

SCHEDULES

SCHEDULE 12

Section 41

AMENDMENTS OF PARTS 11 AND 23 OF FSMA 2000

PART 1

PART 11 OF FSMA 2000: INFORMATION GATHERING AND INVESTIGATIONS

- 1 (1) Section 165 (power to require information) is amended as follows.
- (2) In subsection (1), for “The Authority” substitute “Either regulator”.
- (3) In subsection (3), for “Authority” substitute “regulator”.
- (4) In subsection (4), for “the Authority” substitute “either regulator”.
- (5) In subsections (5) and (6) for “The Authority”, in each place, substitute “The regulator in question”.
- (6) In subsection (7), for the words from “exercised” to the end substitute “exercised—
- (a) by either regulator, to impose requirements on a person who is connected with an authorised person;
 - (b) by the FCA, to impose requirements on an operator, trustee or depositary of a scheme recognised under section 270 or 272 who is not an authorised person;
 - (c) by the FCA, to impose requirements on a recognised investment exchange;
 - (d) by the FCA, to impose requirements on a person who is connected with a recognised investment exchange.”.
- (7) In subsection (9)—
- (a) for “the Authority”, in the first place, substitute “the regulator exercising the power”,
 - (b) for “the Authority's” substitute “that regulator's”, and
 - (c) for “the Authority”, in the second place, substitute “that regulator”.
- (8) In subsection (11)—
- (a) in the opening words, for “an authorised person” substitute “another person”, and
 - (b) in paragraph (d), at the end insert “(reading references in that Part to the authorised person as references to A)”.
- (9) In the heading, for “Authority's” substitute “Regulators”.
- 2 In section 165A (power to require information relevant to financial stability)—
- (a) for “Authority”, in each place, substitute “PRA”, and
 - (b) in the heading, for “Authority's” substitute “PRA's”.

Status: This is the original version (as it was originally enacted).

- 3 In section 165B (safeguards relating to section 165A)—
- (a) for “Authority”, in each place, substitute “PRA”, and
 - (b) for “Authority's”, in each place, substitute “PRA's”.
- 4 In section 165C (orders under section 165A(2)(d)) for subsection (1) substitute—
- “(1) The Treasury may make an order under section 165A(2)(d) only if either or both of the following conditions is met in relation to the provision made by the order.
- (1A) Condition A is that the Treasury consider that—
- (a) the activities carried on by the prescribed person or persons of the prescribed description, or the way in which those activities (or any part of them) are carried on, or
 - (b) any failure to carry on those activities (or any part of them),
- pose, or would be likely to pose, a serious threat to the stability of the UK financial system.
- (1B) Condition B is that the provision implements all or part of a recommendation made by the Financial Policy Committee of the Bank of England under section 9P of the Bank of England Act 1998.”
- 5 For section 166 (reports by skilled persons) substitute—

“166 Reports by skilled persons

- (1) This section applies where either regulator has required or could require a person to whom subsection (2) applies (“the person concerned”) to provide information or produce documents with respect to any matter (“the matter concerned”).
- (2) This subsection applies to—
 - (a) an authorised person (“A”),
 - (b) any other member of A's group,
 - (c) a partnership of which A is a member, or
 - (d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c),
 who is, or was at the relevant time, carrying on a business.
- (3) The regulator mentioned in subsection (1) may either—
 - (a) by notice in writing given to the person concerned, require the person concerned to provide the regulator with a report on the matter concerned, or
 - (b) itself appoint a person to provide the regulator with a report on the matter concerned.
- (4) When acting under subsection (3)(a), the regulator may require the report to be in such form as may be specified in the notice.
- (5) The regulator must give notice of an appointment under subsection (3)(b) to the person concerned.
- (6) The person appointed to make a report—

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

- (a) must be a person appearing to the regulator to have the skills necessary to make a report on the matter concerned, and
 - (b) where the appointment is to be made by the person concerned, must be a person nominated or approved by the regulator.
- (7) It is the duty of—
- (a) the person concerned, and
 - (b) any person who is providing (or who has at any time provided) services to the person concerned in relation to the matter concerned, to give the person appointed to prepare a report all such assistance as the appointed person may reasonably require.
- (8) The obligation imposed by subsection (7) is enforceable, on the application of the regulator in question, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (9) A regulator may make rules providing for expenses incurred by it in relation to an appointment under subsection (3)(b) to be payable as a fee by the person concerned.
- (10) The powers conferred by this section may also be exercised by the FCA in relation to a person to whom subsection (11) applies, (and references to the person concerned are to be read accordingly).
- (11) This subsection applies to—
- (a) a recognised investment exchange (“A”),
 - (b) any other member of A's group,
 - (c) a partnership of which A is a member, or
 - (d) a person who has at any time been a person falling within paragraph (a), (b) or (c),
- who is, or was at the relevant time, carrying on a business.”

6 After section 166 insert—

“166A Appointment of skilled person to collect and update information

- (1) This section applies if either regulator considers that an authorised person has contravened a requirement in rules made by that regulator to collect, and keep up to date, information of a description specified in the rules.
- (2) The regulator may either—
 - (a) require the authorised person to appoint a skilled person to collect or update the information, or
 - (b) itself appoint a skilled person to do so.
- (3) References in this section to a skilled person are to a person—
 - (a) appearing to the regulator to have the skills necessary to collect or update the information in question, and
 - (b) where the appointment is to be made by the authorised person, nominated or approved by the regulator.
- (4) The regulator must give notice of an appointment under subsection (2)(b) to the authorised person.

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

- (5) The skilled person may require any person to provide all such assistance as the skilled person may reasonably require to collect or update the information in question.
 - (6) A requirement imposed under subsection (5) is enforceable, on the application of the regulator in question, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
 - (7) A contractual or other requirement imposed on a person (“P”) to keep any information in confidence does not apply if—
 - (a) the information is or may be relevant to anything required to be done as a result of this section,
 - (b) an authorised person or a skilled person requests or requires P to provide the information for the purpose of securing that those things are done, and
 - (c) the regulator in question has approved the making of the request or the imposition of the requirement before it is made or imposed.
 - (8) An authorised person may provide information (whether received under subsection (7) or otherwise) that would otherwise be subject to a contractual or other requirement to keep it in confidence if it is provided for the purposes of anything required to be done as a result of this section.
 - (9) A regulator may make rules providing for expenses incurred by it in relation to an appointment under subsection (2)(b) to be payable as a fee by the authorised person.
 - (10) In this section “authorised person”, in relation to the PRA, means PRA-authorised person.”
- 7 (1) Section 167 (appointment of investigator in general cases) is amended as follows.
- (2) In subsection (1), for “the Authority or the Secretary of State (“the investigating authority”)” substitute “an investigating authority”.
 - (3) After subsection (5) insert—
 - “(5A) Investigating authority” means—
 - (a) in relation to a recognised investment exchange, the Secretary of State or the FCA;
 - (b) in relation to an authorised person or former authorised person, the FCA or the PRA;
 - (c) in relation to an appointed representative or former appointed representative, the FCA or the PRA.”
- 8 (1) Section 168 (appointment of investigator in specific cases) is amended as follows.
- (2) In subsection (1)—
 - (a) omit paragraph (a), and
 - (b) in paragraph (b), for “191” substitute “191F”.
 - (3) In subsection (2)—
 - (a) in paragraph (a), for “or 397” substitute “or under Part 7 of the Financial Services Act 2012”, and

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

- (b) after paragraph (b) insert—
 - “(ba) an authorised person may have contravened section 20 in relation to a credit-related regulated activity;”.
- (4) In subsection (4)—
 - (a) in the opening words, for “the Authority” substitute “an investigating authority”;
 - (b) in paragraph (c), for “Authority” substitute “investigating authority”;
 - (c) after that paragraph insert—
 - “(ca) a recognised investment exchange may have contravened the recognition requirements (within the meaning of Part 18);”;
 - (d) in paragraph (f), for “an authorised or exempt person” substitute “a person”;
 - (e) in paragraph (h), for “the Authority” substitute “a regulator”;
 - (f) in paragraph (j), omit the words from “or by any” to the end, and
 - (g) for paragraph (k) substitute—
 - “(k) a person may have contravened a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.”
- (5) In subsection (5), for “Authority” substitute “investigating authority”.
- (6) For subsection (6) substitute—
 - “(6) Investigating authority” means—
 - (a) in subsections (1) to (3), the FCA, the PRA or the Secretary of State;
 - (b) in subsections (4) and (5), the FCA or the PRA.”
- 9 (1) Section 169 (investigations at the request of an overseas regulator) is amended as follows.
 - (2) In subsection (1), for “the Authority” substitute “a regulator”.
 - (3) In subsections (3) and (4), in each place, for “Authority” substitute “regulator”.
 - (4) In subsection (5), in each place, for “Authority” substitute “regulator”.
 - (5) In subsection (6), for “Authority” substitute “regulator”.
 - (6) In subsection (7), for “the Authority” substitute “a regulator”.
 - (7) In subsection (8), for “Authority” substitute “regulator”.
 - (8) In subsection (9), for “The Authority” substitute “Each regulator”.
 - (9) In subsection (11), for “Authority” substitute “regulator”.
- 10 In section 169A (supporting an overseas regulator regarding financial stability), in subsection (1), for “Authority” substitute “PRA”.
- 11 In section 170 (investigations: general), in subsection (10), for paragraphs (a) and (b) substitute—
 - “(a) the FCA, if the FCA appointed the investigator;
 - (aa) the PRA, if the PRA appointed the investigator;
 - (b) the Secretary of State, if the Secretary of State appointed the investigator.”

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

- 12 In section 174 (admissibility of statements to investigators), in subsection (2), for
 “the Authority” substitute “a regulator”.
- 13 (1) Section 175 (information and documents: supplemental) is amended as follows.
- (2) In subsection (1), for “the Authority” substitute “either regulator”.
- (3) After subsection (2) insert—
- “(2A) A document so produced may be retained for so long as the person to whom
 it is produced considers that it is necessary to retain it (rather than copies of
 it) for the purposes for which the document was requested.
- (2B) If the person to whom a document is so produced has reasonable grounds
 for believing—
- (a) that the document may have to be produced for the purposes of any
 legal proceedings, and
- (b) that it might otherwise be unavailable for those purposes,
 it may be retained until the proceedings are concluded.”
- (4) In subsection (3), for “Authority” substitute “regulator”.
- 14 (1) Section 176 (entry of premises under warrant) is amended as follows.
- (2) In subsection (1), for “the Authority” substitute “either regulator”.
- (3) After subsection (5) insert—
- “(5A) A warrant under this section may be executed by any constable.
- (5B) The warrant may authorise persons to accompany any constable who is
 executing it.
- (5C) The powers in subsection (5) may be exercised by a person authorised by
 the warrant to accompany a constable; but that person may exercise those
 powers only in the company of, and under the supervision of, a constable.”
- (4) In subsection (6), for “16” substitute “16(3) to (12)”.
- (5) In subsection (7), for “18” substitute “18(3) to (12)”.
- (6) Omit subsection (8).
- (7) In subsection (11), in paragraph (a), for “the Authority” substitute “a regulator”.
- 15 After section 176 insert—

“176A Retention of documents taken under section 176

- (1) Any document of which possession is taken under section 176 (“a seized document”) may be retained so long as it is necessary to retain it (rather than copies of it) in the circumstances.
- (2) A person claiming to be the owner of a seized document may apply to a magistrates' court or (in Scotland) the sheriff for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.

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

- (3) If on an application under subsection (2) the court or (in Scotland) the sheriff cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.
- (4) An order under subsection (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.
- (5) Any right to bring proceedings (as described in subsection (4)) may only be exercised within 6 months of the date of the order made under subsection (2) or (3).”

PART 2

PART 23 OF FSMA 2000: PUBLIC RECORD, DISCLOSURE OF INFORMATION AND CO-OPERATION

- 16 (1) Section 347 (record of authorised persons) is amended as follows.
- (2) In subsections (1) to (6), for “Authority”, in each place, substitute “FCA”.
 - (3) Omit subsection (1)(f).
 - (4) In subsection (2), in paragraph (e)—
 - (a) omit “or recognised clearing house,”, and
 - (b) omit “or clearing house”.
 - (5) In subsection (8), for “Authority” substitute “FCA or the PRA”.
- 17 After section 347 insert—

“347A Duty of PRA to disclose information relevant to the record

- (1) The PRA must, for the purpose of assisting the FCA to comply with its duty under section 347—
 - (a) notify the FCA if the information included in the record as required under section 347(2)(a) appears to the PRA to be incomplete or inaccurate,
 - (b) if it makes a prohibition order relating to an individual, provide the FCA with information falling within section 347(2)(f) in relation to that order,
 - (c) where it is the appropriate regulator in relation to an approved person, provide the FCA with information falling within section 347(2)(g) in relation to that approved person, and
 - (d) where the FCA has notified the PRA that it considers it appropriate to include in the record information of a certain description, disclose to the FCA such information of that description as the PRA has in its possession.
- (2) The duty to provide information under this section does not apply to information which the PRA reasonably believes is in the possession of the FCA.

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

- (3) Subsection (1) does not require or authorise the disclosure of information whose disclosure is prohibited by or under section 348.
- (4) This section is without prejudice to any other power to disclose information.
- (5) In this section references to the “record” are to the record maintained under section 347.”
- 18 (1) Section 348 (restrictions on disclosure of information) is amended as follows.
- (2) In subsection (2)(b)—
- (a) for “Authority” substitute “FCA, the PRA”, and
 - (b) omit “, the competent authority for the purposes of Part VI”.
- (3) In subsection (5)—
- (a) for paragraph (a) substitute—
 - “(a) the FCA;
 - (aa) the PRA;”,
 - (b) omit paragraph (b),
 - (c) in paragraph (d), for “139E” substitute “166A”, and
 - (d) after paragraph (e) insert—
 - “(ea) a person who is or has been engaged to provide services to a person mentioned in those paragraphs;”.
- (4) In subsection (6)—
- (a) in paragraph (a), for “the competent authority” substitute “the FCA”,
 - (b) in paragraph (b), for “Authority” substitute “FCA, the PRA”, and
 - (c) omit paragraph (c).
- (5) In the heading for “Authority” substitute “FCA, PRA”.
- 19 (1) Section 349 (exceptions from section 348) is amended as follows.
- (2) In subsection (2)(c), for “Authority” substitute “FCA or the PRA”.
- (3) In subsection (3A)(a), for “Authority” substitute “FCA or the PRA”.
- (4) In subsection (3B)(c), for “Authority's functions” substitute “functions of the FCA or the PRA”.
- 20 (1) Section 350 (disclosure of information by HMRC) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) No obligation as to secrecy imposed by statute or otherwise prevents the disclosure of Revenue information to—
- (a) the FCA or the PRA, if the disclosure is made for the purpose of assisting or enabling that regulator to discharge its functions under this or any other Act, or
 - (b) the Secretary of State, if the disclosure is made for the purpose of assisting in the investigation of a matter under section 168 or with a view to the appointment of an investigator under that section.”
- (3) In subsection (4), for “subsection (1)” substitute “subsection (1)(b)”.
- 21 Omit section 351 (competition information).

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

- 22 In section 351A (disclosure under the UCITS directive), in subsection (1), for “the Authority” substitute “the FCA or the PRA”.
- 23 (1) In section 353 (removal of other restrictions on disclosure), in subsection (1)(b)—
- (a) for “Authority”, in the first place, substitute “FCA or the PRA”, and
 - (b) for “Authority”, in the second place, substitute “either of them”.
- 24 After section 353 insert—

“Information received from Bank of England

353A Information received from Bank of England

- (1) A regulator must not disclose to any person specially protected information.
- (2) “Specially protected information” is information in relation to which the first and second conditions are met.
- (3) The first condition is that the regulator received the information from—
 - (a) the Bank of England (“the Bank”), or
 - (b) the other regulator where that regulator had received the information from the Bank.
- (4) The second condition is that the Bank notified the regulator to which it disclosed the information that the Bank held the information for the purpose of its functions with respect to any of the following—
 - (a) monetary policy;
 - (b) financial operations intended to support financial institutions for the purposes of maintaining stability;
 - (c) the provision of private banking services and related services.
- (5) The notification referred to in subsection (4) must be—
 - (a) in writing, and
 - (b) given before, or at the same time as, the Bank discloses the information.
- (6) The prohibition in subsection (1) does not apply—
 - (a) to disclosure by one regulator to the other regulator where the regulator making the disclosure informs the other regulator that the information is specially protected information by virtue of this section;
 - (b) where the Bank has consented to disclosure of the information;
 - (c) to information which has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section;
 - (d) to information which the regulator is required to disclose in pursuance of any EU obligation.
- (7) In this section references to disclosure by or to a regulator or by the Bank include references to disclosure by or to—
 - (a) persons who are, or are acting as,—
 - (i) officers of, or members of the staff of, the regulator, or
 - (ii) officers, employees or agents of the Bank, or

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

- (b) auditors, experts, contractors or investigators appointed by the regulator or the Bank under powers conferred by this Act or otherwise.
- (8) References to disclosure by a regulator do not include references to disclosure between persons who fall within any paragraph of subsection (7) (a) or (b) in relation to that regulator.
- (9) Each regulator must take such steps as are reasonable in the circumstances to prevent the disclosure of specially protected information, in cases not excluded by subsection (6), by those who are or have been—
 - (a) its officers or members of staff (including persons acting as its officers or members of staff);
 - (b) auditors, experts, contractors or investigators appointed by the regulator under powers conferred by this Act or otherwise;
 - (c) persons to whom the regulator has delegated any of its functions.”

25 For section 354 substitute—

“354A FCA's duty to co-operate with others

- (1) The FCA must take such steps as it considers appropriate to co-operate with other persons (whether in the United Kingdom or elsewhere) who have functions—
 - (a) similar to those of the FCA, or
 - (b) in relation to the prevention or detection of financial crime.
- (2) The persons referred to in subsection (1) do not include the Bank of England or the PRA (but see sections 3D and 3Q).
- (3) The FCA must take such steps as it considers appropriate to co-operate with—
 - (a) the Panel on Takeovers and Mergers;
 - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
 - (c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the FCA to be similar to those of the Panel on Takeovers and Mergers.
- (4) Co-operation may include the sharing of information which the FCA is not prevented from disclosing.
- (5) “Financial crime” has the meaning given in section 1H(3).

354B PRA's duty to co-operate with others

- (1) The PRA must take such steps as it considers appropriate to co-operate with—
 - (a) other persons (whether in the United Kingdom or elsewhere) who have functions similar to those of the PRA, and
 - (b) other bodies that have functions relevant to financial stability.

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

- (2) The persons referred to in subsection (1) do not include the Bank of England or the FCA (but see sections 3D and 3Q).
- (3) Co-operation may include the sharing of information which the PRA is not prevented from disclosing.

354C PRA's duty to provide information to Bank of England

- (1) The PRA must disclose to the Bank of England (“the Bank”) any information in its possession that it thinks will or may assist the Bank in achieving its financial stability objective.
- (2) The duty in subsection (1) applies whether or not the Bank has requested that the information be disclosed to it.
- (3) Subsection (1) does not require or authorise the disclosure of information whose disclosure—
 - (a) is prohibited by or under section 348 or any other enactment;
 - (b) is incompatible with any EU obligation;
 - (c) would constitute or be punishable as a contempt of court.
- (4) This section is without prejudice to any other power to disclose information.
- (5) The Bank's financial stability objective is the objective set out in section 2A(1) of the Bank of England Act 1998.
- (6) In this section “enactment” includes—
 - (a) an Act of the Scottish Parliament,
 - (b) Northern Ireland legislation, and
 - (c) a Measure or Act of the National Assembly for Wales.”