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STATUTORY INSTRUMENTS

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**2013 No. 442**

**FINANCIAL SERVICES AND MARKETS**

**The Financial Services Act 2012 (Transitional  
Provisions) (Miscellaneous Provisions) Order 2013**

*Made - - - - 27th February 2013*  
*Laid before Parliament 1st March 2013*  
*Coming into force in accordance with article 1*

The Treasury make the following Order in exercise of the powers conferred by sections 115(2) and section 119(3), (4) and (5) of the Financial Services Act 2012<sup>(1)</sup>.

**PART 1**

Introductory

**Citation, commencement and interpretation**

**1.—**(1) This Order may be cited as the Financial Services Act 2012 (Transitional Provisions) (Miscellaneous Provisions) Order 2013.

(2) This article and article 70 come into force on 25th March 2013.

(3) The rest of this Order comes into force on 1st April 2013.

(4) In this Order—

“the 2012 Act” means the Financial Services Act 2012;

“the Authority” means the Financial Services Authority;

“the commencement date” means 1st April 2013.

(5) A reference in this Order to a provision of an Act is a reference to a provision of FSMA 2000<sup>(2)</sup>, except where indicated otherwise.

(6) A term used in this Order which is defined in FSMA 2000 has the same meaning as in that Act.

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(1) 2012 c.21.

(2) Section 117 of the 2012 Act defines “FSMA 2000” as meaning the Financial Services and Markets Act 2000 (c. 8).

## PART 2

### The FCA and the PRA

#### The governing body of the Authority

2.—(1) Paragraph (2) applies to the persons who, immediately before the commencement date, were the persons appointed to be the chairman and the other members of the governing body of the Authority.

(2) The appointment of a person as the chairman or other member of the governing body of the Authority terminates on the commencement date.

#### The annual report of the FCA

3.—(1) Paragraphs (2) and (3) apply to the first annual report made by the FCA(3) in accordance with paragraph 11 of Schedule 1ZA(4) (the Financial Conduct Authority).

(2) The report must be made within a year of the date on which the last annual report made by the Authority in accordance with paragraph 10 of Schedule 1 (as that paragraph applied on the date on which that report was made) was made.

(3) To the extent that the report relates to a period before the commencement date, paragraph 11 of Schedule 1ZA applies as if it required the FCA also to report on—

- (a) the discharge by the Authority of its functions;
- (b) the extent to which, in the FCA's opinion, the regulatory objectives of the Authority were met; and
- (c) the FCA's consideration of the matters specified in section 2(3)(5) (the Authority's general duties) as it applied to the Authority immediately before the commencement date.

#### The annual report of the PRA

4.—(1) Paragraph (2) applies to the first annual report made by the PRA(6) for the purposes of paragraph 19 of Schedule 1ZB (the Prudential Regulation Authority).

(2) Paragraph 19(1) of Schedule 1ZB applies as if it required that annual report to be made no later than 31st July 2014.

#### The Practitioner Panel

5.—(1) Paragraph (2) applies in respect of the persons who, immediately before the commencement date, were the persons appointed by the Authority in accordance with section 9(5)(7) (the practitioner panel) to be members of the Practitioner Panel established in accordance with that section.

(2) The persons are to be treated as if appointed by the FCA in accordance with section 1N(4) and (5)(8) (the FCA practitioner panel) to be members of the FCA Practitioner Panel established in accordance with that section.

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(3) Section 1A(1) of FSMA 2000 renames the Financial Services Authority as the Financial Conduct Authority. Section 1A(2) of FSMA 2000 defines "the FCA" as the Financial Conduct Authority. Section 1A is inserted by the 2012 Act, section 6.

(4) Schedule 1ZA and 1ZB are substituted for Schedule 1 by the 2012 Act, section 6 and Schedule 3.

(5) Section 2(3) was amended by the Financial Services Act 2010 (c.28), section 2.

(6) Section 2A(2) of FSMA 2000 defines "the PRA" as the Prudential Regulation Authority. Section 2A is inserted by the 2012 Act, section 6.

(7) Section 9 is repealed by the 2012 Act, section 6.

(8) Section 1N is inserted by the 2012 Act, section 6.

## The Consumer Panel

6.—(1) Paragraph (2) applies in respect of the persons who, immediately before the commencement date, were the persons appointed by the Authority in accordance with section 10(9) (the consumer panel) to be members of the Consumer Panel established in accordance with that section.

(2) The persons are to be treated as if appointed by the FCA in accordance with section 1Q(4) and (5)(10) (the consumer panel) to be members of the Consumer Panel established in accordance with that section.

(3) Paragraph (4) applies in respect of the person who, immediately before the commencement date, was the person appointed by the Authority in accordance with section 10(2) and (3) to be chairman of the Consumer Panel established in accordance with that section.

(4) The person is to be treated as if appointed by the FCA in accordance with section 1Q(2) and (3) to be the chair of the Consumer Panel established in accordance with that section.

## Definition of “consumers”

7.—(1) For the purposes of the provisions listed in paragraph (2), “consumers” includes persons

- (a) who used any of the services provided before section 19 came into force by—
    - (i) persons who were then regulated persons in carrying on relevant activities, or
    - (ii) a credit union in the course of accepting deposits;
  - (b) who have rights or interests which are derived from, or are otherwise attributable to, the use of any such services by other persons; or
  - (c) who have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them.
- (2) The provisions are—
- (a) section 1G(11) (meaning of consumer);
  - (b) section 1Q;
  - (c) section 391(6)(b)(12) (publication);
  - (d) section 68 of the 2012 Act (cases in which Treasury may arrange independent inquiries).
- (3) In this article—
- “regulated person” means, in relation to a time before section 19 came into force—
- (a) an authorised person within the meaning of the Financial Services Act 1986(13);
  - (b) a person who was an exempted person by virtue of section 43(14) (listed money market institutions) or section 44(15) (appointed representatives) of that Act;
  - (c) an authorised institution within the meaning of the Banking Act 1987(16);

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(9) Section 10 was amended by the Consumers, Estate Agents and Redress Act 2007 (c.17), section 39, and the Financial Services Act 2010 (c.28), Schedule 2, Part 1, paragraph 5 and is repealed by the 2012 Act, section 6.

(10) Section 1Q is inserted by the 2012 Act, section 6.

(11) Section 1G is inserted by the 2012 Act, section 6.

(12) Section 391(6) is substituted by the 2012 Act, Schedule 9, Part 6, paragraph 30.

(13) 1986 c.60; repealed by S.I. 2001/3649.

(14) Section 43 was amended by the Bank of England Act 1998 (c. 11) sections 23, 25 and 26 and modified by S.I. 1992/3218, S.I. 1995/3275 and S.I. 1996/1669.

(15) Section 44 was modified by S.I. 1992/3218 and S.I. 1995/3275.

(16) 1987 c.22; repealed by S.I. 2001/3649.

- (d) a person who was authorised under section 3 or 4 of the Insurance Companies Act 1982<sup>(17)</sup>;
  - (e) a European institution within the meaning of the Banking Coordination (Second Council Directive) Regulations 1992<sup>(18)</sup>;
  - (f) a European investment firm within the meaning of the Investment Services Regulations 1995<sup>(19)</sup>;
  - (g) an EC company within the meaning of the Insurance Companies Act 1982 which, by virtue of paragraph 1 or 8 of Schedule 2F<sup>(20)</sup> to that Act, was able to carry on direct insurance business through a branch in the United Kingdom or provide insurance in the United Kingdom;
  - (h) a friendly society which was authorised or treated as authorised for the purposes of Part IV of the Friendly Societies Act 1992<sup>(21)</sup>, or which was permitted by virtue of section 31(2) or (3) of that Act to carry on any activities without authorisation under that Part; or
  - (i) a building society which was authorised or treated as authorised for the purposes of the Building Societies Act 1986<sup>(22)</sup>;
- “relevant activities” means—
- (j) in relation to persons falling within sub-paragraph (a), (b), (e) or (f) of the definition of “regulated person”, activities constituting investment business within the meaning of the Financial Services Act 1986;
  - (k) in relation to persons falling within sub-paragraph (c), (e) or (i) of that definition, activities constituting a deposit-taking business within the meaning of the Banking Act 1987;
  - (l) in relation to persons falling within sub-paragraph (d) or (g) of that definition, activities constituting insurance business within the meaning of the Insurance Companies Act 1982;
  - (m) in relation to persons falling within sub-paragraph (h) of that definition, activities constituting insurance business within the meaning of the Friendly Societies Act 1992.
- (4) For the purposes of this article—
- (a) where a person provided a service mentioned in paragraph (1) as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or may use the service;
  - (b) a person who deals, or dealt, with another person (“A”) in the course of A providing a service mentioned in paragraph (1) is to be treated as using, or having used, the service.

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(17) 1982 c.50; repealed by S.I. 2001/3649; section 3 was amended by S.I. 1997/2781.

(18) S.I. 1992/3218; revoked by S.I. 2001/3649; relevant amendments were made by S.I. 1999/2094.

(19) S.I. 1995/3275; revoked by S.I. 2001/3649.

(20) Schedule 2F was inserted by S.I. 1994/1696 and amended by S.I. 1997/2781.

(21) 1992 c.40; Part IV repealed by FSMA 2000, Schedule 18, Part 1, paragraph 5.

(22) 1986 c.53; section 9 and Schedule 3 repealed by FSMA 2000, Schedule 18, Part 3, paragraphs 17 and 18.

## PART 3

### Control of business transfers

#### Scheme reports

8.—(1) Paragraph (2) applies if, before the commencement date, the Authority had—

- (a) (i) nominated or approved a person under section 109(2)(**23**) (scheme reports) to make a scheme report, or
- (ii) approved a form of report under section 109(3); and
- (b) not withdrawn the nomination or approval.

(2) The nomination or approval, as the case may be, is to be treated as if it had been given by the PRA (as well as by the FCA).

#### Sanction of the court for business transfer schemes: certificates

9.—(1) Paragraphs (2) and (3) apply if, before the commencement date—

- (a) an application was made to the court under section 107(**24**) (application for order sanctioning transfer scheme); and
- (b) the court had not made an order under section 111(**25**) (sanction of the court for business transfer schemes) in respect of the application.

(2) A certificate given by the Authority before the commencement date for the purposes of paragraph 2(1)(a) of Schedule 12(**26**) (certificates as to margin of solvency) is to be treated as if it had been given by the PRA, if the PRA would have been the relevant authority (within the meaning of sub-paragraph (6) of that paragraph) had the application been made on the commencement date.

(3) A certificate given by the Authority before the commencement date for the purposes of a provision of Schedule 12 listed in paragraph (4) is to be treated as if it had been given by the PRA, if the PRA would have been the appropriate regulator (within the meaning of section 103A(**27**) (meaning of “the appropriate regulator”)) had the application been made on the commencement date.

(4) The provisions are—

- (a) paragraph 2(1)(b) (certificates as to margin of solvency);
- (b) paragraph 3 (certificates as to consent);
- (c) paragraph 4 (certificates as to long-term business);
- (d) paragraph 5 (certificates as to general business);
- (e) paragraph 5A(2) (certificates as to legality and as to consent);
- (f) paragraph 9 (certificates as to consent of home state regulator).

(5) A certificate given by the Authority before the commencement date for the purposes of paragraph 8(1) of Schedule 12 (certificates as to financial resources) is to be treated as if it had been given by the PRA, if the PRA would have been the relevant authority (within the meaning of sub-paragraph (2) of that paragraph) had the application been made on the commencement date.

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(23) Section 109 is amended by the 2012 Act, Schedule 6, paragraph 3.

(24) Section 107 was amended by the Dormant Bank and Building Society Accounts Act 2008 (c.31), Schedule 2, paragraph 3.

(25) Section 111 was amended by the Dormant Bank and Building Society Accounts Act 2008, Schedule 2, paragraph 4.

(26) Schedule 12 is amended by the 2012 Act, Schedule 6. Paragraph 5A was inserted by S.I. 2007/3253. Paragraph 9A was inserted by the Dormant Bank and Building Society Accounts Act 2008, Schedule 2, paragraph 5. There are other amending instruments but none is relevant.

(27) Section 103A is inserted by the 2012 Act, Schedule 6, paragraph 2.

(6) A certificate given by the Authority before the commencement date for the purposes of paragraph 9A(1) of Schedule 12 (certificate as to financial resources) is to be treated as if it had been given by the PRA, if the PRA would have been the relevant regulator (within the meaning of sub-paragraph (2) of that paragraph) had the application been made on the commencement date.

(7) Paragraph 8 applies if, before the commencement date—

- (a) the Authority gave a certificate under paragraph 10(5) of Schedule 12 (insurance business transfers effected outside the United Kingdom) in respect of a transferee of a proposed transfer of insurance policies; and
- (b) an instrument of transfer had not been executed in respect of the proposed transfer.

(8) The certificate is to be treated as if it had been issued by the PRA if, had the certificate been issued on the commencement date, the transferee would have been obliged by the PRA to maintain a margin of solvency.

#### **Order sanctioning business transfer scheme**

**10.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) the court made an order under section 112(1)(**28**) (effect of order sanctioning business transfer scheme); and
- (b) the transferee did not deposit two office copies of the order with the Authority for the purposes of section 112(10).

(2) The office copies are to be deposited with the PRA, if the PRA would have been the appropriate regulator (within the meaning of section 103A) had the order been made on the commencement date.

#### **Appointment of actuary in relation to reduction of benefits**

**11.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) the court appointed an actuary under section 113(2)(**29**) (appointment of actuary in relation to reduction of benefits); and
- (b) the actuary did not make a report to the Authority.

(2) The report is to be made to the PRA, if the PRA would have been the appropriate regulator (within the meaning of section 103A) had the appointment been made on the commencement date.

## **PART 4**

### **Hearings and appeals**

#### **Proceedings before the Tribunal: appeals and references made before 1st April**

**12.**—(1) Paragraphs (2) and (3) apply in respect of a reference or appeal—

- (a) in respect of a decision of the Authority;
- (b) notice of which was given to the Tribunal(**30**) in accordance with the Tribunal Procedure (Upper Tribunal) Rules 2008(**31**) before the commencement date; and
- (c) which the Tribunal had not determined before the commencement date.

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(28) Section 112 is amended by the 2012 Act, Schedule 6, paragraph 5.

(29) Section 113 is amended by the 2012 Act, Schedule 6, paragraph 7.

(30) Section 417, amended by [S.I. 2010/22](#), defines “the Tribunal” as meaning the Upper Tribunal.

(31) [S.I. 2008/2698](#), amended by [S.I. 2010/747](#). There are other amending instruments but none is relevant.

- (2) Section 133(32) (proceedings before Tribunal: general provision) applies as if—
- (a) in subsection (2), for the definition of “the decision maker” there were substituted—  
““the decision-maker” means whichever of the FCA, the PRA and the Bank of England would have been the person who would have made the relevant decision if the decision had been made on the commencement date.”;
  - (b) in subsection (5), “In the case of a disciplinary reference or a reference under section 393(11),” were omitted; and
  - (c) subsections (6), (6A) and (7A) were omitted.
- (3) Section 133A(1) (proceedings before the Tribunal: decision and supervisory notices, etc) applies as if “given by a body” were omitted.

#### **Proceedings before the Tribunal: appeals and references made on or after 1st April**

13.—(1) Paragraphs (2) and (3) apply where the Tribunal determines a reference or appeal made on or after the commencement date in respect of a decision of the Authority made before the commencement date.

(2) Section 133 applies as if, in subsection (2), for the definition of “the decision maker” there were substituted—

““the decision-maker” means—

- (a) the PRA, where the reference or appeal is in respect of a notice or other matter which is treated by an order made under section 119(3) of the Financial Services Act 2012 as if it had been made the by PRA; or
  - (b) in any other case, whichever of the FCA, the PRA and the Bank of England would have been the person who would have made the relevant decision if the decision had been made on the commencement date.”.
- (3) Section 133A(1) applies as if “given by a body” were omitted.

#### **Decisions referred to the Tribunal**

14.—(1) Paragraph (3) applies if, before the commencement date—

- (a) (i) the Tribunal remitted the matter to the Authority with directions to give effect to its determination, or
- (ii) where an appeal was made in respect of the determination of the Tribunal, the appeal was determined; and
- (b) the Authority had not issued a final notice, a notice of discontinuance or a further written or decision notice in respect of the matter.

(2) Paragraphs (3) and (4) apply if—

- (a) the Tribunal determines a reference or appeal to which article 12 or 13 applies and remits the matter to the decision-maker with directions to give effect to its determination; or
- (b) where an appeal was made in respect of the determination of the Tribunal in such a case, the appeal is determined.

(3) The decision-maker must take the decision as if it were taking the decision on the commencement date.

(4) The Tribunal must have regard to paragraph (3) in giving directions for the purposes of section 133.

## PART 5

### Information gathering and investigation

#### Power to require information

- 15.—(1) Paragraph (2) applies if, before the commencement date—
- (a) (i) the Authority—
    - (aa) gave notice to an authorised person or person connected with an authorised person (a “connected person”) under section 165(33) (Authority’s power to require information: authorised persons etc) requiring the provision of information or the production of documents, or
    - (bb) required a third person to produce a document under section 175(34) (information and documents: supplemental provisions); or
  - (ii) an officer of the Authority required an authorised person under section 165(3) to provide information or documents; and
  - (b) the information was not provided or the documents were not produced.
- (2) The FCA may, with the consent of the PRA, make an election in relation to the notice or requirement.
- (3) If the FCA makes an election in relation to the notice or the requirement—
- (a) where the requirement was imposed under section 165(3), the requirement is to be treated as if it had been imposed—
    - (i) by an officer of the PRA who has written authorisation from the PRA; and
    - (ii) also by an officer of the FCA who has written authorisation from the FCA if, in the election, the FCA makes a statement to that effect; and
  - (b) in any other case, the notice or the requirement is to be treated as if it had been given or imposed—
    - (i) by the PRA, requiring the person to whom the notice was given to provide the information or to produce the documents to the PRA; and
    - (ii) by the FCA, requiring the person to whom the notice was given to provide the information or to produce the documents also to the FCA if, in the election, the FCA makes a statement to that effect.
- (4) An election under paragraph (2) must—
- (a) be in writing;
  - (b) specify the notice or requirement to which it relates;
  - (c) include a statement as to whether the requirement or notice is to be treated as if it had been given by—
    - (i) the PRA alone;
    - (ii) an officer of the PRA alone;
    - (iii) both the FCA and the PRA; or
    - (iv) both an officer of the FCA and an officer of the PRA; and
  - (d) be made within the period of 45 days which begins on the commencement date.

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(33) Section 165 is amended by the 2012 Act, Schedule 12, paragraph 1.

(34) Section 175 is amended by the 2012 Act, Schedule 12, paragraph 13.



(5) If the requirement was imposed under the section 165(3), the election must also specify an officer of the PRA and, where a statement is made in compliance with paragraph (4)(c)(iv), an officer of the FCA to whom the information or documents are to be provided.

(6) The FCA must send a copy of the election to—

- (a) the authorised person, the connected person or the third person (as the case may be); and
- (b) the PRA.

#### **Power to require information: financial stability**

**16.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) the Authority gave notice to a person under section 165A(35) (power to require information: financial stability) requiring the provision of information or the production of documents; and
- (b) the information was not provided or the documents were not produced to the Authority.

(2) The notice is to be treated as if had been given by the PRA, requiring the person to whom the notice was given to provide the information or to produce the documents to the PRA.

#### **Safeguards etc in relation to exercise of power under section 165A**

**17.**—(1) Paragraphs (2) to (4) apply if, before the commencement date, the Authority—

- (a) gave a notice under section 165B(1)(36) (safeguards etc in relation to exercise of power under section 165A); and
- (b) had not decided whether to impose the requirement.

(2) The notice is to be treated as having been given by the PRA.

(3) Any representations made before the commencement date are to be treated as if they had been made to the PRA.

(4) Representations may be made to the PRA within the period specified in the notice.

#### **Reports by skilled persons**

**18.**—(1) Paragraphs (2) and (3) apply if, before the commencement date, the Authority—

- (a) gave notice to a person under section 166(37) (reports by skilled persons); and
- (b) did not receive the required report.

(2) The FCA may, with the consent of the PRA, make an election in relation to the notice.

(3) If the FCA makes an election in relation to the notice, the PRA and the notice are to be treated as if the PRA had given the notice.

(4) The FCA and the notice are also to be treated as if the FCA had given the notice if, in the election, the FCA makes a statement to that effect.

(5) The FCA may not make an election unless the person referred to as A in subsection (2) of section 166—

- (a) is, on the commencement date, a PRA-authorised person; or

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(35) Section 165A was inserted by the Financial Services Act 2010, section 18 and is amended by the 2012 Act, Schedule 12, paragraph 2.

(36) Section 165B was inserted by the Financial Services Act 2010, section 18 and is amended by the 2012 Act, Schedule 12, paragraph 3.

(37) Section 166 is substituted by the 2012 Act, Schedule 12, paragraph 5.

- (b) would have been a PRA-authorized person if the relevant time (within the meaning of that subsection) had occurred on the commencement date.
- (6) An election under paragraph (2) must—
  - (a) be in writing;
  - (b) specify the notice to which it relates;
  - (c) include a statement as to whether—
    - (i) the notice and the PRA are to be treated as if the PRA had given the notice; or
    - (ii) the notice, the FCA and the PRA are to be treated as if the FCA and the PRA had both given the notice; and
  - (d) be made within the period of 45 days which begins on the commencement date.
- (7) The FCA must send a copy of the election to—
  - (a) the person to whom the notice was given; and
  - (b) the PRA.

#### **Appointment of persons to carry out investigations**

- 19.**—(1) Paragraphs (2) and (3) apply if, before the commencement date, the Authority—
- (a) appointed a person under section 167(1)(**38**) (appointment of persons to carry out general investigations) or 168(3) or (5)(**39**) (appointment of persons to carry out investigations in particular cases); and
  - (b) had not issued a decision notice in relation to the matter which is the subject of the investigation.
- (2) The FCA may, with the consent of the PRA, make an election in relation to the investigation.
- (3) If the FCA makes an election in relation to the investigation, the PRA is to be treated as the investigating authority for the purposes of Part 11 (information gathering and investigations).
- (4) The FCA is to be treated also as the investigating authority for the purposes of Part 11 if, in the election, the FCA makes a statement to that effect.
- (5) An election under paragraph (2) must—
- (a) be in writing;
  - (b) specify the investigation to which it relates;
  - (c) include a statement as to whether—
    - (i) the PRA alone is, or
    - (ii) the FCA and the PRA are both,to be treated as the investigating authority for the purposes of Part 11; and
  - (d) be made within the period of 45 days which begins on the commencement date.
- (6) The FCA must send a copy of the election to—
- (a) the person appointed to carry out the investigation; and
  - (b) the PRA.
- (7) Paragraph (8) applies if—

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**(38)** Section 167(1) was amended by [S.I. 2007/126](#) and is further amended by the 2012 Act, Schedule 12, Part 1, paragraph 7.

**(39)** Section 168(3) and (5) is amended by the 2012 Act, Schedule 12, Part 1, paragraph 8.

- (a) before the commencement date, the Authority appointed a person under section 167(1), 168(3) or 168(5)(40); and
  - (b) an election is made under paragraph (2).
- (8) Any written notice given by the Authority before the commencement date—
- (a) of the appointment of the investigator for the purposes of section 170(2)(41) (investigations: general); or
  - (b) of a change in the scope or conduct of the investigation,  
is to be treated as if it had been given by the PRA or, if the election includes a statement in compliance with paragraph (5)(c)(ii), by the FCA and the PRA.
- (9) Paragraph (10) applies in respect of a contravention of a rule which occurred, and ceased to occur, before the commencement date.
- (10) Section 168(4)(c) applies as if for “investigating authority” there were substituted “Financial Services Authority”.

### **Support for overseas regulators**

- 20.—(1) Paragraph (2) applies if, before the commencement date, the Authority—
- (a) received a request from an overseas regulator; and
  - (b) did not take action as mentioned in section 169(1)(42) (investigations etc in support of overseas regulator) or 169A(1)(43) (support of overseas regulator with respect to financial stability).
- (2) The request is to be treated as if it had been received by the PRA and, for the purposes section 169, the FCA.

### **Entry of premises under warrant**

21. Section 176(44) (entry of premises under warrant) applies as if—
- (a) information given on oath by the Authority before the commencement date had been given by a regulator;
  - (b) an information requirement imposed by the Authority before the commencement date had been imposed by a regulator;
  - (c) an investigator appointed by the Authority before the commencement date had been appointed by a regulator.

### **Legal professional privilege**

- 22.—(1) Paragraphs (2) and (3) apply in respect of legally privileged information disclosed by the FCA to—
- (a) the PRA, for the purposes of the PRA’s functions; or
  - (b) to the Bank of England for the Bank of England’s functions conferred by or under FSMA 2000.
- (2) In respect of any legally privileged information disclosed by the FCA to the PRA—

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(40) Section 168 is amended by the 2012 Act, Schedule 12, paragraph 8. There are other amending instruments but none is relevant.  
(41) Section 170 is amended by the 2012 Act, Schedule 12, paragraph 11  
(42) Section 169 is amended by the 2012 Act, Schedule 12, paragraph 9. There are other amending instruments but none is relevant.  
(43) Section 169A was inserted by the Financial Services Act 2010, section 18 and is further amended by the 2012 Act, Schedule 12, paragraph 10.  
(44) Section 176 is amended by the 2012 Act, Schedule 12, paragraph 14. There are other amending instruments but none is relevant.

- (a) the disclosure is to be ignored for the purposes of any claim to legal professional privilege or, in Scotland, confidentiality of communications which the FCA is entitled to make; and
  - (b) the PRA is to be entitled to claim legal professional privilege or, in Scotland, confidentiality of communications in respect of the information.
- (3) In respect of any legally privileged information disclosed by the FCA to the Bank of England
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- (a) the disclosure is to be ignored for the purposes of any claim to legal professional privilege or, in Scotland, confidentiality of communications which the FCA is entitled to make; and
  - (b) the Bank is to be entitled to claim legal professional privilege or, in Scotland, confidentiality of communications in respect of the information.
- (4) In this article, “legally privileged information” means information received or generated by the Authority, before the commencement date, in respect of which the FCA could maintain a claim to legal professional privilege or, in Scotland, to confidentiality of communications in legal proceedings.

## PART 6

### Control over authorised persons

#### Application of articles 24 to 27

23. Articles 24 to 27 apply if, before the commencement date, the Authority—
- (a) received a notice given under section 178(45) (obligation to notify: acquisition of control); and
  - (b) the notice would have been required to be given to the PRA as the appropriate regulator (within the meaning of section 178) had the notice been given on the commencement date.

#### Obligation to notify: acquisition of control

- 24.—(1) The notice is to be treated as if it had been given to the PRA.
- (2) Information given to the notice-giver by the Authority for the purposes of section 180(2) (acknowledgement of receipt), that a notice is incomplete, is to be treated as if it had been given by the PRA.

#### Assessment

- 25.—(1) Paragraphs (2) to (6) apply if, before the commencement date—
- (a) the Authority gave an acknowledgement under section 180(1); and
  - (b) the assessment period within the meaning of section 189(1) (assessment: procedure) had not expired.
- (2) The acknowledgement is to be treated as if it had been given by the PRA, on the day that it was actually given.
- (3) Any action taken by the Authority under section 185 (assessment: general) before the commencement date is to be treated as if it had been taken by the PRA.
- (4) Any consultation undertaken, and any steps taken in compliance with prescribed requirements, by the Authority before the commencement date for the purposes of section 188

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(45) Sections 178 to 191G were substituted by [S.I. 2009/534](#) and are amended by the 2012 Act, section 26.

(assessment: consultation with EC competent authorities) or 191A(5) (objection) are to be treated as if they had been taken, or undertaken, by the PRA.

(5) Any information or documents given to the Authority in connection with or for the purposes of the section 178 notice are to be treated as if they had been given to the PRA.

(6) Any information given by the Authority under section 189(3) before the commencement date is to be treated as having been given by the PRA.

### **Approval**

**26.**—(1) Paragraph (2) applies if, before the commencement date, the Authority—

- (a) approved the acquisition unconditionally by notice under section 189(4)(a);
- (b) was treated under section 189(6) as having approved the acquisition; or
- (c) approved the acquisition subject to conditions by a final notice following a decision notice given under section 189(7).

(2) The notice, the approval and any conditions (as the case may be) are to be treated as having been given or imposed by the PRA.

(3) Paragraph (4) applies if, before the commencement date—

- (a) the Authority specified or extended a period under section 191 (duration of approval); and
- (b) the period had not expired.

(4) The period is to be treated as having been specified or extended, as the case may be, by the PRA.

### **Requests for further information**

**27.**—(1) Paragraphs (2) and (3) apply to a request for information made by the Authority under section 190(1) in a case where the fiftieth working day of the assessment period falls on or after the commencement date.

(2) The request is to be treated as if it had been made by the PRA.

(3) An acknowledgement of receipt of information given by the Authority before the commencement date for the purposes of section 190(6) is to be treated as if it had been given by the PRA.

### **Restriction notices**

**28.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) the Authority gave a restriction notice under section 191B; and
- (b) had not withdrawn the restriction notice.

(2) The restriction notice is to be treated as if it had been given by the PRA.

### **Obligations to notify disposition of control**

**29.**—(1) Paragraph (2) applies if—

- (a) before the commencement date, the Authority received a notice given under section 191D (obligation to notify: dispositions of control); and
- (b) the notice would have been required to be given to the PRA as the appropriate regulator (within the meaning of section 178) had the notice been given on the commencement date.

(2) The notice is to be treated as if it had been given to the PRA.

## Offences

30. For the purposes of section 191F(6) (offences under Part 12), information given to the Authority before the commencement date is to be treated as if it had been given to the PRA.

## PART 7

### The Financial Services Compensation Scheme

#### The Financial Services Compensation Scheme

31.—(1) Paragraph (2) applies in respect of the persons who, immediately before the commencement date, were the persons appointed by the Authority in accordance with section 212(4)(46) (the scheme manager) to be—

- (a) the chairman of the scheme manager; and
- (b) the other members of the board.

(2) The persons are to be treated as if appointed by the FCA and the PRA in accordance with section 212(4) to be—

- (a) where paragraph (1)(a) applies, the chairman of the scheme manager; and
- (b) where paragraph (1)(b) applies, the other members of the board.

(3) If the terms and conditions on which a person mentioned in paragraph (1) was appointed by the Authority are not, on the commencement date, in accordance with section 212(5) of the 2012 Act, the FCA and the PRA must amend the terms and conditions of the appointment.

## PART 8

### Recognised investment exchanges and clearing houses

#### Exemption for recognised investment exchanges

32.—(1) Paragraph (2) applies if a recognised investment exchange—

- (a) immediately before the commencement date—
  - (i) carried on a regulated activity for the purposes of, or in connection with, the provision of clearing services by the exchange, and
  - (ii) was exempt from the general prohibition by virtue of section 285(2)(b)(47) (exemption for recognised investment exchanges and clearing houses); and
- (b) continues to carry on, after the commencement date, that regulated activity for the purposes of, or in connection with, the provision of clearing services by the exchange.

(2) The recognised investment exchange is to be treated as if the Bank of England had made a recognition order declaring it to be a recognised clearing house (separate from, and in addition to, its recognition as a recognised investment exchange) under—

- (a) section 292(2)(48) (overseas investment exchanges and overseas clearing houses), in the case of an overseas investment exchange, and

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(46) Section 212 is amended by the 2012 Act, Schedule 10, paragraph 2. There are other amending instruments but none is relevant.

(47) Section 285 is amended by the 2012 Act, section 28.

(48) Section 292(2) is amended by the 2012 Act, Schedule 8, paragraph 8.

- (b) in any other case, section 290(1)(**49**) (recognition orders).
- (3) But paragraph (2) ceases to have effect in relation to the recognised investment exchange on the later of—
- (a) the day which is the last day of the period of six months beginning on the date of entry into force of all the regulatory technical standards under Articles 16, 25, 26, 29, 34, 41, 42, 44, 45, 47 and 49 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4th July 2012 on OTC derivatives, central counterparties and trade repositories(**50**); and
  - (b) if the recognised investment exchange submits an application for authorisation in accordance with Article 17 of that Regulation on or before the last day of that period, the day after the day on which the application is determined in accordance with that Regulation.

### **Application by a clearing house**

- 33.**—(1) Paragraphs (2) to (6) apply if, before the commencement date, the Authority—
- (a) had received an application made in accordance with section 288(**51**) (application by a clearing house); and
  - (b) had not determined the application.
- (2) The application is to be treated as if it had been made to the Bank of England on the date on which it was made.
- (3) A requirement imposed by the Authority under section 288(2)(d) is to be treated as if it had been imposed by the Bank of England.
- (4) Information requested by the Authority under section 289(1)(**52**) (applications: supplementary) is to be treated as if it had been requested by the Bank of England.
- (5) A direction given by the Authority under section 289(2) is to be treated as if it had been given by the Bank of England.
- (6) Information provided to the Authority in accordance with section 289(2) is to be treated as if it had been provided to the Bank of England.

### **Recognition orders for recognised clearing houses**

- 34.**—(1) Paragraph (2) applies if, before the commencement date, the Authority—
- (a) had made a recognition order under section 290 or section 292 declaring the applicant to be a recognised clearing house; and
  - (b) had not revoked the recognition order.
- (2) The recognition order is to be treated as if it had been made by the Bank of England.

### **Notification requirements**

- 35.**—(1) Paragraph (3) applies if, before the commencement date, a recognised clearing house (other than an overseas clearing house)—
- (a) altered or revoked any of its rules or guidance, made new rules or issued new guidance; and

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(**49**) Section 290(1) is amended by the 2012 Act, Schedule 8, paragraph 6.

(**50**) OJ L 201, 27.7.2012, p1.

(**51**) Section 288 is amended by the 2012 Act, Schedule 8, paragraph 4.

(**52**) Section 289 is amended by the 2012 Act, Schedule 8, paragraph 5.

- (b) did not give written notice to the Authority for the purposes of section 293(5)(**53**) (notification requirements).
- (2) Paragraph (3) also applies if, before the commencement date, a recognised clearing house (other than an overseas clearing house)—
  - (a) made a change in—
    - (i) the recognised investment exchanges for whom it provides clearing services, or
    - (ii) the criteria which it applies when determining for whom (other than recognised investment exchanges) it will provide clearing services; and
  - (b) did not give written notice to the Authority for the purposes of section 293(7).
- (3) The recognised clearing house must give written notice to the Bank of England and the FCA without delay.
- (4) Paragraph (5) applies if, before the commencement date, a recognised investment exchange (other than an overseas investment exchange)—
  - (a) made a change in—
    - (i) the arrangements it makes for the provision of clearing services in respect of transactions effected on the exchange, or
    - (ii) the criteria which it applies when determining to whom it will provide clearing services; and
  - (b) did not give written notice to the Authority for the purposes of section 293(6) (notification requirements).
- (5) The recognised investment exchange must give written notice to the Bank of England and the FCA without delay.

### **Power to give directions**

- 36.**—(1) Paragraph (2) applies if, before the commencement date—
  - (a) the Authority gave a direction under section 296(2)(**54**) (power to give directions) to a recognised clearing house; and
  - (b) the clearing house did not take the steps specified in the direction.
- (2) The direction is to be treated as if it had been given by the Bank of England.

### **Revoking recognition**

- 37.**—(1) Paragraph (2) applies if—
  - (a) the Authority had, before the commencement date, made an order under section 297(**55**) (revoking recognition) revoking the recognition order made in relation to a recognised clearing house; and
  - (b) the date on which the revocation order takes effect is, or is after, the commencement date.
- (2) The revocation order is to be treated as if it had been made by the Bank of England.

### **Directions and revocation: procedure**

- 38.**—(1) Paragraphs (2) to (4) apply if—

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(53) Section 293 is amended by the 2012 Act, Schedule 8, paragraph 10.

(54) Section 296 is amended by the 2012 Act, Schedule 8, paragraph 14.

(55) Section 297 was amended by [S.I. 2007/126](#) and [2012/916](#), and is further amended by the 2012 Act, Schedule 8, paragraph 15.



- (a) the Authority gave a notice under section 298(**56**) (directions and revocation: procedure) (including a written notice under section 298 as applied by section 290(5) or section 290A(5)(**57**) (refusal of recognition on ground of excessive regulatory provision)) to a recognised clearing house before the commencement date; and
  - (b) the end of the period for making representations is, or is after, the commencement date.
- (2) The notice is to be treated as if it had been given by the Bank of England.
- (3) Any representations made to the Authority before the commencement date are to be treated as if they had been made to the Bank of England.
- (4) Representations may be made to the Bank of England before the end of the period specified in the notice.

### **Complaints about recognised bodies**

- 39.**—(1) Paragraph (2) applies if, before the commencement date—
- (a) the Authority had received a relevant complaint (within the meaning of section 299(2)(**58**) (complaints about recognised bodies)) about a recognised clearing house; and
  - (b) a response had not been sent to the complainant following the completion of the investigation.
- (2) The complaint is to be treated as if it had been made to the Bank of England.

### **Power to disallow excessive regulatory provision**

**40.** A direction given before the commencement date by the Authority under section 300A(2)(**59**) (power to disallow excessive regulatory provision) to a recognised clearing house is to be treated as if it had been given by the Bank of England.

### **Duty to notify proposal to make regulatory provision**

- 41.**—(1) Paragraph (2) applies if, before the commencement date, a recognised clearing house—
- (a) had given notice to the Authority under section 300B(**60**) (duty to notify proposal to make regulatory provision); and
  - (b) had not made the regulatory provision to which the notice relates.
- (2) The notice is to be treated as if it had been given to the Bank of England.

### **Consideration whether to allow proposed provision**

- 42.**—(1) Paragraphs (2) to (4) apply if, before the commencement date, the Authority—
- (a) had notified a recognised clearing house under section 300C(3)(**61**) (restriction on making provision before deciding whether to act) that it was calling in a proposal to make regulatory provision; and
  - (b) had not notified the clearing house of its decision whether to disallow the provision.

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(56) Section 298 was amended by [S.I. 2007/126](#), and is further amended by the 2012 Act, section 32 and Schedule 8, paragraph 16.

(57) Section 290A was inserted by the Investment Exchanges and Clearing Houses Act 2006 ([c.55](#)), section 4 and is amended by the 2012 Act, Schedule 8, paragraph 7.

(58) Section 299 is amended by the 2012 Act, Schedule 8, paragraph 17.

(59) Section 300A was inserted by the Investment Exchanges and Clearing Houses Act 2006, section 1 and is amended by the 2012 Act, Schedule 8, paragraph 18. There are other amending instruments but none is relevant.

(60) Section 300B was inserted by the Investment Exchanges and Clearing Houses Act 2006, section 2 and is amended by the 2012 Act, Schedule 8, paragraph 19.

(61) Section 300C was inserted by the Investment Exchanges and Clearing Houses Act 2006, section 2 and is amended by the 2012 Act, Schedule 8, paragraph 20.

(2) The notification to which paragraph (1)(a) refers is to be treated as if it had been given by the Bank of England.

(3) Any notice published under section 300D(2)(62) (consideration whether to disallow proposed provision) is to be treated as if it had been published by the Bank of England.

(4) Any extension of the period for making representations granted by the Authority under section 300D(3) is to be treated as if it had been granted by the Bank of England.

(5) Paragraph (6) applies if, before the commencement date—

(a) the Authority had notified a recognised clearing house of its decision not to disallow a regulatory provision, for the purposes of section 300D(5)(a); and

(b) the regulatory provision had not been made.

(6) The notification is to be treated as if it had been given by the Bank of England.

### **Supervision of certain contracts**

**43.**—(1) A person included, immediately before the commencement date, in the list maintained by the Authority for the purposes of section 301(2)(63) (supervision of certain contracts) is to be included on the commencement date in the list maintained by the Bank of England for the purposes of that section.

(2) Paragraph (3) applies if, before the commencement date, the Treasury—

(a) gave approval to the Authority for—

(i) conditions for admission to the list;

(ii) arrangements for admission to, and removal from, the list; and

(b) had not withdrawn the approval.

(3) The approval is to be treated as if it had been given to the Bank of England.

## **PART 9**

### **Lloyd's**

#### **Former underwriting members**

**44.**—(1) Paragraph (2) applies in respect of a requirement imposed by the Authority under section 320(3)(64) (former underwriting members) if the requirement had effect immediately before the commencement date.

(2) The requirement is to be treated as if it had been imposed by the PRA.

(3) This article does not apply in the event that the activity of effecting or carrying out contracts of insurance as principal is not to any extent a PRA-regulated activity.

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(62) Section 300D was inserted by the Investment Exchanges and Clearing Houses Act 2006, section 2 and is amended by the 2012 Act, Schedule 8, paragraph 21.

(63) Section 301 is amended by the 2012 Act, Schedule 8, paragraph 22.

(64) Section 320 is amended by the 2012 Act, section 40.

## PART 10

### Insolvency

#### **Powers of FCA and PRA to participate in proceedings: trust deeds for creditors in Scotland**

**45.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) a trust deed had been granted by or on behalf of a debtor who is, on the commencement date, a PRA-authorised person;
- (b) the trustee had sent to the Authority—
  - (i) a copy of the trust deed, or any other document or information in accordance with section 358(2)(**65**) (powers of FCA and PRA to participate in proceedings: trust deeds for creditors in Scotland), or
  - (ii) notice of a meeting of creditors in accordance with section 358(4); and
- (c) the trust deed had not ceased to have effect.

(2) The copy of the trust deed, other document, information or notice is to be treated as if it had been sent to the PRA (as well as to the FCA).

#### **Administrator's duty to report to FCA and PRA**

**46.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) an administrator made a report to the Authority in accordance with section 361(2)(**66**) (administrator's duty to report); and
- (b) the administration had not ended.

(2) If the report relates to a regulated activity which is, on the commencement date, a PRA-regulated activity, the report is to be treated as if it had been made to the PRA (as well as to the FCA).

#### **Powers of FCA and PRA to participate in proceedings: administration**

**47.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) a notice or other document was sent to the Authority in accordance with section 362(3)(**67**) (powers to participate in proceedings); and
- (b) the administration had not ended.

(2) If the notice or other document relates to a person who is, on the commencement date, a PRA-regulated person within the meaning of section 355(**68**) (interpretation of Part 24), the notice or other document is to be treated as if it had been sent to the PRA (as well as to the FCA).

#### **Administrator appointed by company or directors**

**48.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) the Authority had consented for the purposes of section 362A(2)(**69**) (requirement for consent to the appointment of an administrator) to the appointment of an administrator; and

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(65) Section 358 is amended by the 2012 Act, Schedule 14, paragraph 5.

(66) Section 361(2) was substituted by the Enterprise Act 2002 (c.40), Schedule 17, paragraph 56 and is amended by the 2012 Act, Schedule 14, paragraph 7.

(67) Section 362(3) is amended by the 2012 Act, Schedule 14, paragraph 8.

(68) Section 355 is amended by the 2012 Act, Schedule 14, paragraph 2.

(69) Section 362A(2) was inserted by the Enterprise Act 2002, Schedule 17, paragraph 58 and amended by S.I. 2005/1455 (N.I. 10), and is further amended by the 2012 Act, Schedule 14, paragraph 9.

(b) an administrator had not been appointed.

(2) If the appointment relates to the administration of a company or partnership which is, on the commencement date, a PRA-regulated person within the meaning of section 355, the consent is to be treated as if it had been given by the PRA.

#### **Powers of FCA and PRA to participate in proceedings (receivership)**

**49.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) a report was sent to the Authority in accordance with section 363(4)(70) (powers to participate in proceedings); and
- (b) the receivership had not ended.

(2) If the report relates to person who is, on the commencement date, a PRA-regulated person within the meaning of section 355, the report is to be treated as if it had been sent to the PRA (as well as to the FCA).

#### **Receiver's duty to report to FCA and PRA**

**50.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) a receiver made a report to the Authority in accordance with section 364(71) (receiver's duty to report); and
- (b) the receivership had not ended.

(2) If the report relates to a regulated activity which is, on the commencement date, a PRA-regulated activity, the report is to be treated as if it had been made to the PRA (as well as to the FCA).

#### **Powers of FCA and PRA to participate in proceedings (voluntary winding up)**

**51.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) a notice or other document was sent to the Authority in accordance with section 365(4)(72) (powers to participate in proceedings); and
- (b) the company had not been wound up.

(2) If the notice or other document relates to a person who is, on the commencement date, a PRA-authorized person, the notice or other document is to be treated as if it had been sent to the PRA (as well as to the FCA).

#### **Insurers effecting or carrying out long-term contracts of insurance**

**52.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) the Authority gave consent to the voluntary winding-up of an insurer for the purposes of section 366(1)(73) (insurers effecting or carrying out long-term contracts of insurance); and
- (b) the insurer had not been wound up.

(2) The consent is to be treated as if it had been given by the PRA.

(3) Paragraph (4) applies where, before the commencement date—

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(70) Section 363 is amended by the 2012 Act, Schedule 14, paragraph 10.

(71) Section 364 is amended by the 2012 Act, Schedule 14, paragraph 11.

(72) Section 365(4) is amended by the 2012 Act, Schedule 14, paragraph 12.

(73) Section 366 was amended by [S.I. 2007/2194](#) and is further amended by the 2012 Act, Schedule 14, paragraph 13.

- (a) the Authority had been notified under section 366(2) that notice had been given of a general meeting of an insurer specifying the intention to propose a resolution for voluntary winding up of the insurer; and
  - (b) the insurer had not been wound up.
- (4) The notice is to be treated as if it had been received by the PRA.
- (5) Paragraph (6) applies where, before the commencement date—
- (a) a copy of a winding-up resolution was forwarded to the registrar of companies in accordance with section 30 of the Companies Act 2006<sup>(74)</sup> (copies of resolutions or agreements to be forwarded to registrar) accompanied by a certificate issued by the Authority stating that it consents to the voluntary winding up of the insurer, in accordance with section 366(5); and
  - (b) the registrar had not recorded the information contained in the resolution.
- (6) The certificate is to be treated as if it had been issued by the PRA.
- (7) This article does not apply in the event that the activity of effecting or carrying out long-term contracts of insurance as principal is not to any extent a PRA-regulated activity.

#### **Insurers: service of petition etc**

- 53.**—(1) Paragraph (2) applies if, before the commencement date—
- (a) a copy of—
    - (i) a petition was served on the Authority in accordance with section 369(1)<sup>(75)</sup> (insurers: service of petition etc), or
    - (ii) an application was served on the Authority in accordance with section 369(2); and
  - (b) the petition or application had not been heard.
- (2) If the petition or application relates to a person who is, on the commencement date, a PRA-authorised person, the copy is to be treated as if it had been served on the PRA (as well as on the FCA).

#### **Reclaim funds: service of petition etc**

- 54.**—(1) Paragraph (2) applies if, before the commencement date—
- (a) a copy of—
    - (i) a petition was served on the Authority in accordance with section 369A(1)<sup>(76)</sup> (reclaim funds: service of petition etc), or
    - (ii) an application was served on the Authority in accordance with section 369(2); and
  - (b) the petition or application had not been heard.
- (2) If the petition or application relates to a person who is, on the commencement date, a PRA-authorised person, the copy is to be treated as if it had been served on the PRA (as well as on the FCA).

#### **Liquidator's duty to report to FCA and PRA**

- 55.**—(1) Paragraph (2) applies if, before the commencement date—

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<sup>(74)</sup> 2006 c.46.

<sup>(75)</sup> Section 369 is amended by the 2012 Act, Schedule 14, paragraph 16.

<sup>(76)</sup> Section 369A was inserted by the Dormant Bank and Building Society Accounts Act 2008, Schedule 2, paragraph 7, and is amended by the 2012 Act, Schedule 14, paragraph 17.

- (a) a liquidator made a report to the Authority in accordance with section 370(77) (liquidator's duty to report); and
- (b) the liquidation had not ended.

(2) If the report relates to a regulated activity which is, on the commencement date, a PRA-regulated activity, the report is to be treated as if it had been made to the PRA (as well as to the FCA).

#### **Powers of FCA and PRA to participate in proceedings: liquidation**

**56.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) a notice or other document was sent to the Authority in accordance with section 371(3)(78) (powers of FCA and PRA to participate in proceedings); and
- (b) the body had not been liquidated.

(2) If the notice or other document relates to a person who is, on the commencement date, a PRA-regulated person within the meaning of section 355, the notice or other document is to be treated as if it had been sent to the PRA (as well as to the FCA).

#### **Insolvency practitioner's duty to report to FCA and PRA**

**57.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) an insolvency practitioner made a report to the Authority in accordance with section 373(1)(79) (insolvency practitioner's duty to report); and
- (b) the insolvency had not ended.

(2) If the report relates to a regulated activity which is, on the commencement date, a PRA-regulated activity, the report is to be treated as if it had been made to the PRA (as well as to the FCA).

#### **Powers of FCA and PRA to participate in proceedings: insolvency**

**58.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) a report was sent to the Authority in accordance with section 374(3)(80) (powers to participate in proceedings); and
- (b) the insolvency had not ended.

(2) If the report relates to person who is, on the commencement date, a PRA-authorized person, the report is to be treated as if it had been sent to the PRA (as well as to the FCA).

#### **Right of PRA to apply for an order**

**59.** In section 375(1A)(81) (right to apply for an order), the reference to a PRA-regulated activity includes an activity which would have been a PRA-regulated activity if it had been carried on on the commencement date.

#### **Continuation of contracts of long-term insurance where insurer in liquidation**

**60.**—(1) Paragraph (2) applies if, before the commencement date—

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(77) Section 370 is amended by the 2012 Act, Schedule 14, paragraph 18.

(78) Section 371 is amended by the 2012 Act, Schedule 14, paragraph 19. There are other amending instruments but none is relevant.

(79) Section 373 is amended by the 2012 Act, Schedule 14, paragraph 21.

(80) Section 374 is amended by the 2012 Act, Schedule 14, paragraph 22.

(81) Section 375(1A) is inserted by the 2012 Act, Schedule 14, paragraph 23.

- (a) the court appointed an independent actuary for the purposes of subsection (10) of section 376(82) (continuation of contracts of long-term insurance where insurer in liquidation) on the application of the Authority; and
  - (b) the actuary had not reported to the Authority for the purposes of that subsection.
- (2) The actuary is to report to the PRA.
- (3) This article does not apply in the event that the activity of effecting or carrying out long-term contracts of insurance as principal is not to any extent a PRA-regulated activity.

## PART 11

### Investigation of complaints

#### Complaints made before the commencement date

- 61.—(1) Paragraph (2) applies if, before the commencement date—
- (a) a complaint was made to the Authority;
  - (b) the complaint was eligible for investigation in accordance with the complaints scheme made under paragraph 7 of Schedule 1(83) (arrangements for the investigation of complaints) (“the old scheme”); and
  - (c) the investigation of the complaint was not completed.
- (2) Unless both the Authority and the investigator appointed under that paragraph 7 decided, before the commencement date, not to investigate the complaint—
- (a) the complaint is to be treated as if it had been made to the FCA under the complaints scheme made under section 84 of the 2012 Act (arrangements for the investigation of complaints) (“the new scheme”);
  - (b) anything done by the Authority for the purposes of, or in connection with, the investigation of the complaint in accordance with the old scheme is to be treated as if it had been done by the FCA for the purposes of, or in connection with, the investigation of the complaint in accordance with the new scheme;
  - (c) subject to section 87(9) of the 2012 Act (investigation of complaints), anything done by the investigator or a person appointed by the investigator for the purposes of, or in connection with, the investigation of the complaint in accordance with the old scheme is to be treated as if it had been done by the investigator or the person appointed by the investigator (as the case may be) for the purposes of, or in connection with, the investigation of the complaint in accordance with the new scheme.
- (3) For the purposes of paragraph (2)(a)—
- (a) section 84(1)(a) of the 2012 Act applies as if the reference to the relevant functions of the FCA were a reference to the functions of the Authority (other than its legislative functions) within the meaning of paragraph 7(1)(a) of Schedule 1 as it applied immediately before the commencement date; and
  - (b) section 85 of the 2012 Act is to be treated as if it were omitted.
- (4) Paragraphs (5) and (6) apply if, before the commencement date—
- (a) the investigator reported that a complaint was well-founded or criticised the Authority in a report; and

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(82) Section 376 is amended by the 2012 Act, Schedule 14, paragraph 24.

(83) Schedule 1 is repealed by the 2012 Act, section 6.

- (b) the Authority did not inform the investigator and the complainant in accordance with paragraph 8(6) of Schedule 1 (investigation of complaints) of the steps it proposed to take in response to the report.
- (5) The report is to be treated as if it had been made to the FCA under the new scheme.
- (6) The FCA must inform the investigator and the complainant in accordance with section 87(6) of the 2012 Act of the steps it proposes to take in response to the report.
- (7) Paragraph (8) applies if, before the commencement date—
  - (a) the investigator required the Authority under paragraph 8(7) of Schedule 1 to publish the whole or a specified part of the Authority’s response to the investigator’s report; and
  - (b) the Authority had not complied with the requirement.
- (8) The FCA must publish the response or the specified part.

### **The investigator**

**62.**—(1) Paragraph (2) applies in respect of the person who, immediately before the commencement date, was the investigator appointed by the Authority in accordance with paragraph 7(1)(b) and (3) of Schedule 1.

(2) The person is to be treated as if appointed by the FCA, the PRA and the Bank of England in accordance with section 84(1)(b) and (4) of the 2012 Act.

(3) If the terms and conditions on which that person was appointed by the Authority are not, on the commencement date, in accordance with section 84(5) of the 2012 Act, the FCA, the PRA and the Bank of England must amend the terms and conditions of the appointment.

### **Complaints made on or after the commencement date about a function of the Authority**

**63.**—(1) Paragraph (2) applies in respect of a complaint made on or after the commencement date arising in connection with the exercise by the Authority, or failure to exercise, any of its functions (other than its legislative functions) before the commencement date.

(2) Sections 84 and 85 apply as if the relevant functions of the FCA include the functions, before the commencement date, of the Authority (other than the Authority’s legislative functions).

## **PART 12**

### **Companies Act 1989**

#### **Request for assistance by overseas regulatory authority**

**64.**—(1) Section 82(3) of the Companies Act 1989<sup>(84)</sup> (request for assistance by overseas regulatory authority) is modified as set out in paragraph (2) if, before the commencement date, the Authority was satisfied as is mentioned in that section 82(3) in respect of the assistance requested.

(2) In that section 82(3), for “and the corresponding UK regulator (if any) are” substitute “is”.

(3) Section 82(5)<sup>(85)</sup> of the Companies Act 1989 does not apply if, before the commencement date, the Secretary of State consulted the Authority in accordance with that section 82(5) in respect of the assistance requested.

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<sup>(84)</sup> 1989 c.40. Section 82(3) was amended by S.I 2001/3649 and is further amended by the 2012 Act, Schedule 18, paragraph 63.  
<sup>(85)</sup> Section 82(5) was amended by the Bank of England Act 1998, Schedule 5, paragraph 66 and is further amended by the 2012 Act, Schedule 18, Part 2, paragraph 63.



### Change in default rules

**65.**—(1) This article applies if a recognised UK clearing house has given the Authority notice under section 157(1)(**86**) of the Companies Act 1989 (change in default rules) on a day which is 14 days or less before the commencement date.

(2) If the Authority gave a direction under that provision before the commencement date, the direction is to be treated as if it had been given by the Bank of England.

(3) If the Authority did not give a direction under that provision before the commencement date, the notice is to be treated as if it had been given to the Bank of England.

### Duty to report on completion of default proceedings

**66.**—(1) Paragraph (2) applies if, before the commencement date—

(a) the Authority gave notice to a recognised overseas clearing house under section 162(1A)(**87**) of the Companies Act 1989 (duty to report on completion of default proceedings); and

(b) a report in respect of a proceeding was not provided to the Authority in accordance with section 162(1) of that Act.

(2) The report is to be provided to the Bank of England.

(3) Paragraph (4) applies if, before the commencement date—

(a) a recognised clearing house was under an obligation to report on a proceeding to the Authority in accordance with section 162 of the Companies Act 1989, and

(b) the recognised clearing house did not report to the Authority on the proceeding.

(4) The recognised clearing house must report to the Bank of England on the proceeding.

(5) Paragraph (6) applies if, before the commencement date, the Authority—

(a) received a report from a recognised clearing house in accordance with section 162 of the Companies Act 1989; and

(b) had not published notice of that fact in accordance with subsection (4) of that section.

(6) The Bank of England must publish notice of that fact in accordance with that subsection (4).

### Powers to give directions

**67.**—(1) This article applies in any case where, before the commencement date, a clearing house has not taken action under its default rules.

(2) Paragraph (3) applies if, before the commencement date, the Authority—

(a) had consulted the clearing house for the purposes of section 166(3)(**88**) of the Companies Act 1989 (powers to give directions); and

(b) had not given a direction for the purposes of section 166(2) of the Companies Act 1989.

(3) The Bank of England is to be treated as if it had consulted the clearing house for the purposes of section 166(3) of the Companies Act 1989.

(4) A direction given, before the commencement date, by the Authority for the purposes of section 166 of the Companies Act 1989 is to be treated for the purposes of sections 166 and 167(**89**)

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(**86**) Section 157 was amended by [S.I. 2001/3649](#) and is further amended by the 2012 Act, Schedule 18, Part 2, paragraph 65.

(**87**) Section 162 was amended by [S.I. 1991/880](#) and [2001/3649](#), and is further amended by the 2012 Act, Schedule 18, Part 2, paragraph 66.

(**88**) Section 166 was amended by [S.I. 2001/3649](#) and is further amended by the 2012 Act, section 111.

(**89**) Section 167 was amended by [S.I. 2001/3649](#) and [2009/853](#) and is further amended by the 2012 Act, Schedule 18, Part 2, paragraph 67.

(application to determine whether default proceedings to be taken) of that Act as if it had been given by the Bank of England.

(5) In this article, “default rules” has the meaning given in section 188(1)(90) of the Companies Act 1989 (meaning of “default rules” and related expressions).

### **Application to determine whether default proceedings to be taken**

**68.**—(1) Paragraph (2) applies if, before the commencement date, the Authority—

(a) had received an application made under section 167(1B) of the Companies Act 1989 and in accordance with section 167(2) of that Act; and

(b) had not—

(i) notified the clearing house; or

(ii) given a direction under section 166(2)(a) of that Act.

(2) The application is to be treated as if it had been made to the Bank of England.

(3) Paragraph (4) applies if, before the commencement date, a clearing house—

(a) notified the Authority that it proposed to take action under its default rules; and

(b) had not taken such action.

(4) The duty to take action is enforceable, on the application of the Bank of England, by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988(91).

## **PART 13**

### **Transitory provisions**

#### **Solvency II**

**69.**—(1) Paragraph (2) has effect until such time as Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998(92) on the supplementary supervision of insurance undertakings in an insurance group is repealed by Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009(93) on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

(2) In section 3M(3)(d)(94) (directions relating to consolidated supervision of groups), for “Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)” substitute “Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group”.

#### **Rules made by the Bank of England before the commencement date**

**70.**—(1) Paragraphs (2) and (3) have effect in relation to rules made by the Bank of England before the commencement date under FSMA 2000 if the rules come into force on or after the commencement date.

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(90) Section 188(1) was amended by S.I. 2009/853.

(91) 1988 c.36.

(92) OJ L 330, 5.12.1998, p.1.

(93) OJ L 335, 17.12.2009, p.1.

(94) Section 3M is inserted by the 2012 Act, section 6.

(2) The Bank may make the rules irrespective of whether any draft of the rules published for the purposes of subsection (1) of section 138J (consultation by the PRA), as applied by paragraph 10 of Schedule 17A<sup>(95)</sup> (further provision in relation to exercise of Part 18 functions by Bank of England), was accompanied by a cost benefit analysis within the meaning of subsections (2)(a) and (7) of that section.

(3) Where the draft of the rules published for the purposes of subsection (1) of section 138J was not accompanied by a cost benefit analysis, section 138J(5)(a) does not apply.

27th February 2013

*Desmond Swayne*  
*David Evennett*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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<sup>(95)</sup> Schedule 17A is inserted by the 2012 Act, Schedule 7.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made under the Financial Services Act 2012 (c.21) (“the 2012 Act”) and makes transitional provision in relation to the coming into force of various provisions of that Act which amend the Financial Services and Markets Act 2000 (c.8) (“FSMA 2000”).

Article 1 provides for that article and article 70 to come into force on 25th March 2013. The rest of the Order comes into force on 1st April 2013; that date is defined as the “commencement date” for the purpose of the Order.

Articles 2 to 7 make transitional provision in respect of the Financial Conduct Authority (“FCA”) and the Prudential Regulation Authority (“PRA”). Article 2 makes provision in respect of the board of the Financial Services Authority (which is renamed as the Financial Conduct Authority by FSMA 2000 (as amended by the 2012 Act)). Article 3 makes provision in respect of the FCA’s first annual report, and article 4 makes provision in respect of the PRA’s first annual report. Articles 5 and 6 make provision in respect of the Consumer and Practitioner Panels. Article 7 makes provision in respect of references to “consumers” in certain provisions of FSMA 2000 (as amended by the 2012 Act).

Articles 8 to 11 make transitional provision in respect of control of business transfers under Part 7 of FSMA 2000.

Articles 12 to 14 make transitional provision in respect of appeals to the Upper Tribunal.

Articles 15 to 22 make transitional provision in respect of the information gathering and investigation powers in Part 11 of FSMA 2000, and in respect of legally privileged information.

Articles 23 to 30 make transitional provision in respect of control over authorised persons.

Article 31 makes transitional provision in respect of the scheme manager of the financial services compensation scheme.

Articles 32 to 43 make transitional provision in respect of recognised clearing houses and recognised investment exchanges.

Article 44 makes transitional provision in respect of Lloyd’s of London.

Articles 45 to 60 make transitional provision in respect of Part 24 of FSMA 2000 (insolvency).

Articles 61 to 63 make transitional provision in respect of complaints.

Articles 64 to 68 make transitional provision in respect of amendments to the Companies Act 1989 relating to recognised clearing houses.

Article 69 makes transitory provision in relation to a reference in FSMA 2000 (as amended by the 2012 Act) to Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

Article 70 makes transitory provision in relation to the making of rules by the Bank of England under FSMA 2000 (as amended by the 2012 Act)

A full impact assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from, Her Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ or on <http://www.hm-treasury.gov.uk/> and is published alongside the Order on <http://www.legislation.gov.uk/>.