



Financial Services and Markets Act 2023

2023 CHAPTER 29

PART 1

REGULATORY FRAMEWORK

CHAPTER 2

NEW REGULATORY POWERS

Powers in relation to critical third parties

19 Critical third parties: related amendments

- (1) FSMA 2000 is amended as follows.
- (2) In section 313 (interpretation of Part 18), in subsection (1), at the appropriate place insert—
 - ““critical third party” has the same meaning as in Chapter 3C (see section 312L(8)).”
- (3) In section 380 (injunctions), in subsection (11) after “requirement” insert “, other than a case falling within paragraph 26 of Schedule 17A”.
- (4) In section 391 (publication), in subsection (1ZB) after paragraph (l) insert—
 - “(la) section 312S;”.
- (5) In section 392 (third party rights and access to evidence)—
 - (a) in paragraph (a), after “312(G)(1),” insert “312S(1),” and
 - (b) in paragraph (b) after “312H(1),” insert “312S(3),”.
- (6) In section 429 (Parliamentary control of statutory instruments), in subsection (8), in the list of sections beginning with “3G(1),” insert at the appropriate place “, 312L”.
- (7) The following amendments are to Schedule 17A (application of provisions to Bank).

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(8) In paragraph 10 (rules), after sub-paragraph (4) insert—

“(4A) Sub-paragraphs (1) to (4) do not apply in relation to rules made by the Bank under section 312M (in relation to which see paragraph 10A).”

(9) After paragraph 10 insert—

“10A The following provisions of Part 9A of this Act are to apply in relation to rules made by the Bank under section 312M, subject to the modifications specified in this subsection—

(a) section 137T (general supplementary powers) as if—
 (i) the reference in paragraph (a) to “authorised persons, activity or investment” were a reference to “critical third parties or services”, and
 (ii) for paragraph (b) there were substituted—

“(b) may make provision by reference to rules made by the FCA or PRA or standards issued by any other person, as those rules or standards have effect from time to time.”;

(b) sections 138A and 138B (modification or waiver of rules) as if—
 (i) the reference in subsection (4)(b) of section 138A to any of regulator’s objectives were a reference to the Bank’s Financial Stability Objective,
 (ii) subsection (5) of section 138A were omitted, and
 (iii) subsection (4) of section 138B were omitted;

(c) section 138BA (disapplication or modification of rules in individual cases) as if subsection (3)(b) and (c) were omitted;

d (d) section 138C (evidential provisions);
 (e) section 138E (limits on effect of contravening rules);
 (f) section 138EA (matters to consider when making rules) as if, for paragraphs (a) and (b) of subsection (5), 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).”;

(g) section 138F (notification of rules) as if subsections (1A) and (2) were omitted;

(h) section 138G (rule-making instruments);

(i) section 138H (verification of rules);

(j) section 138J (consultation) as if—
 (i) the reference in subsection (1)(a) to the “FCA” were a reference to the “FCA and the PRA”;
 (ii) the reference in subsection (2)(d) to the compatibility of the proposed rules with the provisions mentioned in that subsection were a reference to their compatibility with the Bank’s Financial Stability Objective; and
 (iii) in subsection (8A), in paragraph (a), for sub-paragraphs (i) and (ii) there were substituted “be prejudicial to advancing the Financial Stability Objective, or”;

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- (k) section 138JA(2), (3) (4), (10) and (11) (duty to consult PRA Cost Benefit Analysis Panel);
 - (l) section 138JB (statement of policy in relation to cost benefit analyses);
 - (m) section 138L (consultation: general exemptions) as if—
 - (i) subsection (1) were omitted, and
 - (ii) in subsection (2) for paragraphs (a) and (b) there were substituted “be prejudicial to financial stability.”;
 - (n) section 141A (power to make consequential amendments of references to rules);
 - (o) section 141B (power to consequentially amend enactments).”
- (10) In paragraph 23(1) (public record and disclosure of information), after “discharge of,” insert “any of its functions under Chapter 3C of Part 18 of this Act.”.
- (11) In paragraph 26(2) (injunctions), after paragraph (a) insert—
 “(aa) a requirement that is imposed on a critical third party by the Bank by or under any provision of Chapter 3C of this Part of this Act;”.
- (12) In paragraph 28 (restitution)—
- (a) in sub-paragraph (2), in the words before paragraph (a), for “or a recognised CSD” substitute “, a recognised CSD or a critical third party”;
 - (b) in sub-paragraph (2)(a) for “or the recognised CSD” substitute “, the recognised CSD or the critical third party”;
 - (c) in sub-paragraph (4)(a) for “or the recognised CSD” substitute “, the recognised CSD or the critical third party”.
- (13) In paragraph 29 (notices) for “or 312H” substitute “, 312H or 312S”.
- (14) In paragraph 30 (offences), after sub-paragraph (a) insert—
 “(aa) a requirement that is imposed by or under any provision of Chapter 3C of Part 18 of this Act that relates to critical third parties;”.
- (15) In paragraph 32 (records) after “recognised CSDs” insert “, critical third parties”.
- (16) In paragraph 33(a) (annual report), in the substituted paragraph (a), after “recognised CSDs” insert “, critical third parties”.
- (17) See also Part 6 of Schedule 2.

Commencement Information

- I1** S. 19 not in force at Royal Assent, see [s. 86\(3\)](#)
- I2** [S. 19](#) in force at 29.8.2023 by [S.I. 2023/779](#), [reg. 4\(n\)](#)

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