



# Financial Services Act 2012

## 2012 CHAPTER 21

### PART 2

#### AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

##### *Lloyd's*

#### **40 Lloyd's**

(1) Part 19 of FSMA 2000 (Lloyd's) is amended as follows.

(2) In section 314 (Authority's general duty)—

(a) for subsection (1) substitute—

“(1) So far as it is appropriate to do so for the purpose of advancing one or more of its operational objectives, the FCA must keep itself informed about—

- (a) the way in which the Council supervises and regulates the market at Lloyd's, and
- (b) the way in which regulated activities are being carried on in that market.

(1A) So far as it is appropriate to do so for the purpose of advancing its general objective or (if section 2C applies) its insurance objective, the PRA must keep itself informed about—

- (a) the way in which the Council supervises and regulates the market at Lloyd's, and
- (b) the way in which any PRA-regulated activities are being carried on in that market.”,

(b) in subsection (2)—

- (i) for “The Authority” substitute “Each regulator”, and
- (ii) in paragraph (b), for “section 315” substitute “provision made by or under this Act”, and

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(c) in the heading, for “Authority's” substitute “Regulators”.

(3) After that section insert—

**“314A The PRA's objectives in relation to Lloyd's etc**

(1) This section modifies—

- (a) the effect of sections 2B and 2C (the PRA's general objective and insurance objective), and
- (b) the effect of section 3I (power of PRA to require FCA to refrain from specified action),

in relation to anything done, or proposed to be done, by the PRA under or for the purposes of this Part.

(2) This section applies only if PRA-authorised persons include—

- (a) the Society, or
- (b) other persons who carry on regulated activities in relation to anything done at Lloyd's.

(3) Section 2B(2) and (3) have effect as if references to PRA-authorised persons (or a PRA-authorised person) were references to the Society, and the members of the Society, taken together (and sections 2G and 2J(3) are to be read accordingly).

(4) Section 2C(1) has effect as if the reference to the discharge of the PRA's general functions so far as relating to the activity mentioned there were a reference to the discharge of its general functions so far as relating to the carrying on by the Society or other persons of PRA-regulated activities in relation to anything done at Lloyd's.

(5) Section 3I(4)(b) has effect as if the reference to a PRA-authorised person were a reference to the Society, and the members of the Society, taken together.”

(4) For section 315 substitute—

**“315 The Society: regulated activities**

(1) This section applies if an activity carried on by the Society is of a kind specified in an order made under section 22 (regulated activities).

(2) The order may provide that the Society is not to be subject to any requirement of this Act concerning the registered office of a body corporate.”

(5) In section 316 (direction by Authority)—

- (a) in subsection (1), for “the Authority” substitute “a regulator”,
- (b) after that subsection insert—

“(1A) A direction under subsection (1)—

- (a) may be given by the FCA only if it considers that giving the direction is necessary or expedient for the purpose of advancing one or more of its operational objectives, and
- (b) may be given by the PRA only if it considers that giving the direction is necessary or expedient for the purpose of

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advancing its general objective or (if section 2C applies) the insurance objective.

- (1B) A direction under subsection (1) which applies the general prohibition to a member of the Society, or to the members of the Society taken together, may be given by a regulator only with the consent of the other regulator.”,
- (c) in subsection (4)—
- (i) for “the Authority”, in both places, substitute “the regulator concerned”, and
  - (ii) in paragraph (c), for “section 315” substitute “provision made by or under this Act”,
- (d) in subsection (9)—
- (i) after “subsection (1)” insert “given by a regulator”, and
  - (ii) for “the Authority” substitute “the regulator”,
- (e) in subsection (10), for “The Authority” substitute “A regulator who gives a direction under subsection (1)”,
- (f) in subsection (11)—
- (i) for “The Authority” substitute “A regulator who gives a direction under subsection (1)”, and
  - (ii) for “any direction which it gives under this section” substitute “the direction”, and
- (g) in the heading, for “Authority” substitute “a regulator”.
- (6) In section 317 (the core provisions), in subsection (1), for “X” substitute “9A”.
- (7) In section 318 (exercise of powers through Council)—
- (a) in subsection (1), for “The Authority” substitute “A regulator”,
  - (b) after subsection (3) insert—

“(3A) A direction under subsection (1)—

    - (a) may be given by the FCA only if it considers that giving the direction is necessary or expedient for the purpose of advancing one or more of its operational objectives, and
    - (b) may be given by the PRA only if it considers that giving the direction is necessary or expedient for the purpose of advancing its general objective or (if section 2C applies) the insurance objective.”,
- (c) in subsection (4)(b), for “the Authority” substitute “the regulator concerned”,
- (d) in subsection (6)(a), for “the Authority” substitute “a regulator”,
- (e) in subsection (7)—
- (i) after “subsection (1)” insert “given by a regulator”, and
  - (ii) for “the Authority” substitute “the regulator”,
- (f) in subsection (8), for “The Authority” substitute “A regulator who gives a direction under subsection (1)”, and
- (g) in subsection (9)—
- (i) for “The Authority” substitute “A regulator who gives a direction under subsection (1)”, and
  - (ii) for “any direction which it gives under this section” substitute “the direction”.

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(8) In section 319 (consultation)—

(a) for subsection (1) substitute—

“(1) Before a regulator gives a direction under section 316 or 318, it must—

- (a) in a case where section 316(1B) requires the regulator to obtain the consent of the other regulator, obtain that consent,
- (b) in any other case, consult the other regulator, and
- (c) after complying with paragraph (a) or (b), publish a draft of the proposed direction.”,

(b) in subsection (2)(b), for “the Authority” substitute “the regulator”,

(c) for subsection (3) substitute—

“(3) Before a regulator gives the proposed direction—

- (a) it must have regard to any representations made to it in accordance with subsection (2)(b), and
- (b) if it was required by subsection (1)(b) to consult the other regulator and proposes to give a direction which differs from the draft published under subsection (1) in a way which is, in the opinion of the regulator, significant, it must again consult the other regulator.”,

(d) in subsections (4) and (5) (in both places), for “the Authority” substitute “the regulator”,

(e) for subsection (6) substitute—

“(6) Subsections (1)(c) and (2) to (5) do not apply in relation to—

- (a) a direction given by the FCA if it considers that the delay involved in complying with them would be prejudicial to the interests of consumers, as defined in section 425A, or
- (b) a direction given by the PRA if it considers that the delay involved in complying with them would—
  - (i) be prejudicial to the safety and soundness of the Society, and the members of the Society, taken together, or
  - (ii) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policyholders.”,

(f) in subsection (7), for “the Authority” substitute “the regulator concerned”,

(g) in subsection (8)—

(i) for “The Authority” substitute “A regulator who publishes a draft under subsection (1)”, and

(ii) for “a draft published under subsection (1)” substitute “the draft”,

(h) in subsection (9), for “the Authority” substitute “a regulator”, and

(i) for subsection (10) substitute—

“(10) Cost benefit analysis” means—

- (a) an analysis of the costs together with an analysis of the benefits that will arise—
  - (i) if the proposed direction is given, or

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- (ii) if subsection (5)(b) applies, from the direction that has been given, and
  - (b) subject to subsection (10A), an estimate of those costs and of those benefits.
- (10A) If, in the opinion of the regulator concerned—
  - (a) the costs or benefits referred to in subsection (10) cannot reasonably be estimated, or
  - (b) it is not reasonably practicable to produce an estimate, the cost benefit analysis need not estimate them, but must include a statement of the opinion of the regulator concerned and an explanation of it.”
- (9) In section 320 (former underwriting members)—
  - (a) in subsection (2), for “Part IV permission” substitute “Part 4A permission”,
  - (b) in subsection (3), for “The Authority” substitute “The PRA”, and
  - (c) at the end insert—
    - “(5) In the event that the activity of effecting or carrying out contracts of insurance as principal is not to any extent a PRA-regulated activity, the function conferred on the PRA by subsection (3) is exercisable instead by the FCA.
  - (6) Accordingly, in that case—
    - (a) references in section 321 to the PRA are to be read as references to the FCA, and
    - (b) the reference in section 321(13) to the FCA is to be read as a reference to the PRA.”
- (10) In section 321 (requirements imposed under section 320)—
  - (a) in subsection (2), for “the Authority” substitute “the PRA”,
  - (b) in subsection (3)(b), for “the Authority’s” substitute “the PRA’s”,
  - (c) in subsections (3)(c), (4) to (9) and (11), for “Authority” substitute “PRA”, and
  - (d) after subsection (12) insert—
    - “(13) Before giving a notice under any provision of this section, the PRA must consult the FCA.”
- (11) In section 322 (rules applicable to former underwriting members)—
  - (a) in subsection (1), for “The Authority” substitute “The PRA”,
  - (b) in subsection (4), for “Part X (except sections 152 to 154)” substitute “Part 9A (except sections 137T, 138F, 138G and 138H)”, and
  - (c) at the end insert—
    - “(5) In the event that the activity of effecting or carrying out contracts of insurance as principal is not to any extent a PRA-regulated activity, the function conferred on the PRA by subsection (1) is exercisable instead by the FCA.”