

SCHEDULES

SCHEDULE 14

Section 44

AMENDMENTS OF PART 24 OF FSMA 2000: INSOLVENCY

- 1 Part 24 of FSMA 2000 is amended as follows.
- 2 In section 355 (interpretation of Part 24) at the end of subsection (1) insert—
- ““PRA-regulated person” means a person who—
- (a) is or has been a PRA-authorised person,
- (b) is or has been an appointed representative whose principal (or one of whose principals) is, or was, a PRA-authorised person, or
- (c) is carrying on or has carried on a PRA-regulated activity in contravention of the general prohibition.”
- 3 (1) Section 356 (powers to participate in proceedings: company voluntary arrangements) is amended as follows.
- (2) In subsections (1) and (2), for “the Authority” substitute “or recognised investment exchange, the appropriate regulator”.
- (3) In subsection (3)—
- (a) for “the Authority”, in the first place, substitute “a regulator”, and
- (b) for “the Authority”, in the second place, substitute “the appropriate regulator”.
- (4) After subsection (3) insert—
- “(4) The appropriate regulator” means—
- (a) in the case of a PRA-authorised person—
- (i) for the purposes of subsections (1) and (2), the FCA or the PRA, and
- (ii) for the purposes of subsection (3), each of the FCA and the PRA;
- (b) in any other case, the FCA.
- (5) If either regulator makes an application to the court under any of those provisions in relation to a PRA-authorised person, the other regulator is entitled to be heard at any hearing relating to the application.”
- (5) In the heading, for “Authority's powers” substitute “Powers of FCA and PRA”.
- 4 (1) Section 357 (powers to participate in proceedings: individual voluntary arrangements) is amended as follows.
- (2) In subsections (1) to (5), for “Authority” substitute “appropriate regulator”.
- (3) In subsection (6)—
- (a) for “the Authority”, in the first place, substitute “a regulator”, and

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- (b) for “the Authority”, in the second place, substitute “the appropriate regulator”.
- (4) After subsection (6) insert—
- “(7) The appropriate regulator” means—
- (a) in the case of a PRA-authorised person—
- (i) for the purposes of subsections (1) and (4) to (6), each of the FCA and the PRA, and
- (ii) for the purposes of subsection (3), the FCA or the PRA;
- (b) in any other case, the FCA.
- (8) If either regulator makes an application to the court under any of the provisions mentioned in subsection (5) in relation to a PRA-authorised person, the other regulator is entitled to be heard at any hearing relating to the application.”
- (5) In the heading, for “Authority's powers” substitute “Powers of FCA and PRA”.
- 5 (1) Section 358 (powers to participate in proceedings: trust deeds for creditors in Scotland) is amended as follows.
- (2) In subsections (1), (2) and (6), after “authorised person” insert “or recognised investment exchange”.
- (3) In subsections (2) to (4), for “Authority” substitute “appropriate regulator”.
- (4) In subsection (5)—
- (a) for “the Authority”, in the first place, substitute “the appropriate regulator”, and
- (b) for “the Authority”, in the second place, substitute “that regulator”.
- (5) In subsection (6), for “the Authority” substitute “a regulator”.
- (6) After subsection (6) insert—
- “(6A) The appropriate regulator” means—
- (a) in the case of a PRA-authorised person—
- (i) for the purposes of subsections (2), (3) and (4), each of the FCA and the PRA, and
- (ii) for the purposes of subsection (5), the FCA or the PRA;
- (b) in any other case, the FCA.”
- (7) In the heading, for “Authority's powers” substitute “Powers of FCA and PRA”.
- 6 (1) Section 359 (administration order) is amended as follows.
- (2) In subsection (1)—
- (a) for “Authority” substitute “FCA”, and
- (b) in paragraph (a), after “authorised person” insert “or recognised investment exchange”.
- (3) After subsection (1) insert—

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- “(1A) The PRA may make an administration application under Schedule B1 to the 1986 Act or Schedule B1 to the 1989 Order in relation to a company or insolvent partnership which is a PRA-regulated person.”
- (4) In subsection (2), for “the Authority” substitute “a regulator”.
- (5) In subsection (4), in the definition of “authorised deposit taker”, for “Part IV”, in both places, substitute “Part 4A”.
- 7 (1) Section 361 (administrator's duty to report) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) If the administrator thinks that the company or partnership is carrying on, or has carried on—
- (a) a regulated activity in contravention of the general prohibition, or
- (b) a credit-related regulated activity in contravention of section 20,
- the administrator must report the matter to the appropriate regulator without delay.”
- (3) After subsection (2) insert—
- “(2A) The appropriate regulator” means—
- (a) where the regulated activity is a PRA-regulated activity, the FCA and the PRA;
- (b) in any other case, the FCA.”
- (4) For subsection (3) substitute—
- “(3) Subsection (2) does not apply where—
- (a) the administration arises out of an administration order made on an application made or petition presented by a regulator, and
- (b) the regulator's application or petition depended on a contravention by the company or partnership of the general prohibition.”
- (5) In the heading, for “Authority” substitute “FCA and PRA”.
- 8 (1) Section 362 (powers to participate in proceedings: administration orders) is amended as follows.
- (2) In subsection (1)—
- (a) omit “other than the Authority”, and
- (b) in paragraph (a), after “authorised person” insert “or recognised investment exchange”.
- (3) After subsection (1A) insert—
- “(1B) This section also applies in relation to—
- (a) the appointment under paragraph 22 of Schedule B1 to the 1986 Act (as applied by order under section 420 of the 1986 Act), or under paragraph 23 of Schedule B1 to the 1989 Order (as applied by order under Article 364 of the 1989 Order), of an administrator of a partnership of a kind described in subsection (1)(a) to (c), or
- (b) the filing with the court of a copy of notice of intention to appoint an administrator under either of those paragraphs (as so applied).”

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- (4) In subsections (2) to (6), for “Authority” substitute “appropriate regulator”.
- (5) After subsection (6) insert—
- “(7) The appropriate regulator” means—
- (a) for the purposes of subsections (2) to (4) and (6)—
- (i) where the company or partnership is a PRA-regulated person, each of the FCA and the PRA, and
- (ii) in any other case, the FCA;
- (b) for the purposes of subsection (5)—
- (i) where the company or partnership is a PRA-regulated person, the FCA or the PRA, and
- (ii) in any other case, the FCA.
- (8) But where the administration application was made by a regulator “the appropriate regulator” does not include that regulator.”
- (6) In the heading, for “Authority's powers” substitute “Powers of FCA and PRA”.
- 9 (1) Section 362A (administrator appointed by company or directors) is amended as follows.
- (2) In subsection (1), after “company” insert “or partnership”.
- (3) For subsection (2) substitute—
- “(2) An administrator of the company or partnership may not be appointed under a provision specified in subsection (2A) without the consent of the appropriate regulator.
- (2A) Those provisions are—
- (a) paragraph 22 of Schedule B1 to the 1986 Act (including that paragraph as applied in relation to partnerships by order under section 420 of that Act);
- (b) paragraph 23 of Schedule B1 to the 1989 Order (including that paragraph as applied in relation to partnerships by order under article 364 of that Order).
- (2B) “The appropriate regulator” means—
- (a) where the company or partnership is a PRA-regulated person, the PRA, and
- (b) in any other case, the FCA.”
- 10 (1) Section 363 (powers to participate in proceedings: receivership) is amended as follows.
- (2) In subsection (1)(a), after “authorised person” insert “or recognised investment exchange”.
- (3) In subsections (2) to (5), for “Authority” substitute “appropriate regulator”.
- (4) After subsection (5) insert—
- “(6) The appropriate regulator” means—
- (a) for the purposes of subsections (2) to (4)—

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- (i) where the company is a PRA-regulated person, each of the FCA and the PRA, and
 - (ii) in any other case, the FCA;
 - (b) for the purposes of subsection (5)—
 - (i) where the company is a PRA-regulated person, the FCA or the PRA, and
 - (ii) in any other case, the FCA.”
 - (5) In the heading, for “Authority's powers” substitute “Powers of FCA and PRA”.
- 11 In section 364 (receiver's duty to report to Authority)—
- (a) in paragraph (b), after “prohibition” insert “or a credit-related regulated activity in contravention of section 20”,
 - (b) for “to the Authority without delay” substitute “without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA”, and
 - (c) in the heading, for “Authority” substitute “FCA and PRA”.
- 12 (1) Section 365 (powers to participate in proceedings: voluntary winding up) is amended as follows.
- (2) In subsection (1)(b), after “authorised person” insert “or recognised investment exchange”.
 - (3) In subsections (2) to (7), for “Authority” substitute “appropriate regulator”.
 - (4) After subsection (7) insert—
 - “(8) The appropriate regulator” means—
 - (a) for the purposes of subsections (2) to (4), (6) and (7)—
 - (i) where the company is a PRA-authorised person, each of the FCA and the PRA, and
 - (ii) in any other case, the FCA;
 - (b) for the purposes of subsection (5)—
 - (i) where the company is a PRA-authorised person, the FCA or the PRA, and
 - (ii) in any other case, the FCA.”
 - (5) In the heading, for “Authority's powers” substitute “Powers of FCA and PRA”.
- 13 (1) Section 366 (insurers effecting or carrying out long-term contracts of insurance) is amended as follows.
- (2) In subsections (1), (2) and (5), for “Authority” substitute “PRA”.
 - (3) At the end insert—
 - “(9) Before giving or refusing consent under subsection (1), the PRA must consult the FCA.
 - (10) In the event that the activity of effecting or carrying out long-term contracts of insurance as principal is not to any extent a PRA-regulated activity—
 - (a) references to the PRA in subsections (1), (2) and (5) are to be read as references to the FCA, and
 - (b) subsection (9) does not apply.”

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- 14 (1) Section 367 (winding-up petitions) is amended as follows.
- (2) In subsection (1)—
- (a) for “Authority” substitute “FCA”, and
 - (b) in paragraph (a), after “authorised person” insert “or recognised investment exchange”.
- (3) After that subsection insert—
- “(1A) The PRA may present a petition to the court for the winding up of a body which is a PRA-regulated person.”
- (4) In subsection (2), for “subsection (1)” substitute “subsections (1) and (1A)”.
- (5) In subsection (6), after “(1)” insert “or (1A)”.
- 15 (1) Section 368 (winding-up petitions: EEA and Treaty firms) is amended as follows.
- (2) The existing provision becomes subsection (1).
- (3) In that subsection—
- (a) for “The Authority” substitute “A regulator”, and
 - (b) after “it” insert “or the other regulator”.
- (4) After that subsection insert—
- “(2) If a regulator receives from the home state regulator of a body falling within subsection (1)(a) or (b) a request to present a petition to the court under section 367 for the winding up of the body, it must—
- (a) notify the other regulator of the request, and
 - (b) provide the other regulator with such information relating to the request as it thinks fit.”
- 16 (1) Section 369 (insurers: service of petition etc. on Authority) is amended as follows.
- (2) In subsection (1)—
- (a) for “the Authority” substitute “a regulator”, and
 - (b) for “on the Authority” substitute “on the appropriate regulator”.
- (3) In subsection (2)—
- (a) for “the Authority” substitute “a regulator”, and
 - (b) for “on the Authority” substitute “on the appropriate regulator”.
- (4) After that subsection insert—
- “(3) The appropriate regulator” means—
- (a) in relation to a PRA-authorised person, the FCA and the PRA, and
 - (b) in any other case, the FCA.
- (4) If either regulator—
- (a) presents a petition for the winding up of a PRA-authorised person with permission to effect or carry out contracts of insurance, or
 - (b) applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of a PRA-authorised person with permission to effect or carry out contracts of insurance,

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that regulator must serve a copy of the petition or application (as the case requires) on the other regulator.”

(5) In the heading, for “Authority” substitute “FCA and PRA”.

17 (1) Section 369A (reclaim funds: service of petition etc. on Authority) is amended as follows.

(2) In subsection (1)—

- (a) for “other than the Authority” substitute “other than a regulator”, and
- (b) for “on the Authority” substitute “on the appropriate regulator”.

(3) In subsection (2)—

- (a) for “other than the Authority” substitute “other than a regulator”, and
- (b) for “on the Authority” substitute “on the appropriate regulator”.

(4) After subsection (3) insert—

“(4) The appropriate regulator” means—

- (a) in relation to an authorised reclaim fund that is a PRA-authorised person, the FCA and the PRA, and
- (b) in relation to any other authorised reclaim fund, the FCA.

(5) If either regulator—

- (a) presents a petition for the winding up of an authorised reclaim fund that is a PRA-authorised person, or
- (b) applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of an authorised reclaim fund that is a PRA-authorised person,

that regulator must serve a copy of the petition or application (as the case requires) on the other regulator.”

(5) In the heading, for “Authority” substitute “FCA and PRA”.

18 For section 370 substitute—

“370 Liquidator's duty to report to FCA and PRA

(1) If—

- (a) a company is being wound up voluntarily or a body is being wound up on a petition presented by any person, and
- (b) it appears to the liquidator that the company or body is carrying on, or has carried on—
 - (i) a regulated activity in contravention of the general prohibition, or
 - (ii) a credit-related regulated activity in contravention of section 20,

the liquidator must report the matter without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA.

(2) Subsection (1) does not apply where—

- (a) a body is being wound up on a petition presented by a regulator, and

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- (b) the regulator's petition depended on a contravention by the body of the general prohibition.”
- 19 (1) Section 371 (power to participate in proceedings: winding up by the court) is amended as follows.
- (2) In subsection (1)—
- (a) omit “other than the Authority”, and
- (b) in paragraph (a), after “authorised person” insert “or recognised investment exchange”.
- (3) In subsections (2) to (5), for “Authority” substitute “appropriate regulator”.
- (4) After subsection (5) insert—
- “(6) The appropriate regulator” means—
- (a) for the purposes of subsections (2), (3) and (5)—
- (i) where the body is a PRA-regulated person, each of the FCA and the PRA, and
- (ii) in any other case, the FCA;
- (b) for the purposes of subsection (4)—
- (i) where the body is a PRA-regulated person, the FCA or the PRA, and
- (ii) in any other case, the FCA.
- (7) But where the petition was presented by a regulator “the appropriate regulator” does not include the regulator which presented the petition.”
- (5) In the heading, for “Authority's powers” substitute “Powers of FCA and PRA”.
- 20 (1) Section 372 (bankruptcy petitions) is amended as follows.
- (2) In subsection (1), for “Authority” substitute “FCA”.
- (3) After that subsection insert—
- “(1A) The PRA may present a petition to the court—
- (a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual who is a PRA-regulated person;
- (b) under section 5 of the 1985 Act for the sequestration of the estate of an individual who is a PRA-regulated person.”
- (4) In subsection (2), for “such a petition may be presented” substitute “a petition may be presented by virtue of subsection (1) or (1A)”.
- (5) In subsection (4)(a)—
- (a) for “the Authority”, in the first place, substitute “a regulator”, and
- (b) for “the Authority”, in the second place, substitute “that regulator”.
- (6) In subsection (6)—
- (a) after “(1)(b)” insert “or (1A)(b)”, and
- (b) in paragraph (a), for “the Authority” substitute “the regulator by which the petition is presented”.

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- 21 (1) Section 373 (insolvency practitioner's duty to report to Authority) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), omit the words from “by virtue of” to “Authority”,
 - (b) in paragraph (b), for the words from “carried on” to the end substitute “carried on—
 - (i) a regulated activity in contravention of the general prohibition, or
 - (ii) a credit-related regulated activity in contravention of section 20,”, and
 - (c) for “to the Authority without delay” substitute “without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA”.
- (3) After that subsection insert—
- “(1A) Subsection (1) does not apply where—
- (a) the bankruptcy order or sequestration award is in force by virtue of a petition presented by a regulator, and
 - (b) the regulator's petition depended on a contravention by the individual of the general prohibition.”
- (4) In the heading, for “to Authority” substitute “to FCA and PRA”.
- 22 (1) Section 374 (Authority's powers to participate in proceedings: bankruptcy) is amended as follows.
- (2) In subsection (1), omit “other than the Authority”.
- (3) In subsections (2) to (4), for “Authority” substitute “appropriate regulator”.
- (4) After subsection (6) insert—
- “(7) The appropriate regulator” means—
- (a) for the purposes of subsections (2) and (3)—
 - (i) where the individual or entity is a PRA-regulated person, each of the FCA and the PRA, and
 - (ii) in any other case, the FCA;
 - (b) for the purposes of subsection (4)—
 - (i) where the individual or entity is a PRA-regulated person, the FCA or the PRA, and
 - (ii) in any other case, the FCA.
- (8) But where the petition was presented by a regulator “the appropriate regulator” does not include the regulator which presented the petition.”
- (5) In the heading, for “Authority's powers” substitute “Powers of FCA or PRA”.
- 23 (1) Section 375 (Authority's right to apply for an order relating to debt avoidance) is amended as follows.
- (2) In subsection (1), for “Authority” substitute “FCA”.
- (3) After subsection (1) insert—

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- “(1A) The PRA may apply for an order under section 423 of the 1986 Act (or Article 367 of the 1989 Order) in relation to a debtor if—
- (a) at the time the transaction at an undervalue was entered into, the debtor was carrying on a PRA-regulated activity (whether or not in contravention of the general prohibition); and
 - (b) a victim of the transaction is or was party to an agreement entered into with the debtor, the making or performance of which constituted or was part of a PRA-regulated activity carried on by the debtor.”
- (4) In subsection (2), after “subsection (1)(b)” insert “or subsection (1A)(b) (as the case may be)”.
- (5) In the heading, for “Authority's right” substitute “Right of FCA and PRA”.
- 24 (1) Section 376 (continuation of contracts of long-term insurance where insurer in liquidation) is amended as follows.
- (2) In subsection (11)(c), for “Authority” substitute “PRA”.
- (3) After subsection (11) insert—
- “(11A) The PRA must—
- (a) consult the FCA before making an application under subsection (10), and
 - (b) provide the FCA with a copy of any actuary's report made to the PRA under that subsection.
- (11B) In the event that the activity of effecting or carrying out long-term contracts of insurance as principal is not to any extent a PRA-authorized activity—
- (a) the reference in subsection (11)(c) to the PRA is to be read as a reference to the FCA, and
 - (b) subsection (11A) does not apply.”