



# Financial Services and Markets Act 2023

## 2023 CHAPTER 29

### PART 1

#### REGULATORY FRAMEWORK

### CHAPTER 3

#### ACCOUNTABILITY OF REGULATORS

##### *FCA and PRA objectives and regulatory principles*

#### **25 Competitiveness and growth objective**

(1) FSMA 2000 is amended as follows.

(2) In section 1B (FCA's general duties), after subsection (4) insert—

“(4A) When discharging its general functions in the way mentioned in subsection (1) the FCA must, so far as reasonably possible, act in a way which, as a secondary objective, advances the competitiveness and growth objective (see section 1EB).”

(3) After section 1E insert—

##### **“1EB Competitiveness and growth objective**

The competitiveness and growth objective is: facilitating, subject to aligning with relevant international standards—

- (a) the international competitiveness of the economy of the United Kingdom (including in particular the financial services sector), and
- (b) its growth in the medium to long term.”

(4) In section 2H—

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- (a) in the title, for “competition objective” substitute “objectives”;
- (b) for subsection (1) substitute—
  - “(1) When discharging its general functions in a way that advances its objectives (see section 2F), the PRA must, so far as reasonably possible, act in a way that advances the following secondary objectives—
    - (a) the competition objective, and
    - (b) the competitiveness and growth objective.
  - (1A) The competition objective is: facilitating effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities.
  - (1B) The competitiveness and growth objective is: facilitating, subject to aligning with relevant international standards—
    - (a) the international competitiveness of the economy of the United Kingdom (including in particular the financial services sector through the contribution of PRA-authorised persons), and
    - (b) its growth in the medium to long term.”

#### Commencement Information

- 11** S. 25 not in force at Royal Assent, see [s. 86\(3\)](#)
- 12** S. 25 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(p\)](#)

## 26 Competitiveness and growth objective: reporting requirements

- (1) Each regulator must make two reports to the Treasury on how it has complied with its duty to advance the competitiveness and growth objective.
- (2) The reports prepared by each regulator under subsection (1) must in particular explain—
  - (a) the action taken by the regulator to ensure that the competitiveness and growth objective is embedded in its operations, processes and decision-making, and
  - (b) how any rules and guidance that the regulator has made advance that objective.
- (3) The first report under this section must be made before the end of 12 months beginning with the first day on which section 25 of this Act comes into force, and must relate to that period.
- (4) The second report under this section must be made before the end of 24 months beginning with the first day on which section 25 of this Act comes into force, and must relate to the period beginning with the day on which the first report is published.
- (5) The Treasury must lay a copy of each report prepared under this section before Parliament.
- (6) Each regulator must publish its reports prepared under this section in such manner as it thinks fit.
- (7) In this section—

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- (a) “regulator” means the FCA and the PRA;
- (b) references to the competitiveness and growth objective, and the duty to advance that objective, are—
  - (i) in relation to the FCA, references to its objective in section 1EB of FSMA 2000 and to its duty to advance that objective under section 1B(4A) of that Act, and
  - (ii) in relation to the PRA, references to its objective in section 2H(1B) of FSMA 2000 and to its duty to advance that objective under section 2H(1)(b) of that Act.

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**Commencement Information**

- I3** S. 26 not in force at Royal Assent, see [s. 86\(3\)](#)
- I4** S. 26 in force at 29.8.2023 by [S.I. 2023/779, reg. 4\(q\)](#)

## 27 Regulatory principles

In section 3B of FSMA 2000 (regulatory principles to be applied by both regulators), in subsection (1) for paragraph (c) substitute—

- “(c) the need to contribute towards achieving compliance by the Secretary of State with section 1 of the Climate Change Act 2008 (UK net zero emissions target) and section 5 of the Environment Act 2021 (environmental targets) where each regulator considers the exercise of its functions to be relevant to the making of such a contribution;”.

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**Commencement Information**

- I5** S. 27 not in force at Royal Assent, see [s. 86\(3\)](#)
- I6** S. 27 in force at 29.8.2023 for specified purposes by [S.I. 2023/779, reg. 4\(r\)](#)

## 28 Sections 25 and 27: consequential amendments

- (1) FSMA 2000 is amended as follows.
- (2) In section 1JA (Treasury recommendations in connection with general duties), after subsection (1)(c) insert—
  - “(ca) how to discharge the duty in section 1B(4A) (duty to advance competitiveness and growth objective);”.
- (3) In section 1K (guidance about objectives), after subsection (1) insert—
  - “(1A) The reference in subsection (1) to the FCA’s operational objectives includes, in its application as a secondary objective, the competitiveness and growth objective (see section 1EB).”
- (4) In section 2I (guidance about objectives), after subsection (1) insert—
  - “(1A) The reference in subsection (1) to the PRA’s objectives includes, in their application as secondary objectives, the competition objective and competitiveness and growth objective (see section 2H).”

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(5) In section 3B (regulatory principles to be applied by both regulators), for subsection (3) substitute—

“(3) “Objectives”—

(a) in relation to the FCA means—

(i) operational objectives, and

(ii) in its application as a secondary objective, the competitiveness and growth objective (see section 1EB), and

(b) in relation to the PRA means—

(i) the PRA’s objectives, and

(ii) in their application as secondary objectives, the competition objective and competitiveness and growth objective (see section 2H).”

(6) In section 3D (duty of FCA and PRA to ensure co-ordinated exercise of functions), for subsection (4) substitute—

“(4) In this section, “objectives”—

(a) in relation to the FCA means—

(i) operational objectives, and

(ii) in its application as a secondary objective, the competitiveness and growth objective (see section 1EB), and

(b) in relation to the PRA means—

(i) the PRA’s objectives, and

(ii) in their application as secondary objectives, the competition objective and competitiveness and growth objective (see section 2H).

(5) Where a regulator is proposing to exercise a function that is not one of its general functions, the reference to “objectives” in subsection (1)(a) does not include the secondary objectives mentioned in subsection (4)(a)(ii) and (b)(ii).

(6) In this section, “general functions”—

(a) in relation to the FCA, has the same meaning as in section 1B(6), and

(b) in relation to the PRA, has the same meaning as in section 2J(1).”

(7) In section 138I (consultation by the FCA), in subsection (2)(d) after “1B(1)” insert “, (4A)”.

(8) In section 143G (matters to consider when making Part 9C rules)—

(a) in subsection (1)—

(i) insert “and” after paragraph (a), and

(ii) omit paragraphs (b) and (c);

(b) omit subsection (2).

(9) In section 232A (scheme operator’s duty to provide information to FCA)—

(a) the existing words become subsection (1), and

(b) after that subsection insert—

“(2) The reference in subsection (1) to the FCA’s operational objectives includes, in its application as a secondary objective, the competitiveness and growth objective (see section 1EB).”

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(10) In paragraph 11 of Schedule 1ZA (FCA annual report), in sub-paragraph (1) after paragraph (d) insert—

“(da) how, in its opinion, it has complied with the duty in section 1B(4A),”.

(11) In paragraph 20 of Schedule 1ZB (consultation about PRA annual report), in sub-paragraph (1)(c) for “and the PRA has facilitated effective competition in accordance with” substitute “including its secondary objectives under”.

#### Commencement Information

**I7** S. 28 not in force at Royal Assent, see [s. 86\(3\)](#)

**I8** S. 28 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(s\)](#)

### *FCA and PRA powers to make rules etc*

## 29 Review of rules

(1) FSMA 2000 is amended as follows.

(2) After section 3R (arrangements for provision of services) insert—

### *“Rules*

#### **3RA Duty of FCA and PRA to review rules**

- (1) Each regulator must keep under review generally any rules made by the regulator under this Act or any other enactment (whenever passed or made).
- (2) Subsection (1) does not apply to rules made for the purpose of complying with a direction or recommendation of the Financial Policy Committee of the Bank of England under—
  - (a) section 9H of the Bank of England Act 1998 (directions to FCA or PRA requiring macro-prudential measures), or
  - (b) section 9Q of that Act (recommendations to FCA and PRA).

#### **3RB Statement of policy relating to review of rules**

- (1) Each regulator must prepare and publish a statement of its policy with respect to its review of rules under section 3RA.
- (2) The statement must provide information about—
  - (a) how representations (including by a statutory panel) can be made to each regulator with respect to its review of rules under section 3RA, and
  - (b) the arrangements to ensure that those representations are considered.
- (3) In this section “statutory panel” has the meaning given by section 1RB(5).
- (4) If a statement published under this section is altered or replaced by a regulator, the regulator must publish the altered or replaced statement.

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- (5) A statement prepared under this section must be published by the regulator in the way appearing to that regulator to be best designed to bring it to the attention of the public.

### **3RC Requirement to review specified rules**

- (1) The Treasury may by direction require a regulator to carry out a review of specified rules if—
- (a) the rules have been in force for at least 12 months,
  - (b) the Treasury consider that it is in the public interest that the rules are reviewed, and
  - (c) it does not appear to the Treasury that—
    - (i) the regulator is carrying out, or proposes to carry out, a review of those rules, or
    - (ii) if the regulator proposes to carry out a review, the proposals are appropriate for the purposes of carrying out an effective review.
- (2) Subsection (1) only applies to rules falling within section 3RA(1).
- (3) The Treasury must consult the regulator concerned before giving a direction under subsection (1).
- (4) In exercising the power under this section, the Treasury must have regard to the desirability of minimising any adverse effect that the carrying out of the review may have on the exercise by the regulator of any of its other functions.
- (5) A direction under subsection (1) may—
- (a) specify the period within which a review must be carried out;
  - (b) determine the scope and conduct of a review;
  - (c) require the provision of interim reports during the carrying out of a review.
- (6) Provision made in a direction under subsection (5)(b) may include a requirement—
- (a) for a review to be carried out by a person appointed by the regulator who is independent of the regulator;
  - (b) for any such appointment to be made only with the approval of the Treasury.
- (7) As soon as practicable after giving a direction under subsection (1) the Treasury must—
- (a) lay before Parliament a copy of the direction, and
  - (b) publish the direction in such manner as the Treasury think fit.
- (8) Subsection (7) does not apply where the Treasury consider that publication of the direction would be against the public interest.
- (9) A direction under subsection (1) may be varied or revoked by the giving of a further direction.

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### 3RD Report on certain reviews

- (1) This section applies where the Treasury have given a direction to a regulator under section 3RC(1) to carry out a review.
- (2) The regulator must make a written report to the Treasury as to the opinion of the regulator in relation to the following matters—
  - (a) if the regulator is the FCA, whether the rules under review—
    - (i) are compatible with the FCA’s strategic objective,
    - (ii) advance one or more of the FCA’s operational objectives, and
    - (iii) advance the competitiveness and growth objective;
  - (b) if the regulator is the PRA, whether the rules under review—
    - (i) advance one or more of the PRA’s objectives, and
    - (ii) advance the PRA’s competition objective and the PRA’s competitiveness and growth objective;
  - (c) whether and to what extent the rules are functioning effectively and achieving their intended purpose;
  - (d) whether any amendments should be made to the rules and, if so, what those amendments should be;
  - (e) whether any rules should be revoked (with or without replacement);
  - (f) whether any other action should be taken and, if so, what that action should be.
- (3) As soon as practicable after receiving the report the Treasury must—
  - (a) lay before Parliament a copy of the report, and
  - (b) publish the report in such manner as the Treasury think fit.
- (4) When complying with subsection (3) the Treasury may withhold material from the report if the Treasury consider that publication of the material would be against the public interest.”

#### Commencement Information

**I9** S. 29 not in force at Royal Assent, see [s. 86\(3\)](#)

**I10** S. 29 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(t\)](#)

### 30 Treasury power in relation to rules

- (1) FSMA 2000 is amended as follows.
- (2) After section 3RD (inserted by section 29) insert—

#### “3RE Power of Treasury to require making of rules by regulations

- (1) The Treasury may by regulations require a regulator to exercise a power under this Act to make rules in relation to a specified activity or a specified description of person.
- (2) Regulations under this section may—
  - (a) specify matters that the rules must cover;

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- (b) specify a period within which the rules must be made.
- (3) But except so far as permitted by subsection (2), regulations under this section may not require rules to be made—
  - (a) in a specified form or with specified content, or
  - (b) to achieve or advance a specified outcome.
- (4) If no period is specified under subsection (2)(b) the rules must be made as soon as reasonably practicable after the coming into force of the regulations.”
- (3) In section 429 (Parliamentary control of statutory instruments) in subsection (2) after “section” insert “3RE,”.

#### Commencement Information

- I11** S. 30 not in force at Royal Assent, see **s. 86(3)**
- I12** S. 30 in force at 29.8.2023 by **S.I. 2023/779, reg. 4(u)**

### 31 Matters to consider when making rules

- (1) FSMA 2000 is amended as follows.
- (2) Before section 138F (under the italic heading “Procedural provisions”) insert—

#### “138EA Matters to consider when making rules

- (1) This section applies where either regulator proposes to make rules.
- (2) The regulator must have regard to any specified matters that are relevant to the making of the rules in question.
- (3) “Specified” means specified in regulations made by the Treasury for the purposes of this section.
- (4) The specification of a matter for the purposes of this section may apply generally to the making of rules or be limited in whatever way the Treasury consider appropriate, including by reference to—
  - (a) the power under which the rules are made;
  - (b) the persons to whom the rules apply;
  - (c) the activities or subject-matter to which the rules relate.
- (5) The requirement imposed by subsection (2) does not apply in respect of any rules if, or to the extent that, the rules are made for the purposes of—
  - (a) complying with a direction given by the Financial Policy Committee of the Bank of England under section 9H of the Bank of England Act 1998 (directions requiring macro-prudential measures), or
  - (b) acting in accordance with a recommendation made by that Committee under section 9Q of that Act (recommendations about the exercise of the FCA and PRA functions).
- (6) The requirement to have regard to specified matters under this section when making rules is in addition to any other requirements to have regard to matters



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when making such rules imposed by another provision of this Act or by any other enactment.”

(3) In section 138I (consultation by the FCA)—

(a) in subsection (2) after paragraph (b) insert—

“(ba) an explanation of the ways in which having regard to specified matters under section 138EA(2) has affected the proposed rules,”;

(b) after subsection (8) insert—

“(8A) The requirement to provide the explanation referred to in subsection (2)(ba) does not apply in relation to any rules if—

- (a) the FCA considers that the delay involved in complying with that requirement would be prejudicial to the interests of consumers (as defined in section 425A) or other persons whose interests would be protected by the rules, or
- (b) the rules change existing rules and the changes consist of, or include, changes which, in the FCA’s opinion, are not material.

(8B) Where an explanation is not provided by virtue of subsection (8A) (b), the draft of the rules must be accompanied by a statement of the FCA’s opinion.”

(4) In section 138J (consultation by the PRA)—

(a) in subsection (2) after paragraph (b) insert—

“(ba) an explanation of the ways in which having regard to specified matters under section 138EA(2) has affected the proposed rules,”;

(b) after subsection (8) insert—

“(8A) The requirement to provide the explanation referred to in subsection (2)(ba) does not apply in relation to any rules if—

- (a) the PRA considers that the delay involved in complying with that requirement would—
  - (i) be prejudicial to the safety and soundness of PRA-  
authorised persons, or
  - (ii) in a case where section 2C applies, be prejudicial  
to securing the appropriate degree of protection for  
policyholders, or
- (b) the rules change existing rules and the changes consist of, or include, changes which, in the PRA’s opinion, are not material.

(8B) Where an explanation is not provided by virtue of subsection (8A) (b), the draft of the rules must be accompanied by a statement of the PRA’s opinion.”

(5) In section 429 (Parliamentary procedure for statutory instruments), in subsection (2), in the list of sections beginning with “90B” insert at the appropriate place “138EA(3)”.

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### Commencement Information

**I13** S. 31 not in force at Royal Assent, see **s. 86(3)**

**I14** S. 31 in force at 29.8.2023 by **S.I. 2023/779, reg. 4(v)**

## 32 Effect of rules etc on deference decisions

- (1) FSMA 2000 is amended as follows.
- (2) In the italic heading before section 410, after “international” insert “powers and”.
- (3) Before section 410 insert—

### “409A Consultation in relation to deference decisions

- (1) This section applies where a regulator is proposing to take a relevant action.
- (2) The regulator—
  - (a) must consider the effect of the relevant action on notified deference decisions, and
  - (b) if having done so it appears to the regulator that there is a material risk that the relevant action would be incompatible with a notified deference decision, must consult the Treasury about the likely effect of the action on the decision.
- (3) Subsection (2) applies only if a duty to consult applies in respect of the taking of the relevant action.
- (4) For the purposes of subsection (1) a regulator proposes to take a “relevant action” if—
  - (a) it proposes to make rules under this Act or any other enactment, or
  - (b) it proposes to make changes to its general policies and practices so far as relating to its supervisory functions under section 1L (FCA supervisory functions) or (as the case may be) section 2K (PRA supervisory functions).
- (5) For the purposes of subsection (2)—
  - (a) “deference decision” means a decision of the Treasury that the law and practice of another country or territory is, so far as relating to financial services and markets, equivalent to the law and practice of the United Kingdom (either generally or as it relates to a particular matter);
  - (b) a deference decision is a “notified deference decision” if the Treasury have, by notice in writing, informed the regulator that it is relevant for the purposes of this section;
  - (c) a relevant action is “incompatible” with a notified deference decision if the action would result in the law and practice of the United Kingdom ceasing to be equivalent to the law and practice of the other country or territory to which the deference decision relates.
- (6) For the purposes of subsection (3) a duty to consult applies in respect of a relevant action if—

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- (a) the duty imposed by section 138I or 138J to publish a draft of proposed rules applies in respect of the action, or
  - (b) any other duty (whether or not imposed by a provision of this Act) to publish the proposal to take the action in question applies.
- (7) Section 138M(1) (consultation: exemptions for temporary product intervention rules) is to be ignored for the purposes of subsection (6) in determining whether a duty to consult applies in respect of a relevant action.
- (8) The requirement imposed by subsection (2)(b) must be carried out before the duty to consult in respect of the relevant action is carried out.
- (9) The requirements imposed by subsection (2) do not apply to the extent that the regulator takes a relevant action—
- (a) by the making of product intervention rules under section 137D if the condition in subsection (10) is met,
  - (b) by the making of rules under Part 9C (see instead section 143G(3)),
  - (c) by the making of rules under Part 9D (see instead section 144C(3)),
  - (d) by the making of rules under Part 12B (see instead section 192XB(2)),
  - (e) in order to comply with a direction given by the Financial Policy Committee of the Bank of England under section 9H of the Bank of England Act 1998 (directions required macro-prudential measures), or
  - (f) in order to act in accordance with a recommendation made by that Committee under section 9Q of that Act (recommendations about the exercise of functions).
- (10) The condition referred to in subsection (9)(a) is that the FCA considers it necessary not to comply with the requirement imposed by subsection (2) for the purpose of advancing—
- (a) the consumer protection objective, or
  - (b) if an order under section 137D(1)(b) is in force, the integrity objective.”

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**Commencement Information**

**I15** S. 32 not in force at Royal Assent, see [s. 86\(3\)](#)

**I16** S. 32 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(w\)](#)

### 33 Effect of rules etc on international trade obligations

In FSMA 2000 after section 409A (inserted by section 32) insert—

**“409B Notification in relation to international trade obligations**

- (1) This section applies where it appears to a regulator that there is a material risk that a relevant action it proposes to take would be incompatible with an international trade obligation.
- (2) The regulator must give written notice to the Treasury of the proposed action before proceeding to take it.

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- (3) Subsection (2) applies only if a duty to consult applies in respect of the taking of the relevant action.
- (4) For the purposes of subsection (1) a regulator proposes to take a “relevant action” if—
  - (a) it proposes to make rules under this Act or any other enactment, or
  - (b) it proposes to make changes to its general policies and practices so far as relating to its supervisory functions under section 1L (FCA supervisory functions) or (as the case may be) section 2K (PRA supervisory function).
- (5) For the purposes of subsection (3) a duty to consult applies in respect of a relevant action if—
  - (a) the duty imposed by section 138I or 138J to publish a draft of proposed rules applies in respect of the action, or
  - (b) any other duty (whether or not imposed by a provision of this Act) to publish the proposal to take the action in question applies.
- (6) Section 138M(1) (consultation: exemptions for temporary product intervention rules) is to be ignored for the purposes of subsection (5) in determining whether a duty to consult applies in respect of a relevant action.
- (7) The requirement imposed by subsection (2) must be carried out before the duty to consult in respect of the relevant action is carried out.
- (8) The requirement imposed by subsection (2) does not apply to the extent that the regulator takes a relevant action—
  - (a) by the making of product intervention rules under section 137D if the condition in subsection (9) is met,
  - (b) in order to comply with a direction given by the Financial Policy Committee of the Bank of England under section 9H of the Bank of England Act 1998 (directions requiring macro-prudential measures), or
  - (c) in order to act in accordance with a recommendation made by that Committee under section 9Q of that Act (recommendations about the exercise of functions).
- (9) The condition referred to in subsection (8)(a) is that the FCA considers it necessary not to comply with the requirement imposed by subsection (2) for the purpose of advancing—
  - (a) the consumer protection objective, or
  - (b) if an order under section 137D(1)(b) is in force, the integrity objective.
- (10) Subsection (11) applies in a case where a notice under subsection (2) is not given because of subsection (3) or (8)(a).
- (11) The regulator must give written notice to the Treasury of the relevant action it has taken as soon as reasonably practicable after taking it if it appears to the regulator that there is a material risk that the action is incompatible with an international trade obligation.
- (12) In this section “international trade obligation” means an obligation of the United Kingdom that relates to financial services or markets under—

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- (a) a free trade agreement, as defined by section 5(1) of the Trade Act 2021, or
- (b) the agreement establishing the World Trade Organisation signed at Marrakesh on 15 April 1994.”

#### Commencement Information

**I17** S. 33 not in force at Royal Assent, see **s. 86(3)**

**I18** S. 33 in force at 1.1.2024 by S.I. 2023/1382, **reg. 9(1)(b)** (with **reg. 15**)

### 34 Power to disapply or modify rules

- (1) FSMA 2000 is amended as follows.
- (2) After section 138B insert—

#### “138BA Disapplication or modification of rules in individual cases

- (1) This section applies to rules made by a regulator if, or to the extent that, regulations made by the Treasury provide for it to apply.
- (2) The regulator may, on the application or with the consent of a person who is subject to the rules, give the person a permission that enables the person—
  - (a) not to apply the rules, or
  - (b) to apply the rules with the modifications specified in the permission.
- (3) Subsections (1) and (2) do not apply to—
  - (a) rules made by either regulator under section 64A (rules of conduct);
  - (b) rules made by either regulator under section 137O (threshold condition code);
  - (c) rules made by the FCA under section 247 (trust scheme rules), section 248 (scheme particular rules), section 261I (contractual scheme rules) or section 261J (contractual scheme particulars rules);
  - (d) rules made by the FCA under section 309Z(1) (rules of conduct).
- (4) The regulator may—
  - (a) give permission under this section subject to conditions, and
  - (b) revoke or vary permission given under this section.
- (5) Regulations under subsection (1) may make provision about procedural matters in relation to the giving of permission under this section.
- (6) Provision under subsection (5) may (among other things) include provision about—
  - (a) the making of applications;
  - (b) the determination of applications (including matters to be taken into account in doing so);
  - (c) the giving and withdrawal of consent;
  - (d) requirements as to notification or publication of decisions of a regulator under this section;
  - (e) appeals in respect of decisions of a regulator under this section.

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- (7) Before making regulations under this section in relation to rules made by a regulator the Treasury must consult the regulator.”
- (3) In section 429 (Parliamentary control of statutory instruments), in subsection (2), in the list of sections beginning with “90B” insert at the appropriate place “138BA,”.

#### Commencement Information

- I19** S. 34 not in force at Royal Assent, see [s. 86\(3\)](#)
- I20** S. 34 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(x\)](#)

### *FCA and PRA engagement*

## **35 Responses to recommendations of the Treasury**

- (1) Section 1JA of FSMA 2000 (recommendations by Treasury in connection with general duties) is amended in accordance with subsections (2) and (3).
- (2) After subsection (2) insert—
- “(2A) The FCA must respond to each recommendation made to it under subsection (1) by notifying the Treasury in writing of—
- (a) action that the FCA has taken or intends to take in accordance with the recommendation, or
  - (b) the reasons why the FCA has not acted or does not intend to act in accordance with the recommendation.
- (2B) The notice under subsection (2A) must be given before the end of 12 months beginning with the date the notice containing the recommendation was given under subsection (1).
- (2C) Where the FCA has given notice under subsection (2A) in relation to a recommendation, the FCA must by notice in writing update the Treasury on the matters mentioned in subsection (2A)(a) and (b) before the end of each subsequent period of 12 months.
- (2D) Subsection (2C) does not apply if the Treasury have notified the FCA in writing that no update (or further update) is required.
- (2E) The FCA is not required under subsection (2A) or (2C) to provide any information whose publication would in the opinion of the FCA be against the public interest.”
- (3) In subsection (3), for “subsection (1)” substitute “subsection (1), (2A) or (2C)”.
- (4) Section 30B of the Bank of England Act 1998 (recommendations by Treasury) is amended in accordance with subsections (5) and (6).
- (5) After subsection (2) insert—
- “(2A) The Prudential Regulation Committee must respond to each recommendation made to it under subsection (1) by notifying the Treasury in writing of—
- (a) action that the Prudential Regulation Committee has taken or intends to take in accordance with the recommendation, or

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- (b) the reasons why the Prudential Regulation Committee has not acted or does not intend to act in accordance with the recommendation.
  - (2B) The notice under subsection (2A) must be given before the end of 12 months beginning with the date the notice containing the recommendation was given under subsection (1).
  - (2C) Where the Prudential Regulation Committee has given notice under subsection (2A) in relation to a recommendation, it must by notice in writing update the Treasury on the matters mentioned in subsection (2A)(a) and (b) before the end of each subsequent period of 12 months.
  - (2D) Subsection (2C) does not apply if the Treasury have notified the Prudential Regulation Committee in writing that no update (or further update) is required.
  - (2E) The Prudential Regulation Committee is not required under subsection (2A) or (2C) to provide any information whose publication would in the opinion of the Committee be against the public interest.”
- (6) In subsection (3), for “subsection (1)” substitute “subsection (1), (2A) or (2C)”.

#### Commencement Information

- I21** S. 35 not in force at Royal Assent, see **s. 86(3)**  
**I22** S. 35 in force at 29.8.2023 by **S.I. 2023/779, reg. 4(y)**

## 36 Public consultation requirements

- (1) After section 1RA of FSMA 2000 (inserted by section 45) insert—

### *“Requirements for public consultation*

#### **1RB Requirements in connection with public consultations**

- (1) This section applies where the FCA issues a public consultation.
- (2) The FCA must include information in the consultation about any engagement by the FCA with the statutory panels of the FCA, the PRA or the Payment Systems Regulator in relation to the matters being consulted on.
- (3) The FCA is not required under subsection (2) to include any information whose publication would in the opinion of the FCA be against the public interest.
- (4) For the purposes of this section, the FCA issues a public consultation if it publishes the draft of any proposals for the purpose of bringing them to the attention of the public (whether or not under a duty to do so imposed by an enactment).
- (5) In this section “statutory panel”—
  - (a) in relation to the FCA, has the meaning given by section 1RA(8),
  - (b) in relation to the PRA, has the meaning given by section 2NA(8), and

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- (c) in relation to the Payment Systems Regulator, means a panel established under section 103(3) of the Financial Services (Banking Reform) Act 2013.”

(2) After section 2NA of FSMA 2000 (inserted by section 45) insert—

*“Requirements for public consultation*

**2NB Requirements in connection with public consultations**

- (1) This section applies where the PRA issues a public consultation.
- (2) The PRA must include information in the consultation about any engagement by the PRA with the statutory panels of the FCA, the PRA or the Payment Systems Regulator in relation to the matters being consulted on.
- (3) The PRA is not required under subsection (2) to include any information whose publication would in the opinion of the PRA be against the public interest.
- (4) For the purposes of this section, the PRA issues a public consultation if it publishes the draft of any proposals for the purpose of bringing them to the attention of the public (whether or not under a duty to do so imposed by an enactment).
- (5) In this section “statutory panel” has the meaning given by section 1RB(5).”

**Commencement Information**

**I23** S. 36 not in force at Royal Assent, see [s. 86\(3\)](#)

**I24** S. 36 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(z\)](#)

**37 Engagement with statutory panels**

- (1) Paragraph 11 of Schedule 1ZA to FSMA 2000 (annual report of the Financial Conduct Authority) is amended in accordance with subsections (2) and (3).
- (2) In sub-paragraph (1)—
  - (a) omit the “and” at the end of paragraph (ia), and
  - (b) after paragraph (ia) insert—
    - “(ib) any engagement with the statutory panels of the FCA, the PRA or the Payment Systems Regulator,
    - (ic) how it has complied with the statement of policy on panel appointments prepared under section 1RA in relation to the process for making appointments and the matters considered in determining who is appointed, and”.
- (3) After sub-paragraph (4) insert—
  - “(5) In this paragraph “statutory panel” has the meaning given in section 1RB(5).”



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- (4) Paragraph 19 of Schedule 1ZB to FSMA 2000 (annual report of the PRA) is amended in accordance with subsections (5) and (6).
- (5) In sub-paragraph (1)—
- (a) after paragraph (ba) insert—
    - “(bb) how it has complied with the statement of policy on panel appointments prepared under section 2NA in relation to the process for making appointments and the matters considered in determining who is appointed,”
  - (b) omit the “and” at the end of paragraph (f), and
  - (c) after paragraph (f) insert—
    - “(fa) any engagement with the statutory panels of the FCA, the PRA or the Payment Systems Regulator, and”.
- (6) After sub-paragraph (5) insert—
- “(6) In this paragraph “statutory panel” has the meaning given in section 1RB(5).”

#### Commencement Information

**I25** S. 37 not in force at Royal Assent, see [s. 86\(3\)](#)

**I26** S. 37 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(aa\)](#)

### 38 Engagement with Parliamentary Committees

- (1) FSMA 2000 is amended as follows.
- (2) In Part 4 of Schedule 1ZA (miscellaneous provisions relating to Financial Conduct Authority), after paragraph 27 insert—

#### *“Engagement with Parliamentary Committees*

- 28 (1) This paragraph applies where the FCA issues a relevant consultation.
- (2) For the purposes of this paragraph the FCA issues a relevant consultation if it—
- (a) publishes a draft of proposed rules under section 138I,
  - (b) publishes a proposal under a duty imposed by another provision of this Act or by any other enactment, or
  - (c) publishes other proposals about the exercise of any of its general functions.
- (3) The FCA must, as soon as reasonably practicable after issuing the consultation, notify in writing the chair of each relevant Parliamentary Committee that the consultation has been issued.
- (4) The notification must specify the parts of the consultation (if any) that address the ways in which the proposals subject to consultation—
- (a) advance the FCA’s operational objectives,
  - (b) are compatible with the FCA’s strategic objective,

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- (c) demonstrate that the FCA has had regard to the regulatory principles in section 3B when preparing the proposals, and
  - (d) engage with matters to which the FCA must have regard under regulations made under section 138EA.
- (5) The reference in sub-paragraph (4)(a) to the FCA’s operational objectives includes, in its application as a secondary objective, the competitiveness and growth objective (see section 1EB).
- (6) The notification must also specify any other part of the consultation which the FCA considers should be drawn to the attention of the relevant Parliamentary Committees.
- (7) References in this paragraph to the relevant Parliamentary Committees are references to—
- (a) the Treasury Committee of the House of Commons,
  - (b) the Committee of the House of Lords which—
    - (i) is charged with responsibility by that House for the purposes of this paragraph, and
    - (ii) has notified the FCA that it is a relevant Parliamentary Committee for those purposes, and
  - (c) the Joint Committee of both Houses which—
    - (i) is charged with responsibility by those Houses for the purposes of this paragraph, and
    - (ii) has notified the FCA that it is a relevant Parliamentary Committee for those purposes.
- (8) References in this paragraph to the Treasury Committee of the House of Commons—
- (a) if the name of that Committee is changed, are references to that Committee by its new name, and
  - (b) if the functions of that Committee (or substantially corresponding functions) become functions of a different Committee of the House of Commons, are to be treated as references to the Committee by which the functions are exercisable.
- (9) Any question arising under sub-paragraph (8) is to be determined by the Speaker of the House of Commons.
- 29 (1) This paragraph applies where—
- (a) the FCA issues a public consultation, and
  - (b) a Committee of the House of Commons or the House of Lords, or a joint Committee of both Houses, has provided to the FCA representations in response to the consultation.
- (2) For the purposes of this paragraph, the FCA issues a public consultation if it publishes the draft of any proposals for the purpose of bringing them to the attention of the public (whether or not under a duty to do so imposed by an enactment).
- (3) The FCA must give to the chair of the Committee concerned a written response to the representations.

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- (4) The duty to respond imposed by sub-paragraph (3) applies only so far as the FCA would not be under a corresponding duty to do so imposed by another enactment.
  - (5) The FCA is not required under sub-paragraph (3) to provide any information whose publication would in the opinion of the FCA be against the public interest.”
- (3) In Part 4 of Schedule 1ZB (miscellaneous provisions relating to the PRA), after paragraph 35 insert—

*“Engagement with Parliamentary Committees*

- 36 (1) This paragraph applies where the PRA issues a relevant consultation.
- (2) For the purposes of this paragraph the PRA issues a relevant consultation if it—
- (a) publishes a draft of proposed rules under section 138J,
  - (b) publishes a proposal under a duty imposed by another provision of this Act or by any other enactment, or
  - (c) publishes other proposals about the exercise of any of its general functions.
- (3) The PRA must, as soon as reasonably practicable after issuing the consultation, notify in writing the chair of each relevant Parliamentary Committee that the consultation has been issued.
- (4) The notification must specify the parts of the consultation (if any) that address the ways in which the proposals subject to consultation—
- (a) advance the PRA’s objectives,
  - (b) demonstrate that the PRA has had regard to the regulatory principles in section 3B when preparing the proposals, and
  - (c) engage with matters to which the PRA must have regard under regulations made under section 138EA.
- (5) The reference in sub-paragraph (4)(a) to the PRA’s objectives includes, in their application as secondary objectives, the competition objective and the competitiveness and growth objective (see section 2H).
- (6) The notification must also specify any other part of the consultation which the PRA considers should be drawn to the attention of the relevant Parliamentary Committees.
- (7) References in this paragraph to the relevant Parliamentary Committees are references to—
- (a) the Treasury Committee of the House of Commons,
  - (b) the Committee of the House of Lords which—
    - (i) is charged with responsibility by that House for the purposes of this paragraph, and
    - (ii) has notified the PRA that it is a relevant Parliamentary Committee for those purposes, and
  - (c) the Joint Committee of both Houses which—

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- (i) is charged with responsibility by those Houses for the purposes of this paragraph, and
  - (ii) has notified the PRA that it is a relevant Parliamentary Committee for those purposes.
- (8) References in this paragraph to the Treasury Committee of the House of Commons—
- (a) if the name of that Committee is changed, are references to that Committee by its new name, and
  - (b) if the functions of that Committee (or substantially corresponding functions) become functions of a different Committee of the House of Commons, are to be treated as references to the Committee by which the functions are exercisable.
- (9) Any question arising under sub-paragraph (8) is to be determined by the Speaker of the House of Commons.
- 37 (1) This paragraph applies where—
- (a) the PRA issues a public consultation, and
  - (b) a Committee of the House of Commons or the House of Lords, or a joint Committee of both Houses, has provided to the PRA representations in response to the consultation.
- (2) For the purposes of this paragraph, the PRA issues a public consultation if it publishes the draft of any proposals for the purpose of bringing the proposals to the attention of the public (whether or not under a duty to do so imposed by an enactment).
- (3) The PRA must give to the chair of the Committee concerned a written response to the representations.
- (4) The duty to respond imposed by sub-paragraph (3) applies only so far as the PRA would not be under a corresponding duty to do so imposed by another enactment.
- (5) The PRA is not required under sub-paragraph (3) to provide any information whose publication would in the opinion of the PRA be against the public interest.”

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**Commencement Information**

**I27** S. 38 not in force at Royal Assent, see **s. 86(3)**

**I28** S. 38 in force at 29.8.2023 by **S.I. 2023/779, reg. 4(bb)**

### 39 Reporting requirements

- (1) FSMA 2000 is amended as follows.
- (2) After paragraph 11 of Schedule 1ZA insert—

*“Other reports*

- 11A (1) The Treasury may (subject to this paragraph) at any time by direction require the FCA to publish a report containing information about—

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- (a) any of the matters mentioned in paragraphs (a) to (ia) of paragraph 11(1);
    - (b) such other matters that the direction may specify.
  - (2) The Treasury may give a direction under this paragraph requiring information to be published only if the Treasury consider that—
    - (a) the information is reasonably necessary for the purpose of reviewing and scrutinising the discharge of the FCA’s functions, and
    - (b) other available information is not sufficient to meet that purpose.
  - (3) Subject to sub-paragraph (4), the FCA must publish a report prepared under a direction given under this paragraph in such manner, and within such period, as the direction may require.
  - (4) Nothing in this paragraph requires the inclusion in the report of any information whose publication would be against the public interest.
  - (5) A direction under this paragraph may not—
    - (a) require a report to be published more than once in each quarter;
    - (b) require the publication of information that is confidential information for the purposes of Part 23 (see section 348(2)).
  - (6) The Treasury must consult the FCA before giving a direction under this paragraph.
  - (7) In exercising the power under this paragraph, the Treasury must have regard to the desirability of minimising any adverse effect that the preparation of the report required in accordance with the direction may have on the exercise by the FCA of any of its other functions.
  - (8) The Treasury must—
    - (a) lay before Parliament a copy of a direction given under this paragraph, and
    - (b) publish the direction in such manner as the Treasury think fit.
  - (9) A direction under this paragraph may be varied or revoked by the giving of a further direction.”
- (3) After paragraph 21 of Schedule 1ZB insert—

*“Other reports*

- 21A (1) The Treasury may (subject to this paragraph) at any time by direction require the PRA to publish a report containing information about—
- (a) any of the matters mentioned in paragraphs (a) to (f) of paragraph 19(1);
  - (b) such other matters that the direction may specify.
- (2) The Treasury may give a direction under this paragraph requiring information to be published only if the Treasury consider that—
- (a) the information is reasonably necessary for the purpose of reviewing and scrutinising the discharge of the PRA’s functions, and

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- (b) other available information is not sufficient to meet that purpose.
- (3) Subject to sub-paragraph (4), the PRA must publish a report prepared under a direction given under this paragraph in such manner, and within such period, as the direction may require.
- (4) Nothing in this paragraph requires the inclusion in the report of any information whose publication would be against the public interest.
- (5) A direction under this paragraph may not—
  - (a) require a report to be published more than once in each quarter;
  - (b) require the publication of information that is confidential information for the purposes of Part 23 (see section 348(2)).
- (6) The Treasury must consult the PRA before giving a direction under this paragraph.
- (7) In exercising the power under this paragraph, the Treasury must have regard to the desirability of minimising any adverse effect that the preparation of the report required in accordance with the direction may have on the exercise by the PRA of any of its other functions.
- (8) The Treasury must—
  - (a) lay before Parliament a copy of a direction given under this paragraph, and
  - (b) publish the direction in such manner as the Treasury think fit.
- (9) A direction under this paragraph may be varied or revoked by the giving of a further direction.”

#### **Commencement Information**

**I29** S. 39 not in force at Royal Assent, see **s. 86(3)**

**I30** S. 39 in force at 29.8.2023 by **S.I. 2023/779, reg. 4(cc)**

### *Co-operation of FCA and others*

#### **40 Duty to co-operate and consult in exercising functions**

- (1) FSMA 2000 is amended as follows.
- (2) In the italic heading before section 415B, at the end insert “and co-operation”.
- (3) After section 415B (consultation) insert—

#### **“415C Co-operation and consultation in relation to exercise of functions**

- (1) In exercising its functions under this Act a relevant organisation (“R”) must—
  - (a) take such steps as R considers appropriate to co-operate with each of the other relevant organisations in relation to matters of interest to that organisation, and
  - (b) consult such other persons as R considers appropriate in relation to any matters that R considers to be of interest to those persons.

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- (2) A matter is of interest to another relevant organisation for the purposes of subsection (1) if it appears to R that it has, or is likely to have, significant implications in relation to—
  - (a) the exercise by that other relevant organisation of functions under this Act, or
  - (b) the functioning generally of relevant markets within the meaning of section 1F.
- (3) The relevant organisations must prepare and publish a statement of policy with respect to compliance with the duty under subsection (1).
- (4) The relevant organisations may alter or replace a statement published under subsection (3).
- (5) The relevant organisations must publish a statement as altered or replaced under subsection (4).
- (6) The relevant organisations—
  - (a) must, at least once a year, prepare and publish a report on their compliance with the duty under subsection (1), and
  - (b) must put in place arrangements enabling representations to be made about their compliance with that duty (whether by seeking representations in response to the report or otherwise).
- (7) Except in the case of the first report to be prepared under this section, a report prepared under subsection (6)(a) must include a summary of representations received in the preceding year in accordance with arrangements made under subsection (6)(b).
- (8) Publication under this section is to be made in such manner as the relevant organisations consider best designed to bring the publication to the attention of the public.
- (9) In this section “relevant organisation” means—
  - (a) the FCA;
  - (b) the scheme operator of the ombudsman scheme within the meaning of section 225(2);
  - (c) the scheme manager of the Financial Services Compensation Scheme within the meaning of section 212.”

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**Commencement Information**

**I31** S. 40 not in force at Royal Assent, see [s. 86\(3\)](#)

**I32** S. 40 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(dd\)](#)

*Panels and policy statements*

**41 Listing Authority Advisory Panel**

In FSMA 2000, after section 1Q insert—

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### “1QA The Listing Authority Advisory Panel

- (1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as “the Listing Authority Advisory Panel”) to represent the interests of practitioners who are likely to be affected by the exercise by the FCA of its relevant functions.
- (2) The reference in subsection (1) to the FCA’s relevant functions is to its functions relating to the listing, issue or trading of products on recognised investment exchanges and other markets the operation of which is regulated by the FCA, including in particular—
  - (a) the issuing of transferable securities, and
  - (b) the trading of transferable securities on regulated markets and multilateral trading facilities.
- (3) The FCA must appoint one of the members of the Listing Authority Advisory Panel to be the chair of the Panel.
- (4) The Treasury’s approval is required for the appointment or dismissal of the chair.
- (5) The FCA must appoint to the Listing Authority Advisory Panel such persons to represent the interests of issuers and investors as it considers appropriate.
- (6) The FCA may appoint to the Listing Authority Advisory Panel such other persons as it considers appropriate.
- (7) Subsections (5) and (6) are subject to section 1MA.
- (8) In this section—
 

“multilateral trading facility”, “recognised investment exchange” and “regulated markets” have the same meaning as in Part 18 (see section 313(1));

“transferable securities” has the meaning given by section 102A(3).”

#### Commencement Information

**I33** S. 41 not in force at Royal Assent, see [s. 86\(3\)](#)

**I34** S. 41 in force at 29.8.2023 for specified purposes by [S.I. 2023/779](#), [reg. 4\(ee\)](#)

**I35** S. 41 in force at 26.12.2023 in so far as not already in force by [S.I. 2023/1382](#), [reg. 7\(a\)](#) (with [reg. 17](#))

## 42 Insurance Practitioner Panel

In FSMA 2000, after section 2M insert—

### “2MA The Insurance Practitioner Panel

- (1) Arrangements under section 2L must include the establishment and maintenance of a panel of persons (to be known as “the Insurance Practitioner Panel”) to represent the interests of practitioners involved in the carrying on of the activity of effecting or carrying out of contracts of insurance.



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- (2) The PRA must appoint one of the members of the Insurance Practitioner Panel to be the chair of the Panel.
- (3) The Treasury’s approval is required for the appointment or dismissal of the chair.
- (4) The PRA must appoint to the Insurance Practitioner Panel at least one person representing PRA-authorized persons engaged in the activity of effecting or carrying out of contracts of insurance.
- (5) The PRA may appoint to the Insurance Practitioner Panel such other persons as it considers appropriate.
- (6) Subsections (4) and (5) are subject to section 2LA.”

#### Commencement Information

- I36** S. 42 not in force at Royal Assent, see [s. 86\(3\)](#)  
**I37** S. 42 in force at 29.8.2023 for specified purposes by [S.I. 2023/779](#), [reg. 4\(ff\)](#)  
**I38** S. 42 in force at 26.12.2023 in so far as not already in force by [S.I. 2023/1382](#), [reg. 7\(b\)](#) (with [reg. 17](#))

### 43 Cost Benefit Analysis Panels

- (1) FSMA 2000 is amended as follows.
- (2) After section 138I insert—

#### “138IA FCA Cost Benefit Analysis Panel

- (1) The FCA must establish and maintain a panel of persons (to be known as the “FCA Cost Benefit Analysis Panel”) to provide advice in relation to cost benefit analyses for the purposes of section 138I.
- (2) Except as provided by subsection (3), the FCA must consult the FCA Cost Benefit Analysis Panel about the following matters—
  - (a) the preparation of a cost benefit analysis under section 138I(2)(a) or (5)(a);
  - (b) the preparation of its statement of policy under section 138IB.
- (3) The requirement to consult under subsection (2)(a) does not apply in such cases as may be set out in the statement of policy maintained under section 138IB.
- (4) Arrangements made by the FCA under subsection (1) for the establishment and maintenance of the FCA Cost Benefit Analysis Panel must include arrangements for the Panel to—
  - (a) keep under review how the FCA is performing generally in carrying out its duties under section 138I(2)(a) and (5)(a), and
  - (b) provide to the FCA whatever recommendations the Panel thinks appropriate as a result of such review.
- (5) The FCA must appoint one of the members of the FCA Cost Benefit Analysis Panel to be the chair of the Panel.

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- (6) The Treasury’s approval is required for the appointment or dismissal of the chair.
  - (7) The FCA must appoint to the FCA Cost Benefit Analysis Panel such persons with knowledge or experience of the preparation of cost benefit analyses as it considers appropriate.
  - (8) The FCA must appoint to the FCA Cost Benefit Analysis Panel at least two individuals who are employed by persons authorised for the purposes of this Act by the FCA, with each one being employed by a different person.
  - (9) The FCA may appoint to the FCA Cost Benefit Analysis Panel such other persons as it considers appropriate.
  - (10) Subsections (7) to (9) are subject to section 1MA.
  - (11) The FCA must consider representations that are made to it by the FCA Cost Benefit Analysis Panel.
  - (12) The FCA must from time to time publish in such manner as it thinks fit responses to the representations.”
- (3) After section 138J insert—

**“138JA PRA Cost Benefit Analysis Panel**

- (1) The PRA must establish and maintain a panel of persons (to be known as the “PRA Cost Benefit Analysis Panel”) to provide advice in relation to cost benefit analyses for the purposes of section 138J.
- (2) Except as provided by subsection (3), the PRA must consult the PRA Cost Benefit Analysis Panel about the following matters—
  - (a) the preparation of a cost benefit analysis under section 138J(2)(a) or (5)(a);
  - (b) the preparation of its statement of policy under section 138JB.
- (3) The requirement to consult under subsection (2)(a) does not apply in such cases as may be set out in the statement of policy maintained under section 138JB.
- (4) Arrangements made by the PRA under subsection (1) for the establishment and maintenance of the PRA Cost Benefit Analysis Panel must include arrangements for the Panel to—
  - (a) keep under review how the PRA is performing generally in carrying out its duties under section 138J(2)(a) and (5)(a), and
  - (b) provide to the PRA whatever recommendations the Panel thinks appropriate as a result of such review.
- (5) The PRA must appoint one of the members of the PRA Cost Benefit Analysis Panel to be the chair of the Panel.
- (6) The Treasury’s approval is required for the appointment or dismissal of the chair.

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- (7) The PRA must appoint to the PRA Cost Benefit Analysis Panel such persons with knowledge or experience of the preparation of cost benefit analyses as it considers appropriate.
- (8) The PRA must appoint to the PRA Cost Benefit Analysis Panel at least two individuals who are employed by PRA-authorised persons, with each one being employed by a different person.
- (9) The PRA may appoint to the PRA Cost Benefit Analysis Panel such other persons as it considers appropriate.
- (10) Subsections (7) to (9) are subject to section 2LA.
- (11) The PRA must consider representations that are made to it by the PRA Cost Benefit Analysis Panel.
- (12) The PRA must from time to time publish in such manner as it thinks fit responses to the representations.
- (13) The reference in subsection (1) to section 138J includes a reference to that section as applied in relation to the Bank of England by paragraphs 10(1) and 10A of Schedule 17A.”

**Commencement Information**

**I39** S. 43 not in force at Royal Assent, see [s. 86\(3\)](#)

**I40** S. 43 in force at 29.8.2023 for specified purposes by [S.I. 2023/779](#), [reg. 4\(gg\)](#)

**44 Statement of policy on cost benefit analyses**

- (1) FSMA 2000 is amended as follows.
- (2) After section 138IA (inserted by section 43) insert—

**“138IB Statement of policy in relation to cost benefit analyses**

- (1) The FCA must prepare and publish a statement of policy in relation to the preparation of cost benefit analyses for the purposes of section 138I.
- (2) The statement must provide information about—
  - (a) the methodology adopted in preparing cost benefit analyses;
  - (b) matters to which the FCA has regard in determining whether section 138I(8) applies;
  - (c) matters to which the FCA has regard in determining whether an exemption under section 138L applies in relation to the preparation of a cost benefit analysis;
  - (d) arrangements to ensure that representations in connection with a cost benefit analysis that are made in accordance with section 138I(2)(e) are considered;
  - (e) cases in which the requirement to consult the FCA Cost Benefit Analysis Panel in relation to the preparation of a cost benefit analysis does not apply;

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- (f) arrangements to ensure that any recommendations in connection with cost benefit analyses that are made following a review carried out under section 138IA(4) are considered.
  - (3) The statement may include whatever other information in relation to cost benefit analyses that the FCA considers appropriate.
  - (4) The FCA may alter or replace a statement published under this section.
  - (5) The FCA must publish a statement as altered or replaced under subsection (4).
  - (6) Publication under this section is to be made in such manner as the FCA considers best designed to bring the statement to the attention of the public.”
- (3) After section 138JA (inserted by section 43) insert—

**“138JB Statement of policy in relation to cost benefit analyses**

- (1) The PRA must prepare and publish a statement of policy in relation to the preparation of cost benefit analyses for the purposes of section 138J.
- (2) The statement must provide information about—
  - (a) the methodology adopted in preparing cost benefit analyses;
  - (b) matters to which the PRA has regard in determining whether section 138J(8) applies;
  - (c) matters to which the PRA has regard in determining whether an exemption under section 138L applies in relation to the preparation of a cost benefit analysis;
  - (d) arrangements to ensure that representations in connection with a cost benefit analysis that are made in accordance with section 138J(2)(e) are considered;
  - (e) cases in which the requirement to consult the PRA Cost Benefit Analysis Panel in relation to the preparation of a cost benefit analysis does not apply;
  - (f) arrangements to ensure that any recommendations in connection with cost benefit analyses that are made following a review carried out under section 138JA(4) are considered.
- (3) The statement may include whatever other information in relation to cost benefit analyses that the PRA considers appropriate.
- (4) The PRA may alter or replace a statement published under this section.
- (5) The PRA must publish a statement as altered or replaced under subsection (4).
- (6) Publication under this section is to be made in such manner as the PRA considers best designed to bring the statement to the attention of the public.”

**Commencement Information**

**I41** S. 44 not in force at Royal Assent, see [s. 86\(3\)](#)

**I42** S. 44 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(hh\)](#)

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#### **45 Statement of policy on panel appointments**

- (1) FSMA 2000 is amended as follows.
- (2) After section 1R insert—

##### **“1RA Statement of policy on panel appointments**

- (1) The FCA must prepare and publish a statement of policy in relation to the appointment of members of its statutory panels.
  - (2) The statement must provide information about—
    - (a) the process adopted for making appointments;
    - (b) matters considered in determining who is appointed.
  - (3) The statement may provide whatever other information in relation to the making of appointments that the FCA considers appropriate.
  - (4) The FCA may alter or replace a statement published under this section.
  - (5) The FCA must publish a statement as altered or replaced under subsection (4).
  - (6) Before publishing a statement under this section the FCA must—
    - (a) consult the Treasury about the proposed statement, and
    - (b) have regard to any representations the Treasury make in response to the consultation.
  - (7) Publication under this section is to be made in such manner as the FCA considers best designed to bring the statement to the attention of the public.
  - (8) In this section “statutory panel” means a panel established under section 1N, 1O, 1P, 1Q, 1QA or 138IA.”
- (3) After section 2N insert—

##### **“2NA Statement of policy on panel appointments**

- (1) The PRA must prepare and publish a statement of policy in relation to the appointment of members of its statutory panels.
- (2) The statement must provide information about—
  - (a) the process adopted for making appointments;
  - (b) matters considered in determining who is appointed.
- (3) The statement may provide whatever other information in relation to the making of appointments that the PRA considers appropriate.
- (4) The PRA may alter or replace a statement published under this section.
- (5) The PRA must publish a statement as altered or replaced under subsection (4).
- (6) Before publishing a statement under this section the PRA must—
  - (a) consult the Treasury about the proposed statement, and
  - (b) have regard to any representations the Treasury make in response to the consultation.

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- (7) Publication under this section is to be made in such manner as the PRA considers best designed to bring the statement to the attention of the public.
- (8) In this section “statutory panel” means a panel established under section 2M, 2MA or 138JA.”

#### Commencement Information

- I43** S. 45 not in force at Royal Assent, see **s. 86(3)**
- I44** S. 45 in force at 29.8.2023 by **S.I. 2023/779, reg. 4(ii)**

## 46 Composition of panels

- (1) FSMA 2000 is amended in accordance with subsections (2) to (8).
- (2) After section 1M (FCA’s general duty to consult) insert—

#### “1MA Composition of Panels

- (1) A person who receives remuneration from the FCA, the PRA, the Payment Systems Regulator, the Bank of England or the Treasury is disqualified from being appointed as a member of a panel established under any of sections 1N to 1QA or 138IA.
- (2) Subsection (1) does not apply in respect of a panel mentioned in that subsection if regulations made by the Treasury provide for it not to apply to that panel.
- (3) Regulations under subsection (2) may make provision in respect of a panel—
- (a) generally, or
  - (b) only in relation to such descriptions of persons or cases as the regulations may specify (but the power to make such regulations may not be exercised so as to specify persons by name).”
- (3) In section 1N (FCA Practitioner Panel), after subsection (5) insert—
- “(6) Subsections (4) and (5) are subject to section 1MA.”
- (4) In section 1O (Smaller Business Practitioner Panel), after subsection (6) insert—
- “(6A) Subsections (5) and (6) are subject to section 1MA.”
- (5) In section 1P (Markets Practitioner Panel), after subsection (6) insert—
- “(7) Subsections (4) to (6) are subject to section 1MA.”
- (6) In section 1Q (Consumer Panel), after subsection (4) insert—
- “(4A) Subsection (4) is subject to section 1MA.”
- (7) After section 2L (PRA’s general duty to consult) insert—

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### “2LA Composition of Panels

- (1) A person who receives remuneration from the FCA, the PRA, the Payment Systems Regulator, the Bank of England or the Treasury is disqualified from being appointed as a member of a panel established under any of sections 2M, 2MA or 138JA.
- (2) Subsection (1) does not apply in respect of a panel mentioned in that subsection if regulations made by the Treasury provide for it not to apply to that panel.
- (3) Regulations under subsection (2) may make provision in respect of a panel—
  - (a) generally, or
  - (b) only in relation to such descriptions of persons or cases as the regulations may specify (but the power to make such regulations may not be exercised so as to specify persons by name).”
- (8) In section 2M (the PRA Practitioner Panel), after subsection (5) insert—

“(6) Subsections (4) and (5) are subject to section 2LA.”
- (9) In section 103 of the Financial Services (Banking Reform) Act 2013 (regulator’s general duty to consult) after subsection (5) insert—

“(5A) A person who receives remuneration from the FCA, the PRA, the Payment Systems Regulator, the Bank of England or the Treasury is disqualified from being appointed as a member of a panel established under subsection (3).

(5B) Subsection (5A) does not apply in respect of a panel mentioned in that subsection if regulations made by the Treasury provide for it not to apply to that panel.

(5C) Regulations under subsection (5B) may make provision in respect of a panel—
  - (a) generally, or
  - (b) only in relation to such descriptions of persons or cases as the regulations may specify (but the power to make such regulations may not be exercised so as to specify persons by name).”

#### Commencement Information

- I45** S. 46 not in force at Royal Assent, see **s. 86(3)**
- I46** S. 46(1) in force at 29.8.2023 for specified purposes by S.I. 2023/779, **reg. 4(jj)(i)**
- I47** S. 46(1)(2)(7)(9) in force at 26.12.2023 in so far as not already in force by S.I. 2023/1382, **reg. 7(c)** (with **reg. 17**)
- I48** S. 46(2)(7)(9) in force at 29.8.2023 for specified purposes by S.I. 2023/779, **reg. 4(jj)(ii)**
- I49** S. 46(3)-(6)(8) in force at 26.12.2023 by S.I. 2023/1382, **reg. 7(c)** (with **reg. 17**)

### 47 Panel reports

- (1) The Treasury may by regulations require specified statutory panels of the regulator to produce an annual report on their work and provide that report to the Treasury.

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- (2) Regulations under subsection (1) may make provision about the content of the annual report.
- (3) The Treasury must lay a copy of each report prepared by virtue of this section before Parliament.
- (4) Each specified statutory panel of the regulator must publish its reports prepared by virtue of this section in such manner as it thinks fit.
- (5) In this section—
  - (a) “statutory panels of the regulator” means—
    - (i) in relation to the FCA, the panels mentioned in section 1RA(8) of FSMA 2000,
    - (ii) in relation to the PRA, the panels mentioned in section 2NA(8) of FSMA 2000, and
    - (iii) in relation to the Payment Systems Regulator, a panel established under section 103(3) of the Financial Services (Banking Reform) Act 2013;
  - (b) “specified” means specified in regulations under this section.
- (6) Regulations under this section are subject to the negative procedure.

**Commencement Information**

- I50** S. 47 not in force at Royal Assent, see [s. 86\(3\)](#)  
**I51** S. 47 in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(kk\)](#)

*Bank of England regulatory powers*

**48 Exercise of FMI regulatory powers**

After section 30C of the Bank of England Act 1998 insert—

**“PART 3B**

CENTRAL COUNTERPARTIES AND CENTRAL SECURITIES DEPOSITORIES

**30D Exercise of functions relating to CCPs and CSDs**

- (1) In exercising its FMI functions in a way that advances the Financial Stability Objective (and subject to that), the Bank must have regard to—
  - (a) the regulatory principles in section 30E;
  - (b) the effects generally that the exercise of FMI functions will or may have on the financial stability of countries or territories (other than the United Kingdom) in which FMI entities are established or provide services;
  - (c) the desirability of exercising FMI functions in a manner that is not determined by whether the persons to whom FMI services are provided are located in the United Kingdom or elsewhere.



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- (2) In exercising its FMI functions in a way that advances the Financial Stability Objective the Bank must, so far as reasonably possible, act in a way which, as a secondary objective, facilitates innovation in the provision of FMI services (including in the infrastructure used for that purpose) with a view to improving the quality, efficiency and economy of the services.
- (3) For the purposes of this Part the Bank’s “FMI functions” are the following functions so far as exercisable in relation to FMI entities—
- (a) its function of making rules under FSMA 2000 (considered as a whole);
  - (b) its function of making technical standards in accordance with Chapter 2A of Part 9A of FSMA 2000;
  - (c) its function of preparing and issuing codes under FSMA 2000 (considered as a whole);
  - (d) its function of determining the general policy and principles by reference to which it performs particular functions under FSMA 2000.
- (4) In this Part—
- “FMI entities” means—
- (a) a recognised central counterparty within the meaning of Part 18 of FSMA 2000 (see section 285(1)(b)(i) of that Act),
  - (b) a recognised CSD as defined by section 285(1)(e) of FSMA 2000,
  - (c) a third country central counterparty as defined by section 285(1)(d) of FSMA 2000, and
  - (d) a third country CSD as defined by section 285(1)(g) of FSMA 2000;
- “FMI services” means services provided by FMI entities as part of their business as FMI entities;
- “FSMA 2000” means the Financial Services and Markets Act 2000.

### **30E Regulatory principles**

- (1) These are the regulatory principles referred to in section 30D(1)(a)—
- (a) the need to use the resources of the Bank in the most efficient and economic way;
  - (b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
  - (c) the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term, including in a way consistent with contributing towards achieving compliance by the Secretary of State with section 1 of the Climate Change Act 2008 (UK net zero emissions target) and section 5 of the Environment Act 2021 (environmental targets) where the Bank considers the exercise of its FMI functions to be relevant to the making of such a contribution;
  - (d) the general principle that consumers should take responsibility for their decisions;
  - (e) the responsibilities of the senior management of FMI entities subject to requirements imposed by or under FSMA 2000, including

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- those affecting consumers, in relation to compliance with those requirements;
- (f) the desirability where appropriate of the Bank exercising its FMI functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons;
  - (g) the desirability in appropriate cases of the Bank publishing information relating to persons on whom requirements are imposed as a result of the exercise of the Bank’s FMI functions, or requiring such persons to publish information, as a means of contributing to the advancement by the Bank of its Financial Stability Objective and its objective under section 30D(2);
  - (h) the principle that the Bank should exercise its FMI functions as transparently as possible;
  - (i) the desirability of facilitating fair and reasonable access to FMI services.
- (2) For the purposes of subsection (1) “consumer” has the same meaning as in section 3B of FSMA 2000 (and for these purposes includes in particular persons who receive FMI services).

### **30F Financial Market Infrastructure Committee**

- (1) There is to be a committee of the Bank known as the Financial Market Infrastructure Committee (the “FMI Committee”).
- (2) The FMI Committee is to consist of—
  - (a) a chair appointed by the Bank;
  - (b) at least three independent members appointed by the Bank;
  - (c) such other members as may be appointed from time to time by the Bank.
- (3) The person appointed as chair under subsection (2)(a) must be the Governor, or a Deputy Governor, of the Bank.
- (4) A person is an independent member for the purposes of subsection (2)(b) if the person is an officer, employee or agent of the Bank—
  - (a) as a result only of their membership of one or more of the Bank’s committees, or
  - (b) is appointed as an independent member to the FMI Committee with the consent of the Treasury.
- (5) For the purposes of subsection (4)(a)—
  - (a) the Bank’s committees are—
    - (i) the FMI Committee,
    - (ii) the Financial Policy Committee,
    - (iii) the Monetary Policy Committee, and
    - (iv) the Prudential Regulation Committee;
  - (b) the reference to a person who is an officer, employee or agent of the Bank as result of their membership of one or more of those committees includes a reference to a person who becomes such an officer, employee or agent as a result of their appointment to the FMI Committee under this section.

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- (6) Before appointing a person under subsection (2)(b) the Bank must—
- (a) be satisfied that the person has knowledge or experience which is likely to be relevant to the FMI Committee’s functions, and
  - (b) consider whether the person has any financial or other interests that could substantially affect the functions as member that it would be proper for the person to discharge.

### **30G Functions of the Financial Market Infrastructure Committee**

- (1) The following functions of the Bank are to be exercised by the Bank acting through the FMI Committee (and, except as authorised by this section, are not to be exercised in any other way)—
- (a) its FMI functions;
  - (b) such other functions of the Bank as the court of directors may specify as functions that are to be discharged by the FMI Committee.
- (2) The FMI Committee may arrange for such of its functions as it thinks fit to be carried out only by, or after consultation with, the Governor of the Bank.
- (3) Except as provided by subsection (4), the FMI Committee may delegate such of its functions as it thinks fit to—
- (a) a member of the FMI Committee;
  - (b) a sub-committee of the FMI Committee consisting of members of the FMI Committee or one or more such members and one or more officers, employees or agents of the Bank;
  - (c) an officer, employee or agent of the Bank;
  - (d) a committee consisting of officers, employees or agents of the Bank.
- (4) The FMI Committee may not delegate under subsection (3) its FMI functions under FSMA 2000 of making rules or technical standards (but this does not prevent arrangements under subsection (2) being made in respect of such functions).

### **30H Information**

- (1) The Bank must publish a statement setting out the following matters in respect of the FMI Committee—
- (a) the number of members and whether each such member is a Bank member or an independent member;
  - (b) if the Committee includes any Bank members, the role of each such member within the Bank;
  - (c) arrangements for meetings and how proceedings at meetings are conducted;
  - (d) arrangements for the taking of decisions otherwise than at meetings;
  - (e) arrangements for any functions to be carried out by, or after consultation with, the Governor of the Bank (including details of the functions to which such arrangements relate);
  - (f) arrangements for the delegation of functions.
- (2) If there is a material change in any of the matters contained in the statement the Bank must publish an updated statement.

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- (3) Publication under this section is to be made in such manner as the Bank considers best designed to bring the statement to the attention of the public.
- (4) For the purposes of subsection (1)—
  - (a) a person is an independent member if they are appointed in accordance with section 30F(2)(b) and (4);
  - (b) a person is a Bank member if they are an officer or employee of the Bank who is not appointed as mentioned in paragraph (a).

### **30I Recommendations by Treasury**

- (1) The Treasury may at any time by notice in writing to the FMI Committee make recommendations about aspects of the economic policy of His Majesty's Government to which the Bank should have regard—
  - (a) when considering how to advance the Financial Stability Objective and the objective under section 30D(2), and
  - (b) when considering the application of the regulatory principles set out in section 30E.
- (2) The Treasury must make recommendations under subsection (1) at least once in each Parliament.
- (3) The Treasury must—
  - (a) publish in such manner as they think fit any notice given under subsection (1), and
  - (b) lay a copy of it before Parliament.
- (4) The FMI Committee must respond to each recommendation made under subsection (1) by notifying the Treasury in writing of—
  - (a) action that the Bank has taken or intends to take in accordance with the recommendation, or
  - (b) the reasons why the Bank has not acted or does not intend to act in accordance with the recommendation.
- (5) The notice under subsection (4) must be given before the end of 12 months beginning with the date the notice containing the recommendation was given under subsection (1).
- (6) Where the FMI Committee has given notice under subsection (4) in relation to a recommendation, it must by notice in writing update the Treasury on the matters mentioned in subsection (4)(a) and (b) before the end of each subsequent period of 12 months.
- (7) Subsection (6) does not apply if the Treasury have notified the FMI Committee in writing that no update (or further update) is required.
- (8) The FMI Committee is not required under subsection (4) or (6) to provide any information whose publication would in the opinion of the Committee be against the public interest.”

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#### **Commencement Information**

**I52** S. 48 not in force at Royal Assent, see [s. 86\(3\)](#)

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*Changes to legislation:* There are currently no known outstanding effects for the Financial Services and Markets Act 2023, CHAPTER 3. (See end of Document for details)

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**I53** S. 48 in force at 1.1.2024 at 1.00 a.m. for specified purposes by S.I. 2023/1382, reg. 10(d)

## **49 Bank of England: rule-making powers**

- (1) FSMA 2000 is amended as follows.
- (2) After section 300H (inserted by section 11) insert—

*“Bank of England rules*

### **300I Duty of Bank of England to review rules**

- (1) The Bank of England must keep under review generally any rules made by the Bank under this Act.
- (2) Subsection (1) does not apply to rules made for the purpose of complying with a recommendation of the Financial Policy Committee of the Bank of England under section 9O of the Bank of England Act 1998 (making of recommendations within the Bank).

### **300J Statement of policy relating to review of rules**

- (1) The Bank of England must prepare and publish a statement of policy with respect to its review of rules under section 300I.
- (2) The statement must provide information about—
  - (a) how representations (including by a statutory panel) can be made to the Bank with respect to its review of rules under section 300I, and
  - (b) the arrangements to ensure that those representations are considered.
- (3) In this section “statutory panel” has the meaning given by section 1RB(5).
- (4) If a statement published under this section is altered or replaced, the Bank must publish the altered or replaced statement.
- (5) A statement prepared under this section must be published by the Bank in the way appearing to the Bank to be best designed to bring it to the attention of the public.

### **300K Requirement to review specified rules**

- (1) The Treasury may by direction require the Bank of England to carry out a review of specified rules made by the Bank under this Act if—
  - (a) the rules have been in force for at least 12 months,
  - (b) the Treasury consider that it is in the public interest that the rules are reviewed, and
  - (c) it does not appear to the Treasury that—
    - (i) the Bank is carrying out, or plans to carry out, a review of those rules, or
    - (ii) if the Bank proposes to carry out a review, the proposals are appropriate for the purposes of carrying out an effective review.

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- (2) Subsection (1) only applies to rules falling within section 300I(1).
- (3) The Treasury must consult the Bank before giving a direction under subsection (1).
- (4) In exercising the power under this section, the Treasury must have regard to the desirability of minimising any adverse effect that the carrying out of the review may have on the exercise by the Bank of any of its other functions.
- (5) A direction under subsection (1) may—
  - (a) specify the period within which a review must be carried out;
  - (b) determine the scope and conduct of a review;
  - (c) require the provision of interim reports during the carrying out of a review.
- (6) Provision made in a direction under subsection (5)(b) may include a requirement—
  - (a) for a review to be carried out by a person appointed by the Bank who is independent of the Bank;
  - (b) for any such appointment to be made only with the approval of the Treasury.
- (7) As soon as practicable after giving a direction under subsection (1) the Treasury must—
  - (a) lay before Parliament a copy of the direction, and
  - (b) publish the direction in such manner as the Treasury think fit.
- (8) Subsection (7) does not apply where the Treasury consider that publication of the direction would be against the public interest.
- (9) A direction under subsection (1) may be varied or revoked by the giving of a further direction.

### **300L Report on certain reviews**

- (1) This section applies where the Treasury have given a direction to the Bank of England under section 300K to carry out a review.
- (2) The Bank must make a written report to the Treasury as to the opinion of the Bank in relation to the following matters—
  - (a) whether the rules under review advance—
    - (i) the Bank’s Financial Stability Objective, and
    - (ii) the Bank’s secondary innovation objective (see section 30D(2) of the Bank of England Act 1998);
  - (b) whether and to what extent the rules are functioning effectively and achieving their intended purpose;
  - (c) whether any amendments need to be made to the rules and, if so, what those amendments should be;
  - (d) whether any rules should be revoked (with or without replacement);
  - (e) whether any other action should be taken and, if so, what that action should be.
- (3) As soon as practicable after receiving the report the Treasury must—

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- (a) lay before Parliament a copy of the report, and
  - (b) publish the report in such manner as the Treasury think fit.
- (4) When complying with subsection (3) the Treasury may withhold material from the report if the Treasury consider that publication of the material would be against the public interest.

### **300M Power of Treasury to require making of rules by regulations**

- (1) The Treasury may by regulations require the Bank of England to exercise a power under this Act to make rules in relation to a specified activity or a specified description of person.
  - (2) Regulations under this section may—
    - (a) specify matters that the rules must cover;
    - (b) specify a period within which the rules must be made.
  - (3) But except so far as permitted by subsection (2), regulations under this section may not require rules to be made—
    - (a) in a specified form or with specified content, or
    - (b) to achieve or advance a specified outcome.
  - (4) If no period is specified under subsection (2)(b) the rules must be made as soon as reasonably practicable after the coming into force of the regulations.”
- (3) In section 429 (Parliamentary control of statutory instruments), in subsection (2), in the list of sections beginning with “90B” insert at the appropriate place “300M,”.

#### **Commencement Information**

**I54** S. 49 not in force at Royal Assent, see [s. 86\(3\)](#)

**I55** S. 49 in force at 1.1.2024 at 1.00 a.m. by [S.I. 2023/1382](#), [reg. 10\(e\)](#)

## **50 Application of FSMA 2000 to FMI functions**

- (1) FSMA 2000 is amended as follows.
- (2) In section 285A (powers exercisable in relation to recognised bodies)—
  - (a) in the title at the end insert “etc”;
  - (b) in subsection (3), at the end of paragraph (b) insert “or as a consequence of conferring other FMI functions on the Bank”.
- (3) In section 313(1) (interpretation of Part 18), insert at the appropriate place—

““FMI functions”, in relation to the Bank of England, has the meaning given by section 30D(3) of the Bank of England Act 1998;”.
- (4) Schedule 17A to FSMA 2000 (further provision in relation to exercise of Bank of England functions under Part 18 of that Act) is amended as follows.
- (5) In the title to the Schedule, after “functions” insert “, or other FMI functions,”.
- (6) After paragraph 9 insert—

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*“Public consultations*

9A (1) Section 1RB (requirements in connection with public consultations) applies in relation to the Bank but as if, in subsection (4), after “proposals” there were inserted “in connection with the carrying on by the Bank of its FMI functions.

(2) For this purpose, paragraph 9(2)(a) does not apply so far as relating to the following references in section 1RB—

- (a) in subsection (2), the reference after “statutory panels of” to the FCA and the PRA;
- (b) in subsection (5)(a), the reference to the FCA;
- (c) in subsection (5)(b), the reference to the PRA.”

(7) In paragraph 10—

(a) in sub-paragraph (1)(b), for the words from “subsection (4)(b)” to the end substitute “subsection (5) of section 138A, subsection (4) of section 138B, and, apart from in relation to rules made under section 300F, subsection (4) (b) of section 138A;”;

(b) after sub-paragraph (1)(b) insert—

“(ba) section 138BA (disapplication or modification of rules in individual cases);”;

(c) in sub-paragraph (1)(d) for “subsection (2)” substitute “subsections (2) and (3), and any references to those subsections”;

(d) after sub-paragraph (1)(e) insert—

“(ea) section 138EA (matters to consider when making rules);”;

(e) at the end of sub-paragraph (1)(f) insert “but with the omission of subsections (1A) and (2)”;

(f) at the end of sub-paragraph (1)(i) omit “and”;

(g) after sub-paragraph (1)(i) insert—

“(ia) section 138JA(2), (3) (4), (10) and (11) (duties in relation to PRA Cost Benefit Analysis Panel);

(ib) section 138JB (statement of policy in relation to cost benefit analyses);”;

(h) after sub-paragraph (1)(j) insert—

“(k) section 141A (power to make consequential amendments of references to rules);

(l) section 141B (power to consequentially amend enactments).”;

(i) in sub-paragraph (2) at the end insert “or other persons in respect of whom FMI functions are exercised”;

(j) after sub-paragraph (2) insert—

“(2A) Section 137T has effect as if, in paragraph (b), for “the other regulator” there were substituted “the FCA or the PRA”.

(2B) Section 138A has effect as if the reference in subsection (4)(b) to any of the regulator’s objectives were a reference to the Bank’s Financial Stability Objective.



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- (2C) Section 138BA has effect as if subsection (3)(b) and (c) were omitted.
- (2D) Section 138EA(5) has effect as if, for paragraphs (a) and (b), there were substituted “complying with a recommendation of the Financial Policy Committee of the Bank of England under section 9O of the Bank of England Act 1998 (making of recommendations within the Bank).”;
- (k) after sub-paragraph (3) insert—
- “(3A) Section 138J(8A) has effect as if, in paragraph (a), for subparagraphs (i) and (ii) there were substituted “be prejudicial to advancing the Financial Stability Objective, or”.
- (8) After paragraph 12 insert—
- “12A —
- (1) Section 166A applies in relation to rules made by the Bank under section 300F.
- (2) For this purpose any reference in section 166A to an authorised person is to be read as a reference to a relevant FMI entity (as defined by paragraph 9B(2)).”
- (9) In paragraph 14(2)—
- (a) in paragraph (a) omit “an offence under section 398(1) or”;
- (b) for paragraph (g) substitute—
- “(g) a person may be guilty of an offence under section 398(1), as applied by paragraph 30 of this Schedule;”.
- (10) In paragraph 29 before “192L,” insert “55X(2) or (4).”.
- (11) After paragraph 31 insert—

*“International obligations*

- 31A (1) The following provisions of Part 28 of this Act apply in relation to the exercise by the Bank of its FMI functions with the modifications in subparagraphs (2) and (3)—
- (a) section 409A (consultation in relation to deference decisions), and
- (b) section 409B (notification in relation to international trade obligations).
- (2) Section 409A applies as if—
- (a) in subsection (4), in paragraph (b), for the words after “proposes to” to the end there were substituted “exercise any of its other FMI functions”;
- (b) in subsection (6)(a), the reference to the duty imposed by section 138J were a reference to that duty as it applies in relation to the Bank under paragraph 10(1) of this Schedule;
- (c) in subsection (9), for paragraphs (a) to (f) there were substituted “in order to comply with a recommendation of the Financial

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Policy Committee of the Bank of England under section 9O of the Bank of England Act 1998 (making of recommendations within the Bank).”;

(d) subsections (7) and (10) were omitted.

(3) Section 409B applies as if—

(a) in subsection (4), in paragraph (b), for the words after “proposes to” to the end there were substituted “exercise any of its other FMI functions”;

(b) in subsection (5)(a), the reference to the duty imposed by section 138J were a reference to that duty as it applies in relation to the Bank under paragraph 10(1) of this Schedule;

(c) in subsection (8), for paragraphs (a) to (c) there were substituted “in order to comply with a recommendation of the Financial Policy Committee of the Bank of England under section 9O of the Bank of England Act 1998 (making of recommendations within the Bank).”;

(d) subsections (6) and (9) were omitted.”

(12) In paragraph 33(a), for “(f)” substitute “[<sup>F1</sup>(fb)]” and in the substituted paragraph (b)—

(a) for “financial stability objective has been met” substitute “Financial Stability Objective and its objective under section 30D(2) of the Bank of England Act 1998 have been advanced”;

(b) after “been met,” insert—

“(c) the efforts it has made to engage with persons (other than those mentioned in paragraph (a)) appearing to the Bank to have an interest in the discharge of those functions, and

(d) the results of that engagement.”.

(13) In paragraph 33(b), for “sub-paragraph (3)” substitute “sub-paragraphs (1A), (1B), (3) and (6)”.

(14) After paragraph 33 insert—

*“Other reports*

33A Paragraph 21A of Schedule 1ZB (other reports by PRA) applies in relation to the Bank, but as if—

(a) the reference in sub-paragraph (1)(a) to paragraphs (a) to (f) of paragraph 19(1) were a reference to those paragraphs as substituted in relation to the Bank under paragraph 33 of this Schedule;

(b) the reference in sub-paragraph (1)(b) to such other matters were a references to such other matters so far as relating to the exercise of the Bank’s FMI functions;

(c) the reference in sub-paragraph (5)(b) to section 348 were a reference to that section as it applies in relation to the Bank under paragraph 23 of this Schedule.

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### *Engagement with Parliamentary Committees*

- 33B (1) Paragraph 36 of Schedule 1ZB (PRA engagement with Parliamentary Committees) applies in relation to the Bank, but as if—
- (a) in sub-paragraph (2)(a), the reference to section 138J were a reference to that section as it applies in relation to the Bank under paragraph 10(1) of this Schedule;
  - (b) in sub-paragraph (2)(b), the reference to a proposal were to a proposal so far as relating to the exercise of the Bank’s FMI functions;
  - (c) in sub-paragraph (2)(c), the reference to general functions were a reference to the Bank’s FMI functions;
  - (d) in sub-paragraph (4)(a), the reference to the PRA’s objectives were a reference to the Financial Stability Objective and the Bank’s secondary innovation objective (see section 30D(2) of the Bank of England Act 1998);
  - (e) in sub-paragraph (4)(b), the reference to section 3B were a reference to section 30E of the Bank of England Act 1998;
  - (f) in sub-paragraph (4)(c), the reference to section 138EA were a reference to that section as it applies in relation to the Bank under paragraph 10(1) of this Schedule;
  - (g) in sub-paragraph (5A)(b)(ii) and (c)(ii), the references to the PRA being notified were references to the Bank being notified.
- (2) Paragraph 37 of Schedule 1ZB applies in relation to the Bank, but as if, in sub-paragraph (2), after “the draft of any proposals” there were inserted “so far as relating to the exercise by the Bank of its FMI functions”.

#### **Textual Amendments**

- F1** Word in [s. 50\(12\)](#) substituted (1.1.2024) by [The Financial Services and Markets Act 2023 \(Consequential Amendments\) Regulations 2023 \(S.I. 2023/1410\)](#), regs. 1(2), [5](#)

#### **Commencement Information**

- I56** S. 50 not in force at Royal Assent, see [s. 86\(3\)](#)  
**I57** S. 50 in force at 1.1.2024 at 1.00 a.m. for specified purposes by [S.I. 2023/1382](#), [reg. 10\(f\)](#)

### *Payment Systems Regulator*

## **51 Payment Systems Regulator**

Schedule 7 makes provision corresponding or similar to provision made by preceding provisions of this Chapter relating to the accountability of the Payment Systems Regulator.

#### **Commencement Information**

- I58** S. 51 not in force at Royal Assent, see [s. 86\(3\)](#)  
**I59** S. 51 in force at 29.8.2023 for specified purposes by [S.I. 2023/779](#), [reg. 4\(II\)](#)

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**I60** S. 51 in force at 1.3.2024 for specified purposes by S.I. 2024/250, reg. 2(a)

## **52 Chair of the Payment Systems Regulator as member of FCA Board**

- (1) FSMA 2000 is amended as follows.
- (2) In section 417(1) (definitions), at the appropriate place insert—
  - ““the Payment Systems Regulator” means the body established under section 40(1) of the Financial Services (Banking Reform) Act 2013;”.
- (3) Schedule 1ZA (FCA: constitution etc) is amended as follows.
- (4) In paragraph 2—
  - (a) in sub-paragraph (2), after paragraph (c) insert—
    - “(ca) the Chair of the Payment Systems Regulator;”;
  - (b) in sub-paragraph (3), after “(c)” insert “, (ca)”.
- (5) In paragraph 3—
  - (a) in sub-paragraph (6) after “PRA” insert “or of the Payment Systems Regulator”;
  - (b) in sub-paragraph (7) for “the Bank’s Deputy Governor for prudential regulation” substitute “a person holding an office mentioned in paragraph 2(2)(c) or (ca)”.
- (6) In paragraph 5(a) for “or (c)” substitute “, (c) or (ca)”.
- (7) After paragraph 6 insert—
  - “6A (1) The Chair of the Payment Systems Regulator must not take part in any discussion by or decision of the FCA which relates to—
    - (a) the exercise of the FCA’s functions in relation to a particular person, or
    - (b) a decision not to exercise those functions.
  - (2) Sub-paragraph (1) does not apply at any time when the person who is the Chair of the Payment Systems Regulator also holds the office mentioned in paragraph 2(2)(a).”

### **Commencement Information**

**I61** S. 52 in force at 29.8.2023, see s. 86(2)(b)

### *Consultation on rules*

## **53 Consultation on rules**

- (1) In section 138I of FSMA 2000 (consultation by the FCA), after subsection (4) insert—
  - “(4A) The FCA must include, in the account mentioned in subsection (4), a list of the respondents who made the representations, where those respondents have consented to the publication of their names.

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- (4B) The duty in subsection (4A) is not to be read as authorising or requiring such processing of personal data as would contravene the data protection legislation (but the duty is to be taken into account in determining whether particular processing of data would contravene that legislation).
- (4C) For the purposes of this section, the exemption relating to functions conferred on the FCA mentioned in paragraph 11 of Schedule 2 to the Data Protection Act 2018 (exemption from application of listed GDPR provisions) does not apply.
- (4D) Where representations are made to the FCA by a Committee of the House of Commons or the House of Lords or a Joint Committee of both Houses in accordance with subsection (2)(e), the FCA’s account mentioned in subsection (4) must also describe how the FCA has considered the representations made by that Committee in making the proposed rules.”
- (2) In section 138J of FSMA 2000 (consultation by the PRA), after subsection (4) insert—
- “(4A) The PRA must include, in the account mentioned in subsection (4), a list of the respondents who made the representations, where those respondents have consented to the publication of their names.
- (4B) The duty in subsection (4A) is not to be read as authorising or requiring such processing of personal data as would contravene the data protection legislation (but the duty is to be taken into account in determining whether particular processing of data would contravene that legislation).
- (4C) For the purposes of this section, the exemption relating to functions conferred on the PRA mentioned in paragraph 9 of Schedule 2 to the Data Protection Act 2018 (exemption from application of listed GDPR provisions) does not apply.
- (4D) Where representations are made to the PRA by a Committee of the House of Commons or the House of Lords or a Joint Committee of both Houses in accordance with subsection (2)(e), the PRA’s account mentioned in subsection (4) must also describe how the PRA has considered the representations made by that Committee in making the proposed rules.”
- (3) In section 104 of the Financial Services (Banking Reform) Act 2013 (consultation requirements), after subsection (5) insert—
- “(5A) The Payment Systems Regulator must include, in the account mentioned in subsection (5), a list of the respondents who made the representations, where those respondents have consented to the publication of their names.
- (5B) The duty in subsection (5A) is not to be read as authorising or requiring such processing of personal data as would contravene the data protection legislation (but the duty is to be taken into account in determining whether particular processing of data would contravene that legislation).
- (5C) In this section “data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).
- (5D) Where representations are made to the Payment Systems Regulator by a Committee of the House of Commons or the House of Lords or a Joint Committee of both Houses in accordance with subsection (3)(d), the Payment Systems Regulator’s account mentioned in subsection (5) must also describe

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how the Payment Systems Regulator has considered the representations made by that Committee in making the proposed requirement.”

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**Commencement Information**

- I62** S. 53 not in force at Royal Assent, see **s. 86(3)**  
**I63** S. 53 in force at 29.8.2023 by S.I. 2023/779, **reg. 4(mm)**

**Changes to legislation:**

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