

SCHEDULES

SCHEDULE 11

Section 39

THE FINANCIAL OMBUDSMAN SERVICE

- 1 In section 226 (compulsory jurisdiction), in subsection (3)(a), for “Authority” substitute “FCA”.
- 2 In section 226A (consumer credit jurisdiction), in subsection (7), for “Authority” substitute “FCA”.
- 3 In section 227 (voluntary jurisdiction), in subsection (6), for “Authority's” substitute “FCA's”.
- 4 (1) Section 228 (determination under the compulsory and consumer credit jurisdiction) is amended as follows.
 - (2) In subsection (4), in paragraph (c), omit “in writing”.
 - (3) After subsection (6) insert—

“(6A) But the complainant is not to be treated as having rejected the determination by virtue of subsection (6) if—

 - (a) the complainant notifies the ombudsman after the specified date of the complainant's acceptance of the determination,
 - (b) the complainant has not previously notified the ombudsman of the complainant's rejection of the determination, and
 - (c) the ombudsman is satisfied that such conditions as may be prescribed by rules made by the scheme operator for the purposes of this section are satisfied.”
 - (4) After subsection (7) insert—

“(7A) Where a determination is rejected by virtue of subsection (6), the notification under subsection (7) must contain a general description of the effect of subsection (6A).”
- 5 In section 229 (awards), in subsection (4), for “Authority” substitute “FCA”.
- 6 In section 230 (costs), in subsection (2), for “Authority” substitute “FCA”.
- 7 After section 230 insert—

“230A Reports of determinations

- (1) The scheme operator must publish a report of any determination made under this Part.
- (2) But if the ombudsman who makes the determination informs the scheme operator that, in the ombudsman's opinion, it is inappropriate to publish a report of that determination (or any part of it) the scheme operator must not publish a report of that determination (or that part).

Status: This is the original version (as it was originally enacted).

(3) Unless the complainant agrees, a report of a determination published by the scheme operator may not include the name of the complainant, or particulars which, in the opinion of the scheme operator, are likely to identify the complainant.

(4) The scheme operator may charge a reasonable fee for providing a person with a copy of a report.”

8 In section 232 (powers of court), in subsection (2), after “director or” insert “other”.

9 After section 232 insert—

“232A Scheme operator's duty to provide information to FCA

If the scheme operator considers that it has information that, in its opinion, would or might be of assistance to the FCA in advancing one or more of the FCA's operational objectives, it must disclose that information to the FCA.”

10 In section 234 (industry funding), in subsection (1), for “Authority” substitute “FCA”.

11 In section 234A (funding by consumer credit licensees), in subsection (1), for “Authority” substitute “FCA”.

12 After section 234A insert—

“Successors to businesses

234B Transfers of liability

(1) This section applies where a person (the “successor”) has assumed a liability (including a contingent one) of a person (the “predecessor”) who was, or (apart from this section) would have been, the respondent in respect of a complaint falling to be dealt with under the ombudsman scheme.

(2) The complaint may (but need not) be dealt with under this Part as if the successor were the respondent.”

13 Schedule 17 (the ombudsman scheme) is amended as follows.

14 For paragraph 2 (and the italic heading before it) substitute—

“Duty of FCA

2 The FCA must take such steps as are necessary to ensure that the body corporate established by the Financial Services Authority under this Schedule as originally enacted is, at all times, capable of exercising the functions conferred on the scheme operator by or under this Act.”

15 In paragraph 3 (constitution)—

(a) for “Authority”, in each place, substitute “FCA”, and

(b) in sub-paragraph (4), after “9” insert “, 9A”.

16 After paragraph 3 insert—

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“Relationship with FCA

- 3A (1) The scheme operator and the FCA must each take such steps as it considers appropriate to co-operate with the other in the exercise of their functions under this Part of this Act.
- (2) The scheme operator and the FCA must prepare and maintain a memorandum describing how they intend to comply with sub-paragraph (1).
- (3) The scheme operator must ensure that the memorandum as currently in force is published in the way appearing to the scheme operator to be best calculated to bring it to the attention of the public.”

17 In paragraph 6 (status), in sub-paragraph (2), omit “board members,”.

18 In paragraph 7 (annual reports)—

- (a) for “Authority”, in each place, substitute “FCA”, and
(b) at the end insert—

“(5) The Treasury may—

- (a) require the scheme operator to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
(b) direct that any provision of that Act about accounts and their audit is to apply to the scheme operator with such modifications as are specified in the direction, whether or not the provision would otherwise apply to the scheme manager.

(6) Compliance with any requirement under sub-paragraph (5)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.

(7) Proceedings under sub-paragraph (6) may be brought only by the Treasury.”

19 After paragraph 7 insert—

“Audit of accounts

- 7A (1) The scheme operator must send a copy of its annual accounts to the Comptroller and Auditor General as soon as is reasonably practicable.
- (2) The Comptroller and Auditor General must—
- (a) examine, certify and report on accounts received under this paragraph, and
(b) send a copy of the certified accounts and the report to the Treasury.
- (3) The Treasury must lay the copy of the certified accounts and the report before Parliament.

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- (4) The scheme operator must send a copy of the certified accounts and the report to the FCA.
- (5) Except as provided by paragraph 7(5), the scheme operator is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.
- (6) In this paragraph “annual accounts” has the meaning given by section 471 of the Companies Act 2006.”
- 20 For the italic heading before paragraph 8 substitute “*Information, advice and guidance*”.
- 21 In paragraph 8 (guidance), for “guidance consisting of such information and advice” substitute “such information, guidance or advice”.
- 22 In paragraph 9 (budget), for “Authority”, in each place, substitute “FCA”.
- 23 After paragraph 9 insert—
- “*Annual plan*
- 9A (1) The scheme operator must in respect of each of its financial years prepare an annual plan.
- (2) The plan must be prepared before the start of the financial year.
- (3) An annual plan in respect of a financial year must make provision about the use of the resources of the scheme operator.
- (4) The plan may include material relating to periods longer than the financial year in question.
- (5) Before preparing an annual plan, the scheme operator must consult such persons (if any) as the scheme operator considers appropriate.
- (6) The scheme operator must publish each annual plan in the way it considers appropriate.”
- 24 In paragraph 13 (procedural rules)—
- (a) for “Authority”, in each place, substitute “FCA”,
- (b) for “Authority's”, in each place, (including the italic heading), substitute “FCA's”, and
- (c) in sub-paragraph (4)(b), for “Part X” substitute “Part 9A”.
- 25 In paragraph 14 (scheme operator's rules)—
- (a) in sub-paragraph (2), after paragraph (f) insert—
- “(fa) allow the correction of any clerical mistake in the written statement of a determination made by an ombudsman;
- (fb) provide that any irregularity arising from a failure to comply with any provisions of the scheme rules does not of itself render a determination void;”, and”
- (b) in sub-paragraph (7), for “Authority” substitute “FCA”.
- 26 In paragraph 16B (procedure for complaints etc), in sub-paragraph (1), after paragraph (d) insert—

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- “(e) may provide that an ombudsman may correct any clerical mistake in a determination made by that ombudsman;
 - (f) provide that any irregularity arising from a failure to comply with any provisions of the consumer credit rules does not of itself render a determination void.”
- 27 In paragraph 16E (consumer credit rules), for “Authority”, in each place, substitute “FCA”.
- 28 In paragraph 18 (terms of reference), for “Authority”, in each place, substitute “FCA”.
- 29 In paragraph 19 (delegation), in sub-paragraph (3), for “Authority” substitute “FCA”.
- 30 In paragraph 20 (voluntary jurisdiction rules: procedure), for “Authority”, in each place, substitute “FCA”.