

FINANCIAL SERVICES (BANKING REFORM) ACT 2013

EXPLANATORY NOTES

COMMENTARY

Part 7 – Miscellaneous

Competition

Section 129 and Schedule 8: Functions of FCA under competition legislation

283. *Section 129* introduces Schedule 8 to the Act, which gives the FCA new competition powers. *Paragraph 2* of the Schedule repeals section 234H of FSMA. This section gives the FCA a power to ask the Office of Fair Trading to consider whether a feature, or combination of features, of a market in the United Kingdom for financial services may prevent, restrict or distort competition in connection with the supply or acquisition of any financial services in the United Kingdom or a part of the United Kingdom. These provisions are no longer necessary now that the FCA is to have concurrent competition functions.
284. *Paragraph 3* of the Schedule inserts sections 234I to 234O into FSMA. *New section 234I* makes some of the functions of the CMA under Part 4 of EA02 functions exercised concurrently by the FCA. *Subsection (2)* provides that the CMA's functions under Part 4 are exercised concurrently, so far as those functions relate to the provision of financial services. The effect of *subsection (2)* is that the FCA only has a market study function concurrently exercisable with the CMA (whose Board exercises this function); the FCA does not have the concurrent function of conducting market investigations, which remains solely that of the CMA (which convenes a group to conduct such investigations).
285. The effect of *subsections (2) and (4)* is to enable the FCA to conduct a market study the purpose of which is, amongst other things, to consider the extent to which a matter in relation to the provision of financial services provided or received in the United Kingdom has or may have effects adverse on the interests of consumers. Having conducted a market study, the FCA can then refer the relevant market to the CMA which has the power to conduct a market investigation and, if necessary, use its powers in Part 4 of the EA02 to remedy any distortion or restriction of competition that it finds in the market.
286. *Subsection (3)*, in conjunction with *subsection (5)*, excludes certain functions of the CMA (relating to the maintenance of registers and publishing of guidance) contained in Part 4 of EA02 from those that the FCA may exercise concurrently.
287. *Subsection (6)* modifies section 130A of EA02 in its application to the FCA. This section requires the CMA to publish a market study notice when they are proposing to conduct a market study, which, among other things, sets the time frame within which the market study must be completed. The effect of *subsection (6)* is therefore to ensure

that when the FCA exercises its concurrent market study function, the statutory time frame applies.

288. *Subsections (7) and (8)* impose a requirement on the CMA and the FCA to consult each other before exercising any of their concurrently-held functions and to ensure they do not both exercise the same functions in relation to the same matter.
289. *New section 234J* provides that the functions under Part 1 of CA98 specified in *subsection (2)*, so far as they relate to the provision of financial services, are functions exercisable by the FCA concurrently with the CMA. This ensures that the FCA will have powers to address restrictions and distortions in competition so far as those arise in the context of financial sector activities. *Subsection (3)* excludes those functions of the CMA relating to the publishing of guidance and statements of policy from those that the FCA may exercise concurrently.
290. *New section 234K* ensures that the FCA is required to consider the use of its new powers in CA98 before exercising the powers in FSMA listed in *subsection (3)*. These powers are powers which the FCA could exercise in respect of particular firms rather than generally.
291. *New section 234L* ensures that for the purposes of assisting a CMA group to carry out a market investigation in response to a reference from the FCA under section 131, the FCA must provide the CMA with any information relevant to the investigation and with any other assistance that the CMA might reasonably require. It also ensures that the CMA group must take note of information provided by the FCA.
292. *New section 234M* confers on the FCA the function of keeping under review the market for financial services so that it may take informed decisions in the exercise of its concurrent competition functions and may exercise its other functions effectively.
293. *New section 234N* ensures that where the FCA exercises any of its concurrent competition functions, its general duties under section 1B of FSMA do not apply. This means that the FCA exercises its new competition functions in relation to the provision of financial services without being bound by general duties to which the CMA would not itself be subject when exercising those functions. However, this does not prevent the FCA taking account of the matters relevant to its general duties if the CMA would be able to take those matters into account.
294. *New section 234O* requires the Treasury to settle any questions that arise as to whether, by virtue of the FCA's concurrent competition functions, any functions may be exercised by the FCA in relation to a particular case. This provides a mechanism for determining whether the FCA or CMA should exercise competition powers in a particular case. It also ensures that no-one can object to the FCA taking action under its competition powers just because the CMA could have taken that action.
295. *Paragraph 4* of the Schedule amends section 3I of FSMA, to ensure that the PRA does not have the power to require the FCA to refrain from a specified action in relation to the exercise of its concurrent competition powers.
296. *Paragraph 5* of the Schedule ensures that the restriction contained in section 348 of FSMA on the FCA disclosing confidential information does not apply in respect of information received by the FCA when discharging its competition powers. Instead, the provisions contained in Part 9 of the Enterprise Act 2002, which deals with the disclosure of specified information obtained by those regulators with concurrent competition functions, will apply.
297. *Paragraph 6* of the Schedule amends the FCA's duty to co-operate with other regulators with similar functions under section 354A of FSMA, so that that duty does not apply where the FCA has made a competition reference under section 131 of EA02. This does not affect the FCA's duty to share information with the CMA under new section 234L of FSMA.

298. *Paragraph 7* of the Schedule amends paragraph 8 of Schedule 1ZA to FSMA, ensuring that sub-paragraph (1) of paragraph 8 which allows the FCA to delegate its functions to committees, officers or members of staff does not override any provisions relating to delegation contained in CMA rules made under section 51 of CA98. It also amends paragraph 23 of that Schedule to make it clear that the FCA may charge fees to cover the cost of exercising its new competition functions.
299. *Paragraphs 8 to 12* of the Schedule make consequential amendments to the Company Directors Disqualification Act 1986, the Competition Act 1998, the EA02 and the Enterprise and Regulatory Reform Act 2013. *Paragraph 8* makes the FCA a “specified regulator” for the purposes of section 9B of the Company Directors Disqualification Act 1986, and therefore able to bring actions for the disqualification of directors under that section. *Paragraph 9* makes the FCA a “regulator” for the purposes of Part 1 of the Competition Act 1998. *Paragraph 10* makes the FCA one of the “relevant sectoral regulators” for the purposes of section 136 of EA02. *Paragraph 11* adds the FCA to the list of sectoral regulators in section 52 of the Enterprise and Regulatory Reform Act 2013 from whom the Secretary of State may remove powers exercisable concurrently by the regulator concerned and the CMA and *paragraph 12* amends paragraph 16 of Schedule 4 to that Act to require the CMA to report on the arrangements for co-operation between the CMA and the FCA in relation to the FCA’s concurrent competition powers.

Section 130: Competition as a secondary objective of the PRA

300. *Section 130(1)* provides the PRA with a new, secondary, competition objective, by substituting section 2H of FSMA. The new *section 2H* provides that, in exercising its general functions, such as making rules, in a way which advances its general objective (and where relevant, its insurance objective), the PRA must act in a way which, as far as is reasonably possible, facilitates effective competition in the markets in which PRA-authorized persons operate. It also restates the existing requirement that, in exercising its general functions, the PRA must also have regard to the regulatory principles in section 3B. *Subsection (2)* amends paragraphs 19 and 20 of Schedule 1ZB to FSMA to require the PRA to include information on its compliance with the new competition objective in its annual report, and to invite representations on whether it has facilitated effective competition.

Section 131: Duty of FCA to make rules restricting charges for high-cost short term credit

301. *Section 131* imposes a duty on the FCA to make rules under section 137C(1)(a)(ii) and (b) of FSMA to impose a cap on the charges which may be imposed in relation to high-cost short-term credit in order to give borrowers appropriate protection against excessive charges, and to consult the Treasury before doing so. The first rules have to be made no later than 2 January 2015, and apply to credit agreements which are entered into on or after that date (though if the FCA makes rules coming into force before that date, it will not be prevented from applying the rules to agreements entered into before that date). This section also requires the FCA to include information in its annual report on the rules it has made under section 137C, and the types of regulated credit agreements to which those rules apply.

Section 132: Role of FCA Consumer Panel in relation to PRA

302. *Section 132* amends section 1Q of FSMA to provide that the FCA Consumer Panel established under that section may make its views on any matter which it is considering which it believes may be relevant to the PRA known to that regulator. This ensures that the PRA may benefit from the expertise of the FCA Consumer Panel even though it is not under an obligation to consult the Panel. This section also enables the PRA to reimburse the FCA in respect of FCA expenditure relating to the FCA Consumer Panel,

if the expenditure in question relates to communications between the FCA Consumer Panel and the PRA.

Parent undertakings

Section 133: Power of FCA and PRA to make rules applying to parent undertakings

303. *Section 133(1)* inserts new sections 192JA and 192JB into FSMA, giving the PRA and the FCA powers to make certain rules relating to parent undertakings which are not themselves authorised persons. Under *new section 192JA*, the regulators are able to make rules applying to any company incorporated in the UK which is a parent undertaking of a ring-fenced body. This will include not only the immediate holding company of the ring-fenced body, but also any ultimate holding company of the ring-fenced body. The regulators are given the power to subject such parent undertakings to any rules which the regulators consider are necessary or expedient in order to achieve the group ring-fencing purposes, set out in new section 142H(4), which are designed to ensure that the ring-fenced body is able to operate independently of the other companies in its group.
304. *New section 192JB* gives the regulators a further power to make rules in relation to “qualifying parent undertakings”, as defined in section 192B of FSMA (which comprise the parent undertakings of UK companies authorised by the PRA, UK investment firms, or recognised investment exchanges where the parent undertaking is itself a UK company or has a place of business in the UK). The regulators are able to make rules requiring qualifying parent undertakings to make any arrangements if the regulators consider that those arrangements might facilitate the exercise of the resolution powers in Parts 1 to 3 of the Banking Act 2009 (or any similar powers exercisable by overseas authorities).
305. *Section 133(2)* amends section 192K of FSMA to ensure that the regulators’ powers to impose a penalty or issue a statement of censure where a qualifying parent undertaking has contravened rules made by the regulators under section 192J also apply if the qualifying parent undertaking has breached rules made under new section 192JB, or if a parent undertaking of a ring-fenced body has breached rules made under new section 192JA.

Section 134: Duty to meet auditors of certain institutions

306. *Section 134* inserts two new sections into Part 22 of FSMA. *New section 339B* requires each of the regulators to meet with the auditors of certain authorised persons at least once a year. *New section 339C* defines the authorised persons to which this duty applies, namely UK banks and UK investment firms which are regulated by the PRA (but not insurers or credit unions), and which are, in the opinion of the PRA, important to the financial stability of the United Kingdom.

Fees to meet Treasury expenditure

Section 135: Fees to meet Treasury expenditure

307. *Section 135* inserts new sections 410A and 410B into FSMA.
308. *New section 410A(1)* gives the Treasury power to make regulations to give themselves a power to direct a regulator (the FCA, the PRA or the Bank of England) to impose fees on certain persons to meet relevant expenses, to make related provision as to the way in which the regulator must comply with any direction given by the Treasury under the regulations, and to require the regulator to pay any monies received through the levy to the Treasury. The PRA may be required to impose fees on PRA-authorised persons. The FCA may be required to impose fees on other authorised persons or recognised investment exchanges. The Bank of England may be required to impose fees on recognised clearing houses provided they are not regulated by the PRA or the FCA.

The definition of “relevant persons” (in *subsection (8)*) has been designed to ensure that no person can be made liable to pay fees to more than one regulator.

309. *Subsection (2)* defines “relevant expenses” as those expenses incurred by the Treasury in connection with, or for the purposes of, United Kingdom membership of (or Treasury participation in) international organisations identified in the regulations, provided that the expenses represent a contribution (by way of subscription or otherwise) to the resources of the international organisation, and provided that Treasury considers that the expenses are connected to the organisation’s work in relation to financial stability or financial services. “Relevant expenses” includes expenses of a capital nature (for example, the provision of an endowment). Other examples of expenses which may be relevant for this purpose are the payment of a membership fee or the secondment of staff to a relevant international organisation.
310. *Subsection (3)* ensures that the PRA and the FCA charge fees in pursuance of a direction by way of rules.
311. *Subsection (4)* applies Chapter 2 of Part 9A of FSMA to rules made by either the PRA or the FCA charging fees in order to comply with a direction from the Treasury under regulations made under section 410A, as it applies to any rules made by the regulators charging fees, so that all rules charging fees are subject to the same procedural requirements.
312. *Subsection (5)* applies paragraph 36 of Schedule 17A to FSMA to fees charged by the Bank of England in compliance with a direction from the Treasury under regulations made under section 410A so that such fees are subject to the same provisions as other fees the Bank charges to recognised clearing houses.
313. *Subsection (6)* makes further provision as to what may be included in regulations made by the Treasury. In particular, the Treasury may make provision about what is, or what is not, to be regarded as an expense for this purpose.
314. *Subsection (7)* ensures that each regulator is able to recover any amount payable to it for fees imposed in consequence of regulations made by the Treasury as a debt owed to it.
315. *New section 410B* sets out the requirements which the Treasury must satisfy in giving any direction to the regulators as a result of regulations made under new section 410A. Under *subsection (2)*, the Treasury must first consult the regulator to which they propose to give a direction. *Subsection (3)* provides that the direction must be in writing and sets out what information it should contain. *Subsection (4)* requires the Treasury to lay a copy of any direction it gives to the regulator under regulations made under section 410A before Parliament.

Parliamentary control of statutory instruments under FSMA 2000

Section 136: Amendments of section 429 of FSMA 2000

316. *Section 136* amends section 429 of FSMA 2000 to provide for the parliamentary procedure applicable to statutory instruments made under new sections 71A, 142W (*subsection (2)*), and new section 410A (*subsection (4)*). Orders under section 410A are subject to draft affirmative resolution procedure, apart from regulations which only contain provision made under section 410A(2) (prescribing of international organisations), which will be subject to negative resolution procedure. The amendment made by *subsection (2)(b)* does not make any substantive change but adjusts the order of the sections referred to in section 429 of FSMA so they follow a logical sequence.

Bank of England

Section 137: Accounts of Bank of England and its wholly-owned subsidiaries

317. *Section 137* amends the Bank of England Act 1998 (“the 1998 Act”).

318. The Bank of England is established by Royal Charter and so is not subject to the Companies Act 2006 (“the 2006 Act”). However section 7 of the 1998 Act provides that in preparing its accounts the Bank is subject to provisions corresponding to the requirements placed on directors of a banking company under the 2006 Act (in the 1998 Act called the “relevant Companies Act requirements”). Currently section 7(4) of the 1998 Act provides that the Bank may disregard a requirement to the extent it considers it appropriate, having regard to its functions. The amendments made by [section 137\(2\)](#) of the Act will mean that the Bank may only disregard a requirement where it considers it necessary to do so having regard to its financial stability objective under section 2A of the 1998 Act.
319. *Subsection (3)* inserts new section 7A of the 1998 Act. This makes provision similar to that made in section 7 in relation to certain wholly-owned subsidiaries of the Bank of England. Subsection (1) of new section 7A enables the Bank, by direction to a “qualifying company”, to exclude the application to that company of any of the relevant Companies Act requirements. Such a direction may only be given where the Bank considers it necessary to do so, having regard to the Bank’s financial stability objective. “Qualifying company” is defined by *subsection (9)* as a company which is wholly-owned by the Bank, other than the PRA or a company which is a bridge bank for the purposes of section 12(3) of the Banking Act 2009. “Relevant Companies Act requirements” is defined in *subsection (2)*.
320. *Subsections (4) to (7)* of new section 7A of the 1998 Act relate to the role of the Treasury. *Subsection (4)* requires the Bank to consult the Treasury before giving a direction under subsection (1). *Subsection (5)* enables the Treasury, by notice in writing, to require the Bank to publish information about the accounts of a qualifying company. *Subsection (6)* makes it clear that such information may include information which, as a result of a direction issued by the Bank under subsection (1), was not included in the accounts of the qualifying company. The Treasury must consult the Bank before giving such a notice.

Building Societies

Section 138: Building Societies

321. *Section 138 and Schedule 9* to the Act make amendments to the Building Societies Act 1986 (“the BS Act”).
322. *Paragraph 2* of Schedule 9 amends section 7 of the BS Act, which sets out the funding limit for building societies. The funding limit, in effect, requires that the value of shares in the society held by individuals (known as retail funds) is at least 50% of the value of the total funds of the society’s group (or total group funds).
323. *Sub-paragraphs (2) and (3) of paragraph 2* insert new section 7(3)(aa) and (3A) to alter the calculation of the funding limit so that a limited amount of the value of deposits by small businesses does not count towards the value of total group funds. New section 7(3A) sets the limit, so that no more than 10% of the value of total group funds can be disregarded in calculating the funding limit. For the purposes of this calculation, the value of total group funds will be the value it would have been without the modification made by new subsection (3)(aa), i.e. after all the other modifications required by or under section 7 had been made.
324. *Sub-paragraph (4) of paragraph 2* inserts new section 7(6ZA) to provide that a small business is assumed to be a small business if it has declared itself to be so, unless it is shown not to be the case. *Paragraph 2(5)* inserts new subsections (10) and (11) to define a small business as any person carrying on a business with an annual turnover of less than £1 million, but not including individuals acting as sole traders. For example, a small business could be a company, partnership, mutual association or other unincorporated body. Under new subsections (12) and (13) the Treasury has power to make an order to vary the amount of £1 million.

325. *Paragraph 3* makes a consequential amendment to the [Building Societies Act 1986 \(Substitution of Specified Amounts and Modification of the Funding Limit Calculation\) Order 2007 \(SI 2007/860\)](#) (“the 2007 Order”). The 2007 Order provides that a limited amount of deposits held in a society’s EEA subsidiaries are to be disregarded in calculating the funding limit. The amendment in *paragraph 3* ensures that, for the purposes of calculating the amount to be disregarded under the 2007 Order, the value of total group funds is the value it would have been without the modification made by the 2007 Order and the modification made by new section 7(3)(aa).
326. *Paragraph 4* repeals section 9B of the BS Act which restricts a building society’s power to create floating charges. Consequently, a building society will be permitted to create floating charges over its assets. Such floating charges however will not give the holder the right to appoint an administrator or an administrative receiver (unless appointed under the Building Societies (Financial Assistance) Order 2010). An administrator cannot be appointed because Schedule B1 to the Insolvency Act 1986 (under which companies can create floating charges which enable the holder to appoint an administrator) does not apply to building societies, because societies are subject to the version of Part 2 of the Insolvency Act 1986 as it had effect before the Enterprise Act 2002 (section 249(1) and (2) of the Enterprise Act 2002). An administrative receiver cannot be appointed because Schedules 15 and 15A to the BS Act (which apply companies winding up and insolvency legislation to building societies) would continue to provide that, in the provisions of the Insolvency Act 1986 which apply to societies, a reference to an administrative receiver does not apply to a society (paragraph 3(2)(b) of Schedule 15 and paragraph 2(2)(b) of Schedule 15A to the BS Act).
327. *Sub-paragraph (2) of paragraph 4* amends Schedule 15A to the BS Act to ensure that an administration order of the court under Part 2 of the Insolvency Act 1986 applies to a floating charge. *Sub-paragraph (3) of paragraph 4* makes consequential amendments to remove references in various enactments to the restrictions in section 9B of the BS Act.
328. *Paragraph 5* amends section 74 of the BS Act so that regulations made under that section may no longer require the annual business statement published by a building society to include information about officers, past officers and persons connected with them. This will in consequence remove the duty on officers (who are not directors) of a building society to notify their interests to the society for the purposes of the annual business statement. Consequential amendments will need to be made by secondary legislation to the Building Societies (Accounts and Related Provisions) Regulations 1998.
329. *Paragraph 6* amends section 76 of the BS Act, which requires a building society to produce a summary financial statement (the “SFS”) for each financial year. The existing obligation under subsection (8) to supply the SFS and (where that subsection is applied under section 78(6)) the auditor’s report to new shareholding members will be replaced by a new requirement to publish the document(s) on a website and notify such new members of: (i) the online publication of the document(s); (ii) the website address; and (iii) where on the website, and how, the information may be accessed. The existing criminal offence in subsection (11) of section 76 is amended to reflect the amended provisions. It will be an offence to fail to publish the documents online or to notify new shareholders as required.
330. *Paragraph 7* makes consequential amendments to the BS Act to reflect the amendments to section 76.
331. *Paragraph 8* amends section 100 of the BS Act, which sets out distributions and share rights on a transfer of a society’s business. *Sub-paragraph (2)* replaces section 100(8) with a new subsection to make it clear that the subsection applies to any right (i.e. not only a priority right) to acquire shares which is conferred on members. It also makes specific provision for holders of deferred shares, a form of capital instrument issued by building societies. The result of the new subsection is be that, if a right to acquire

shares is given to members on a transfer of business, then the right must be restricted to members who have held shares for at least two years, or who hold deferred shares of a class described in the transfer agreement. *Sub-paragraph (3)* amends section 100(9) so that, if a right to receive a cash distribution is given to members on a transfer of business, then the right must be restricted to shareholders who have held shares for at least two years, or who hold deferred shares of a class described in the transfer agreement.

332. *Paragraph 9* inserts new sections 115A to 115C relating to website communication by a society. New section 115A provides that a person is deemed to have agreed to access a document, information or facility on a website if: (a) the person has been asked individually and has agreed to do so; or (b) the person has been asked and the society has not received a response within 28 days. The provision does not apply to every communication (section 115A(4)) and a person could revoke the agreement (section 115A(3)). New section 115B ensures that a person has a right to receive, free of charge and within 21 days of the request being received, a hard copy of any document sent by electronic or other means. If a society fails to comply with new section 115B, then it will be treated as if it has breached rules made under section 137A of FSMA, the FCA's general rule-making power. The effect of this will be that the FCA can take disciplinary measures if a society fails to comply with this new section 115B. Under new section 115C, an intended recipient could agree with a society to receive a document in a way that is not by hard copy or by electronic means.
333. *Paragraphs 10 to 14* make related amendments to existing website communication provisions in the BS Act which require a person to agree how to receive notification that a document is available online. The amendments remove references to agreeing the manner of notification, so that there is simply a duty on the society to notify the person that a document is available online.
334. *Paragraph 15* effectively replaces section 117 of the BS Act relating to the financial year of a building society. New section 117 sets out the year-end date for all building societies as at the coming into force of the provisions. *Paragraph 16* inserts new section 117A to allow a society to alter its financial year to any date in the year by notifying the FCA. *Paragraph 17* makes a consequential amendment to the BS Act.

Claims Management Services

Section 139: Power to impose penalties on persons providing claims management services

335. *Section 139* enables the Secretary of State to make regulations which allow the Claims Management Regulator to impose a financial penalty, in addition to the Regulator's current powers in relation to imposing conditions on or suspending or cancelling an authorisation.
336. *Subsection (7)* provides that regulations made by the Secretary of State in relation to financial penalties must include provision about how the amount of the penalty is to be calculated and may specify a maximum and minimum amount. It also requires any such regulations to provide that the income received from the financial penalties be paid into the Consolidated Fund. The regulation-making power also allows for costs of enforcement or collection of the financial penalty to be deducted before the income is paid into the Consolidated Fund. Regulations may also provide that financial penalties may be enforced as a debt.
337. *Subsection (8)* extends the jurisdiction of the First-tier Tribunal to include consideration of appeals against a decision of the Claims Management Regulator to impose a financial penalty, the amount of a penalty or any date by which it is required to be paid. The Tribunal will be able to require an authorised person to pay a penalty and to vary the date by which any payment, or part of it, is due. This is in addition to the Tribunal's existing powers to impose or remove conditions, suspend or cancel an authorisation or to remit the matter to the Claims Management Regulator.

Section 140: Recovery of expenditure incurred by Office for Legal Complaints

338. *Section 140* relates to the provisions in section 161 of the Legal Services Act 2007 that give the Office for Legal Complaints jurisdiction over complaints about claims management services. Persons providing such services are regulated by the Claims Management Regulator under the Compensation Act 2006. *Subsections (1) to (3)* amend paragraph 7 of the Schedule to the Compensation Act 2006 to make it clear that the Claims Management Regulator may charge fees in respect of the costs the Claims Management Regulator incurs in meeting the costs of the Office for Legal Complaints in dealing with complaints about claims management services.
339. *Subsection (5)* inserts in the Legal Services Act 2007 a new section 174A which is to have effect at any time when no one is designated as the Claims Management Regulator. Section 5(9) of the Compensation Act 2006 provides that, when (as is the case at the end of 2013) no person is designated as the regulator the Secretary of State is to act as the Regulator. New section 174A(2) ensures that there is no cross-subsidisation by the legal profession of the costs incurred and income received by the Office for Legal Complaints in handling complaints about claims management services. It does this by providing that the costs incurred and income received by the Office for Legal Complaints in connection with the exercise of its functions in relation to complaints about claims management services is to be disregarded from the calculation of the expenditure of the Office for Legal Complaints that can be levied against the regulators of the legal profession.
340. New section 174A(3) enables the Lord Chancellor to make regulations charging fees for those providing regulated claims management services for the purpose of meeting the costs the Lord Chancellor incurs in respect of the expenditure of the Office for Legal Complaints related to claims management services.
341. New section 174A(5) provides that the regulations made by the Lord Chancellor under section 174A(3) may include, amongst other things, provision about how the fees are to be calculated and collected and provision specifying the consequences of failure to pay the fees.
342. *Subsection (6)* makes the regulations made by the Lord Chancellor under section 174A(3) subject to the affirmative procedure.

Minor Amendments

Section 141: Minor amendments

343. This section introduces Schedule 10, which makes a number of minor and technical amendments.
344. *Paragraph 1* of Schedule 10 repeals a redundant provision in the information disclosure provisions of the Companies Act 1985.
345. *Paragraph 2* amends section 376(11B) of the Financial Services and Markets Act 2000 (continuation of contracts of long-term insurance where insurer in liquidation) to change the references to “PRA-*authorised person*” to “PRA-*regulated person*”.
346. *Paragraph 3* extends the definition of “*relevant requirement*” in sections 380, 382 and 384 of FSMA to include the offences created under Part 7 of the Financial Services Act 2012, which deal with misleading statements, misleading impressions, and misleading statements in relation to benchmarks such as LIBOR. This enables the regulators to exercise the powers conferred by sections 380, 382 and 384 to seek an injunction or restitution in relation to these offences.
347. *Paragraph 4* makes consequential amendments to Schedule 1ZA to FSMA to ensure that the costs the FCA incurs in enforcing the concurrent competition powers given to it in the new Schedule are “*enforcement costs*” for the purposes of Part 3 of Schedule 1ZA,

and may therefore be deducted from the penalty receipts the FCA is required to pay to the Treasury.

348. *Paragraph 5* amends paragraph 10(1)(j) of Schedule 17A to FSMA (application of provisions of FSMA in relation to the Bank of England) so that the reference to “subsections (1) and (3)” is replaced with a reference to “subsection (1)”.
349. *Paragraph 6* amends section 991 of the Income Tax Act 2007 so that it refers to “Part 4A” of FSMA instead of “Part 4” of that Act.
350. *Paragraph 7* amends section 81B(2) of the Banking Act 2009 as applied to recognised central counterparties by section 89B of that Act, so that it refers to the Bank of England instead of the PRA.
351. *Paragraph 8* amends section 191 of the Banking Act 2009 to add the word “payment” after “inter-bank”.
352. *Paragraph 9* makes minor changes to the scope of section 73(1)(b)(i) of the Financial Services Act 2012 which covers the duty of the FCA to investigate and report on possible regulatory failure.
353. *Paragraph 10* amends section 85 of the Financial Services Act 2012, which sets out which functions of the PRA and the FCA (in subsection (2)) and of the Bank of England (in subsection (3)) come within the scope of the complaints scheme established by Part 6 of the Financial Services Act 2012 (in that Act referred to as “relevant functions”). The effect of the amendments is that the relevant functions of the FCA and PRA are confined to functions under FSMA. However, the Treasury is given power to extend the complaints scheme by providing, by order, that other functions of the FCA, PRA and the Bank of England are to be relevant functions.

Final Provisions

Section 142: Orders and regulations: general

354. *Section 142* provides that any power of the Treasury, the Secretary of State or the Lord Chancellor to make an order or regulations under the Act is exercisable by statutory instrument. The only exception is that an order under section 43 designating a payment system as a regulated payment system is not to be a statutory instrument (*subsection (2)*). *Subsection (3)* ensures that statutory instruments made under the Act may contain incidental and transitional provision where this is considered to be appropriate, and may make different provision in different cases.

Section 143: Orders and regulations: parliamentary control

355. *Section 143* provides for the parliamentary procedure which will apply to statutory instruments which are made under the Act. As a general rule, these statutory instruments will be subject to the negative resolution procedure (apart from commencement orders, which are not subject to any parliamentary procedure). However, under *subsection (2)* the affirmative resolution procedure will apply to:
 - (a) Regulations made under section 7 (applying ring-fencing provisions to building societies);
 - (b) Orders under section 41(4) (altering the list of things that are not to be regarded as payment systems);
 - (c) Orders under section 145 (power to make further consequential amendments) which amend primary legislation; and
 - (d) Orders under paragraph 6 of the Schedule 6 (power to make further modifications of primary legislation in connection with FMI administration).

Section 144: Interpretation

356. *Section 144* defines “enactment”, “the FCA”, “FSMA 2000” and “the PRA”.

Section 145: Power to make further consequential amendments

357. *Section 145* enables the Treasury, the Secretary of State and the Lord Chancellor to make amendments to other primary and secondary legislation considered necessary or expedient in consequence of any provision made by or under the Bill.

Section 146: Transitional provisions and savings

358. *Section 146* enables the Treasury, the Secretary of State and the Lord Chancellor to make transitional and saving provisions which may be necessary or expedient on the commencement of any provision of the Act. An order made under this section may confer functions on the FCA or the PRA and may modify, exclude or apply enactments.

Section 147: Extent

359. *Section 147* provides that the Act extends to the whole of the United Kingdom (*subsection (1)*), except for section 13 (provisions relating to preferential debts) section 139 (penalties for claims management service providers) and section 140 (the recovery of the expenditure of the Office for Legal Complaints in connection with claims management services), which under *subsection (2)* have the same extent as the Acts which they amend (for example, the amendments relating to the expenditure of the Office for Legal Complaints extend only to England and Wales, as do the relevant parts of the Legal Services Act 2007 and the Compensation Act 2006).

Section 148: Commencement and short title

360. *Section 148* provides for the commencement of the Act (see below) and gives the Act its short title.