intended to give payers greater certainty over the size of their annual contribution as, unlike the CRD scheme, the levy will not change in line with gilt yields. The overall objective of financial institutions funding the Bank's policy functions will not change, however the method by which this happens will.

518 Under the new levy, the Bank will determine the total policy levy annually to match expected expenditure on policy functions. The Bank's policy costs to be recovered through the levy will be approved by the Bank's Court of Directors as part of the annual budget setting processes. This will be discussed with HM Treasury as part of the existing arrangements for engagement on the Bank's annual budgets and financial performance as agreed in the Memorandum of Understanding on the Financial Relationship between HM Treasury and the Bank. Each year, before applying the levy, the Bank will notify industry on its plans for the levy. Financial gains or losses from policy operations – for example in relation to profits or losses from trading activities or counterparty losses – would not be covered by the scheme.

519 In line with the existing CRD scheme, the levy will apply to eligible institutions, which are defined as deposit-takers whose eligible liabilities are above a defined threshold. It is intended that secondary legislation will provide that the Bank will allocate the expenditure total across the eligible firms, for each institution and proportionate to their eligible liability base. This will allow each firm's contribution to be proportional to their exposure to liquidity risk. It is proposed that the levy would apply to all eligible firms with eligible liabilities of at least £600 million.

520 HM Treasury will be able to set out how the Bank calculates the levy and allocates the charge to eligible institutions in secondary legislation, subject to the affirmative procedure. The intention is for the policy costs payable by an eligible institution to be proportional to an eligible institution's liability base above a threshold.

521 As happens with other cost recovery schemes, a mechanism would exist for adjusting subsequent years' levies to take account of under or overspends, following the finalisation of accounts. The Bank would publish a detailed breakdown of its costs for the year, deviations from budget and income from the levy in its annual report and accounts and/or the annual notification.

522 The government will continue to monitor the effectiveness of the funding model used to meet the Bank's policy costs and will conduct a further formal review within at least five years of secondary legislation being introduced and publish a report in respect of that review. As part of HM Treasury's five-yearly review of the levy, consideration of the Bank's approach to levying policy costs, including its approach to setting the annual aggregate costs will be included.

Credit unions

523 Credit unions are small financial co-operatives owned by their members. Most credit unions in Great Britain have less than £5m in assets. The largest credit union has around £210m in assets and 55,000 members.

524 In Great Britain, credit unions are governed under the Credit Unions Act 1979 (the 1979 Act). The 1979 Act is restrictive in that it sets out the purpose of a credit union and specifies the products and services that credit unions can provide. It lists four "objects"[20] which sets out their purpose. These are:

a. The promotion of thrift among the members of the society by the accumulation of their savings;

b. The creation of sources of credit for the benefit of the members of the society at a fair and reasonable rate of interest;

c. The use and control of the members' savings for their mutual benefit; and

d. The training and education of the members in the wise use of money and in the management of their financial affairs.

525 In addition to this, credit unions have a set of rules, agreed by members, which set out their relationship with members and their governance structures. For example, credit unions set out their mandatory objects, as well as broader restrictions around topics such as membership, minimum shareholding requirements, or if the credit union should allow corporate members.

526 The current content of the 1979 Act has meant that credit unions primarily offer savings accounts and loans to their members, with some offering a slightly wider range of products and services such as mortgages. In the 2020 Budget, the Chancellor committed to bringing "forward legislation to allow credit unions to offer a wider range of products and services to their members, supporting their vital role in financial inclusion."

527 The Association of British Credit Unions Limited (ABCUL) ran a sector-wide consultation in 2019 named "Vision 2025". The consultation highlighted that credit unions were interested in offering other products and services beyond those allowed under the 1979 Act. There was strong interest from credit unions in being able to offer car finance (70%) and insurance distribution (49%).

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[20] "Objects" is an antiquated term for "objectives".

528 The Act gives credit unions in Great Britain the ability to offer hire purchase and conditional sale agreements to their members, for example as a form of car finance agreement.

529 Hire purchase agreements and conditional sale agreements have different structures but are similar in that members of the credit union will be able to choose a product and pay a deposit to a credit union. The credit union will then buy and own the asset while the member uses it and makes payments to the credit union until it is paid off. The member will typically repay the credit union the value of the item plus interest in instalments or periodic payments. The agreements usually include the condition that the goods do not belong to the member until they have paid the final instalment and the credit union may be able to repossess the goods if the member falls behind with payments.

530 Specifically, a conditional sale agreement is an agreement where a credit union purchases a good on behalf of a member and the member then pays the credit union in instalments as agreed for the product until it is paid off. The credit union retains ownership of the good, but the member uses it during the period of repayment.

531 Hire purchase agreements are agreements where the credit union purchases the good on behalf of the member, and the member makes periodic payments on the good until it is owned by the member, often based on compliance with payments and full repayment.

532 Hire purchase agreements and conditional sale agreements will be subject to credit unions obtaining permission from the appropriate regulator in the same way as other providers, and secure approval from their members. The Act caps the interest a credit union can charge on the outstanding balance due under these finance agreements at 3% interest per month but gives the government the power to raise this cap to provide flexibility for credit unions. This interest rate is in line with what credit unions can charge for loans and mirrors the power HM Treasury already has for setting the interest rate cap for loans in the 1979 Act. Additionally, the Act allows credit unions to offer these agreements to corporate members. This is subject to this being set out in a credit union's rules, which requires member agreement at a general meeting. The legislation also requires that no more than 10% of the total outstanding balances due to be repaid under these agreements can be owed by corporate members. The Act also ensures that the 10% limit can be amended via statutory instrument.

533 The Act enables credit unions to offer insurance distribution services to their members. This means, subject to receiving permission from the appropriate regulator to carry out any regulated activities, a credit union will be able to help its members take out insurance policies with partner insurance firms and charge the partner insurance firm for their services.

534 The Act gives HM Treasury the power to add further services to the 1979 Act in the future via secondary legislation, subject to the affirmative procedure, i.e., the approval of both Houses of Parliament. HM Treasury will be required to consult with relevant stakeholders before exercising this power. Given that the 1979 Act is prescriptive, as described above, this power provides HM Treasury with greater flexibility to support the credit union model to adapt more quickly to changing demands in product offerings, remain competitive as a sector, and continue to serve their members effectively, while still maintaining the lighter-touch regulatory benefits of the prescriptive regime by ensuring there is still scrutiny over which products and services may be offered.

535 The Act introduces two additional changes to the 1979 Act, following engagement with the Financial Conduct Authority and the Prudential Regulatory Authority. Firstly, it introduces a legislative requirement for credit unions to submit annual returns to the Financial Conduct Authority, and adopt year of account provisions in the Co-operative and Community Benefit Societies Act 2014 to specify the accounting period, to reinforce good governance practices in

credit unions and bring credit unions in line with other societies registered under the Co-operative and Community Benefit Societies Act 2014. Credit unions in Great Britain are currently required to submit a copy of their audited accounts to the FCA in accordance with the FCA's rules, rather than under legislation.

536 Secondly, the legislation also clarifies the ability of credit unions to lend to/borrow from other credit unions, even when there is no membership link, to provide legal certainty over this activity. Credit unions are already able to undertake this lending and borrowing, and the legislation previously made explicit reference to temporarily borrowing from another credit union under the original drafting of section 10 of the 1979 Act. This new amendment provides further legislative clarity over this practice.

537 The Act also ensures that the new legislative changes do not retrospectively apply to the practices of lending to and borrowing from other credit unions, or to submitting annual accounts to the FCA, and adopting year of account provisions before the Act comes into force.

Reinsurance for acts of terrorism

538 In some instances, HM Treasury intervenes in the (re)insurance market to support the provision of insurance for certain systemic risks. This is when the risks would not otherwise be covered by the market because the potential financial losses are deemed too great by commercial (re)insurers. In cases of terrorism, HM Treasury has agreements with reinsurers under which it offers an unlimited guarantee (in the form of an unlimited loan) should they exhaust their funds in the event of pay-outs pursuant to a terrorist attack.

539 Under the Reinsurance (Acts of Terrorism) Act 1993 ("the 1993 Act"), HM Treasury has Parliamentary approval to pay out funds in line with these agreements. This enables the widespread provision of terrorism insurance in Great Britain. The 1993 Act was introduced when, following a number of terrorist attacks in Great Britain, (re)insurers withdrew from the terrorism (re)insurance markets. The 1993 Act enables the government to act as the reinsurer of last resort for reinsurance companies offering terrorism cover.

540 In accordance with its current practice, the Office for National Statistics ("ONS") is likely to classify a company that enjoys the benefit of a guarantee under the 1993 Act as a public sector body. Such classifications are likely to be retrospective to the date that the company started to enjoy the benefit of a guarantee under the 1993 Act.

541 The consequences of a company being classified as a public sector body include a requirement that its accounts are consolidated into its sponsor department's departmental accounts (as required by the Government Resources and Accounts Act 2000), and it becomes subject to necessary and appropriate controls, standards and processes expected of a public sector (which may include central government) body, in line with government policy and the expectations of Parliament on the use of funds on the public account. This could include, for example, Managing Public Money ("MPM") guidance.

542 In order to secure compliance with the requirements associated with classification as a public sector body, sponsor government departments generally put in place Framework Documents with entities subject to this classification. Framework Documents are not legally enforceable. HM Treasury therefore needs to ensure that any entity classified as a public body that benefits from an arrangement under the 1993 Act, will comply with necessary controls so that money on the public accounts is managed appropriately.

543 This provision in this Act amends the 1993 Act to give HM Treasury the power to issue directions to any public sector body which benefits from an arrangement under the 1993 Act. The provision also provides HM Treasury with the ability to issue a direction to the group undertakings (within the meaning of section 1161 of the Companies Act 2006) of public sector

bodies which benefit from an arrangement under the 1993 Act. HM Treasury may issue a direction if it considers it necessary for the purpose of ensuring compliance with any requirements associated with classification as a public sector body. Directions may include provision about compliance with relevant requirements relating to auditing, accounting, budgeting, arm's length bodies or public sector bodies. There is also a specific power to direct such bodies to appoint an accounting officer. This will enable HM Treasury to ensure that any public sector body that benefits from a guarantee has sufficient oversight of its requirements as a public sector body.

Requirements

544 The Act ensures that any public sector bodies that benefit from an arrangement under the 1993 Act can be obliged to comply with any requirements associated with their public sector classification and/or to appoint an accounting officer. The requirements may include matters relating to:

a. Auditing - for example, MPM which sets out the main principles for the management of resources in UK public sector organisations.

b. Accounting - for example, Government Financial Reporting Manual (FReM) standards, which are the public sector accounting standards.

c. Budgeting - for example, MPM and the Consolidated Budgeting Guidance, which is the budgeting framework that applies for expenditure control.

d. Arm's length bodies – for example, MPM.

e. Public sector bodies - for example, MPM and public sector pay guidance.

Banking Act 2009: miscellaneous amendments

545 The Banking Act 2009 provides for a special resolution regime (SRR), providing the Bank of England, the PRA, the FCA and HM Treasury with tools to protect financial stability by effectively resolving banks, building societies, investment firms, banking group companies and central counterparties that are failing, while protecting depositors, client assets, taxpayers and the wider economy.

546 Since its introduction, the Act has undergone further amendment to keep up with international developments and maintain its usability. Most notably during the implementation of two EU directives (the original Bank Recovery and Resolution Directive in 2014 and the update to the Bank Recovery and Resolution Directive in 2019) and the onshoring process by which EU financial services legislation was preserved in the UK statute book and amended to ensure that it worked in a UK-only context.

547 The government is committed to maintaining the workability of the legislation and has identified five minor but necessary technical amendments across the Act.

548 The Act makes a technical correction in relation to a requirement on the Bank of England, when directing firms to issue eligible liabilities (equity and debt that can be bailed-in during a resolution), to consult the FCA and the PRA as well as to have regard to:

a. The wider UK financial services market;

b. the impact on the institution in question;

c. and the UK's financial stability.

This correction also establishes explicitly a similar requirement on the Bank when it is directing institutions with regard to altering maturity profiles of these eligible liabilities. This represents a reversion to the approach established in the original Act which was inadvertently removed during the transposition of the update to the Bank Recovery and Resolution Directive in 2020.

549 The Act also makes two further corrections which clarify the existing legislation by deleting extraneous text and correcting a cross reference between two sections of the Act.

550 Additionally, this provision clarifies the application of the power to recognise a payment system as systemic, for the purposes of engaging the Bank's regulatory powers under Part 5 of the Banking Act 2009. The clarification ensures that a payment system can be recognised before it has commenced operating within the UK.

551 Finally, section 75 also includes an amendment specifying that the Bank's existing immunity from damages will extend to new functions conferred by or under this Act.

Arrangements for the investigation of complaints

552 The Financial Services Act (FSA) 2012 requires the FCA, the PRA and the Bank to establish a complaints scheme to investigate complaints against them, as opposed to complaints against the firms they regulate. Prior to Royal Assent of this Act, FSA 2012 also required the regulators to appoint an independent person, known as the Complaints Commissioner, to be responsible for the investigation of complaints against the regulators in accordance with that scheme, with the appointment and dismissal of the Complaints Commissioner requiring approval from HM Treasury.

553 The role of the Complaints Commissioner is governed by the framework set out in Part 6 of the FSA 2012 and in the regulators' complaints scheme. The Complaints Commissioner has powers to recommend that the regulators provide redress where a complaint about the regulators is upheld, including recommending the payment of compensation.

Appointment of the Complaints Commissioner

554 To add a further layer of independence to the role of the Complaints Commissioner, section 76 of the Act amends the FSA 2012 to make HM Treasury responsible for the appointment of the Complaints Commissioner, rather than the regulators.

555 HM Treasury will be responsible for setting the terms and conditions of the appointment of the Complaints Commissioner, including term limits. In doing so, HM Treasury must ensure that these terms and conditions are reasonably designed to ensure that the investigator will be free at all times to act independently of the regulators, and that complaints will be investigated under the complaints scheme impartially, without favouring the regulators.

Complaints Commissioner: annual report

556 The Act also strengthens the current reporting arrangements contained in the FSA 2012, to increase the transparency of regulator responses to Complaints Commissioner recommendations.

557 The Complaints Commissioner is required by the FSA 2012 to prepare an annual report on its investigations under the complaints scheme, which is subsequently published and sent to the regulators and HM Treasury. The report must set out various matters including information about trends in complaints, recommendations for how the regulators can improve, and a review of the effectiveness of the regulators' complaints processes.

558 Section 76 requires the FCA, the PRA and the Bank to respond to any recommendations or criticisms relating to them in the Complaints Commissioner's annual report and to publish their responses, and send copies to the Complaints Commissioner and HM Treasury. HM Treasury is required to lay the annual report and, and the regulators' responses, before Parliament.

559 The Act gives HM Treasury a power to direct the Complaints Commissioner to include additional matters which are relevant to the complaints scheme in their annual report. This is similar to the existing powers of HM Treasury under FSMA 2000, which allow it to direct the FCA and the PRA to include specified matters in their annual reports.

560 This is intended to ensure that the Complaints Commissioner's annual report can be required to include emerging policy issues that the government believes are important to support scrutiny of the regulators.

561 The Act also requires the regulators to include a summary of where they have decided not to comply with Complaints Commissioner recommendations on individual cases during the previous year as part of their response to the Complaints Commissioner's annual report. This is intended to drive greater overall accountability of the regulators, along with other measures introduced by the Act, by increasing transparency around the regulators' decisions and actions.

Politically exposed persons: money laundering and terrorist financing

562 The Money Laundering, Terrorist Financing, and Transfer of Funds (Information on the Payer) Regulations 2017 (the MLRs) are an important part of the UK's anti-money laundering regime, requiring regulated businesses, such as banks and lawyers, to identify and verify the identity of their customers to ensure their services are not abused for illicit purposes such as money laundering or corruption. They derive from international standards, for example from the Financial Action Task Force (FATF) or the UN Convention on Corruption, and are in line with those applied by most other G7 countries.

563 The MLRs define Politically Exposed Persons (PEPs) as those who hold prominent public functions, including all MPs and Peers. Regulated businesses must carry out enhanced due diligence (EDD) checks on PEPs, their family members and known close associates, owing to their increased risk of being targeted for criminal purposes, for example by serious organised criminals or hostile state actors. EDD measures include seeking additional assurance of a customer's identity and information on their sources of wealth.

564 To ensure firms were prepared to meet the obligation to apply EDD to domestic PEPs in a proportionate manner, the FCA issued guidance in 2017 on the treatment of PEPs by financial institutions. This guidance is clear that domestic PEPs should be treated as lower risk than non-domestic PEPs unless other risk factors are present, and that firms should simplify their EDD measures accordingly, for example by relying on existing or publicly available information rather than making new requests.

565 A number of Parliamentarians raised concerns about disproportionate treatment from banks and financial institutions due to their status as PEPs, linked to burdensome requests for additional information and in some instances themselves or family members being denied accounts.

566 The Act introduces two provisions to ensure the distinction between domestic and overseas PEPs is clear in law and that financial institutions are adhering to the approach set out in the FCA's guidance.

Amendment to the Money Laundering Regulations

567 The MLRs set out requirements for regulated firms (such as banks, lawyers and accountants) to implement when providing regulated services to any PEP and known close associates and family members of PEPs. They require all firms to take a risk-based approach to their compliance with regard the requirements of the Regulations, assessing the risk of their customers and implementing proportionate policies, controls and procedures.

568 The guidance on the treatment of PEPs, published by the FCA in 2017, provides support to firms in applying a risk-based approach to PEPs, including specific risk indicators which firms may use to inform their anti-money laundering controls. The guidance is clear that PEPs who are entrusted with a prominent public function in the UK should be treated as low risk, unless a firm has assessed that other risk factors not linked to their position as a PEP mean they pose a higher risk.

569 Section 77 requires HM Treasury to amend the MLRs within twelve months of Royal Assent to recognise the distinction between the general risk of domestic and non-domestic PEPs in law. This will ensure additional clarity on the approach firms should take when their customer is a domestic PEP or the family member or known close associate of a domestic PEP.

570 HM Treasury is also required to, within six months of Royal Assent, lay before Parliament a statement setting out what progress has been made towards making the regulations amending the MLRs.

Politically exposed persons: review of guidance

571 As noted above, the FCA guidance on the treatment of PEPs is an important tool for regulated firms when ensuring they take appropriate and proportionate measures to meet their obligations under the MLRs. Poor adherence to the guidance by firms, particularly by banks and other financial institutions, could result in the seemingly disproportionate treatment reported by some PEPs if firms apply their fullest extent of enhanced due diligence.

572 Section 78 requires the FCA to conduct a review of the adherence of regulated firms to its guidance, to identify if there is a systemic issue which is causing unnecessary burdens of domestic PEPs and their family members and known close associates. The review must be completed within twelve months of Royal Assent, and the FCA will be required to consider if the findings of the review necessitate updating its guidance. If the FCA does conclude the guidance requires updating, it must also publish draft guidance alongside the publication of the review's findings.

573 Along with the amendments to the MLRs, the review is intended to help address the problems currently experienced by some domestic PEPs.

574 The FCA is required to publish an update on its plan for the review within three months of Royal Assent.

Forest risk commodities

575 At the UN Climate Change Conference in 2021 (COP26), over 140 countries including the UK – representing 90% of the world's forests – signed the Glasgow Leaders' Declaration on Forests and Land Use. Signatories committed to work collectively to halt and reverse forest loss and land degradation by 2030, while delivering sustainable development and promoting inclusive rural transformation.

576 The government launched the forest and climate leaders' partnership at COP27, and also funds the partnership for forests, which has channelled more than £1 billion of private investment into forests and sustainable land use and brought more than 4 million hectares of critical landscapes under sustainable land use.

577 A coherent international approach on disclosure and management of nature-related risks and impact is necessary to support effective action against deforestation-linked financing. The government is therefore committed to exploring how best the final Taskforce for Nature-related Financial Disclosures (TNFD) framework should be incorporated into the UK policy and legislative architecture.

578 Work is also underway to address due diligence to combat illegal deforestation using the Environment Act 2021. The most relevant UK businesses that use forest-risk commodities or products derived from them will be required to ensure those products are produced in compliance with relevant local laws. The government will work with UK financial institutions, starting with a series of roundtables in 2023, to further tackle deforestation-linked finance. The policy considerations for tackling the financing of forest risk commodities are complex and further work is required to ensure that the regulatory framework can adequately address this issue.

Financing of forest risk commodities: review

579 Section 79 introduces a requirement for HM Treasury to review the adequacy of the regulation of the UK financial system for the purpose of eliminating the financing of the use of prohibited forest risk commodities. This is intended to help identify any practical steps that can be taken through the financial services regulatory framework to help tackle the financing of illegal deforestation.

580 The UK financial system is defined in section 1I of FSMA 2000. Prohibited forest risk commodities are those to be defined in Schedule 17 to the Environment Act 2021 and subsequent regulations (which have not been made at the time of this Act achieving Royal Assent).

581 HM Treasury is required to undertake this review within nine months of the Secretary of State making the first set of regulations under paragraph 1 of Schedule 17 to the Environment Act 2021. This will enable HM Treasury to consider those regulations in the review, and ensure a joined-up and effective approach.

582 HM Treasury is obliged to publish a report on the conclusions of the review and the steps it considers appropriate to take to improve the effectiveness of the regulation of the UK financial system for the purpose of eliminating the financing of the use of prohibited forest risk commodities.

Legal background

Revocation of retained EU law

583 The European Union (Withdrawal) Act 2018 (EUWA 2018) repealed the European Communities Act 1972 (ECA 1972) and preserved the existing body of directly applicable EU law, so that it continues to apply. It also preserved UK laws relating to EU membership, such as legislation implementing EU Directives.

584 This body of law is referred to as "retained EU law", as defined by EUWA 2018.

585 Broadly speaking, EU law falls into the following categories:

a. Direct EU legislation, such as an EU regulation or a Delegated Regulation, which applied directly to the UK as a result of the ECA 1972; this is incorporated into UK law through section 3 of EUWA 2018.

b. EU obligations, principally those imposed by EU Directives, which were, in part, incorporated into UK law through the powers in section 2(2) of the ECA 1972; this is incorporated into UK law as "EU-derived domestic legislation" in section 2 of the EUWA 2018.

c. Rights, powers, liabilities, obligations, restrictions, remedies and procedures which stem from retained EU law, and which are saved by section 4 of EUWA 2018.

586 HM Treasury undertook an extensive programme of secondary legislation in order to address deficiencies in retained EU law in financial services under the powers in section 8 of EUWA 2018. Where retained EU law continues to exist, it restricts the ability of the regulators to make rules, even where they already have the power to do so.

587 This Act revokes most types of retained EU law in financial services so that the model of regulation established in FSMA 2000 can be applied across all areas of financial services regulation.

588 It does this by creating the concept of "EU-derived legislation". This concept captures all Direct EU legislation and all EU obligations related to financial services.

589 The Act also sets aside any rights, powers and liabilities in financial services captured by section 4 of EUWA 2018, which exist as a result of EU-derived legislation.

590 EU-derived legislation as defined in this Act, and retained EU law as defined in sections 2, 3, and 4 of EUWA 2018, are not exactly the same, meaning that this Act does not revoke all retained EU law in financial services. In particular, this Act does not generally repeal retained EU law where it has been incorporated into primary legislation. It does not revoke non-legislative provisions such as the regulators rulebooks, where they implemented EU obligations.

591 The Act also revokes some legislation which is not retained EU law. This is because EU-derived legislation also captures associated regulations made under EUWA 2018, and regulations made under this Act which amend retained EU law. When retained EU law in financial services is revoked, these regulations will no longer be needed.

Parts 9C and 9D of FSMA 2000

592 The Financial Services Act 2021 inserted Parts 9C and 9D into FSMA 2000. Both these parts enable the PRA and the FCA to make rules for firms which has previously been subject to retained EU law, and are relevant to the approach taken in this Act.

593 Both Parts 9C and 9D of FSMA 2000 establish "accountability arrangements" for the relevant regulators which govern the making of these prudential rules for some firms. In particular, sections 144C and 143G of FSMA 2000 require the PRA and the FCA to "have regard" to certain matters when making rules. Sections 143C and 143D of FSMA 2000 require the FCA to make certain rules in relation to investment firms. Sections 29, 30, and 31 of this Act insert new powers in FSMA 2000 which provide for HM Treasury to make similar arrangements for other policy areas.

594 Finally, section 144E(3) of FSMA 2000 creates a number of exemptions from the requirement to consult and conduct cost benefit analysis where the PRA makes rules which are materially similar to those in the capital requirements regulation ("the CRR"). Section 6 of this Act applies a similar approach to other parts of retained EU law where the regulators make rules which are materially similar, or revoke rules without replacing them.

Transitional amendments

Amendments to the Markets in Financial Instruments Regulation (MiFIR) and the European Market Infrastructure Regulation (EMIR)

Wholesale capital markets regulation

595 UK capital markets are regulated under the framework that the UK inherited from the EU: the MiFID II framework (with 'MiFID' standing for 'Markets in Financial Instruments Directive'). The MiFID II framework has been, where necessary, brought into UK law and amended to address deficiencies resulting from the UK's withdrawal from the EU.

596 The cornerstone of the MiFID II framework is an EU Directive known as MiFID II.[21] Being an EU Directive, MiFID II required transposition into national law across EU states. Responsibility for transposition into UK law was essentially divided between HM Treasury and the FCA: the FCA made changes to its Handbook (for example, to introduce new rules on the categorisation of clients of regulated entities), and HM Treasury dealt with the changes that had to be made to UK legislation (for example, it updated the Regulated Activities Order[22] to include new regulated activities). Although MiFID II itself was not brought into UK law, those UK-issued rules and legislation which were used to transpose it still reflect the content of that Directive.

597 The other central piece of legislation in the MiFID II framework is MiFIR. Being an EU Regulation, MIFIR applies directly across EU states. MiFIR is one of the parts of the framework that was brought into UK law; this means there is now a UK version of MiFIR, which is currently treated much like UK primary legislation. In its UK version, MiFIR applies to investment firms, credit institutions and market operators with a registered or head office in the UK.[23] In this UK version, the FCA inherited functions that had belonged to the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) under the EU version.

598 A number of MiFID II and MiFIR provisions had required supplementing via delegated acts or technical standards (including regulatory technical standards (RTS)). Like MiFIR, the resulting Commission Delegated Regulations were brought into UK law but, differently from MiFIR, they are treated much like, respectively, UK subordinate legislation and regulators' rules.

599 Changes to the regulation of wholesale financial markets will involve amendment of the UK version of MiFIR. Because of the interplay between rules and legislation making up the MiFID II framework, most of these changes will also involve amendment of UK-issued law transposing MiFID II (especially the MiFI Regulations[24]), FCA and PRA rules, and the UK versions of Commission Delegated Regulations. Many of these additional amendments will be effected other than through the Act: for example, changes to certain Commission Delegated Regulations will be effected by the FCA through powers the FCA already has.

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[21] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

[22] Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544).

[23] This is subject to important caveats in respect of non-UK firms with permission to carry on business in the UK.

[24] Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/701).

Equity markets

600 The predecessor of MiFID II, which was known as the Markets in Financial Instruments Directive (MiFID), was in force across the EU from 2007 to 2018 (the date from which the majority of the MiFID II framework's requirements began to apply). MiFID provided for, among others, transparency requirements; this included, for example, how EU states should require investment firms to report on transactions, and rules for admission of financial products to trading.

601 MiFID II, which replaced MiFID, also covered, among other key areas, the regulation of trading venues, with requirements being imposed on both market operators[25] and investment firms operating trading venues; those requirements concerned, for example, best execution, and the suspension and removal of financial instruments from trading. The FCA's transposition of MiFID II involved the publishing of policy statements[26] introducing instruments to turn MiFID II requirements into FCA rules.

602 In addition to MiFID II requirements brought into UK law and rules, MiFIR (which was directly applicable EU law and the other fundamental component of the MiFID II framework) contains several provisions for the regulation of trading venues, including in respect of transparency. A notable characteristic of the retained version of MiFIR in UK law is its interplay with the regulatory treatment of trading venues under FSMA 2000. Article 2(1)(13A) MiFIR introduces the definition of 'UK regulated market', which brings together the MiFID II concept of 'regulated market' with FSMA 2000's 'recognised investment exchanges' (RIEs)[27]. RIEs (and therefore some MiFIR 'regulated markets') are exempt from the FSMA 2000 general prohibition in respect of any regulated activity which they carry on as part of the exchange's business as an investment exchange.

Share Trading Obligation (STO)

603 One of the regulatory changes introduced by the MiFID II framework to the regulatory regime established by MiFID was the introduction of a new requirement known as the Share Trading Obligation (STO), which sits at Article 23 MiFIR. Under the STO, no investment firm may execute a trade in shares admitted to trading on a UK RM, or traded on a UK trading venue, unless that trade takes place on a UK RM, MTF, or systematic internaliser, or an equivalent third-country trading venue.

604 Under Part 7 (regulations 197 – 205) of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, [28] each of the FCA, PRA and Bank of England has a power (the Temporary Transitional Power, or TTP) to make transitional directions to waive or modify obligations imposed on persons where the nature of the obligation has been altered by

[25] This is the person (including a legal person) who manages and/or operates the business of a regulated market and may be the regulated market itself.

[26] Policy Statement 17/5 (which covered mainly markets and organisational requirements) and Policy Statement 17/14 (which covered conduct issues, including research, inducements, client categorisation, best execution, the appropriateness test, taping, client assets and perimeter guidance).

[27] These are investment exchanges which have been recognised by the FCA under Part 18 of FSMA 2000.

[28] SI 2019/632.

the exercise of section 8 of EUWA 2018. In December [2020 the FCA exercised its TTP power to modify the requirements imposed on investment firms by the STO]: its transitional direction provided that investment firms could trade in shares subject to the STO on or through EU trading venues and systematic internalisers.

605 The Act permanently removes the STO.

Pre-trade transparency waiver regime

606 Articles 3 to 7 MiFIR concern transparency obligations in respect of trading in a wide range of equity and equity-like instruments, comprising shares, depositary receipts, ETFs, certificates and other similar financial instruments. Each of Articles 3 to 7 relates to obligations on market operators and investment firms operating a trading venue[29]. Of those Articles, the following concern transparency obligations imposed on those persons in a pre-trade context:

a. Article 3 (*Pre-trade transparency requirements for trading venues in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments*). Market operators and investment firms operating a trading venue must make public current bid and offer prices and the depth of trading interests at those prices.

b. Article 4 (*Waivers for equity instruments*). The FCA has the power to waive the obligation above in respect of certain types of orders or financial instruments. Article 4(1) MiFIR specifies a number of situations in which the FCA may waive the pre-trade transparency requirements in Article 3(1). These waivers include the Reference price (RP) and the Negotiated trade (NT) waivers. Article 4(5) enables the FCA to withdraw waivers if it considers that the way in which they are being used is inconsistent with the original purpose of the waiver or is circumventing the requirements of Article 4.

c. Article 5 (*Volume cap mechanism*). Article 5 introduces what is commonly known as the Double Volume Cap (DVC). The DVC imposes two quantitative constraints on the use of the RP and NT waivers in the trading of equity instruments on trading venues:

    i. that trading on a single venue using those waivers be limited to 4% of the trading of that instrument on all trading venues across the 'relevant area'[30]; and

    ii. that trading on all venues using those waivers be limited to 8% of the trading of that instrument on all trading venues across the relevant area.

607 Temporarily, further to Article 5(3A) MiFIR, the requirement at Article 5(2) and (3) for the FCA to suspend use of the RP and NT waivers in the event the 4% and 8% caps are exceeded does not apply; instead the FCA has the discretion to suspend use of the RP or NT waivers for an initial period of six months to ensure that the use of the waivers does not harm price formation (Article 5(3B)).

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[29] I.e., a UK regulated market, a UK MTF or a UK OTF (Article 2(1)(16A) MiFIR, read with 2(1)(62)).

[30] This is the UK and any countries or regions specified by the FCA in a direction.

608 In respect of the waivers regime generally, the Act confers on the FCA the discretion to decide what the waivers should be and the conditions or limitations that should attach to them. In respect, specifically, of the DVC, the Act removes that mechanism and replaces it with an obligation on the FCA to monitor the level of 'dark' trading and a power to limit it where there is evidence that it is undermining the efficiency of the price formation process.

Systematic internalisers

609 A systematic internaliser is an investment firm which, on an organised, frequent, systematic and substantial basis, deals on own account when executing client orders outside of an RM, MTF or an OTF, without operating a multilateral system.[31]

610 Under MiFIR, systematic internalisers are subject to bespoke pre-trade transparency requirements and, alongside other investment firms, to post-trade disclosure requirements. Before a trade takes place, systematic internalisers must make public the prices they are prepared to buy and/or sell an equity instrument at (see Article 14(1); for the corresponding obligation in respect of non-equities, see Article 18(1)). After a trade has taken place, systematic internalisers (like other investment firms) must make public the price and volume of certain transactions completed (see Article 20(1) for transactions in equities and Article 21(1) for transactions in non-equities). Commission Delegated Regulation (EU) 2017/587[32], made under MiFIR, sets out the detail of the pre- and post- trade transparency requirements for trading venues and investment firms (including systematic internalisers).

Definition of a systematic internaliser

611 The definition of systematic internaliser brings together a number of concepts and calculations. In particular, a systematic internaliser will:

a. be an "investment firm": this is a person whose regular occupation or business is the provision of one or more investment services to third parties or the performance of one or more investment activities on a professional basis;[33]

b. be "dealing on own account": this means that the investment firm (that is, the systematic internaliser) executes trades by trading against the investment firm's own proprietary capital. Because the systematic internaliser uses its proprietary capital, it is legally considered to be a counterparty of the trade, and to take on risk from that trade; and

c. operate on an "organised, frequent, systematic and substantial basis": this concept is aimed at excluding from the definition investment firms who, though otherwise operating as systematic internalisers, only do so on an occasional, ad hoc and irregular basis.

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[31] Article 2(1)(12)(a) MiFIR.

[32] Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser.

[33] Article 2(1A)(1) MiFIR.

612 There are two notable features of the definition of systematic internaliser which concern the "organised, frequent, systematic and substantial basis" limb of the definition:

a. First, determining whether an investment firm is acting as a systematic internaliser involves looking at each relevant instrument. This is a result of the way in which Article 2(1)(12A) MiFIR provides what this basis is: "*[F]requent and systematic*" is measured by reference to each financial instrument the firm deals on, and "*substantial*" is measured by reference to each specific financial instrument the firm deals on.[34]

b. Second, the way to determine what constitutes organised, frequent, systematic and substantial trading in respect of each such instrument is via a combination of quarterly calculations and quantitative thresholds specified in an onshored Commission Delegated Regulation (this Delegated Regulation is often referred to as MiFID Org Regulation)[35]

613 The Act removes the inherent requirement on firms to carry out complex calculations by substituting Article 2(1)(12) to (12A) MiFIR with a new definition of systematic internaliser. This definition retains the "organised, frequent, systematic and substantial basis" criterion but removes the role of calculations, in the MiFID Org Regulation or elsewhere, in determining the meaning of this basis, instead empowering the FCA to make this determination via rules.

Execution of trades at the midpoint

614 'Tick sizes' set minimum increments ('ticks') by which prices for equities can change; in other words, they represent the smallest permitted price fluctuation for any particular equity. 'Tick size regimes' restrict so-called 'midpoint' trading. Midpoint trading is where a buyer and seller of a security are matched at a price that is half-way between (i.e. at the 'midpoint' of), for example, their respective offers to buy and sell.[36] In other words, tick size regimes prohibit or constrain trades happening where the price agreed is set at a fraction of the minimum increment (i.e. at a fraction of the tick size).

615 The current UK tick size regime was introduced by the MiFID II Directive. It provides trading venues (regulated markets, MTFs and OTFs) with an exemption permitting midpoint trading that would otherwise involve a price movement below the tick size where the order is 'Large In Scale' (LIS). Whether an order is LIS is determined in accordance with Article 7 of Commission Delegated Regulation 2017/587.

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[34] Article 2(1)(12A)(b) MiFIR.

[35] Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

[36] In the context of trades made with an systematic internaliser, the mid-point would be between the buy and sell quotes of that systematic internaliser.

616 Article 63 of the Investment Firms Regulation[37] inserted Article 17a into MiFIR, which provided that systematic internalisers must comply with the tick size regime as well, although giving them the benefit of a similar exemption for midpoint trading on orders that are LIS. Bar this exemption, the prices at which systematic internalisers quote, offer improvements and ultimately enter into transactions must be in multiples of the stipulated tick size.

617 The Act provides for systematic internalisers to be able to trade in equities with their clients at the midpoint in all circumstances, rather than only for orders that are LIS.

Fixed income and derivatives markets

618 The Derivatives Trading Obligation (or DTO) is set out in Article 28 MiFIR. There are three fundamental components to the DTO:

a. *the counterparties on whom the DTO is imposed*. The DTO applies to all 'financial counterparties' (FCs) and to a subset of 'non-financial counterparties' (NFCs). The terms 'financial counterparty' and 'non-financial counterparty' are taken from another retained EU Regulation, the European Market Infrastructure Regulation or EMIR.[38]

b. *the derivatives coming under the scope of the DTO*. These are the derivatives within a class that the FCA has declared to be subject to the DTO and listed in a public register.

c. *the venues on which transactions must be concluded by the counterparties under the DTO*. The counterparties on whom the DTO is imposed must trade the derivatives coming under the scope of the DTO on a UK authorised trading venue, or overseas trading venue that benefits from an equivalence decision.

Alignment with the EMIR clearing obligation

619 EMIR imposes a number of requirements on counterparties to derivative contracts, central counterparties and trade repositories[39]. What EMIR seeks to tackle is essentially the risk that OTC derivatives (as defined in EMIR[40]) pose to market stability and increased transparency in the OTC market. One of the key elements of EMIR, aimed at increasing the number of OTC derivatives that are cleared through CCPs[41], is the Clearing Obligation (CO). The CO is set out at Article 4 EMIR. Like the DTO, the CO applies to (at least some) FCs, NFCs and analogous third-country entities. Where the CO applies, the entities in question must clear the trade through a CCP.

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[37] Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014.

[38] 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. A financial counterparty (FC) is a regulated financial services firm falling within one of the seven categories specified in Article 2(8) EMIR; a non-financial counterparty (NFC) is an entity established in the UK that is not a financial counterparty or a CCP (see Article 2(9) EMIR).

[39] 'Trade repository' is defined at Article 2(2) EMIR as a legal person that centrally collects and maintains the records of derivatives. Trade repositories are regulated under EMIR to manage data in a transparent and confidential manner.

[40] OTC derivatives are derivatives the execution of which does not take place on a regulated market.

[41] A CCP is a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer. This process is the 'clearing' to which the CO refers.

620 The way in which MiFIR frames the scope of the DTO draws heavily on EMIR; indeed, the scope of the DTO and CO were originally aligned. In 2019, EMIR was amended by an EU Regulation commonly referred to as 'EMIR Refit'.[42] The amendments to EMIR made by EMIR Refit include changes to the scope of the counterparties subject to the CO, namely, the introduction of an exemption from the CO for small FCs, and the modification of the mechanism for determining the obligations of NFCs that are subject to the CO because they exceed certain thresholds. EMIR Refit did not make corresponding changes to Article 28 MiFIR, and so the respective scopes of the CO and DTO stopped being aligned.

621 The Act realigns the scopes of the CO and DTO by amending the DTO so that it only applies to relevant FCs and to relevant NFCs, being those FCs and NFCs that are subject to the CO.

622 In the interest of the realignment between the CO and the DTO, the Act also amends EMIR to introduce an exemption to the CO mirroring the exemption to the DTO. The Act gives the Bank of England a rule-making power to determine which post-trade risk reduction services should benefit from the new exemption to the CO, which power will be analogous to the FCA's power to determine the application of the exemption from the DTO; in exercising its respective power, each regulator will be required to consult with the other.

Exemptions for post-trade risk reduction services

623 Article 31 MiFIR concerns a post-trade service used in derivatives markets known as 'portfolio compression', which MiFIR defines as a risk reduction service in which two or more counterparties wholly or partially terminate some or all of the derivatives submitted by those counterparties for inclusion in the portfolio compression and replace the terminated derivatives with another derivative whose combined notional value is less than the combined notional value of the terminated derivatives. Article 31(1) MiFIR exempts those carrying out portfolio compression from certain requirements, and in particular it exempts the trades that occur as part of portfolio compression from the DTO.

624 The Act makes the exemption from the DTO available to other post-trade risk-reduction services which can perform a similar function by empowering the FCA to set the appropriate scope of the exemption, which would no longer be linked to portfolio compression, and the appropriate conditions that should attach to its use.

FCA power to modify or suspend the DTO

625 The FCA has used the TTP to make a transitional direction modifying the DTO to, in short, allow certain counterparties to use EU venues when trading with an EU client who does not have access to a venue that both the UK and EU have granted equivalence to. The Act empowers the FCA to suspend or modify the DTO outside the limited purpose and time limit constraints of the TTP. The Act allows the FCA to direct that the DTO is modified including in respect of any of its three fundamental components, and subject to conditions; the FCA will be able to direct, for example, that, for a certain period, certain persons to whom the DTO would normally apply are not bound by the DTO provided they meet certain conditions laid out in the direction.

[42] 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.

Transparency regime for fixed income and derivatives

626 Articles 8 to 11 MiFIR[43] concern transparency obligations in respect of trading in a wide range of fixed income and derivatives instruments, including covered bonds,[44] exchange traded notes (ETNs),[45] exchange traded commodities (ETCs)[46] and emission allowances. Each of Articles 8 to 11 relates to obligations on market operators and investment firms operating a trading venue. In overview:

a. Article 8 (*Pre-trade transparency requirements for trading venues in respect of bonds, structured finance products,[47] emission allowances and derivatives*). Market operators and investment firms operating a trading venue must, on a continuous basis during normal trading hours, make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems.

b. Article 9 (*Waivers for non-equity instruments*). The FCA has the power to waive the obligation above in respect of certain types of orders or financial instruments, for example, orders that are 'large in scale' compared with normal market size (this is sometimes referred to as the 'LIS Waiver'), or financial instruments for which there is not a liquid market. The FCA is empowered, further to Article 9(5)(e) MiFIR, to make or amend technical standards to specify the financial instruments or the classes of financial instruments for which there is not a liquid market where pre-trade disclosure (as required by Article 8(1)) may be waived (under Article 9(1)); Commission Delegated Regulation (EU) 2017/583, an onshored Delegated Regulation amended by the FCA, fulfils this role.[48] Likewise, the same Delegated Regulation provides the methodology for specifying whether there is a liquid market; the FCA then performs the calculations to determine whether a 'liquid market' exists, on the basis of information it must collect daily from, in particular, trading venues and APAs.

c. Article 10 (*Post-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives*). Market operators and investment firms operating a trading venue must, as close to real time as possible (and in any case within five minutes after the execution of the relevant transaction), make public the price, volume and time of the transactions executed on the trading venues they operate. MiFIR empowers the FCA to specify the details of the transactions that must be made available for each class of financial instrument, which details are currently provided by Commission Delegated Regulation (EU) 2017/583.

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[43] I.e. Chapter 2 MiFIR ("Transparency for non-equity instruments").

[44] Bonds, generally issued by banks and other regulated credit institutions, which are backed by a pool of assets.

[45] Securities issued by an institution which are traded on a stock exchange and which invest in underlying securities or assets.

[46] Investments which are traded on a stock exchange and themselves invest in commodities or follow commodity indices.

[47] 'Structured finance products' are defined in Article 2(1)(28) MiFIR as "securities created to securitise and transfer credit risk associated with a pool of financial assets entitling the security holder to receive regular payments that depend on the cash flow from the underlying assets". Put simply, they are a form of tradeable investment that derives its value from underlying contractual debt; e.g. mortgage-backed securities.

[48] Including to specify what a liquid market is for purposes of deferred publication in respect of post-trade disclosure obligations.

d. Article 11 (*Authorisation of deferred publication*). The FCA has the power to authorise deferred compliance with the obligation above on the basis of the size or type of the transaction, e.g. where transactions are large in scale compared with the normal market size for a given non-equity (this is sometimes referred to as the 'LIS Deferral'); similarly to the pre-trade transparency regime, there is also a deferral available in respect of fixed income and derivative instruments, or classes of fixed income and derivative instruments, for which there is not a liquid market. FCA authorisation of the proposed arrangements for deferred publication must be obtained in advance, and those arrangements must be clearly disclosed to market participants and the public. The conditions for authorising market operators and investment firms operating a trading venue to provide for deferred publication are specified by the FCA itself further to Article 11(4)(c) MiFIR, and are currently provided by Commission Delegated Regulation (EU) 2017/583. Under Article 11(3) MiFIR, the FCA may do a number of things in conjunction with giving authorisation, including allowing for the omission of the publication of the volume of an individual transaction during an extended time period of deferral of four weeks.

627 Articles 18, 19 and 21 MiFIR similarly concern transparency obligations in respect of trading in fixed income and derivative instruments, but rather than applying to market operators and investment firms operating a trading venue, these apply to systematic internalisers and, in respect of Article 21, investment firms trading over the counter. In overview:

a. Article 18 (*Obligation for systematic internalisers to make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives*). When providing a quote to a client at that client's request in respect of a non-equity which is traded on a trading venue (ToTV), systematic internalisers must, in a manner which is easily accessible and on a reasonable commercial basis, also make public firm quotes in respect of that instrument. Systematic internalisers must, in addition, undertake to enter into transactions under the published conditions with any other client to whom the quote is made available. There are waivers available which similarly hinge on specifications provided by the FCA under the UK version of Commission Delegated Regulation (EU) 2017/583.

b. Article 19 (*Monitoring by the competent authority*). The FCA has a monitoring duty in respect of the application of Article 18, and HM Treasury have the power to specify certain elements of the same article, e.g. what constitutes a 'reasonable commercial basis'.

c. Article 21 (*Post-trade disclosure by investment firms, including systematic internalisers, in respect of bonds, structured finance products, emission allowances and derivatives*). Investment firms (including systematic internalisers) trading away from a trading venue must, on concluding transactions, make public the volume and price of those transactions and the time at which they were concluded via an APA. The FCA has the power to allow investment firms to defer publication of such transaction details or may request the publication of limited details of a transaction or details of several transactions in an aggregated form, or a combination thereof, on similar terms to those provided by transactions caught by Article 11. Like Article 10, Article 21 concerns transactions in fixed income and derivative instruments which are traded on a trading venue.

628 The Act allows for the simplification of both pre- and post-trade transparency requirements by empowering the FCA to provide for the nature, scope and detail of those requirements in rules, including, if desired, with recourse to the 'liquid market' and 'ToTV' concepts. In respect of pre-trade requirements, the FCA will be able to, for example, determine, or set out a mechanism to determine, which trading systems used by venues, and which fixed income and

derivative instruments, would be in scope, and in which circumstances waivers would be available. Similarly, in respect of post-trade requirements, the FCA will be able to, for example, determine, or set out a mechanism to determine, which fixed income and derivative instruments would be in scope and in which circumstances deferrals would be available.

629 In the case of pre-trade transparency requirements on trading venues, and of post-trade transparency requirements, the FCA's rule-making powers are coupled with an obligation on the FCA to use those powers.

Commodity derivatives

630 Article 2(1)(30) MiFIR provides the legal definition of "commodity derivative", which definition the FCA adopts in its Handbook, and which is also used in the RAO.

631 In addition to providing the definition of "commodity derivative", MiFIR also contains important FCA powers in respect of the setting of position limits which are reflected in Commission Delegated Regulation (EU) 2017/591. The regulation of commodity derivatives as such is not provided for in detail in the UK version of MiFIR, which reflects the EU's MiFID II framework approach to commodity derivatives. Beyond MiFIR, and the relevant RTS which have been brought into UK law, financial regulation of commodity derivatives exists in UK law and regulation under, among others:

a. Part 3 of the MiFI Regulations, which concerns key parts of the UK's onshored regime for commodity derivatives, namely, position limits[49] and position management controls[50]; and

b. rules and directions relating to position limits, position management and position reporting at chapter 10 of the FCA's Market Conduct sourcebook (FCA MAR), which rules and directions implement Articles 57 and 58 of MiFID II.

Position limits regime

632 MiFID II provided that, in order to prevent market abuse, and to support orderly pricing and settlement conditions (including the prevention of market distorting positions), competent authorities should be empowered to establish position limits, with Article 57 of that Directive stipulating that those competent authorities must set and apply position limits. Today, the obligation on the FCA to establish position limits sits in Part 3 of the MiFI Regulations and catches both venue-traded commodity derivative contracts and economically equivalent over the counter contracts. Note that regulation 19(1) generally requires the FCA to establish position limits using Commission Delegated Regulation (EU) 2017/591 (as amended by the FCA during the onshoring process), which details the methodology for the calculation of position limits on commodity derivatives.

633 Other than position limits, the regulation of commodity derivatives in the UK also involves the application of position management controls. FCA MAR 10.3.3, which, in short, applies to firms operating MTFs or OTFs, imposes requirements in respect of position management controls, the details of which firms must provide to the FCA. Paragraph 7BA of the Schedule

[49] A position limit is a pre-set level of ownership established by exchanges or regulators that limits the number of shares or derivative contracts that a trader, or any affiliated group of traders and investors, may own.

[50] In short, these are the means by which trading venues ensure compliance with position limits.

to the Recognition Requirements Regulations sets out requirements for position management controls for investment exchanges operating trading venues which are (or wish to be) recognised by the FCA under section 290 of FSMA 2000. These requirements, which substantially mirror the FCA MAR 10.3.3 requirements, cover e.g. the monitoring of open interest positions and the power to require persons to terminate or reduce positions.

634 The Act removes the universal requirement, under Part 3 of the MiFI Regulations, for position limits to be imposed in respect of commodity derivatives, and transfers the principal responsibility for the setting of position limits (and exemptions from those position limits) from the FCA to trading venue operators, while empowering the FCA to develop a framework to support and constrain operators in both setting and applying position limits. The FCA will also retain an exceptional power to impose position limits, or restrict positions, itself. In respect of position management controls, the Act gives the FCA the flexibility to require venues to set and apply position management controls as the FCA considers appropriate.

Amendments to the EU Securitisation Regulation 2017

635 Regulation (EU) 2017/2402 ('the EU Securitisation Regulation'), laid down a general framework for securitisation and created a specific framework for designating certain securitisations as STS. It applied in the UK and EU from 1 January 2019. The EU Securitisation Regulation was accompanied by the Securitisation Regulations 2018 SI 2018/1288 ('the 2018 Regulations'), which amended UK law to ensure that the EU Securitisation Regulation was fully effective and enforceable in the UK.

636 The Securitisation (Amendment) (EU Exit) Regulations 2019, SI 2019/660 ('the Securitisation Exit SI') addressed deficiencies in the EU Securitisation Regulation and the 2018 Regulations that arose from the withdrawal of the UK from the EU. These changes, which took effect at the end of the EU Exit transition period, were made to ensure that the securitisation framework continued to operate effectively after the UK left the EU. This legislative approach, which was taken across government, is known in financial services as 'onshoring'. Amendments to the onshoring arrangements for securitisation (extending the duration of the transitional arrangements for EU STS securitisations) were made by the Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2022, SI 2022/1080 and the Financial Services (Miscellaneous Amendments) Regulations 2022, SI 2022/1223. The onshored EU Securitisation Regulation is referred to as the UK Securitisation Regulation.

637 The UK Securitisation Regulation aims to strengthen the legislative framework for securitisations and revive high-quality securitisation markets after the Global Financial Crisis. It seeks to do this in two ways:

638 First, it sets out provisions in relation to all securitisations which are within its scope, consolidating and adding to the rules that previously applied to particular types of regulated entities. These provisions include requirements for SSPEs, investors' due diligence, risk retention and transparency obligations, credit-granting standards, and a ban on re-securitisation, as well as a supervisory and enforcement framework for these requirements.

639 Secondly, it sets out a regulatory, supervisory, and enforcement framework for STS securitisations. The framework for STS securitisations is designed to make it easier for investors to understand and assess the risks of a securitisation investment.

640 Through this Act, the UK Securitisation Regulation is being amended to add new Chapter 4A, which creates the regime for STS equivalent non-UK securitisations.

Amendments to the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018

641 The UK's regulatory regime for CCPs is outlined in Part 18 of FSMA 2000. Amongst other provisions, Part 18 of FSMA 2000 grants an exemption for the purposes of the general prohibition (which provides that no person may carry on a regulated activity in the UK unless they are authorised or exempt), under which CCPs that have been recognised by the Bank are able to carry on a regulated activity in the UK without being authorised under FSMA 2000.

642 As with other areas of financial services, the regulation and supervision of CCPs has also been heavily influenced by the UK's membership of the EU. EMIR is the core EU legislation relating to CCPs. It came into effect on 16 August 2012, and lays down rules on OTC derivatives, central counterparties, and trade repositories. Following the end of the Transition Period, the EU Regulation forms part of retained EU law, by virtue of the European Union (Withdrawal) Act 2018 (EUWA 2018) and as amended by regulations made under section 8 of EUWA 2018, which ensure that EMIR continues to function appropriately and effectively in the UK. The EU Regulation as amended and forming part of retained EU law is referred to as UK EMIR.

643 The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (the "CCP Regulations") is one of the statutory instruments that amended UK EMIR in order to deal with deficiencies arising from the withdrawal of the UK from the EU. Regulations 11 to 26 provide for the TRR.

644 There have been several other instruments made under section 8 of EUWA 2018 which have made amendments to UK EMIR to ensure it works in a UK context after EU withdrawal. This includes The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019, which amended the CCP Regulations in order to establish a 'run-off' regime for overseas CCPs. Regulations 19A to 19D of the CCP Regulations provide for the run-off regime. The run-off regime was established to allow UK firms time to wind down relevant contracts and business with non-UK CCPs that did not enter the TRR or are removed from it without the necessary permissions to provide services in the UK.

645 This Act amends Regulation 19B of the CCP Regulations in two ways:

a. extending the maximum length of the run-off period from one year to 3 years and 6 months and providing that the length of a CCP's run-off period may be varied; and

b. giving the Bank a time-limited power where a non-UK CCP has exited the run-off regime before Royal Assent. This would enable the Bank to determine that the run-off period for that CCP (in spite of its expiry) is to be treated, as from the making of the determination, as not having expired and allow the Bank to use its power to vary the run-off period. The purpose of this was to ensure that UK firms would have had a sound legal footing to access the relevant CCPs in a scenario where the Act was passed after 30 June 2023.

New regulatory powers

Designated activities regime

Replacement of revoked Retained EU law

646 Section 1 of the Act revokes the retained EU law relating to financial services listed in Schedule 1. When that retained EU law is revoked, which will take place over several years, where appropriate the activities previously regulated in retained EU law can be designated by HM Treasury under the new designated activities regime in new Part 5A of FSMA, inserted by section 8 of this Act. HM Treasury will be able to provide, by way of regulations, for an activity to be a designated activity under this new regime. These “designated activity regulations” will be made under new section 71K of FSMA 2000. Under new section 71N(2) of FSMA 2000 the designated activity regulations will also be able to provide for the FCA to make rules in relation to designated activities or in relation to specified matters relating to designated activities.

Powers of the FCA under FSMA 2000

647 Section of 1B of FSMA 2000 requires the FCA to comply with a number of requirements when discharging its “general functions” under FSMA 2000. This includes acting in a way that is compatible with its strategic objectives and advancing one or more of its operational objectives. The FCA must also have regard to the regulatory principles in section 3B of FSMA 2000. The FCA’s general functions, specified in subsection (6) include the making of rules. Section 22 of FSMA 2000 provides for HM Treasury to specify in regulations activities where the person conducting them requires to be authorised by the FCA.

648 Schedule 2 to FSMA 2000 sets out a non-exclusive list of examples of activities which require authorisation, which are set out in more detail in the Financial Services and Markets Act 2000 (Regulated Activities) Order SI 2001/544 (“the Regulated Activities Order”). There are many pieces of retained EU law which set the rules for a kind of activity, product, or conduct which are not FSMA 2000 regulated activities, and which apply to a broader range of entities than persons. As a result, the general rule-making powers of the FCA in relation to authorised persons under FSMA 2000 do not currently apply. When those areas of retained EU law are revoked under section 1 of the Act, the FCA would not, therefore, have a power to make rules in relation to those activities, in the absence of the provisions of the Act. FSMA 2000 also provides the FCA with a range of information-gathering and enforcement powers, again linked to the FCA’s general functions (see for example, Parts 11 and 14 of FSMA 2000).

649 Where these powers are currently available for matters contained in retained EU law, this is sometimes enabled through statutory instruments specific to the particular matter, and sometimes through the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013[51](QUEPO). The QUEPO applies provisions of FSMA 2000 to retained EU law files listed within it. When an area of regulated activity becomes subject to designated activity regulations the corresponding retained EU law will be revoked, through commencing the revocation of section 1 of the Act in relation to the specific pieces of retained EU law, and the powers applied under the QUEPO no longer apply. The FCA would not, therefore, have

[51] SI 2013/419

access to those powers in relation to matters designated by HM Treasury under the new Part 5A of FSMA 2000, without the provisions for HM Treasury to enable powers of information-gathering and enforcement under the Act.

Financial Market Infrastructure: general rules and requirements

Regulation of FMI by the Bank of England

The existing statutory framework for the Bank's regulation of CCPs and CSDs

650 The Bank was incorporated by Royal Charter in 1694. As a chartered corporation, it is an entirely statutory entity, with its powers determined by reference to the 1694 Charter, subsequent Charters and various pieces of primary and secondary legislation. In particular, the Bank of England Act 1946 brought the Bank of England's capital stock into public ownership and made provision concerning the relationship between the Bank, HM Treasury and other banks, and the Bank of England Act 1998 (as amended over time, in particular by the Banking Act 2009, Financial Services Act 2012 and the Bank of England and Financial Services Act 2016) makes more detailed provision about the constitution, regulation, financial arrangements and functions of the Bank. Section 2A of the Bank of England Act 1998 contains the Bank's Financial Stability Objective, which applies to the Bank in its regulation of CCPs and CSDs, as in its other responsibilities. This objective requires the Bank to protect and enhance the stability of the financial system of the United Kingdom.

651 Part 18 of FSMA 2000 establishes a recognition regime for certain types of financial market infrastructure, including CCPs and CSDs that are established in the UK. The recognition regime for CCPs and CSDs is operated by the Bank, and recognised firms are subject to supervision by the Bank. Firms that are recognised are exempt from the general prohibition in FSMA 2000 in respect of the regulated activities they carry out, and hence are exempt from the requirement to obtain permission to carry on regulated activities under Part 4A of that Act.

652 The requirements of the recognition regime are set out in Part 18 of FSMA 2000 and supplemented by Schedule 17A to that Act which applies various provisions to the FCA and the PRA to the Bank when performing functions under Part 18. In particular, Part 18 and Schedule 17A give the Bank limited powers to make rules which apply to CCPs and CSDs, at section 166(9) (applied by paragraph 12 Sch 17A), section 286(4F) and section 293. Paragraph 10 of Schedule 17A applies a number of provisions in Part 9A of FSMA 2000 to rules made by the Bank, including the requirement to notify rules to HM Treasury and to publish them, and to consult before making rules.

653 Paragraph 33 of Schedule 17A requires the Bank to make a report to HM Treasury at least once a year, based on the requirements for the PRA's report under Schedule 1ZB to FSMA 2000.

Current regulation of CCPs and CSDs

654 The key regulatory requirements for CCPs in the UK are currently contained in the following instruments:

a. Titles III and IV of 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 ("EMIR"), which forms part of retained EU law and therefore continues to apply in the United Kingdom as amended by regulations made under the European Union (Withdrawal) Act 2018;

b. Part 18 of and Schedule 17A to FSMA 2000;

c. secondary legislation made in order to implement EMIR and under Part 18 of FSMA 2000;

d. technical standards made under EMIR.

655 The key regulatory requirements for CSDs in the UK are currently contained in the following instruments:

a. Titles III and IV of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 in improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (the "CSDR"), which forms part of retained EU law and therefore continues to apply in the United Kingdom as amended by regulations made under the European Union (Withdrawal) Act 2018;

b. Part 18 of and Schedule 17A to FSMA 2000;

c. secondary legislation implementing the CSDR;

d. technical standards made under the CSDR.

Regulation of FMIs by the Financial Conduct Authority

Data Reporting Service Providers

656 Data Reporting Service Providers (DRSPs) are currently regulated through:

a. the Data Reporting Services Regulations 2017 (SI 2017/699) (DRSRs)

b. chapter 9 of the FCA's Market Conduct sourcebook (MAR 9), relating to data reporting services

c. the UK version of the Markets in Financial Instruments Regulation (UK MiFIR)

d. Regulation 2017/565; and

e. onshored technical standards such as Commission Delegated Regulation 2017/571.

657 DRSPs are not authorised persons under FSMA 2000.

658 The DRSRs impose a prohibition on the provision of data reporting services in the course of business unless that person is authorised to do so under the DRSRs or is verified by the FCA. The FCA has the power to authorise a person to carry out data reporting services only where the applicant satisfies certain conditions as set out in regulation 10 of the DRSRs. The FCA may provide verification only where an applicant fulfils the requirements set out at regulation 8 of the DRSRs.

659 Operational requirements on DRSPs arise under the DRSRs and retained EU law, namely Regulation 2017/571 and Regulation 2017/565. Information requirements are set out across the DRSRs and UK MiFIR and vary depending on the type of DRSP.

660 Whilst the FCA does not have any rule-making powers over DRSPs (except for the limited power in respect of technical standards), it does have a significant role in the regulation of DRSPs. The function of the FCA in respect of DRSPs is set out at regulation 17 of the DRSRs. In exercising its function, the FCA must cooperate with other persons with a regulatory role under the DRSR including, in certain situations, the Bank of England (see regulation 19 of the DRSRs).

661 Under regulation 18, the FCA must maintain arrangements to monitor and enforce the provisions of the DRSRs. They may also give guidance, as it considers appropriate, and may direct DRSPs as to how information should be provided to them.

662 Where the FCA considers that a DRSP has contravened its requirements under the DRSRs, it may:

a. impose restrictions on that entity (regulation 22),

b. publish a statement to that effect (regulation 23), and/or

c. impose financial penalties (regulation 24).

663 The DRSRs create the offences of:

a. misleading the FCA (regulation 29); and

b. breaching the prohibition on providing a data reporting service, without authorisation or an exemption (regulation 30).

664 A person found guilty of an offence under the DRSR would be liable:

a. on summary conviction

i. in England and Wales, to a fine; or

ii. in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum; or

b. on conviction on indictment, to a fine.

Recognised Investment Exchanges

665 The legislation and rules which currently regulate Recognised Investment Exchanges (RIEs) include:

a. Part 18 of FSMA 2000 (Recognised Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulation;

b. secondary legislation, including FSMA 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (SI 2001/995) (the recognition requirements regulations);

c. Part 7 of the the Companies Act 1989 (Financial Markets and Insolvency);

d. UK MiFIR;

e. the FCA's specialist sourcebook relating to RIEs (REC); and

f. technical standards, such as Commission Delegated Regulation 2017/587, Commission Delegated Regulation 2017/583. Commission Delegated Regulation 2017/584, Commission Delegated Regulation 2017/588.

666 Section 285(2) of FSMA 2000 provides that an RIE is exempt from the general prohibition in respect of any regulated activity carried on as part of the exchange's business as an investment exchange, or which is carried on for the purposes of, or in connection with, the provision by the exchange of services designed to facilitate the provision of clearing services by another person. RIEs are outside of the FCA's "authorisation regime" and therefore not within scope of the FCA's general rule-making power under section 137A of FSMA 2000.

667 The FCA has the power to grant a 'recognition order' under section 290 of FSMA 2000 only where the applicant satisfies the recognition requirements. These recognition requirements include requirements contained in any retained direct EU legislation stemming from any EU regulation originally made under MiFID, from any EU regulation originally made under MiFIR, and any subordinate legislation made under MiFIR. The FCA's position on what is

accepted in satisfaction of these requirements is set out at REC2 of the FCA Handbook. Regulation 11 of the recognition requirements regulations confers power on the FCA to make rules for the purpose of these regulations, although to date this has not been used.

668 Sections 293 to 300 of FSMA 2000 include provisions regarding the supervision of RIEs and other recognised bodies. These include notification and information requirements. Under section 296, the FCA has limited powers to direct an RIE which has failed, or is likely to fail, to satisfy the recognition requirements, or has failed any other obligation imposed on it under FSMA 2000. In doing so, the FCA must comply with the procedure under section 298. The FCA has limited powers under s. 294 to waive or modify certain rules regarding notification under FSMA 2000.

669 UK MiFIR provides the framework for exchanges and markets in the UK, and imposes a number of information requirements on market operators and investment firms that operate trading venues. Almost all of the relevant Articles of MiFID II and UK MiFIR are subject to further specification under level 2 measures (regulatory technical standards (RTS); Implementing Technical Standards (ITS); and delegated acts).

Financial market infrastructure: regulatory sandboxes

670 Financial services are currently tightly structured and highly intermediated with a number of participating FMIs being governed by different regulatory and legal frameworks. For example, a form of FMI is a CSD. It is regulated by the Bank of England (the Bank) and its main regulatory framework is principally based on the Central Securities Depositories Regulation 2014 (CSDR), Uncertificated Securities Regulations 2001 (USRs), and Settlement Finality Regulations 1999 (SFRs). A second form of FMI is a multilateral trading facility (MTF). It is operated by an investment firm or a recognised investment exchange (RIE). The operation of MTFs by RIEs or investment firms is supervised by the FCA, and the main regulatory framework includes (without limitation) the UK MIFIR, FSMA 2000, related secondary legislation, technical standards and rules.

671 FMI legislation is intended to be 'technology neutral'. Inevitably, FMI legislation is based on and in some cases heavily tailored to the technology of the day. This potentially creates obstacles for FMI using new technology where the legislative requirements are heavily based on how existing technology works. What is unclear is whether emerging technology, such as distributed ledger technology (DLT), can always be accommodated within this existing FMI legislative framework or whether there will be legal ambiguity and a risk of inconsistencies as to whether the legislation is compatible with a particular emerging technology. An FMI sandbox is an opportunity to review the existing legislative framework in a technologically neutral way, that allows for the appropriate regulatory outcomes to be achieved.

672 For example, provisions in CSDR may prevent FMI from undertaking certain activities and practices when using emerging technology such DLT. HM Treasury's Call for Evidence to examine the application of DLT to FMI identified that operators of multilateral trading facilities (MTFs) could look to use their own DLT arrangements to settle tokenised securities traded on their market. A key obstacle to this was identified by industry in CSDR Article 3(2), which requires transferable securities traded on a UK trading venue to be "recorded in book entry form in a CSD or third-country CSD". This means that an operator of an MTF is prevented from being able to use its own settlement arrangements to settle transactions on its market.

673 The CSDR includes other definitions and obligations that are based on how current FMI IT legacy systems function, which may raise questions about their application to DLT arrangements. For example, DLT coordinates the simultaneous updating of records held by multiple 'nodes' in a decentralised network- in this context, doubts have been raised around

the compatibility of this with CSDR definitions and requirements in relation to 'securities accounts' or 'book entry form', which reflect the settlement of securities transactions being reflected by double or multiple book entry keeping on securities accounts at CSDs. Modifications to legislation may therefore provide clarity within CSDR around accommodating the functioning of DLT, in a way that meets the same regulatory outcomes but in a different way.

674 Another example is the Companies Act 2006 (CA 2006), which is the main piece of legislation that governs UK company law. It seeks to modify, consolidate, and simplify company laws which, among other things, protect shareholder rights and simplifies certain formalities and administrative burdens imposed on UK companies.

675 There is provision in the CA 2006 that certain formalities are complied with in the recording and registration of shares and access to shareholder information in a prescribed way that is intended to protect shareholders and creditors. The CA 2006 defines "company records" and specifies the form in which they are to be available for public inspection and how they are disseminated.

676 The operation of technology, such as DLT, is not necessarily incompatible with the overall obligations identified above in the CA 2006, though there is a greater risk that DLT is incompatible with the existing means and mechanisms of delivering these obligations. Temporary modifications to the CA 2006 for the duration of a FMI sandbox may ensure that key provisions, such as shareholder and creditors rights and overall company transparency are preserved, as intended by the legislation, but in a way that ensures that emerging technologies, such as DLT, operate in a way that is compatible with the legislation.

677 A further example is the USRs, which are intended to allow for title in securities to be transferred without the need for a written instrument – in what is described as "dematerialised" form. It has been highlighted by industry that the USRs are not drafted in such a way that contemplates DLT. The regulations are premised on the operation of centralised registers that are maintained by an operator using a "Relevant System" – colloquially described as providing the "golden record" – which maintains control over the maintenance and verification of records. This approach differs from how DLT is used. It is premised on a de-centralised operating system, with a number of the transactional functions, currently performed by system operators, being performed automatically within the architecture of the DLT framework concerned.

678 The examples given above are not intended to provide a legal commentary on the application of UK law with regard to DLT systems. Rather they are cited because they have been flagged as potential obstacles by industry (and as legislation that may need to be modified within the context of an FMI sandbox relating to DLT). Absent any express amendments to legislation, such as those outlined above, it is possible that this form of technology could be interpreted as compatible with parts of existing legislation, but possibly in a way that strains the existing language and therefore risks causing ambiguity, particularly as different types of technology, with different characteristics, emerge and are applied to the legislation over time. As noted, in some other cases, the introduction of new technology and practices, may be clearly incompatible with existing legislation and therefore unambiguously in need of modification if the new technologies and practices are to be integrated into the operations of FMI.

Variation from the affirmative SI procedure

679 The Act enables HM Treasury and the regulators to modify relevant enactments (including primary legislation, secondary legislation, and technical standards and rules) by applying the negative statutory instrument procedure, in place of the more standard affirmative procedure. The approach, in the context of these clauses, is reasonable because the modifications are

temporary in nature and will be available to a limited number of entities that have been approved by the regulators to participate in a particular FMI sandbox. Limitations may be placed on the amount and values of instruments permitted for an FMI activity in an FMI sandbox. FMI entities will be carefully monitored by the regulators for the duration of the FMI Sandbox and the regulators will be permitted to suspend or terminate an FMI entity for breaching the terms of an FMI sandbox or the legislative requirements. If this occurs, the general law, as it exists outside of an FMI sandbox, would then apply once more.

680 The negative statutory instrument procedure will be limited to the modification of legislation that appears as a relevant enactment on face of the Act at section 17(3). Any additions to this list of legislation are intended to be approved by affirmative statutory instrument procedure.

681 A report will be made to Parliament outlining the performance of an FMI Sandbox, in advance of any proposed permanent changes to legislation which will be subject to the affirmative statutory instrument procedure where primary legislation is amended, otherwise the negative procedure will apply. This is intended to ensure that Parliament is afforded an appropriate level of scrutiny.

682 It is possible that certain enabling legislation will fall to the rule-making powers of regulators, where the powers within the proposed future regulatory framework are to be implemented. As a result, in future the functioning of the FMI Sandbox may evolve with the regulators, rather than HM Treasury, being responsible for making the majority of legislative changes to be tested in a FMI sandbox

Powers in relation to critical third parties

683 The Bank, the PRA and the FCA's indirect power over third parties results from their direct powers over the firms they authorise and regulate under the Banking Act 2009 (for the Bank) and FSMA 2000 (for the PRA and the FCA). Under section 180-191 of the Banking Act 2009, the Bank has the power to establish principles, codes of practice and requirements for operators of recognised payments systems. Under section 137A of FSMA 2000, the FCA has the power to 'make such rules applying to authorised persons' with respect to their carrying out any activities, regardless of whether these are regulated or not. The PRA has a similar power under section S137G of FSMA 2000 in respect of PRA-authorised persons.

684 The Bank, the PRA and the FCA have used these powers to attempt to mitigate risks from third parties. In 2021, for example, the Bank, the PRA and the FCA introduced new rules on operational resilience. In addition, the PRA introduced modern expectations on outsourcing and third party risk management.

685 In comparison to their powers over authorised entities, the Bank, the PRA and the FCA have very limited direct powers over unrelated third party service providers to authorised firms.

686 The Bank can have direct regulatory power over a service provider to a recognised payments system but only if HM Treasury has specified that service provider in an order made under S206A of the Banking Act 2009. HM Treasury has to date specified only one such service provider.

687 The PRA has power under section 165A of FSMA 2000 to obtain information or documents from certain third parties, including service providers to PRA- and FCA-authorised firms, where the information or documents are relevant to the stability of the UK financial system or reasonably required by the Bank in connection with the exercise of its functions in pursuit of its financial stability objective. Exercise of the section 165A power is subject to significant procedural safeguards.

Regulatory gateway for financial promotions

688 Section 21 of FSMA 2000 provides that a person must not, in the course of business, communicate an invitation or inducement to engage in investment activity or to engage in claims management activity (referred to as a '"financial promotion"), unless they are an authorised firm, the communication is approved by an authorised firm, or there is an applicable exemption under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 ("FPO"). An authorised firm is primarily a person that has permission from the FCA or the PRA to carry on one or more regulated activities, in accordance with section 31 of FSMA 2000 (referred to as "Part 4A permission"). Engaging in investment activity is defined in section 21(8) of FSMA 2000 as relating to either a controlled activity or a controlled investment, which are further defined in Schedule 1 to FPO. The exemptions to the restriction in section 21 of FSMA 2000 are also set out in the FPO.

689 Under section 25 of FSMA 2000 it is a criminal offence for an unauthorised firm to communicate a financial promotion in breach of section 21 of FSMA 2000. Firms that commit such an offence can be liable to a fine and/or up to two years' imprisonment. In addition, agreements entered into as a result of a financial promotion that contravenes section 21(1) of FSMA 2000 are, among other things, unenforceable against any customer (section 30 of FSMA 2000).

690 The Act inserts section 21(2A) of FSMA 2000 which provides that an authorised firm can only approve a financial promotion within the scope of a permission granted by the FCA or within an exemption. The Act provides HM Treasury with a power to specify the relevant exemptions from the requirement for FCA permission to approve promotions. The Act also inserts section 55NA of FSMA 2000 which provides the FCA with powers to grant permission and to vary or cancel that permission, either on the application of the authorised firm or on the FCA's own initiative. The FCA's powers are exercisable primarily by reference to its operational objectives.

Sustainability disclosure in financial services

691 The FCA and the PRA have wide powers in FSMA 2000 to impose sustainability disclosure requirements on authorised firms in pursuance of their statutory objectives. The FCA consulted in October 2022 (CP22/20: Sustainability Disclosure Requirements (SDR) and investment labels) with regard to enhancing its ESG Sourcebook and introducing investment labels in order to better protect consumers from "greenwashing".

Digital settlement assets

692 As noted in the policy background to these Notes, the current legislation applicable to the UK payments regime is contained in various pieces of existing legislation.

693 A new category of "digital settlement asset", which includes stablecoins and other cryptoassets which meet the definition, will be created to bring all such instruments within the regulatory reach of the existing payment and electronic money landscape. Initially, digital settlement assets will be defined (in section 23(2) of this Act and new section 182(4A) of the Banking Act 2009, which will be inserted by Schedule 6 to this Act) as a digital representation of value or rights, whether or not cryptographically secured, that—

a. Can be used for the settlement of payment obligations,

b. Can be transferred, stored or traded electronically, and

c. Uses technology supporting the recording or storage of data (which may include distributed ledger technology).

The Banking Act 2009

694 The Act expands Part 5 of the Banking Act 2009. This Part of that Act provides for the Bank's oversight and supervisory powers once a payment system is "recognised" by HM Treasury upon fulfilling the designation criteria set in section 185 of the Act. In recognising a payment system using digital settlement assets or a digital settlement asset service provider, HM Treasury will consider whether an entity is likely to threaten the stability of, or confidence in the UK financial system; or have serious consequences for business or other interests throughout the UK, and if so, they will be considered for recognition. There are currently nine payment systems recognised by HM Treasury, all of whom are within the Bank's supervision. Once recognised, the Bank will have oversight of the operators of digital settlement asset recognised payment systems and will be able to, for example, issue principles (under section 188 of the Banking Act 2009) and codes of practice (under section 189 of that Act), give directions (under section 191 of that Act), take enforcement action against recognised payment systems or service providers using digital settlement asset and expect compliance with information requests.

695 Through the expansion of Part 5 of the Banking Act 2009, recognised payment systems and service providers using digital settlement assets may also be subject to the same sanctions and criminal offences that existing payment systems will be subject to in the event of a compliance failure. For example, if the Bank thinks that a compliance failure threatens the stability of, or confidence in, the UK financial system, or has serious consequences for business or other interests throughout the UK, it may give that operator of the digital settlement asset payment system a "closure order" such that all payment activities or specified activities to cease. A person in breach of a closure order is guilty of an offence, liable on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine. Under section 200, the Bank may also issue a management disqualification against a person holding an office or position for making management decisions for a recognised digital settlement asset payment system or service provider. A person who breaches a disqualification order is guilty of an offence under section 200(3) punishable by a fine, on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment.

Financial Services (Banking Reform) Act 2013

696 The Act expands the application of FSBRA 2013 so that its regulatory regime includes those systems using digital settlement assets in a similar manner to current payment system designation orders under section 43(1) of FSBRA 2013. Once a payment system has been designated as a regulated system by HM Treasury, the PSR will have regulatory powers over participants in that system to ensure that relevant stablecoin-based payment systems are subject to appropriate economic and competition regulation.

697 Thereafter the PSR will have powers over digital settlement assets to issue directions (under section 54 of FSBRA 2013), system rules (under section 55), conduct investigations into regulatory failures (sections 83-93) and have enforcement powers to maintain competition scrutiny. As in the application of offences and sanction under the Banking Act 2009, the same would be the case for the application of FSBRA 2013 criminal offences to digital settlement asset payment systems. For example, under regulation 83 of FSBRA 2013, the Payment Systems Regulator may appoint an "officer" to conduct investigations on a regulated payment in furtherance of its payment systems objectives. In connection with that investigation, digital settlement assets will risk committing criminal offences under the Act and they will be liable to a term of imprisonment, or fine, or both.

Special Administration Regimes

698 The Act gives HM Treasury powers to amend insolvency and administration procedures as they apply to the operators of recognised (under Part 5 of the Banking Act 2009) payment systems and recognised service providers that use digital settlement. This will allow HM Treasury to amend existing Special Administration Regimes (SARs) by way of secondary legislation, as they apply to such firms, to prepare for their possible failure. SARs provide for bespoke insolvency provision where the general administration process is not considered to be in the public interest. The Financial Market Infrastructure (FMI) SAR (provided for in Part 6 of FSBRA 2013 imposes an objective on administrators to ensure that a failed payment system in scope of the regime continues to be maintained and operated as an efficient and effective system, effectively prioritising this ahead of the interests of its creditors. Initially, HM Treasury intends to develop and bring forward a statutory instrument to amend the FMI SAR to ensure it can effectively be applied to digital settlement.

Implementation of mutual recognition agreements

699 The relevant legal background is explained in the policy background section of these Notes.

New objectives and regulatory principles

FCA and PRA objectives and regulatory principles

700 The statutory framework for the Financial Conduct Authority (FCA) is set out in Chapter 1 of Part 1A of, and Schedule 1ZA to, FSMA 2000. This Part sets out the FCA's general functions which consist of making rules, making technical standards in certain circumstances, issuing codes and guidance and determining its general policy and principles by reference to which it performs particular functions under FSMA 2000. Part 1A also sets out the FCA's strategic objective, three operational objectives and the regulatory principles which the FCA must advance and have regard to, respectively, when discharging its general functions.

701 The statutory framework for the Prudential Regulation Authority (PRA) is set out in Chapter 2 of Part 1A of, and Schedule 1ZB to, FSMA 2000. This Part sets out the PRA's general functions which consist of making rules, making technical standards in certain circumstances, issuing codes and determining the general policy and principles by reference to which it performs certain functions under FSMA 2000. Part 1B also sets out the PRA's general objective, insurance objective and secondary competition objective together with the regulatory principles which the PRA must promote and have regard to, respective, when discharging its general functions.

702 When discharging its general functions, the FCA must, so far as is reasonably possible act in a way which is compatible with its strategic objective and advances its three operational objectives. The three operational objectives are detailed in sections 1C, 1D and 1E of FSMA 2000. The FCA's operational objectives are concerned with consumer protection, protecting the integrity of the UK financial system and promoting effective competition. The FCA's strategic objective is to ensure that relevant markets function well.

703 The Act inserts into FSMA 2000 a new secondary objective for the FCA which requires it, so far as is reasonably possible, when discharging its general functions in a way that advances its objectives, to act in a way which advances the international competitiveness of the economy of the United Kingdom and its growth in the medium to long term.

704 The Act creates a new requirement for the FCA to make two reports to HM Treasury on how it has complied with its duty to advance the secondary competitiveness and growth objective.

705 When discharging its general functions the PRA must, so far as is reasonably possible, act in a way which advances its general objective. The PRA has a general objective, an insurance objective and a secondary competition objective.

706 The PRA's general objective is to promote the safety and soundness of PRA-authorised persons. The insurance objective is to contribute, so far as is reasonably possible, to the securing of an appropriate degree of protection for those who are or may become policyholders. This applies where the PRA is discharging its general functions so far as relating to a PRA-regulated activity relating to the effecting or carrying out of contracts of insurance. The secondary competition objective requires the PRA, when discharging its general functions in a way that advances its objectives must, so far as is reasonably possible, act in a way which facilitates effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities.

707 The Act inserts an additional secondary objective in FSMA 2000 for the PRA which requires it, when discharging its general functions in a way that advances its objectives, to act in a way which facilitates the international competitiveness of the economy of the United Kingdom in the medium to long term.

708 The Act creates a new requirement for the PRA to make two reports to HM Treasury on how it has complied with its duty to advance the secondary competitiveness and growth objective.

709 Section 1B(5)(a) of FSMA 2000 requires the FCA to have regard to the regulatory principles in section 3B of FSMA 2000 when discharging its general functions. Section 2H(2) of FSMA 2000 requires the same of the PRA. Section 3B of FSMA 2000 sets out eight regulatory principles which apply to the FCA and the PRA.

710 The regulatory principle in section 3B(1)(c) of FSMA 2000 requires the FCA and the PRA to have regard to the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term ("the sustainable growth principle").

711 The Act removes the existing sustainable growth principle and introduces a new regulatory principle which refers explicitly to section 1 of the Climate Change Act 2008 and section 5 of the Environment Act 2021. The new regulatory principle will be engaged where the relevant regulator considers the exercise of its functions to be relevant to the need to contribute towards achieving compliance by the Secretary of State to the referenced targets.

712 The Act makes consequential amendments to Part 9C of FSMA 2000 to take account of the new principle in section 3B(1)(c) of FSMA 2000.

713 The statutory framework for the PSR is set out in Part 5 of FSBRA 2013. This Part establishes the PSR as the authority responsible for exercising functions in relation to payment systems; makes provision in relation to designating payment systems as a regulated payment system; and contains provisions about the general duties of the PSR, its regulatory and competition functions. Part 5 includes the ability of the PSR to make directions, which is the PSR's principal regulatory tool, and encompasses the regulatory principles and objectives which underpin the creation of the authority.

714 The statutory principle in section 53(c) of FSBRA 2013 requires the PSR to have regard to the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term ("the sustainable growth principle").

715 The Act amends the PSR's sustainable growth principle so that it refers to section 1 of the Climate Change Act 2008 and section 5 of the Environment Act 2021. The amended regulatory principle will be engaged where the PSR considers the exercise of its functions to be relevant to the need to contribute towards achieving compliance by the Secretary of State to the referenced targets.

Regulator engagement with HM Treasury, external stakeholders, and Parliament

Regulators' relationship with HM Treasury

716 Section 1JA of FSMA 2000 provides that HM Treasury may make recommendations, by notice in writing, to the FCA about aspects of economic policy of His Majesty's government to which the FCA should have regard when considering certain matters. These are, how to act in a way which is compatible with its strategic objective, how to advance one or more of its operational objectives, the application of its regulatory principles and the importance of taking action to minimise the extent to which it is possible for a business to be used for a purpose connected with financial crime (in section 1B(5)(b) of FSMA 2000).

717 Section 30B of the Bank of England Act 1998 provides that HM Treasury may make recommendations, by notice in writing, to the Prudential Regulation Committee ("PRC") about aspects of economic policy of His Majesty's Government to which the PRC should have regard to when considering how to advance the PRA's objectives and when considering the application of the regulatory principles in section 3B of FSMA 2000.

718 HM Treasury is required to make recommendations to the FCA and the PRA at least once in each Parliament.

719 The Act inserts a new provision in FSMA 2000 that requires the FCA and the PRA to respond to each recommendation made by HM Treasury in writing before the end of 12 months beginning with the date the notice containing the recommendation was given. The new provision places an ongoing requirement, to be exercised every 12 months, on the FCA and the PRA to update HM Treasury on its responses to the recommendations.

720 The FCA's rule-making powers are set out in Parts 5, 6, 8A, 9A, 9B, 9C, 12A, 15, 15A, 16, 17, 17A, 20, 22 of, and Schedules 1ZA and 1A to, FSMA 2000. This includes the power to make 'general rules' in section 137A. In addition, the FCA has rule-making powers under the Payment Services Regulations 2017[52] and the Electronic Money Regulations 2011[53].

721 The PRA's rule-making powers are set out in Parts 5, 9A, 9B, 9D, 11, 12A, 12B, 15A, 19 of, and Schedule 1ZB to, FSMA 2000.

722 The Act inserts in FSMA 2000 a general duty on the FCA and the PRA to keep their rules under review and to issue and maintain a statement of policy setting out how the FCA and the PRA will review their rules. The provision provides that the statement of policy must provide information about how representations, including by a statutory panel, can be made to the FCA and the PRA with respect to the duty to review rules and the arrangements to ensure that those representations are considered. The new provision gives HM Treasury the power to direct the FCA and the PRA to carry out a review of rules that the FCA or the PRA have made where HM Treasury believes it is in the public interest to do so. Where HM Treasury has directed the FCA or the PRA to undertake a review of certain rules, the new provision also requires the FCA and the PRA to make a written report to HM Treasury

[52] SI 2017/752.

[53] SI 2011/99.

detailing the findings of its review. HM Treasury must then publish this report and lay it before Parliament. Schedule 7 amends FSBRA 2013 to include new sections imposing equivalent requirements on the PSR.

723 Sections 144C(3) and (4) of FSMA 2000 require the PRA to consider and consult HM Treasury on the impact on relevant equivalence decisions when making rules relating to the Capital Requirements Regulation (CRR) or CRR Basel standards. Sections 143G (3) and (4) of FSMA, contain a similar requirement for the FCA when making rules relating to the prudential regulation of investment firms regulated by the FCA.

724 The Act inserts section 409A in FSMA 2000 to specify the circumstances in which the regulators must consult with HM Treasury in relation to the effect of certain actions on deference decisions.

725 The Act inserts section 409B in FSMA 2000 to specify the circumstances in which the regulators must notify HM Treasury in relation to compatibility of certain actions with international trade obligations.

726 Section 138L of FSMA 2000 sets out general exemptions to the regulator's duty to consult the public. These (and any other exemption from a duty to consult) are relevant to determining whether and when the regulators must consult / notify HM Treasury under Sections 409A and 409B. This is because the obligation to consult/notify HM Treasury will only generally only apply where the regulators are under a duty to consult in respect of the action that they propose to take (though section 409B also contains obligations which apply in the absence of a duty to consult).

727 Section 138M of FSMA 2000 sets out an exemption to the FCA's duty to consult the public in relation to temporary product intervention rules. The application of section 138M to sections 409A and 409B has been modified by the Act. The modified section 138M is relevant to determining whether and when the regulators must consult/ notify HM Treasury under sections 409A and 409B.

728 Section 410 of FSMA 2000 allows HM Treasury to direct the FCA, the PRA and the Bank of England in exercising certain functions to take action (or refrain from taking action) in order to ensure that the UK meets its international obligations. Obligations arising from international trade agreements fall within this section. Section 410 of FSMA 2000 does not apply to the PSR.

729 Section 9S of the Bank of England Act 1998 requires the Financial Policy Committee to prepare an explanation of how the use of powers in section 9H (directions to the FCA or the PRA requiring macro-prudential measures) and section 9Q (recommendations to the FCA and the PRA) is compatible with duties under section 9F (other general duties). Section 9F sets out that the Financial Policy Committee must have regard to the international obligations of the UK. Sections 409A and 409B of FSMA 2000 accordingly omit overlaps with the provisions in the Bank of England Act.

730 Part 2 of Schedule 17A to FSMA 2000 applies certain provisions of FSMA 2000 in relation to the Bank of England. By amendments under section 450 of this Act, sections 409A and 409B of FSMA 2000 are applied with modification to the Bank in exercise of its FMI functions.

731 FSBRA 2013 establishes the PSR as the authority responsible for exercising functions in relation to payment systems. Schedule 7 amends FSBRA 2013 to include a new section 107A on international trade obligations. This works analogously to section 409B to specify the circumstances in which the PSR must notify HM Treasury in relation to compatibility of their actions with international trade obligations. Unlike the other regulators, the PSR does not

have a rule-making function, and instead imposes generally applicable requirements. Accordingly, new section 107A applies to proposals to impose generally applicable requirements, or changes to the PSR's general policies and practices).

Power for HM Treasury to direct the regulator to report on performance

732 Paragraph 11(1) of Schedule 1ZA to FSMA 2000 requires the FCA to make a report to HM Treasury annually. Paragraph 11(1) of Schedule 1ZA details the information which the FCA must include in the annual report. Paragraph 11(1)(j) of Schedule 1ZA provides a power for HM Treasury to specify information which the FCA must include in the annual report.

733 Paragraph 19(1) of Schedule 1ZB to FSMA 2000 requires the PRA to make a report to the Chancellor annually. Paragraphs 19(1) and 19(1A) of Schedule 1ZA detail the information which the PRA must include in the annual report. Paragraph 19(1)(g) of Schedule 1ZB provides a power for HM Treasury to specify information which the PRA must include in the annual report.

734 Paragraph 33 of Schedule 17A to FSMA 2000 applies paragraph 19 of Schedule 1ZB to FSMA 2000 to the Bank of England when acting as a regulator for CCPs and CSDs.

735 Paragraph 7(1) of Schedule 4 to FSBRA requires the PSR to make a report to the FCA annually. Paragraph 7(2) of Schedule 4 details the information which must be included in the annual report.

736 The Act provides a new power to HM Treasury, in addition its power to direct the FCA, PRA and the Bank in its function as a regulator for CCPs and CSDs to include specified information in their annual reports. The new power, in paragraph 11A of Schedule 1ZA, paragraph 21A of Schedule 1ZB to FSMA 2000 and paragraph 7A of Schedule 4 to FSBRA permits HM Treasury to direct the FCA, PRA, Bank and PSR to report on such matters as specified by HM Treasury where the information is reasonably necessary for the purpose of reviewing and scrutinising the discharge of the regulators' functions and only where other information available is not sufficient.

737 The new provisions for each of the regulators state that a direction by HM Treasury may not require the publication of information that is confidential information for the purposes of Part 23 of FSMA. "Confidential information" is defined in section 348(2) of FSMA 2000 and section 91(2) of FSBRA.

Engagement with stakeholders

738 Part 1A of FSMA 2000 details the statutory panels which the FCA must establish and maintain. The FCA Practitioner Panel represents the interests of practitioners, the Smaller Business Practitioner Panel represents the interests of eligible practitioners, the Markets Practitioner Panel represents the interests of practitioners who are likely to be affected by the exercise of the FCA of its functions relating to markets and the Consumer Panel represents the interests of consumers.

739 The FCA is required to consult the statutory panels and consider representations that are made by the panels. Where appropriate, the FCA must publish the representations it receives from the panels.

740 The FCA appoints the members of the statutory panels. HM Treasury's approval is required for the appointment and dismissal of the chair of the statutory panels. The Act inserts a new provision in FSMA 2000 that requires the FCA to prepare and publish a statement of policy detailing the process adopted for making appointments and the matters considered in determining who is appointed.

741 The Act also inserts a provision in FSMA 2000 that requires the FCA to establish and maintain a panel called the Listing Authority Advisory Panel to represent the interests of practitioners who are likely to be affected by the exercise by the FCA of its functions relating to the listing, issue or trading of products on recognised investment exchanges and other markets the operation of which is regulated by the FCA.

742 Section 2L of FSMA 2000 places a duty on the PRA to make and maintain effective arrangements for consulting PRA-authorised persons or persons appearing to the PRA to represent the interests of such persons. This includes a requirement to make and maintain the PRA Practitioner Panel (see section 2M of FSMA 2000).

743 The PRA is required to consider representations that are made by the PRA Practitioner Panel. Where appropriate, the FCA must publish the representations it receives from the panel.

744 The PRA appoints members of its statutory panel. HM Treasury's approval is required for the appointment and dismissal of the chair. The Act inserts in FSMA 2000 a provision that requires the PRA to prepare and publish a statement of policy detailing the process adopted for making appointments and the matters considered in determining who is appointed.

745 The Act also inserts a new provision in FSMA 2000 that requires the PRA to establish and maintain a panel called the Insurance Practitioner Panel to represent the interests of practitioners involved in the carrying on of the activity of effecting or carrying out contracts of insurance.

746 Paragraph 11 of Schedule 1ZA to FSMA 2000 requires the FCA to make a report to HM Treasury at least once a year on a number of matters including the discharge of its functions, the extent to which it has acted compatibly with its strategic objective and the extent to which its operational objectives have been advanced. The existing requirement in relation to the FCA's operational objective will also capture the FCA's new secondary competitiveness and growth objective. The Act inserts new provisions into Schedule 1ZA to FSMA 2000 that requires the FCA to include in its annual report any engagement it has had with the statutory panels of the FCA, the PRA or the PSR and how it has complied with the statement of policy on panel appointments in section 1RA of FSMA 2000.

747 Paragraph 19 of Schedule 1ZB to FSMA 2000 requires the PRA to make a report to the Chancellor of the Exchequer at least once a year on a number of matters including the discharge of its functions, the extent to which, in the PRA's opinion, it has advanced its objectives. The existing provision in paragraph 19 in relation to the PRA's objectives will also capture the PRA's new competitiveness and growth objective. The Act inserts new provisions into Schedule 1ZB to FSMA 2000 that require the PRA to include in its annual report any engagement it has had with the statutory panels of the PRA, the FCA or the PSR and how the PRA has complied with the statement of policy on panel appointments in section 2NA of FSMA 2000.

748 The Act inserts new provisions in FSMA 2000 that require the FCA and the PRA to each publish a CBA statement of policy which applies when the regulator is proposing to make new rules or amend existing rules. The statement of policy will make reference to the methodology of the CBA, the application of existing exemptions to carry out a cost benefit analysis, how the regulator considers section 138I(8) of FSMA 2000 (whether the costs and benefits can be reasonably estimated), how any representations made by stakeholders at the consultation stage are considered and the criteria for when the regulator does not need to consult with the cost benefit analysis panel in relation to the development of cost benefit analysis.

749 Section 138J(2)(a) of FSMA 2000 requires the PRA to undertake and publish a CBA alongside a draft of any proposed rules. "Cost benefit analysis" is defined in section 138J(7) of FSMA 2000.

750 The Act inserts a new provision in FSMA 2000 that requires the PRA to establish and maintain a statutory panel which is dedicated to supporting the development of the PRA's cost benefit analyses for the purposes of section 138J. The Act requires the PRA to appoint two members to this panel who are employed by persons authorized, for the purposes of FSMA 2000, by the PRA.

751 Section 138I(2)(a) of FSMA 2000 requires the FCA to undertake and publish a CBA alongside a draft of any proposed rules. "Cost benefit analysis" is defined in subsection (7).

752 The Act inserts a provision in FSMA 2000 that requires the FCA to establish and maintain a statutory panel to provide advice in relation to cost benefit analyses for the purpose of section 138I of FSMA 2000. The Act requires the FCA to appoint two members of this panel who are employed by persons authorized, for the purposes of FSMA 2000, by the FCA.

753 Section 103 of FSBRA 2013 sets out the PSR's general duty to make and maintain effective arrangements for consulting relevant persons on the extent to which its general policies and practices are consistent with its general duties under section 49, and how its payment systems objectives may best be achieved. Section 103(3) confirms that these arrangements must include the establishment and maintenance of one or more panels of persons to represent the interests of relevant persons.

754 The PSR appoints the members of the statutory panel. HM Treasury's approval is required for the appointment and dismissal of the chair of the statutory panel. The Act inserts a new provision in FSBRA 2013 that requires the PSR to prepare and publish a statement of policy detailing the process adopted for making appointments and the matters considered in determining who is appointed.

755 Section 104 of FSBRA 2013 states that before imposing a generally applicable requirement, the PSR must publish a draft of the proposed requirement, accompanied by a cost benefit analysis (defined in subsection (7)).

756 The Act inserts a provision in FSBRA 2013 requiring the PSR to consult the FCA's Cost Benefit Analysis Panel about the preparation of CBAs under section 104. It also places requirements on the FCA Cost Benefit Analysis Panel in relation to the PSR's duties in connection with CBAs. It also requires the PSR to publish a statement of policy in relation to the preparation of CBAs for the purposes of section 104 FSBRA 2013 and include in its annual report, published in accordance with paragraph 7 of Schedule 4 to FSBRA, how it has complied with this statement.

Appointment of external persons to statutory panels

757 Section 1M of FSMA 2000 requires the FCA to make and maintain effective arrangements for consulting practitioners and consumers on the extent to which its general policies and practices are consistent with its general duties. In order to satisfy this requirement, the FCA has the following statutory panels:

a. The FCA Practitioner Panel (set out in section 1N of FSMA);
b. The Smaller Business Practitioner Panel (set out in section 1O of FSMA);
c. The Markets Practitioner Panel (set out in section 1P of FSMA);
d. The Consumer Panel (set out in section 1Q of FSMA);
e. The Listing Authority Advisory Panel (new section 1QA of FSMA, inserted by section 41 of the Act); and
f. FCA Cost Benefit Analysis Panel (new section 138IA of FSMA, inserted by section 43(2) of the Act).

758 The members of the panels listed above are appointed by the FCA. The Act introduces a provision (new section 1MA of FSMA) which means that persons who receive remuneration from the FCA, PRA, the Bank, PSR or HM Treasury are disqualified from being appointed as a member of a statutory panel. This will capture anyone who is completing work for the regulators or HM Treasury but will not capture those who only receive expenses.

759 "Remuneration" is not defined in this new section because the default position in other legislation is that a reference to "remuneration" does not include expenses – see for example, paragraph 7 of Schedule 1 to the Advanced Research and Invention Agency Act 2022.

760 The Act provides HM Treasury with a power to make regulations to exempt a panel generally or in relation to such descriptions of persons or cases as the regulations may specify. These regulations will be subject to the negative procedure.

761 Section 2L of FSMA 2000 requires the PRA to make and maintain effective arrangements for consulting PRA-authorised persons, or persons who represent the interest of such persons, on the extent to which its general policies and practices are consistent with its general duties. In order to satisfy this requirement, the PRA has the following statutory panels:

a. The PRA Practitioner Panel (set out in section 2M of FSMA);
b. The Insurance Practitioner Panel (new section 2MA of FSMA inserted by section 42 of this Act); and
c. PRA Cost Benefit Analysis Panel (new section 138JA of FSMA inserted by section 43(3) of this Act).

762 The members of the panels listed above are appointed by the PRA. The Act introduces a provision (new section 2LA of FSMA) which means that persons who receive remuneration from the FCA, PRA, the Bank, PSR or HM Treasury are disqualified from being appointed as a member of a statutory panel. This will capture anyone who is completing work for the regulators or HM Treasury but will not capture those who only receive expenses.

763 "Remuneration" is not defined in this new section because the default position in other legislation is that a reference to "remuneration" does not include expenses – see for example, paragraph 7 of Schedule 1 to the Advanced Research and Invention Agency Act 2022.

764 The Act provides HM Treasury with a power to make regulations to exempt a panel generally or in relation to such descriptions of persons or cases as the regulations may specify. These regulations will be subject to the negative procedure.

765 Section 103(1) of FSBRA 2013 requires the PSR to make and maintain effective arrangements for consulting relevant persons on certain specified areas.

766 Section 103(3) of FSBRA requires the PSR to establish and maintain one or more panels to represent the interests of relevant persons. In order to satisfy this requirement, the PSR has established the Payment Systems Regulator Panel.

767 The members of the Payment Systems Regulator Panel are appointed by the PSR. The Act introduces a new provision in section 103 which means that persons who receive remuneration from the FCA, PRA, the Bank, PSR or HM Treasury are disqualified from being appointed as a member of a statutory panel. This will capture anyone who is completing work for the regulators or HM Treasury but will not capture those who only receive expenses.

768 "Remuneration" is not defined in this section because the default position in other legislation is that a reference to "remuneration" does not include expenses – see for example, paragraph 7 of Schedule 1 to the Advanced Research and Invention Agency Act 2022.

769 The Act provides HM Treasury with a power to make regulations to exempt a panel generally or in relation to such descriptions of persons or cases as the regulations may specify. These regulations will be subject to the negative procedure.

Publication of consultation respondents

770 Section 138I(1)(b) of FSMA 2000 requires the FCA to, before making any rules, and after consulting the PRA, consult publicly on the proposed rules. Section 138I(2) of FSMA 2000 sets out what must accompany the consultation. Section 138I(4) of FSMA 2000 requires the FCA to publish an account of the representations that have been made to it in response to the consultation and its response to these representations.

771 The Act inserts new provisions into section 138I of FSMA 2000. New sections 138I(4A) to (4C) require the FCA to publish the names of respondents to a consultation published under section 138I(1)(b) as part of its response in accordance with section 138I(4). This requirement only applies where a respondent has explicitly provided their consent to the FCA that their response can be published. New section 138I(4D) requires the FCA to describe how it has considered representations made by a Committee of the House of Commons, House of Lords or a Joint Committee of both Houses in accordance with section 138I(2)(e).

772 Section 138J(1)(b) of FSMA 2000 requires the PRA, before making any rules, and after consulting the FCA, to consult publicly on the proposed rules. Section 138J(2) of FSMA 2000 sets out what must accompany the consultation. Section 138J(4) of FSMA 2000 requires the PRA to publish an account of the representations that have been made to it in response to the consultation and its response to these representations.

773 The Act inserts a new provision into section 138J of FSMA 2000. New sections 138J(4A) to (4C) require the PRA to publish the names of respondents to a consultation published under section 138J(1)(b) as part of its response in accordance with section 138J(4). This requirement only applies where a respondent has explicitly provided their consent to the PRA that their response can be published. New section 138J(4D) requires the FCA to describe how it has considered representations made by a Committee of the House of Commons, House of Lords or a Joint Committee of both Houses in accordance with section 138J(2)(e).

774 Paragraph 10(1)(i) of Schedule 17A to FSMA 2000 applies section 138J of FSMA 2000 and the provision inserted by the Act to the Bank of England in respect of its functions in relation to CCPs and CSDs.

775 The Act inserts a new paragraph into Schedule 17A to FSMA 2000 (paragraph 10A) which applies section 138J of FSMA 2000 and the provision inserted by the Act to the Bank of England in relation to rules made by the Bank of England under section 312M of FSMA 2000.

776 Section 104(2)(b) of FSBRA 2013 requires the PSR to, before imposing generally applicable requirements, and after consulting the Bank of England, the FCA and the PRA, consult publicly on the proposed rules. Section 104(3) of FSBRA 2013 sets out what must accompany the consultation. Section 104(5) of FSBRA requires the PSR to publish an account of the representations that have been made to it in response to the consultation and its response to these representations.

777 The Act inserts a new provision into section 104 of FSBRA 2013. Sections 104(5A) to (5C) require the PSR to publish the names of respondents to a consultation published under section 104(2)(b) as part of its response in accordance with section 104(5). This requirement only applies where a respondent has explicitly provided their consent to the PSR that their response can be published. New section 104(5D) requires the PSR to describe how it has considered representations made by a Committee of the House of Commons, House of Lords or a Joint Committee of both Houses in accordance with section 104(5).

Treasury power to require annual reports by statutory panels

778 The Act provides a power for HM Treasury to, by regulations subject to the negative procedure, require specified statutory panels of the FCA, PRA and PSR to produce an annual report on their work and to provide that report to HM Treasury to lay before Parliament.

Accountability to Parliament

779 The Act inserts a new provision in Schedules 1ZA and 1ZB to FSMA 2000 that requires the FCA and the PRA to notify the chairs of relevant Parliamentary Committees that a relevant consultation has been issued. For the PSR, an equivalent amendment is made via a new provision in Schedule 4 to the Financial Services (Banking Reform) Act 2013 (FSBRA 2013).

780 Where the FCA or the PRA issue a public consultation and a Committee of the House of Commons or the House of Lords or a joint Committee of both Houses has provided to the FCA or the PRA representations in response to the consultation, the new provision in Schedules 1ZA and 1ZB requires the FCA and the PRA to respond in writing to the representations. For the PSR, an equivalent obligation to respond to Parliament is created in the new provision of Schedule 4 to FSBRA 2013.

Financial Ombudsman Service, FCA and FSCS co-operation on wider implications issues

781 The Financial Ombudsman Service is set up under Part 16 and Schedule 17 to FSMA 2000 and referred to in that legislation as "the ombudsman scheme". The ombudsman scheme's statutory purpose is to provide for the resolution of certain disputes "quickly and with minimum formality by an independent person" (section 225(1) of FSMA 2000) based on what is, in the ombudsman's opinion, fair and reasonable in all the circumstances of the case. The Financial Ombudsman Service is administered by the Financial Ombudsman Service Limited, a company limited by guarantee, which is the "body corporate" established by the Financial Services Authority (now the FCA) under paragraph 2(1) of Schedule 17 to FSMA 2000 (as originally enacted). Financial Ombudsman Service Limited is the "scheme operator" for the purposes of FSMA 2000 (see section 225(2) FSMA 2000).

782 The Financial Ombudsman Service is operationally independent from the FCA, but the FCA has a duty to make the rules which govern the Financial Ombudsman Service's operation (including matters such as the scope of the Financial Ombudsman Service's jurisdiction and the eligibility of complainants). These rules are in the FCA's Dispute Resolution: Complaints Sourcebook (DISP).

783 The FSCS is a scheme set up under Part 15 of FSMA 2000 to provide for the payment of compensation, up to certain limits, to eligible customers of financial services firms that are unable, or likely to be unable, to pay claims against them. Technically, the FSCS consists of the rules establishing the "compensation scheme" that have been made by the FCA and the Prudential Regulation Authority (PRA) under Part 15 of FSMA 2000. "FSCS" is also used as an abbreviation for the Financial Services Compensation Scheme Ltd, the company limited by guarantee which administers the compensation scheme and which is defined as the "scheme manager" in FSMA 2000 (see section 212(1) of FSMA 2000).

784 Like the Financial Ombudsman Service, the FSCS is operationally independent from the FCA, but the FCA and the PRA are responsible under section 212(2) FSMA 2000 for ensuring that the scheme manager is at all times capable of exercising its functions under parts 15 and 15A of FSMA 2000. The FCA's rules governing the FSCS are in its Compensation Sourcebook (COMP).

785 Paragraph 3A of Schedule 17 to FSMA 2000 (Relationship with FCA) requires the Financial Ombudsman Service and the FCA to "take such steps as [they] consider appropriate to cooperate with each other in the exercise of their functions" and requires them to prepare (and publish) a memorandum describing how they intend to comply with that obligation.

786 The FCA and the Financial Ombudsman Service have a Memorandum of Understanding in place which was entered into in December 2015 to comply with their duty under paragraph 3A of Schedule 17 of FSMA 2000. This document provides "a framework for the FCA and the Financial Ombudsman Service Limited to cooperate and communicate constructively to carry out their independent roles and separate functions" (paragraph 2). This "is particularly important where the FCA is taking supervisory or regulatory action and, at the same time, the Financial Ombudsman Service Limited's ombudsman scheme is receiving a significant number of cases concerning the same issue" (paragraph 4). Paragraph 14(d) of the memorandum requires the Financial Ombudsman Service and FCA to "consult one another at an early stage on any issues that might have significant implications for the other organization", and paragraph 14(e) requires them to "share (for comment) at an early stage, draft documents (such as consultation papers and briefings) that affect the other's functions.".

787 Section 232A of FSMA 2000 provides that the Financial Ombudsman Service must disclose to FCA any information which "would or might be of assistance to the FCA in advancing one or more of FCA's operational objectives". In addition to this obligation, the memorandum makes further provision about voluntary information sharing between the Financial Ombudsman Service and FCA, and provides that the Financial Ombudsman Service and FCA may each disclose information to the other for the purpose of assisting either party in discharging their functions.

788 The FSCS and the FCA are subject to an equivalent duty to take appropriate steps to cooperate with each other and to prepare, maintain and publish a memorandum describing how they intend to do so, under section 217A of FSMA 2000 (Co-operation). Accordingly, the FCA and the FSCS also have a Memorandum of Understanding in place, which provides at paragraph 19 that the FCA "will seek advice from the FSCS in relation to domestic or international policy making initiatives that might have a material effect on the FSCS's ability to administer those schemes effectively now or in the future". This memorandum also states that: the FCA and FSCS "undertake to share information to allow them to fulfil their respective responsibilities" (paragraph 11); the FSCS "will keep the FCA informed in relation to issues concerning the interpretation of rules, the eligibility of claims, and its contingency and scenario planning, where appropriate" (paragraph 12); the FCA "agrees to keep the FSCS informed of any regulatory or market developments that may affect the planning or operation of the FSCS - both in general terms and in relation to the likelihood of a specific firm failing" (paragraph 13); and the FSCS "will keep the FCA informed on the effectiveness of the rules for the compensation scheme".

789 The Financial Ombudsman Service and the FSCS are not subject to a bilateral duty of cooperation akin to the duties in paragraph 3A of Schedule 17 to, and section 217A of, FSMA 2000.

Chair of the Payment Systems Regulator as member of FCA Board

790 The PSR is a body corporate which was established by the FCA under Part 5 of the Financial Services (Banking Reform) Act 2013 (FSBRA 2013), to exercise regulatory functions in relation to payment systems. Under paragraph 2(2)(a) of Schedule 4 to FSBRA 2013, the FCA is responsible for appointing a member to chair the board of the PSR (the PSR Chair), with the approval of HM Treasury.

791 The "governing body" of the FCA (the FCA Board) is formed in accordance with paragraph 2 of Schedule 1ZA to FSMA 2000. Under paragraph 2(2)(a), HM Treasury is responsible for appointing a chair to that board (the FCA Chair). Under paragraph 2(3), certain members of the FCA Board are non-executive members.

792 Until 1 May 2022, the same individual was appointed to the offices of FCA Chair and PSR Chair. Therefore, the PSR Chair was effectively a member of the FCA Board. However, the PSR Chair is no longer the same person as the FCA Chair, and the PSR Chair is not currently listed as a member of the FCA Board in paragraph 2(2) of Schedule 1ZA to FSMA 2000.

793 The Act adds the PSR Chair to that list, so that the PSR Chair will become a member of the FCA Board in their own right. It also amends paragraph 2(3) to specify that the PSR Chair is to be a non-executive member.

794 The Act also ensures that the following provisions in Schedule 1ZA FSMA 2000 will be extended to apply to the PSR Chair as member of the FCA Board:

a. Paragraph 3(6), which provides that an employee of the PRA cannot be an "appointed member" of the FCA Board.

b. Paragraph 3(7), which allows the FCA to pay expenses to the Bank's Deputy Governor for prudential regulation for service as a member of the FCA Board.

c. Paragraph 6, which prohibits the Bank's Deputy Governor for prudential regulation from taking part in discussions about the exercise of the FCA's powers in relation to particular persons.

Access to cash

Cash access services

795 The Act inserts new Part 8B, titled "Cash Access Services", into FSMA 2000. Part 8B applies to credit institutions which are authorised under Part 4A. The FCA therefore already regulates the carrying on of regulated activities by these credit institutions. In September 2020, the FCA issued guidance setting out considerations that these firms should take into account when planning the closure of a branch or ATM, or conversion of a free-to-use ATM to pay-to-use. This guidance was underpinned by Principles 6 and 7 of the FCA's "Principles for Business."

796 The new Part 8B of FSMA 2000 provides the FCA with a bespoke rule making and directions power to further advance the aim of protecting access to cash for UK customers, through seeking to ensure the continued reasonable provision of cash withdrawal and deposit facilities; this includes reasonable provision of free cash access services for relevant personal current accounts.

Wholesale cash distribution

797 There currently exists no statutory regime relating to the wholesale cash distribution network and the Bank has no statutory powers of oversight. The Act establishes a new statutory oversight regime of wholesale cash distribution. In particular, it confers on the Bank a formal role of oversight over the wholesale cash distribution network.

Performance of functions relating to financial market infrastructure

798 The key features of the senior managers and certification regime (SM&CR) introduced by the Act for relevant recognised bodies will be similar to those of the existing SM&CR for banks, insurers and other authorised persons, which is set out in Part 5 of FSMA 2000.

799 The existing SM&CR replaced the Approved Persons Regime (APR) between March 2016 and December 2019. The APR, which was introduced in 2001 and was set out in sections 59 to 71 of FSMA 2000, required the pre-approval by a regulator of certain individuals within financial institutions before they could carry out one or more activities. The global financial crisis in 2007-08 and the Libor scandal in 2012 exposed the shortcomings of the APR, and made clear that there was a need for more effective regulation of the conduct of individuals working in the financial services industry.

800 This was achieved by amending FSMA 2000 to augment the APR with the SM&CR for certain types of financial institutions. The SM&CR was introduced with the aim of reducing harm to consumers and strengthening market integrity by changing behaviours and culture within firms. The Financial Services (Banking Reform) Act 2013 created two regimes within sections 59 to 71 of FSMA 2000. The new SM&CR would apply to 'relevant authorised persons' (i.e., banks, building societies, credit unions and PRA-regulated investment firms), and the APR would continue to apply to all other authorised persons. SM&CR was subsequently extended to all authorised persons. As a result of the amendments to sections 59 to 71 of FSMA 2000, the existing SM&CR can be viewed as an enhanced version of the APR.

801 The SM&CR set out in Part 5 of FSMA 2000 has five key elements: the Senior Managers Regime (sections 59 to 63ZE and 71 of FSMA 2000); the Certification Regime (sections 63E and 63F of FSMA 2000); conduct rules for individuals (sections 64A to 64C of FSMA 2000); disciplinary powers (sections 56 to 58, 63A to 63D and 66 to 71 of FSMA 2000); and criminal offences (sections 56(4) and 398 of FSMA 2000).

802 Whilst the new regime implemented by the Act will be broadly similar to the SM&CR set out in Part 5, it will sit separately to the existing regime, and will be set out in Part 18 of FSMA 2000.

803 In order to implement the regime, the Bank and the FCA would rely on both their general rule-making powers as well as bespoke rule-making powers and duties. This Act introduces a new general rule-making power for the Bank over CCPs and CSDs which will be inserted as section 300F of FSMA 2000 (see section 9), and a new general rule-making power for the FCA over RIEs and data reporting service providers (DRSPs) which will be inserted as section 300H of FSMA 2000 (see section 11). Regulation 3 of The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019[54] grants the FCA an existing general rule-making power over CRAs.

804 The UK's regulatory regime for CCPs, CSDs and RIEs is outlined in Part 18 of FSMA 2000. Amongst other provisions, Part 18 of FSMA 2000 grants an exemption for the purposes of the general prohibition (which provides that no person may carry on a regulated activity in the

[54] SI 2019/266.

UK unless they are authorised or exempt), under which RIEs, CCPs and CSDs that have been recognised by the regulator are able to carry on a regulated activity in the UK without being authorised under FSMA 2000. It also provides for the recognition and supervisory powers of the relevant regulators – the FCA in respect of RIEs and the Bank in respect of CCPs and CSDs. As with other areas of financial services, the regulation and supervision of UK CCPs, CSDs and RIEs has also been heavily influenced by the UK's membership of the EU. The core EU legislation relating to each of these bodies is set out below.

805 The European Market Infrastructure Regulation (EMIR)[55] is the core EU legislation relating to CCPs. It came into effect on 16 August 2012, and lays down rules on OTC derivatives, central counterparties, and trade repositories. Following the end of the Transition Period, the EU Regulation forms part of retained EU law, by operation of the European Union (Withdrawal) Act 2018 (EUWA 2018) and as amended by regulations made under section 8 of EUWA 2018, which ensure that EMIR continues to function appropriately and effectively in the UK. The EU Regulation as amended and forming part of retained EU law is referred to as UK EMIR.

806 The Central Securities Depositories Regulation (CSDR)[56] is the core EU legislation relating to CSDs, and it came into effect on 17 September 2014. The aim of CSDR is to harmonise certain aspects of the settlement cycle and settlement discipline and to provide a set of common requirements for CSDs operating securities settlement systems across the EU. Following the end of the Transition Period, the EU Regulation forms part of retained EU law, by operation of EUWA 2018, and as amended by regulations made under section 8 of EUWA 2018, which ensure that CSDR continues to function appropriately and effectively in the UK. The EU Regulation as amended and forming part of retained EU law is referred to as UK CSDR.

807 The Markets in Financial Instruments Directive (MiFID II)[57] and the Markets in Financial Instruments Regulation (MiFIR)[58] form the MiFID II framework, which is the core EU legislation relating to RIEs. The MiFID II framework came into effect on 3 January 2018. The framework strengthens investor protection and improves the functioning of financial markets, making them more efficient, resilient and transparent. Following the end of the Transition Period, the MiFID II framework forms part of retained EU law, by operation of EUWA 2018. The EU MiFID II framework was transposed and implemented in the UK by a combination of FCA and PRA Handbook rules, HM Treasury legislation (such as the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018), and directly applicable EU regulations, which delivered the necessary amendments to ensure that the framework was implemented and continues to function appropriately and effectively following the end of the Transition Period. MiFID II and MiFIR as amended and forming part of retained EU law are referred to together as the UK MiFID II framework.

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[55] 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.

[56] Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.

[57] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

[58] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

808 The Credit Rating Agencies Regulation (the EU CRAR)[59] is the core EU legislation relating to CRAs and credit ratings. It was developed to address issues relating to CRAs that became apparent in the financial crisis of 2007/08. The EU CRAR was subsequently amended by Regulation (EU) 513/2011 (OJ L 145/30) (EU CRA II Regulation) and Regulation (EU) 462/2013 (OJ L 146/1) (EU CRA III Regulation). The EU Regulation now forms part of retained EU law, by operation of EUWA 2018. The Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019[60] delivered 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 UK CRAR.

809 As set out in the FRF Review consultation, it is proposed that, as a general approach, the direct regulatory requirements that apply to firms in retained EU law be revoked, so that, for the most part, the regulators can determine them in their rulebooks. There are also a number of provisions in retained EU law which do not set direct regulatory requirements on firms. These may be amended and/or retained in domestic legislation. The core EU legislation mentioned above will therefore be revoked, with most firm-facing requirements replaced by regulators' rules, and other requirements retained and restated in legislation.

Central counterparties in financial difficulties

810 As explained above, the UK has an existing recovery and resolution regime for central counterparties (CCPs), which came into force in 2014. This regime comprises Part 1 of the Banking Act 2009, as modified and extended to CCPs by section 102 of the Financial Services Act 2012, and secondary legislation made under the Banking Act 2009.

811 Section 102 of the Financial Services Act 2012 inserted sections 89B to 89G into Part 1 of the Banking Act 2009, with section 89B setting out the modifications of Part 1 in its application to CCPs.

812 Part 1 of the Banking Act 2009 has since been amended by the Bank Recovery and Resolution Order 2014, the Bank Recovery and Resolution Order 2016, and the Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020. None of these amendments affected the regime as it applies to CCPs, and section 89B(1ZA) disregards amendments made by these enactments for the purposes of the CCP regime.

813 The existing resolution regime for CCPs is therefore based on the text of Part 1 of the Banking Act 2009, as amended in accordance with any amendments not disregarded under section 89B, as modified under section 89B[61].

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[59] Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies.

[60] SI 2019/266.

[61] Minor amendments have been made under the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018/1394.

Miscellaneous

Disciplinary action against formerly authorised persons

814 Under section 168(3) and (5) of FSMA 2000, the FCA and the PRA may appoint one or more competent persons to conduct an investigation on their behalf. Section 168(1) to (2) sets out the circumstances in which a regulator can exercise its power under section 168(3). Section 168(4) specifies the circumstances in which a regulator can exercise its power under section 168(5). The powers in section 168 can be used against a range of persons, including authorised persons under FSMA 2000.

815 Part 14 of FSMA 2000 gives the FCA and the PRA certain disciplinary powers. In particular, if a regulator considers that an authorised person has contravened a relevant requirement, it may publish a statement to that effect under section 205, or impose a financial penalty, under section 206(1) of FSMA 2000. By virtue of section 404C of FSMA 2000, these powers can also be used against formerly authorised persons to enforce rules made under section 404.

816 Under section 384(5), the FCA or the PRA can require an authorised person to pay profits unlawfully accrued or an amount for the loss the person caused if the regulator is satisfied that the conditions set out in subsection (1) are met.

817 The powers described above cannot be used against formerly authorised persons (except in the circumstances set out in section 404C). "Authorised person" under section 31 of FSMA 2000 means a person with a current permission to carry on one or more regulated activities in the UK.

Financial Services Compensation Scheme

818 Part 15 of FSMA 2000 makes provision in connection with the FSCS. The FSCS is administered by the FSCS manager established under section 212 of FSMA 2000. The FCA and the PRA are responsible for appointing and removing the FSCS manager's chairperson, chief executive and directors. The appointment and the removal of the chairperson and chief executive require HM Treasury's approval.

819 Section 212(3)(aa) of FSMA 2000 requires the chief executive to be the accounting officer of the FSCS manager. This requirement reflects the principle that the permanent heads of ALBs are usually appointed as the accounting officers for those bodies.

820 Under section 218B of FSMA 2000, HM Treasury can require the FSCS manager to provide information reasonably required in connection with HM Treasury's duties under the Government Resources and Accounts Act 2000.

The Ombudsman scheme

821 The FOS is an alternative dispute resolution scheme set up under Part XVI of, and Schedule 17 to FSMA 2000 and is referred to in that legislation as "the ombudsman scheme". The ombudsman scheme's statutory purpose is to provide for the resolution of certain disputes "quickly and with minimum formality by an independent person" section 225(1) of FSMA 2000 at no financial cost to the complainant based on what is, in the ombudsman's opinion, fair and reasonable in all the circumstances of the case.

822 The FOS is administered by the Financial Ombudsman Service Limited, a company limited by guarantee, which is the "body corporate" established by the Financial Services Authority (now the FCA) under paragraph 2(1) of Schedule 17 to FSMA 2000 (as originally enacted). FOS Ltd is the "scheme operator" for the purposes of FSMA 2000 (see section 2).

823 Section 63 amends paragraph 15 of Schedule 17 to FSMA 2000 to enable HM Treasury to make regulations to add further categories of persons to the list of those to whom the FOS can charge case fees. This amendment prevents HM Treasury from adding eligible complainants (those bringing their own cases to the FOS) to the categories of persons to whom the FOS can charge case fees.

Unauthorised Co-ownership AIFs

824 The concept and definition of a "contractual scheme" is set out at section 235A of FMSA 2000. Contractual schemes are a form of collective investment scheme as per section 235A(2) and section 235A(5) of FSMA 2000. They can be established as a co-ownership scheme (section 235A(2) to (4) of FSMA 2000), or as a partnership scheme (section 235A(5) to (7) of FSMA 2000). If the contractual scheme is established as a co-ownership scheme it is not prevented from being established as an umbrella structure[62] (section 235(4) of FSMA 2000).

825 A contractual scheme can apply to the FCA for authorisation, per sections 261C to 261D of FSMA 2000, and therefore become an authorised contractual scheme, by virtue of an authorisation order under section 261D(1) of FSMA 2000. If it is structured as a co-ownership scheme, it will therefore be a CoACS.

826 Sections 261M to 261P of FSMA 2000 sets out the rights and liabilities of participants in CoACS. These provisions afford CoACS with the following:

a. section 261M of FSMA 2000 makes provision about the contracts in the scheme;
b. section 261N of FSMA 2000 limits an investor's rights and liabilities - to which they are entitled or subject under, or in connection with, contracts in the scheme - to the period that they are a participant;
c. section 261O of FSMA 2000 limits an investor's liability for debts incurred under, or in connection with, contracts which the operator is authorised to enter on their behalf; and
d. section 261P of FSMA 2000 provides for the segregation of liabilities of participants in sub-funds, where a co-ownership scheme is constituted as an umbrella fund.

827 These provisions (sections 261M to 261P of FSMA 2000) do not apply to a co-ownership scheme that does not benefit from an authorisation order and therefore would not apply to a new investment vehicle, like the unauthorised contractual scheme, that is structured as an unauthorised co-ownership AIF with a corresponding tax treatment, if such a vehicle was introduced into statute.

828 The power taken in this measure enables HM Treasury to essentially apply, as relevant, the effects of sections 261M to 261O and section 261P(1) and (2) of FSMA 2000 to a contractual scheme, that is a co-ownership scheme, but which does not benefit from an authorisation order (noting that of section 261P of FSMA 2000, only section 261P(1) and (2) of FSMA 2000 would be relevant for the unauthorised contractual scheme in any event). Any such scheme would likely be an alternative investment fund ("AIF"), as per section 417(1) of FSMA 2000 and so the power is scoped to only apply to AIFs (hence the term, "unauthorised co-ownership AIF" within the measure). The likely exercise of this power will therefore be to

[62] An "umbrella fund" is a collective investment scheme that exists as a single legal entity, but has several distinct sub-funds which, in effect, are traded as individual investment funds.

make provision that corresponds or is similar to sections 261M to 261O and section 261P(1) and (2) of FSMA 2000, for a new investment vehicle that benefits from a corresponding tax treatment and is structured as an unauthorised co-ownership AIF. This is in the event that such a vehicle was introduced into statute, like the unauthorised contractual scheme.

829 Separately, this measure also amends section 261E of FSMA 2000, to clarify that section 261E of FSMA 2000 is relevant for the purposes of authorised contractual schemes with regards to section 261D(1)(a) of FSMA 2000, reflecting the title of the section.

Control over authorised persons

830 The change in control regime is contained in Part 12 of FSMA 2000. This sets out the full process for all applications for a change in control.

831 Section 187 which sets out the circumstances where conditions can be imposed:

(2) The appropriate regulator may only impose conditions where–

(a) if it did not impose those conditions, it would propose to object to the acquisition, or

(b) it is required to do so by a direction under section 187A(3)(b) or section 187B(3)

832 The Act adds an additional limb to this section to enable the regulators to impose conditions where it is appropriate to do so in order to advance any of that regulator's objectives.

Cryptoassets

833 Section 69 amends FSMA 2000. It amends the definitions of "investment" for the purposes of section 21 of FSMA 2000, which allows HM Treasury to prohibit unauthorised persons from issuing financial promotions, and section 22 of FSMA 2000, which allows HM Treasury to make provision as to the classes of regulated activity and types of investment that are regulated under FSMA 2000. In doing so, it ensures that HM Treasury's powers under sections 21 and 22 of FSMA 2000 can be used to regulate cryptoassets.

834 Section 69(4)(a) inserts a new definition of "cryptoasset" to section 417 of FSMA 2000. Per sections (4)(b) and (5), HM Treasury may amend this definition by SI subject to the affirmative Parliamentary procedure.

Bank of England levy

835 The Cash Ratio Deposit scheme is provided for by section 6 of, and Schedule 2 to, the Bank of England Act 1998. Certain aspects of the scheme, such as the value bands and the ratio applicable to each value band used for calculating how much a financial institution must deposit, are set out in secondary legislation made under paragraphs 2 and 5 of Schedule 2 to the Bank of England Act 1998. The Act repeals all these provisions and, in its place, make provision for a levy to be imposed.

Liability of payment service providers for fraudulent transactions

The Financial Services (Banking Reform) Act 2013

836 FSBRA 2013 specifically Part 5, as supplemented by Schedule 4, established the PSR, and specifies the entities it regulates (namely designated payment systems and their participants), provides for the PSR's objectives and powers in relation to those regulated entities, and how those powers are to be exercised.

837 Under section 43 of FSBRA 2013, HM Treasury may by order designate a payment system and its participants for regulation by the PSR, provided certain criteria (in section 44 of that Act) are met.

838 The PSR's objectives, in summary, include: to promote effective competition in the markets for payment systems and services - between operators, payment service providers (PSPs) and infrastructure providers (the "competition objective"; section 50 of FSBRA 2013); to promote the development of and innovation in payment systems, in particular the infrastructure used to operate those systems (the "innovation objective"; section 51 of FSBRA 2013) and to ensure that payment systems are operated and developed in a way that considers and promotes the interests of all the businesses and consumers that use them (the "service-user objective"; section 52 of FSBRA 2013).

839 In order to achieve these objectives, the PSR may give direction to regulated participants (section 54 of FSBRA 2013), and/or require payment system rule changes (section 55 of FSBRA 2013).

The Payment Services Regulations 2017

840 The Payment Services Regulations 2017 are the main domestic legislation governing payment services in the UK, establishing the rights and obligations of payment service users (including payers and payees) and PSPs - including banks and certain other authorised entities - in relation to payment services. The Payment Services Regulations implemented the requirements of the Second Payment Services Directive and were made under powers in section 2(2) of the European Communities Act 1972. The Payment Services Regulations were amended by the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 (2018/1201) using powers under the European Union (Withdrawal) Act 2018 to fix deficiencies arising as a result of the UK's exit from the European Union.

841 Regulation 90(1) of the Payment Services Regulations provides that where a payment order is executed in accordance with the "unique identifier" (defined in regulation 2 of the Payment Services Regulations) provided by the payment service user, the payment order is deemed to have been correctly executed by each PSP involved in executing the payment order, and the PSP is not obliged to provide reimbursement.

842 The Financial Conduct Authority (FCA) remains the competent authority for the purposes of monitoring and enforcing regulation 90.

Credit unions

843 The relevant legal background is explained in the policy background section of these Notes.

Reinsurance for acts of terrorism

844 The relevant legal background is explained in the policy background section of these Notes.

Banking Act 2009: miscellaneous amendments

845 Section 7A(1) of the Banking Act 2009 requires the Bank of England, where it is considering the imposition of a requirement under certain direction-making powers in section 3A of that Act, to consult the PRA and the FCA, and to have regard to certain potential impacts of those directions. When section 3A was amended in December 2020 to implement an update of the EU Bank Recovery and Resolution Directive, the cross-reference made to section 3A in section 7A(1) was not updated to reflect that amendment. This provision updates that cross-reference in section 7A(1). This restores the obligation for the Bank of England to consult other regulators (and have regard to specific impacts) in relation to the amended parts of section 3A.

846 Section 83ZD of the Banking Act 2009 allows the Bank of England to appoint persons to conduct an investigation where there are circumstances suggesting that a person may have failed to comply with any requirement imposed by the Bank of England under Part 1 of the

Banking Act. An exception to this is where the requirement is imposed by the Bank in relation to regulatory sanctions. This provision corrects the cross-reference to the provision related to regulatory sanctions.

847 Section 89H of the Banking Act 2009 provides for the recognition by the Bank of England of resolution actions undertaken in a country or territory outside the United Kingdom. This provision provides for the removal of certain words used in subsection (7) which have no legal effect and may reduce clarity of the recognition process.

848 Part 5 of the Banking Act 2009 provides the Bank of England with regulatory powers over payment systems that may pose financial stability risks to the UK. For those powers to be engaged, the payment system must be recognised by HM Treasury as suitable for such regulation, under section 182 of that Act.

849 Section 244 of the Banking Act 2009 provides that the Bank, its directors, officers, employees and agents are immune from liability in damages for anything done or not done in the exercise of its functions, as described in that section.

Arrangements for the investigation of complaints

850 Part 6 of the FSA 2012 governs the investigation of complaints against the FCA, the PRA and the Bank ("the regulators") by the Financial Regulators Complaints Commissioner.

851 Section 84 of the FSA 2012 requires the regulators to put in place a scheme for the prompt, independent investigation of complaints made against them in respect of their relevant functions (as defined in section 85), for example complaints about maladministration.

852 Under section 84(1)(b), the regulators must appoint an independent person as the "investigator" (i.e. the Complaints Commissioner). This appointment requires the approval of HM Treasury under section 84(4), and it must be made on terms and conditions reasonably designed to ensure the Complaints Commissioner's independence from the regulators, and to ensure that complaints will be investigated under the scheme without favouring the regulators (section 84(5)).

853 The Act amends section 84 to provide that HM Treasury, rather than the regulators, must appoint the Complaints Commissioner on terms and conditions reasonably designed by HM Treasury to ensure independence from the regulators, and to ensure that complaints will be investigated under the scheme without favouring the regulators.

854 Section 86 of the FSA 2012 requires the regulators to consult publicly on a draft of the proposed scheme, and any alteration to or replacement of the complaints scheme, to consider and report on representations received, and to publish up-to-date details of the complaints scheme. The current complaints scheme is available on the Complaints Commissioner's website.

855 Section 87 of the FSA 2012 deals with the operation of the complaints scheme. Under subsection (1) a regulator may decide not to investigate a complaint in accordance with the scheme if it reasonably considers that it would be more appropriately dealt with in another way. A regulator may make an initial investigation of a complaint, and the Scheme must provide for the possibility of referral of any complaint it is investigating to the Complaints Commissioner (subsection (2)(a)). The regulator must also notify the Complaints Commissioner of complaints it has decided not to investigate, and the Complaints Commissioner may choose to investigate such a complaint (subsections (3) and (4)).

856 Where the Complaints Commissioner has conducted an investigation, it must report on it to the regulator and the complainant, and the investigator can recommend that the regulator makes a compensatory payment to the complainant or remedies the matter, or both

(subsection (5)). The Complaints Commissioner can publish all or part of the report if the investigator thinks that it ought to be brought to the attention of the public (subsection (2)(b)(iii)) and, if a report is critical of the regulator, the regulator must inform the investigator and the complainant of the steps it proposes to take in response (subsection (6)) and the investigator may require the regulator to publish all or part of that response (subsection (7)).

857 Two further subsections were inserted in section 87 by section 20 of the Small Business, Enterprise and Employment Act 2015, requiring the complaints scheme to provide for the Complaints Commissioner to make an annual report. Under subsection (9A), the annual report is prepared and published by the Complaints Commissioner, who must send a copy of the report to each regulator and HM Treasury. If the report makes recommendations or criticisms about the regulators' handling of complaints, the regulators must produce and publish a response. The regulators must send a copy of their response to both the Complaints Commissioner and HM Treasury. HM Treasury must lay the annual report and any responses before Parliament.

858 The Act inserts a new subsection (9A)(ba) to require the regulators, in their response to the Complaints Commissioner’s annual report, to provide a summary of the cases in which they decided not to follow “relevant recommendations” of the Complaints Commissioner, and a summary of the reasons for those decisions. “Relevant recommendations” is defined in a new subsection (9C) as recommendations to the regulator contained in the Complaints Commissioner’s annual report, or in final reports given by the Complaints Commissioner in relation to individual complaints during the period to which the annual report relates.

859 Subsection (9B) provides a power for the complaints scheme to include provision about the period to which each annual report must relate, and about the contents of the report. It also requires the complaints scheme to provide for the report to include specific contents.

860 The Act inserts a new subsection (9B)(f), which enables HM Treasury to direct the Complaints Commissioner to include other matters (as may be specified in the direction) in its annual report.

Politically exposed persons

861 Section 77 requires HM Treasury to exercise existing powers contained in section 49 of the Sanctions and Anti-Money Laundering Act 2018 to amend regulation 35 of the MLRs. This regulation sets out the existing requirements in relation to enhanced customer due diligence with respect to PEPs including, at paragraph (4), taking into account guidance issued by the FCA.

862 The FCA must give guidance on the enhanced customer due diligence measures required in relation to PEPs, their family members and known close associates in accordance with section 139A of the Financial Services and Markets Act 2000 and regulation 48 of the MLRs.

863 Further detail as to the relevant legal background is explained in the policy background section of these Notes.

Forest risk commodities: review

864 Section 79 obliges HM Treasury to carry out a review to assess the extent to which regulation of the UK financial system is adequate for the purpose of eliminating the financing of the use of prohibited forest risk commodities.

865 Once HM Treasury has undertaken this review, it must publish and lay before Parliament a report which states its conclusions, and the steps it considers appropriate to take to improve the effectiveness of the regulation of the UK financial system for the purpose of eliminating the financing of the use of prohibited forest risk commodities.

866 The timing of HM Treasury's report is connected with the making of regulations by the Secretary of State under paragraph 1 of Schedule 17 to the Environment Act 2021, which will specify "forest risk commodities" for the purposes of the prohibition in that Act on regulated persons using illegally produced forest risk commodities (or products derived therefrom) in UK commercial activities. HM Treasury's report must be published and laid before Parliament before the end of 9 months beginning with the day on which the first regulations under paragraph 1 of Schedule 17 are made.

867 Section 79 sets out relevant definitions for the purposes of the scope of the review:

a. "UK financial system" has the same meaning as in section 1I of FSMA 2000 (meaning the financial system operating in the UK including (a) financial markets and exchanges; (b) regulated activities and claims management activities; and (c) other activities connected with financial markets and exchanges).

b. "Forest risk commodities" has the same meaning as in Schedule 17 to the Environment Act, namely a commodity specified in paragraph 1 to that Schedule, to be specified further by regulations made by the Secretary of State under that paragraph (which are yet to be made as at the date of this Act receiving Royal Assent).

c. "Prohibited" forest risk commodities refers to those commodities (or products derived from those commodities), the use of which is prohibited by paragraph 2 of Schedule 17 to the Environment Act 2021. Paragraph 2 prohibits regulated persons (for the purposes of that Act) from using forest risk commodities (or products derived from such commodities) in their UK commercial activities unless relevant local laws were complied with in relation to those commodities. "Relevant local laws" are further defined under that legislation.

Territorial extent and application

868 Section 85 sets out the territorial extent of the Act. That is, the jurisdictions in the UK of which the Act forms part of the law; application applies to where the Act has practical effect.

869 Financial services is a reserved matter in the UK. The Act extends and applies to England, Wales, Scotland and Northern Ireland, with two exceptions. Section 73 (credit unions) and section 74 (reinsurance for acts of terrorism) extend to England, Wales and Scotland only.

870 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of the Act

Part 1: Regulatory Framework

Chapter 1: Revocation of retained EU law

Section 1: Revocation of retained EU law relating to financial services and markets

871 Subsection (1) revokes the retained EU law relating to financial services referred to in Schedule 1.

872 This has the effect of revoking most types of retained EU law entirely, subject to commencement.

873 Subsection (2) sets out the contents of Schedule 1.

874 EUWA 2018 saves as part of UK law directly effective rights that existed through section 2(1) of ECA where those rights have been recognised by a domestic or EU court before then. It also saves rights derived from Directives that have been recognised by the courts prior to the end of the transition period. Subsection (3) disapplies those rights, along with any other powers, liabilities, obligations, restrictions, remedies and procedures which may have been preserved by EUWA 2018 in any of the instruments in Schedule 1. To the extent to which the government considers it desirable to save those rights, they can be saved through the savings provisions in section 84(2)(c).

875 Subsection (4) clarifies that, where a piece of retained EU law is revoked, any amendments that that piece of retained EU law makes will continue to apply. For example, if an instrument referred to in Schedule 1 makes an amendment to FSMA 2000, then FSMA 2000 will remain unchanged, and unaltered by the revocation of the instrument which amended it.

876 Subsection (5) enables HM Treasury to exclude subordinate legislation from Part 5 of the Schedule, meaning that it would not be revoked by Part 5.

877 Subsection (6) is self-explanatory.

Section 2: Transitional amendments

878 This section inserts Schedule 2, which makes transitional amendments to parts of Schedule 1 before it is revoked.

879 Subsection (2) establishes the concept of a "transitional period". Each piece of legislation captured by Schedule 1 has its own transitional period, which lasts from the commencement of this section to the point at which the revocation of that instrument is commenced.

880 Subsection (3) is self-explanatory.

Section 3: Power to make further transitional amendments

881 This section creates a power for HM Treasury to modify retained EU law captured by Schedule 1 during the transitional period. It can only be modified for the reasons set out in subsection (2).

882 Many of the 'reasons' in subsection (2) are similar to the objectives of the FCA, the PRA, the financial stability objective of the Bank of England, and the special resolution objectives in section 4 of the Banking Act 2009. This section should be read in its own right, and is in no way bound by the way that these objectives are interpreted by the regulators.

883 Subsection (3) is self-explanatory.

884 Subsection (4) enables HM Treasury to create powers, including new regulator rule-making powers, as part of modifying retained EU law for or in connection to one of the purposes in subsection (4). Subsection (4)(a) governs the creation of new powers generally; and subsections (4)(b) and (4)(c) confirm that HM Treasury may confer powers for HM Treasury to make subordinate legislation and for the regulators to make rules and other instrument. An important point is that subsection (4)(c) is not limited to rule-making. The Payments Systems Regulator (PSR), for example, makes directions and not rules, and a direction is an example of an "other instrument" that is captured by this section. Section 7 defines "regulator" as the PRA, the FCA, the Bank of England, or the PSR.

885 Subsection (5) clarifies that when exercising the power under section 84(2)(c), HM Treasury can restate legislation for the purpose of making the law clearer or more accessible.

886 Subsection (6) require HM Treasury to consult the PRA, the FCA, and PSR, and the Bank of England when exercising this power. The effect of subsection (7) is that HM Treasury must consult the PRA and the FCA in all instances, and the Bank of England and the PSR only where HM Treasury considers it appropriate to do so.

887 Subsection (8)(b) provides that the power in this section cannot be used to amend technical standards, which are a subset of EU tertiary legislation. Responsibility for these instruments was transferred to the financial services regulators using powers in EUWA 2018, and the regulators already have the ability to amend or revoke them. Subsection (8)(b) also prohibits the use of the power over new technical standards instruments made by the regulators.

888 Subsections (9) and (10) govern the Parliamentary procedure to be applied when the power in this section is exercised. Regulations under this section can be made through the negative procedure where they modify either EU tertiary legislation, or subordinate legislation which was originally made under negative procedure. Otherwise, the affirmative procedure must be used.

Section 4: Power to restate and modify saved legislation

889 This section clarifies the power in subsection (5) of section 86, which is the power to make transitional and saving provision when making regulations to commence parts of this Act. Subsection (1) provides that, when revoking retained EU law captured by Schedule 1, HM Treasury may exercise the power to make saving provision in order to restate parts of retained EU law into domestic primary or secondary legislation (referred to as "restatement regulations"). Subsection (1)(a) enables HM Treasury to amend existing primary and secondary legislation and subsection (1)(b) enables HM Treasury to create new secondary legislation through restatement regulations.

890 Subsection (2) enables HM Treasury to modify the restated retained EU law in the restatement regulations. HM Treasury can modify legislation either to make the law clearer or more accessible, or for any of the purposes in section 3(2). That means that when modifying retained EU law, either directly as per section 3 or when restating it into domestic legislation as per section 4, it can be modified for the same set of purposes.

891 Subsection (3) provides that restatement regulations should not be treated as retained EU law, to the extent to which they would otherwise be.

892 Subsection (4) provides that HM Treasury can continue to modify restatement regulations for the purpose of making the law clearer or more accessible or for any of the same set of purposes in section 3(2).

893 Subsection (5) clarifies that HM Treasury can create powers for the regulators or HM Treasury, or modify existing powers in FSMA 2000, in the same way as through section 3(4).

894 Subsection (6) clarifies that restatement regulations can be used to restate an entire piece of legislation t captured by Schedule 1, or part of one.

895 Subsection (7) applies the same restriction to restating technical standards and other EU tertiary legislation as in section 3(8).

896 Subsections (8) and (9) govern the Parliamentary procedure to be applied when this power is exercised. Regulations under this section can be made through the negative procedure where they amend either EU tertiary legislation, subordinate legislation which was originally made under negative procedure, or where legislation is restated without modification for a purpose in section 3(2). Otherwise, the affirmative procedure must be used. The affirmative procedure must be used in all instances where restatement regulations amend primary legislation.

Section 5: Power to replace references in EU directives

897 Subsection (1) provides that HM Treasury can modify legislation in order to remove references to EU directives. While directives were implemented in UK law, there are many existing references to EU directives in legislation. Where HM Treasury exercises this power, there is no requirement that it replaces the removed reference with a new reference.

898 Subsection (2) provides that this power is only exercisable if HM Treasury considers it necessary or desirable for the purpose of making the law clearer or more accessible, or for any of the purposes in section 3(2).

899 Subsections (3) and (4) govern the Parliamentary procedure to be applied when this power is exercised. Where the power is exercised to amend primary legislation, the affirmative procedure must be used. Otherwise, the negative procedure can be used.

Section 6: Restatement in rules: exemption from consultation requirements

900 Under section 6 the regulators are exempt from certain requirements when making, amending or revoking rules in relation to retained EU law.

901 Subsection (1) provides that a relevant requirement does not apply to the making of rules by the regulator where the proposed rules make excluded provision in relation to the retained EU law specified in Schedule 1 and which has been specified by HM Treasury in regulations.

902 "Relevant requirement" is defined in subsection (3) and means specified statutory requirements that apply to the regulators when make rules, such as carrying out a public consultation.

903 "Excluded provision" is defined in subsection (2B) and means, in the opinion of the regulator, that the rules reproduce the relevant retained EU law in Schedule 1 without material changes, or the changes are material but their effect is to reduce a regulatory burden.

904 Subsection (2) provides that a relevant requirement does not apply to rules made by the regulator if the rules make 'excluded changes' to existing rules that contain a retained EU obligation and which are specified by HM Treasury in regulations.

905 "Excluded changes" is defined in subsection (2C) and means changes to existing rules that, in the opinion of the regulator, reduce a regulatory burden and have no other effects that are material.

906 Subsection (3) provides that a relevant requirement does not apply to the revocation of rules by a regulator if the rules make provision containing a retained EU obligation and, the rules that are being revoked are not being replaced.

907 Subsection (4) sets out a definition of "excluded provision" for the purposes of subsection (1).

908 Subsection (5) sets out a definition of "excluded changes" for the purposes of subsection (2).

909 Subsection (6) sets out a non-exhaustive list of matters that fall within the term "regulatory burden".

910 Subsection (7) provides that a relevant requirement does not apply to an incidental, supplemental, consequential or transitional provision made in connection with rules that are made, amended or revoked as described in subsections (1), (2) or (2A).

911 Subsection (8) sets out the meaning of 'relevant requirement' for the FCA, the PRA, the Bank of England, and the PSR.

912 Subsection (9) requires the regulator to publish a statement when making, or revoking rules that are subject to this exemption. The statement must list the provisions of legislation that have been restated by the rules, the retained EU obligations that have been changed by the rules, or the retained EU obligations that have been removed by the rules, as relevant.

913 Subsection (10), applies where new rules or changes to existing rules make material changes but their effect is to reduce a regulatory burden. In these circumstances, the subsection requires the regulators to explain in the statement why it believes that the proposed rules are compatible with, in particular, their statutory objectives.

914 Subsections (5) and (6) are self-explanatory.

915 Subsection (7) sets out the meaning of 'rules' referred to in this section in relation to the FCA, the PRA, the Bank of England and the PSR.

Section 7: Interpretation of Chapter

916 This section governs the interpretation of Chapter 1 of the Act.

917 Subsection (1) defines several terms which are used in the preceding sections and Schedule 1.

918 Subsection (2) clarifies that, for the purposes of Chapter 1 of the Act, references to legislation do not include references to rules made by the regulators. Otherwise, regulator rules would be revoked through Part 5 of Schedule 1.

919 Subsections (3) and (4) are self-explanatory.

Chapter 2: New regulatory powers
Designated activities regime

Section 8: Designated activities

920 This section inserts new Part 5A into FSMA 2000.

New section 71K: Designated activities

921 This new section of FSMA 2000 allows HM Treasury to specify an activity as a designated activity through secondary legislation.

922 Subsections (1) and (2) empower HM Treasury to make designated activities regulations. These regulations enable HM Treasury to specify an activity as a "designated activity", bringing it into the regulation of new Part 5A of FSMA 2000.

923 Subsection (3) stipulates that HM Treasury can only specify an activity is a designated activity if that activity is related or connected to either, the financial markets or exchanges of the United Kingdom, or to financial instruments, financial products or financial investments that are (or are proposed to be) issued or sold to, or by, persons in the United Kingdom.

924 Subsection (4) is self-explanatory.

925 Subsection (5) refers to Schedule 6B which is inserted into FSMA 2000 by section 8(9) of, and Schedule 3 to, this Act, which contains an illustrative, but non-exhaustive list of examples of the types of activity which HM Treasury intends to specify as designated activities. This is similar to Schedule 2 to FSMA 2000 which relates to regulated activities. Schedule 6B itself is inserted by subsection (9) of section 8.

926 Subsection (6) clarifies that the contents of Schedule 6B in no way limits HM Treasury's power to designate activities under this section.

927 Subsection (7) clarifies that financial instruments, financial products and financial investments can include cryptoassets for the purpose of this section.

New section 71L: Restrictions on carrying out designated activities

928 Subsection (1) prohibits any person from carrying on a designated activity, to the extent to which it is prohibited by HM Treasury through designated activities regulations.

929 Subsection (2) stipulates that any person carrying out a designated activity, which is not prohibited under subsection (1), must do so in line with designated activities regulations made by HM Treasury, and designated activity rules made by the FCA.

930 Subsection (3) is self-explanatory.

New section 71M: Designated activity regulations: general

931 This section provide that designated activity regulations can make provision about the carrying on of delegated activities.

932 Subsection (2) gives examples of what could be included in designated activity regulations. This includes the ability to state in which circumstances the restrictions on carrying out a designated activity imposed by section 71L are to apply to a person carrying out the activity outside the United Kingdom. Subsection 2(b) enables HM Treasury to make designated activity regulations supplementing or connected to any FCA rules in relation to designated activities.

933 Subsection (3) allows HM Treasury to make exemptions through designated activity regulations, for example to exclude a certain type of firm from the requirement to follow designated activities rules and designated activities regulations. It also gives HM Treasury the ability to confer powers both on itself and on the FCA through designated activity regulations.

New section 71N: Designated activity: rules

934 This section governs the making of designated activity rules by the FCA.

935 Subsection (1) enables the FCA to make rules relating to any and all designated activities which are designated through designated activity regulations.

936 Subsection (2) states that subsection (1) only applies to the extent to which this is provided for in HM Treasury's designated activities regulations.

937 Subsection (3) gives the FCA the ability to suspend designated activity rules for any length of time it considers appropriate.

938 Subsection (4) allows the FCA to modify or waive designated activity rules where the FCA considers it appropriate.

939 Subsection (5) states that the FCA can only suspend, modify or waive designated activity rules under subsections 3 or 4 under circumstances specified by HM Treasury in secondary legislation.

940 Subsection (6) requires the FCA to consult with the PRA before suspending any rules.

941 Subsection (7) states that the FCA must bring any suspension of designated activity rules under subsection (3) to the attention of those impacted by the relevant rules.

942 Subsection (8) states that the reference to "authorised persons" in section 138T(a) of FSMA 2000 should also be read as relating to persons subject to designated activities rules. This has the effect of meaning that the FCA's designated activities rules can make different provision for different types of persons, activities, or investment. Section 138T(b) and Section 138(c) apply automatically to designated activities rules, as they apply to all regulator rule-making under FSMA 2000, including designated activities rules.

New section 71O: Designated activities: directions

943 Subsection (1) gives the FCA a power of direction in relation to designated activities. As supplemented by subsection (3), this power enables the FCA to require a person carrying on a designated activity to take, or refrain from taking, an action specified by the FCA.

944 Subsection (2) states that HM Treasury has the power to state, in secondary legislation, when the FCA is able to exercise its power of direction under subsection (1). Subsection (10) expands on this by enabling HM Treasury to set conditions which the FCA must meet when exercising a power of direction. Under subsection (11) this can include, but is not limited to, a requirement to consult the PRA before imposing or varying a requirement under subsection (1) relating to a PRA-authorised person.

945 Subsection (4) states that any action required by the FCA's power of direction under this section need not be in relation to a designated activity itself.

946 Subsections (5) to (12) are self-explanatory.

New section 71P: Designated activities: liability

947 This section sets out that designated activities regulations can make regulations concerning liability and compensation.

948 Subsection (2) states that a contravention of a designated activity rule or regulation does not make a person guilty of an offence, or make transactions void or unenforceable, or give rise to action for breach of statutory duty, unless designated activity regulations explicitly state otherwise.

949 Subsection (3) gives examples of how HM Treasury may use its power under subsection (1).

950 Subsection (3)(d) clarifies that HM Treasury may make such regulations for the purpose of subsection (1) by applying, and if needed modifying, existing provisions of FSMA 2000.

New section 71Q: Designated activities: enforcement

951 This section enables designated activities regulations to make regulations concerning enforcement of designated activities regulations and rules. This will allow HM Treasury to create an enforcement framework for each designated activity.

952 Subsection (2) gives a non-exhaustive list of examples of the types of enforcement provision which can be made through designated activities regulations, such as monetary penalties or powers of censure.

953 Subsection (3) states HM Treasury may create such enforcement frameworks for designated activities by applying existing provisions of FSMA 2000, with or without amendments. For example, instead of creating a new investigation power for the FCA, designated activities regulations could apply the relevant parts of FSMA 2000 which govern the FCA's current information gathering powers.

954 This subsection also enables designated activities regulations to apply, with or without amendments provisions in FSMA 2000 which create criminal offences.

955 Subsection (4) clarifies that HM Treasury's power to apply provisions in FSMA 2000 under this section includes the power to amend, or repeal such provisions.

New section 71R: Designated activities and rules: connected amendments

956 This section creates a new power, for the purpose of modifying primary legislation in order to make modifications which are appropriate, taking account of designated activities regulations and rules.

957 Subsection (1) gives HM Treasury the power to amend primary legislation including FSMA 2000, if it considers appropriate to do so for the purposes of, or in connection with, designated activity regulations or rules.

958 Subsection (2) clarifies that HM Treasury's power under subsection (1) to amend primary legislation in particular extends to revoking or varying any requirement under FSMA 2000 which extends to a designated activity.

959 Subsection (3) further clarifies that HM Treasury's power to amend FSMA 2000 under subsection (1) allows HM Treasury to modify any criminal offence in FSMA 2000 which relates to a designated activity. Modification in this case includes widening the scope of the criminal offence.

960 Subsection (4) is self-explanatory.

Section 71S: Designated activity regulations: Parliamentary control

961 Subsections (1) and (2) provide that regulations made under new section 71K are subject to the affirmative procedure where they provide for an activity of a specified description to be a designated activity.

962 Subsections (3) to (7) provide that where, in the opinion of HM Treasury, it is, by reason of urgency, necessary to make the regulations without a draft being laid before and approved by parliament, the regulations must be laid after being made and cease to have effect at the end of the period of 28 days beginning with the day on which the regulations are made unless approved by parliament.

Section 8: Designated activities: continued

963 Subsection (3) onwards makes a number of changes to FSMA 2000, which are needed as a result of inserting Part 5A.

964 Subsection (4) amends section 3E of FSMA 2000. Section 3E of FSMA 2000 provides for a memorandum of understanding between the PRA and the FCA regarding their functions under FSMA 2000. Subsection (4) amends section 3E to include directions made by the FCA under section 71O within the ambit of the memorandum of understanding.

965 Subsection (5) amends section 3I of FSMA 2000. Where the FCA proposes to make rules in relation to persons who are also regulated by the PRA, section 3I of FSMA 2000 gives the PRA power to direct the FCA not to make those rules in specified circumstances. Subsection 5 includes rules proposed to be made by the FCA under Part 5A of FSMA 2000 within the PRA's powers under section 3I.

966 Subsection (6) excludes designated activity rules from section 138D of FSMA 2000 (action for damages).

967 Subsection (7) amends section 417 to insert a definition of 'designated activity' into FSMA 2000.

968 Alongside the new section 71S, subsection (8) establishes the Parliamentary procedure which governs statutory instruments made under new Part 5A of FSMA 2000. The affirmative procedure is used where HM Treasury 'designates' a new activity (subject to the urgency exception described above), and where HM Treasury amends primary legislation.

969 Subsection (9) inserts new Schedule 6B, which is Schedule 3 to this Act, into FSMA 2000.

Financial market infrastructure: general rules and requirements

Section 9: Rules relating to central counterparties and central securities depositories

970 This section inserts new sections 300F and 300G into FSMA 2000, which will create a general rule-making power for the Bank over recognised central counterparties, recognised CSDs, third country central counterparties and third country CSDs. The terms "recognised central counterparty", "recognised CSD", "third country central counterparty" and "third country CSD" have the meaning provided for in section 285 of FSMA 2000. This section will enable the Bank to set rules for these firms that it judges are necessary or expedient to advance its Financial Stability Objective.

971 New section 300G places restrictions on how this general rule-making power will apply to third country CCPs and CSDs. It ensures that the Bank can only apply "corresponding" rules to these firms. This means that the Bank can only apply rules which have already been applied to the relevant domestic firm (for example, in the case of third country CCPs, this would be recognised CCPs). The Bank would be able to apply all corresponding rules to the third country CCP or CSD or only such rules as it considers appropriate.

972 Subsection (3) of new section 300G allows the Bank to modify the rules to ensure that they can be applied effectively to overseas firms, reflecting their different circumstances. This is intended to account for the fact that domestic rules may have been drafted with the specific legal or operational circumstances of UK CCPs in mind. For example, rules may make reference to UK-law concepts or definitions, or they may be tailored to fit the corporate structure of UK firms. As such, the Bank may need to modify the rules to ensure they operate effectively for overseas firms.

973 New section 300G also makes different provision for "systemic third country CCPs" compared to other CCPs and CSDs. "Systemic third country CCPs" are third country CCPs the Bank has determined are systemically important, or are likely to become systemically important, to the financial stability of the United Kingdom. When making this determination, the Bank must have regard to criteria of general application set out by HM Treasury through secondary legislation. It must also have regard to any statement of policy issued by the Bank which provide further specification of the criteria set out by HM Treasury.

974 Where a third country CCP is a systemic third country CCP, the Bank will automatically be able to apply rules to that firm which correspond to those for recognised CCPs. For other CCPs and CSDs, the Bank may only apply its rules to third country firms if HM Treasury makes regulations authorising it to do so (new section 300G (1)(b)). When making these regulations, HM Treasury, under subsections (4) and (5) of the new 300G, would be able to limit which firms any such Bank power would apply to, and to impose further conditions or limitations on how any power could be used. These restrictions do not apply to the Bank's power to apply corresponding rules to systemic third country CCPs.

975 New section 300G(14) allows HM Treasury to make regulations applying other provisions of FSMA 2000 with modifications to third country CCPs and third country CSDs. These are the overseas firms that the Bank will be able to apply its rules to, subject to the limitations set out in s.300G. This power is needed in order to ensure that provisions of FSMA 2000 - for example, regarding enforcement - apply to these firms, as is appropriate in light of the rules that the Bank is able to make. Schedule 17A already makes some provision for application of provisions in FSMA 2000.

976 Subsection (5) of section 9 amends the Bank's power at section 293 of FSMA 2000 to make rules requiring recognised bodies to notify it of specified events, or provide it with specified information. This amendment will enable the Bank to make rules under section 293 concerning third country central counterparties.

Section 10: Central counterparties and central securities depositories: other requirements

977 This section inserts a new paragraph 9B into Schedule 17A to FSMA 2000. This new paragraph provides for a power for the Bank to be able to impose requirements on a recognised central counterparty, recognised CSD and systemic third-country CCP; these are described as "relevant bodies" in this section. There are two key means by which a requirement can be imposed. First, paragraph 9B(1) to (5) provide that the Bank can impose a requirement of its own initiative, either if it is desirable to do so for its objective 'to protect and enhance the stability of the financial system of the United Kingdom' (the Financial Stability Objective), or if the relevant body has failed, or is likely to fail, to satisfy recognition requirements or an obligation under FSMA 2000. This power is based on the FCA's "own-initiative power" in section 55L(3) of FSMA 2000, and the PRA's equivalent power in section 55M. Second, paragraph 9B(7) provides that the Bank can impose a requirement on the application of the relevant body itself. This is based on the FCA's power to impose a voluntary requirement on authorised persons in section 55L(5) of FSMA 2000 and the PRA's equivalent power in section 55M.

978 Paragraph 9B(6) provides that the Bank's "own-initiative" power cannot be used to restrict or prohibit discretionary payments to employees or shareholders of a recognised central counterparty. Paragraph 13 of Schedule 11 to this Act gives the power to impose such a restriction or prohibition in certain circumstances.

979 Paragraph 9B(9) provides that relevant provisions of Part 4A apply to requirements imposed by the Bank under this new provision, as they apply to requirements imposed by the FCA under section 55L, with appropriate modifications provided for in sub-paragraph (10).

Section 11: Rules relating to investment exchanges and other data reporting service providers

980 This section inserts new section 300H into FSMA 2000. This new section gives the Financial Conduct Authority (FCA) general rule-making powers with regard to Recognised Investment Exchanges (RIEs) and Data Reporting Service Providers (DRSPs).

981 Subsection (1) explains that FSMA 2000 will be amended to establish this power.

982 Subsection (2) inserts a new section (300H) into FSMA 2000 to confer the new rule-making powers on the FCA.

983 New subsection 300H(1) of FSMA 2000 limit the FCA's ability to make rules applying to RIEs and DRSPs to circumstances where the FCA considers that doing so is necessary or expedient to advance one or more of its operational objectives. These objectives are set out in FSMA 2000 (see section 1B(3)).

984 New subsection 300H(2) defines relevant activity for the purposes of 300G.

985 New subsection 300H(3) provides indicative examples of the sort of requirements the FCA could impose using this power.

986 New subsection 300H(4) stipulates that the FCA may not use this power to change, amend or revoke any retained direct EU law for RIEs or DRSPs with the exception of parts of retained direct EU law which take the form of FCA rules.

987 New subsection 300H(5) sets out the definitions applicable to this power. It also sets out that this power is only applicable to UK authorised RIEs, not overseas investment exchanges as defined in section 313(1) FSMA 2000.

988 Subsection (3) gives the FCA the power to appoint a skilled person to collect and update information in relation to RIEs, if it considers that an RIE has contravened a requirement in rules made by the FCA.

989 Subsection (4) enables the FCA to appoint investigators if they believe an authorised RIE might have breached the rules made using this power.

990 Subsection (5) gives the appropriate regulator the power to publish a statement when it considers that a DRSP or RIE has contravened a relevant requirement.

991 Subsection (6) makes consequential amendments to Chapter 3A of Part 18 of FSMA 2000. This ensures that the various disciplinary measures in that chapter also apply to DRSPs in respect of breaches of rules made under the FCA's general rule-making power.

Section 12: Treasury directions to Bank of England: restrictions

992 Section 4 of the Bank of England Act 1946 contains provisions for HM Treasury to be able to give directions to the Bank where it considers it necessary in the public interest to do so. Section 12 of this Act amends section 4 of the Bank of England Act 1946, so that it no longer applies to the Bank's functions in relation to recognised central counterparties, recognised CSDs, third country central counterparties or third country CSDs. Instead, the Bank will be subject to the transparency and accountability requirements set out elsewhere in these Notes.

Financial market infrastructure: piloting powers

Section 13: Testing of FMI technologies or practices

993 This section provides for the temporary disapplication and modification of legislation to allow FMI to innovate with certain technology and new practices in the activities they perform in a controlled environment. This will ensure that any modification or disapplication of legislation is fit for purpose before any permanent changes are enacted in general law.

994 Subsection (1) provides HM Treasury with a power to make provision in regulations to allow for the creation of one or more iterations of an FMI sandbox. This is intended to test, for a limited period, the efficiency or effectiveness of engaging in FMI activity in a particular way, as permitted by the regulations in accordance with Subsection (2) to (11). It also provides an opportunity to assess if any relevant enactments may need amending permanently in general law and, if so, in what form.

995 Subsection (2) provides that carrying on FMI activity in a particular way is intended to include the use of developing technology or the adoption of new and different practices. For example, in a particular part of the trading, clearing, and settlement cycle.

996 Subsection (3) provides that regulations allowing for the FMI activities permitted within this section will be referred to as an FMI sandbox.

997 Subsection (4)(a) and (b) provide that the creation of an FMI sandbox will consist of a regulatory framework that will specify or otherwise make provision for the type of FMI activities, FMI entities and "other persons" that can participate in a particular iteration of the FMI sandbox. "Other persons" shall include, for example, persons either connected with or otherwise peripherally engaged with an FMI entity's FMI activities in a particular iteration of an FMI sandbox arrangement. One such example being "users" of an FMI entity's services within an FMI sandbox. This is because if changes are made to requirements for FMI entities, it may also be desirable or necessary to make changes to requirements for their related users.

998 Subsection (4)(c) provides expressly that an FMI sandbox is not intended to operate indefinitely. An FMI sandbox can be determined by reference to a particular date, time frame or some other trigger in connection with its cessation.

999 Section 84 contains a general power that allows for a regulation to impose different requirements on different persons. This would be helpful in the above respect, particularly as it relates to different types of participants operating within or engaging with an FMI sandbox.

1000 Subsection (5) makes provision for regulations to confer functional powers on the regulators in connection with the creation and operation of an FMI sandbox. For example, the provision could confer on the regulators a functional, rule-making power in connection with winding-down an FMI sandbox. This would include provision for regulations conferring discretionary powers on regulators under section 16(1). It would not extend to conferring functional powers on regulators that are legislative in nature because these operational powers would fall to HM Treasury. In this respect, HM Treasury could exercise a general power to make regulations under section 84 of the Act to ensure a smooth transition between the temporarily modified legislation in an FMI sandbox and those provisions that are adopted in general law.

1001 Subsection (6)(a) and (b) allow for a framework of legislation to be temporarily disapplied or modified, from the list of relevant enactments, for the purpose of testing the compatibility of FMI activities against this within an FMI sandbox. Subsection (6)(b) allows for new provisions to be added to support new practices or technologies that are not covered by existing legislation. For example: in the context of DLT, new provisions may be required for so-called smart contracts, which automate the execution of certain activities when certain pre-conditions are met. New provisions may be required to address new risks, such as around cyber security. Subsection (6)(c) allows for the application of legislation that would otherwise not apply to a particular FMI entity and other persons (such as "users"), were it not permitted to engage in a particular activity within an FMI sandbox. For example, an FMI sandbox could allow a trading venue to perform securities issuance, settlement and maintenance (in addition to trading). Under current legislation, these activities are performed only by a CSD and not a trading venue. This section would also enable further relevant enactments to be temporarily disapplied, modified or applied during an FMI sandbox so that any new and unforeseen legislative obstacles or risks identified during an FMI sandbox could be assessed in a timely manner. This subsection also makes clear that any disapplication, modification or alternative application of legislation within an FMI sandbox is non-textual and not intended to amend, repeal or revoke legislation, subject to it being implemented permanently by HM Treasury under section 15.

1002 Subsection (7) makes provision in regulation that would allow a regulator to exercise powers under Subsection (6) if a relevant enactment contains rules or standards instruments made by regulators. For example, the regulator may want certain formalities connected with its rule making powers, such as a duty to consult in a relevant enactment such as FSMA 2000 to not apply when making or modifying rules or technical standards for purposes of an FMI sandbox. This section is intended to supplement and not undermine either powers that may be conferred on regulators in subsections (5) or (6) when read together with section 16(1) or otherwise the operation of their powers in general law.

1003 Subsection (8) refers to Schedule 1 which serves as an indication of how an FMI sandbox might be structured and operate.

1004 Subsection (9) makes provision for more than one iteration of an FMI sandbox to operate at any one time which may be different, similar or the same to an existing or previous FMI sandbox either in terms of function or effect.

1005 Subsection (10) provides that regulations made under this section are subject to the negative statutory instrument procedure.

1006 Subsection (11)(a) defines FMI entities that are eligible to apply and participate in an FMI sandbox and makes provision to amend the list of FMI entities to beyond what is listed. Subsections (11)(b) and (11)(c) are self-explanatory.

Section 14: Reports on FMI sandboxes

1007 Subsections (1) to (7) of this section specify the reporting obligations on HM Treasury when it exercises its regulatory powers under section 13. This includes an obligation to prepare and publish a report on an iteration of an FMI sandbox to be laid before Parliament. The subsection specifies the information the report must contain by the agreed deadline. Subsection (5), imposes an express obligation on HM Treasury to engage with the relevant regulator when preparing a report and imposes an obligation on the regulator to provide HM Treasury with information it may require in preparing its report.

Section 15: Permanent implementation of arrangements tested under an FMI sandbox

1008 Subsections (1) to (6) of this section make provision for HM Treasury to exercise its regulatory powers and roll out into general law those legislative provisions which have been subject to temporary modification and disapplication within an FMI sandbox and Parliamentary scrutiny. These legislative provisions would therefore apply to entities that either did not participate or were ineligible to participate in an FMI Sandbox, such as overseas operators of FMI entities, subject to the entities being authorised by the appropriate regulator.

1009 Subsections (1) and (2) provides that the exercise of this power will be subject to the due consideration of the "efficiency or effectiveness" of an FMI sandbox arrangement, as provided for in the reporting procedure in section 14 and can take place either at the conclusion of an FMI sandbox or while it remains operational. The intention is that this power is broad enough to include provisions in relevant enactments that may not have been included in the initial legislative framework of an FMI sandbox but are nonetheless included in making permanent changes in general law to ensure the legislation operates as intended. For example, where it may not be possible or practicable to test a particular activity in the FMI sandbox, but where changes to general law may be required to facilitate the FMI activities.

1010 Subsection (3) makes express provision for a determination to be made as to the efficiency or effectiveness of an FMI before the expiry of an FMI sandbox. If an FMI sandbox is terminated early, it would be possible to revoke the temporary modifications before the termination date and, subject to Parliamentary scrutiny, approve the amendments into general law. This is intended to provide legislative continuity and avoid legislative gaps between the termination and the permanent implementation of FMI sandbox arrangements and would operate in conjunction with HM Treasury's power to engage general transitional provisions within the Act.

1011 HM Treasury's powers under subsections (4), (5) and (6) make provision to amend repeal or revoke a relevant enactment, subject to the affirmative statutory instrument procedure if it concerns primary legislation or retained direct principal EU legislation. Otherwise, the negative statutory instrument procedure will apply.

Section 16: Regulations

1012 Subsection (1) allows HM Treasury to confer a discretionary power on an appropriate regulator or another specified person to do anything under or for the purposes of the regulations made under sections 13 to 15. This includes a power for an appropriate regulator to make, disapply or modify rules or technical standards in connection with an FMI sandbox. For example, where HM Treasury has made changes to remove obstacles from primary legislation, it may be necessary for the regulators to also make consequential changes to the related technical standards and rules. Prior to conferring such a power, HM Treasury must consult with the appropriate regulators or such other persons it considers appropriate.

Section 17: Interpretation

1013 Subsection (2) defines "appropriate regulator" as either the FCA or the Bank of England acting either independently or jointly in the operation and oversight of an FMI sandbox.

1014 Subsection (3) defines a relevant enactment for the purpose of the provisions and sections 16(6) and (7) provides HM Treasury with a power to amend the list of relevant enactment by way of the affirmative statutory instrument procedure.

1015 Subsection (4) provides the meanings for "FMI activities", "FMI participant", "FMI sandbox" and "FMI sandbox arrangements".

1016 Subsection (5) provides that "FMI entities" defined for the purpose of section 13(11) have the same meaning as in Part 18 of FSMA 2000.

Powers in relation to critical third parties

Section 18: Critical third parties: designation and powers

1017 This section inserts new sections 312L to 312W into FSMA 2000. These new sections enable the FCA, the PRA and the Bank of England to oversee the services provided by critical third parties to the UK's financial services sector.

1018 **New section 312L** grants HM Treasury the power to designate a third party to an authorised person, relevant service provider or FMI entity ("regulated firms") as a critical third party (CTP) (subsection (1)). HM Treasury can only designate an entity as a CTP if failure or disruption to the CTP's services would pose a financial stability or confidence risk to the UK (subsection (2)).

1019 Subsection (3) sets out criteria which HM Treasury must have regard to in designating a CTP. These are the materiality of the services provided to regulated firms in the context of the UK's financial stability; and the number of regulated firms to which services are provided by a given entity.

1020 Subsection (4) obliges HM Treasury, before designating a CTP, to consult the relevant regulators (and anyone else HM Treasury considers appropriate); to give the proposed CTP a notice in writing which sets out a period in which that potential CTP can make representations to HM Treasury; and to have regard to any representations received from that entity.

1021 Subsection (5) prevents the Bank of England from being designated as a CTP.

1022 Subsection (6) sets out that the relevant regulators for the CTP regime are the FCA, the PRA and the Bank of England, while subsections (7) and (8) provide definitions.

1023 **New section 312M** grants the FCA, the PRA and the Bank of England a power to make rules over the services that CTPs provide to regulated firms to advance the relevant regulator's objectives.

1024 Subsection (2) clarifies the regulators' objectives for this purpose.

1025 Subsection (3) applies and adapts the existing FSMA 2000 provisions containing the regulators' rule-making powers over authorised persons for the CTP regime.

1026 **New section 312N** grants the FCA, the PRA and the Bank of England a power to direct a CTP to do (or not do) something for the purpose of advancing a regulator's objectives. This could include setting conditions or restrictions on the CTP's provision of services.

1027 Subsection (2) sets out procedural requirements for a direction.

1028 Subsections (3) to (6) provide that a CTP (including its officers and staff) be immune from damages where it is acting in accordance with a Direction from the Bank, the PRA or the FCA which has been given for the purpose of resolving or reducing a threat to the stability of the UK financial system (unless the CTP is acting in bad faith or contrary to section 6(1) of the Human Rights Act 1998). In such a case, the direction must set out that immunity applies.

1029 Subsections (7) to (9) are self-explanatory.

1030 **New section 312O** sets out further procedural matters for a direction under 312N.

1031 Subsection (1) provides that the relevant regulator must give written notice to a critical third party.

1032 Subsection (2) enables the relevant regulator to specify when the direction takes effect (which could be immediately or on a specific date). Alternatively, if the regulator specifies no date in the notice, then the notice takes effect when the matter to which the notice relates is no longer open to review.

1033 Subsection (3) requires no further explanation.

1034 Subsection (4) sets out the matters a notice must contain.

1035 Subsection (5) enables the relevant regulator to extend the period of notice it provides for a critical third party to make representations.

1036 Subsection (6) provides that the relevant regulator must give written notice to the critical third party if, after considering its representations, it still wishes to proceed with a direction (or wishes to continue the effect of a notice which has already been given).

1037 Subsection (7) provides that the relevant regulator must give written notice if, after considering a critical third party's representations, it decides not to proceed with the proposed direction; decides to give a different direction; or to revoke a direction which is already in force.

1038 Subsection (8) ensures that the critical third party is notified of its right to refer the matter to the Tribunal.

1039 Subsection (9) ensures that if the relevant regulator, after taking representations, gives a different direction, the new notice must comply with the same rules (in subsection (4)) as the original notice.

1040 Subsection (10) applies existing rules as to whether a matter can be referred to the Tribunal.

1041 **New section 312P** grants the FCA, the PRA and the Bank of England powers to require information from a CTP, to commission a report by a skilled person and to investigate potential contraventions.

1042 Subsection (1) applies the existing FSMA 2000 information-gathering and investigation provisions to CTPs.

1043 Subsection (2) adapts the language in those provisions to the CTP regime.

1044 Subsection (3) enables the regulators to delegate the power to request information to their members of staff.

1045 Subsection (4) makes clear that information can only be requested if it is reasonably required in relation to the regulators' functions under the CTP regime.

1046 Subsection (5) enables the regulators to obtain a skilled person's report in respect of a CTP or a person connected to a CTP (that is, a member of the CTP's group, a controller of the CTP, or an officer or employee of these).

1047 Subsection (6) enables the regulators to obtain a skilled person's report in respect of a CTP in cases where a regulator suspects a breach of their rules to have occurred.

1048 Subsection (7) restricts the regulators' power of investigation to those cases where it appears that a CTP may have contravened a requirement.

1049 Subsections (8) and (9) enable the regulators to require, where necessary or expedient for an investigation, persons with relevant information to appear for an interview and provide information.

1050 Subsection (10) provides definitions.

1051 **New section 312Q** expressly empowers the FCA, the PRA and the Bank of England to publicly censure a CTP which has contravened a requirement under the CTP regime.

1052 **New section 312R** sets out disciplinary measures available to the regulators under the CTP regime.

1053 Subsection (1) provides that the disciplinary measures in the section are available if the FCA, the PRA or the Bank of England consider that a CTP has contravened a requirement imposed under the CTP regime.

1054 Disciplinary measures are given effect by the publication of a notice (subsection (2)), which can prohibit the CTP and specified regulated firms from entering into arrangements for the services specified in the notice or, if such arrangements already exist, prohibit the CTP from continuing to provide (and specified regulated firms from continuing to receive from the CTP) the specified services.

1055 Subsection (3) ensures that disciplinary measures can be tailored to the contravention and are appropriately proportionate.

1056 The regulators may only exercise the disciplinary powers if they are satisfied that it is appropriate in the circumstances to take action against the CTP; that the action will not threaten the UK's financial stability or confidence in the UK finance system; and that it is desirable to exercise the power in order to advance one or more of the regulators' objectives (subsection (4)).

1057 Subsection (5) sets out that notices can be varied or withdrawn, including on application by the CTP concerned.

1058 Subsection (6) requires no further explanation.

1059 Where a notice contains a measure from subsection (2), the regulators must publish the notice in a way that best brings it to the attention of those affected by it (subsection (7)).

1060 Subsection (8) brings a breach of these disciplinary measures into the existing offences framework of FSMA 2000.

1061 Subsection (9) requires no further explanation.

1062 **New section 312S** sets the notice and other procedural requirements for a statement under section 312Q or a notice under section 312R and grants the CTP the right to appeal to the Tribunal.

1063 **New section 312T** obliges the FCA, the PRA and the Bank of England to publish a statement of policy setting out how they will use the disciplinary powers in the CTP regime (subsection (1)). Subsections (2) to (4) are self-explanatory.

1064 **New section 312U** obliges the FCA, the PRA and the Bank of England to coordinate their functions under the CTP regime (subsection (1)), to the extent that doing so does not create a disproportionate burden (subsection (3)).

1065 It obliges them to seek information from each other as needed (subsection (2)) and to consult each other before exercising any of the powers in the CTP regime (subsection (4)).

1066 **New section 312V** requires the FCA, the PRA and the Bank of England to produce and keep up-to-date a memorandum of understanding (MoU) relating to the exercise of functions in the CTP regime and how they will comply with their duty to coordinate in new section 312Q (subsection (1)).

1067 Subsections (2) to (6) require no further explanation.

1068 The regulators do not need to include in the MoU any aspect of their coordination under new section 312Q which would be against the public interest to publish, or which is technical or operational and so does not affect the public (subsection (7)).

1069 **New section 312W** disapplies certain sections of FSMA 2000 (which have already been re-cast above) for the purposes of the CTP regime.

Section 19: Critical third parties: related amendments

1070 This section amends FSMA 2000 to accommodate the new framework for CTPs as inserted by section 18.

1071 Subsection (2) inserts a definition of a critical third party into FSMA 2000 for the purpose of the amendments the Act makes to Schedule 17A.

1072 Subsection (3) ensures that existing provisions in FSMA 2000 about injunctions function properly for the CTP regime.

1073 Subsection (4) applies existing publication requirements in FSMA 2000 to warning notices issued under new sections 312Q and 312R.

1074 Subsection (5) applies existing provision in FSMA 2000 about warning notices and decision notices to the power of censure and the disciplinary powers in the CTP regime.

1075 Subsection (6) establishes the Parliamentary procedure for an order of HM Treasury designating a service provider as a CTP.

1076 Subsection (7) is self-explanatory.

1077 Subsections (8) and (9) apply the legislative framework around rules made by the FCA and the PRA to rules made by the Bank of England under the new section 312M.

1078 Subsection (10) applies the restrictions on disclosure of confidential information to information received by the Bank of England in connection with the exercise of its functions under the CTP regime.

1079 Subsection (11) clarifies that the Bank of England may also apply to the court for an injunction in connection with a contravention or likely contravention of a requirement under the CTP regime.

1080 Subsection (12) applies existing provisions in FSMA 2000 on restitution orders to the CTP regime.

1081 Subsection (13) applies existing provisions in relation to notices under FSMA 2000 to the power of censure and disciplinary measures in the CTP regime.

1082 Subsection (14) makes it an offence (as it already is with the PRA and the FCA) to knowingly or recklessly give the Bank of England information which is false or misleading in connection with a requirement imposed by the Bank of England in relation to CTPs.

1083 Subsection (15) applies existing record-keeping provisions in FSMA 2000 to the CTP regime.

1084 Subsection (16) applies existing provisions in FSMA 2000 about the Bank of England's annual report to the CTP regime.

1085 Subsection (17) incorporates the changes in Part 5 of Schedule 2 into this provision.

Regulatory gateway for financial promotions

Section 20: Financial promotion

1086 This section amends FSMA 2000 to establish the regulatory gateway, which authorised firms must pass through before being able to approve the financial promotions of unauthorised firms. Any authorised firm wishing to approve the financial promotions of unauthorised firms will first need to obtain permission to do so from the FCA or otherwise do so within the scope of an exemption to the regulatory gateway.

1087 Subsection (1) is self-explanatory.

1088 Subsection (2) relates to the insertion of the new subsection 2A into section 21 of FSMA 2000. This removes a general permission that allows authorised firms to approve the content of financial promotions. By this new subsection, an authorised firm can only approve a financial promotion if it is either permitted to do so having gone through the regulatory gateway under the new section 55NA of FSMA 2000, or an applicable exemption applies under the new section 55NB of FSMA 2000.

1089 Subsection (3) sets out the substance of the new financial promotion regulatory gateway and inserts the new section 55NA and the new section 55NB into FSMA 2000.

1090 Subsection (3) (inserting section 55NA(1) of FSMA 2000) imposes a new requirement on all authorised firms to have permission from the FCA under the regulatory gateway before approving financial promotions, unless exempt from this requirement.

1091 Subsection (3) (inserting section 55NA(2) of FSMA 2000) provides that authorised firms that approve financial promotions for the purpose of section 21 of FSMA 2000, without FCA permission under the regulatory gateway, will be doing so in breach of a requirement imposed by the FCA under FSMA 2000.

1092 Subsection (3) (inserting section 55NA(3) of FSMA 2000) provides that both an authorised firm, or an applicant for authorisation, may apply for and be granted permission under the regulatory gateway.

1093 Subsection (3) (inserting section 55NA(4) to (6) of FSMA 2000) details the FCA's powers to grant, vary or cancel a permission to approve financial promotions under the regulatory gateway. The FCA is able to grant the firm permission in line with the terms sought in its application, but it can also make the permission subject to other, potentially narrower, terms if it considers that appropriate. The FCA is also able to vary or cancel an existing permission, either on its own initiative or following an application made by the firm that was granted the permission. Where a permission is either granted or varied, the FCA must set out the terms on which it has been granted or varied.

1094 Subsection (3) (inserting section 55NA(7) of FSMA 2000) provides that the FCA may refuse an application for a new regulatory gateway permission, or a variation or cancellation of an existing permission, if the FCA believes that such a decision would advance one or more of its operational objectives of consumer protection, integrity and competition under section 1B(3) of FSMA 2000.

1095 Subsection (3) (inserting section 55NA(8) of FSMA 2000) details the grounds on which the FCA may vary or cancel an authorised firm's existing permission, on its own initiative. These arise if it appears to the FCA that the firm has not approved or refused to approve any promotions of unauthorised firms in at least 12 months, or if doing so would advance one or more of its operational objectives.

1096 Subsection (3) (inserting section 55NA(9)(a) of FSMA 2000) imposes a requirement on the FCA to consult the PRA before granting, varying or cancelling a permission under the gateway given to a firm that is, or will be, a PRA-authorised firm or to a firm that is part of a group that includes a PRA-authorised firm.

1097 Subsection (3) (inserting section 55NA(9)(b) to (10) of FSMA 2000) requires the FCA to consult the Gibraltar regulator before granting, varying or cancelling a permission given to a Gibraltar-based firm. The exception is if the FCA varies or cancels a gateway permission on its own initiative, in which case the FCA must only inform the Gibraltar regulator of its decision.

1098 Subsection (3) (inserting section 55NA(11) of FSMA 2000) provides that the requirement for authorised firms to obtain FCA permission under the regulatory gateway will not apply if an exemption under the new section 55NB applies.

1099 Subsection (3) (inserting section 55NA(12) of FSMA 2000) provides that, where appropriate, the FCA is able to draw on other powers in FSMA 2000 to impose further requirements on an authorised firm's ability to approve a financial promotion, beyond what is provided for in the new section 55NA(1) of FSMA 2000. It also clarifies that, where any additional requirement is inconsistent with the new section 55NA(1) of FSMA 2000, then that requirement would be of no effect to the extent of the inconsistency.

1100 Subsection (3) (inserting section 55NB(1) to (3) of FSMA 2000) confers a power on HM Treasury to create exemptions to the regulatory gateway in respect of certain firms, activities, circumstances and under certain conditions.

1101 Subsection (4) is self-explanatory.

1102 Subsection (5) confirms that the amendments under this section and Schedule 5 apply to firms authorised either before or after they come into force and that it does not affect financial promotions that were approved before this measure comes into force.

Sustainability disclosure requirements

Section 21: Sustainability disclosure requirements

1103 The Act inserts two sections about sustainability disclosure requirements, 416A and 416B, into FSMA 2000. The Act enables HM Treasury to prepare an SDR policy statement concerning disclosure requirements in connection with matters relating to sustainability, as defined in the Act, whenever it considers appropriate to do so.

1104 Subsections (3) to (5) oblige HM Treasury to consult the FCA and the PRA when preparing an SDR policy statement and to publish it. HM Treasury must keep the SDR policy statement under review and may revise or withdraw it.

1105 Subsections (6) to (10) oblige the FCA and the PRA to provide a report to HM Treasury on any matter required in connection with the preparation of the policy statement if requested by HM Treasury.

1106 Subsection (9) determines that the FCA and the PRA are not prevented or restricted from sharing information with HM Treasury for the purposes of providing reports to HM Treasury by section 348 of FSMA 2000 (Restrictions on Disclosure of Confidential Information), or regulations made under section 349, notably the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001.

1107 As per subsection (10), the disapplication of section 348 and regulations made under 349 in subsection (9) does not apply in relation to information provided to the FCA or the PRA by a regulatory authority outside the United Kingdom.

1108 New section 416B imposes an obligation on the FCA and the PRA to have regard to any published HM Treasury SDR policy statement before making rules or issuing guidance in connection with disclosure concerning matters relating to sustainability.

1109 Subsections (3) and (4) insert new provisions into Schedule 1ZA of FSMA 2000 (FCA annual report) and Schedule 1ZB of FSMA 2000 (PRA annual report) requiring the FCA and the PRA, separately, to report about how they have satisfied the requirement in section 138EA(2) of FSMA 2000 (matters to consider when making rules) in relation to disclosure concerning matters relating to sustainability and the obligation in section 416B(1) to have regard to the SDR policy statement.

Digital settlement assets

Section 22: Digital settlement assets

1110 This section introduces Schedule 6 which provides for the regulation of payment systems using digital settlement assets, digital settlement asset service providers and service providers to digital settlement asset systems by way of extending Part 5 of the Banking Act 2009 and Part 5 of FSBRA 2013 with additional provision for addressing occurrences of regulatory overlap in that context.

Section 23: Digital settlement assets: power to make regulations

1111 Subsection (3)(a) to (i) gives HM Treasury the power to make regulations to regulate payments that include digital settlement assets.

1112 Subsections (3)(a) to (e) clarifies the nature of legislative provisions that HM Treasury may enact in pursuance of that aim. Subsection (3)(b) provides that the power includes the power to apply, and amend, existing legislation on insolvency arrangements (including administration, restructuring and similar procedures – as provided for in (1)(c) to apply appropriately for digital settlement assets used in payments. Subsection (3)(c) confers powers on HM Treasury to legislate, which will be relevant when amending primary legislation to include regulation making powers with respect to digital settlement assets. These are intended to bring digital settlement assets within the existing legislative perimeter of payments and electronic money regime, address regulatory overlaps and amend the application of existing SARs to cater for digital settlement asset features and operations.

1113 Subsection (4) allows HM Treasury to make provision for creating offences punishable on summary conviction with respect to digital settlement assets. This could include expanding existing criminal offences that apply to existing authorised payment institutions and authorised electronic money institutions under the EMR 2011 and PSR 2017 to apply to digital settlement assets.

1114 Subsection (5) clarifies that the power to make such regulations includes the power to modify legislation (which under section 80(1) includes the power to amend, repeal or revoke existing legislation). For instance, this could be relevant where HM Treasury needs to amend existing legislation, such as the EMR 2011, to apply to digital settlement assets.

1115 Subsections (7) and (9) to (12) sets out the procedure in which such legislation may be made and confirms that such regulations made under these provisions will be subject to the affirmative procedure or if urgent, that the "made affirmative" procedure be used. This procedure could be relevant if HM Treasury needs to react urgently to developments within the cryptoasset market. Subsection (8) imposes the requirement on HM Treasury to consult with the regulators before laying draft regulations under this power.

1116 Subsection (13) is self-explanatory.

Mutual recognition

Section 24: Implementation of mutual recognition agreements

1117 Subsection (1) allows HM Treasury to make, by regulations, any such provision as it considers appropriate for the purpose of, or in connection with, implementing MRAs to which the UK is or is expected to become a party.

1118 Subsections (2) and (3) clarify the meaning of "mutual recognition agreement". This would include a full-fledged MRA which covers all financial services sectors, as well as more bespoke MRAs which cover only specific financial services or markets sectors or activities. It would also include mutual recognition provisions on financial services contained within other international agreements such as free trade agreements. As per subsection (5), it would also extend to any future amendments or modifications to existing MRAs. The definition would not include any parts of international agreements which are not related to mutual recognition in the field of financial services or markets.

1119 Subsections (4) and (6) provide further clarification as to the provision which may be made by regulations under subsection (1). This includes conferring powers on HM Treasury or the financial services regulators and imposing duties on those regulators. Duties may only be imposed where considered appropriate by HM Treasury. The appropriateness of such duties will be considered, where relevant, in the context of the relevant regulator's obligations in FSMA 2000 with respect to the advancement of its statutory objectives. Such regulations may modify (including amending repealing or revoking, as per subsection (11)) primary and subordinate legislation, as well as retained EU law. This will enable HM Treasury to give domestic effect to the recognition accorded under an MRA. For example, if an MRA provides for recognition of an MRA partner country's framework in relation to a sector or activity not covered by an existing equivalence regime, the power could be used to create a new domestic recognition regime or to amend the scope of existing regimes to allow for such recognition.

1120 HM Treasury may also impose duties on the regulators, including a duty to make rules. HM Treasury is required to consult the relevant regulator before doing so, pursuant to subsection (7). Subsections (8) and (9) further provide that if HM Treasury imposes a duty on a regulator to make rules, this may (among other things) specify matters that the rules must cover and specify a period within which the rules must be made. This ensures that HM Treasury can delegate aspects of implementation of MRAs to regulators where appropriate, but that it may not specify the precise form or content of the regulators' rules.

1121 Subsection (10) applies the affirmative procedure to regulations made under subsection (1).

Chapter 3: Accountability of regulators

FCA and PRA objectives and regulatory principles

Section 25: Competitiveness and growth objective

1122 This section adds new secondary objectives for the PRA and the FCA in relation to growth and international competitiveness.

1123 Subsection (2) inserts a new subsection (4A) into FSMA 2000 which requires the FCA to, so far as is reasonably possible, advance the competitiveness and growth objective when discharging its general functions.

1124 Subsection (3) inserts a new section (1EB) into FSMA 2000 which sets out what the competitiveness and growth objective is. The facilitation of the objective by the FCA is subject to the FCA aligning with relevant international standards.

1125 Subsection (4a) changes the title in section 2H of FSMA 2000 to account for the new secondary objective.

1126 Subsection (4b) substitutes the existing subsection (1) of section 2H of FSMA 2000 to add a requirement for the PRA to, so far as is reasonably possible, advance the competitiveness and growth objective when discharging its general functions.

1127 Subsection (4b) inserts a new section (1B) into FSMA 2000 which sets out what the competitiveness and growth objective is. The facilitation of the objective by the PRA is subject to the PRA aligning with relevant international standards.

Section 26: Competitiveness and growth objective: reporting requirements

1128 Subsection (1) requires the FCA and the PRA to produce two reports each on how they have advanced the competitiveness and growth objective.

1129 Subsection (2) sets out a short, non-exhaustive list of what the reports must explain.

1130 Subsections (3) and (4) specify when the two reports must be made and the periods to which each of the reports must relate.

1131 Subsections (5) and (6) require HM Treasury to lay a copy of each report before Parliament, and require the FCA and the PRA to publish the reports.

1132 Subsection (7) defines the "regulator" and references to the competitiveness and growth objective.

Section 27: Regulatory principles

1133 This section embeds the targets made by the Secretary of State under the Climate Change Act 2008 and Environment Act 2021 into the regulatory principles for the PRA and the FCA. The FCA and PRA determine whether the exercise of their functions is relevant to the need to contribute to the net zero target and the environmental targets made by the Secretary of State. Where the regulator determines that the function is relevant, the regulator must have regard to the regulatory principle in section 3B(1)(c) of FSMA 2000.

Section 28: sections 25 and 27: consequential amendments

1134 This section sets out minor and consequential amendments to FSMA 2000 as a result of the new competitiveness and growth objective introduced by section 25 and the new regulatory principle that refers to the net zero emissions target.

1135 Subsection (2) amends section 1JA of FSMA 2000 to require the FCA to have regard to recommendations by HM Treasury when considering how to discharge its duty to advance the international competitiveness and growth objective.

1136 Subsection (3) amends section 1K of FSMA 2000 to clarify that the reference to the FCA's objectives includes the international competitiveness and growth objective.

1137 Subsection (4) amends section 2I of FSMA 2000 to clarify that the reference to the PRA's objectives includes the international competitiveness and growth objective.

1138 Subsection (5) amends section 3B of FSMA 2000 to clarify that the definition of 'objectives' includes the international competitiveness and growth objective.

1139 Subsection (6) amends section 3D of FSMA 2000 to ensure that the international competitiveness and growth objective is included in the requirement for the FCA and the PRA to ensure co-ordinated exercise of their functions.

1140 Subsection (7) amends 138I of FSMA 2000 to require the FCA to explain how its proposed rules advance the international competitiveness and growth objective when it consults on draft rules.

1141 Subsection (8) amends the duty for the FOS to provide information to the FCA so that it includes information that relates to the international competitiveness and growth objective.

1142 Subsection (9) amends section 143G of FSMA 2000 to make consequential amendments to provisions which are redundant following the introduction of the amended sustainable growth principle.

1143 Subsection (10) amends paragraph 11 of Schedule 1ZA to FSMA 2000 and requires the FCA to report annually on how it has advanced its international competitiveness and growth objective through its annual report.

1144 Subsection (11) amends paragraph 20 of Schedule 1ZB to FSMA 2000 and requires the PRA to report annually on how it has advanced its international competitiveness and growth objective through its annual report.

FCA and PRA powers to make rules etc

Section 29: Review of rules

1145 This section amends FSMA 2000 to introduce requirements relating to the review of rules made by the regulators.

1146 New section 3RA(1) introduces a requirement for the regulators to keep generally under review any rules made by the regulator, with subsection (2) exempting rules made for the purpose of complying with directions or recommendations from the Financial Policy Committee. If the relevant direction or recommendation is withdrawn, the rules made to comply with the direction or recommendation will no longer fall under the exemption in subsection (2).

1147 New section 3RB requires each regulator to prepare and publish statements of policy on how they will carry out their obligations under new section 3RA. Subsection (3) requires publication to be in a way appearing to the regulator to be best designed to bring it to the attention of the public.

1148 Subsection (2) requires the statements of policy to include information on how stakeholders can make representations de to the regulators on the review of rules, and the arrangements to ensure those representations are considered.

1149 New section 3RC provides HM Treasury with the power to direct the regulators to review specified rules.

1150 Subsection 3RC(1)(a) requires that the rules have been in force for at least 12 months. 3RC(1)(b) sets out that HM Treasury must consider it to be in the public interest that the rules are reviewed. Subsection (1)(c) clarifies that HM Treasury can only direct the regulator to carry out a review if, in the opinion of HM Treasury, the regulator is not already carrying out, or planning to carry out, an effective review of the rules in question.

1151 Subsection (2) clarifies that the scope of the power is those rules which fall under the regulators general duty to review rules in new section 3RA(1).

1152 Subsection (3) requires HM Treasury to consult the regulator before giving a direction under the power.

1153 Subsection (4) specifies that HM Treasury must have regard to the desirability of minimising any adverse effect that the carrying out of the review may have on the regulator. Subsection (5) sets out what a direction may include. Subsection (6) sets out what may be included in the scope and conduct of a review. Subsection (7) sets out the requirement for HM Treasury to lay the direction before Parliament and publish it before giving a direction. Subsection (8) disapplies subsection (7) where HM Treasury considers that publication would not be in the public interest. Subsection (9) allows a direction to be varied or revoked by a further direction.

1154 New section 3RD requires reports to be made by the regulator on reviews under new section 3RC. Section 3RD(1) states that section 3RD applies where HM Treasury has given a direction to a regulator under section 3RC(1). Subsection (2) sets out the matters that must be contained in the regulator's report.

1155 Subsection (3) requires HM Treasury to lay a copy of the report before Parliament and publish it. Subsection (4) provides a public interest exemption to subsection (3).

1156 Schedule 7 inserts into FSBRA 2013 corresponding provisions for the PSR.

Section 30: Treasury power in relation to rules

1157 This section inserts new section 3RE into FSMA 2000.

New section 3RE

1158 Subsection (1) of new section 3RE creates a power for HM Treasury to require a regulator to use one of their rule-making powers to make rules. HM Treasury can require a regulator to use any of the rule-making powers in or under FSMA 2000, but it does not apply to any regulator powers outside FSMA 2000 unless the relevant Parts of FSMA 2000 have been applied.

1159 Subsection (2)(a) of new section 3RE enables HM Treasury to specify matters that the rules must cover. Subsection (2)(b) of the new section enables HM Treasury to set a time limit within which the relevant regulator must make the rules necessary to fulfil the requirement set by HM Treasury.

1160 Subsection (3) limits the power to the matters covered by subsection 2(a) – i.e. the requirement that the regulator make rules covering specified matters. Subsection 3(a) states that the power cannot be used to require a regulator to structure their rules in a particular way or to include certain content. And subsection 3(b) states that the power cannot be used to achieve a particular outcome.

1161 Subsection (4) of new section 3RE clarifies that, if no time period within which rules must be made is specified by HM Treasury under subsection (2)(b), the relevant regulator is required to make the rules as soon as is practicable.

Section 31: Matters to consider when making rules

1162 This section inserts new Section 138EA into FSMA 2000.

1163 Within this, subsection (1) of new Section 138EA states that this section applies to all regulator rule-making empowerments within FSMA 2000, meaning that it is applicable whenever a regulator proposes to make rules in or under the Act. It therefore has the same scope as new Section 3RE, as inserted by section 30.

1164 138EA(2) and (3) provide HM Treasury with a power to specify matters that the regulators must have regard to when making rules in a particular area. HM Treasury is able to specify different matters that must be considered when rules are made in different areas.

1165 138EA(4) enables HM Treasury to limit the matters which must be considered such that it can apply to only a subset of regulator rule-making, including by references to the power exercised by the regulator, the persons to whom the rules apply, or the activities or subject matter concerned.

1166 138EA(5) provides an exemption to the consideration of matters specified by HM Treasury where rules are made in order to comply or act in accordance with a direction or recommendation made by the Financial Policy Committee of the Bank of England.

1167 138EA(6) is self-explanatory.

1168 Subsection (3) of this section inserts a number of provisions into section 138I of FSMA 2000.

1169 Subsection (3)(a) inserts new subsection 138I(2)(ba) which places a requirement on the FCA to include within a consultation an explanation of the how the consideration of matters specified by HM Treasury using the power in 138EA has affected the draft rules proposed in their consultation.

1170 Subsection (3)(b) inserts new subsection 138I(8A) which exempts the FCA from complying with the requirement in new subsection 138I(2)(ba) if compliance would cause an undue delay which would be damaging to consumer interests or if the proposed rules make changes to pre-existing rules that are non-material in the opinion of the FCA. The new subsection 138I(8B) is self-explanatory.

1171 Subsection 4 inserts a number of provisions into 138J of FSMA 2000.

1172 Subsection (4)(a) inserts new subsection 138J(2)(ba). This has the same effect on the PRA's consultation requirement as new subsection 138I(2)(ba) has on the FCA's consultation requirements.

1173 Subsection (4)(b) inserts new subsection 138J(8A). This exempts the PRA from complying with the requirement in new subsection 138J(2)(ba) if compliance would cause an undue delay. The conditions that this exemption is subject to in 138J(8A)(a)(i) and 138J(8A)(a)(ii) are based on the PRA's statutory objectives. The new subsection 138J(8A)(b) exempts the PRA from the requirement in new subsection 138J(2)(ba) if the proposed rules make changes to pre-existing rules that are non-material in the opinion of the PRA. The new subsection 138J(8B) is self-explanatory.

1174 Subsection (5) inserts new section 138EA into section 429 of FSMA 2000 which provides that SIs made under this power are subject to the affirmative Parliamentary procedure.

Section 32: Effect of rules etc on deference decisions

1175 This section amends FSMA 2000 by inserting a new section 409A, requiring the FCA and the PRA to consider the effect of a relevant action on notified HM Treasury deference decisions and consult HM Treasury if it considers there to be a material risk that the action would be incompatible with a notified deference decision.

1176 Subsection (1) outlines that this mechanism will apply only in scenarios where the FCA and the PRA propose to take a "relevant action".

1177 Subsection (2) requires the PRA or the FCA to consider the effect of the relevant action on notified deference decisions. If the PRA or the FCA considers there is a material risk that the action would be incompatible with a notified decision, it must consult HM Treasury about the likely effect of the action on the decision.

1178 Subsection (3) limits the requirements in subsection (2) to situations where the PRA or the FCA proposes to take a relevant action, and a duty to consult publicly applies in respect of the action. Subsection (6) provides that a "duty to consult" (publicly) for the purposes of subsection (3) means i) a duty imposed by sections 138I or 138J FSMA 2000 to publish draft rules, or ii) any other duty to publish the proposal to take the action- examples of (ii) include duties under common law, or a statutory requirement under Article 42(3) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (Retained EU Legislation). If there is no duty to consult as defined in subsection (6), which includes circumstances where the FCA or the PRA are relying on an exemption from the duty to consult, the test in subsection (3) is not satisfied. Examples of such exemptions applicable to the regulator include section 138L FSMA 2000 (Consultation: general exemptions) and Article 42(4) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (Retained EU Legislation). Note that the treatment of the exemption in section 138M(1) of FSMA 2000 (consultation: exemptions for temporary product intervention rules) has been modified for the purposes of new section 409A.

1179 Subsection (4) defines what constitutes a "relevant action" under this section. These are if the PRA or the FCA proposes to make rules under FSMA 2000 or any other enactment, or make changes to its general policies and practices relating to their respective supervisory remits.

1180 Subsection (5) defines key concepts for the purposes of the requirement outlined in subsection (2).

1181 Subsection (6) defines the "duty to consult" test set out in subsection (3).

1182 Subsection (7) states that section 138M(1), which is the FCA's exemption relating to temporary product intervention rules, should be ignored for the purposes of assessing whether there is a "duty to consult" for the purposes of subsection (6). Subsection (7) should be read alongside subsections (9)(a) and (10) which introduce a narrower exception from the requirement in subsection (2) in relation to product intervention rules for the purposes of new section 409A.

1183 Subsection (8) requires the PRA or the FCA, when fulfilling the consultation requirement outlined in subsection (2), to consult HM Treasury prior to consulting publicly.

1184 Subsection (9) creates certain exceptions to the requirement in subsection (2). The requirement in subsection (2) does not apply when there is an existing duplicative requirement elsewhere in FSMA 2000. Subsection (9) further exempts the regulator from the requirement where the proposed action has been undertaken to comply with a direction given by the Financial Policy Committee of the Bank of England or to act in accordance with a recommendation made by the same committee.

1185 Subsection (10) provides the condition for subsection (9)(a) to apply, and covers situations where the FCA considers that delay involved in complying with the requirement in subsection (2) would be prejudicial to advancing a) the consumer protection objective or b) if an order under section 137D(1)(b) of FSMA 2000 is in force, the integrity objective.

Section 33: Effect of rules etc on international trade obligations

1186 This section amends FSMA 2000 by inserting a new section 409B, requiring the FCA and the PRA to notify HM Treasury of a relevant action if they consider there to be material risk that the action would be incompatible with the UK's international trade obligations.

1187 Subsection (1) outlines that this mechanism will apply only in scenarios where the FCA or the PRA propose to take a "relevant action" and considers there to be a material risk that the action would be incompatible with an international trade obligation. Under subsection (12),

the only international trade obligations which the regulator must consider for the purposes of this section are the UK's obligations relating to financial services or markets under free trade agreements or the 1994 Marrakesh Agreement which established the World Trade Organisation.

1188 Subsection (2) requires the regulator to give HM Treasury written notice of the proposed action before taking it (see separately the requirement under subsections (10) and (11)).

1189 Subsection (3) limits the notification requirement in subsection (2) to situations where the regulator proposes to take a relevant action, and a duty to consult publicly applies in respect of the action.

1190 Subsection (4) defines what constitutes a "relevant action" under this section. These are if the PRA or the FCA propose to make rules under FSMA 2000 or any other enactment, or make changes to its general policies and practices relating to their respective supervisory remits.

1191 Subsection (5) provides that a "duty to consult" (publicly) for the purposes of subsection (3) means i) a duty imposed by sections 138I or 138J FSMA 2000 to publish draft rules, or ii) any other duty to publish the proposal to take the action. Examples of (ii) include duties under common law, or a statutory requirement under Article 42(3) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (Retained EU Legislation). If there is no duty to consult as defined in subsection (5), including where the FCA or the PRA are relying on an exemption from the duty to consult, the test in subsection (3) is not satisfied. Examples of such exemptions applicable to the regulator include section 138L FSMA 2000 (Consultation: general exemptions) and Article 42(4) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (Retained EU Legislation). Note that the treatment of the exemption in section 138M(1) of FSMA 2000 (consultation: exemptions for temporary product intervention rules) has been modified for the purposes of new section 409B.

1192 Subsection (6) states that section 138M(1), which is the FCA's exemption relating to temporary product intervention rules, should be ignored for the purposes of assessing whether there is a "duty to consult" for the purposes of subsection (5). Subsection (6) should be read alongside subsections (8)(a) and (9) which introduce a narrower exception from the requirement in subsection (2) in relation to product intervention rules.

1193 Subsection (7) requires the regulator to give the written notice under subsection (2) prior to consulting publicly in respect of the relevant action.

1194 Subsection (8) also exempts the regulator from the requirement in subsection (2) where the proposed action has been undertaken to comply with a direction given by the Financial Policy Committee of the Bank of England or to act in accordance with a recommendation made by the same committee.

1195 Subsection (9) provides the condition for subsection (8)(a) to apply, and covers situations where the regulator considers that delay involved in complying with the requirement in subsection (2) would be prejudicial to advancing a) the consumer protection objective or b) if an order under section 137D(1)(b) of FSMA 2000 is in force, the integrity objective.

1196 Subsection (10) provides that subsection (11) applies in circumstances where a notification is not made under subsection (2) prior to a relevant action being taken, either because there is no duty to consult publicly in respect of that action or because the exception relating to product intervention rules under subsection (8)(a) applies.

1197 Subsection (11) provides that in those circumstances, the regulator must give written notice to HM Treasury as soon as reasonably possible after taking a relevant action if it appears that there is a material risk that the action is incompatible with an "international trade obligation".

Section 34: Power to disapply or modify rules

1198 This section inserts new section 138BA into FSMA 2000. This Section of FSMA 2000 enables the PRA and the FCA to identify parts of their rules which can be waived or disapplied upon application or consent.

1199 Within this, subsection (1) of new section 138BA states that new section 138BA only applies to rules made by a regulator if, or to the extent that, HM Treasury provides for it to apply in regulations.

1200 138BA(2) states that, where provided for in subsection 1, a regulator can grant a permission to a person who is subject to their rules, on their application or with their consent.

1201 138BA (2)(a) and (b) specify what a permission granted by the relevant regulator can enable. The regulator is able to disapply the rules entirely or to continue to apply the rules but with modifications specified in the permission.

1202 138BA (3) states that the PRA and the FCA cannot grant in relation to rules made under these listed sections of FSMA 2000.

1203 138BA (4)(a) states that the relevant regulator may grant an authorised person permission to disapply or modify the rules subject to conditions. The regulator will set these conditions.

1204 138BA(4)(b) makes provision for the regulators to revoke or vary permission under new section 138BA.

1205 138BA(5) enables HM Treasury to set procedural requirements in relation to the granting of a permission in regulations under subsection (1). 138BA(6) is a list of possible provision about procedural matters that may be made under subsection (5). This list is indicative and provision under subsection (5) may include provision about other matters.

1206 138BA(7) places an obligation on HM Treasury to consult the relevant regulator prior to making regulations under subsection (1).

1207 Subsection (3) of this section inserts new section 138BA into section 429 of FSMA 2000 which provides that SIs made under this power are subject to the affirmative Parliamentary procedure.

FCA and PRA engagement

Section 35: Responses to recommendations of HM Treasury

1208 This section amends section 1JA of FSMA 2000 and section 30B of the Bank of England Act 1998, respectively, to require annual responses from the FCA and the Prudential Regulation Committee to HM Treasury recommendations.

1209 Section 33(2) inserts subsection (2A) into section 1JA of FSMA 2000 which requires the FCA and the Prudential Regulation Committee to respond to the recommendations explaining the action that the relevant regulator has taken or intends to take in accordance with the recommendation, or the reasons why the relevant regulator has not acted or does not intend to act in accordance with the recommendation.

1210 Section 33(2) inserts subsection (2B) and (2C) into section 1JA of FSMA 2000 to make this requirement annual.

1211 Section 33(2) also inserts subsection (2D) into section 1JA of FSMA 2000 to remove the requirement where HM Treasury has notified the FCA in writing that an update (or further update) is not required.

1212 Section 33(2) inserts subsection (2E) into section 1JA of FSMA 2000 to allow the FCA to withhold information where its publication would be against the public interest.

1213 Section 33(4) does the same for the Prudential Regulation Committee as section 33(2) does for the FCA.

1214 Schedule 7 to this Act inserts corresponding provisions into FSBRA 2013 in relation to the PSR.

Section 36: Public consultation requirements

1215 This section requires the FCA and the PRA to provide information in their public consultations on any engagement they have had with the statutory stakeholder panels established for the FCA, the PRA and the PSR prior to that consultation. Reference to public consultations include non-statutory consultations.

Section 37: Engagement with statutory panels

1216 This section will require the FCA and the PRA to publish information in their annual reports on how they have engaged with the statutory stakeholder panels established for the FCA, the PRA and the PSR.

1217 The section also requires the FCA and the PRA to include information in their annual reports on how they have complied with the processes and considerations set out in their statements of policy on panel appointments.

1218 The section also requires the FCA and the PRA to provide information in their public consultations on any engagement they have had with these statutory panels prior to that consultation. Reference to public consultations include non-statutory consultations.

1219 Equivalent provision is made for the PSR in relation to its engagement with its statutory panel in Schedule 7 to this Act. This amends the existing requirements of the PSR in relation to its annual report in Schedule 4 to FSBRA 2013, and inserts a new section 104A into FSBRA 2013.

Section 38: Engagement with Parliamentary Committees

1220 This section amends FSMA 2000 to require the FCA and the PRA to notify the Treasury Select Committee, a relevant Lords committee, and a relevant joint committee when the regulators publish a consultation on any matter and that they must respond to any Parliamentary Committee that has responded to a consultation published by the regulators.

1221 Subsection (2) amends Part 4 of Schedule 1ZA to FSMA 2000. Subsection (2) inserts paragraph 28 into Part 4 and sets out the requirement for the FCA to notify the relevant Parliamentary committees when it publishes a consultation. It also sets out that the relevant committee of the House of Lords and the relevant joint committee are committees that have been charged with responsibility for the purposes of the paragraph, and which have informed the FCA of this.

1222 Subsection (2) also inserts paragraph 29 into Part 4 of Schedule 1ZA to FSMA 2000 which sets out the requirement that the FCA must respond to any Parliamentary Committee that has responded to a consultation published by the regulators. The qualification in new paragraph 29(5) that the FCA does not need to supply any information that they consider is against the public interest operates only as a qualification of the new statutory duty itself. It does not purport to speak for any wider purpose (and, therefore does not purport to limit the inherent jurisdiction of Parliament to require the production of papers or to summon witnesses).

1223 Subsection (3) inserts paragraph 36 into Part 4 of Schedule 1ZB to FSMA 2000 and sets out the requirement for the PRA to notify the relevant Parliamentary committees when it publishes a consultation. It also sets out that the relevant committee of the House of Lords and the relevant joint committee are committees that have been charged with responsibility for the purposes of the paragraph, and which have informed the PRA of this.

1224 The qualification in new paragraph 36(5) that the PRA does not need to supply any information that they consider is against the public interest operates only as a qualification of the new statutory duty itself. It does not purport to speak for any wider purpose (and therefore does not purport to limit the inherent jurisdiction of Parliament to require the production of papers or to summon witnesses).

1225 Subsection (3) also inserts paragraph 37 into Part 4 of Schedule 1ZB to FSMA 2000 which sets out the requirement that the PRA must respond to any Parliamentary Committee that has responded to a consultation published by the regulators.

Section 39: Reporting requirements

1226 This section inserts new paragraph 11A into Schedule 1ZA of FSMA 2000, which provides HM Treasury with a power to direct the FCA to publish a report containing information about matters specified by HM Treasury.

1227 Subsection (2) of this section inserts new paragraph 11A(1) which enables HM Treasury to direct the FCA to publish information, subject to conditions.

1228 Paragraph 11A(2) sets the conditions under which HM Treasury can direct the FCA, relating to the necessity of information for scrutiny of the regulator and the availability of existing information.

1229 Paragraph 11A(3) requires the FCA to publish a report in line with the direction. Paragraph 11A(4) exempts information from this publication that it would be against the public interest to publish.

1230 Paragraph 11A(5) places conditions on the provision of information in a direction, in that a direction cannot require the FCA to report more than once a quarter, nor to publish information that is confidential for the purposes of Part 23 of FSMA 2000.

1231 Paragraphs 11A(6) and 11A(7) are self-explanatory.

1232 Paragraph 11A(8) is self-explanatory.

1233 Paragraph 11A(9) allows HM Treasury to vary or revoke directions under the power.

1234 Sub-section (3) inserts paragraph 21A into Schedule 1ZB to FSMA 2000 which sets out the same power to direct the regulator to publish a report containing information about matters specified by HM Treasury, but in relation to the PRA.

Cooperation of FCA, PRA and others

Section 40: Duty to co-operate and consult in exercising functions

1235 This section introduces a statutory requirement for the FCA, the Financial Ombudsman Service and the FSCS to cooperate on issues which have significant implications for each other or the wider financial services market.

1236 Subsection 3 requires the FCA, the Financial Ombudsman Service and the FSCS to publish a statement explaining how they will comply with the duty.

1237 Subsection 6a requires the FCA, the Financial Ombudsman Service and the FSCS to publish an annual report on their compliance with the duty. This report must also describe representations the authorities have received from stakeholders on their compliance with the duty to cooperate on wider implications issues (subsection 7).

FCA and PRA panels and policy statements

Section 41: Listing Authority Advisory Panel

1238 The section will place the Listing Authority Advisory Panel on an equal footing with the regulators' current statutory panels.

Section 42: Insurance Practitioner Panel

1239 The section will place the PRA Practitioner Panel's Insurance Sub-committee on an equal footing with the regulators' current statutory panels.

Section 43: Cost Benefit Analysis Panels

1240 This section will require the FCA and the PRA to establish and maintain a new statutory panel each ("the CBA Panel") which is dedicated to supporting the development of the regulators' CBA. The regulators should consult their CBA Panel before publication of consultations on rules, except for circumstances where there is an exemption. The CBA Panels will also be able to review the regulators' CBA methodology and processes by examining published CBAs. The CBA Panels will be on equal footing with the existing statutory panels and those panels which will be placed on a statutory footing. The regulators will each be required to appoint at least two persons from authorised firms to their panels.

Section 44: Statement of policy on cost benefit analyses

1241 This section will create a new statutory requirement for the regulators to each publish a statement of policy on their approach to Cost Benefit Analyses. This statement will set out when a CBA is conducted and what a CBA consists of.

Section 45: Statement of policy on panel appointments

1242 This section will create a requirement for the regulators and publish statements of policy which set out their processes for appointing members to their statutory panels. Prior to publishing their respective statements of policy, the regulators will be required to consult HM Treasury and have regard to any representations HM Treasury make in response.

Section 46: Composition of panels

1243 This section inserts new sections after section 1M of FSMA 2000 (FCA's general duty to consult), after section 2L of FSMA 2000 (PRA's general duty to consult), and after section 103(5) of FSBRA 2013 (regulator's general duty to consult) to require the FCA, the PRA, and the PSR, when appointing persons to their statutory panels, to ensure all members are external to the FCA, the PRA, the PSR, the Bank of England, and HM Treasury.

1244 Subsection (2) inserts section 1MA into FSMA 2000 (composition of panels) which sets out that a person who receives remuneration from the FCA, the PRA, the PSR, the Bank of England, or HM Treasury is disqualified from being appointed as a member of a panel established under any of sections 1N to 1QA or 138IA of FSMA for the FCA. Section 1MA(2), as inserted by subsection (2) of this section, sets out that section 1MA(1) does not apply in respect of a panel if regulations made by HM Treasury provide for it not to apply to that panel. Section 1MA(3), as inserted by subsection (2) of this section, sets out that regulations made by HM Treasury using the power in sections 1MA(2) may include provision in respect of a panel generally, or in relation to descriptions of persons or cases, but that such regulations may not be exercised so as to specify these persons by name.

1245 Subsections (3) to (6) of section 46 make sections 1N (FCA Practitioner Panel), 1O (Smaller Business Practitioner Panel), 1P (Markets Practitioner Panel), and 1Q (Consumer Panel) of FSMA 2000 subject to section 1MA of FSMA 2000 as inserted by this section.

1246 Subsection (7) of this section inserts section 2LA (PRA's general duty to consult) into FSMA 2000 which replicates, with appropriate amendments, the wording of section 1MA of FSMA 2000 for the PRA.

1247 Subsection (8) of this section makes section 2M (the PRA Practitioner Panel) of FSMA 2000 subject to section 2LA of FSMA 2000. Subsection (9) of this section inserts sections (5A) to (5C) into section 103 of FSBRA 2013 which replicate, with appropriate amendments, the wording of section 1MA of FSMA for the PSR.

Section 47: Panel reports

1248 Subsections (1) and (2) permit HM Treasury, by regulations, to require specified statutory panels to produce annual reports to HM Treasury and to make provision about the contents of those reports.

1249 Subsections (3) and (4) require HM Treasury to lay a copy of each report before Parliament, and require the statutory panel to publish the report in such manner as it thinks fit.

1250 Subsection (5) defines statutory panels for the purposes of this section.

1251 Subsection (6) provides that regulations made under this section are subject to the negative procedure.

Bank of England regulatory powers

Section 48: Exercise of FMI regulatory powers

1252 This section inserts new sections 30D to 30I into the Bank of England Act 1998. They make new provision concerning the Bank's exercise of its regulatory powers as follows.

1253 Section 30D sets out the statutory objectives for the Bank to follow in the exercise of its FMI functions (which are defined in section 30D(3)). FMI functions, as defined, will include the Bank's role in implementing a new Senior Manager & Certification Regime for CCPs and CSDs as well its powers over critical third parties when relevant powers in that regime are exercised in relation to a critical third party who provides services to CCPs and CSDs. Subsection (1) maintains the Bank's Financial Stability Objective as its primary objective, and further provides that when advancing this objective the Bank should have regard to:

a. The regulatory principles set out in section 30E;

b. The effect that the Bank's regulation will or may have on the financial stability of other countries or territories in which CCPs and CSDs are established or provide services; and

c. The desirability of regulating CCPs and CSDs in a way that is not determined by whether the users of their services are located in the UK or elsewhere.

1254 Subsection (2) provides for a new secondary objective for the Bank when exercising its FMI functions, which is to be advanced as far as reasonably possible alongside the Financial Stability Objective. This is to facilitate innovation in the services provided by central counterparties and CSDs, with a view to improving the quality, efficiency and economy of those services.

1255 Section 30E of the Bank of England Act 1998 sets out the regulatory principles to which the Bank must have regard when exercising its FMI functions. These are based on the existing principles set out in section 3B of FSMA 2000 which apply to the FCA and the PRA. Section

30E includes a requirement for the Bank to have regard to the desirability of sustainable growth, including in a way which is consistent with the UK's net zero emissions target and the targets made by the Secretary of State under the Climate Change Act 2008 and Environment Act 2021 when exercising its FMI functions. Where the Bank determines that the exercise of its functions is relevant to the need to contribute to the targets, the regulator must have regard to the regulatory principle in section 30E of the Bank of England Act 1998. The section also includes an additional principle requiring the Bank to have regard to the desirability of facilitating fair and reasonable access to services provided by CCPs and CSDs.

1256 Section 30F creates a committee of the Bank called the 'Financial Market Infrastructure Committee' (FMI Committee). It sets out the requirements regarding the membership of this Committee. The Committee must be chaired by either the Governor or a Deputy Governor of the Bank, and it must have at least three independent members.

1257 Section 30G provides for the functions of the FMI Committee. It will be responsible for exercising the Bank's FMI functions (which are its regulatory functions in relation to CCPs and CSDs, including setting policy approaches and making rules, and are defined in section 30D). Subsection (1)(b) provides that the Bank's Court of Directors can confer other functions on the Committee. Subsections (3) and (4) provide that the functions of the Committee can be delegated, for example to Bank officials, where it considers this appropriate, except for its function of making rules or technical standards. Subsection (2) provides that the Committee can provide for certain of its functions to be exercised by the Governor, instead of by the Committee, or that the Committee is only able to exercise a particular function after consulting with the Governor of the Bank.

1258 Section 30H requires the Bank to publish certain information on the new Committee, including roles and membership, meeting and decision-making procedures and arrangements for the exercise of any functions outside of the Committee.

1259 Section 30I provides that HM Treasury may make recommendations on aspects of the government's economic policy which the Bank should have regard to when advancing its objectives and applying the regulatory principles in relation to its FMI functions. HM Treasury is required to do so at least once every Parliament, and to publish and lay before Parliament its recommendations. The FMI Committee must respond in writing within a year to note what action it has taken, or intends to take, in response to these recommendations (or, if it does not intend to take action in response, its reasons for this). The Committee must then provide an updated response every year unless HM Treasury has informed the Bank that no update is required.

Section 49: Bank of England: rule-making powers

1260 This section amends FSMA 2000 to introduce requirements relating to the review of rules made by the Bank in relation to CCPs and CSDs. New section 300I introduces a requirement for the Bank to keep generally under review any rules made by the Bank under FSMA 2000. Subsection (2) exempts rules made for the purpose of complying with a recommendation from the Financial Policy Committee.

1261 New section 300J requires the Bank to prepare and publish a statement of policy on how they will carry out their obligations under new section 300I. Subsection (5) requires publication to be in a way appearing to the Bank to be best designed to bring it to the attention of the public.

1262 Subsection (2) requires the statements of policy to include information on how stakeholders can make representations to the regulators on the review of rules, and the arrangements to ensure those representations are considered.

1263 New section 300K provides HM Treasury with the power to direct the Bank to review specified rules when this is in the public interest.

1264 Subsection 300K(1)(a) sets out that the rules must have been in place for at least 12 months. Subsection (1)(b) sets out that HM Treasury must consider it to be in the public interest that the rules are reviewed. Subsection (1)(c) clarifies that HM Treasury can only direct so if, in the opinion of HM Treasury, the Bank is not already carrying out, or planning to carry out, an effective review of the rules in question.

1265 Subsection (2) clarifies that the scope of the power is those rules which fall under the Bank's general duty to review rules in new section 300I.

1266 Subsection (3) requires HM Treasury to consult the Bank before giving a direction under the power.

1267 Subsection (4) requires HM Treasury to consider the effect of any direction under the power on the exercise of the Bank's other functions. Subsections (5) and (6) clarify various matters that may be included in a direction issued under this section. Subsection (7) requires HM Treasury to lay any direction under the power in Parliament and publish it. Subsection (8) provides a public interest exemption to subsection (6).

1268 Subsection (9) allows for HM Treasury directions under the power to be varied or revoked by further directions.

1269 New section 300L requires reports to be made by the Bank on reviews under new section 300K. Subsection (2) defines the matters that must be contained in the Bank's report.

1270 Subsection (3) requires HM Treasury to lay the report before Parliament and publish it. Subsection (4) provides a public interest exemption to subsection (3).

1271 The section also inserts a new section 300M into FSMA 2000. Subsection (1) of new section 300M creates a power for HM Treasury to require the Bank to use its rule-making power under FSMA 2000 to make rules in relation to a specified activity or description of person.

1272 Subsection (2)(a) of new section 300M enables HM Treasury to list elements that the Bank must include within the rules. Subsection (2)(b) enables HM Treasury to set a time limit within which the Bank must make the rules necessary to fulfil the requirement set by HM Treasury.

1273 Subsection (3) limits the power to the matters covered by subsection (2)(a), i.e. the requirement that the Bank make rules covering specified matters. Subsection (3)(a) states that the power cannot be used to require the Bank to structure their rules in a particular way or to include certain content. And subsection (3)(b) states that the power cannot be used to achieve a particular outcome.

Section 50: Application of FSMA 2000 to FMI functions

1274 This section makes several amendments to Part 18 and Schedule 17A to FSMA 2000 to ensure that they function in a way which is appropriate for the Bank's new regulatory framework and its new general rule-making power. For example, subsection (8) applies section 166A of FSMA 2000 to the Bank, which allows for the appointment of a skilled person to investigate a potential breach of a requirement to collect and keep up to date information.

1275 The section also amends Schedule 17A to make provision in relation to the Bank which aligns with measures being introduced for the PRA and the FCA as follows:

a. It applies new section 1RB, which will be inserted into FSMA 2000 by section 36 of this Act, to the Bank. This will require the Bank to include in its public consultations information about the statutory panels of the FCA, the PRA and Payment Systems Regulator that it has engaged with in relation to the subject matter of the consultation.

b. It applies new section 138BA, which will be inserted into FSMA 2000 by section 34 of the Act, to the Bank. This will provide for the Bank to be able to disapply or modify rules in individual cases.

c. It applies new section 138EA, which will be inserted into FSMA 2000 by section 31 of this Act, to the Bank. This confers power on HM Treasury to set out in regulations matters which the Bank must consider when making rules.

d. It applies new section 138JA(2), (3), (4), (9) and (10) and section 138JB, which will be inserted into FSMA 2000 by section 44 and as a result of which the Bank will be required to consult the PRA Cost-Benefit Advisory Panel (which is established by section 138JA), and to publish a statement of policy for its cost-benefit analyses.

e. It applies section 141A of FSMA 2000, and new section 141B, which will be inserted into FSMA 2000 by section 65, to the Bank. This will enable HM Treasury to make amendments to legislation which are consequential on Bank rules and references to Bank rules.

f. It applies new sections 409A and 409B, which will be inserted into FSMA 2000 by sections 32 and 33, subject to modifications. As a result of which the Bank will be subject to obligations to consult or notify HM Treasury (as applicable) in relation to the effect of certain actions on notified deference decisions and their compatibility with international trade obligations.

g. It introduces a new requirement to paragraph 33 (a) of the Schedule for the Bank to set out in its Annual Report the efforts it has made to engage with interested stakeholders other than CCPs and CSDs, and the results of that engagement.

h. It applies new paragraph 21A of Schedule 1ZB to FSMA 2000 (which will be inserted into that Act by section 39), and which will provide HM Treasury with a power to direct the Bank to publish a report containing information about matters specified by HM Treasury.

i. It applies new paragraphs 36 and 37 of Schedule 1ZB to FSMA 2000 (which will be inserted into that Act by section 39), and which will require the Bank to notify the Treasury Select Committee, a relevant Lords committee, and a relevant joint committee when issuing a consultation, publishing draft rules or other proposals, and to provide a written response when a Parliamentary committee makes representations in response to a consultation. The qualification in new paragraph 36(5) that the Bank does not need to supply any information that they consider is against the public interest operates only as a qualification of the new statutory duty itself. It does not purport to speak for any wider purpose (and therefore does not purport to limit the inherent jurisdiction of Parliament to require the production of papers or to summon witnesses).

Payment Systems Regulator's powers

Section 51: Payment Systems Regulator

1276 This section introduces Schedule 7 which makes amendments to FSBRA 2013.

Section 52: Chair of the Payment Systems Regulator as member of the FCA Board

1277 This section amends FSMA 2000 to make the chair of the PSR board (the PSR Chair) an ex-officio member of the FCA Board.

1278 Subsection 4 provides for the PSR Chair to be a non-executive member of the governing body of the FCA (the FCA Board).

1279 Subsection 5 ensures that the same provisions applying in relation to the Bank of England's Deputy Governor for prudential regulation apply to the PSR Chair. This includes prohibiting an employee of the PSR being appointed as a member of the FCA Board and allowing for the FCA to pay expenses to the PSR Chair in respect to their service as a member of the FCA Board.

1280 Subsection 6 ensures that the validity of any act of the FCA is not affected by vacancy or defects in the appointment of the PSR Chair to the FCA Board.

1281 Subsection 7 prohibits the PSR Chair, from taking part in discussions or decisions relating to the exercise of the FCA's function in relation to a particular person, unless the PSR Chair is also the chair of the FCA Board.

Consultation on rules

Section 53: Consultation on rules

1282 Section 138I(1)(b) of FSMA 2000 requires the FCA to, before making any rules, and after consulting the PRA, consult publicly on the proposed rules. Section 138I(2) of FSMA 2000 sets out what must accompany the consultation. Section 138I(4) of FSMA 2000 requires the FCA to publish an account of the representations that have been made to it in response to the consultation and its response to these representations.

1283 The Act inserts new subsections (4A) to (4D) into section 138I of FSMA 2000 that require the FCA to publish the names of respondents to a consultation published under section 138I(1)(b) as part of its response in accordance with section 138I(4). This requirement only applies where a respondent has explicitly provided their consent to the FCA that their response can be published.

1284 New subsection (4D) also requires the FCA's response to consultations required by section 138I(4) to include an explanation of how representations by Parliamentary committees have been considered.

1285 Section 138J(1)(b) of FSMA 2000 requires the PRA to, before making any rules, and after consulting the FCA, consult publicly on the proposed rules. Section 138J(2) of FSMA 2000 sets out what must accompany the consultation. Section 138J(4) of FSMA 2000 requires the PRA to publish an account of the representations that have been made to it in response to the consultation and its response to these representations.

1286 The Act inserts new subsections (4A) to (4D) into section 138J of FSMA 2000 that requires the PRA to publish the names of respondents to a consultation published under section 138J(1)(b) as part of its response in accordance with section 138J(4). This requirement only applies where a respondent has explicitly provided their consent to the PRA that their response can be published.

1287 New subsection (4D) also requires the PRA's response to consultations required by section 138J(4) to include an explanation of how representations by Parliamentary committees have been considered.

1288 Paragraph 10(1)(i) of Schedule 17A to FSMA 2000 applies section 138J of FSMA 2000 and the provision inserted by the Act to the Bank of England in respect of its functions in relation to CCPs and CSDs.

1289 The Act inserts a new paragraph into Schedule 17A to FSMA 2000 (paragraph 10A) which applies section 138J of FSMA 2000 and the provision inserted by the Act to the Bank of England in relation to rules made by the Bank of England under section 312M of FSMA 2000.

1290 Section 104(2)(b) of FSBRA 2013 requires the PSR to, before imposing generally applicable requirements, and after consulting the Bank of England, the FCA and the PRA, consult publicly on the proposed rules. Section 104(3) of FSBRA 2013 sets out what must accompany the consultation. Section 104(5) of FSBRA requires the PSR to publish an account of the representations that have been made to it in response to the consultation and its response to these representations.

1291 The Act inserts a new provision into section 104 of FSBRA 2013 that requires the PSR to publish the names of respondents to a consultation published under section 104(2)(b) as part of its response in accordance with section 104(5). This requirement only applies where a respondent has explicitly provided their consent to the PSR that their response can be published.

Part 2: Access to Cash

Section 54: Cash access services

1292 This section inserts Schedule 8, which inserts new Part 8B into FSMA 2000.

Section 55: Wholesale cash distribution

1293 This section inserts Schedule 9, which inserts new Part 5A into the Banking Act 2009 and makes amendments to Part 6 of the Financial Services (Banking Reform) Act 2013.

Part 3: Performance of functions relating to financial market infrastructure

Section 56: Recognised bodies: senior managers and certification

1294 This section inserts Schedule 10, which inserts new Chapter 2A into Part 18 of FSMA 2000.

Part 4: Central counterparties in financial difficulties

Section 57: Central counterparties in financial difficulties

1295 This section inserts Schedule 11, which makes provision for a special resolution regime for central counterparties (CCPs) where all or part of the business has encountered or is likely to encounter financial difficulties.

Part 5: Insurers in financial difficulties

Section 58: Insurers in financial difficulty

1296 Subsection (1) introduces the concept of a "write-down order" and cross-references Schedule 12, which sets out related amendments to FSMA 2000.

1297 Subsection (2) cross-references Schedule 13, which introduces restrictions on the enforcement of contracts against an insurer subject to a write-down order or certain insolvency proceedings.

Part 6: Miscellaneous

Amendments to FSMA 2000

Section 59: Application of provisions to regulatory functions under this Act

1298 This section amends sections 1A and 2AB of FSMA 2000 so that those responsibilities given to the FCA and the PRA in this Act, or could be given to them in the future as a result of regulations made under this Act, are treated as functions of the respective regulator.

1299 Subsection (2) provides that functions under this Act, or regulations made under it, are functions of the FCA.

1300 Subsection (3) provides that functions under this Act, or regulations made under it, are functions of the PRA.

Section 60: Formerly authorised persons

1301 This section amends FSMA 2000 to ensure that the regulators can use their existing powers in sections 168, 205, and 206 and 384 of FSMA 2000 in relation to formerly authorised persons.

1302 Subsection (2) amends section 404C of FSMA 2000 to ensure that it is consistent with new section 415AA.

1303 Subsection (3) inserts new section 415AA into FSMA 2000, which provides that a power in section 168, 205, 206 or 384 of FSMA 2000 may be exercised in relation to persons who were at any time authorised persons (in addition to persons who are authorised persons at the time when the power is exercised). Section 415AA(2) provides that references to "authorised person" in sections 168, 205, 206 to 209 and 384 are to be read as including a person who is no longer authorised.

1304 Subsection (4) provides that the amendments made by this section have effect only in relation to persons who cease to be authorised persons on or after the day on which this Act is introduced.

Section 61: Control over authorised persons

1305 This section inserts an additional scenario where the regulators can impose conditions on a new controller into section 187(2) of Part 12 of FSMA 2000. This additional scenario is where it is desirable to do so in order to advance that regulator's objectives, subject to the obligation to disregard the economic needs of the market.

Section 62: Financial services compensation scheme

1306 This section amends section 212(3)(aa) and repeals section 218B of FSMA 2000 as set out in subsections (2) and (3) to remove the requirement that the chief executive should be the accounting officer of the FSCS manager and remove HM Treasury's power to require information from the FSCS manager respectively.

1307 Subsection (4) repeals section 15 of FSBRA 2013, which inserted section 218B of FSMA 2000.

Section 63: The Ombudsman scheme

1308 This section amends paragraph 15 of Schedule 17 to FSMA 2000.

1309 Subsection (2) inserts a new subsection 2B(d) to section 429 FSMA which applies the affirmative procedure to any provision made under paragraph 15(3) of Schedule 17.

1310 Subsection (3) introduces amendments effected at paragraph 15 of Schedule 17 which are set out at subsections (4) and (5).

1311 Subsection 4 inserts "or other persons of a specified description" to sub-paragraph (1) after "respondent". Sub-paragraph (1) sets out to whom the FOS can charge fees.

1312 Subsection (5) inserts the following sub-paragraphs after sub-paragraph (2).

1313 Subparagraph (3) which explains that a reference to persons of a specified description is a reference to such descriptions as may be specified in regulations made by HM Treasury.

1314 Subparagraph (4) which explains that the power to specify descriptions of persons at (3) may not be exercised so as to provide for eligible complainants to fall within those specified under Treasury regulations.

1315 Subparagraph (5) which defines "eligible complainants" as those who are eligible to bring complaints to the FOS in relation to the compulsory and voluntary jurisdiction of the ombudsman scheme under section 226(6) and 227(7) of FSMA 2000.

1316 Subparagraph (6) requires HM Treasury to consult the scheme operator, meaning the FOS, before making regulations under sub-paragraph (3).

Section 64: Unauthorised co-ownership AIFs

1317 This section amends FSMA 2000 to establish a delegated power for HM Treasury and to clarify that section 261E of FSMA 2000 is relevant for the purposes of authorised contractual schemes with regards to section 261D(1)(a) of FSMA 2000.

1318 Subsection (1) is self-explanatory.

1319 Subsection (2)(a) (inserting section 261E(A1) of FSMA 2000) clarifies that section 261E is relevant for the purposes of section 261D(1)(a) of FSMA 2000.

1320 Subsection (2)(b) is self-explanatory.

1321 Subsection (3) inserts the new Chapter 3B – Unauthorised co-ownership AIFs, along with the new section 261Z6 of FSMA 2000.

1322 Subsection (3) (inserting section 261Z6(1) of FSMA 2000) delegates a power to HM Treasury to apply the effect, as relevant, of sections 261M to 261O and section 261P(1) and (2) of FSMA 2000, to unauthorised co-ownership AIFs.

1323 Subsection (3) (inserting section 261Z6(2) of FSMA 2000) makes clear that the delegated power allows for provision about unauthorised contractual AIFs in general, or those of a specified description.

1324 Subsection (3) (inserting section 261Z6(3) of FSMA 2000) sets out the definition of an unauthorised co-ownership AIF, for the purposes of this section.

Section 65: Power to amend enactments in consequence of rules

1325 This section inserts new section 141B into FSMA 2000.

1326 Within this, subsection (1) of new section 141B enables HM Treasury to amend legislation as a consequence of rules made by a regulator.

1327 Subsection 141B(2) is self-explanatory.

1328 Subsection (3) omits section 144F of FSMA 2000, which enables HM Treasury to amend an enactment as a consequence of CRR rules made by the PRA. New section 141B will enable HM Treasury to amend enactments as a consequence of CRR rules, in addition to other regulator rules, and so section 144F is no longer required.

1329 Subsection (4)(a) inserts new section 141B into section 429(4) of FSMA 2000 which provides that regulations made under this power are subject to the affirmative Parliamentary procedure. And as 144F has been repealed, subsection (4)(b) provides for the deletion of section 144F from Section 429(4) of FSMA 2000.

Section 66: Ambulatory references

1330 This section enables the PRA, the FCA, and HM Treasury to make "ambulatory" references to domestic legislation and regulator rules respectively. This means that such references would not need to be updated if the rules or legislation they refer to change over time.

1331 Subsection (2) amends section 137T of FSMA 2000. When the PRA and the FCA make rules, this section enables them to make provisions that a reference to legislation is ambulatory. This means that it would refer to the current version of the legislation rather than the legislation at the point at which the rule is made.

1332 Subsection (3) fulfils a similar function for regulations made under FSMA 2000. This means that where HM Treasury makes secondary legislation, that legislation can refer to the current version of the rules, rather than the rules at the point at which the legislation is made. Subsection 3(b) clarifies that this includes rules made by the Bank of England.

Section 67: Power to amend or repeal certain provisions of FSMA 2000

1333 This section enables HM Treasury to amend or repeal the parts of 9C and 9D of FSMA 2000 which established the requirements for the FCA to make certain rules in relation to investment firms, and for the PRA and the FCA to have regard to certain matters. This is required as HM Treasury could exercise the powers in sections 30 and 31 in a way that would require these Parts of FSMA 2000 to be repealed or amended in order to remain effective.

1334 Subsection (1) provides a power for HM Treasury to amend or repeal provisions the relevant parts of Parts 9C and 9D of FMSA 2000. Subsection (2) enables HM Treasury to make consequential changes to the rest of these Parts of FSMA 2000 as a result of exercising this power.

1335 Subsection (3) is self-explanatory.

Section 68: Power under FSMA 2000 to make transitional provisions

1336 This section amends section 427 of FSMA 2000, which makes provision about transitional arrangements that can be provided for by the government in relation to FSMA 2000. These amendments update references to "the Authority" (which referred to the Financial Services Authority) to refer to the FCA and the PRA.

1337 Subsection (3) inserts paragraph 31B into Schedule 17A to FSMA 2000, which ensures that references to "a regulator" in section 427 of FSMA 2000 are read as including the Bank of England.

Section 69: Cryptoassets

1338 This section amends FSMA 2000 to clarify that HM Treasury can use its existing powers in sections 21 and 22 of FSMA 2000 to regulate cryptoassets.

1339 Subsection (2) amends the definition of "investment" contained in section 21(14) of FSMA 2000. The existing definition is '"investment" includes any asset, right or interest.' This amendment ensures that this includes where an asset, right or interest is, or comprises or represents, a cryptoasset.

1340 Subsection (3) amends the definition of "investment" contained in section 22(4) of FSMA 2000. The existing definition is '"investment" includes any asset, right or interest.' This amendment ensures that this includes where an asset, right or interest is, or comprises or represents, a cryptoasset.

1341 Subsection (4)(a) inserts a new definition of "cryptoasset" to section 417 of FSMA 2000, to apply across FSMA 2000. This defines cryptoassets as any cryptographically secured digital representation of value or contractual rights that can be transferred, stored or traded electronically, and that uses technology supporting the recording or storage of data (which may include distributed ledger technology).

1342 Subsection (4)(b) gives HM Treasury the power to amend by regulation the definition of cryptoassets in subsection (4)(a) above.

1343 Subsection (5) amends section 429(2) of FSMA 2000 to include the new amendment power in subsection (4)(b) above. As a result, any regulation made by HM Treasury pursuant to the power in subsection (4)(b) above is subject to the affirmative parliamentary procedure.

Bank of England levy

Section 70: Bank of England levy

1344 This section amends the Bank of England Act 1998 to repeal the Cash Ratio Deposit (CRD) scheme and to introduce new provisions for the Bank to impose a charge on financial institutions in connection with the pursuit of its financial stability and monetary policy objectives.

1345 Subsection (2) omits section 6 (Cash ratio deposits) of, and Schedule 2 to, the Bank of England Act 1998. Together these omissions repeal the CRD scheme. Subsections (3) and (4) insert the new section 6A and Schedule 2ZA into the Bank of England Act 1998, establishing the Bank of England levy, which will replace it.

1346 Paragraph 1 of Schedule 2ZA will give a new power to the Bank to impose a charge on eligible institutions, known as the Bank of England levy. The remainder of the Schedule makes provision for how this power may be exercised.

1347 The charge may be levied on 'eligible institutions', which is defined by paragraph 2 broadly as UK deposit-taking institutions (banks and building societies) authorised under FSMA 2000. HM Treasury will have the power to amend this definition by regulations.

1348 Paragraph 4 requires the Bank to: 1) determine which of its policy functions it intends to fund (in whole or in part) using the levy; and, 2) determine the amount it reasonably considers it requires in connection with the funding of those functions, for each levy year (which is defined as a period of 12 months in paragraph 3). Here the Bank's policy functions refers to functions exercised by the Bank in pursuit of its monetary policy and financial stability objectives. The Bank will also be required to publish these determinations.

1349 Paragraph 5 provides that the amount of the levy that an individual eligible institution is liable to pay must be determined by the Bank in accordance with regulations made by HM Treasury. These regulations will set out how the levy is to be calculated and it is intended that they will be reviewed at least every five years. The provision also gives HM Treasury the power to confer discretion on the Bank to determine certain specified matters. Paragraph 6 sets out the process by which the Bank will notify individual eligible institutions of the amount of levy they must pay each levy year.

1350 Paragraphs 7 and 8 set out what will happen if a levy is not paid and how the Bank may seek to recover unpaid amounts.

1351 Paragraph 9 gives the Bank powers to request information which it needs in order to operate the levy scheme.

1352 Paragraph 10 sets out the provisions concerning the making of secondary legislation. In making regulations under Schedule 2ZA, HM Treasury must consult the Bank and any others who appear to HM Treasury to represent those likely to be affected by the regulations. It must also have regard to the financial needs of the Bank. The provision also sets out the parliamentary procedure required for exercising the regulation making powers.

Section 71: Bank of England levy: consequential amendments

1353 This section makes a number of consequential amendments to the Bank of England Act 1998 which are needed as a result of the amendments in section 70.

Other miscellaneous provisions

Section 72: Liability of payment service providers for fraudulent transactions

1354 Subsections (1), (2), (3)(a) and (4) of this section set out that the Payment Systems Regulator must prepare and publish a draft relevant requirement; describe the nature of that requirement; how the Payment Systems Regulator should consult, and the timescales within which it must do so. The effect of this section is to place a standalone duty on the PSR that it must prepare and publish a draft of a relevant requirement for reimbursement in such "qualifying cases" of payment orders as the Regulator considers should be eligible for reimbursement (subsections (1) and (3)(a)). Such qualifying cases are where "the case relates to a payment order executed over the Faster Payments Scheme" and "the payment order was executed subsequent to fraud or dishonesty" (subsection (2)). This would cover APP scams. Such a requirement must be published within 2 months of the provision being commenced (subsection (4)).

1355 Subsections (5) to (7) require the Payment Systems Regulator to subsequently impose such a requirement, having regard for any representations received as part of the consultation, and the timescales within which it must do so. The PSR must consult on the published requirement and then give effect to it subject to any consultation responses (subsections (3)(b), (5) and (6)). This process must be completed within 6 months of the provision being commenced. The provision does not amend the FSBRA 2013 framework, but requires the PSR to take a set of specified actions within that framework.

1356 Subsection 8 makes clear that publication and consultation requirements in subsections (1) and (3) as well as under section 104(2) of the Financial Services (Banking Reform) Act 2013 in the application of that section to a relevant requirement can be satisfied by action taken before the coming into force of this provision.

1357 Subsection (9) clarifies that the Payment Systems Regulator is able to subsequently vary (that is, amend) or revoke any requirement made under this section, and to impose further requirements relating to the reimbursement of fraudulent payments.

1358 Subsection 10 defines specific terms used in subsections (1) to (9).

1359 Subsection 11 amends regulation 90 of the Payment Services Regulations 2017, such that it does not affect the liability of a payment service provider under a relevant requirement in a case where the payment order is executed subsequent to fraud or dishonesty. Relevant requirements include the provisions in FSBRA 2013 and regulation 125 of the Payment Services Regulations 2017 that may be used by the PSR in relation to APP scams.

Section 73: Credit unions

1360 This section inserts Schedule 14, which amends the Credit Unions Act 1979.

Section 74: Reinsurance for acts of terrorism

1361 This section inserts new sections 2A and 2B into the Reinsurance (Acts of Terrorism) Act 1993 (the 1993 Act) after section 2.

1362 Section 2A gives HM Treasury the power to issue directions to any public sector body, as classified by the Office for National Statistics (ONS), which benefits from an arrangement under the Act.

1363 Section 2A(1) is self-explanatory.

1364 Subsection (2) defines the category of "relevant persons" who may be subject to directions made by HM Treasury under these powers. A "relevant person" is defined in subsection (2)(a) as a person who has (i) entered into arrangements with HM Treasury under the 1993 Act

(whether before or after the passing of the 1993 Act), such as an unlimited guarantee, and (ii) who has also been classified to the public sector by the ONS (whether before or after the passing of the 1993 Act). Subsection (2)(b) also includes in the definition any group undertaking of a person falling within subsection (2)(a).

1365 Subsection (3) gives HM Treasury the power to direct a "relevant person" to appoint an accounting officer.

1366 Subsection (4) allows HM Treasury to issue directions if it considers it necessary for the purpose of ensuring compliance with any requirements associated with the public sector classification of a person falling within subsection (2)(a). The following subsection (5) sets out certain matters to which such requirements may relate.

1367 Subsection (6) imposes a requirement on HM Treasury to consult with a "relevant person" before giving a direction to that person.

1368 Subsection (7) sets out the requirements for HM Treasury to issue a notice alongside any direction which includes the reasons for giving the direction and states when the direction takes effect.

1369 Subsections (8) to (12) are self-explanatory.

1370 Section 2B sets out how section 2A may be enforced by HM Treasury.

Section 75: Banking Act 2009: miscellaneous amendments

1371 This section makes minor technical amendments to the Banking Act 2009.

1372 Subsections (2) to (4) are explained in the legal background of these Notes.

1373 Subsection (5) amends the definition of "payment system" for the purposes of Part 5 of the Banking Act 2009 to clarify that it clearly includes firms before they have commenced operation.

1374 Subsection (6) provides that the Bank's immunity from liability for damages in s.244 of the Banking Act 2009 applies to functions conferred under, or as a result of regulations made under, this Act.

Section 76: Arrangements for investigating complaints

1375 This section amends the Financial Services Act 2012.

1376 Subsections (2)(a) to (d) amend section 84 FSA 2012 to make HM Treasury, rather than the FCA, the PRA and the Bank, responsible for appointing an independent person, known as the "Complaints Commissioner". The Complaints Commissioner is responsible for the conduct of investigations under the complaints scheme established under Part 6 of the FSA 2012 for the resolution of complaints against the regulators.

1377 Subsection 2(e) requires that HM Treasury must appoint the Complaints Commissioner on terms and conditions reasonably designed by HM Treasury to ensure independence from the regulators, and to ensure that complaints will be investigated under the scheme without favouring the regulators.

1378 Subsection (3) makes amendments to section 87 FSA 2012, which sets out the requirements relating to the Complaints Commissioner's annual report in subsections (9A) and (9B).

1379 Subsection (3)(a) inserts a new subsection (9A)(ba) to require the regulators, in their response to the Complaints Commissioner's annual report, to provide a summary of the cases in which they decided not to follow "relevant recommendations" of the Complaints Commissioner and a summary of the reasons for not following those recommendations.

1380 Subsection (3)(b) inserts a new subsection (9B)(f) to enable HM Treasury to direct the Complaints Commissioner to include other matters (as may be specified in the direction) in its annual report.

1381 Subsection (3)(c) defines the term "relevant recommendations" used in the new subsection (9A)(ba) as comprising recommendations to the regulator contained in the Complaints Commissioner's annual report, or in final reports given by the Complaints Commissioner in relation to individual complaints during the period to which the annual report relates.

Section 77: Politically exposed persons: money laundering and terrorist financing

1382 Section 77 sets out a requirement for HM Treasury to amend the MLRs such that "domestic PEPs" (PEPs entrusted with prominent public functions by the UK) and their family members or known close associates would be subject to a lesser level of enhanced due diligence, unless any other 'enhanced risk factors' are present. The requirement is also for the regulations to be laid in Parliament within twelve months of Royal Assent, and for HM Treasury lay a statement in Parliament within six months to update on its progress.

Section 78: Politically exposed persons: review of guidance

1383 Section 78 sets out a requirement for the FCA to review its guidance on PEPs within twelve months, to publish the conclusions of that review, and, if appropriate, to publish draft updated guidance for consultation. The FCA is also required to publish an update on its plan for the review within three months of Royal Assent

Section 79: Forest risk commodities: review

1384 This section obliges HM Treasury to carry out a review to assess the extent to which regulation of the UK financial system is adequate for the purpose of eliminating the financing of the use of prohibited forest risk commodities.

1385 Subsection (2) links the scope of the review to definitions in the Schedule 17 of the Environment Act 2021.

1386 Subsection (3) requires HM Treasury to publish and lay before Parliament a report that states the conclusions of the review, and the steps HM Treasury considers it appropriate to take to improve the effectiveness of the regulation of the UK financial system for the purpose of eliminating the financing of the use of prohibited forest risk commodities.

1387 Subsection (4) outlines that the review must be completed within 9 months of the first regulations being made by the Secretary of State under paragraph 1 of Schedule 17 to the Environment Act 2021.

1388 Subsection (5) contains relevant definitions.

Part 7: General

Section 80: Interpretation

1389 This section explains key terms for the purposes of this Act.

Section 81: Pre-commencement consultation

1390 Subsections (1) and (2) explain that any duty to consult that applies to or is connected with, or arises as a consequence of a provision modified or made by, the Act can be fulfilled if undertaken before the commencement date, as well as on or after. obligation to consult introduced by the Act. That includes, for example, the obligation for the FCA and the PRA to consult their cost-benefit analysis panels.

1391 Subsection (3) specifies duties to consult in other primary legislation to which subsection (1) applies.

1392 Subsection (4) defines the term "commencement date" for the purpose of this section.

Section 82: Financial provision

1393 This section is self-explanatory.

Section 83: Power to make consequential provision

1394 This section gives HM Treasury power to make regulations making provisions consequential on provisions of the Act. Regulations making consequential amendments are subject to the negative procedure, except where they amend primary legislation. In that case, the regulations are to be subject to the affirmative procedure.

Section 84: Regulations

1395 This section specifies that regulations made under this Act are exercisable by statutory instrument. Subsection (2)(a) enables HM Treasury to make regulations that include ambulatory references rules or other instruments.

1396 Subsections (3) and (4) defines the "affirmative" and "negative" scrutiny procedures that apply to the making of regulations under the Act.

1397 Subsections (5), (6) and (7) are self-explanatory.

Section 85: Extent

1398 This section sets out the territorial extent of the Act.

Section 86: Commencement

1399 This section sets out that the provisions of the Act, other than those listed in subsections (1) and (2), will commence on the day appointed by HM Treasury by regulations.

1400 Subsection (1) lists provisions which will commence on Royal Assent and subsection (2) lists provisions which will commence two months after Royal Assent.

1401 Subsections (3) to (7) are self-explanatory.

Section 87: Short title

1402 This section provides that the Act may be cited as the Financial Services and Markets Act 2023.

Schedule 1: EU financial services legislation

1403 Schedule 1 governs the retained EU law related to financial services which is revoked by section 1(1).

Part 1 – Retained direct principal EU legislation

1404 Part 1 of the Schedule captures retained direct principal EU legislation. This means EU Regulations which were made directly under the powers to make legislation granted to EU intuitions in the various Treaties which establish the EU. This list is not exhaustive, but it contains all the EU Regulations which are generally followed. It is possible that there are some EU Regulations which have been superseded which are not listed here.

Part 2 – Subordinate legislation made under primary legislation

1405 Part 2 of the Schedule captures subordinate legislation made under primary legislation. That means domestic secondary legislation which was made either entirely or in part, for the purposes of implementing EU Directives or other obligations, or for related purposes.

1406 This list is broadly composed of three types of SI:

a. SIs made under section 2(2) of the European Communities Act (ECA) 1972. These SIs were generally made under the ECA in order to implement EU obligations when the UK was part of the EU. It was common for EU Directives to be implemented in this way, and many EU Regulations also required use of the powers in the ECA in order to be properly incorporated into UK law.

b. SIs made partly under the ECA. While some SIs in this Schedule may look as if they are made under entirely domestic legislation according to their titles, such as FSMA 2000, HM Treasury has included them in this list as they exercised the powers in the ECA in addition to domestic powers.

c. SIs made under EUWA 2018. These SIs were made in order to address deficiencies in retained EU law when the UK left the EU. While these SIs do not directly implement EU obligations, they will no longer function effectively when retained EU law is revoked, and they are included in this Schedule. There is also one SI made under the EU (Withdrawal) Agreement Act 2020, which is included for the same reason.

Part 3 – EU tertiary legislation

1407 Part 3 of the Schedule captures EU tertiary legislation. This means instruments which are made under other EU instruments, rather than under EU Treaties. Examples include Delegated Regulations, Implementing Acts, and EU Decisions. Rather than list this category directly in the Schedule, the Schedule captures tertiary legislation under:

a. EU Regulations related to financial services as captured by Part 1 of the Schedule; and

b. EU Directives related to financial services, which are listed in the Schedule itself. While EU Directives no longer apply to the UK, they sometimes created powers for the EU commission to create EU tertiary legislation which does continue to apply.

c. Any legislation made under the secondary legislation in Part 2 of the Schedule, as these SIs will be revoked;

d. Any Technical Standards made under Chapter 2A of Part 9A of FSMA 2000, which will also be revoked.

Part 4 – Primary legislation

1408 Part 4 of the Schedule contains primary legislation. This includes repealing Part 9D of FSMA 2000, which relates to rules which are defined in relation to the EU Capital Requirements Regulation; and Chapter 2A of Part 9B of FSMA 2000, which governs Technical Standards, which are a form of EU tertiary legislation for which responsibility has already been transferred to the Regulators, and so when they are repealed this Chapter of FSMA 2000 will no longer be needed.

Part 5 – Other retained EU law

1409 Part 5 acts as a "sweep up" provision by revoking all EU-derived legislation relating to financial services which is not directly listed in the Schedule (except primary legislation). While the government has attempted to identify all relevant retained EU law in financial services, this has not always been possible. This is due to the length of time that the UK was in the EU, the fact that many EU laws have been updated frequently or superseded over time, and finally because some EU obligations were implemented entirely through domestic instruments. This approach is also necessary to capture instruments which will be made during the transitional period before retained EU law is revoked.

1410 Therefore Part 5 revokes all EU-derived legislation in financial services which is not listed or otherwise captured by Parts 1, 2, and 3 of the Schedule.

1411 This part is governed by the definition of EU-derived legislation and how this can be determined to "relate" to financial services, which is also set out in Part 5 of the Schedule. Essentially, this means that section 1(1) of the Act revokes all the legislation which is listed directly in the Schedule, but also any unlisted EU-derived legislation related to financial services.

1412 As a result, Part 5 revokes:

a. Any unlisted EU regulations relating to financial services;

b. Any unlisted EU tertiary legislation relating to financial services;

c. Any unlisted UK secondary legislation which implemented an EU Directive or other obligation related to financial services.

d. Secondary legislation made under section 3 of this Act, which gives HM Treasury a power to amend retained EU law;

e. Any unlisted or not yet made SIs made under EUWA 2018 relating to financial services.

1413 The revocation of unlisted EU-derived legislation does not capture any domestic primary legislation.

1414 In order to ensure that Part 5 does not revoke important provisions which may, in part, implement EU obligations, and to avoid unintended consequences, section 1(6) provides HM Treasury with a power to exclude subordinate legislation from this "sweep up" provision, meaning that they would not be revoked by section 1(1) of the Act. The Regulated Activities Order is an example of an instrument which HM Treasury may wish to exclude from Part 5 of the Schedule in such as way, as it is an important part of the functioning of the domestic FSMA 2000 framework, and there are already sufficient existing powers to update it. Section 1(6) is therefore included in order to avoid the unnecessary complexity of revoking and restating such instruments, and any others.

Schedule 2: Transitional amendments

Part 1 – Amendments to the Markets in Financial Instruments Regulation

Paragraph 2: Transparency requirements for equities and equity-like instruments

1415 This paragraph of the Schedule amends Article 3 of the Markets in Financial Instruments Regulation (MiFIR), which sets out what information trading venues need to make public in respect of trading interests in certain equity and equity-like instruments. It transfers to Article 3 a power, previously contained in Article 4 of MiFIR, for the FCA to make RTS to specify the detail of pre-trade transparency requirements and their calibration for different types of trading system. It specifies that when developing the RTS the FCA must take into account the different types of trading systems that may be used by trading venues.

Paragraph 3: Waivers for equity and equity-like instruments

1416 This paragraph of the Schedule substitutes Article 4 MiFIR to allow the FCA to make rules to provide for the waiver of the pre-trade transparency requirements that are set out in Article 3 of MiFIR. For context, Article 3(1) MiFIR requires market operators and investment firms operating a trading venue to make public certain information about a trade in equity and

equity-like instruments on a continuous basis, that is, before shares, depositary receipts, exchange traded funds, certificates and other similar financial instruments are traded on a trading venue.

1417 Paragraph 2 of the new Article 4 limits the FCA's ability to waive pre-trade transparency requirements for equity and equity-like instruments traded on a venue to circumstances where the FCA considers that doing so is necessary or expedient to advance one or more of its operational objectives. These objectives are set out in FSMA 2000 (see section 1B(3)).

1418 Paragraph 3 enables the FCA to apply conditions on market operators and investment firms operating trading venues when they are using a waiver.

1419 Paragraph 4 requires the FCA to monitor the impact of any rules it makes when using this power.

1420 Paragraph 5 gives the FCA the power to withdraw the use of waivers for specific market operators and investment firms operating a trading venue if it believes that a trading venue is mis-using a waiver (for example, if it is using them to avoid requirements imposed by the rules).

Paragraph 4: Suspension of waivers

1421 Paragraph 4 introduces a new Article 4a into MiFIR to give the FCA the power to suspend, or partially suspend the use of a waiver if it considers that price formation is being unduly harmed by its use.

1422 Paragraph 2 of Article 4a specifies that the FCA can only suspend a waiver using the power outlined in paragraph 1 for six months at a time but can renew the suspension for further periods of up to six months if it considers that reinstating the waiver would unduly harm price formation.

1423 Paragraph 3 limits the FCA's ability to suspend a waiver using the powers outlined in paragraph 1 to instances where the FCA considers that the intervention is necessary to advance the FCA's integrity objective under section 1D of FSMA 2000.

1424 Paragraph 4 prescribes the factors to which the FCA must have regard when considering the suspension or renewal of a suspension of a waiver.

1425 Paragraph 5 requires that the FCA consult HM Treasury before directing that a waiver is suspended.

1426 Paragraph 6 exempts the FCA from that consultation requirement if the FCA considers that it is under time pressure and urgent action is needed to protect the price formation process or the interests of consumers.

Paragraph 5: Double Volume Cap

1427 This paragraph of the Schedule removes the double volume cap (DVC), which was a mechanism that was introduced to limit the amount of trading that could happen using the 'reference price waiver' and 'negotiated trade waiver' (waivers provided by the Article 4 MiFIR prior to its substitution by paragraph 3).

Paragraph 6: Amendment to the obligation for systematic internalisers to make public firm quotes

1428 This paragraph of the Schedule makes consequential amendments to Article 14 of MiFIR (which concerns the obligation for systematic internalisers to make public firm quotes on equity and equity-like instruments) to remove references to Article 5 MiFIR (Article 5 MiFIR contains the DVC, which is being removed by paragraph 5 of the Schedule).

1429 This paragraph also introduces a provision describing the transitional period referenced in Article 14. This replaces an equivalent provision previously contained in Article 5 MiFIR.

Paragraph 7: Transparency requirements for fixed income instruments and derivatives etc

1430 This paragraph of the Schedule substitutes Articles 8 to 11 (Pre-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives; Waivers for non-equity instruments; Post-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives; and, Authorisation of deferred publication) of MiFIR.

1431 Paragraph 1 of new Article 8 requires the FCA to make rules imposing pre-trade transparency requirements on trading venues where the FCA determines that relevant non-equity instruments should attract such requirements. The purpose of imposing requirements must be to aid price formation and to allow for the fair evaluation of financial assets.

1432 Paragraph 2 of Article 8 limits the rule-making power outlined in paragraph (1) to circumstances where the FCA considers its use is necessary or expedient for advancing at least one of the FCA's operational objectives as set out in section 1B(3) of FSMA 2000.

1433 Paragraph 3 of Article 8 also requires the FCA to consider the impact on market liquidity when setting pre-trade transparency requirements for fixed income and derivatives trading using the power outlined in paragraph 1. This is to avoid the efficient functioning of markets being negatively impacted through reduced liquidity.

1434 Paragraph 4 of Article 8 provides examples of the sorts of requirements the FCA could impose using this power.

1435 Paragraph 5 of Article 8 clarifies that when making rules using the power in paragraph 1 the FCA can set different requirements for different types of trading systems and instruments. For example, the FCA could limit pre-trade transparency requirements to systems that already operate based on broad transparency, such as order books in respect of derivative transactions.

1436 Paragraph 6 of Article 8 makes provision about the instruments and persons that are in scope of this power.

1437 Paragraph 1 of new Article 9 gives the FCA the power to include provision for waivers in respect of the pre-trade transparency requirements it imposes through rule-making power in Article 8.

1438 Paragraph 2 of Article 9 gives the FCA the power to decide what, if any, conditions should be applied to any waiver.

1439 Paragraph 3 of Article 9 gives the FCA the ability to withdraw a waiver from a relevant person if they are using it in a way that deviates from its original purpose or to avoid complying with regulation. The FCA must give the relevant person a notice to withdraw the waiver.

1440 Paragraph 4 of Article 9 gives the FCA the power to suspend requirements in pre-trade transparency rules for an instrument or class of instruments. The power is exercisable by notice.

1441 Paragraph 5 of Article 9 obliges the FCA to include specific information in such notices and imposes requirements about the manner of their publication.

1442 Paragraph 6 of Article 9 limits the FCA's power to suspend pre-trade requirements to instances where it considers that it is necessary to do so to advance its integrity objective, as set out in section 1D of FSMA 2000.

1443 Paragraph 7 of Article 9 specifies that when suspending pre-trade transparency requirements, the FCA should also have regard to its consumer protection objective and competition objective, as set out in sections 1C and 1E of FSMA 2000 respectively.

1444 Paragraph 1 of new Article 10 requires the FCA to make rules imposing post-trade transparency requirements on trading venues where the FCA determines that relevant non-equity instruments should attract such requirements. The purpose of imposing requirements must be to aid price formation and to allow for the fair evaluation of financial assets.

1445 Paragraph 2 of Article 10 limits the rule-making power for post-trade transparency, outlined in paragraph (1) to circumstances where the FCA considers its use is necessary or expedient for advancing at least one of the FCA's operational objectives as set out in section 1B(3) of FSMA 2000.

1446 Paragraph 3 of Article 10 requires the FCA to consider the impact on market liquidity, when setting post-trade requirements using the power outlined in paragraph 1. This is to avoid the efficient functioning of markets being negatively impacted through reduced liquidity.

1447 Paragraph 4 of Article 10 provides examples of the sorts of requirements the FCA could impose using this power.

1448 Paragraph 5 of Article 10 clarifies that when making post-trade transparency requirements using the rule-making power in paragraph 1 the FCA can set different requirements for different types of trading systems and instruments.

1449 Paragraph 6 of Article 10 makes provision about the instruments and persons that are in scope of this power.

1450 Paragraph 1 of new Article 11 gives the FCA the power to include provision for deferrals in respect of post-trade transparency requirements it imposes through the rule-making power in Article 10.

1451 Paragraph 2 of Article 11 gives the FCA the power to suspend requirements in post-trade transparency rules for an instrument or class of instruments. The power is exercisable by notice.

1452 Paragraph 3 of Article 11 obliges the FCA to include certain things in such notices and imposes requirements about the manner of their publication.

1453 Paragraph 4 of Article 11 limits the FCA's power to suspend post-trade requirements to instances where it considers that it is necessary to do so to advance its integrity objective, as set out in section 1D of FSMA 2000.

1454 Paragraph 5 of Article 11 specifies that when suspending post-trade transparency requirements, the FCA should also have regard to its consumer protection objective and competition objective, as set out in sections 1C and 1E of FSMA 2000 respectively.

Paragraph 8: Systematic Internalisers (definition)

1455 This paragraph of the Schedule amends the definition of a systematic internaliser in Article 2(1) MiFIR.

1456 It retains the current high-level component of the definition of a systematic internaliser in MiFIR (an investment firm which, on an organised, frequent, systematic and substantial basis, deals on own account when executing client orders outside of a UK regulated market, a UK multilateral trading facility (MTF) or a UK organised trading facility (OTF)), and the ability for investment firms to opt in to be a systematic internaliser. It removes the need for investment firms to undertake complex calculations to determine if they are operating on an organised,

frequent, systematic and substantial basis and instead gives the FCA the power to make rules to determine the meaning of organised, frequent, systematic and substantial. This determination can be entirely qualitative, if the FCA sees fit.

Paragraph 9: Systematic Internalisers (midpoint crossing)

1457 This paragraph of the Schedule removes the reference to 'large in scale' in Article 17a of MiFIR, which currently restricts systematic internalisers from crossing at the midpoint within the best bid and offer to trades that are 'large in scale'. Removing the reference to 'large in scale' will allow systematic internalisers to execute client orders at the midpoint within the best bid and offer for all trades.

Paragraphs 10 to 12: Systematic internalisers (pre-trade transparency requirements for fixed income instruments and derivatives etc)

1458 Paragraphs 10 and 11 of the Schedule substitute Articles 18 and 21 (Obligation for systematic internalisers to make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives; Post-trade disclosure by investment firms, including systematic internalisers, in respect of bonds, structured finance products, emission allowances and derivatives) of MiFIR, and introduce two new articles. Further to this, paragraph 12 of the Schedule makes a consequential amendment to Article 22.

1459 Paragraph 1 of new Article 18 gives the FCA a power to make rules imposing pre-trade transparency requirements on systematic internalisers where the FCA determines relevant non-equity instruments should attract such requirements. The purpose of imposing requirements must be to aid price formation and allow for the fair evaluation of financial assets.

1460 Paragraph 2 of Article 18 limits this rule-making power to circumstances where the FCA considers its use is necessary or expedient for advancing at least one of the FCA's operational objectives as set out in section 1B(3) of FSMA 2000.

1461 Paragraph 3 of Article 18 requires the FCA to consider the impact on market liquidity when using the power to set pre-trade transparency requirements on systematic internalisers. This is to avoid the efficient functioning of markets being negatively impacted through reduced liquidity.

1462 Paragraph 4 of Article 18 provides examples of the sorts of requirements the FCA could impose using this power.

1463 Paragraph 5 of Article 18 provides that when making rules to set pre-trade transparency requirements for systematic internalisers, the FCA can set provisions for quotes issued by systematic internalisers to be updated or withdrawn.

1464 Paragraph 6 of Article 18 makes provision about the instruments that are in scope of this power.

1465 Paragraph 1 of Article 18a gives the FCA the power to make provision for waivers of any of the pre-trade transparency requirements it imposes using the rule-making power in Article 18.

1466 Paragraph 2 of Article 18a gives the FCA the power to decide what, if any, conditions should be applied to any waiver.

1467 Paragraph 3 of Article 18a gives the FCA the ability to withdraw a waiver from a systematic internaliser if the systematic internaliser is using it in a way that deviates from its original purpose or to avoid complying with regulation. The FCA must give the relevant systematic internaliser a notice to withdraw the waiver.

1468 Paragraph 4 of Article 18a gives the FCA the ability to suspend pre-trade transparency requirements for an instrument or class of instruments. The power is exercisable by notice.

1469 Paragraph 5 of Article 18a obliges the FCA to include certain things in such notices and also imposes requirements about the manner of their publication.

1470 Paragraph 6 of Article 18a limits the FCA's power to suspend pre-trade transparency requirements to instances where it considers that it is necessary to do so to advance its integrity objective, as set out in section 1D of FSMA 2000.

1471 Paragraph 7 of Article 18a specifies that when suspending pre-trade transparency requirements, the FCA should also have regard to its consumer protection objective and competition objective, as set out in sections 1C and 1E of FSMA 2000 respectively.

1472 Article 18b is inserted to complement the amendment to the 'systematic internaliser' definition in paragraph 8 of the Schedule. It requires investment firms who meet the definition of 'systematic internaliser' to notify the FCA, and the FCA to keep a list of all systematic internalisers for which it has received notification.

1473 Paragraph 1 of new Article 21 requires the FCA to make rules imposing post-trade transparency requirements on investment firms, including systematic internalisers, where the FCA determines that relevant non-equity instruments should attract such requirements. The purpose of imposing requirements must be to aid price formation and allow for the fair evaluation of financial assets.

1474 Paragraph 2 of Article 21 limits the rule-making power outlined in paragraph (1) to circumstances where its use is either necessary, or expedient, in advancing at least one of the FCA's operational objectives as set out in section 1B(3) of FSMA 2000.

1475 Paragraph 3 of Article 21 requires the FCA to consider the impact on market liquidity when setting post-trade transparency requirements for investment firms, including systematic internalisers, using the power conferred by paragraph 1. This is to avoid the efficient functioning of markets being negatively impacted through reduced liquidity.

1476 Paragraph 4 of Article 21 provides examples of the sorts of requirements the FCA could impose in relation to transparency using this power.

1477 Paragraph 5 of Article 21 clarifies that when making rules about post-trade transparency requirements for investment firms, including systematic internalisers, using the powers in paragraph 1 the FCA can prescribe who should report a trade, when both parties to the trade are subject to post-trade transparency requirements.

1478 Paragraph 6 of Article 21 explains that the FCA can grant deferrals for investment firms, including systematic internalisers, who are subject to the post-trade transparency requirements that the FCA imposes through the rule-making power in paragraph 1.

1479 Paragraph 7 of Article 21 states that the FCA can impose any conditions it deems appropriate when granting a deferral.

1480 Paragraph 8 of Article 21 gives the FCA the ability to suspend any transparency requirement the FCA imposes using the rule-making power in paragraph 1 for an instrument or class of instruments. The power is exercisable by notice.

1481 Paragraph 9 of Article 21 obliges the FCA to include certain things in such notices and imposes requirements about the manner of their publication.

1482 Paragraph 10 of Article 21 limits the FCA's power to suspend post-trade requirements for systematic internalisers and investment firms to instances where it considers that it is necessary to do so to advance its integrity objective, as set out in section 1D of FSMA 2000.

1483 Paragraph 11 of Article 21 provides that when suspending post-trade transparency requirements for investment firms, including systematic internalisers, the FCA must also have regard to its consumer protection objective and competition objective, as set out in sections 1C and 1E of FSMA 2000 respectively.

1484 Paragraph 12 of Article 21 makes provision about the instruments and persons that are in scope of the FCA's rule-making power.

Paragraphs 13 and 14: Share Trading Obligation

1485 Paragraph 13 of the Schedule amends Article 23 MiFIR. Subparagraph (2) of this paragraph removes the requirement (known as the Share Trading Obligation or STO) for investment firms to ensure that the trades they undertake in shares admitted to trading on a venue take place on a UK regulated market, UK MTF, UK systematic internaliser, or an overseas trading venue assessed as equivalent.

1486 Subparagraph (3) changes the title of Article 23 MiFIR to reflect the removal of the STO. The only remaining requirement in Article 23 is the requirement for investment firms that operate an internal matching system which executes client orders in shares, depositary receipts, ETFs, certificates and other similar financial instruments on a multilateral basis to ensure that they have permission to operate as an MTF.

1487 Paragraph 14 of the Schedule removes a reference to Article 23 in Article 1 of MiFIR which is no longer needed as a result of the removal of the STO.

Paragraphs 15 and 16: Realigning the scope of the derivatives trading obligation

1488 Paragraphs 15 and 16 of the Schedule alter the scope of the type of counterparties that are subject to the derivatives trading obligation (DTO), set out at Article 28 of MiFIR, in order to align it with the scope of counterparties subject to the Clearing Obligation (CO), which is contained in EMIR.

1489 Paragraph 15 amends Article 1(3) MiFIR to bring the overall application of the relevant Part of MiFIR, as regards financial counterparties and non-financial counterparties, into line with those expressed to be within scope of the DTO further to the changes made to Article 28 by paragraph 16, as described below.

1490 Paragraph 16 of the Schedule amends Article 28 MiFIR to specify that the financial and non-financial counterparties in scope of the DTO are those subject to the CO in EMIR.

1491 To ensure consistency with the CO, paragraph 16 also stipulates that intragroup transactions and transactions that are covered by temporary exemptions from the CO (which apply to transactions that reduce investment risks directly relating to the financial solvency of pension scheme arrangements) are out of scope of the DTO.

Paragraph 17: Suspension or modification of the DTO

1492 Paragraph 17 of the Schedule introduces a new Article 28a into MiFIR. Paragraph 1 of Article 28a MiFIR gives the FCA the power to suspend or modify the DTO if the FCA considers it necessary to prevent or mitigate disruption to financial markets and advances one or more of the FCA's operational objectives.

1493 Paragraph 2 outlines specific ways in which the DTO may be suspended or modified. It specifies that changes can be made in respect of either the persons, derivatives, or classes of derivatives to which the obligation applies, or to the trading venues on which the transactions must be concluded. It also gives the FCA the ability to make the suspension conditional on any criteria, as it deems appropriate.

1494 Paragraph 3 requires the FCA to have regard to its new competitiveness and growth objective in section 1EB of FSMA 2000 when using the power.

1495 Paragraph 4 explains that the FCA must consult with the Bank of England and the PRA if the suspension or modification could have an impact within the PRA's remit (for example, if the change would apply to a person which is authorised by the PRA or if it would impact the discharge of the PRA's functions).

1496 Paragraph 5 specifies that the FCA must obtain consent from HM Treasury before issuing a direction. Once the FCA has submitted a proposed direction to HM Treasury, HM Treasury must provide a written response within four weeks (and HM Treasury are deemed to consent to the issuing of the direction if no response is provided within that period).

1497 Paragraph 6 outlines that when giving a direction to modify the DTO, the FCA must also prepare a statement which explains the rationale behind issuing the direction, and any relevant guidance.

1498 Paragraph 7 requires the FCA to publish this direction and statement, and paragraph 8 requires HM Treasury to lay a copy of the direction and the statement before Parliament.

1499 Paragraph 9 outlines that if the FCA wish for a direction to have effect for longer than 6 months, it must publish a statement explaining why the criteria for the use of the direction are still being fulfilled. This statement is to be published as soon as reasonably practicable after each 6-month period (which starts on the day the direction is given).

1500 Paragraph 10 clarifies that the FCA may publish the statement in whatever way it thinks will best bring it to the attention of the public.

1501 Paragraph 11 clarifies that the FCA can vary a suspension or modification by issuing a new direction. Paragraph 12 specifies that the variation of a direction is not to be treated as the giving of a new direction in respect of the requirement to publish a statement after every 6-month period (as outlined above). It also explains that certain requirements applying to the issuing of an initial direction (such as the obligation to publish guidance in connection with the direction) do not apply to a direction which merely revokes a previous direction.

1502 Paragraph 13 stipulates that the issuance of an FCA direction to modify or suspend the DTO does not fall within scope of requirements in the Financial Services Act 2012 which concern the investigation of complaints against regulators in relation to the exercise of certain functions. Complaints relating to the exercise of this power of direction would not therefore need to be dealt with through the complaints scheme established under the relevant provisions of the 2012 Act.

Paragraph 18: DTO exemptions for risk reduction services

1503 Paragraph 18 of the Schedule substitutes Article 31 MiFIR. Paragraph 1 of the new Article 31 gives the FCA a rule-making power to disapply certain obligations in relation to either the transactions carried out as part of a risk reduction service, or persons meeting certain criteria who participate in the risk reduction services.

1504 Paragraph 2 limits the FCA's use of this rule-making power to circumstances where the FCA considers its use is necessary or expedient for advancing at least one of the FCA's operational objectives, as outlined in section 1B(3) FSMA 2000.

1505 Paragraph 3 establishes the criteria which risk reduction services must satisfy in order to be eligible for the exemption. Namely, to be capable of benefiting from the exemption, services must be post-trade services and must only produce trades which are non-price forming (i.e. that do not contribute to the price discovery process).

1506 Paragraph 4 specifies that when exercising this power, the FCA has the discretion to:

a. Specify which risk reduction services are to be eligible for the exemptions with reference to any factors or criteria which it deems to be suitable (within the parameters of paragraph 3); and

b. Impose any conditions on, or exceptions to, the use of the exemption that the FCA deems appropriate. It is through this provision that the FCA will be able to apply the conditions which were previously applied to the narrower exemption for portfolio compression, should it wish to.

1507 Paragraph 5 requires the FCA to consult with the Bank of England before using this power to make rules.

1508 Paragraph 6 specifies which requirements the FCA can exempt risk reduction services from under this rule-making power. These are:

a. The best execution obligation, which obliges firms carrying out investment business to obtain the best possible deal for clients;

b. A requirement in the FCA's Market Conduct sourcebook relating to the operation of a multilateral system from an establishment in the United Kingdom.

c. The DTO.

Paragraphs 19 to 27: Consequential amendments in MiFIR

1509 These paragraphs of the Schedule set out minor and consequential amendments to MiFIR further to the changes detailed above.

Part 2 – Amendments to the European Market Infrastructure Regulation

Paragraphs 28 to 30: CO exemptions for risk reduction services

1510 Paragraph 28 of the Schedule introduces the changes to EMIR made by paragraphs 29 and 30.

1511 Paragraph 29 of the Schedule inserts Article 6b in EMIR.

1512 Paragraph 1 of Article 6b gives the Bank of England the power to disapply the clearing obligation, set out in Article 4 of EMIR, from transactions which stem from a post-trade risk reduction service. Post-trade risk reduction services consist of technical trades that reduce the risk of positions that market participants have entered into.

1513 Paragraph 2 limits the Bank's use of this rule-making power to circumstances where the Bank considers its use is necessary or expedient for advancing the Bank's key objective of financial stability under section 2A of the Bank of England Act 1998.

1514 Paragraph 3 establishes the criteria which risk reduction services must satisfy in order to be eligible for the exemption. Namely, it explains that the services must be post-trade, and must only produce trades which are non-price forming (i.e. which do not contribute to the price discovery process).

1515 Paragraph 4 specifies that when exercising this power, the Bank has the discretion to:

a. Specify which risk reduction services are to be eligible for the exemptions with reference to any factors or criteria which it deems to be suitable (within the parameters of paragraph (3)); and

b. Impose any conditions on, or exceptions to, the disapplication of the CO that the Bank deems appropriate.

1516 Paragraph 5 clarifies what counts as a risk reduction service for the purposes of this Article (i.e. that it must be a service provided by two or more counterparties for the purpose of reducing non-market risk in derivatives portfolios, such as portfolio compression).

1517 Paragraph 30 of the Schedule introduces Article 84c into EMIR, which provides how provisions of Part 9A of FSMA 2000 concerning rule-making will apply in relation to Article 6b.

Part 3 – Amendments to the EU Securitisation Regulation 2017

Paragraphs 31 and 32: Amendments to the UK Securitisation Regulation

1518 Paragraph 31 sets out that the UK Securitisation Regulation will be amended by this Schedule.

1519 Paragraph 32 amends definitions in Article 2 of the UK Securitisation Regulation to add a definition of 'STS equivalent non-UK securitisation'. It also revokes the definition of 'third country', because this term is being replaced with references to 'country or territory outside of the United Kingdom' throughout the Regulation.

Paragraph 33: Designation of countries or territories in relation to STS equivalent non-UK securitisations

1520 Paragraph 33 inserts new Article 28A into the UK Securitisation Regulation.

1521 Paragraph 1 of new Article 28A confers on HM Treasury a power to make regulations designating a country or territory in relation to specified descriptions of securitisations ('STS equivalent non-UK securitisations.')

1522 Paragraph 2 of new Article 28A allows HM Treasury to do so only if it is satisfied that the law and practice of the country or territory in relation to such securitisations has equivalent effect to the UK Securitisation Regulation and the 2018 Regulations as they relate to UK STS securitisations ('applicable UK law', as defined by paragraph 3).

1523 Paragraph 4 of new Article 28A says that, in making such regulations, HM Treasury must have regard to whether the FCA and, where relevant, the PRA, have established effective cooperation arrangements with the competent authorities of the country or territory being designated, as well as any other matter it considers relevant.

1524 Paragraph 5 sets out that HM Treasury may request a report in writing from the FCA on the law and practice of a country or territory in relation to specified securitisations. This can be requested when HM Treasury is considering whether to make, vary or revoke its designation of a country or territory.

1525 Paragraph 6 specifies what the FCA must do when HM Treasury requests such a report.

1526 Paragraph 7 sets out that the regulations made by HM Treasury may specify matters that must be considered by an institutional investor carrying out due diligence under Article 5(3) of the UK Securitisation Regulation, prior to holding a position in an STS equivalent non-UK securitisation.

1527 Paragraphs 8, 9 and 10 set out the requirements for regulations made by HM Treasury under new Article 28A.

Paragraphs 34 to 43: Minor and consequential amendments

1528 Paragraphs 34 to 43 make minor and consequential amendments including:

a. Replacing reference to 'third country' with reference to 'country or territory outside the United Kingdom' in the UK Securitisation Regulation and the Securitisation Regulations 2018 (SI 2018/1288);

b. Revoking the requirement for HM Treasury to review the UK Securitisation Regulation in relation to whether an equivalence regime should be introduced in the area of STS securitisations, because this review has been completed and new Article 28A inserts such a regime; and

c. To ensure STS equivalent non-UK securitisations receive the same prudential treatment as UK STS securitisations in the CRR and Solvency II.

Part 4 – Amendments to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017

1529 Paragraph 44 of the Schedule introduces the changes to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 made by paragraphs 45 to 50.

Paragraph 45: Position limits for commodity derivatives

1530 Paragraph 45 of the Schedule introduces regulation 15A to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (MiFI Regulations).

1531 Paragraph 1 of regulation 15A gives the FCA a rule-making power to require the operators of trading venues to set and enforce position limits and position management controls in respect of specific commodity derivative contracts, as well as classes of commodity derivatives. This will allow the FCA to establish a framework which will govern these regimes.

1532 Paragraph 2 of regulation 15A limits the ability of the FCA to exercise this rule-making power to instances where the FCA considers that doing so is necessary or expedient for advancing at least one of its operational objectives, as outlined in section 1B(3) of FSMA 2000.

1533 Paragraph 3 of regulation 15A explains that the FCA must have regard to its competitiveness and growth objective in section 1EB of FSMA 2000 when making rules under paragraph (1).

1534 Paragraph 4 of regulation 15A clarifies that the FCA can use its rule-making power to set out specific matters that trading venues need to consider when establishing position limits and management controls.

1535 Paragraph 5 of regulation 15A notes that the FCA can specify by rules certain circumstances when there will be exemptions from position limits and position management controls established under the framework set out in rules made under Paragraph 1.

1536 Paragraph 6 of regulation 15A clarifies the meaning of 'position management controls' which are covered by this rule-making power. It does so by giving a high-level, inexhaustive, list of arrangements which are encompassed by 'position management controls'. This list includes monitoring the exposure of persons holding commodity derivative contracts, as well as requiring information from them about the size of the positions they have entered into.

1537 Paragraphs 7 through to 10 of regulation 15A outline the way in which various elements of the wider existing legislative framework apply to the rule-making power conferred by this regulation

Paragraph 46: FCA power to establish position limits

1538 Sub-paragraphs (2) and (3) of paragraph 46 to the Schedule amend regulation 16 to remove the obligation for the FCA to establish position limits on commodity derivative contracts traded on a trading venue and economically equivalent over-the-counter (OTC) contracts. As amended, regulation 16 gives the FCA the ability to set position limits on contracts that are in scope of the rules developed under regulation 15A (the FCA's rule-making power over trading venues).

1539 Sub-paragraph (4) introduces changes to regulation 16 to limit the FCA's ability to use this power to circumstances where the FCA considers that doing so is necessary to advance at least one of its operational objectives (as outlined in 1B(3) of FSMA 2000). Sub-paragraph 4 also provides that position limits which the FCA sets directly take precedence over position limits imposed by venues (even if this is as a result of the FCA requiring the venue to impose such limits through the use of its rule-making power). This effectively creates an emergency power through which the FCA can intervene in the market to impose position limits directly, in instances where the limits imposed by venues in accordance with the FCA's broader framework are insufficient to uphold its objectives.

1540 Sub-paragraph 5 removes various requirements which are no longer necessary as a result of the FCA no longer being obliged to impose limits on commodity derivative contracts.

Paragraph 47: FCA power to require information on commodity derivatives

1541 Paragraph 47 updates the FCA's power to require information regarding commodity derivatives contracts in order to take account of amendments introduced by paragraphs 45 and 46 of the Schedule.

1542 Sub-paragraphs (2) to (4) remove references to 'over-the-counter' contracts. They specify that the FCA can require information, notably, about contracts which belong to a class in respect of which the FCA is considering making rules and imposing requirements further to regulation 15A.

Paragraph 48: FCA power to intervene in setting position limits

1543 Paragraph 48 updates the FCA's power to intervene in respect of position in commodity derivatives to account for the changes made to other parts of the position limits regime.

1544 To achieve this, sub-paragraph (2) updates the criteria under which the FCA can intervene directly, by limiting its use of this power to situations where the FCA considers intervention is necessary for advancing at least one of its operational objectives.

1545 Sub-paragraph (3) clarifies that the FCA may intervene and set restrictions on positions in commodity derivatives, even when doing so means imposing a more stringent requirement that those which are being imposed by trading venues in accordance with the FCA's overarching framework governing the setting of position limits.

1546 Sub-paragraph (4) removes 'economically equivalent over the counter contracts' from the scope of the power.

Paragraphs 49: Interpretation

1547 Paragraph 49 to the Schedule makes updates to relevant definitions in regulation 29 of the MiFI Regulations. It:

a. clarifies that the market operators which are subject to the FCA's rule-making power in respect of position limits and position management controls are the same market operators as defined more generally in MiFIR;

b. reiterates the meaning of "relevant person" provided by regulation 15A(10).

Paragraph 50: Consequential revocations

1548 This paragraph sets revocations of related legislation to be made in consequence of the changes to the MiFI Regulations described above.

Part 5 – Amendments to the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018

Paragraph 51: Amendments relating to central counterparties

1549 Paragraph 51 extends the maximum period for which a non-UK CCP can be placed in the run-off regime to the Temporary Recognition Regime for overseas CCPs. It amends the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (the "CCP Regulations").

1550 Sub-paragraph (2) amends regulation 19B(2) of the CCP Regulations to provide that the maximum duration of the 'run-off' period for an overseas CCP is 3 years and 6 months, rather than one year.

1551 Sub-paragraph (3) inserts new paragraphs 4 to 8 into Regulation 19B of the CCP Regulations. New paragraph 4 clarifies that the Bank of England may make a new determination varying the length of the run-off period for a particular firm, in addition to any determination it has already made.

1552 New paragraphs 5 to 7 allow the Bank of England to extend the period for a CCP which leaves the run-off regime before these provisions come into force. They give the Bank of England the ability to determine that the CCP's run-off period is to be treated as not having expired from the making of the determination onwards, and therefore to exercise its power to vary that CCP's run-off period up to the maximum period of 3 years and 6 months.

1553 New paragraph 8 provides that new paragraphs 5 to 7 expire at the end of 31 December 2025 and clarifies that this expiry will not affect previous determinations made under these paragraphs.

Part 6 – Amendments relating to critical third parties

Paragraphs 52 to 72: Consequential amendments relating to critical third parties

1554 Because electronic money institutions (EMIs) as well as authorised payment institutions, small payment institutions and registered account information services providers can be designated as critical third parties (CTPs) and thus subject to the new Part of FSMA 2000, this Schedule makes consequential changes to the Electronic Money Regulations 2011 and the Payment Services Regulations 2017 to accommodate the new CTP regulatory regime.

Schedule 3: New Schedule 6B to FSMA 2000

1555 This Schedule is to be inserted as Schedule 6B into FSMA 2000.

1556 This Schedule gives an illustrative and non-exhaustive list of examples of the types of activities which HM Treasury may designate using the powers conferred on it by new section 71K.

Schedule 4: FMI sandboxes

1557 Paragraphs 1 to 9 of the Schedule are intended to be illustrative as to the operational structure of an FMI sandbox and the powers that may be conferred by regulation on the regulators in its operation and oversight.

Paragraph 1 – Participation

1558 Sub-paragraph (1) to (4) outlines the type of eligibility criteria and procedure that may be applied for a particular iteration of an FMI Sandbox.

1559 Sub-paragraph (5) suggests that FMI participants notify other persons likely to engage either directly or indirectly in its FMI activities. For example, this would ensure that the market users of an FMI participant which is participating in an FMI sandbox, do not inadvertently end up participating in an FMI Sandbox without any warning or consent.

Paragraph 2 – Technology

1560 Testing the efficiency or effectiveness of technology is an example of how the FMI sandbox may be employed.

Paragraph 3 – Practices

1561 Testing the efficiency or effectiveness of new or different practices is an example of how the FMI sandbox may be employed.

Paragraph 4 – Financial Instruments

1562 An iteration of an FMI sandbox could specify the type of activity; the type and form of financial instruments; and any limitations imposed on an FMI participant as part of its participation in the FMI sandbox.

Paragraph 5 – Settlement of Payments

1563 An iteration of an FMI Sandbox could specify how transactions are to be settled and the form in which the settlement takes place.

Paragraph 6 – Requirements

1564 Sub-paragraph (1): The legislative framework of an FMI sandbox would allow the regulations to impose requirements on persons participating in an FMI sandbox and other persons engaged in connection with or otherwise not participating directly in an FMI sandbox.

1565 Sub-paragraph (2): The regulations could confer a power on the regulator to make its rules and technical standards applicable for the purposes of an FMI sandbox arrangement.

Paragraph 7 – Co-operation

1566 This paragraph is self-explanatory.

Paragraph 8 – Transparency and reporting

1567 Sub-paragraphs (1) to (3) are indicative of the reporting and accountability provisions that could be adopted to ensure that an appropriate level of information is provided for the duration of an FMI sandbox, particularly as it relates to the reporting obligation, as provided for in section 14.

Paragraph 9 – Enforcement

1568 Sub-paragraphs (1) to (3) are indicative of an enforcement regime that could be in place during the operation of an FMI sandbox. Provision could be made to allow regulators to draw on their existing enforcement powers and tailor them in accordance with a particular iteration of an FMI sandbox, to include, suspending or terminating a person’s participation within an FMI Sandbox and the imposition of civil penalties.

Schedule 5: Financial promotion: related amendments

1569 Paragraph 1 is self-explanatory.

1570 Paragraph 2 refers to section 1H of FSMA 2000. The amendment expands the definition of “regulated financial services” to now include services provided by authorised firms communicating, or approving communications by others, of “inducements” to engage in

investment activity or claims management activity. Inclusion of the term "inducement" provides that the FCA's operational objectives are applied to the full range of financial promotion activity and specifically as it relates to the new section 55NA(7) and (8)(b) of FSMA 2000.

1571 Paragraph 3 refers to section 25 of FSMA 2000. The change amends the reasonable grounds for a defence relating to a contravention of the general restriction on financial promotions under section 21 of FSMA 2000, to accommodate the new subsection 2A. This change means that in proceedings for an offence under section 25 of FSMA 2000, it is a defence for the accused to show that they believed on reasonable grounds that the communication had been approved by an authorised firm who had been granted permission under the regulatory gateway or was otherwise exempt.

1572 Paragraph 4 refers to section 55A of FSMA 2000, which relates to an application for permission to carry on one or more regulated activities. This amendment clarifies that an application for permission under the regulatory gateway is distinct and separate from this.

1573 Paragraph 5 refers to section 55O of FSMA 2000, which relates to the imposition of a requirement where control is acquired over a UK authorised firm with a Part 4A permission and there are no grounds for the FCA to exercise its own initiative power. The amendments take account of the regulatory gateway regime for these purposes.

1574 Paragraph 6 refers to section 55R of FSMA 2000. This amendment expands the remit within which the regulator can consider persons connected with a firm applying for a permission. When considering a new application under the regulatory gateway, or a variation or cancellation of an existing gateway permission, the regulator may consider persons connected with that firm where it is relevant.

1575 Paragraph 7 refers to section 55U of FSMA 2000, which relates to applications under Part 4A to carry on regulated activities. This amendment sets out that where an application is made for permission in respect of the regulatory gateway, or for variation of an existing permission, a statement must be included of the permission or variation sought.

1576 Paragraph 8 refers to section 55V of FSMA 2000. The amendment expands the requirement on the regulator to provide written notice when it grants an application for permission under the regulatory gateway, or for the variation or cancellation of such a permission.

1577 Paragraph 9 refers to section 55X of FSMA 2000, specifying when the regulator must give warning and decision notices to applicants. The amendment expands the obligation on the regulator to give the applicant a warning notice when it proposes to grant or vary a permission under the regulatory gateway, subject to other terms the regulator considers appropriate (which may be narrower than the application sought). In addition, if the regulator makes a decision to grant or vary a permission so that it is subject to other such terms, the regulator must give the applicant a decision notice.

1578 Paragraph 10 refers to section 55Y of FSMA 2000, which relates to the procedures the regulator must follow when exercising its own-initiative power. The amendments provide that when the regulator exercises its own-initiative power to vary, or proposes to vary, a gateway permission, it must follow the pre-existing procedure under section 55Y of FSMA 2000. This includes a requirement that if the FCA either proposes to vary a permission under the regulatory gateway, or varies a permission under the regulatory gateway with immediate effect, it must give the firm written notice.

1579 Paragraph 11 refers to section 55Z of FSMA 2000, which relates to the procedure for cancelling a permission. The amendments expand the remit of this procedure to take into account the regulatory gateway regime.

1580 Paragraph 12 refers to section 55Z3 of FSMA 2000, which relates to an applicant's right to refer a regulator's decision or exercise of its own-initiative variation or requirement power, to the Upper Tribunal. The amendment allows a firm to refer the FCA's exercise of its own-initiative power to vary or cancel a permission under the regulatory gateway to the Upper Tribunal.

Schedule 6: Digital settlement assets

Part 1 – Amendments to the Banking Act 2009

1581 Schedule 6 extends the application of the existing scope of Part 5 of the Banking Act 2009 to include payment systems using digital settlement assets and digital settlement asset service providers. Therefore, consequential amendments are made to accommodate the differences between systems using digital settlement assets and more traditional payments systems (those which are currently regulated). This necessitates the inclusion of new sections covering those who are service providers connected to a digital settlement asset payment system. For example—

a. Paragraph 4(4) of the Schedule introduces a definition of "digital settlement assets" as a new section 182(4A) of the Banking Act 2009, which includes a right to or interest in a digital settlement asset.

b. Paragraph 4(5) of the Schedule adds a new section 182(5A) of the Banking Act 2009, intended to capture firms that provide one or more services in relation to a payment system chain. These could be those that safeguard, or safeguard and administer (such as wallets), stablecoin creators or issuers, exchange providers. Those who set rules are defined as "digital settlement asset service providers". This reflects the way in which stablecoin functions can be distributed across multiple entities. The same paragraph adds a new section 182(5B) which defines what "digital settlement asset exchange providers" are.

c. Paragraph 4(5) adds a new section 182(5C) of the Banking Act 2009 allowing HM Treasury to amend the definitions in the new sections 182(4A) and 182(5A), via affirmative procedure, as necessary for HM Treasury to remain agile and responsive to market developments and safeguard against risks for consumer protection and financial stability purposes. Without such futureproofing, there is the risk of current definitions quickly becoming outdated and the measure would not capture entities intended for regulation.

1582 Paragraph 9 adds a new section 184A of the Banking Act 2009 enabling HM Treasury to issue recognition orders in respect of payments systems using digital settlement assets as is currently the case for traditional payment systems as well as a new section 185A at paragraph 10 which sets out the recognition criteria for such digital settlement assets service providers mirroring sections 184 and 185 for the power and criteria to make designation orders for traditional payment systems. Paragraph 17(b) adds a new section 190A which allows the Bank to direct systemic digital settlement assets to establish service provider rules mirroring its powers under section 190 as it can direct so for system rules.

1583 Paragraph 20 adds a new section 192A where the Bank may give direction to the FCA to refrain from certain action with respect to recognised digital settlement asset payment systems and recognised digital settlement asset service providers. This seeks to address the situation where an existing firm regulated by the FCA under either the EMR 2011 and the PSR 2017 is recognised as systemic – such that it is also regulated by the Bank in relation to financial stability risks under Part 5 of the Banking Act 2009.

1584 Paragraph 32(b) inserts a new section 203C which requires that the Bank issue a policy statement with respect to its overall policy approach with regard to its oversight of recognised digital settlement asset payment systems and recognised digital settlement asset service providers under Part 5 of the Banking Act 2009. This will ensure the means and mechanics of the new regime are sufficiently communicated to those operating within the market through a coordinated approach between the regulators, in this case the FCA who the Bank is required to consult with.

1585 Paragraph 37 amends section 206A to insert new subsections 206A(2A), 206(2B) and 206(3A) which confer powers on HM Treasury to make order(s) applying any sections under Part 5 of the Banking Act 2009 to those service providers who provide services to DSA service providers. This is intended to capture other service providers in relation to recognised DSA service providers or those who may themselves potentially become systemic but could not be recognised as systemic by HMT for systemic regulation in their own right.

1586 Paragraph 38 inserts a new section 206AA to acknowledge the difference between the normal payments chain and the digital settlement asset payments chain. In doing so, it seeks to capture service providers connected with a recognised payment system using digital settlement assets.

Part 2 – Amendments to FSBRA 2013

1587 This section extends the application of the existing scope of Part 5 of FSBRA 2013 to include payment systems using digital settlement assets and digital settlement asset service providers. Paragraph 41(2) inserts a new section 41(2A) amending the reference to funds to include digital settlement assets and then defines digital settlement asset, mirroring the Banking Act 2009 definition. This is so that the regulatory oversight for regulated payment systems which HM Treasury controls via designation orders, will be brought within scope of the PSR power as set out above.

1588 Paragraph 42(3) inserts a new section 42(5A) defining payment service providers mirroring the definition under the new section 182(5A) of the Banking Act 2009.

1589 Paragraph 43 amends section 98(5)(c) with respect to amending the FCA's duty to ensure a co-ordinated exercise of functions so that such duties are extended with respect to its functions under the EMR 2011 and its functions in regulating credit institutions with Part 4A permissions and authorised Payment institutions that it regulates under PSR 2017.

1590 Paragraph 44 inserts definitions of "digital settlement asset" and "digital settlement asset exchange provider" to section 110 of FSBRA 2013. The latter cross-references back to the definition of "digital settlement asset exchange provider" in section 182(5B) of the Banking Act 2009. This ensures that, should the definition in the Banking Act 2009 be amended, the amendment will automatically flow through to FSBRA 2013.

Schedule 7: Accountability of the Payment Systems Regulator

1591 Paragraph 2 of the Schedule inserts new subsection (11A) in section 39 of FSBRA 2013 for the accountability of the Payment Systems Regulator (PSR) and in section 39(12) substitutes 107A for 107.

Paragraph 3: Regulatory principles of the PSR

1592 Paragraph 3 amends paragraph (c) of section 53 of FSBRA 2013 to embed the UK's net zero target into the regulatory principles of the PSR, by confirming that the sustainable growth principle to which the PSR must have regard includes consistency with contributing towards achieving compliance with the targets made by the Secretary of State under the Climate Change Act 2008 and Environment Act 2021. The PSR determines whether the exercise of its functions is relevant to the need to contribute to the net zero target and the environmental targets made by the Secretary of State. Where the PSR determines that the function is relevant, the PSR must have regard to the regulatory principle in section 53 of FSBRA 2013.

Paragraph 4: Recommendations by HM Treasury

1593 Paragraph 4 inserts new section 102A which enables HM Treasury to make recommendations to the PSR about aspects of government economic policy to which the regulator should have regard, similar to section 1JA of FSMA 2000. The PSR must respond to those recommendations, in a corresponding set of provisions to section 35.

Paragraphs 5 to 7: Corresponding provisions

1594 Paragraphs 5 and 6 insert into FSBRA 2013 corresponding provision for the PSR as section 31 of this Act. Specifically, paragraph 5 inserts section 102B (Matters to consider when imposing generally applicable requirements) before section 103 (regulator's general duty to consult). Paragraph 6(a) substitutes "Part" for "section" in 104(1), in the words before paragraph (a). Paragraph 6(b) inserts paragraph (ba) "an explanation of the ways in which having regard to specified matters under section 102B(2) has affected the proposed requirement" after 104(3)(b). Paragraph 6(c) inserts new subsections (12A) and (12B) after subsection (12). New subsection (12A) removes the requirement to provide the explanation referred to in subsection (3)(ba) in relation to any requirement if the requirement changes an existing requirement and the changes consist of, or include changes which, in the Payment Systems Regulator (PSR's) opinion, are not material. New subsection (12B) provides that where an explanation is not provided by virtue of subsection (12A), the draft of the requirement must be accompanied by a statement of the PSR's opinion.

1595 Paragraph 7 inserts into FSBRA 2013 corresponding provision for the PSR as sections 36, 29, 30, 43, 44 and 45. Adjustments are made to reflect that the PSR operates by imposing generally applicable requirements, such as general directions, and is not a rule-making authority. Adjustments are also made to reflect that the PSR is required to consult the FCA Cost Benefit Analysis Panel, rather than establish its own. References to the Financial Policy Committee ("FPC") are omitted as the FPC has no power of direction in relation to the PSR.

Paragraph 8: International trade obligations for the PSR

1596 Paragraph 8 inserts a new section 107A into FSBRA 2013, requiring the PSR to notify HM Treasury of a relevant action if it considers there to be material risk that the action would be incompatible with the UK's international trade obligations. This is a corresponding provision to section 33, adjusted to refer to the PSR.

1597 Subsections (6), (8) and (9) of section 33 are not relevant to the PSR, so have no corresponding provision in this new section.

Paragraphs 9 to 11: Ancillary adjustments to FSBRA 2013

1598 Paragraph 9 inserts into section 110(1) of FSBRA 2013 a definition of a generally applicable requirement, which has the meaning given by section 104(1) of FSBRA 2013.

1599 Paragraph 10 inserts into section 143(2), after paragraph (b), a new subsection (ba) matters to consider when imposing generally applicable requirements and (bb) power to require imposition of generally applicable requirements, which ensure that the statutory instruments HM Treasury is permitted to make in relation to the accountability of the PSR require affirmative procedure.

1600 Paragraph 11 inserts into Schedule 4 of FSBRA 2013 a requirement that the PSR must include in its annual report any engagement with its statutory panel, in a corresponding provision to section 37.

Paragraph 12: Engagement with Parliamentary Committees for the PSR

1601 Paragraph 12 amends Schedule 4 to FSBRA 2013, inserting new paragraph 14A into the Schedule to establish the requirement for the PSR to notify the Treasury Select Committee when it publishes a consultation.

1602 Paragraph 13 also inserts new paragraph 14B into Schedule 4 to FSBRA 2013, which sets out the requirement that the PSR must reply to the chair of any Parliamentary Committee that has responded to a consultation published by the PSR. The qualification in new paragraph 14B(5) that the PSR does not need to supply any information that they consider is against the public interest operates only as a qualification of the new statutory duty itself. It does not purport to speak for any wider purpose (and therefore does not purport to limit the inherent jurisdiction of Parliament to require the production of papers or to summon witnesses).

Schedule 8: Cash access services

Part 1 – New Part 8B of FSMA 2000

1603 Part 1 of this Schedule inserts a new Part 8B titled "Cash Access Services" into FSMA 2000.

Section 131M: Overview

1604 This section provides a summary of the new Part 8B of FSMA 2000, which creates legislation to protect access to cash.

1605 It explains that Part 8B requires HM Treasury to publish a cash access policy statement (see section 131P), permits HM Treasury to designate legal persons that are involved in the provision of cash deposit and withdrawal services (which are defined in section 131N subsection (3)), and provides the Financial Conduct Authority (FCA) with powers over those persons designated by HM Treasury.

Section 131N: Cash access services and coordination arrangements

1606 This section defines the use of the terms "cash", "cash access service", "free cash access service", and "cash access coordination arrangements" for the purposes of this Part.

1607 Subsection (2) defines "cash" as banknotes and coins.

1608 Subsection (3) defines a "cash access service" as a service which enables cash to be placed on a relevant current account (as defined in section 131O) or which enables cash to be withdrawn from a relevant current account. Examples may include, but are not limited to, a cash withdrawal from an ATM or cash machine, cashback, or an over-the-counter cash withdrawal or deposit at a bank branch or Post Office.

1609 Subsection (3A) defines a "free cash access service" as a free of charge service that enables cash to be placed on a relevant personal current account, or enables cash to be withdrawn from a relevant personal current account.

1610 Subsection (4) defines "cash access coordination arrangements" as arrangements which are designed to coordinate the provision of cash access services by multiple providers, but which do not directly provide these services to any person. The core functions of such coordination arrangements may include monitoring cash access, assessing whether cash provision meets community needs (for example, in response to a closure or request from a local community), and commissioning the provision of solutions where required.

1611 Subsection (5) defines terms in relation to "cash access coordination arrangements". A reference to an "operator" of such arrangements means any person with responsibility for managing or operating such arrangements. A reference to the operation of such arrangements includes their management. Subsection (6) uses the same definition of 'relevant current account' as that contained under section 131O.

Section 131O: Current accounts and relevant current account providers

1612 This section defines "current account", "relevant current account", "relevant personal current account," and "relevant current account provider" for the purposes of this Part. These definitions are used in other parts of the legislation, for example, to specify the types of accounts that are within scope of the definition of cash access services and free cash access services (see section 131N) under this Part and the type of firm that HM Treasury may designate (see 131R).

1613 Subsection (2) describes the type of account that is intended to be within scope of this Part. It defines "current account" as an account by means of which one or more named persons are able to place cash, withdraw cash, and execute and receive "payment transactions" to and from third parties including execution of credit transfers. This is to cover the types of account by which customers facilitate their day-to-day transactions in cash. Subsection (3) defines "payment transaction" as an act initiated by the payer or payee, or on behalf of the payer, of placing, transferring or withdrawing funds.

1614 Subsection (3A) defines a "relevant personal current account" as an account held by one or more individuals for purposes outside any business, trade, craft or profession of that individual or those individuals. This is intended to limit provisions relating to free cash access services to accounts provided for personal use.

1615 Subsections (4) and (5) define a "relevant current account provider" and "relevant current account". "Relevant current accounts" are current accounts provided by legal persons in reliance on a Part 4A permission under FSMA 2000. "Relevant current account providers" are the legal persons that provide such accounts, subject to the exemptions in subsection (5). These are banks and building societies, and are the entities potentially in scope of new Part 8B (subject to the designation process set out in section 131R). Subsection (5) lists persons that are not "relevant current account providers" for the purposes of this Part. These are credit unions (as defined in the Credit Unions Act 1979 or Credit Unions (Northern Ireland) Order 1985); societies that are registered under Friendly Societies Act 1974 or incorporated under the Friendly Societies Act 1992.

1616 Subsection (6) permits HM Treasury to amend the definitions of this Part and any other related provisions of this Part.

Cash access policy statement

Section 131P: Cash access policy statement

1617 This section requires HM Treasury to set out a policy statement and describes the contents and process relating to such a policy statement. This enables HM Treasury to set out its policy with regards to access to cash withdrawal and deposit services, which the FCA must have regard to when exercising its functions to protect access to cash (see subsection 131U(2)).

1618 Subsection (1) provides that HM Treasury must prepare a cash access policy statement.

1619 Subsection (2) defines a policy statement as a statement of the government's policies for cash access services in the United Kingdom, or a part of the United Kingdom.

1620 Subsection (2A) clarifies that reference to “cash access services” in subsection (2) includes free cash access services. This ensures that the cash access policy statement that HM Treasury must prepare under this Part, includes policies concerning free cash access services.

1621 Subsection (3) provides that the policy statement may state policies in relation to cash deposit and withdrawal services, services provided in relation to current accounts of different descriptions (for example personal and business current accounts) and services provided in urban and rural areas, among other things.

1622 Subsection (4) provides that when preparing a policy statement under this section HM Treasury must consult the FCA and have regard to any report provided to it by the FCA (see section 131Q).

1623 Subsections (5) and (6) provide that HM Treasury must publish a cash access policy statement in a manner that it thinks fit, and must keep the statement under review and may prepare a revised statement.

Section 131Q: Provision of reports to assist HM Treasury

1624 This section requires the FCA to provide reports to HM Treasury under this Part, if requested to do so by HM Treasury. This is to provide HM Treasury with the necessary data on cash provision in the UK required to support HM Treasury’s roles under the legislation, preparing the policy statement (section 131P) and designating persons (section 131R).

1625 Subsection (1) provides that the FCA, when requested by HM Treasury, must provide a report to HM Treasury.

1626 Subsection (2) sets out that HM Treasury may only request a report under this section for a report it reasonably requires in connection with the preparation of a policy statement (section 131P) or a decision on whether or not to designate a person for the purposes of this Part (section 131R).

1627 Subsection (3) determines the process for HM Treasury to make a request for a report. It states that a request must be made in writing and allows HM Treasury to require the FCA to send a report within a reasonable period of time as may be specified in the request.

1628 Subsection (4) determines that the FCA is not prevented or restricted from sharing information with HM Treasury for the purposes of providing reports to HM Treasury under this Part by section 348 of FSMA 2000 (restrictions on disclosure of confidential information), or regulations made under section 349, notably the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001. As per subsection (5), the disapplication of section 348 and regulations made under 349 in subsection (4) does not apply in relation to information provided to the FCA by a regulatory authority outside the United Kingdom.

Designation

Section 131R: Designation

1629 This section permits HM Treasury to designate persons for the purposes of this Part and specifies the procedure which HM Treasury must follow to designate a person. It provides HM Treasury with the ability to bring banks, building societies and operators of cash coordination arrangements within scope of the FCA’s functions relating to access to cash described below.

1630 Subsection (1) allows HM Treasury to designate a legal person if the person is a relevant current account provider (i.e. a bank or building society - see section 131O), or the operator of cash access coordination arrangements (see subsection 131N subsection (5)) if at least one of the participants in those arrangements is a designated relevant current account provider.

1631 Subsections (2) to (5) set out the procedure relating to designation under this Part. Subsection (2) states that a person is designated by giving the person a designation notice, and subsection (3) states that a designation notice must specify whether the person is designated for the whole of the United Kingdom, Great Britain only, or Northern Ireland only. Subsection (4) states that a designation notice to the operator of cash access coordination arrangements must specify the arrangements in as much detail as is reasonably practicable. Subsection (5) provides that before HM Treasury can give a designation notice to a person it must consult the FCA, notify the person, and consider any representations made.

1632 Subsection (6) provides that a designated person must comply with rules made by the FCA (see section 131V) and any directions given by the FCA (see section 131W).

Section 131S: Designation criteria

1633 This section sets out the purpose and criteria that HM Treasury must have regard to when designating a person.

1634 Subsection (1) provides that HM Treasury may only designate a person if it is satisfied that this is likely to further the FCA's purpose of seeking to ensure reasonable provision of cash access services (see section 131U).

1635 Subsection (2) sets out criteria that HM Treasury must have regard to when considering whether to designate a relevant current account provider. These are:

a. the distribution of cash access services operated by the provider in the United Kingdom, Great Britain or Northern Ireland (as the case may be);

b. the distribution in the United Kingdom, Great Britain or Northern Ireland (as the case may be) of persons holding current accounts provided by the provider;

c. the provider's share of the current account market in the United Kingdom, Great Britain or Northern Ireland (as the case may be);

d. the total value of the deposits held in current accounts provided by the provider in the United Kingdom, Great Britain or Northern Ireland (as the case may be).

1636 Subsection (3) makes clear that where a relevant current account provider is part of a group which includes other relevant current account providers, for example where there may be multiple banks within a banking group, references to "provider" are to be read as both the relevant current account provider HM Treasury is considering whether to designate and each of the other relevant current account providers that are part of the group. This allows HM Treasury, when considering whether to designate a person, to take into account the other relevant current account providers that are part of the group in accordance with the criteria in subsection (2).

1637 Subsection (4) provides that for the purposes of subsection (3) a "group" means the definition applied under section 421 of FSMA 2000, with the omission of subsection (1)(g) of that section as this relates to friendly societies, which are excluded from the definition of relevant current account providers under this Part.

Section 131T: Cancellation or variation of a designation notice

1638 This section permits HM Treasury to cancel or vary a designation notice given to a person. If HM Treasury varies a notice given to a person so that person is designated for a new or different part of the United Kingdom from the previous notice, sections 131R (3) and (5) and 131S apply. This means that:

a. the varied document must specify for which part of the United Kingdom the person is designated (section 131R subsection (3));

b. HM Treasury must consult the FCA, notify the person and consider any representations made (section 131R subsection (5));

c. the purpose, criteria and related provisions set out in section 131S apply.

Supervision of designated persons

Section 131U: Purpose for which FCA must exercise functions under this Part

1639 This section sets out the purpose for which the FCA must exercise its functions in order to protect access to cash under this Part, and the considerations that the FCA must have regard to in relation to achieving this purpose.

1640 Subsection (1) provides that the FCA must exercise its functions under this Part for the purpose of seeking to ensure reasonable provision of cash access services in the United Kingdom or a part of the United Kingdom.

1641 Subsection (1A) clarifies that any references to "cash access service" in section 131U includes references to free cash access services. This ensures that the FCA's purpose, as set out in section 131U, of seeking to ensure reasonable provision of cash access services includes seeking to ensure reasonable provision of free cash access services for relevant personal current accounts.

1642 Subsection (2) provides that for the purposes of this Part the FCA may determine what is meant by "reasonable provision" of cash withdrawal and deposit services. Reasonable provision of cash access services will include reasonable provision of free cash access services for relevant personal current accounts. This subsection also requires the FCA to have regard to the HM Treasury cash access policy statement currently in effect and any other matters that the FCA thinks appropriate.

1643 Subsection (3) and (4) supports the FCA's ability to use its powers to address issues with access to cash at a local level. It provides that in making a determination of reasonable provision the FCA must have regard to any impacts of local deficiencies in the provision of cash access services that it considers to be significant, to the extent that it is aware of them. Subsection (4) defines a local deficiency as circumstance which, the FCA believes, limits the ability of persons in any local area in the United Kingdom to withdraw or place cash from or on a relevant current account.

1644 Subsections (5) and (6) provide that in determining whether there are local deficiencies, and their impacts, the FCA must have regard to the cash access policy statement currently in effect and any other such matters it thinks appropriate. Subsection (6) lists what these other matters may include (but are not limited to), such as the number of persons likely to be affected, their characteristics, and the likely impact upon them.

Section 131V: FCA rules

1645 This section gives the FCA powers to make rules that apply to designated persons as the FCA thinks is necessary or expedient in order to achieve the purpose set out in section 131U. The process for the FCA to make rules in relation to this Part reflects the process under the existing FSMA 2000 regime with appropriate modifications to ensure it functions effectively.

1646 Subsection (2) explains that rules made by the FCA under this section only apply to a designated person in relation to the part of the United Kingdom for which they are designated.

1647 Subsection (3) applies 137T (general supplementary powers for rules made by a regulator) FSMA 2000 to any rules made by the FCA under this section. This subsection sets out that references to "authorised persons, activity, or investment" in section 137T means designated

persons (as defined section 131R) and their activities. Section 137T as it is applied to section 131V supplements the rule-making power, for instance permitting the FCA to make rules that make different provision for different cases and in respect of different descriptions of designated persons.

1648 Subsection (4) applies section 138A (modification or waiver of rules) FSMA 2000 to any rules made by the FCA under this section, except subsection (4)(b) of that section. Section 138A as it is applied to 131V has the effect of allowing the FCA to modify how rules made under section 131V apply to particular designated persons (or disapply them entirely).

1649 Subsection (5) applies section 138I (consultation by FCA before making rules) FSMA 2000 to any rules made by the FCA under this section. Section 138I as it is applied to 131V requires the FCA to consult and publish a draft of proposed rules before such rules may take effect, and to accompany any draft rules with explanation of the FCA's reasons for believing the proposed rules are compatible with the FCA's purpose to seek to ensure the reasonable provision of cash access services, as set out in section 131U.

Section 131W: Power to direct designated persons

1650 This section gives the FCA powers to give a direction under this section to a designated person.

1651 Subsection (1) provides that the FCA may only give a direction if it thinks the direction is desirable for the purpose mentioned in section 131U.

1652 Subsection (2) explains that a direction given by the FCA under this section only applies to a designated person in relation to the part of the United Kingdom that they are designated.

1653 Subsection (3) explains that a direction may include requiring a person to take specified action, refrain from taking a specified action, or to review - or take remedial action in respect of - past conduct.

1654 Subsection (4) allows the FCA to issue a new direction following the expiration of an existing direction.

1655 Subsection (5) permits the FCA to revoke a direction by written notice, and states that a direction ceases to be in force if the recipient is no longer a designated person.

Section 131X: Direction: procedure

1656 This section sets out the procedure by which the FCA can give a direction for the purposes of this Part.

1657 Subsection (1) requires the FCA to give written notice to the designated person to whom the direction is or will be given. A direction given by the FCA may take effect immediately, on a date specified by the FCA, or when the matter to which the notice relates is no longer open to review in accordance with section 391(8) of FSMA 2000 (see section 131X subsections (2) and (11)). Subsection (3) provides that a direction may only take effect immediately or on a specified date if the FCA thinks this is necessary.

1658 Subsection (4) sets out the details that the FCA must include in a written notice. These are: details of the direction; the FCA's reasons for the direction and when it takes effect; information that the designated person may make representations to the FCA within a specified period in the notice and of the designated person's right to refer to the Tribunal.

1659 Subsection (5) permits the FCA to extend the period specified in the notice for designated persons to make representations to the FCA.

1660 Subsection (6) requires the FCA to give written notice to a designated person if, having considered any representations, it decides to give the direction proposed or not revoke an existing direction. The notice must inform the person of their right to refer to the Tribunal (as stated in subsection (8)).

1661 Subsection (7) requires the FCA to give written notice to a designated person if, having considered any representations, it decides to not give the direction proposed, give a different direction (in which case this must comply with the requirements in subsection (4) as stated in subsection (9)), or revoke a direction.

1662 If a notice informs the designated person of their right to refer to the Tribunal it must give an indication of the procedure (as per subsection 10).

Section 131Y: Information gathering and investigations

1663 This section gives the FCA powers to obtain information and documents reasonably required by the FCA in connection with the exercise of functions under this Part, and the ability to investigate designated persons for the purposes of this Part. Such powers are intended to give the FCA the ability to collect information to inform reports to assist HM Treasury in preparing a policy statement and designating persons (see section 131Q), and to carry out their own functions under this Part 8B.

1664 This is achieved by applying Part 11 (information gathering and investigations) FSMA 2000 (see subsection (1)) with the exceptions of sections of 165A to 165C; 169; and 169A (see subsection (2)). These exceptions relate to powers of the Prudential Regulation Authority (165A to 165C) and assistance to overseas regulators (169 and 169A), which are not relevant to this Part 8B regime.

1665 Subsection (3) applies the provisions in Part 11 of FSMA 2000 to persons who are designated under this Part (relevant current account providers and operators of cash coordination arrangements, as per section 131R). All sections of Part 11, including powers relation to both information gathering and investigations, are applied to such designated persons, except those listed in subsection (2).

1666 Subsection (4) applies provisions in Part 11 that relate to information gathering only (i.e. not investigations) to persons who are not designated under this Part but may have relevant information to support the FCA in exercising its functions under this Part (see subsection 5).

1667 Subsection (5) lists the non-designated persons that are in scope of the FCA's information gathering powers specified in subsection (4). The persons are:

a. relevant current account providers who are not a designated person;

b. operators of a cash access coordination arrangements who are not a designated person;

c. operators of, or infrastructure providers in relation to, a payment system, who are not designated;

d. any other person who provides cash access services and is not a designated person; and

e. any other person who provides a relevant service to a person mentioned in paragraph (a), (b), (c) or (d) and is not a designated person.

1668 Subsections (6) and (7) define terms used in subsection (5). Any references to a "payment system", an "operator" and "infrastructure provider" in relation to a payment system, have the same meanings as in Part 5 of the Financial Services (Banking Reform) Act 2013 (see section 110 of that Act). Any references to a "relevant service" in subsection 5(e) is a service provided in connection with the provision of cash access services.

1669 Subsection (8) clarifies that, for the purposes of its application to this Part 8B, any reference in Part 11 to "either regulator" is to the FCA only.

Section 131Z: Disciplinary Measures

1670 This section gives powers to enforce requirements imposed by or under this Part on designated persons. This is achieved by applying Part 14 of FSMA 2000 (disciplinary measures) as if reference to "authorised persons" includes a person who is designated for the purposes of this Part. This allows the FCA to issue public statements or impose financial penalties in response to contraventions of requirements such as rules or directions. Subsection (b) omits section 206A of FSMA 2000 which relates to suspending permission to carry on regulated activities.

Section 131Z1: Costs of supervision

1671 The FCA is to be able to collect fees in order to cover the costs of supervision, for example costs associated with day to day supervision, or with appointing an investigator. This section restricts the FCA's ability to collect such fees in relation to functions under this Part to designated relevant current account providers (i.e. designated banks and building societies).

Section 131Z2: Exclusion and modification of general duties

1672 This section requires that, when exercising its functions under this Part, the FCA must, so far as is reasonably possible, act in a way which is compatible with its strategic objective and advances its access to cash purpose (section 131U) in place of its operational objectives. The FCA's competition duty (subsection 1B(4) of FSMA 2000) and economic competitiveness and growth objective (subsection 1B(4A) are also disapplied in relation to this Part.

1673 Subsection (2) ensures that the FCA's regulatory principles (in section 3B of FSMA 2000) are appropriately modified, by including a reference to the FCA's purpose in relation to access to cash (section 131U) in paragraph (g) which relates to the publication of information as a means of contributing to the advancement of the FCA's objectives.

1674 Subsection (3) ensures that the existing decision-making procedure in section 395 of FSMA 2000 applies appropriately for a direction made under section 131W.

Part 2 – Consequential amendments to FSMA 2000

1675 Part 2 of this Schedule makes consequential amendments to FSMA 2000 as a result of the introduction of Part 8B.

a. Paragraph 2 introduces amendments to FSMA 2000.

b. Paragraph 3 amends subsection (4) of section 3D of FSMA 2000, to enable the FCA to coordinate with the Prudential Regulation Authority (PRA) regarding the FCA's functions under this part.

c. Paragraph 4 amends subsection 55H(4) to allow the FCA to refuse an application to vary a permission under Part 4A if it appears to the FCA that it is desirable to do so in order to advance the FCA's purpose under this Part.

d. Paragraph 5 amends subsection 55L(6) to allow the FCA to refuse an application to impose, vary or cancel a requirement in relation to a Part 4A permission if it appears to the FCA that it is desirable to do so in order to advance the FCA's purpose under this Part.

e. Paragraph 6 amends section 55T as a consequence of the amendments in paragraphs 4 and 5.

f. Paragraph 7 amends section 232A so that the ombudsman scheme operator's duty to provide information to FCA applies in relation to information relevant to this Part.

g. Paragraph 8 amends subsection 395 in order to enable the application of the existing process for decision making with regards to directions issued under section 131W.

h. Paragraph 9 amends subsection 429(2) to apply the affirmative procedure to regulations made under 131O.

Schedule 9: Wholesale cash distribution

Part 1 – New Part 5A of the Banking Act 2009

1676 Part 1 of this Schedule inserts a new Part 5A into the Banking Act 2009.

Section 206C: Overview and purpose

1677 This section summarises the purpose of this Part. This Part permits the Bank to oversee certain persons involved in wholesale cash distribution (as defined in section 206E) (see subsection (1)).

1678 The Bank must exercise its powers under this Part for the purpose of managing risks to the effectiveness, resilience, and sustainability of wholesale cash distribution throughout the United Kingdom, or throughout any part of the United Kingdom (see subsection (2)).

Section 206D: Policy statement

1679 This section sets out the policy statement requirements. Subsection (1) provides that the Bank must prepare a statement of its policy with respect to the exercise of its powers under this Part, and must from time to time review the statement, and may prepare a revised statement.

1680 Subsection (2) provides that when preparing a statement under this section the Bank must consult such persons as appear to the Bank to be representative of persons likely to be affected by the statement.

1681 Subsection (3) provides that after preparing a statement under this section the Bank must provide the statement to HM Treasury and publish the statement. Subsection (4) provides that HM Treasury must lay a copy of each statement received before Parliament.

1682 Subsection (5) provides that no power conferred on the Bank by this Part may be exercised before a statement under this section has been published.

Section 206E: Interpretation: "wholesale cash distribution"

1683 This section defines the use of the terms "wholesale cash distribution" and "wholesale cash distribution activities". In this Part, "wholesale cash distribution" means arrangements by which cash is made available for retail cash distribution and removed from circulation, and "wholesale cash distribution activities" are activities intended to facilitate or control wholesale cash distribution and include (but are not limited to) purchasing cash from issuing authorities or the Mint; storing cash; transporting cash; undertaking authentication processes; and returning cash to issuing authorities or the Mint (see subsection (1)).

Section 206F: Interpretation: other terms

1684 This section defines other terms used in this Part. In particular, "FCA" means the Financial Conduct Authority; "Part 4A permission" has the meaning given by section 55A of FSMA 2000; "PRA" means the Prudential Regulation Authority; "the UK financial system" has the meaning given by section 1I of FSMA 2000.

<u>Recognised persons</u>

Section 206G: Wholesale cash oversight orders

1685 This section sets out how and when HM Treasury may specify a person as a recognised person and the information that must be recorded in a wholesale cash oversight order. HM Treasury may, by a wholesale cash oversight order, specify a person as a recognised person

for the purposes of this Part (see subsection (1)) if the person performs a relevant function in relation to a wholesale cash distribution activity and is recognised as having market significance in accordance with section 206H (see subsection (2)). A "relevant function" is defined in subsection (3).

1686 Subsection (4) provides that a wholesale cash oversight order must specify in as much detail as is reasonably practicable each wholesale cash distribution activity in relation to which the specified person performs a relevant function and each relevant function the person performs.

1687 Subsection (5) provides that HM Treasury is not permitted to make a wholesale cash oversight order in respect of an issuing authority or the Mint. Authorised banks that are issuing authorities may be subject to an order in respect of their activities that are not in their capacity as an issuing authority.

Section 206H: "Market significance" and "systemic significance"

1688 This section explains the relevance of "market significance" and "systemic significance" in the context of wholesale cash oversight orders.

1689 Subsection (1) provides that a wholesale cash order must specify whether the person in respect of whom the order is made is recognised as having market significance only, or as also having systemic significance.

1690 Subsection (2) provides that HM Treasury may recognise a person as having market significance only if satisfied that any significant deficiency in, or disruption to, the performance of the person's relevant functions in relation to wholesale cash distribution activities would be likely to undermine the effectiveness, resilience, or sustainability of wholesale cash distribution throughout the United Kingdom, or throughout any part of the United Kingdom.

1691 Subsection (3) provides that HM Treasury may recognise a person as having systemic significance only if satisfied that any significant deficiency in, or disruption to, the performance of the person's relevant functions in relation to wholesale cash distribution activities would be likely (in addition to the consequences mentioned above) to threaten the stability of, or confidence in, the UK financial system, or to have serious consequences for business or other interests throughout the United Kingdom or any part of the United Kingdom.

1692 Subsection (4) provides that where a person is part of a group, HM Treasury may have regard to functions performed by other members of the group when determining the matters mentioned in subsection (2) or (3). In this subsection "group" has the meaning given by section 421 of the Financial Services and Markets Act 2000 (see subsection (5)).

1693 Subsection (6) provides that HM Treasury may not recognise a person as having systemic significance if the person is a company wholly owned by the Crown.

Section 206I: Procedure

1694 This section sets out the procedure for the making of a wholesale cash oversight order. In particular, HM Treasury must first consult the Bank, notify the person, and consider any representations made (see subsection (1)).

1695 Subsection (2) provides that HM Treasury must, in addition to the requirements in subsection (1), consult the FCA before making a wholesale cash oversight order in respect of a person who has, or has applied for, Part 4A permission. Where the person has, or has applied for, Part 4A permission for the carrying on of a PRA-regulated activity, HM Treasury must also consult the PRA. Where the person is a participant in a regulated payment system (as defined in subsection (3)), HM Treasury must also consult the Payment Systems Regulator. In carrying out the consultation in accordance with subsection (2) HM Treasury must consider any representations made before making the wholesale cash oversight order.

1696 Subsection (4) provides that in considering whether to make the wholesale cash oversight order, HM Treasury may rely on information provided by the Bank, the FCA, the Payment Systems Regulator or the PRA.

Section 206J: Amendment or revocation of a wholesale cash oversight order

1697 Subsection (1) provides that HM Treasury may amend or revoke a wholesale cash oversight order.

1698 Subsection (2) provides that HM Treasury must revoke a wholesale cash oversight order if it is no longer satisfied that the person specified in the order performs a relevant function in relation to a wholesale cash distribution activity and has market significance.

1699 If HM Treasury is satisfied that the person continues to have market significance but is no longer satisfied that the person has systemic significance, then HM Treasury must amend the order so that it no longer specifies that the person is recognised as having systemic significance (see subsections (3) and (4)).

1700 Subsection (4) provides that subject to subsections (2) to (3), HM Treasury must consider any request by a person specified in a wholesale cash oversight order for the amendment or revocation of the order.

1701 Subsection (5) provides that the procedure as set out in section 206I applies to the amendment or revocation of a wholesale cash oversight order as it applies to the making of the order.

Regulation

Section 206K: Principles

1702 Subsection (1) gives the Bank the power to publish principles to which recognised persons must have regard in performing relevant functions in relation to wholesale cash distribution activities.

1703 Principles of general application may be published. Alternatively, subsection (2) provides that different principles may be published in relation to different wholesale cash distribution activities; different relevant functions; persons recognised as having market significance only and persons recognised as also having systemic significance.

1704 Subsection (3) provides that prior to publishing such principles, the Bank must consult such persons as appear to the Bank to be representative of persons likely to be affected by the principles and obtain the approval of HM Treasury.

Section 206L: Code of Practice

1705 This section gives the Bank the power to publish codes of practice about the performance by recognised persons of relevant functions in relation to wholesale cash distribution activities (see subsection (1)). Codes of practice are intended to set out binding requirements, whereas principles (made under section 206K) are intended to provide high-level over-arching guidance.

1706 Codes of general application may be published. Alternatively, subsection (2) provides that different codes of practice may be published in relation to different wholesale cash distribution activities; different relevant functions; and persons recognised as having market significance only and persons recognised as also having systemic significance.

1707 Subsection (3) provides that before publishing a code of practice, the Bank must consult such persons as appear to the Bank to be representative of persons likely to be affected by the code.

Section 206M: Directions

1708 This section gives the Bank power to give directions in writing to a recognised person (see subsection (1)). This may include requiring or prohibiting the taking of specified action in relation to the performance of a specified relevant function in relation to a specified wholesale cash distribution activity. It may also include setting standards to be met in the performance of a specified relevant function in relation to a specified wholesale cash distribution activity (see subsection (2)).

1709 Subsections (3) and (4) provide that if the Bank gives a direction to a recognised person for the purpose of resolving or reducing a threat to the stability of the UK financial system, the recognised person (including the recognised person's officers and staff) has immunity from liability in damages in respect of action or inaction in accordance with the direction.

1710 Subsection (5) sets out that a direction given to a recognised person for the purpose of resolving or reducing a threat to the stability of the UK financial system must include a statement that it is given for that purpose and inform the recognised person of the effect of immunity from liability in damages in respect of action or inaction in accordance with the direction.

1711 Subsection (6) provides that HM Treasury may confer, by regulations, immunity on any person from liability in damages in respect of action or inaction taken by a person in accordance with the direction of the Bank, including a direction to a recognised person for the purpose of resolving or reducing a threat to the stability of the UK financial system. Subsection (7) sets out the procedure for making an order under subsection (6).

1712 Immunity from liability conferred under this section does not extend to action or inaction taken in bad faith or in contravention of section 6(1) of the Human Rights Act 1998.

Section 206N: Role of the FCA, the PRA and the Payment Systems Regulator

1713 This section sets out the role of the FCA, the PRA and the Payment Systems Regulator. Under subsection (1), the Bank of England is required to have regard to any action which the FCA, the PRA or the Payment Systems Regulator has already taken or could take when exercising its powers.

1714 Under subsection (2), as part of the requirement at subsection (1), the Bank of England is required to consult FCA before taking action in respect of a person who is regulated or has applied to be regulated. There is also a requirement to consult the PRA where it is in respect to a person who has applied for Part 4A Permission to carry out PRA regulated activity. Where the Payment Systems Regulator is involved, there is also a requirement for the Bank of England to consult the regulator before taking action in respect to a participant in a regulated payment system.

1715 Subsection (3) provides the source for definition for "participant" and "regulated payment system" for the purposes of subsection (2)(c) ascribing to them the same meaning as that contained at section 110 of the Financial Services (Banking Reform) Act 2013.

1716 Subsection (4) stops the Bank of England from taking action in respect to a person described under subsection (2) if the FCA, the PRA or the Payment Systems Regulator has given notice to the Bank of England that they are considering taking action. The exception to this requirement not to take action is whereby the FCA, the PRA or the Payments Systems Regulator have consented or withdrawn the notice.

Enforcement

Section 206O: Inspection

1717 This section gives the Bank the power to appoint one or more persons to inspect the performance by a recognised person of a relevant function in relation to a wholesale cash distribution activity (see subsection (1)). This power allows the Bank to appoint an inspector to check that codes of practice, principles, or directions are being complied with, or that the performance by a recognised person of a relevant function is being carried out in a satisfactory manner.

1718 Subsection (2) requires a recognised person who performs a relevant function in relation to a wholesale cash distribution activity to co-operate with an inspector and grant the inspector access, on request and at any reasonable time, to premises on or from which any part of the function is performed, and otherwise co-operate with an inspector.

Section 206P: Inspection: warrant

1719 This section provides that an inspector may apply for a warrant entitling the inspector or a constable to enter premises if there is performed on the premises any part of a relevant function in relation to a wholesale cash distribution activity. The application for a warrant is to be made to a justice of the peace (or in Scotland, to a justice of the peace or a sheriff; in Northern Ireland, to a lay magistrate), who can issue the warrant only if one or more of the conditions set out in subsections (2), (3), (4) and (5) are fulfilled:

a. Condition 1: The Bank has issued a notice under Information section 206Z3 and the requirement has not been complied with, and it is reasonable to believe that relevant documents or information are on the premises.

b. Condition 2: An information requirement has been imposed under section 206Z3, there is reason to suspect that it would not be complied with or that the documents or information would be destroyed or tampered with.

c. Condition 3: An inspector appointed under section 206O gave reasonable notice of a wish to enter the premises and was refused entry to those premises.

d. Condition 4: A person occupying or managing the premises has failed to co-operate with an inspector.

1720 Subsection (6) sets out that a warrant issued in accordance with this section will permit an inspector or a constable to enter the premises, to search and take possession of information or documents, take copies, and permit a constable to use reasonable force.

1721 Subsection (7) applies to warrants issued in accordance with this section, sections 15(5) to (8) and 16 of the Police and Criminal Evidence Act 1984 which provide that a warrant may authorise persons to accompany the constable executing it and permit that person to have the same powers as the constable in relation to the warrant. Subsections (8) and (9) make similar provision about the application to warrants issued in accordance with this section in Scotland and Northern Ireland.

Section 206Q: Independent report

1722 Subsection (1) enables the Bank to require a recognised person who performs a relevant function in relation to a wholesale cash distribution activity to appoint an expert to provide a report on the performance of the function.

1723 Subsection (2) specifies that the Bank may only impose this requirement where the Bank thinks that the person is not having sufficient regard to the principles published by the Bank under section 206K; the person is failing to comply with a code of practice under section 206L; or the report is likely for any other reason to assist the Bank in the performance of its functions under this Part.

1724 Subsection (3) enables the Bank to impose requirements about the nature of the expert to be appointed, the content of the expert's report, how the report is subsequently treated (including whether or not it is to be disclosed or published); and the timeframe within which the report must be produced.

Section 206R: Compliance failure

1725 This section defines the use of the term "compliance failure" throughout this Part. A compliance failure is taken to mean the failure by a recognised person to comply with a code of practice (section 206L), with a direction made by the Bank (section 206M), or with a requirement to ensure compliance with regard to producing an independent report (section 206Q).

Section 206S: Publication

1726 This section gives the Bank the power to publish details of a compliance failure by a recognised person and gives the Bank the power to publish details of a sanction imposed under sections 206T to 206V.

Section 206T: Penalty

1727 In the event of a compliance failure, subsection (1) gives the Bank the power to impose on a recognised person a financial penalty.

1728 Subsection (2) provides that the financial penalty is to be paid to the Bank and is enforceable as a debt.

1729 Subsections (3) and (4) specify that the Bank must prepare and publish on its website a statement of principles which it will apply in determining whether to impose a penalty, and the quantum of the penalty, for compliance failures under this Part. The Bank must send a copy of the statement to HM Treasury, review the statement from time to time and revise the statement, if necessary. In considering financial penalties for compliance failures under this Part, the Bank must apply the statement in force when the failure occurred.

Section 206U: Closure

1730 This section enables the Bank to give a closure order to a person recognised for the purposes of this Part as having systemic significance only.

1731 Subsection (1) provides that the Bank may make a closure order only if it is satisfied that a compliance failure threatens the stability of, or confidence in, the UK financial system, or has serious consequences for business or other interests throughout the United Kingdom.

1732 Subsection (2) gives the Bank the power to specify that a recognised person must cease operation for a specified time, until further notice, or permanently.

1733 Subsection (3) provides that before giving a closure order to a recognised person, the Bank must have regard to the public interest in the continued performance by the person of relevant functions (whether or not specified) in relation to wholesale cash distribution activities (whether or not specified).

1734 Subsection (4) makes it an offence for a recognised person to fail to comply with a closure order. A fine may be imposed on a person found guilty of contravening an order issued under this section (see subsection (5)).

Section 206V: Management disqualification

1735 This section enables the Bank to make an order to disqualify a specified person from holding an office or position involving responsibility for taking decisions about the management of a recognised person for either a specified period, until further notice, or permanently (see subsection (1)).

1736 Under subsection (2) it is an offence for a person to breach a prohibition issued in accordance with subsection (1). A fine may be imposed on a person found guilty of contravening an order issued under this section (see subsection (3)).

Section 206W: Warning

1737 This section requires the Bank to give a warning notice of its intention to impose a sanction and allow 21 days for the person to whom the notice relates to make representations, which the Bank must consider before it may impose a sanction under this Part. The Bank must issue a decision notice stating whether or not it intends to impose the sanction.

1738 In certain circumstances the Bank has power, under subsection (3), to give a closure order under section 206U or to make an order under section 206V without giving a warning notice. The Bank may make such orders if, for instance, the recognised person is committing a compliance failure of such a serious nature that it poses an imminent threat to the stability of the UK financial system.

Section 206X: Appeal

1739 This section provides for appeals against the Bank's decision to impose a sanction under this Part. Where the Bank notifies a person under section 206W(1) that it intends to impose a sanction, the person may appeal to the Upper Tribunal (see subsection (1)). Where the Bank imposes a sanction on a person without notice in reliance on section 206W(3), the person may appeal to the Upper Tribunal (see subsection (2)). The Bank may not impose a sanction while an appeal under this section could be brought or is pending (see subsection (3)).

Section 206Y: Injunctions

1740 This section provides for injunctions in favour of the Bank.

1741 If, on the application of the Bank, the court is satisfied that there is a reasonable likelihood that there will be a compliance failure, or that there has been a compliance failure and there is a reasonable likelihood that it will continue or be repeated, the court may make an order restraining the conduct constituting the failure (see subsection (1)).

1742 If, on the application of the Bank, the court is satisfied that there has been a compliance failure by a recognised person, and that there are steps which could be taken for remedying the failure, the court may make an order requiring the recognised person, and any other person who appears to have been knowingly concerned in the failure, to take such steps as the court may direct to remedy it (see subsection (2)).

1743 If, on the application of the Bank, the court is satisfied that there may have been a compliance failure by a recognised person, or that any other person may have been knowingly concerned in a compliance failure, the court may make an order restraining the person from dealing with any assets which it is satisfied the person is reasonably likely to deal with (see subsection (3)).

1744 Subsection (4) provides that in England and Wales and Northern Ireland the jurisdiction conferred by this section is exercisable by the High Court and in Scotland by the Court of Session.

1745 1459 Subsection (5) explains how provisions in this section are to be interpreted in Scotland.

Miscellaneous

Section 206Z: Fees

1746 This section enables the Bank to require a recognised person to pay fees (see subsection (1)) but only in accordance with a scale of fees set by HM Treasury in regulations (see subsection (2)). Subsection (4) specifies that the requirement to pay fees may be enforced by the Bank as a debt.

Section 206Z1: Records

1747 This section provides that the Bank must maintain satisfactory arrangements for recording decisions made in the exercise of functions under this Part and the safe keeping of those records which it considers ought to be preserved (see subsection (1)).

Section 206Z2: Annual report

1748 This section provides that the Bank must, at least once a year, make a report to HM Treasury on the discharge of its functions under this Part and such other matters as HM Treasury may from time to time direct (see subsection (1)). Subsection (1) does not require the inclusion in the report of any information the publication of which would, in the opinion of the Bank, be against the public interest (see subsection (3)).

1749 A report on the discharge of the Bank's functions under this Part must, in particular, include the Bank's opinion as to the extent to which risks to the effectiveness, resilience and sustainability of wholesale cash distribution throughout the United Kingdom, or throughout any part of the United Kingdom, have been managed, and the extent to which, in relation to the exercise of functions in relation to persons recognised as having systemic significance, risks to the stability of the UK financial system have been managed (see subsection (2)).

1750 HM Treasury must lay before Parliament a copy of each report received under this section (see subsection (4)).

Section 206Z3: Requirement to provide information

1751 This section provides that the Bank may by notice in writing require a person to provide information which the Bank thinks will help HM Treasury in determining whether to make a wholesale cash oversight order (section 206G) or which the Bank otherwise requires in connection with its functions under this Part (see subsection (1)). The Bank may also by notice in writing require a person who performs a relevant function in relation to wholesale cash distribution activity to provide information which the Bank requires in connection with the exercise of its functions (whether under this Part or otherwise) in pursuance of the purpose mentioned in section 206C(2), or the Bank's financial stability objective. A notice under subsection (1) or (2) may require the person to notify the Bank if events of a specified kind occur (see subsection (3)). A notice under subsection (1) or (2) may require information to be provided in a specified form or manner at a specified time in respect of a specified period (see subsection (4)).

1752 Under subsection (5) it is an offence for a person to fail without reasonable excuse to comply with a requirement under this section or knowingly or recklessly to give false information in pursuance of this section. Under subsection (6)(a), a fine may be imposed on a person found guilty of contravening a notice issued under this section.

Section 206Z4: Disclosure of information

1753 This section permits the Bank to disclose information obtained by virtue of section 206Z3 to HM Treasury, the FCA, the PRA, and The Royal Mint (see subsection (1)). Subsection (1) overrides a contractual or other requirement to keep information in confidence and is without prejudice to any other power to disclose information (see subsection (2)).

1754 HM Treasury may by regulations permit the disclosure by the Bank of specified information obtained by virtue of section 206Z3 to specified persons and permit the publication of specified information and make provision about the manner and extent of publication (see subsection (3)).

Section 206Z5: Saving for informal oversight

1755 This section clarifies that nothing in Part 5A prevents the Bank of England either from having dealings with persons who are not recognised persons for the purposes of the Part or from having dealings with recognised persons other than through the provisions of the Part.

Section 206Z6: Power to disapply regulation and enforcement provisions

1756 This section permits HM Treasury by regulations to provide for any of sections 206K to 206Z4 not to apply, or to apply with modifications, in relation to recognised persons that are companies wholly owned by the Crown (see subsection (1)). For the purposes of this section, a company is wholly owned by the Crown if, and only if, every member of the company is a Minister of the Crown, government department or company wholly owned by the Crown, or a person acting on behalf of a Minister of the Crown, government department or company wholly owned by the Crown (see subsection (5)).

1757 Before making regulations under this section HM Treasury must consult the Bank.

1758 Subsection (4) makes provision about the procedure for regulations made under subsection (1).

1759 Section 206Z6 allows HM Treasury to, by regulations, provide for a company wholly owned by the Crown to be a person recognised as having market significance. Currently there is only one company that is both wholly owned by the Crown and operating in the wholesale cash distribution market. Existing oversight arrangements over this company are envisaged to be sufficient to safeguard against any risks that may arise should the company become systemic. HM Treasury intends for wholly Crown-owned entities to be within scope of market oversight designation only, but with a power for HM Treasury to disapply some or all of the powers under the regime for Crown-owned entities at the point of designation, if deemed appropriate.

Part 2 – Amendments to Part 6 of the Financial Services (Banking Reform) Act 2013

1760 Part 2 of this Schedule makes amendments to Part 6 of the Financial Services (Banking Reform) Act 2013. These amendments extend the special administration regime for operators of certain infrastructure systems to also include persons recognised for the purposes of Part 5A of the Banking Act 2009. This ensures that a special administration regime (SAR) applies to entities designated as having systemic significance.

1761 Paragraph 2 provides that Part 6 of the Financial Services (Banking Reform) Act 2013 (to provide for special administration arrangements to apply to certain persons) is amended as follows.

1762 Paragraph 3 amends section 111 (financial market infrastructure administration) to refer to a new term "financial market and cash infrastructure" for the purposes of Part 6.

1763 Paragraph 4 provides that section 112 (interpretation: infrastructure companies) is amended to include persons recognised under Part 5A as having systemic significance within the definition of an "infrastructure company".

1764 Paragraph 5 amends section 113 (interpretation: other expressions) to include within the definition of "the relevant system" in relation to an infrastructure company falling within section (2)(ba) "any system used by the company to facilitate or control wholesale cash distribution".

1765 Paragraph 6 amends section 115 (objective of FMI administration) to provide that where an FMI administrator is appointed in relation to a company that is a person recognised for the purposes of Part 5A of the Banking Act 2009, the objective of the FMI administration is (a) to ensure that the functions performed by the person in relation to wholesale cash distribution are and continue to be performed efficiently and effectively, and (b) to ensure by one or both of the specified means that it becomes unnecessary for the FMI administration order to remain in force for that purpose or those purposes.

1766 Paragraph 7 amends section 119 (continuity of supply). The definition of "supply" is amended to include, in the case of an infrastructure company that is a person recognised for the purposes of Part 5A of the Banking Act 2009, goods and equipment used by the person in connection with wholesale cash distribution activities.

1767 Paragraph 8 amends section 120(8) (power to direct FMI administrator) to state that the section does not limit the powers conferred on the Bank by section 206M(directions) of the Banking Act 2009 in relation to a person recognised as having systemic significance for wholesale cash distribution.

1768 Paragraph 9 amends section 127(1) (interpretation of Part) to state that the terms "wholesale cash distribution" and "wholesale cash distribution activities" have the meanings given by section 113.

Part 3 – Consequential amendments

1769 Part 3 of this Schedule makes consequential amendments to the Banking Act 2009 which are needed as a result of the amendments in Part 1 of this Schedule.

1770 Paragraph 10 introduces amendments to Banking Act 2009.

1771 Paragraph 11 amends the table contained at section 259(3) of the Banking Act 2009 by adding four new rows and three columns in a table with the heading (Part 5A-Wholesale cash distribution) to continue the table after 206A (services forming part of recognised payment systems). This table sets out the procedures as follows: in the first row under the heading, where the Bank of England issues directions: immunity under section 206M this should be done following the negative resolution procedure. In the second row, section 206Z for fees should follow the negative resolution procedure. In the third row which is for information powers, the negative resolution is followed and where section 206Z6 which is the power to disapply regulation and enforcement provisions, the draft affirmative resolution is followed.

1772 Paragraph 12 makes some changes to the index of defined terms to be found under section 261 of the Banking Act 2009. The row where "FCA" appears under the expression column, section 206F is added after 183 to include it in the index of defined terms which should read "3, 93, 166, 183 & 206F]". In the entry for "Payment Systems Regulator" in the second column section 206F is added after so that it reads "183 & 206F). At (c), in the row for the PRA in the second column "206F" is also added to read "183 & 206F). This table sets out expressions defined in the Banking Act 2009 for general purposes.

1773 Paragraph 13 introduces amendments to the Financial Services Act 2012.

1774 Paragraph 14(1) amends section 85 at subsection (3)(a) of the Financial Services Markets Act 2012 which deals with relevant functions of the Bank of England in relation to the complaints scheme by making wholesale cash distribution a relevant function.

1775 Paragraph 14(3)(a) adds wholesale cash distribution functions of publishing principles under section (206K) or codes of practice under section 206L as legislative functions in section 85(7) of Banking Act 2009. Paragraph 14(3)(c) makes preparing a statement of principles by the Bank of England under section 206T(3) a legislative function.

1776 Paragraph 15(1) introduces amendments to section 110 of the Banking Act 2009 which deals with payments to HM Treasury of penalties received by the Bank of England. Paragraph 15(2) amends section 110(2)(b) to add penalties received under new Part 5A section 206T.

1777 Paragraph 15(3) adds sections 206S to 206V and 206Y to the enforcement powers of the Bank of England for the purposes of section 110(7).

1778 Paragraph 16 deals with amendments necessary in the Financial Services (Banking Reform) Act 2013. The new Part 5A (wholesale cash distribution) is added to ensure coordinated exercise of functions in section 98.

Schedule 10: Performance of functions relating to financial market infrastructure

Part 1 – New Chapter 2A of Part 18 of FSMA 2000

1779 Paragraph 1 inserts a new "Chapter 2A: Performance of Functions of Recognised Bodies" into Part 18 of FSMA 2000, comprising new sections 309A to 309Z8 of FSMA 2000, and making provision for a Senior Managers & Certification Regime for recognised central counterparties (CCPs), recognised investment exchanges (RIEs) and recognised central security depositories (CSDs), and a power to apply the regime to credit rating agencies (CRAs).

1780 Section 309A enables HM Treasury to make regulations which, in effect, apply the new Chapter 2A to CCPs, CSDs or RIEs designating them as a "relevant recognised body" for the purpose of the regime. This section provides that, if HM Treasury wishes to apply the regime to RIEs, it must consult the Financial Conduct Authority ("FCA"), and that if it wishes to apply the regime to recognised CCPs or recognised CSDs, it must consult the Bank of England ("the Bank"). HM Treasury is also required to consult anyone who is likely to be affected by the application of this Chapter to a particular type of recognised body, for example the firms themselves. Section 309A (4) clarifies that where the "relevant recognised body" is an RIE, the appropriate regulator for the purpose of this Chapter is the FCA, and that for CCPs and CSDs it is the Bank.

1781 Section 309B provides that, if the appropriate regulator considers that an individual is not a fit and proper person to perform functions which relate to any activity (regulated or unregulated) carried on by a relevant recognised body it regulates, it can make a "Part 18 prohibition order". A Part 18 prohibition order is an order which prohibits an individual from performing a particular function, any function within a particular category, or any function. Sections 309B (3) and (4) clarifies the types of activities and persons that a prohibition order may relate to. The regulators have the power to make a range of prohibition orders, depending on the circumstances of each case and the range of activities which the relevant individual would not be considered fit to undertake. They can also make provision prohibiting the individual from performing functions in relation to a regulated activity (or regulated activities) carried out by a person who is authorised or exempt under FSMA 2000, or a person to whom, as a result of Part 20 of FSMA 2000, the general prohibition does not apply in relation to a regulated activity. This would allow, for example, the Bank to issue a prohibition order that prevented an individual not only from performing functions in respect of activities carried out by a CCP, CSD, RIE or CRA, but also functions in respect of regulated activities (or activities that would otherwise be regulated) within any other type of entity subject to the SM&CR in Part 5 of FSMA 2000.

1782 Section 309C sets out the procedure for making Part 18 prohibition orders. The appropriate regulator may be required to consult another regulator ahead of making a prohibition order in circumstances prescribed by HM Treasury through secondary legislation. If the appropriate regulator proposes to make a Part 18 prohibition order it must also give the individual to whom the prohibition order would apply a warning notice, which sets out the terms of the prohibition order. A warning notice is a notice issued by the appropriate regulator, in accordance with section 387 of FSMA 2000. If the regulator decides to make a Part 18 prohibition order, section 309C provides for a decision notice to be given to the individual to whom the prohibition order applies. A decision notice is a notice issued by the appropriate regulator, in accordance with section 388 of FSMA 2000. The decision notice must name the individual and, similarly to the warning notice, set out the terms of the Part 18 prohibition order. An individual subject to a Part 18 prohibition order has the right to refer the matter to the Tax and Chancery Chamber of the Upper Tribunal ("the Tribunal").

1783 Section 309D enables the appropriate regulator to vary or revoke a prohibition order if an individual named in the order applies for it to be revoked or varied. In circumstances prescribed by HM Treasury through secondary legislation, the appropriate regulator may be required to consult another regulator ahead of varying or revoking a prohibition order. Subsections (4) and (5) are self-explanatory.

1784 Section 309E provides that an individual is guilty of an offence, if they perform, or agree to perform, a function in breach of a Part 18 prohibition order, issued under section 309B. If convicted, an individual is liable to a fine. The fine could be potentially unlimited in England and Wales, while it should not exceed £5,000 in Scotland and Northern Ireland. There is a defence under subsection (3) for a person who can show that they took all reasonable precautions and exercised all due diligence to avoid committing the offence.

1785 Section 309F (1) provides that persons falling within section 309B (4) must take reasonable care to ensure that their functions are not performed by a person in breach of a Part 18 prohibition order. If a private person suffers a loss because a person falling within section 309B (4) has acted in breach of this duty, subsection (2) provides that they may bring an action for damages against them. Subsections (3) and (4) confer powers on HM Treasury, by regulations, to define a "private person" and to specify circumstances in which this section applies to a person other than a private person.

1786 Section 309G (1) requires relevant recognised bodies to take reasonable care not to allow persons, natural or corporate, to perform certain functions – described in these provisions as "designated senior management functions" - without the approval of the appropriate regulator. Subsection (2) provides that this duty applies where functions are performed under an arrangement entered into by the body itself (e.g., a contract of employment), or where they are performed under an arrangement entered into by its contractor. Subsection (3) provides that the functions which are "designated senior management functions" requiring approval are to be specified by the appropriate regulator's rules. The regulator is able to specify a function as a "designated senior management" function if it falls within the description in subsections (4) to (6), which can be summarised as follows:

a. The function will require the person performing it to be responsible for managing one or more aspects of the body's affairs (including, for example, taking decisions, or participating in the taking of decisions, about how one or more aspects of a relevant recognised body's affairs should be carried on); and

b. Those aspects involve, or might involve, a risk of serious consequence for the relevant recognised body itself, or for business or other interests in the United Kingdom.

1787 Section 309H grants the appropriate regulator the power to make transitional provisions when making rules under section 309G (3). Subsection (2) enables HM Treasury to make any incidental, consequential, transitional, supplemental or saving provision it considers appropriate through secondary legislation, in connection with the regulators' ability to make rules under section 309G (3).

1788 Section 309I requires an application for approval to be submitted to the appropriate regulator by the relevant recognised body concerned or, in the case of new firms awaiting recognition, a prospective recognised body, and must include a statement of the aspects of the applicant's affairs that the person will be responsible for managing (known as a "statement of responsibilities"). The application must be made in the manner required by the appropriate regulator and must contain any information that the appropriate regulator may reasonably require. After the application is made, the appropriate regulator can require the applicant to request any additional information it needs to assess the application.

1789 Section 309J provides for the vetting of candidates by a relevant recognised body before it submits an application for approval to perform a designated senior management function. Section 309J (1) requires the relevant recognised body to be satisfied that a candidate is fit and proper to perform the functions in question before it is able to submit an application. Subsection (2) sets out matters that a recognised body must have regard to, among other things, when vetting candidates. These are whether the person has obtained specified qualifications, has undergone, or is undergoing specified training, possesses a specified competence, or has specified personal characteristics. These matters are all to be specified in rules made by the appropriate regulator. Subsection (4) provides that HM Treasury will specify in regulations the circumstances in which regulators are required to consult each other, ahead of making rules.

1790 Section 309K sets out the basis on which the relevant regulator is to assess the suitability of a candidate for approval. Subsection (1) requires the relevant regulator to be satisfied that a candidate is fit and proper to perform the functions in question before it is able to give its approval, or that this condition will be met if the application is granted subject to conditions. Subsection (3) sets out that the appropriate regulator may choose to grant a time-limited approval, or an approval subject to specific conditions, if it considers it desirable to do so in order to advance, in the case of the FCA, any of its operational objectives, and, in the case of the Bank, its Financial Stability Objective. Subsection (5) provides that HM Treasury can make regulations imposing consultation requirements on the appropriate regulator to be complied with ahead of granting an application.

1791 Section 309L requires the appropriate regulator to grant an approval within three months of receiving an application, or, if later, within the period within which a prospective recognised body's application for recognition is to be determined. The three-month period is paused if the regulator requires the applicant to provide it with further information after the application is submitted. Subsection (5) provides that an applicant may withdraw an application by giving written notice to the appropriate regulator, but only with the consent of the person in relation to whom the application is being made (and the person by whom that person is retained, if not the applicant).

1792 Section 309M sets out the procedure for notifying interested parties of a regulator's actual or proposed decision in relation to an application. If it proposes to refuse the application, or grant it for a time limited period or subject to conditions, it must give a warning notice to the interested parties. A warning notice is a notice issued by the appropriate regulator, in accordance with section 387 of FSMA 2000. This must be followed by a decision notice if it subsequently decides to refuse the application or grant it for a time limited period or subject to conditions. A decision notice is a notice issued by the appropriate regulator, in accordance with section 388 of FSMA 2000. Subsection (4) provides for an appeal to the Tribunal if an application is refused or granted for a limited time or subject to conditions.

1793 Section 309N requires the relevant recognised body to notify the appropriate regulator, and submit a revised statement of responsibilities, each time there is a change within the area of responsibility of a senior manager who has been approved by the appropriate regulator, which is worthy of notification to the regulator. A statement of responsibilities is a statement of the aspects of the relevant recognised body's affairs that the senior manager is responsible for managing. The appropriate regulator has the power to make rules specifying when a change in a senior manager's responsibilities is to be considered worthy of notification to the regulator (subsection 3), and to direct the form in which the relevant recognised body may be required to submit and verify information, when informing the regulator of such a change (subsection 4).

1794 Section 309O gives the appropriate regulator the power to withdraw the approval granted for the purposes of section 309G where it no longer considers that the person is a fit and proper person to carry out the functions for which they had been approved. It also requires the relevant recognised body to review senior managers' fitness for approval at intervals specified by the appropriate regulator in its rules, and to notify the regulator if it considers there are grounds for withdrawal of approval.

1795 Section 309P sets out the procedure for withdrawing approval of a senior manager. Before making a decision to withdraw an approval given under section 309G, the appropriate regulator must comply with any consultation requirements that are prescribed in regulations made by HM Treasury and issue a warning notice to the interested parties, including the person in relation to whom the approval was given. This must be followed by a decision notice if the proposed decision is made. Subsection (3) provides for a right of appeal to the Tribunal.

1796 Section 309Q sets out that, if the appropriate regulator has granted a conditional or time-limited approval, the relevant recognised body to which the approval applies may request the appropriate regulator to vary or remove the condition or time limit, or impose a new condition. Subsections (3) and (4) set out that the appropriate regulator must decide whether to grant the application or give a warning notice within three months (or such other period prescribed by HM Treasury regulations). Subsections (5) and (6) provide that the appropriate regulator can refuse an application if it is desirable to do so in order to advance, for the FCA any of its operational objectives, and for the Bank its Financial Stability Objective.

1797 Section 309R provides that the appropriate regulator may choose to vary an approval on its own initiative if it considers it desirable to do so in order to advance a relevant objective, as defined in subsection (2). The approval may be varied by imposing, varying or removing a condition, limiting the period for approval, or varying or removing a time limit. Subsections (5) to (14) provide for the procedure to be followed when the appropriate regulator proposes to or decides to vary an application.

1798 Section 309S requires the appropriate regulator to issue a statement of its policy on the circumstances in which it will give a time-limited or conditional approval, and on the variation of an approval under sections 309Q and 309R. The statement of policy is required to be published in draft, which must specify a period within which members of the public may make representations. These must be considered by the appropriate regulator before the proposed statement is issued. The appropriate regulator is required to publish the statement, along with a summary of the representations received and any significant changes made since the statement was published in draft, in the best way to bring them to the attention of the public.

1799 Under section 309T, if a private person suffers a loss because a relevant recognised body has acted in breach of the duty under section 309G (1) (failing to take care to prevent a person carrying out certain functions without approval), they may bring an action for damages against the relevant recognised body. Subsections (2) and (3) confer powers on HM Treasury, by regulations, to define a "private person" and to specify circumstances in which this section applies to a person other than a private person.

1800 Section 309U provides that the appropriate regulator can impose a penalty, of such amount as the regulator considers appropriate, if a person has performed a designated senior management function without approval, and the person knows, or ought to have known, that they were doing so.

1801 Section 309V sets out the procedure for imposing penalties and is self-explanatory.

1802 Section 309W requires the appropriate regulator to issue a statement of its policy on the circumstances in which it will impose penalties under section 309U and the basis on which the level of penalties will be determined. The policy set out in the statement must cover the matters set out in subsection (2) to (4). Subsection (5) is self-explanatory. Subsection (6) requires the appropriate regulator to have regard to the statement in force at the time when the person performed a senior manager function without approval.

1803 Section 309X sets out the procedure for issuing a statement of policy under section 309W. Subsections (1) and (2) require the regulator to publish a draft of the statement of policy before it is issued, together with a notice stating that representations about the proposal may be made to the appropriate regulator within a specified period. The appropriate regulator is then required to publish the statement when it is issued, along with a summary of the representations received and any significant changes made since it was published in draft, in the best way to bring them to the attention of the public.

1804 Section 309Y establishes a certification regime for specified functions which are not subject to the senior managers' approval regime in sections 309G to 309X. It requires relevant recognised bodies to take reasonable care not to allow employees, including contractors and secondees, to perform certain functions without having a valid certificate issued by the relevant recognised body. The functions requiring certification will be specified by the appropriate regulator's rules. The regulator is only able to specify functions for this purpose if they are a "significant harm function" which is not a designated senior management function (as defined in s309G). Subsection (5) provides that a "significant harm function" is:

a. a function which will require the person performing it to be involved in one or more aspects of the relevant recognised body's affairs; and

b. those aspects involve, or might involve, a risk of serious harm for the relevant recognised body itself, or for any of its users, or persons who have relevant rights or interests in its services. "Relevant rights or interests" are described in subsection (7).

1805 Section 309Z (1) provides that a relevant recognised body must not issue a certificate to a person in relation to a function specified under section 309Y unless it is satisfied that a person is fit and proper to perform that function. Subsection (2) sets out the matters that a relevant recognised body must have regard to, among other things, when assessing the suitability of someone to perform a function specified under section 309Y. These are whether the person has obtained a specified qualification, has undergone or is undergoing specified training, possesses a specified competence, or has specified personal characteristics (with all these matters being specified in rules made by the appropriate regulator). Subsection (4) provides that the certificate issued under this section must state that the body is satisfied that the individual is fit and proper to perform the function, and set out the aspects of the body's affairs which the certified individual is involved in when performing the function to which the certificate relates. The certificate has a validity of twelve months. Where the relevant recognised body decides not to issue a certificate, subsection (6) requires it to give the person a notice in writing stating the reason for the decision, and next steps. Subsection (7) requires the relevant recognised body to keep a record of all employees who have a valid certificate.

1806 Section 309Z1 provides that the appropriate regulator may make rules about the conduct of approved senior managers, employees and directors of relevant recognised bodies. These rules are often referred to as "conduct rules". Rules under this section may include provision requiring a relevant recognised body to notify its employees of the conduct rules that apply to them, and to take the necessary steps to ensure that all employees understand the rules that apply in relation to them. They may also include provision requiring a relevant recognised body to notify the appropriate regulator if the body decides to take disciplinary action in relation to a person.

1807 Section 309Z2 gives the appropriate regulator a power to take disciplinary action for misconduct. Action can be taken if it appears to the appropriate regulator that the person is guilty of misconduct, and the appropriate regulator is satisfied that it is appropriate to take action against the person. Subsection (2) sets out what the appropriate regulator may do when it decides to take action under this section. The actions that a regulator may take are: publishing a statement of the person's misconduct, imposing a monetary penalty or imposing a suspension, condition or limitation on an approval given under section 309G. Subsection (3) limits the length of a suspension, condition or limitation. Subsection (4) allows the appropriate regulator to withdraw or vary any such existing suspension, condition or limitation. Subsection (5) provides that action taken under this section must be within 6 years of the regulator finding out about the misconduct.

1808 Section 309Z3 sets out circumstances in which a person is guilty of misconduct for the purposes of section 309Z2.

1809 Section 309Z4 sets out the procedure to be followed when a regulator proposes to take disciplinary action under section 309Z2. Subsections (1) to (5) require a warning notice to be issued and detail what it must include. If the regulator subsequently decides to take action, it must issue a decision notice under subsection (6). Subsections (7) to (10) detail what must be stated in the decision notice in different circumstances. Subsection (11) provides for a right of appeal to the Tribunal against a decision to take disciplinary action. Subsection (12) requires the appropriate regulator to send a copy of the statement of a person's misconduct to the person concerned, as well as anyone who was given a copy of the decision notice.

1810 Section 309Z5 requires the appropriate regulator to issue a statement of its policy on the circumstances in which it will impose penalties, suspensions, conditions or limitations under section 309Z2 and the basis on which the level of these sanctions will be determined for different types of misconduct. The policy set out in the statement must provide for the regulator to take into account the factors which are set out in subsection (2). Subsection (4) requires the appropriate regulator to have regard to any statement in force at the time of the misconduct when exercising, or deciding whether to exercise, its power under this section 309Z2.

1811 Section 309Z6 sets out the procedure for issuing a statement of policy under section 309Z5. Subsection (1) requires the appropriate regulator to publish the statement of policy in draft, with a notice stating that representations about the proposal may be made to the appropriate regulator. The appropriate regulator is required to consider representations before issuing the statement, and then to publish the statement, along with a summary of the representations made in accordance with subsection (2) and a description of significant changes since the statement was published in draft, in the best way to bring them to the attention of the public.

1812 Section 309Z7 defines a number of the terms used in this Chapter of the Act.

1813 Section 309Z8 grants HM Treasury the power to provide by regulations for the regime set out in this Chapter, or any part of it, to apply to registered credit rating agencies (CRAs), or to certain categories of CRA. Subsection (2) provides that the appropriate regulator, in relation to CRAs, must be the FCA. Subsection (3) provides that regulations made under this section can modify legislation.

Part 2 – Related amendments

1814 Part 2 of the Schedule makes amendments to FSMA 2000 in consequence of the provision being made in Part 1 of this Schedule.

Schedule 11: Central counterparties

Part 1 – Introductory

1815 Paragraph 1 sets out the main features of the special resolution regime for central counterparties (CCPs). The regime is intended to address a situation where all or part of the business of a CCP has encountered, or is likely to encounter, financial difficulties.

1816 This paragraph sets out the eight stabilisation options, and the three stabilisation powers which may be exercised to achieve the stabilisation options.

1817 The Bank and HM Treasury have significant roles in the operation of the special resolution regime, with more limited roles for the PRA and the FCA.

Part 2 – Pre-resolution powers of the Bank of England

Removal of impediments to the exercise of stabilisation powers etc.

1818 Paragraph 2 provides the powers the Bank will have to direct a CCP to take measures which address impediments to the effective exercise of the stabilisation powers. It is envisaged that these powers would be available for the Bank to use when performing its day-to-day functions of CCP supervisor and resolution authority, should such measures be necessary.

1819 Paragraph 2(2) outlines a non-exhaustive list of the powers the Bank could take to direct a CCP if required.

1820 Paragraph 2(3) outlines that, where a CCP is a subsidiary, the Bank may direct the parent company of the CCP to establish a holding company to facilitate the exercise of stabilisation powers, or to ensure the powers do not have an adverse effect on other entities in the group.

1821 Paragraph 2(4) outlines that the Bank must consult the relevant authorities and consider the impact on the CCP or entity in question, the financial markets and the financial stability of the UK before giving directions.

1822 Paragraph 2(6) outlines the form directions can or must take if being issued by the Bank.

1823 Paragraph 2(7) clarifies that nothing in this section limits the powers of the Bank under section 296A of, or paragraph 9B of Schedule 17A to, FSMA 2000.

Safeguards relating to directions under paragraph 2

1824 Paragraph 3 outlines the various safeguards relating to any directions given under paragraph 2, noting (but not limited to) the rights of the CCP to make representations and requirements for the Bank, including a requirement for the Bank to accompany any direction with a notice stating its reasons for exercising the power.

Part 3 – Resolution plans

1825 Paragraph 4(1) outlines that HM Treasury may, by regulations, make provisions for the purpose of ensuring that the Bank creates and maintains a resolution plan for each CCP under its jurisdiction. Examples of provisions that could be created by these regulations are provided in paragraph 4(2), whilst paragraph 4(3) outlines that regulations may also provide for exemptions

Part 4 – Removal of directors and senior managers

Removal of directors and senior managers

1826 Paragraph 5 outlines the Bank's power to require the CCP to remove directors and senior managers if the conditions in paragraphs 7(1) and (2) are met. It is envisaged that this power would be used in instances where the Bank has not yet exercised the stabilisation powers.

Temporary manager

1827 Paragraph 6 outlines that the Bank may appoint a person or more than one person to act as a temporary manager of the CCP, either replacing or working with the directors of a CCP, and that the temporary manager will have the functions specified in paragraph 9. Paragraph 6(7) outlines the powers of instruction the Bank could utilise if the temporary manager is being appointed to work with the directors.

1828 Sub-paragraphs (4) to (6) outline the functions and powers of the temporary manager that may be specified under paragraph 9.

Paragraphs 5 and 6: conditions

1829 Paragraph 7 outlines the conditions that would have to be met for the powers in paragraph 5 and 6 to be exercised. Namely, that there is a significant deterioration in the financial situation of a CCP, a serious infringement by the CCP of a relevant requirement or its rules, or if director of a CCP meets the conditions in paragraph 7(5). Paragraph 7(6) defines a relevant requirement as one imposed by or under FSMA 2000, the European Market Infrastructure Regulation (EMIR), as onshored in UK law, or another enactment specified in regulations made by HM Treasury.

1830 Paragraph 7(2) clarifies that the conditions are met if it’s not reasonably likely that a measure taken by the Bank under its powers in section 296 or 296A of FSMA 2000 or paragraph 13 of this Schedule would reverse a financial deterioration or bring an infringement to an end.

Temporary manager: further provisions in relation to the appointment

1831 Paragraph 8(1) clarifies that the Bank must be satisfied the temporary manager has the relevant experience and qualifications necessary to perform the role and has no conflicts of interest.

1832 Sub-paragraphs (2) to (4) outline that the Bank may not appoint a temporary manager for longer than a year, may vary the terms of the appointment (and remove the temporary manager) at any point, and clarifies the limitations of what the temporary manager will be liable for.

Temporary manager: instrument of appointment

1833 Paragraph 9 clarifies that the power to appoint a temporary manager must be exercised by an instrument of appointment, which must be published if the conditions specified in sub-paragraph (7) are met.

1834 Sub-paragraphs (2), (5) and (6) outline the details and provisions that the instrument of appointment must or may contain, whilst sub-paragraphs (3) and (4) outline the requirements the Bank may place on the temporary manager.

Right to refer matters to the Tribunal

1835 Paragraph 10 outlines the rights of a CCP, director, or senior manager (or former director or senior manager) who is aggrieved by the exercise of powers within paragraphs 5 or 6 to refer the matter to the Tribunal.

Removal of directors and senior managers and appointment of temporary manager: procedure

1836 Paragraph 11(1) outlines that the powers to remove directors or appoint a temporary manager may take effect immediately, or at a specified date.

1837 Sub-paragraphs (2) and (3) specify that the Bank must give written notice to the CCP, and in some cases the directors and senior managers to whom the requirement relates when exercising the powers mentioned in paragraphs 5 or 6, or in cases where representations have been made and the Bank does or does not change their approach in light of this.

Removal of directors and senior managers and appointment of temporary manager: notice requirements

1838 Paragraph 12 outlines requirements for the contents of any written notice which is provided under paragraph 11.

Temporary restriction on remuneration

1839 Paragraph 13 describes the powers the Bank will have to direct a CCP to restrict or prohibit discretionary payments to specific employees or shareholders of a CCP for a specified time. These include equity remuneration, dividend payments, share buy-backs, bonuses and severance payments, where these payments are not obligations imposed under a contract. The Bank can only exercise this power when it has not yet exercised any stabilisation powers.

1840 Sub-paragraphs (2) to (4) outline the conditions that must be met for this power to be exercised.

1841 Sub-paragraphs (5) to (8) require that the Bank must publish a statement of policy, and that no directions may be under this section before the statement of policy has been published.

1842 Sub-paragraph (9) outlines that the specified time for use of this power must not exceed 5 years, and sub-paragraph (10) clarifies that a direction must be given in writing and can be varied or revoked.

Restriction on remuneration: review and revocation

1843 Paragraph 14 applies where a direction has been given under paragraph 13 in relation to a CCP, noting that the Bank must review whether the requirements are still met for the power to be exercised every 3 months, and revoke the direction immediately if they are not.

1844 The direction also ceases to have effect if a stabilisation power is exercised.

Part 5 – Special resolution action

Special resolution objectives

1845 Paragraph 15 sets out the five special resolution objectives, which the Bank must have regard to in using (or considering using) the stabilisation powers.

1846 With no order of priority these objectives are:

a. To protect and enhance the stability of the financial system of the UK (by preventing contagion and maintaining market discipline);

b. To protect and enhance public confidence in the stability of the financial system of the UK;

c. To maintain the continuity of clearing services;

d. To protect public funds;

e. To avoid interfering with property rights in contravention of a Convention right (the meaning of which is in the Human Rights Act 1998).

Code of Practice

1847 Paragraph 16 specifies that HM Treasury must issue a code of practice about the use of stabilisation powers, which the Bank must have regard to.

1848 Paragraph 16(2) outlines what the code may provide guidance on. This includes, amongst other things, how the special resolution objectives should be interpreted, how decisions over which stabilisation powers to exercise are expected to be made, and compensation arrangements including the methodology for calculating how much compensation may be owed to persons left financially worse off where stabilisation options are exercised.

1849 Paragraph 16 also clarifies that HM Treasury must consult the Bank, the FCA and the PRA before issuing the code, and must lay a copy before Parliament as soon as reasonably practicable after issuing it.

General conditions

1850 Paragraph 17 outlines the conditions that must be met for a stabilisation power to be exercised.

1851 There are four conditions which are not in order of priority:

a. Condition 1: The CCP is failing or likely to fail (within the meaning given in sub-paragraph (6));

b. Condition 2: It is not reasonably likely that (ignoring the stabilisation powers) action will be taken which means the CCP is not likely to fail, or actions undertaken by the CCP to prevent failure might have an adverse impact the stability of the financial system of the UK;

c. Condition 3: The exercise of the power is necessary having regard to the public interest, in the advancement of one or more of the special resolution objectives;

d. Condition 4: One of more of the special resolution objectives would not be met to the same extent by the winding up of the CCP.

1852 Paragraph 17(10) clarifies that the Bank must consult the FCA and Treasury (and in some cases the PRA) before determining if conditions 2, 3 and 4 are met.

Effect on other group members

1853 Paragraph 18 outlines that, if the CCP is a member of a group, the Bank must have regard to the need to minimise the effect of the power on other undertakings of the same group, and the effect of the power on the financial stability of third countries.

Specific conditions: financial assistance cases

1854 Paragraph 19 sets out the conditions that must be met before the Bank exercises the stabilisation powers outlined in paragraphs 27, 29 and 30, where HM Treasury has notified the Bank that they have provided financial assistance in respect of a CCP, for the purpose of resolving or reducing a serious threat to the stability of the financial system of the UK.

Resolution liaison panel

1855 Paragraph 20 sets out the arrangements HM Treasury must make for a panel to advise HM Treasury about the effect of the special resolution regime for CCPs on the financial services industry and financial markets. In particular it clarifies what the panel may advise on and the membership of the panel.

Restrictions on use of certain resolution powers

1856 Paragraph 21 outlines restrictions on certain resolution powers; specifically, for the first stabilisation option (private sector purchaser), where the Bank may only exercise resolution powers in relation to a residual CCP; and the third stabilisation option (transfer of ownership), where the Bank may only exercise resolution powers where the transferee is the Bank, a company owned the Bank or HM Treasury, or a nominee of HM Treasury.

Pre-resolution valuation

1857 Paragraph 22 sets out that before the bank exercises any stabilisation power, it must ensure that the assets and liabilities of a CCP are valued by an independent valuer (unless urgency dictates that the Bank must carry out a provisional valuation instead).

1858 Sub-paragraph (4) provides that the Bank may carry out a provisional valuation if urgency dictates it is necessary.

1859 Sub-paragraph (5) clarifies what a person conducting a valuation is obligated to consider, and sub-paragraphs (7) and (8) set out the products that a valuation must or may be accompanied by, though if a provisional valuation is being carried out the Bank need only comply with sub-paragraph (7) as far as it is reasonable to do so in the circumstances (sub-paragraph (9)).

1860 Sub-paragraph (10) outlines that HM Treasury may by regulations specify the methodology for a valuation.

Replacement of Bank's provision valuation

1861 Paragraph 23 provides that if the Bank has carried out a provisional valuation under paragraph 22(4), the Bank must arrange for a full valuation to be carried out by an independent valuer as soon as is reasonably practicable, for the purposes outlined in sub-paragraph (2).

1862 The valuation under paragraph 23 must adhere to the same requirements as in paragraph 22(5) and (7)).

Independent valuer: valuation under paragraph 22 or 23

1863 Paragraph 24 provides that the Bank must appoint a person to act as an independent valuer for the purposes outlined under paragraph 22 and 23. Sub-paragraph (2) explains that the Bank may require the CCP to reimburse the Bank for costs it incurs in relation to the valuer.

1864 Sub-paragraph (3) notes that an independent valuer must satisfy certain requirements in order to be appointed, whilst sub-paragraphs (4), (5) and (6) provide for the duration in which a valuer may hold office, the grounds on which a valuer may be removed from office, and the actions the Bank must take upon the death, resignation or removal from office of an independent valuer respectively.

Independent valuer: supplemental

1865 Paragraph 25 outlines that the independent valuer may do anything necessary or desirable for the purposes of their valuation (sub-paragraph (1)), including appointing staff (sub-paragraph (4)), and HM Treasury may make regulations to confer specific functions on valuers or make provisions for procedure to be followed, as outlined in sub-paragraphs (2), (3), and (5).

1866 Sub-paragraph (6) notes that independent valuers and their staff are not civil servants, nor servants or agents of the crown, and sub-paragraph (7) notes that records of an independent valuer are public records (for the purposes of the Public Records Act 1958).

Consequences of a replacement valuation

1867 Paragraph 26 provides that, where an independent valuation produces a higher valuation of the net asset value of the CCP than a provisional valuation, the Bank may modify and liability of the CCP which has been reduced, deferred or cancelled by a write-down instrument, to reinstate that liability. They may also instruct a bridge CCP to pay additional considerations to the persons outlined in sub-paragraph (1)(b).This is subject to certain conditions, outlined in sub-paragraph (2).

Private sector purchaser

1868 Paragraph 27 sets out the first stabilisation option (private sector purchaser), which allows the Bank to sell all or part of the business of a CCP to a commercial purchaser.

1869 Sub-paragraph (2) provides that this transfer may be effected through either a transfer of the CCP's shares and other securities, or some or all of its property, rights and liabilities. Both types of transfer are executed by instruments made by the Bank (a share transfer instrument or a property transfer instrument).

Private sector purchaser: marketing

1870 Paragraph 28 sets out that if utilising the private sector purchaser option, the Bank must make arrangements for marketing any parts of the businesses sold through the share transfer or property transfer instruments (unless this would undermine one or more of the special resolution objectives (sub-paragraphs (4) and (5)).

1871 Arrangements are subject to certain criteria, outlined in sub-paragraphs (2) and (3).

Bridge central counterparty

1872 Paragraph 29 sets out the second stabilisation option (bridge central counterparty). It allows the Bank to transfer all or part of the business of a CCP to a company which is a) wholly or partially owned by the Bank, is b) controlled by the Bank, and is c) created for the purposes of receiving a transfer by virtue of this paragraph. The option is designed to facilitate a temporary arrangement in order to maintain access to critical clearing services, with the view to eventually selling the CCP or its business. The Bank can make one or more property or share transfer instrument(s) for this purpose.

1873 Sub-paragraphs (4) and (5) set out the provisions that must be included in the code of practice referred to in paragraph 16, and the situations in which the Bank must take necessary steps to wind up the bridge CCP.

1874 Sub-paragraphs (9) and (10) set out circumstances pertaining to an "onward bridge central counterparty", whereby the business of a CCP first transferred by a property transfer instrument is later transferred to another company wholly owned by the Bank.

Transfer of ownership

1875 Paragraph 30 sets out that third stabilisation option is to transfer ownership of the CCP to any person, for which the Bank may make one or more share transfer instruments. It is designed to allow the Bank to transfer the ownership of the CCP to a person other than a commercial purchaser or into a Bank-owned bridge company.

Tear-up power

1876 Paragraph 31 sets out the fourth stabilisation option (to make one or more tear-up instruments for the purpose of ensuring the CCP has a matched book). This would involve the Bank terminating all or part of any contracts held by the CCP with its clearing members, allowing the Bank to rebalance the CCP's finances.

1877 Sub-paragraph (4) sets out that the Bank must either a) require a CCP to make a commercially reasonable payment to a clearing member who is a party to a contract being terminated, or b) require the clearing member who is a party to the contract to make a commercially reasonable payment to the CCP. Sub-paragraph (5) requires the Bank to publish a statement of policy within 12 months of the power coming into force as to how it determines what a commercially reasonable payment is.

1878 Sub-paragraph (8) defines a matched book.

Cash call power

1879 Paragraph 32 out the fifth stabilisation option (to make one or more cash-call instruments). This power allows the Bank to require clearing members of the CCP to pay a specified amount in cash to the CCP, in order to absorb losses and recapitalise the CCP.

1880 Sub-paragraph (3) states that HM Treasury may make regulations to determine the maximum cash amount that clearing members can be required to contribute, and specify circumstances in which the Bank may require a CCP to use specified funds of specified clearing members. It is the government's intention in the near-term to use this power to set specific maximum cash limits, specifically two times a clearing member's default fund contribution (for default losses) and three times a clearing member's default fund contribution (for non-default losses).

1881 This power will not apply to certain clearing members, as clarified in sub-paragraph (4).

Power to reduce variation margin payments

1882 Paragraph 33 sets out the sixth stabilisation option (power to cancel or reduce variation margin payments). This power allows the Bank to cancel or reduce a variation margin payment (as defined in sub-paragraph (5)) that a CCP would have otherwise paid to a clearing member.

1883 Sub-paragraph (3) specifies that this power can only be used to recover losses incurred as a result of a clearing member defaulting and will not apply to the clearing members outlined in sub-paragraph (4).

Write-down power

1884 Paragraph 34 outlines the seventh stabilisation option (to make one or more write-down instruments). This power allows the Bank to cancel, modify or change the form of an unsecured liability which is owed by the CCP.

1885 Sub-paragraph (3) specifies that this power can only be used to recover losses incurred as a result of anything other than a clearing member defaulting. This power may also not be exercised for a number of liabilities, outlined in sub-paragraph (4), and HM Treasury will have power to make regulations to add to/amend this list of excluded liabilities.

Powers in relation to securities

1886 Paragraph 35 sets out the interaction of the write-down power with securities, and provides that a write-down instrument may cancel, transfer, dilute, modify or convert any securities (as defined in sub-paragraph (2)).

1887 Sub-paragraph (3) further outlines what a write-down instrument may provide for, including provision with respect to rights attaching to securities issued by the CCP and providing for the listing of securities issued by the CCP to be discontinued or suspended. Further details are provided in sub-paragraphs (5), (6) and (7).

1888 Sub-paragraph (8) clarifies the interaction with FSMA 2000, whilst sub-paragraph (9) clarifies that any provision made under this paragraph is in addition to any powers in paragraph 34.

Report on provisions in write-down instrument

1889 Paragraph 36 applies to a relevant provision in a write-down instrument as referred to in para 34(2), and provides that the Bank must report to the Chancellor stating reasons why that provision has been made in the case of the liabilities concerned and the reasons for any deviation from normal certain specified insolvency treatment principles. The Chancellor must lay a copy of this report before Parliament.

Priority between creditors

1890 Paragraph 37 permits HM Treasury to make regulations to specify matters to which the Bank must have regard in making a write-down instrument to ensure that the treatment of liabilities in a write down instrument align to an appropriate degree with how liabilities should be treated under insolvency proceedings. This will ensure the effective use of the write down power in paragraph 34. The power corresponds with the provisions in paragraph 36 where the Bank has taken action that deviate from normal insolvency treatment principles.

Power to take control

1891 Paragraph 38 outlines the eighth stabilisation option (to make one or more instruments of control). An instrument of control allows for any voting rights of shareholders or members and specified powers of directors and senior managers of the CCP to be transferred to the Bank for a specified time. The power will thus enable the Bank to assume control of a failing CCP quickly in order to stabilise it and restore it to viability.

Shadow directors etc

1892 Paragraph 39 applies where the Bank has used one or more stabilisation options mentioned in paragraph 1(3) unless the CCP has ceased to be subject to the exercise of any stabilisation power mentioned in paragraph 1(4), and clarifies that relevant persons (e.g. the Bank, someone working for or acting for the Bank, or a temporary manager appointed under paragraph 6) are not to be treated as a shadow director of a CCP, or a director or someone who discharges managerial responsibilities for the purposes of the relevant enactments.

Interpretation: "securities"

1893 Paragraph 40 defines "securities" for the purpose of this Schedule and in particular the use of share transfer instruments, as per paragraph 41.

Share transfer instrument

1894 Paragraph 41 defines a "share transfer instrument". It is an instrument which provides for securities issued by a CCP to be transferred, or makes other provision for the transfer of securities issued by a CCP. This enables the operation of stabilisation options involving a transfer of shares set out at paragraphs 27, 29 and 30.

Effect

1895 Paragraph 42 outlines that a 'transfer' (a transfer provided for by a share transfer instrument) takes effect despite any restrictions arising from contracts or legislation (sub-paragraph (3)), and can take effect free from any trust, liability or other encumbrance (sub-paragraph (5)). It can also extinguish any rights to acquire securities arising from shares, stock or debentures (sub-paragraph (6)).

Continuity

1896 Paragraph 43 states that when a share transfer instrument is made, provision can be made to ensure the continuity of arrangements operating in respect of a CCP.

1897 Sub-paragraph (1) enables the share transfer instrument to include provision that the transferee can be treated as the same person as the transferor for any purpose connected with the transfer.

1898 Sub-paragraph (2) enables the share transfer instrument to include provision that agreements made or other things done by or in relation to a transferor are treated as made or done by or in relation to the transferee. This provision would enable for example, the transferred CCP to continue to benefit from arrangements entered into by the transferors, notwithstanding any rights triggered on the transfer.

1899 Sub-paragraph (3) allows for transitional provision about things transferred to be continued. This can include continuation of legal proceedings by or in relation to the transferee. Sub-paragraph (4) allows for the modification of references to the transferor in instruments or documents. Sub-paragraph (5) allows for provision of information to be required or permitted between the transferor and the transferee of a share transfer instrument or order.

Conversion and delisting

1900 Paragraph 44 outlines that a share transfer instrument may provide for securities (as previously defined), to be converted from one form or class to another (sub-paragraph (1)) – and may also provide for the listing of securities to be discontinued or suspended (sub-paragraph (2)). Sub-paragraph (3) explains that where the listing of securities is suspended by a share transfer instrument, those securities are to be treated as still being listed for specific purposes.

Directors and senior managers

1901 Paragraph 45 outlines that a share transfer instrument may be used to remove, appoint, and amend the service contract of a director or senior manager of a CCP.

1902 Sub-paragraph (2) clarifies that this also applies to directors or senior managers of any undertaking which is a CCP group company, in respect of a specified CCP. Sub-paragraph (4) explains that any appointments are to be on terms and conditions agreed with the Bank, whilst sub-paragraph (3) defines 'relevant CCP group company'.

Ancillary instruments: production, registration, etc

1903 Paragraph 46 makes various provisions for share transfer instruments to take effect irrespective of the lack of completion of formalities. It provides that the transfer has effect irrespective of production, delivery, transfer or other dealing with an instrument and irrespective of registration.

Incidental provision

1904 Paragraph 47 outlines that a share transfer instrument may include incidental, consequential or transitional provision (e.g., provision for different purposes, cases or circumstances).

Procedure: instruments

1905 Paragraph 48 outlines the procedure that the Bank must follow in making a share transfer instrument. It describes the persons that the Bank must send a copy of the share transfer instrument to (sub-paragraph (1)), and where the Bank must publish a copy (sub-paragraph (2)). HM Treasury must also lay a copy before Parliament (sub- paragraph (3)).

Supplemental instruments

1906 Paragraph 49 outlines that where the Bank has made a share transfer instrument, they may also make one or more supplemental share transfer instruments (sub-paragraph (2)). This can provide for the transfer of securities which were issued by the CCP before the original

instrument, and have not been transferred by the original instrument (or another supplementary instrument), or makes provisions of the kind that a share instrument may make under paragraph 41, sub-paragraph (1)(b)).

1907 The general and specific conditions (paragraphs 17 and 19) do not apply to a supplemental instrument. Sub-paragraph (5) outlines who the Bank must consult before making a supplemental share instrument, and sub-paragraph (7) outlines that paragraph 48 also applies for a supplemental share instrument.

Onward transfer

1908 Where the Bank has made a share transfer instrument, it may then make onward share transfer instruments.

1909 These may provide for two things: first, for the transfer of securities meeting the description specified in paragraph 50(3)(a); and, second, for any provision in relation to the relevant securities.

1910 Paragraph 50(4) stipulates that the transferee may not be the transferor under the original order, and the Bank may not make an onward share transfer unless the transferee falls into the conditions outlined in paragraph 50(5).

1911 The general and specific conditions (paragraph 17 and 19) do not apply to an onwards transfer. Paragraph 50(7) provides that the Bank must consult the FCA, and the PRA if the CCP is authorised by the PRA.

1912 Paragraph 48 applies where the Bank has made an onward share transfer instrument.

Reverse share transfer

1913 Where the Bank has made a share transfer instrument, it may make reverse share transfer instruments.

1914 A reverse share transfer instrument may transfer securities back to original transferors (e.g the holders of the shares and other securities before Bank intervention). Where there has been an onward share transfer, the order may transfer securities back from that onward transferee. The three conditions defining a reverse share transfer instrument are outlined in paragraph 51(4).

1915 Sub-paragraphs 51(5) and (6) outline the conditions that must be met for a reverse share transfer instrument to be used (e.g. the onward transferee must be the Bank, a company owned by the Bank or HM Treasury, or a nominee of HM Treasury, or must be made with written consent of the onward transferee).

1916 The general and specific conditions (paragraph 17 and 19) do not apply to reverse share transfers. Paragraph 51(8) provides that the Bank must consult the FCA, and the PRA if the CCP is authorised by the PRA.

1917 Paragraph 48 applies where the Bank has made a reverse share transfer instrument.

Bridge central counterparties: share transfers

1918 Where the Bank has made a property transfer instrument to effect the bridge CCP option, it may make bridge CCP share transfer instruments.

1919 These instruments provide for securities issued by the bridge CCP to be transferred and for other provision to be made in relation to the securities of the bridge CCP. Thus the Bank of England may transfer the securities of a bridge CCP.

1920 The general and specific conditions (paragraph 17 and 19) do not apply to transfers under paragraph 52. Paragraph 52(5) provides that the Bank must consult the FCA, and the PRA if the CCP is authorised by the PRA.

1921 Paragraph 48 applies where the Bank has made a transfer under paragraph 52.

Bridge central counterparties: reverse share transfers

1922 Where the Bank has made a bridge CCP share transfer instrument, it may make one or more bridge CCP reverse share transfer instruments, as long as the transferee under the original instrument fulfils the criteria outlined in paragraph 53(4).

1923 A bridge CCP reverse share transfer instrument provides for securities to be transferred back to the transferor under the original instrument, as outlined in paragraph 53(3).

1924 The general and specific conditions (paragraph 17 and 19) do not apply to transfers made under paragraph 53. Paragraph 53(6) provides that the Bank must consult the FCA, and the PRA if the CCP is authorised by the PRA.

1925 Paragraph 48 applies where the Bank has made instrument under paragraph 53.

Property transfer instruments

1926 Paragraph 54 provides that property transfer instruments may be made by the Bank of England to effect a transfer of a CCP's property, rights or liabilities. It describes the provision that a property transfer instrument may make. The instrument may transfer some or all of the property, rights or liabilities of a specified CCP. The instrument may relate to specified combinations of the specified CCP's property, rights or liabilities.

Effect

1927 Paragraph 55 sets out that a transfer of property, rights or liabilities is effected through a property transfer instrument (paragraph 54). Sub-paragraphs (3) and (4) make provision for the transfer to take effect regardless of any legislative or contractual restriction, including requirements for consent (or any other restrictions which might render property not transferable).

Transferable property

1928 Paragraph 56 makes provision for a property transfer instrument to transfer any property, rights or liabilities. Such property, rights and liabilities are expressed to include those acquired or arising between the making of the instrument and the transfer date, and any rights and liabilities arising on or after the transfer date in respect of matters occurring before that date. Sub-paragraphs (c) and (d) provide that foreign property may be transferred. Sub-paragraph (e) provides that rights and liabilities under enactments may be the subject of a transfer.

Continuity

1929 Paragraph 57 states that, when a property transfer instrument is made, provision can be made to ensure the continuity of arrangements operating in respect of a CCP.

1930 Sub-paragraph (1) enables the property transfer instrument to include provision that the transferee can be treated as the same person as the transferor for any purpose connected with the transfer and for the transfer to be treated as a succession.

1931 Sub-paragraph (2) enables the property transfer instrument to include provision that agreements made or other things done by or in relation to a transferor are treated as made or done by or in relation to the transferee. This provision would enable, for example, the CCP to continue to benefit from arrangements entered into by the transferor, notwithstanding any rights triggered on the transfer.

1932 Sub-paragraph (3) provides that anything related to things that have been transferred under the instrument, which are already in the process of being done by or to the transferor immediately before the transfer can be continued in relation to the transferee. This can include continuation of legal proceedings by or in relation to the transferee.

1933 Sub-paragraph (4) allows for provision to be included in a property transfer instrument about continuity of employment.

1934 Sub-paragraph (5) allows for the modification of references to the transferor in instruments or document.

1935 Sub-paragraph (6) provides that in so far as rights and liabilities in respect of anything transferred are enforceable after a transfer date, a property transfer instrument can apportion them as between the transferor and the transferee.

1936 Sub-paragraph (7) provides that the transferor and the transferee may, by agreement, modify a provision of the instrument. Such a modification must achieve a result that could have been achieved by the instrument, and may not transfer (or arrange the transfer of) property rights or liabilities.

1937 Sub-paragraph (8) allows for provision of information and assistance to be required or permitted between the transferor and the transferee under a property transfer instrument.

Directors and senior managers

1938 Paragraph 58 allows the Bank, through a property transfer instrument, to take various actions with regard to directors and senior managers of CCPs or relevant CCP group company in respect of a CCP, including appointment and removal, termination and variation of service contracts.

1939 Sub-paragraph (4) clarifies that appointments are to be made on terms and conditions agreed by the Bank, whilst sub-paragraph (3) defines 'relevant CCP group company'.

Recognised central counterparty rules

1940 Paragraph 59 states that a property transfer instrument made by the Bank may also include provision regarding the consequences of a transfer for the rules of a CCP. Sub-paragraph (2) provides that an instrument may modify or amend the rules of a CCP (or the part of the CCP that either has or has not been transferred).

Recognised central counterparty membership

1941 Paragraph 60 outlines that a property transfer instrument may make provision about the consequences of a transfer for membership of a CCP. Namely, an instrument may make provision which modifies the terms on which a person is a clearing member of a CCP, and where there has been a partial transfer provide for a person to remain a member of the transferor whilst also becoming a member of the transferee.

Licenses

1942 Paragraph 61 makes provision in relation to licenses. Sub-paragraph (1) provides that a licence in respect of property transferred by property instrument shall continue to have effect notwithstanding the transfer. Sub-paragraph (2) provides that the Bank may disapply sub-paragraph (1), so that a licence may be discontinued. Sub-paragraph (3) specifies that where a licence imposes rights or obligations, a property transfer instrument may apportion responsibility for exercise or compliances between the transferor and transferee.

Foreign property

1943 Paragraph 62 describes how a property transfer instrument may make provision for the transfer of property situated outside the United Kingdom and rights and liabilities governed by foreign law.

1944 Sub-paragraph (3) states that both the transferor and the transferee must take any necessary steps to ensure that the transfer is effective as a matter of foreign law.

1945 Sub-paragraph (4) makes provision for what the transferor must do in the period before a transfer is fully effective as a matter of foreign law. For this period, the transferor must act on behalf of the transferee by holding any property or right for its benefit or discharging any liability on its behalf. This is unless the Bank determines that it will not be possible for the transfer of property to be effective under the jurisdiction it occurs in (subsection (5)).

1946 Sub-paragraph (7) outlines that the transferor must meet any expenses of the transferee in complying with this provision.

1947 Sub-paragraphs (8) and (9) relate to obligations imposed by the operation of this paragraph. Such obligations are enforceable as contracts and the Bank of England may give directions in relation to those obligations, with which the transferor must comply.

Incidental provision

1948 Paragraph 63 provides for a property transfer instrument to include incidental, consequential or transitional provision. Such provision may be made generally or for a specified purpose or purposes.

Procedure

1949 Paragraph 64 outlines the procedural requirements for a property transfer instrument. It requires the Bank of England to send a copy of a property transfer instrument, as soon as reasonably practicable, to the affected CCP, HM Treasury, the FCA, the PRA (if the CCP is a PRA-authorised person) and any other persons specified in the code of practice.

1950 The Bank of England must also publish the property transfer instrument in line with the provisions of sub-paragraph (2). HM Treasury is also required to lay a copy of the transfer instrument before Parliament (sub-paragraph (3)).

Property transfer instrument: delisting

1951 Paragraph 65 explains that a property transfer instrument may provide for the listing of securities to be discontinued or suspended. Where they are suspended, the securities are to be treated for the purposes of the relevant provisions in FSMA 2000 (outlined in sub-paragraph (2)) as still being listed.

Transfer of property subsequent to resolution instrument

1952 Paragraph 66 states that, where the Bank has made a resolution instrument, the Bank may make one or more property transfer instruments in respect of property, rights or liabilities of the CCP.

1953 Sub-paragraph (3) notes that paragraph 17 does not apply to a property transfer instrument under sub-paragraph (2), whilst sub-paragraph (4) notes that the Bank must consult the FCA, HM Treasury, and the PRA if the CCP is a PRA-authorised person.

Supplemental instruments

1954 Paragraph 67 states that, where the Bank of England has made a property transfer instrument in accordance with either the private sector purchaser or the bridge CCP options, it may make additional supplemental property transfer instruments. These may, among others, provide for

two things: first, for property, rights and liabilities to be transferred from the original transferor; and, second, for anything that a property transfer instrument may otherwise provide for.

1955 Sub-paragraph (4) provides that the general and specific conditions (paragraph 17 and 19, respectively) do not apply to supplemental transfers.

1956 Sub-paragraph (5) provides that the Bank of England must consult the FCA, HM Treasury, and, if the CCP is a PRA-authorised person) the PRA, before making the instrument.

1957 Making a supplementary property transfer instrument will not prejudice the possibility of making a new instrument under paragraph 27 or 29.

1958 The procedure outlined under paragraph 64 will also apply if a supplemental property transfer instrument is made.

Private sector purchaser: reverse property transfer

1959 Paragraph 68 sets out that, where the Bank of England has made a property transfer instrument in accordance with the private sector purchaser option it may make reverse property transfer instruments.

1960 A reverse property transfer instrument may transfer property, rights or liabilities of a private sector purchaser back to the original transferor, or make other provision in connection with the transfer of property, rights or liabilities that are, could be, or could have been transferred.

1961 Sub-paragraph (4) provides that the Bank must obtain the written consent of the original transferee before making a private sector reverse property transfer instrument.

1962 Sub-paragraph (5) provides that the general and specific conditions (paragraph 17 and 19, respectively) do not apply to instruments made under paragraph 68.

1963 Sub-paragraph (6) provides that the Bank of England must consult the FCA, HM Treasury, and (if the CCP is a PRA-authorised person) the PRA, before making the instrument.

1964 The procedure outlined under paragraph 64 will also apply if a transfer instrument is made under this paragraph.

Onward transfer

1965 Paragraph 69 sets out that, where the Bank has made a property transfer instrument in respect of a bridge CCP, the Bank may make one or more onward property transfer instruments. This provides that property rights or liabilities of the bridge CCP may be transferred, or the Bank make other provision in connection with the transfer of property, rights or liabilities of the bridge CCP. This applies to property, rights and liabilities of the bridge CCP whether or not they were transferred under the original instrument.

1966 Sub-paragraph (5) provides that the onward property transfer may not transfer property, rights, or liabilities to the original transferor.

1967 Sub-paragraph (6) provides that the general and specific conditions (paragraph 17 and 19, respectively) do not apply to an instrument made under paragraph 69.

1968 Sub-paragraph (7) provides that the Bank of England must consult the FCA, HM Treasury, and (if the CCP is a PRA-authorised person) the PRA, before making the instrument.

1969 The procedure outlined under paragraph 64 will also apply if an instrument is made under this paragraph.

Bridge central counterparties: reverse property transfer

1970 Paragraph 70 sets out that, where the Bank has made a property transfer instrument providing for the transfer of property, rights or liabilities to a bridge CCP, they may make one or more bridge CCP reverse property transfer instruments. If the Bank makes an onward property transfer instruments under paragraph 69, they may make one or more reverse property transfer instruments in respect of property rights or liabilities of the onward transferee.

1971 The Bank may not make a bridge CCP reverse property transfer instrument unless the conditions in sub-paragraph (5) are met.

1972 Sub-paragraph (6) provides that the general and specific conditions (paragraph 17 and 19, respectively) do not apply to instruments made under paragraph 70.

1973 Sub-paragraph (7) provides that the Bank of England must consult the FCA, HM Treasury, and (if the CCP is a PRA-authorised person) the PRA, before making the instrument.

1974 The procedure outlined under paragraph 64 will also apply if an instrument is made under this paragraph.

Transfer of ownership: property transfer

1975 Paragraph 71 sets out that, where the Bank has made a share transfer instrument in respect of paragraph 30 (transfer of ownership) or paragraph 27, the Bank may make one or more property transfer instruments. A property transfer instrument is defined in sub-paragraph (3), and sub-paragraph (4) notes that the Bank may not make a property transfer instrument under this paragraph unless the original instrument transferred securities to the Bank, a company wholly owned by the Bank or HM Treasury, or a nominee of HM Treasury.

1976 Sub-paragraph (5) provides that the general and specific conditions (paragraph 17 and 19, respectively) do not apply to a property instrument made under paragraph 71.

1977 Sub-paragraph (6) provides that the Bank of England must consult the FCA, and (if the CCP is a PRA-authorised person) the PRA, before making the instrument.

1978 The procedure outlined under paragraph 64 will also apply if an instrument is made under this paragraph.

Transfer of ownership: reverse property transfer

1979 Paragraph 72 sets out that, where the Bank has made a property transfer instrument in accordance with paragraph 71, the Bank may make one or more reverse property transfer instruments in respect of the property rights and liabilities of the transferee under the original instrument. The reverse property transfer instrument is defined in sub-paragraph (3).

1980 Sub-paragraph (4) outlines the conditions that must be met for a reverse property transfer instrument to be used (e.g the transferee under the original instrument is the Bank, a company owned by the Bank or HM Treasury, or a nominee of HM Treasury, or must be made with written consent of the onward transferee).

1981 Sub-paragraph (5) provides that the general and specific conditions (section 17 and 19, respectively) do not apply to a property instrument made under paragraph 72.

1982 Sub-paragraph (6) provides that the Bank of England must consult the FCA, and (if the CCP is a PRA-authorised person) the PRA, before making the instrument.

1983 The procedure outlined under 64 will also apply if an instrument is made under this paragraph.

Bridge central counterparty: supplemental property transfer powers

1984 Paragraph 73 applies where the Bank has made a share transfer instrument providing for the transfer of securities by a CCP to a bridge central counterparty. Sub-paragraph (2) outlines that the Bank may make one or more property transfer instruments in relation to the CCP.

1985 Sub-paragraph (3) defines a bridge central counterparty supplemental property transfer instrument.

1986 Sub-paragraph (4) provides that the general and specific conditions (paragraphs 17 and 19 respectively) do not apply to bridge central counterparty supplemental property transfer instruments.

1987 Sub-paragraph (5) provides that the Bank of England must consult the FCA, and (if the CCP is a PRA-authorised person) the PRA, before making the instrument.

1988 Sub-paragraph (6) provides that the possibility of making a bridge central counterparty supplemental property transfer instrument is without prejudice to the possibility of making a property transfer instrument in accordance with paragraph 29(3).

1989 The procedure outlined under 64 will also apply if an instrument is made under this paragraph.

Bridge central counterparty: supplemental reverse property transfer powers

1990 Paragraph 74 sets out that, where the Bank has made a bridge central counterparty supplemental property transfer in accordance with paragraph 73, the Bank may make one or more reverse property transfer instruments in respect of the property rights and liabilities of the transferee under the original instrument. The reverse property transfer instrument is defined in sub-paragraph (3).

1991 Sub-paragraph (5) sets out the conditions that must be met for a reverse property transfer instrument to be used.

1992 Sub-paragraph (4) provides that the general and specific conditions (paragraphs 17 and 19 respectively) do not apply to a bridge central counterparty supplemental reverse property transfer instrument.

1993 Sub-paragraph (6) provides that the Bank of England must consult the FCA, and (if the CCP is a PRA-authorised person) the PRA, before making the instrument.

1994 The procedure outlined under 64 will also apply if an instrument is made under this paragraph.

Restriction of partial transfers

1995 Paragraph 75 sets out a power for HM Treasury to make regulations enabling restrictions to be placed on the making of partial transfers through the property transfer powers by HM Treasury. A partial transfer is the transfer of some, but not all, of a CCP’s property, rights or liabilities (as defined in sub-paragraph (1)). The regulations that may be laid by HM Treasury are outlined in sub-paragraph (2).

1996 Regulations can apply to protected arrangements generally, or in specified circumstances or as a specified kind (sub-paragraph 3).

Power to protect certain interests

1997 Paragraph 76 sets out a power to enable certain private law rights to be protected when the property transfer powers are exercised to effect a partial transfer. A partial transfer is the transfer of some, but not all, of a CCPs property, rights or liabilities (as defined in sub-paragraph (1) of paragraph 75).

1998 Sub-paragraph (1) broadly defines the certain interests ("protected arrangements") for which the power may provide protection. This provision reflects the extremely broad range of relevant interests which exist in this field. The interests which the exercise of the power is intended to cover may include, for example, security interests and set-off and netting arrangements.

1999 Under the power, such interests may be protected in the ways set out in sub-paragraph (2), as supplemented by sub-paragraph (3).

2000 Sub-paragraph (4) allows for regulations to include provision for determining which arrangements are to be considered protected arrangements (with 'arrangements' being defined in sub-paragraph (5)).

Creation of liabilities

2001 Paragraph 77 explains that a property transfer instrument may include provision for the creation of liabilities.

Regulation for safeguarding certain financial arrangements

2002 Paragraph 78 sets out that HM Treasury may make regulations in cases where write down instruments may interact with or affect protected arrangements (sub-paragraph (3)). Regulations under this paragraph can restrict the making of instruments, impose conditions on a write-down instrument, require write-down instruments to included specific provisions, provide for a write-down instrument to be void, and specify principles that the Bank must have regard to when making a write-down instrument.

2003 Regulations can apply to protected arrangements generally, or in specified circumstances or as a specified kind (sub-paragraph 4).

2004 Regulations made by HM Treasury may include provision for determining what is, or is not to be, treated as a protected arrangement.

Resolution instruments: effect and supplementary matters

2005 Paragraph 79 outlines the powers of, and requirements imposed on, resolution instruments (which must be made in writing). A resolution instrument enables the Bank to exercise all stabilisation options other than those that require use of a share or property transfer instrument.

2006 Sub-paragraph (3) outlines that resolution instruments cease to have effect in relation to CCPs on one of the following occurring; the date specified in the instrument is reached (though the Bank may amend this in consultation with HM Treasury, as set out in sub-paragraphs (4) and (5)), a share transfer or property transfer instrument is made in relation the CCP, or any of the resolution conditions cease to have effect in relation to the CCP.

2007 Sub-paragraph (6) outlines that provision made in a resolution instrument will take effect regardless of any restriction arising from contracts or legislation in another way, and sub-paragraph (7) set out that it may provide for anything that is affected by the instrument to be continued that was in the process of being done immediately before the instrument takes effect (including legal proceedings).

2008 Sub-paragraphs (8) to (10) specify that a resolution instrument can modify references in an instrument or document, require or permit any person to provide information and assistance to the Bank or another person, and include incidental, consequential, or circumstantial provision. Sub-paragraph (11) states that an instrument ceasing to have effect does not affect the validity of anything previously done in accordance with it.

Write-down instruments: supplementary

2009 Paragraph 80 makes provision for instruments that allow the Bank to exercise its power to write-down unsecured liabilities.

Resolution instruments: procedure

2010 Paragraph 81 outlines the procedural requirements for resolution instruments.

2011 The Bank must, as soon as is reasonably practicable after making a resolution instrument in respect of a CCP, send a copy of the instrument to the organisations listed in sub-paragraph (1).

2012 The Bank must also follow the instructions in sub-paragraph (2), regarding publishing a copy of the resolution instrument. HM Treasury must also lay a copy of the resolution instrument before Parliament.

Supplemental resolution instruments

2013 Paragraph 82 applies where the Bank has made a resolution instrument. The Bank may make additional resolution instruments, designated by the Bank as supplemental resolution instruments.

2014 Sub-paragraph (3) provides that paragraphs 17 and 79(3)(c) do not apply to a supplemental resolution instrument.

2015 Sub-paragraph (4) provides that the Bank of England must consult the FCA, and (if the CCP is a PRA-authorised person) the PRA, before making the instrument.

2016 Sub-paragraph (5) clarifies that the possibility of making a supplemental resolution instruments is done without prejudice to the possibility of making new instruments in accordance with the paragraphs outlined.

Directors and senior managers

2017 Paragraph 83 allows the Bank, through a resolution instrument, to take various actions with regard to directors and senior managers of CCPs or relevant CCP group companies in respect of a CCP, including appointment and removal, termination and variation of service contracts.

2018 Sub-paragraph (4) clarifies that appointments are to be made on terms and conditions agreed by the Bank.

Termination rights etc

2019 Paragraph 84 sets out certain provisions in relation to default event provisions of the two types set out in the paragraph. Sub-paragraph (6) allows for default event provisions (e.g. termination rights) not to be triggered in relation to the exercise of a resolution measure (as defined in sub-paragraph (1)) and the occurrence of any event directly linked to the application of such a measure.

Deferment

2020 Paragraph 85 outlines that HM Treasury may make provisions through regulations for the suspension or waiver of provisions that are made under a resolution instrument. This would enable the Bank to defer enforcement of obligations imposed on a clearing member of a CCP through its exercise of its resolution powers.

2021 Sub-paragraph (2) provides examples of provisions that may be made under this section.

Recovery of expenses

2022 Paragraph 86 provides that the Bank may direct a CCP to pay the Bank a fee to cover expenses reasonably incurred by the Bank in making a resolution, share transfer, or property transfer instrument.

2023 Sub-paragraph (2) provides that HM Treasury may also exercise a similar power to recover its own reasonable expenses.

Compensation scheme

2024 Paragraph 87 outlines that HM Treasury may, by making regulations, make provision for protecting the financial interests of persons in connection with the making of a relevant instrument. The regulations may provide for a scheme which may, for example, determine whether compensation is required, pay compensation, and under which specified relevant persons become entitled to the proceeds of the disposal of things transferred under a share transfer/property transfer instrument.

2025 Sub-paragraph (3) ensures HM Treasury must have regard to the desirability of ensuring a person is not worse off under a relevant instrument than they would have been if the CCP had entered insolvency immediately before the relevant instrument was made and all the relevant rules of the CCP had been applied in the period leading up to insolvency.

2026 Sub-paragraph (6) notes that regulations may provide for compensation either by HM Treasury or any other specified person.

Instruments: notification of members and creditors

2027 Paragraph 88 sets out that, where the Bank has applied one or more stabilisation options, the Bank must send a copy of any share/property transfer or resolution instrument to the shareholders (or members, where the CCP is an unincorporated association) and creditors of the CCP known to the Bank. This is unless securities issued by the CCP have been admitted to trading on a regulated market.

General continuity obligation: property transfers

2028 Under paragraph 89, a residual CCP and each group company (as defined in sub-paragraph (1)) must provide such services and facilities as are required to enable a transferee to operate the transferred business (or part of it) effectively. This duty may be enforced as a contract (sub-paragraph (4)), continues even if the residual CCP or group company enter insolvency (sub-paragraph (5)), and is not limited to the provision of services or facilities directly to a transferee (sub-paragraph (8)).

2029 The Bank may also (with HM Treasury consent) specify activities that are required of the residual CCP or group company (sub-paragraph (9)), with further detail in sub-paragraph (10)).

2030 Sub-paragraph (6) provides that the residual CCP or group company has a right to reasonable consideration, with extra detail provided in (sub-paragraph (7)).

Special continuity obligations: property transfers

2031 Paragraph 90 provides that the Bank may modify, cancel or impose rights and obligations between a transferee, the residual CCP and a group company or third-party (sub-paragraph (2)).

2032 Sub-paragraph (3) provides that the Bank shall aim, so far as is reasonably practicable, to preserve or include provision for reasonable consideration and terms.

2033 Powers in this section may only be exercised if the conditions under sub-paragraph (4) are met. Sub-paragraph (5) ensures that obligations imposed under sub-paragraph (2)(d) or (e) continue to apply despite the residual CCP or group company entering insolvency.

Continuity obligations: onward property transfers

2034 Paragraph 91 provides for the Bank or HM Treasury to extend the general continuity obligation of paragraph 89 or special continuity obligations of paragraph 90 in the circumstances of an onward transfer of property, rights or liabilities (so, for example, continuity obligations could be owed to the onward transferee).

2035 Sub-paragraph (3) provides that onward obligations may be imposed on the persons listed, whilst sub-paragraph (4) clarifies that these obligations may be imposed in addition to, or replacing, initial obligations.

2036 The power under this section is exercisable by giving a notice both to each person on whom a continuity obligation is to be imposed, and the person who is expected to benefit from it. The Bank may exercise the power only with the consent of HM Treasury.

General continuity obligation: share transfers

2037 Paragraph 92 makes provision for services to be provided in respect of a CCP transferred by share transfer from former group companies through means of a general obligation.

2038 Sub-paragraph (3) provides that each former group company (as defined in sub-paragraph (1)) must provide such services and facilities as required to enable the transferred CCP to operate effectively. This duty may be enforced as a contract (sub-paragraph (4)), continues even if the residual CCP or former group company enters insolvency (sub-paragraph (5)), and is not limited to the provision of services or facilities directly to the transferred CCP (sub-paragraph (8)).

2039 The Bank may also (with Treasury consent) specify activities that are required of the residual CCP or former group company (sub-paragraph (9)), with further detail in sub-paragraph (10).

2040 Sub-paragraph (6) provides that the residual CCP or former group company has a right to reasonable consideration, with extra detail provided in (sub-paragraph (7)).

Special continuity obligations: share transfers

2041 Paragraph 93 provides that the Bank, through a share transfer instrument, may modify or cancel a contract or other arrangement between the transferred CCP and a group company or third-party, or otherwise confer and impose rights and obligations upon those entities in respect of a share transfer (sub-paragraph (2)).

2042 Sub-paragraph (3) provides that the Bank shall aim, so far as is reasonably practicable, to preserve or include provision for reasonable consideration and terms expected in arm’s length arrangements.

2043 Powers in this section may only be exercised if the conditions under sub-paragraph (4) are met. Sub-paragraph (5) ensures that obligations imposed under sub-paragraph (2)(b) or (c) continue to apply despite the transferred CCP or former group company entering insolvency.

Continuity obligations: onward share transfers

2044 Paragraph 94 provides for the Bank to extend the general continuity obligation of paragraph 92 or special continuity obligations of paragraph 93 in the circumstances of an onward transfer of securities.

2045 Sub-paragraph (3) outlines who the Bank may impose obligations on. Sub-paragraph (4) provides that onward obligations may be in addition to, or replace, initial obligations.

2046 The power under this paragraph is exercisable by giving a notice both to each person on whom a continuity obligation is to be imposed, and the person who is expected to benefit from it. The Bank may exercise the power only with the consent of HM Treasury.

Continuity obligations: consideration and terms

2047 Paragraph 95 provides HM Treasury with a power to make regulations to specify matters which are to be or not to be considered in determining what amounts to reasonable consideration for the purposes of general continuity obligations, and what provisions to include in accordance with paragraphs 90(3)(b) and 93(3)(b).

2048 Sub-paragraph (2) also provides that the Bank may give guarantees or indemnities in respect of the services or facilities that are providing in pursuance of a continuity obligation.

Continuity obligations: termination

2049 Paragraph 96 provides that the Bank may by notice terminate a general continuity obligation.

Suspension of obligations

2050 Paragraph 97 provides that the Bank may suspend obligations to make a payment or delivery under a contract, if one of the parties is a CCP for which the Bank is exercising a stabilisation power.

2051 Sub-paragraph (2) provides that a suspension does not apply to payments of eligible claims or payments or deliveries to excluded persons.

2052 This power must be exercised through a share transfer instrument, property transfer instrument, resolution instrument or third-country instrument (sub-paragraph 5)), and sub-paragraphs (3) and (4) outline when the suspension may begin and end, and clarify the extent of the suspension and when payment or delivery under a contract will be due in certain circumstances.

2053 Sub-paragraph (6) outlines that the Bank must have regard to the impact of a suspension on the functioning on financial markets.

Restriction of security interests

2054 Paragraph 98 provides that, when exercising a stabilisation power in respect of a CCP, the Bank may suspend the rights of a secured creditor in order to enforce any security interest the creditor has in relation to any CCP assets. This power must be exercised through a share transfer, property transfer, resolution instrument, or third-country instrument.

2055 Sub-paragraph (2) outlines when this suspension must begin and end.

2056 Sub-paragraph (3) sets out a situation in which the Bank may not exercise this power.

2057 Sub-paragraph (6) outlines that the Bank must have regard to the impact of a suspension on the functioning on financial markets.

Suspension of termination rights

2058 Paragraph 99 provides that the Bank may suspend the termination right of any party to a qualifying contract, providing that the obligations under the contract are still being met by the CCP in question, or the conditions in sub-paragraph (3) are met.

2059 Sub-paragraph (4) sets out that the Bank must have regard to the impact of this on the functioning of financial markets, and sub-paragraph (5) sets out that the power must be exercised by way of provision within the instruments listed.

2060 Sub-paragraphs (7), (8) and (9) outline when a person may, or may not exercise their termination right.

Suspension: general provision

2061 Paragraph 100 provides definitions for 'business day' and 'excluded person' for the purposes of paragraph 97 to 99.

Stay on terminating membership

2062 Paragraph 101 provides that, where the Bank has made a resolution instrument, a member of the CCP may not terminate their membership during the period that the resolution instrument is in force.

2063 Sub-paragraph (4) clarifies that a resolution instrument in relation to a CCP may provide for this power not to apply in relation to member of the CCP, or only apply to extent that is specified by the Bank, if the Bank considers that would advance one or more special resolution objectives (sub-paragraph (5)).

Restriction on remuneration

2064 Paragraph 102 provides that the Bank may, for a specified period, restrict or prohibit discretionary payments to specified employees or shareholders of a CCP, where a share transfer, property transfer or resolution instrument has been exercised. This is similar to the power set out in paragraph 13 and enables the Bank to impose a restriction on discretionary payments in instances when it has exercised a stabilisation option. The period of any restriction may not exceed 5 years.

2065 This power must be exercised by way of provision in a share transfer, property transfer or resolution instrument.

Pensions

2066 Paragraph 103 provides that a share transfer or property transfer instrument may make provision about the consequences of a transfer for a pension scheme, and make provision about the property rights and liabilities of any pension scheme of the CCP. A provision in reliance of this section must have the consent of HM Treasury.

2067 An instrument may modify or apportion rights or liabilities, and property of, or accrued rights in one pension scheme to another. It may also amend the terms of a pension scheme.

Disputes

2068 Paragraph 104 provides that a share transfer, property transfer, or resolution instrument or a third-country instrument may include provision for disputes to be determined in a specified manner. In particular, provision may confer jurisdiction on a court or tribunal, or confer discretion on a specified person.

Tax

2069 Paragraph 105 enables HM Treasury to make regulations including provision in relation to tax in connection with the fiscal consequences of the exercise of a stabilisation power.

2070 Sub-paragraph (2) sets out the taxes in relation to which provision may be made.

2071 Sub-paragraphs (3) and (4) set out what the regulations may apply to, and the effects which the regulations may have.

2072 Sub-paragraph (5) outlines that HM Treasury may make provision for the fiscal consequences of a stabilisation power in respect of things done three months before the exercising of the stabilisation powers, or on or after that date.

2073 Sub-paragraph (6) defines 'stabilisation power' under the section in relation to a number of other paragraphs.

2074 Sub-paragraph (7) allows HM Treasury to change the taxes listed in sub-paragraph (2) by regulations.

Stay or sist of legal proceedings

2075 Paragraph 106 provides that where the Bank has exercised a stabilisation power in relation to a CCP or CCP group company, and that CCP or CCP group company is a party to legal proceedings before the court in the UK, the Bank may apply to that court for a stay of proceedings where the Bank reasonably considers it necessary for the effective application of the stabilisation powers.

Insolvency proceedings

2076 Paragraph 107 provides that, if a stabilisation power has been exercised in respect of the CCP, or the conditions in paragraph 17 have been met, insolvency proceedings may not be commenced in relation to the CCP without the consent of the Bank. Sub-paragraph (3) defines "commencement of insolvency proceedings".

Recognition of transferee company

2077 Paragraph 108 provides that the Bank may provide for a company to which the business of a CCP is transferred (as under paragraph 29 (3)) to be treated as a CCP for the purposes of FSMA 2000.

2078 This provision may have effect for a period specified in the instrument, or until an event described in the instrument occurs. This power may only be exercised with the consent of HM Treasury, and by way of provision in a property transfer instrument (or supplemental instrument).

International obligation notice: general

2079 Paragraph 109 provides that the Bank may not exercise a stabilisation power in respect of a CCP if HM Treasury notifies the Bank that the exercise would be likely to contravene an international obligation of the UK.

2080 This notice must be in writing, and may be withdrawn (generally, partially or conditionally) (sub-paragraph (2)), and the Bank must then consider other exercises of pursuing the resolution objectives and avoiding Treasury objections (sub-paragraph (3)). HM Treasury may disapply sub-paragraph (3) and may revoke a notice.

International obligation notice: bridge central counterparty

2081 Paragraph 110 provides that where a bank transferred all or part of a CCP's business to a bridge CCP, the Bank must comply with any notice of HM Treasury to take, or not to take action ensuring compliance by the UK with its international obligations.

2082 This notice may include timing requirements, must be in writing, and may be withdrawn (generally, partially or conditionally).

Public funds: general

2083 Paragraph 111 makes provision about the role of HM Treasury with regard to public funds when the stabilisation powers are being exercised. It provides that the Bank of England may not exercise a stabilisation power without HM Treasury's consent if the exercise would be likely to have implications for public funds.

2084 Sub-paragraph (3) provides HM Treasury with the power to specify considerations that should or should not be taken into account in determining whether action has implications for public funds.

2085 Sub-paragraph (4) requires the Bank to consider another exercise of the stabilisation powers if HM Treasury has refused consent. In doing so the Bank must pursue the special resolution regime objectives and avoid the objections that HM Treasury first made.

2086 Sub-paragraph (5) allows HM Treasury, by notice, to disapply the requirement to consider alternative actions (as set out in sub-paragraph (4)). Any such notice may be revoked.

Public funds: bridge central counterparty

2087 Paragraph 112 makes provision about the role of HM Treasury with regard to public funds when a CCP has been fully or partially placed into a bridge institution.

2088 Sub-paragraph (2) states that the Bank of England may not take any action in respect of the bridge CCP without HM Treasury's consent if the action would be likely to have implications for public funds.

2089 Sub-paragraph (3) applies paragraph 111(2) and (3) for the purposes of this paragraph.

Private sector purchaser: report

2090 Paragraph 113 provides that, where the Bank has sold all or part of a CCP's business to a private sector purchaser, the Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share and property transfer instruments under paragraph 27(2).

2091 Sub-paragraph (4) provides that the first report be made as soon as is reasonably practicable after the end of one year, and the report must comply with any requirements specified by HM Treasury (sub-paragraph (3)).

Bridge central counterparty: report

2092 Paragraph 114 sets out requirements for the Bank to report to the Chancellor of the Exchequer on the activities of a bridge CCP.

2093 Sub-paragraphs (2) and (3) requires the first report to be made as soon as is reasonably practicable after the end of one year and each subsequent year.

2094 Sub-paragraph (4) requires the Chancellor of the Exchequer to lay a copy of the reports mentioned in sub-paragraphs (2) and (3) before Parliament.

2095 Sub-paragraph (5) requires the Bank of England to comply with any request of HM Treasury for a report dealing with specified matters in relation to the bridge CCP. The request may include the content or timing (sub-paragraph (6)).

Resolution instruments: report

2096 Paragraph 115 provides that, where the Bank makes one or more resolution instruments in respect of a CCP, the Bank must at HM Treasury's request report to the Chancellor of the Exchequer about the exercise of the power. Sub-paragraph (3) states that the report must comply with any requirements specified by HM Treasury.

2097 Sub-paragraph (4) requires the Chancellor of the Exchequer to lay a copy of each report before Parliament.

Transfer of ownership: report

2098 Paragraph 116 provides that, where the Bank makes one or more share transfer instruments in respect of a CCP under paragraph 30 sub-paragraph (2) (transfer of ownership), the Bank must report to the Chancellor of the Exchequer about the exercise of the power.

2099 Sub-paragraph (4) provides that the first report be made as soon as is reasonably practicable after the end of one year, and the report must comply with any requirements specified by HM Treasury (sub-paragraph (3)).

Sale to commercial purchaser, transfer to bridge central counterparty and transfer of ownership: conditions for group companies

2100 Paragraph 117 lays out the conditions that must be met if the Bank is to exercise a stabilisation power in respect of a CCP group company in accordance with paragraph 27 sub-paragraph (2) (private sector purchaser), paragraph 29 sub-paragraph (3) (bridge CCP) or paragraph 30 sub-paragraph (2) (transfer of ownership).

2101 Sub-paragraph (2) sets out that the Bank must be satisfied the general conditions for exercising a stabilisation power are met in respect of a CCP in the same group, and the Bank is satisfied that exercise of the power is necessary (sub-paragraph (3)).

2102 Sub-paragraph (4) sets out that in a financial assistance case, HM Treasury must first recommend a stabilisation power be used and the Bank must be of the opinion that the exercise of the power is appropriate.

2103 Sub-paragraph (5) sets out that the CCP group company must be an undertaking incorporated in or formed under the law of the UK.

2104 Sub-paragraph (6) sets out that the Bank must consult HM Treasury, the FCA, and (if the CCP is a PRA-authorised person) the PRA.

2105 Sub-paragraph (7) sets out that the Bank must have regard to the need to minimise the effect of the power on other undertakings in the same group, whilst sub-paragraph (8) defines "financial assistance case".

Paragraph 117: Supplemental

2106 Paragraph 118 provides that where the Bank exercise a stabilisation power in respect of a CCP group company in reliance on paragraph 117, the provisions apply as if the CCP group company were a CCP (with some exceptions, outlined in sub-paragraph (2)).

Part 6 – Information, investigation and enforcement

Information

2107 Paragraph 119 outlines the powers available to the Bank for acquiring information and documents reasonably required in connection with the exercise of functions conferred on the Bank by or under the Schedule.

2108 Sub-paragraphs (2) to (6) outline that the Bank, or an officer authorised by the Bank, may require a CCP or group company to provide specified information or documents, and may determine the form and reasonable timeline for producing the documents.

2109 Sub-paragraph (7) outlines that the Bank may also impose these requirements on a person connected to the CCP.

Reports by skilled persons

2110 Paragraph 120 provides that, where the Bank has required a person (defined in sub-paragraph (2)) to provide information in accordance with paragraph 119, the Bank may produce a notice to a person to provide a report or appoint a person to provide a report.

2111 The person appointed must have the skills necessary to make a report. If an appointment is made by the person concerned, the appointee must be nominated or approved the Bank.

2112 Sub-paragraph (7) outlines that the appointed person must be given all assistance they reasonably require by the person concerned (as defined in sub-paragraph (2)).

2113 Sub-paragraph (8) outlines that the assistance requirement (sub-paragraph (7) is enforceable by an injunction (except in Scotland, where an order for specific performance applies), and sub-paragraph (9) notes that the CCP may be required to pay the Bank a fee to cover expenses incurred by the Bank in relation to the appointment.

Appointment of persons to carry out general investigations

2114 Paragraph 121(2) outlines the three things the Bank may appoint one or more competent persons to conduct an investigation into: the nature, conduct, or state of a CCP's business, a particular aspect of that business, or the ownership or control of a CCP.

2115 Sub-paragraph (3) provides that, with written notice, a person may investigate the business of a person who is, or has been at a relevant time, a member of a group of which the CCP under investigation is part.

Appointment of persons to carry out investigations in particular cases

2116 Paragraph 122 provides that, if the Bank thinks that a person may have failed to comply with any relevant requirement (meaning a requirement imposed by the Bank by or under the Schedule, the Bank may appoint a competent person to conduct an investigation on its behalf.

Investigations etc in support of foreign resolution authorities

2117 Paragraph 123 provides for the Bank to exercise the power conferred in paragraph 119 or appoint one or more competent persons to investigate any matter, in relation to a request from a foreign resolution authority.

2118 Sub-paragraph (3) stipulates an applicable request by a foreign resolution authority as one in connection with the exercise by that authority of functions in relation to third-country resolution action (within the meaning of paragraph 145 of this Schedule).

2119 Sub-paragraph (4) explains that an investigator appointed under this paragraph has the same powers as an investigator appointed under paragraph 122.

Investigations: general

2120 Paragraph 124 provides that, if the Bank appoints one or more investigators to conduct an investigation on its behalf (under paragraph 121 or paragraph 122), the person under investigation must be notified by the Bank. The notice must state the reason for the appointment and specify the provisions under which (and as a result of which) the investigator has been appointed.

2121 Sub-paragraphs (4) and (5) provide that the investigator may be a member of staff at the Bank, and must make a report of the investigation to the Bank.

2122 Sub-paragraphs (6) and (7) outline the ways in which the Bank may direct the investigation, and sub-paragraph (8) provides that the person under investigation must be notified of a significant change in scope.

2123 If the appointment was made under paragraph 122, the Bank does not need to notify the person under investigation if they believe it will result in the investigation being frustrated.

Powers of persons appointed under paragraph 121

2124 Paragraph 125 provides that, if a person is appointed under paragraph 121 to conduct an investigation, the investigator may require the person under investigation (or any connected person) to answer questions in person, or provide required information, or produce documents at a specified time or place. The investigator can only impose such requirements at a specified time and place, as long as the investigator reasonably considers the information relevant for the purposes of the investigation.

Powers of persons appointed as a result of paragraph 122

2125 Paragraph 126 provides that, if an investigator was appointed under paragraph 122, they have the powers conferred under paragraph 125, and may also require the person under investigation to give all assistance they can reasonably give. If they see it as necessary or expedient, the investigator may also require a person who is neither under investigation, or connected with the investigation, to answer questions at a specified time and place, or provide information that is required for the purposes of the investigation.

Admissibility of statements made to the investigators

2126 Paragraph 127 provides that a statement made to an investigator appointed under paragraph 121 or 122 by a person that complies with an information requirement is admissible in evidence in any proceedings (subject to the general law on admissibility of evidence).

2127 Sub-paragraphs (2) and (3) stipulate that, in criminal proceedings in which a person is charged with an offence other than an offence listed in sub-paragraph (3) (which relate generally to making false or misleading statements or failing to comply with information requirements imposed by an investigator), no evidence relating to the statement may be adduced and no question relating to it may be asked, by or on behalf of the prosecution or the Bank.

Information and document: supplemental provision

2128 Paragraph 128 provides that, where a person has been required to produce a document but it is in the possession of a third person, the Bank may impose that requirement on the third person.

2129 A person to whom the document is produced may take copies or extracts of the document, and require any relevant person to provide an explanation of the document.

2130 An investigator or the Bank may require the person to state, if they fail to produce a document, where they believe the document to be, and lawyers may be required if necessary to furnish the name and address of a client.

2131 A document so produced may be retained for so long as the person to whom it is produced considers it necessary to retain, and if there are reasonably grounds for believing that it may be required in connection with to legal proceedings it may be retained until they are concluded.

2132 Information which comes under and is subject to an obligation of confidence may be exempt from a requirement to disclose, unless one or more of the conditions outlined under sub-paragraph (7) apply.

2133 Sub-paragraph (8) clarifies that if a person claims a lien on a document, its production under this part will not affect the lien, whilst sub-paragraph (9) provides definitions.

Protected items

2134 Paragraph 129 outlines that a person may not be required under this Schedule to produce, disclose or permit the inspection of protected items, as defined by sub-paragraphs (2), (3), and (4) (broadly meaning legally privileged communications and material).

Entry of premises under warrant

2135 Paragraph 130 provides that a justice of the peace may issue a warrant if there are reasonable grounds to believe that the conditions in sub-paragraph (2), (3) and (4) are met, based on information on oath that is given by, or on behalf of, the Secretary of State, the Bank or an investigator.

2136 Sub-paragraph (5) outlines the various actions a warrant under this section authorises a constable to perform. Sub-paragraphs (6), (7) and (8) clarify that that a warrant may authorise any constable, or person authorised by and under the supervision of a constable.

Retention of documents obtained under paragraph 130

2137 Paragraph 131 provides that any document of which possession is taken under warrant (paragraph 130) may be retained so long as it is necessary to retain it in the circumstances.

2138 Sub-paragraphs (2), (3), (4), and (5) outline the legal proceedings for any person claiming to be the owner of a document appealing for its return.

Offences etc

2139 Paragraph 132 sets out the criminal offences which apply in relation to investigations. Paragraphs (1) and (2) provide that if a person fails to comply with requirements imposed under an investigation without reasonable excuse, that person can be dealt with as if they were in contempt of court. Sub-paragraphs (4), (5) and (6) set out other offences relating to the falsification, concealment or destruction of documents by a person who knows that an investigation is being or is likely to be conducted, the provision of false or misleading information in response to a requirement imposed under this Schedule, and the intentional obstruction of the exercise of rights conferred by a warrant under paragraph 130. Sub-paragraph (7) sets out the penalties for these offences.

Prosecution of offences under paragraph 132

2140 Paragraph 133 provides that proceedings for an offence under paragraph 132 may be instituted only by the Bank or with the consent of the Director of Public Prosecutions (in England and Wales) or the Director of Public Prosecutions for Northern Ireland. Sub-paragraphs (2) and (3) note provide that the Bank must comply with any conditions or restrictions imposed by HM Treasury.

Offences under paragraph 132 by bodies corporate etc

2141 Paragraph 134 outlines how the offences in paragraph 132 relate to bodies corporate. Sub-paragraph (1) outlines that both bodies corporate and officers may be subject to proceedings and punished accordingly if sub-paragraphs (a) and (b) apply. Sub-paragraph (3) makes similar provision in respect of partnerships and partners. In a case where a body corporate is managed by its members, sub-paragraph (1) applies as if that member were a director of the body (as per sub-paragraph (2)).

2142 Sub-paragraph (6) provides for offences committed by an unincorporated association.

Injunctions: prevent failure to comply with relevant requirement

2143 Paragraph 135 provides that the court may make an order restraining (or in Scotland an interdict prohibiting) a contravention by a person that the court is satisfied is reasonably likely to contravene a relevant requirement (as defined in paragraph 122). Sub-paragraph (2) clarifies how this is exercised within England and Wales.

Regulatory sanctions

2144 Paragraph 136 outlines the actions (regulatory sanctions) the Bank may take if they consider that a person has failed to comply with a relevant requirement (as defined in paragraph 122). Sub-paragraphs (1), (2), (3) and (4) outline the actions the Bank may take and their duration, including censures, fiscal penalties, directions and disqualifications, and that those penalties must be paid to the Bank (and can be enforced by the Bank as a debt).

Determination of sanctions

2145 Paragraph 137 outlines the circumstances the Bank must take into account when determining the type of sanction or level of any penalty to be imposed under paragraph 136.

Procedure: warning notice

2146 Paragraph 138 outlines that the Bank must give a person a warning notice if imposing a sanction under paragraph 136 and sets out the content the warning notice must include.

2147 Sub-paragraphs (2) and (3) outline how section 387 of FSMA 2000 applies to warning notices given under this paragraph.

Procedure: decision notice

2148 Paragraph 139 outlines that if the Bank decides to impose a sanction on a person under paragraph 136, it must (without delay) give that person a decision notice. Sub-paragraphs (2), (3), (4) and (5) outline what a decision notice must specify in different contexts.

2149 Sub-paragraphs (6) and (7) outline how section 388 of FSMA 2000 applies to decision notices given under this paragraph.

Procedure: general

2150 Paragraph 140 outlines how the procedure set out in certain sections in FSMA 2000 apply to a warning notice given under paragraph 138, or a decision notice given under paragraph 139.

Appeals

2151 Paragraph 141 outlines that a person may appeal to the Upper Tribunal in respect of a sanction imposed on them by the Bank under paragraph 136.

Injunctions: failure to comply with certain paragraph 136 sanctions

2152 Paragraph 142 outlines actions the court may take if it is broadly satisfied that there has been, or will be, or may have been a compliance failure (as defined in sub-paragraph (4)) in respect of certain sanctions imposed under paragraph 136 (sub-paragraphs (1), (2) and (3)). These actions include (among others) orders restraining the conduct constituting a failure to comply, or requiring a person to take such steps as directed by the court to remedy a failure to comply.

2153 Sub-paragraph (5) sets out the courts within England and Wales which have jurisdiction in respect of the matters in this paragraph.

Publication

2154 Paragraph 143 provides that, in the case of a warning notice given under paragraph 138, neither the Bank nor the person to whom the notice is given or copied may publish the notice, though the Bank may publish such information as it considers appropriate after consulting the persons to whom it is given or copied (sub-paragraph (1)).

2155 Sub-paragraph (2) provides that a person given a decision notice under paragraph 139 may not publish the notice or any details unless the Bank has published the notice or those details.

2156 Sub-paragraphs (3) and (4) outline the content that must sit within, and accompany, a notice of discontinuance.

2157 Sub-paragraph (5) sets out that the Bank may publish information regarding a decision notice. Under sub-paragraph (6), where the Bank has published information relating to a decision notice, the Bank must publish updated information (comprising the status and outcome of the appeal) if the matter to which the decision notice relates is appealed to the Upper Tribunal.

The Bank must also publish details of any sanction where the Bank gives a final notice (sub-paragraph (7)) and if the circumstances in sub-paragraph (8) apply in relation to information to which a decision notice or a final notice relates, such information must be published anonymously (further details on this are in sub-paragraph (9)).

2158 Any published information must remain for five years on the Bank's website, unless this contradicts data protection legislation (sub-paragraph (10)).

Co-operation

2159 Paragraph 144 outlines that if imposing sanctions under paragraph 136, the Bank must take steps as it considers appropriate to co-operate with the organisations, authorities and persons in sub-paragraphs (a) and (b).

Part 7 – Third-country resolution actions

2160 Paragraph 145 applies where the Bank is notified of third-country resolution action, in respect of a third-country central counterparty. With the approval of HM Treasury (sub-paragraph (3)), the Bank must make an instrument which either recognises the action, or refuses to recognise the action, or recognises part all or part of the action but not the remainder (sub-paragraph (2)).

2161 Recognition of the action may be refused if the Bank and HM Treasury are satisfied that the conditions in sub-paragraph (4) are met, and recognition of third-country resolution actions is without prejudice to normal insolvency proceedings (sub-paragraph (5)).

2162 Paragraph 146 applies where an instrument under paragraph 145 recognises all or part of the third-country resolution action. The third-country resolution actions produce the same legal effect in any part of the UK as it would have produced had it been made under the law of the relevant part of the UK. The Bank may, to support or give full effect to a third-country resolution action, exercise one or more stabilisation options in relation to the third-country central counterparty (sub-paragraph (3)).

2163 Sub-paragraph (4) provides further detail on which instruments these provisions may sit within, and that the wider Schedule applies to any power exercised under sub-paragraph (3), pending the modifications made in sub-paragraphs (6) and (7).

2164 Paragraph 147 applies (with some modifications) certain other paragraphs within the Schedule to a third-country instrument.

Part 8 – General

Information

2165 Paragraph 148 permits the Bank of England to disclose information relating to the financial stability of the individual financial institutions or aspects of the financial system of the United Kingdom. It may disclose information to HM Treasury, the FCA, the Financial Services Compensation Scheme, the Payment Systems Regulator, and authorities in jurisdictions outside the United Kingdom exercising similar functions to those of HM Treasury and the financial authorities. The provision overrides other confidentiality requirements and is without prejudice to any other power to disclose information.

Restrictions on disclosure of confidential information

2166 Paragraph 149 outlines how certain sections in FSMA 2000 relating to the disclosure of confidential information apply to this Schedule, and notes modifications.

2167 This will enable the Bank of England to share relevant information that it may have received in relation to its financial stability functions, for example from an institution administered under the special resolution regime.

Remedies on judicial review

2168 Paragraph 150 outlines the effect that a decision from a judicial review concerning the decision of the Bank to exercise stabilisation powers may have on a "relevant provision" or "relevant transfer" (as defined in sub-paragraphs (2)(b) and (c)).

2169 Sub-paragraph (3) clarifies that the power of the court to award damages (subject to the immunity provided under section 244 of the Banking Act 2009) is not affected by sub-paragraph (1).

Giving of notices, documents etc under this Schedule

2170 Paragraph 151 notes that regulations made under section 414 of FSMA 2000, and subsection (4) of that section, apply in relation to any notice, direction or document required to be given under this Schedule.

Financial assistance

2171 Paragraph 152 provides a definition of "financial assistance" and allows HM Treasury to make regulations to further define financial assistance for the purposes of the Act.

Modifications to the law

2172 Paragraph 153 enables HM Treasury to modify the law in order to allow powers made under the Schedule to be used effectively, having regard to the special resolution objectives. This includes regulations with retrospective effect (sub-paragraph (3)), though HM Treasury must note it is in the public interest to avoid this.

2173 Sub-paragraph (6) outlines that regulations under this paragraph are subject to the affirmative procedure, or if HM Treasury deems it necessary for the regulations to come into force without delay, the made affirmative procedure.

Interpretation

2174 Paragraph 154 provides a number of definitions relevant to this Schedule.

Recognised central counterparty

2175 Paragraph 155 defines a "recognised central counterparty" for the purpose of this Schedule. Sub-paragraph (2) notes that a recognised central counterparty does not include a recognised clearing house which is also a bank, building society, credit union or investment firm. Sub-paragraph (3) notes that a recognised central counterparty does not cease to have that status for the purposes of this Schedule if its recognition under FSMA 2000 is revoked.

Interpretation: CCP group company, etc

2176 Paragraph 156 defines "CCP group company", and gives HM Treasury the power to make regulations to further define a CCP group company.

Part 9 – HM Treasury support for CCPs

Consolidated fund

2177 Paragraph 157 provides for any expenditure incurred by HM Treasury in connection with the exercise of the powers in this Schedule, by HM Treasury or Secretary of State (with the consent of HM Treasury) in connection with the giving of financial assistance to or in respect of CCPs or in connection with the provision of financial assistance by HM Treasury to the Bank of England to be paid from money provided by Parliament. Financial assistance includes giving guarantees or indemnities.

National loans fund

2178 Paragraph 158 allows HM Treasury to draw money from the National Loans Fund for the purpose of making a loan to or in respect of a CCP, when the loan is required urgently to protect the stability of the financial systems of the United Kingdom.

Part 10 – Consequential etc provision

2179 Paragraphs 159 to 164 make consequential amendments to a number of enactments to ensure these apply correctly to Schedule 11.

2180 Paragraph 165 allows HM Treasury to make regulations to provide for provisions in of certain listed enactments to apply for the purposes of Schedule 11, with or without modifications.

Schedule 12: Write-down orders

Part 1 – Write-down orders: main provisions

2181 Paragraph 1 of Schedule 12 amends Part 24 of FSMA 2000. It amends section 360 of FSMA 2000 to require that a person may not be appointed as administrator of an insurer in relation to which a write-down order under new section 377A of FSMA 2000 is in effect without the consent of the Prudential Regulation Authority (PRA). It also omits section 377 of FSMA 2000 and inserts sections 377A to 377J. The effects of each of the new sections inserted into FSMA 2000 are detailed below. Nothing inserted by these provisions affects the requirement for an insurer to comply with its broader obligations as an authorised person once a write-down order is made.

2182 Section 377A provides more detail on write-down orders. In particular, the section explains what a write-down order is, sets out the test which the court must consider when deciding whether to make a write-down order, makes provision about when a write-down order takes and ceases to have effect (cross-referencing section 377H),provides that a write-down order cannot be made in respect of an insurer in administration or in liquidation and provides that liabilities under write-down orders are, to the extent of their reduction, to be treated as extinguished unless and until they are revived (cross-referencing section 377H and 377I).

2183 Section 377B sets out the liabilities which cannot be written-down under a write-down order.

2184 Section 377C sets out the parties able to apply to the court to make a write-down order. It also sets out, in particular, the consent which certain applicants must obtain before making an application.

2185 Section 377D gives the FCA and the PRA the right to be heard at court hearings relating to a write-down order and to receive documents related to those hearings.

2186 Section 377E sets out the court's powers once an application for a write-down order has been received.

2187 Section 377F requires an insurer subject to a write-down order to notify "affected persons" (the meaning of which will be specified in Rules made by the PRA) and the FCA and the PRA as soon as possible after the order is made. The broader regulatory obligations on an insurer as an authorised person may require additional notifications separate from this legislative requirement.

2188 Section 377G sets out the court's powers to appoint an eligible person or persons to act as a 'manager of a write-down order' (the manager). The section includes provision that the court can only appoint a person as a manager if the PRA provides a statement confirming they are suitably qualified (for example if they are an actuary, a licensed insolvency practitioner, or a

suitably qualified insurance professional). The majority of the procedural provisions in sections 337C and 377D apply in relation to a manager, as they apply in relation to a write-down order.

2189 Section 377H provides that a write-down order ceases to have effect on the date specified in the order or on the date a "termination event" occurs (the latter only if the termination event is earlier than the date specified or no date is specified). Termination events include the making of a winding up order against the insurer and the insurer entering administration, among others set out in the section.

2190 Section 377I sets out how the court can revoke or vary a write-down order, including broadening or narrowing the scope of the order. When deciding whether to revoke or vary a write-down order, the court must apply the same test it applies when deciding whether to make an order. Subject to certain differences, the procedural provisions relating to the making of a write-down order and the appointment of a manager under sections 377C to 377G also apply to termination or variation of a write-down.

2191 Section 377J is self-explanatory.

Part 2 – The manager of a write-down order

New Schedule 19A

2192 Paragraph 2 of Schedule 12 inserts a new Schedule 19A to FSMA 2000, which makes further provision about the manager. The effect of the provisions included in Schedule 19A are detailed below.

2193 Paragraph 1 of the new Schedule 19A sets out that the Schedule only applies where the court has: (i) made a write-down order in relation to an insurer; and (ii) appointed a manager. Paragraph 1 also makes provision in relation to the application of the Schedule where one or multiple persons are appointed as the manager.

2194 Paragraph 2 is self-explanatory.

2195 Paragraph 3 provides that a manager must monitor the insurer's affairs to consider whether the write-down order remains reasonably likely to lead to a better outcome for policyholders and creditors (taken as a whole) than if the write-down order were not in effect. Paragraph 3 also provides that the manager must consider whether the insurer could take or refrain from taking certain actions so that the write-down order would remain, or once again become, reasonably likely to lead to a better outcome for policyholders and creditors (taken as a whole), and provides that the manager can make relevant recommendations to the insurer. Paragraph 3 also sets out that the manager must produce a report if directed to do so by the FCA or the PRA.

2196 Paragraph 4 sets out that the manager must apply to the court for such orders as the manager thinks likely to achieve the best outcome for the insurer's policyholders and other creditors (taken as a whole) if they form the view that it would be in the interests of the insurer's policyholders and creditors (taken as a whole) for the order to be varied or revoked.

2197 Paragraph 5 empowers the manager to require the provision of information and assistance (as reasonably required to undertake its functions) by the people listed in sub-paragraph (2), and requires that the information be provided as soon as practicable; subparagraph (4) provides that the manager can enforce the provision of information through an application for an injunction/specific performance.

2198 Paragraph 6 is self-explanatory.

2199 Paragraph 7 provides that the actions, omissions or decisions of a manager can be challenged through an application to the court by the parties listed and sets out the court's powers when a challenge to the manager is brought.

Part 3 – Further provision about write-down orders

New Schedule 19B

2200 Paragraph 3 of Schedule 12 inserts a new Schedule 19B into FSMA 2000, which provides for:

a. restrictions on the enforcement against an insurer (including the enforcement of security over the insurer's property) (Part 1);

b. restrictions on the insurer's dealing with assets, paying variable renumeration and making of distributions to shareholders (Part 2);

c. the treatment of an insurer's liabilities in certain circumstances (Part 3); and

d. the interest payable in respect of liabilities reduced under a write-down order (Part 4).

2201 The effects of the provisions included in Schedule 19B are described in further detail below.

Part 1 of new Schedule 19B: Restrictions on enforcement

2202 Paragraph 1 sets out when the restrictions on enforcement provided for by Paragraph 2 have effect. These restrictions apply initially (on an interim basis) from when an application for a write-down order is put to the court until a write-down order is made or the application is withdrawn or dismissed. Paragraph 1 provides that the restrictions subsequently apply (on a permanent basis) from the date a write-down order is made for a default period of 6 months (beginning with the day on which the order takes effect) and any such further period as the court may order (which cannot be more than six months per order). These restrictions cease to apply if the court orders so, or if the write-down order ceases to have effect in accordance with section 377H of FSMA 2000. The court may extend or terminate the restrictions only on an application by the persons set out in Paragraph 1(4).

2203 Paragraph 2 sets out the restrictions on enforcement which take effect for such periods as provided for under Paragraph 1. The restrictions prevent an insurer's creditors from taking steps, without the permission of the court, to, for example, enforce security over the insurer's property. Paragraph 2 empowers the court to impose conditions on any consent it gives for an act of enforcement to be taken which would otherwise be prohibited under the paragraph.

2204 Paragraph 3 sets out exceptions to the restrictions imposed by Paragraph 2. This Paragraph provides HM Treasury with a power to amend certain of the exceptions through statutory instrument under the draft affirmative procedure.

Part 2 of new Schedule 19B: Dealing with assets etc

2205 This Part is intended to prevent inappropriate value extraction from an insurer subject to a write-down order under new section 377A of FSMA 2000.

2206 Paragraphs 4 to 7 are self-explanatory.

Part 3 of new Schedule 19B: Treatment of written-down liabilities for certain purposes

2207 Paragraph 8 sets out that Part 3 of Schedule 19B applies to liabilities of an insurer when the value of a liability has been reduced by or under a write-down order.

2208 Paragraph 9 sets out that written-down liabilities (and the potential for a future reversal of the write-down) will be disregarded for the purposes of section 123 Insolvency Act 1986 or Article 103 of the Insolvency (Northern Ireland) Order 1989 (to ensure that an insurer cannot be deemed 'unable to pay its debts' on the basis of liabilities which have been written-down); the PRA's prudential rules governing insurers; and Solvency II. This is to ensure that written-down liabilities are treated as extinguished for these purposes, for so long as the write-down is in force. Without this, an insurer could still meet the statutory test for insolvency following its liabilities being written-down or have the potential for a future reversal of the write-down reflected on its balance sheet as a contingent liability, contrary to the intended effect of the write-down which is to restore an insurer's balance sheet. Paragraph 9(3) gives HM Treasury a power to amend the purposes for which written-down liabilities are disregarded through statutory instrument under the draft affirmative procedure.

2209 Paragraph 10 concerns pay-as-paid clauses. These clauses stipulate that a reinsurer must only pay out the amount the original insurer (cedant) actually pays to underlying policyholders. Paragraph 10 overrides "pay-as-paid" clauses held between an insurer under write-down and its reinsurers, meaning reinsurers will remain liable for the full amount due, even if the court has reduced the value of the liability owed by the cedant insurer to the underlying policyholder. This prevents the value of outwards reinsurance contracts held by an insurer under write-down from decreasing and providing undue financial benefits to a reinsurer.

Part 4 of new Schedule 19B: Interest

2210 Paragraph 11 sets out the interest payable in respect of liabilities reduced under a write-down order.

Part 4 – Write-down orders: financial services compensation scheme

2211 Paragraph 4 of Schedule 12 is self-explanatory.

2212 Paragraph 5 of Schedule 12 inserts a new section 217ZA and section 217ZB into FSMA 2000. Section 217ZA provides that the rules underpinning the Financial Services Compensation Scheme (FSCS) must require the FSCS to provide financial assistance to protected policyholders whose entitlements reduce in value following a write-down order under section 377A. Subsection 5 of section 217ZA sets out that the financial assistance provided by the FSCS under this section must not be used for any purpose other than enabling payments to be made to protected policyholders and will not appear as an asset on the insurer's balance sheet. Section 217ZB provides for the FSCS to have the right to recover the financial assistance provided to an insurer. The right of recovery must not be taken into account in assessing an insurer's liabilities for the purposes of a relevant insolvency provision, as set out in paragraph 9 of Schedule 19B. This right of recovery must not be exercised against a policyholder.

2213 Paragraph 6 of Schedule 12 amends section 219 of FSMA 2000, setting out that the FSCS can obtain information from an insurer who has been given financial assistance under section 217ZA.

2214 Paragraph 7 of Schedule 12 inserts section 220A of FSMA 2000, allowing an FSCS-authorised person to inspect documents held by a write-down manager, for the purpose of assisting the FSCS to discharge its functions under sections 217ZA and 217ZB.

Part 5 – Consequential amendments

2215 Paragraph 8 of Schedule 12 is self-explanatory.

2216 Paragraph 9 of Schedule 12 amends section 348 of FSMA 2000 to make the write-down manager a "primary recipient", which means certain provisions restricting the disclosure of confidential information in FSMA 2000 have effect in relation to the write-down manager.

2217 Paragraph 10 of Schedule 12 amends section 429 (2B) of FSMA 2000 to require that any regulations made by HM Treasury pursuant to the power in paragraph 3(4) or paragraph 9(3) of Schedule 19B be approved by Parliament.

2218 Paragraph 11 of Schedule 12 amends Schedule 1ZB to FSMA 2000 to ensure a member of staff of the PRA acting as a write-down manager is exempt from liability in damages for anything they do or omit to do in so acting.

2219 Paragraph 12 of Schedule 12 amends Part 1 of Schedule 1 of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 to ensure that a write-down manager appointed under section 377G can obtain confidential information where this information relates to the write-down manager's functions concerning the write-down order.

Schedule 13: Insurers in financial difficulties: enforcement of contracts

Part 1 – New Schedule 19C TO FSMA 2000

2220 Paragraph 1 of Schedule 13 inserts new provisions into Part 24 of FSMA 2000 and a new Schedule 19C into FSMA 2000. Sub-paragraph 2 inserting the new section 377K into FSMA 2000 is self-explanatory. The effect of the provisions of the new Schedule inserted by sub-paragraph 3 are detailed below.

New Schedule 19C

Part 1 of new Schedule 19C: introductory

2221 Paragraph 1 is self-explanatory.

2222 Paragraph 2 explains for the purpose of Schedule 19C when an insurer is in financial difficulties (i.e., when Part 1 of Schedule 19B has effect in relation to the insurer, or where it is in administration or subject to a winding-up petition).

Part 2 of new Schedule 19C: policyholder surrender rights

2223 Paragraph 3 prevents policyholders exercising "surrender rights", or the ability to cancel a life insurance contract in exchange for its cash value, beyond a defined limit ('the surrender limit') while an insurer is in "financial difficulties" as defined in Paragraph 2.

2224 Paragraph 4 provides that restrictions on policyholder surrender rights extend to a policyholder's right to switch between funds in accordance with the terms of a relevant contract of insurance ("switching rights").

2225 Paragraph 5 provides for consent to be given, by the court and certain other parties, to the surrender of an amount beyond the surrender limit. These parties may give consent if they are satisfied that not providing consent would cause hardship to the policyholder.

Part 3 of new Schedule 19C: termination of relevant contracts

2226 Paragraph 6 explains that contracts for goods and services, financial contracts (the meaning of which is defined further in sub-paragraphs (2) to (3)), and reinsurance contracts are "relevant contracts" potentially subject to the restriction on termination created by Paragraph 7.

2227 Paragraph 7 prevents relevant contracts, to which the insurer is a counterparty, terminating or being terminated by reason of the insurer being in "financial difficulties" as defined in Paragraph 2.

2228 Paragraph 8 provides for consent to be given, by the court and certain other parties, to the termination of contracts. These parties may give consent if satisfied that not providing consent would cause the counterparty hardship.

Part 4 of new Schedule 19C: exclusions and disapplication of this Schedule

2229 Paragraph 9 is self-explanatory.

2230 Paragraph 10 provides that the court may, by order, disapply or modify any of the provisions imposed by this Schedule in relation to one or more of an insurer's contracts.

2231 Paragraph 11 specifies the applicants who may apply to the court to disapply the provisions imposed by this Schedule as provided for by Paragraph 10 and the procedural requirements that must be followed before an application can be made to the court.

Part 5 of new Schedule 19C: powers to amend this Schedule

2232 Paragraph 12 provides a power for HM Treasury to amend certain provisions in new Schedule 19C.

Part 2 – Consequential amendments

2233 Paragraph 2 amends section 429 (2B) of FSMA 2000 to require that any regulations made by HM Treasury pursuant to the power in paragraph 12 of the new Schedule 19C must be approved by Parliament.

Schedule 14: Credit unions

2234 This Schedule amends the Credit Unions Act 1979.

2235 Section 1 (3ZZA) introduces a new, optional object for credit unions. This is the section which allows credit unions to offer the new services specified in section 1ZA, should they choose to adopt this new object into their rules and subject to any relevant regulatory permissions.

2236 Section 1ZA outlines the services that fall under the optional object and the new powers HM Treasury has in relation to this new object. The services are hire purchase agreements, conditional sale agreements, and insurance distribution services. It also sets out that HM Treasury may specify future regulations relating to these objects.

2237 Section 1ZB grants HM Treasury powers to make regulations to amend section 1ZA relating to the new, optional object and the processes HM Treasury must go through to make the regulations. HM Treasury may add new activities to the optional object in future, and any amendments to the rest of the Credit Unions Act 1979 as needed, to support the new products or services. Before HM Treasury can add any further products or services under the new object, it must consult with people it deems appropriate, and it must secure approval for the additions from both Houses of Parliament.

2238 The amendments to section 2(3) specify that a society must be registered as a credit union provided it has, wholly or substantially, the mandatory objects, regardless of whether it takes on the new, optional object 3ZZA.

2239 Section 7 (5A) places restrictions in certain circumstances on members' ability to withdraw shares held when they have taken out secured hire purchase agreements and/or conditional sale agreements with the credit union.

2240 Section 9A is amended to allow credit unions to charge for services ancillary to entering into a conditional sale agreement or hire purchase agreement.

2241 Section 11 clarifies that credit unions may offer loans to other credit unions, regardless of whether they have a membership link with the lending credit union. The lending must be repaid in six months or less. These loans are subject to the same interest rate cap as all other loans made by credit unions. This does not affect existing loans between credit unions.

2242 Section 11E details further provisions as to how credit unions may offer hire purchase agreements or conditional sale agreements. It specifies that credit unions may offer these services to their members if they have adopted the optional object into their rules. They may offer these products to corporate members provided that their rules allow them to enter into these agreements with corporate members, and provided that the aggregate, outstanding balances of the agreements with corporate members are no more than 10% of the aggregate outstanding balances of these contracts provided to members. This is to ensure that credit unions primarily remain focused on serving their retail members as mutual organisations. The 10% rate may be amended by HM Treasury.

2243 This section also specifies that credit unions must include in the terms of an agreement whether the borrower may withdraw any of their shares during the repayment period. Finally, it also outlines that these agreements are subject to a 3% interest rate cap, the same as credit union loans, and that HM Treasury may amend this rate.

2244 Section 11F details provisions for treating hire purchase agreements or conditional sale agreements as secured agreements.

2245 Section 11G introduces the terms under which a credit union may offer insurance distribution services to members and specifies that it may charge a fee as deemed appropriate for providing the service. This section also specifies that a credit union must have adopted the new object 3ZZA in its rules to carry out insurance distribution.

2246 Section 12(3) is amended to allow credit unions to hold an interest in land for the purposes of securing hire purchase agreements or conditional sale agreements.

2247 Subsection (5) of section 23A is omitted as it is instead moved into the "interpretation" section.

2248 The amendment to section 29 is self-explanatory.

2249 Section 31 is amended to provide definitions for the new financial activities included in the new, optional object 3ZZA. It also includes the definition of "enactment" which was removed from section 23A. Subsection (4) of this section requires credit unions to submit annual returns to the Financial Conduct Authority and requires credit unions to be subject to the year of account provisions in the Co-operative and Community Benefit Societies Act 2014.

2250 Schedule 1(9) is amended to require credit unions to outline the mode and circumstances in which loans to other credit unions, alongside loans to members, are made and repaid in their rules.

2251 A transitional provision is made to ensure that amendments to section 11 and Schedule 1(9) do not apply retrospectively to any loans credit unions may have made to another credit union before Royal Assent of this Act.

2252 A transitional provision is included to ensure that a credit union's current year-end remains intact, and that the provisions for year of account do not apply retrospectively to previous years of account.

Commencement

2253 Section 86 sets out that the provisions of the Act, other than those listed in subsections (1) and (2), 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.

Statement on environmental principles

2254 The government considers that the Financial Services and Markets Act 2023 contains provision which, if enacted, would be environmental law; and that the Act will not have the effect of reducing the level of environmental protection provided for by any existing environmental law.

2255 Accordingly, a statement has been made under section 20(2)(a) and (3) of the Environment Act 2021 to this effect.

Related documents

2256 The following documents are relevant to the Act and can be read at the stated locations:

- Impact Assessment: https://bills.parliament.uk/publications/49053/documents/2621
- Financial Services Regulation: Measuring Success – Call for Proposals: https://www.gov.uk/government/consultations/financial-services-regulation-measuring-success-call-for-proposals
- A new chapter for financial services: https://www.gov.uk/government/publications/a-new-chapter-for-financial-services
- Future Regulatory Framework (FRF) Review: Proposals for Reform (2021): https://www.gov.uk/government/consultations/future-regulatory-framework-frf-review-proposals-for-reform
- Future Regulatory Framework (FRF) Review Consultation (2020): https://www.gov.uk/government/consultations/future-regulatory-framework-frf-review-consultation
- Wholesale Markets Review Consultation: https://www.gov.uk/government/consultations/uk-wholesale-markets-review-a-consultation
- Review of the Securitisation Regulation: Call for Evidence: https://www.gov.uk/government/consultations/securitisation-regulation-call-for-evidence
- Critical third parties to the finance sector: policy statement: https://www.gov.uk/government/publications/critical-third-parties-to-the-finance-sector-policy-statement
- Regulatory Framework for Approval of Financial Promotions: https://www.gov.uk/government/consultations/regulatory-framework-for-approval-of-financial-promotions

- UK regulatory approach to cryptoassets and stablecoins: Consultation and call for Evidence: https://www.gov.uk/government/consultations/uk-regulatory-approach-to-cryptoassets-and-stablecoins-consultation-and-call-for-evidence

- Access to Cash Consultation: https://www.gov.uk/government/consultations/access-to-cash-consultation

- Protecting UK wholesale cash infrastructure: policy statement: https://www.gov.uk/government/publications/protecting-uk-wholesale-cash-infrastructure

- Senior Managers & Certification Regime (SM&CR) for Financial Market Infrastructures (FMIs) Consultation: https://www.gov.uk/government/consultations/senior-managers-certification-regime-smcr-for-financial-market-infrastructures-fmis-consultation

- Expanded Resolution Regime for Central Counterparties (CCP) Consultation: https://www.gov.uk/government/consultations/expanded-resolution-regime-for-central-counterparties-ccp-consultation

- Amendments to the Insolvency Arrangements for Insurers Consultation: https://www.gov.uk/government/consultations/amendments-to-the-insolvency-arrangements-for-insurers-consultation

- Review of the Cash Ratio Deposit Scheme Consultation: https://www.gov.uk/government/consultations/review-of-the-cash-ratio-deposit-scheme-consultation

- Government approach to authorised push payment scam reimbursement: policy statement: https://www.gov.uk/government/publications/government-approach-to-authorised-push-payment-scam-reimbursement

- HM Treasury's review of Pool Reinsurance Company Limited 2020-2022: https://www.gov.uk/government/publications/hm-treasurys-review-of-pool-reinsurance-company-limited-2020-2022

Annex A – Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Regulatory framework: revocation of retained EU law Sections 1 – 7	Yes	Yes	Yes	Yes
Regulatory framework: new regulatory powers Sections 8 – 24	Yes	Yes	Yes	Yes
Regulatory framework: accountability of regulators Sections 25 – 53	Yes	Yes	Yes	Yes
Access to cash Sections 54 and 55	Yes	Yes	Yes	Yes
Performance of functions relating to financial market infrastructure Section 56	Yes	Yes	Yes	Yes
Central counterparties in financial difficulties Section 57	Yes	Yes	Yes	Yes
Insurers in financial difficulties Section 58	Yes	Yes	Yes	Yes
Miscellaneous: miscellaneous provisions Sections 59 – 72 and 75 – 79	Yes	Yes	Yes	Yes
Miscellaneous: Credit unions Section 73	Yes	Yes	Yes	No
Miscellaneous: Reinsurance for acts of terrorism Section 74	Yes	Yes	Yes	No
General Sections 80 – 87	Yes	Yes	Yes	Yes
Schedules 1 – 13	Yes	Yes	Yes	Yes
Schedule 14 (Credit unions)	Yes	Yes	Yes	No

Annex B – Hansard References

2257 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	20 July 2022	Vol. 718 Col. 993
Second Reading	7 September 2022	Vol. 719 Col. 278
Public Bill Committee	19 October 2022 25 October 2022 27 October 2022 1 November 2022 3 November 2022	PBC (Bill 146) 2022 - 2023
Report and Third Reading	7 December 2022	Vol. 724 Col. 371
House of Lords		
Introduction	8 December 2022	Vol. 826 Col. 266
Second Reading	10 January 2023	Vol. 826 Col. 1331
Grand Committee	30 January 2023 1 February 2023 6 February 2023 20 February 2023 1 March 2023 13 March 2023 21 March 2023 23 March 2023	Grand Committee (Bill 80) 2022 - 2023
Report	6 June 2023 8 June 2023 13 June 2023	Vol. 830 Col. 1279 Vol. 830 Col. 1576 Vol. 830 Col. 1842
Third Reading	19 June 2023	Vol. 831 Col. 17
Commons Consideration of Lords Amendments	26 June 2023	Vol. 735 Col. 65
Lords Consideration of Commons Amendments	27 June 2023	Vol. 831 Col. 605
Royal Assent	29 June 2023	House of Commons Vol. 735 Col. 438 House of Lords Vol. 831 Col. 795

Annex C – Progress of Bill Table

2258 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 in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 6	Clause 6	Clause 6	Clause 6	Clause 6	Clause 6
Section 7	Clause 7	Clause 7	Clause 7	Clause 7	Clause 7
Section 8	Clause 8	Clause 8	Clause 8	Clause 8	Clause 8
Section 9	Clause 9	Clause 9	Clause 9	Clause 9	Clause 9
Section 10	Clause 10	Clause 10	Clause 10	Clause 10	Clause 10
Section 11	Clause 11	Clause 11	Clause 11	Clause 11	Clause 11
Section 12	Clause 12	Clause 12	Clause 12	Clause 12	Clause 12
Section 13	Clause 13	Clause 13	Clause 13	Clause 13	Clause 13
Section 14	Clause 14	Clause 14	Clause 14	Clause 14	Clause 14
Section 15	Clause 15	Clause 15	Clause 15	Clause 15	Clause 15
Section 16	Clause 16	Clause 16	Clause 16	Clause 16	Clause 16
Section 17	Clause 17	Clause 17	Clause 17	Clause 17	Clause 17
Section 18	Clause 18	Clause 18	Clause 18	Clause 18	Clause 18
Section 19	Clause 19	Clause 19	Clause 19	Clause 19	Clause 19
Section 20	Clause 20	Clause 20	Clause 20	Clause 20	Clause 20
Section 21	-	-	-	-	Clause 21
Section 22	Clause 21	Clause 21	Clause 21	Clause 21	Clause 22
Section 23	Clause 22	Clause 22	Clause 22	Clause 22	Clause 23
Section 24	Clause 23	Clause 23	Clause 23	Clause 23	Clause 24
Section 25	Clause 24	Clause 24	Clause 24	Clause 24	Clause 25
Section 26	-	-	-	-	Clause 26
Section 27	Clause 25	Clause 25	Clause 25	Clause 25	Clause 27
Section 28	Clause 26	Clause 26	Clause 26	Clause 26	Clause 28
-	-	-	-	-	Clause 29
Section 29	Clause 27	Clause 27	Clause 27	Clause 27	Clause 30
Section 30	Clause 28	Clause 28	Clause 28	Clause 28	Clause 31
Section 31	Clause 29	Clause 29	Clause 29	Clause 29	Clause 32

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 in Committee in the Lords	Bill as amended on Report in the Lords
Section 32	Clause 30	Clause 30	Clause 30	Clause 30	Clause 33
Section 33	Clause 31	Clause 31	Clause 31	Clause 31	Clause 34
Section 34	Clause 32	Clause 32	Clause 32	Clause 32	Clause 35
Section 35	Clause 33	Clause 33	Clause 33	Clause 33	Clause 36
Section 36	Clause 34	Clause 34	Clause 34	Clause 34	Clause 37
Section 37	Clause 35	Clause 35	Clause 35	Clause 35	Clause 38
Section 38	Clause 36	Clause 36	Clause 36	Clause 36	Clause 39
Section 39	-	-	Clause 37	Clause 37	Clause 40
Section 40	Clause 37	Clause 37	Clause 38	Clause 38	Clause 41
Section 41	Clause 38	Clause 38	Clause 39	Clause 39	Clause 42
Section 42	Clause 39	Clause 39	Clause 40	Clause 40	Clause 43
Section 43	Clause 40	Clause 40	Clause 41	Clause 41	Clause 44
Section 44	Clause 41	Clause 41	Clause 42	Clause 42	Clause 45
Section 45	Clause 42	Clause 42	Clause 43	Clause 43	Clause 46
Section 46	-	-	Clause 44	Clause 44	Clause 47
Section 47	-	-	-	-	Clause 48
Section 48	Clause 43	Clause 43	Clause 45	Clause 45	Clause 49
Section 49	Clause 44	Clause 44	Clause 46	Clause 46	Clause 50
Section 50	Clause 45	Clause 45	Clause 47	Clause 47	Clause 51
Section 51	Clause 46	Clause 46	Clause 48	Clause 48	Clause 52
Section 52	-	Clause 47	Clause 49	Clause 49	Clause 53
Section 53	-	-	Clause 50	Clause 50	Clause 54
Section 54	Clause 47	Clause 48	Clause 51	Clause 51	Clause 55
Section 55	Clause 48	Clause 49	Clause 52	Clause 52	Clause 56
Section 56	Clause 49	Clause 50	Clause 53	Clause 53	Clause 57
Section 57	Clause 50	Clause 51	Clause 54	Clause 54	Clause 58
Section 58	Clause 51	Clause 52	Clause 55	Clause 55	Clause 59
Section 59	Clause 52	Clause 53	Clause 56	Clause 56	Clause 60
Section 60	Clause 53	Clause 54	Clause 57	Clause 57	Clause 61
Section 61	Clause 54	Clause 55	Clause 58	Clause 58	Clause 62
Section 62	Clause 55	Clause 56	Clause 59	Cause 59	Clause 63
Section 63	-	-	-	-	Clause 64
Section 64	-	-	Clause 60	Clause 60	Clause 65
Section 65	Clause 56	Clause 57	Clause 61	Clause 61	Clause 66
Section 66	Clause 57	Clause 58	Clause 62	Clause 62	Clause 67

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 in Committee in the Lords**	**Bill as amended on Report in the Lords**
Section 67	Clause 58	Clause 59	Clause 63	Clause 63	Clause 68
Section 68	Clause 59	Clause 60	Clause 64	Clause 64	Clause 69
Section 69	-	Clause 61	Clause 65	Clause 65	Clause 70
-	-	-	-	-	Clause 71
Section 70	Clause 60	Clause 62	Clause 66	Clause 66	Clause 72
Section 71	Clause 61	Clause 63	Clause 67	Clause 67	Clause 73
Section 72	Clause 62	Clause 64	Clause 68	Clause 68	Clause 74
Section 73	Clause 63	Clause 65	Clause 69	Clause 69	Clause 75
Section 74	Clause 64	Clause 66	Clause 70	Clause 70	Clause 76
Section 75	Clause 65	Clause 67	Clause 71	Clause 71	Clause 77
Section 76	-	-	-	-	Clause 78
Section 77	-	-	-	-	Clause 79
Section 78	-	-	-	-	Clause 80
Section 79	-	-	-	-	*Introduced at Commons Consideration of Lords Amendments*
Section 80	Clause 66	Clause 68	Clause 72	Clause 72	Clause 81
Section 81	Clause 67	Clause 69	Clause 73	Clause 73	Clause 82
Section 82	Clause 68	Clause 70	Clause 74	Clause 74	Clause 83
Section 83	Clause 69	Clause 71	Clause 75	Clause 75	Clause 84
Section 84	Clause 70	Clause 72	Clause 76	Clause 76	Clause 85
Section 85	Clause 71	Clause 73	Clause 77	Clause 77	Clause 86
Section 86	Clause 72	Clause 74	Clause 78	Clause 78	Clause 87
Section 87	Clause 73	Clause 75	Clause 79	Clause 79	Clause 88
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3
Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4
Schedule 5	Schedule 5	Schedule 5	Schedule 5	Schedule 5	Schedule 5
Schedule 6	Schedule 6	Schedule 6	Schedule 6	Schedule 6	Schedule 6
Schedule 7	Schedule 7	Schedule 7	Schedule 7	Schedule 7	Schedule 7
Schedule 8	Schedule 8	Schedule 8	Schedule 8	Schedule 8	Schedule 8
Schedule 9	Schedule 9	Schedule 9	Schedule 9	Schedule 9	Schedule 9
Schedule 10	Schedule 10	Schedule 10	Schedule 10	Schedule 10	Schedule 10
Schedule 11	Schedule 11	Schedule 11	Schedule 11	Schedule 11	Schedule 11

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 in Committee in the Lords	Bill as amended on Report in the Lords
Schedule 12	Schedule 12	Schedule 12	Schedule 12	Schedule 12	Schedule 12
Schedule 13	Schedule 13	Schedule 13	Schedule 13	Schedule 13	Schedule 13
Schedule 14	Schedule 14	Schedule 14	Schedule 14	Schedule 14	Schedule 14

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