



# Financial Services and Markets Act 2023

## 2023 CHAPTER 29

### PART 1

#### REGULATORY FRAMEWORK

### CHAPTER 3

#### ACCOUNTABILITY OF REGULATORS

##### *Bank of England regulatory powers*

#### **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 sub-paragraphs (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 sub-paragraphs (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 90 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 90 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

- I1** S. 50 not in force at Royal Assent, see [s. 86\(3\)](#)
- I2** S. 50 in force at 1.1.2024 at 1.00 a.m. for specified purposes by [S.I. 2023/1382](#), [reg. 10\(f\)](#)

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**Changes and effects yet to be applied to :**

- s. 50 coming into force by [S.I. 2023/1382 reg. 11\(b\)](#)