

# **FINANCIAL SERVICES ACT 2010**

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## **EXPLANATORY NOTES**

### **SUMMARY AND OVERVIEW OF THE STRUCTURE OF THE ACT**

#### ***Objectives of FSA etc***

8. FSMA currently sets out four objectives for the FSA. These are: maintaining confidence in the financial system; promoting public understanding of the financial system; securing the appropriate degree of protection for consumers; and reducing financial crime. As maintaining financial stability is a fundamental component of maintaining confidence in the financial system, the Act provides the FSA with an additional objective, namely an explicit financial stability objective. In considering financial stability, the FSA must have regard to the costs to the economy both of instability and of regulatory actions (taken to reduce instability). The FSA, like the Bank of England, is required to consult the Treasury when determining its strategy for financial stability.
9. The Act removes the FSA's regulatory objective of promoting public understanding of the financial system and requires the FSA to establish a new consumer financial education body whose purpose is to raise the understanding and knowledge of members of the public of financial matters (including the financial system) and improve their ability to manage their financial affairs. The new body will therefore take over responsibility for the activity previously undertaken by the FSA as part of the National Strategy for Financial Capability under its 'public understanding' objective. In addition the body will implement the national rollout of an impartial generic financial advice or 'money guidance' service, taking forward the recommendations of the Thoresen Review<sup>1</sup>.
10. The Act provides that the FSA's powers, including its general rule-making power, can now be exercised for the purpose of meeting any of its regulatory objectives. Previously, these powers were only exercisable in pursuit of its consumer protection objective.

#### ***Remuneration of executives of authorised persons***

11. The Act gives the Treasury power to make provision for executive remuneration reports, and imposes a new duty on the FSA to make general rules requiring authorised persons (or a specified class of authorised persons) to have and implement a remuneration policy and to secure that the remuneration policy satisfies the requirements set out in the Act. It also provides the FSA with other powers in relation to remuneration.

#### ***Recovery and resolution plans***

12. The Act imposes on the FSA a duty to make rules requiring the production of recovery and resolution plans by authorised persons (or certain classes of authorised person) and makes other provision about such plans. A recovery plan aims to reduce the likelihood of failure of a firm by setting out what the authorised person would do in, or prior to it becoming subject to, stressed circumstances (which the FSA may specify in its rules)

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<sup>1</sup> *Thoresen Review of Generic Financial Advice: Final Report*, HM Treasury, 3 March 2009. [http://www.hm-treasury.gov.uk/d/thoresenreview\\_final.pdf](http://www.hm-treasury.gov.uk/d/thoresenreview_final.pdf)

that would affect the ability of the authorised person to carry on all or a significant part of its business. A resolution plan is a plan covering both action to be taken in the event of failure of all or any part of the business occurring and action to be taken by a firm where failure is likely. This would include action to be taken by the relevant authorities to resolve the authorised person.

### ***Short selling***

13. The Act provides the FSA with a new power to prohibit, or require disclosure of, short selling.

### ***FSA's disciplinary powers***

14. The Act provides the FSA with greater enforcement powers. The FSA has the power to fine authorised persons and approved individuals for misconduct. The Act extends these powers to enable the FSA to suspend or limit an authorised person's permission or an approved person's approval. It also enables the FSA to impose a fine on an individual performing a controlled function without approval, as well as prohibit the individual from working in the industry. Additionally, it includes provisions concerning disclosure by the FSA of decision notices.

### ***Measures to protect consumers***

15. The Act enables the FSA to make rules requiring firms to establish consumer redress schemes. Rules can be made if it appears to the FSA that (a) there may have been a widespread or regular failure by a relevant firm to comply with the requirements for carrying on an activity; (b) as a result, consumers have suffered or may suffer loss that would entitle them to redress; and (c) it is desirable to establish a scheme to secure redress for consumers.
16. The Act makes it an offence for a credit card issuer to provide credit card cheques to a customer, other than in response to a request from that customer.

### ***Financial Services Compensation Scheme (FSCS)***

17. The FSCS is the scheme established by the FSA under Part 15 of FSMA to compensate customers of authorised financial services firms when those firms are in default, that is, unable or likely to be unable to pay claims.
18. Under section 214B of FSMA, which was inserted by the Banking Act 2009, the Treasury may require the FSCS to contribute to the costs incurred in applying the stabilisation powers of the special resolution regime (established in Part 1 of the Banking Act) to a bank that is failing. The Act replaces section 214B and inserts two new sections into FSMA to provide that the "expenses" to which the FSCS may be required to contribute include interest, and that the limit up to which the FSCS may be required to contribute (which reflects the amount the FSCS would have had to pay out had no stabilisation power been used and the bank been unable to satisfy claims against it) takes into account the costs that the FSCS would have incurred in funding compensation payments if the stabilisation power had not been exercised.
19. The Act inserts a new Part 15A into FSMA to enable the Treasury to require the FSCS manager to make payments on behalf of another compensation scheme (or a government or other authority) that pays compensation in respect of institutions that provide financial services, including institutions that are not authorised financial services firms under FSMA.

### ***Powers to require information***

20. The Act confers on the FSA a power to require certain types of person to provide specified information, where the FSA considers that the information or documents in

*These notes refer to the Financial Services Act 2010  
(c.28) which received Royal Assent on 8 April 2010*

question are or might be relevant to the stability of one or more aspects of the financial system.

21. The Act provides the Treasury with the power to require information or documents from participants or proposed participants in the Asset Protection Scheme or related schemes.

***Banking Act 2009***

22. The Act makes some minor and technical amendments to the Banking Act 2009, including amendments that (a) make express that the property transfer power can be used to impose a liability on a residual company in place of liabilities transferred from the residual company; and (b) allow compensation orders (see section 49 for the various orders that may be made) to include an independent valuer order in the interests of administrative efficiency.

***Director of Savings***

23. The Act provides for the Director of Savings to undertake functions on behalf of the Accountant General for England and Wales where appointed to do so under court funds rules.