

LORDS AMENDMENTS TO THE  
FINANCIAL SERVICES BILL

*[The page and line references are to HL Bill 25, the bill as first printed for the Lords.]*

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**Clause 1**

- 1 Page 1, line 6, leave out “members” and insert “directors”
- 2 Page 1, line 12, leave out “directors” and insert “non-executive directors”

**After Clause 2**

- 3 Insert the following new Clause—

**“Oversight Committee**

- (1) The Bank of England Act 1998 is amended as follows.
- (2) For section 3 substitute—

**“3A Oversight Committee**

- (1) There is to be a sub-committee of the court of directors of the Bank (“the Oversight Committee”) consisting of the non-executive directors of the Bank.
- (2) The functions of the Oversight Committee are—
  - (a) keeping under review the Bank’s performance in relation to—
    - (i) the Bank’s objectives (that is, the objectives specified in relation to it in this Act and the other objectives for the time being determined by the court of directors of the Bank),
    - (ii) the duty of the Financial Policy Committee under section 9C, and
    - (iii) the Bank’s strategy as for the time being determined by the court of directors of the Bank (including its financial stability strategy);

- (b) monitoring the extent to which the objectives set by the court of directors of the Bank in relation to the Bank's financial management have been met;
  - (c) keeping under review the internal financial controls of the Bank with a view to securing the proper conduct of its financial affairs;
  - (d) the functions conferred on the Oversight Committee by the provisions listed in subsection (4).
- (3) The court of directors of the Bank may arrange for specified functions of the Bank to be discharged by the Oversight Committee.
- (4) The provisions referred to in subsection (2)(d) are –
- (a) section 9B (review of procedures followed by Financial Policy Committee);
  - (b) section 16 (review of procedures followed by Monetary Policy Committee);
  - (c) paragraph 14 of Schedule 1 (remuneration of Governor and Deputy Governors);
  - (d) paragraph 5 of Schedule 2A (terms and conditions of office of members of Financial Policy Committee appointed under section 9B(1)(e));
  - (e) paragraph 9 of that Schedule (removal of members of Financial Policy Committee appointed under section 9B(1)(d) or (e));
  - (f) paragraph 4(2) of Schedule 3 (terms and conditions of office of members of Monetary Policy Committee appointed under section 13(2)(c));
  - (g) paragraph 9 of that Schedule (removal of members of Monetary Policy Committee appointed under section 13(2)(b) or (c));
  - (h) paragraph 15 of Schedule 1ZB to the Financial Services and Markets Act 2000 (terms of service and remuneration of members of the governing body of the Prudential Regulation Authority).

### **3B Oversight Committee: procedure**

- (1) The chair of the court (designated under paragraph 13 of Schedule 1) is to chair meetings of the Oversight Committee (when present).
- (2) The Committee is to determine its own procedure, but this is subject to subsection (1) and subsection (5).
- (3) The Committee may invite other persons to attend, or to attend and speak at, any meeting of the Committee.
- (4) The Committee may delegate any of its functions to two or more of its members.
- (5) If a member of the Committee (“M”) has any direct or indirect interest (including any reasonably likely future interest) in any dealing or business which falls to be considered by the Committee –
  - (a) M must disclose that interest to the Committee when it considers that dealing or business, and

- (b) the Committee must decide whether M is to be permitted to participate in any proceedings of the Committee relating to any question arising from its consideration of the dealing or business, and if so to what extent and subject to what conditions (if any).

### **3C Reviews**

- (1) In the discharge of any of its functions, the Oversight Committee may arrange—
  - (a) for a review to be conducted under this section in relation to any matter by a person appointed by the Committee, and
  - (b) for the person conducting the review to make one or more reports to the Committee.
- (2) The persons who may be appointed to conduct a review include an officer or employee of the Bank.
- (3) A review under this section is a “performance review” if it—
  - (a) is arranged by the Committee in the discharge of any of its functions under section 3A(2)(a) and (b), and
  - (b) relates to past events.
- (4) If the person to be appointed to conduct a performance review is an officer or employee of the Bank, the appointment requires the consent of the Governor of the Bank.
- (5) In the case of a performance review, the Committee must have regard to the desirability of ensuring that sufficient time has elapsed—
  - (a) for the review to be effective, and
  - (b) to avoid the review having a material adverse effect on the exercise by the Bank of its functions.

### **3D Publication of reports of performance reviews**

- (1) The Bank must give the Treasury a copy of any report made to the Oversight Committee by a person appointed under section 3C to conduct a performance review (as defined by subsection (3) of that section).
- (2) Subject to subsection (3), the Bank must also publish the report.
- (3) Subsection (2) does not require the publication of information whose publication at the time when the report is made would in the opinion of the court of directors of the Bank be against the public interest.
- (4) Where the court of directors decides under subsection (3) that publication of information at the time when the report is made would be against the public interest, it must keep under consideration the question of whether publication of the information would still be against the public interest.
- (5) Where the court of directors decides that publication of any information is no longer against the public interest, the Bank must publish the information.

- (6) The Treasury must lay before Parliament a copy of any report or other information published by the Bank under this section.

### **3E Recommendations resulting from review**

- (1) This section applies where a report made by a person appointed under section 3C to conduct a review makes recommendations to the Bank as to steps to be taken by it.
- (2) The Oversight Committee must—
- (a) monitor the Bank’s response to the report, and
  - (b) if or to the extent that the Bank accepts the recommendations, monitor the implementation of the recommendations.

### **3F Oversight Committee: further provisions**

- (1) The documents to which the Oversight Committee is to have access in the discharge of its functions include documents considered, or to be considered, by the Financial Policy Committee or the Monetary Policy Committee.
- (2) One or two members of the Oversight Committee may attend any meeting of the Financial Policy Committee or the Monetary Policy Committee, but a person attending by virtue of this subsection may not speak unless invited to do so by the person chairing the meeting.
- (3) Subsection (2) does not affect—
- (a) anything done in relation to the Financial Policy Committee by a member of that Committee who is also a member of the Oversight Committee,
  - (b) the powers of the Financial Policy Committee under paragraph 13 of Schedule 2A, or
  - (c) the powers of the Monetary Policy Committee under paragraph 13A of Schedule 3.”
- (3) In section 4 (annual report by the Bank), in subsection (2), for paragraph (a) substitute—
- “(a) a report by the Oversight Committee on the matters for which it is responsible, and”.
- (4) In section 16 (functions of court of directors)—
- (a) in subsection (1), for “court of directors of the Bank” substitute “Oversight Committee”,
  - (b) in subsection (2)—
    - (i) for “the court’s function” substitute “the function of the Oversight Committee”,
    - (ii) for “the Committee” substitute “the Monetary Policy Committee”,
  - (c) omit subsection (3), and
  - (d) accordingly, in the heading, for “court of directors” substitute “Oversight Committee”.

### **Clause 3**

- 5 Page 3, leave out lines 16 to 20 and insert –  
“(2) The member appointed under subsection (1)(d) is to be a person who has executive responsibility within the Bank for the analysis of threats to financial stability.”
- 6 Page 3, line 28, leave out “court of directors” and insert “Oversight Committee”
- 7 Page 3, line 28, at end insert “Financial Policy”
- 8 Page 3, leave out lines 30 and 31
- 9 Page 3, line 32, after “the” insert “Financial Policy”
- 10 Page 3, line 35, leave out from first “to” to end of line 36 and insert –  
“(a) contributing to the achievement by the Bank of the Financial Stability Objective, and  
(b) subject to that, supporting the economic policy of Her Majesty’s Government, including its objectives for growth and employment.”
- 11 Page 3, line 37, leave out “of that objective” and insert “by the Bank of the Financial Stability Objective”
- 12 Page 4, line 4, leave out “(1)” and insert “(1)(a)”
- 13 Page 4, line 21, at end insert –  
**“9CA Specification of matters relevant to economic policy**  
(1) The Treasury may by notice in writing to the Financial Policy Committee specify for the purposes of section 9C(1)(b) what the economic policy of Her Majesty’s Government is to be taken to be.  
(2) The Treasury must specify under subsection (1) the matter mentioned there –  
(a) before the end of the period of 30 days beginning with the day on which section 9C comes into force, and  
(b) at least once in every calendar year following that in which the first notice under that subsection is given.  
(3) Where the Treasury give notice under this section they must –  
(a) publish the notice in such manner as they think fit, and  
(b) lay a copy of it before Parliament.”
- 14 Page 4, line 29, at end insert –  
“( ) the responsibility of the Committee in relation to support for the economic policy of Her Majesty’s Government, including its objectives for growth and employment;”
- 15 Page 5, line 13, leave out from “while” to “seek” in line 14 and insert “complying with section 9C(1),”
- 16 Page 10, line 18, at end insert –

*“Explanation***9QA Duty to prepare explanation**

- (1) In connection with the exercise of any of the specified powers, the Financial Policy Committee must prepare an explanation of—
  - (a) the reasons for the Committee’s decision to exercise the power, in the way in which it is being exercised, and
  - (b) the Committee’s reasons for believing that the exercise of the power, in the way in which it is being exercised, is compatible with the duties of the Committee under the following provisions—
    - (i) section 9C(1) (as read with section 9C(4)), and
    - (ii) section 9E.
- (2) The specified powers are—
  - (a) the power to give a direction under section 9G;
  - (b) the power to make recommendations under section 9N, so far as relating to the exercise of the Bank’s functions in relation to payment systems, settlement systems and clearing houses;
  - (c) the power to make recommendations under section 9O, so far as relating to the exercise by the Treasury of their power to make orders under any of the provisions mentioned in subsection (2) of that section;
  - (d) the power to make recommendations under section 9P.
- (3) The explanation required by subsection (1) in relation to the duty in section 9E(3)(a) must include an estimate of the costs and an estimate of the benefits that would arise from compliance with the direction or recommendation in question, unless in the opinion of the Committee it is not reasonably practicable to include such an estimate.”

17 Page 10, line 18, at end insert—

*“Review***9QB Duty to review directions and recommendations**

- (1) The Financial Policy Committee must—
  - (a) before the end of each review period, review each direction given by it under section 9G, other than a direction revoked before the end of the review period, and
  - (b) prepare a summary of its conclusions.
- (2) A review period is—
  - (a) in relation to the first review, the period of 12 months beginning with the day on which the direction was given, and
  - (b) in relation to subsequent reviews, the period of 12 months beginning with the day on which the previous review was completed.
- (3) The Financial Policy Committee must maintain arrangements for the review at regular intervals of any recommendations that it has

made under any of sections 9N to 9Q and are of continuing relevance.

- (4) The purpose of a review is—
- (a) in the case of a direction, to consider whether the direction ought to be revoked, and
  - (b) in the case of a recommendation, to consider whether the recommendation ought to be withdrawn.”

18 Page 12, line 9, leave out “Committee’s objectives” and insert “objectives set out in section 9C(1)(a) and (b)”

19 Page 12, line 9, at end insert—

“(4A) If during the reporting period the Committee has made any decision in relation to which section 9QA requires the preparation of an explanation, the financial stability report must include the required explanation.”

20 Page 12, line 9, at end insert—

“(4B) If during the reporting period the Committee has completed the review of a direction or recommendation, the financial stability report must include a summary of the review.”

21 Page 12, line 14, leave out “subsection (3) or (4)” and insert “subsections (3) to (4B)”

#### Clause 5

22 Page 15, line 25, leave out “or”

23 Page 15, line 26, at end insert “or

- (d) a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.”

24 Page 17, line 2, at end insert—

“(ea) the differing expectations that consumers may have in relation to different kinds of investment or other transaction;”

25 Page 17, line 31, at end insert—

“( ) the ease with which consumers who may wish to use those services, including consumers in areas affected by social or economic deprivation, can access them,”

26 Page 19, line 7, leave out “or”

27 Page 19, line 8, at end insert “, or

- (d) the financing of terrorism.”

28 Page 21, line 7, after “The” insert “FCA”

29 Page 21, line 9, after “the” insert “FCA”

30 Page 21, line 11, after third “the” insert “FCA”

31 Page 21, line 15, after second “the” insert “FCA”

32 Page 21, line 19, after second “the” insert “FCA”

33 Page 24, line 20, leave out “or”

34 Page 24, line 21, at end insert “or  
 (d) a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.”

35 Page 25, line 35, at end insert –

**“2DA Strategy**

- (1) The PRA must –
  - (a) determine its strategy in relation to its objectives, and
  - (b) from time to time review, and if necessary revise, the strategy.
- (2) Before determining or revising its strategy, the PRA must consult the court of directors of the Bank of England about a draft of the strategy or of the revisions.
- (3) The PRA must determine its strategy within 12 months of the coming into force of this section.
- (4) The PRA must carry out and complete a review of its strategy before the end of each relevant period.
- (5) The relevant period is 12 months beginning with the date on which the previous review was completed, except that in the case of the first review the relevant period is the period of 12 months beginning with the date on which the strategy was determined under subsection (3).
- (6) The PRA must publish its strategy.
- (7) If the strategy is revised the PRA must publish the revised strategy.
- (8) Publication under subsection (6) or (7) is to be in such manner as the PRA thinks fit.”

36 Page 26, line 8, at end insert “, and  
 (b) the need to minimise any adverse effect on competition in the relevant markets that may result from the manner in which the PRA discharges those functions.

- (2) In subsection (1)(b) “the relevant markets” means the markets for services provided by PRA-authorized persons in carrying on regulated activities.”

37 Page 27, leave out lines 13 to 16

38 Page 27, line 16, at end insert –

**“2KA The PRA Practitioner Panel**

- (1) Arrangements under section 2K must include the establishment and maintenance of a panel of persons (to be known as “the PRA Practitioner Panel”) to represent the interests of practitioners.
- (2) The PRA must appoint one of the members of the PRA Practitioner Panel to be its chair.
- (3) The Treasury’s approval is required for the appointment or dismissal of the chair.

- (4) The PRA must appoint to the PRA Practitioner Panel such persons representing PRA-authorized persons as it considers appropriate.
- (5) The PRA may appoint to the PRA Practitioner Panel such other persons as it considers appropriate.”
- 39 Page 28, line 36, leave out “2G” and insert “2G(1)(a)”
- 40 Page 29, line 2, at end insert—  
“( ) the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term;”
- 41 Page 29, line 8, at end insert—  
“(da) the desirability where appropriate of each regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under this Act;”
- 42 Page 29, line 40, leave out “2G” and insert “2G(1)(a)”
- 43 Page 31, line 28, leave out from beginning to end of line 11 on page 32 and insert—  
“(1) The regulators must prepare and maintain a memorandum which describes in general terms—  
(a) the role of each regulator in relation to the exercise of functions conferred by or under this Act so far as they relate to with-profits insurers, and  
(b) how the regulators intend to comply with section 3D in relation to the exercise of those functions so far as they relate to the effecting or carrying out of with-profits policies by with-profits insurers.  
(2) The memorandum required by this section may be combined with the memorandum required by section 3E.  
(3) If the memorandum required by this section is contained in a separate document, the PRA and the FCA must publish the memorandum as currently in force in such manner as they think fit.  
(4) Subsections (1) to (3) apply only if the effecting or carrying out of with-profits policies is a PRA-regulated activity.  
(5) For the purposes of this section—  
(a) a “with-profits policy” is a contract of insurance under which the policyholder is eligible to receive a financial benefit at the discretion of the insurer;  
(b) a “with-profits insurer” is a PRA-authorized person who has a Part 4A permission, or permission resulting from any other provision of this Act, relating to the effecting or carrying out of with-profits policies (whether or not the permission also relates to contracts of insurance of other kinds).  
(6) The Treasury may by order amend the definition of “with-profits policy” applying for the purposes of this section.”
- 44 Page 32, leave out line 21
- 45 Page 33, line 39, at end insert—

**“3IA Power of PRA in relation to with-profits policies**

- (1) Where the first, second and third conditions are met, the PRA may give a direction under this section to the FCA.
- (2) The first condition is that the FCA is proposing to exercise any of its regulatory powers in relation to with-profits insurers, a class of with-profits insurers or a particular with-profits insurer.
- (3) In subsection (2) “regulatory powers”, in relation to the FCA, means its powers in relation to the regulation of authorised persons, including its powers under Part 24 (insolvency) but not its powers in relation to consent for the purposes of section 55F or 55I.
- (4) The second condition is that the proposed exercise of the power relates to the provision of financial benefits under with-profits policies at the discretion of the insurer, or affects or may affect the amount, timing or distribution of financial benefits that are so provided or the entitlement to future benefits that are so provided.
- (5) The third condition is that the PRA is of the opinion that the giving of the direction is desirable in order to advance the PRA’s general objective or its insurance objective.
- (6) A direction under this section is a direction requiring the FCA not to exercise the power or not to exercise it in a specified manner.
- (7) The direction may be expressed to have effect during a specified period or until revoked.
- (8) The FCA is not required to comply with a direction under this section if or to the extent that in the opinion of the FCA compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.
- (9) Subsections (1) to (8) apply only if the effecting or carrying out of with-profits policies is a PRA-regulated activity.
- (10) In this section “with-profits insurer” and “with-profits policy” have the same meaning as they have for the purposes of section 3F.”

46 Page 33, line 40, at end insert “or 3IA”

47 Page 33, line 42, at end insert “or 3IA”

48 Page 33, line 43, after “3I” insert “or 3IA”

49 Page 34, line 1, at end insert “or 3IA”

50 Page 34, line 2, after “3I” insert “or 3IA”

51 Page 34, line 4, after “3I” insert “or 3IA”

52 Page 34, line 6, after “3I” insert “or 3IA”

53 Page 34, line 7, at end insert –

“(3A) The PRA must –

- (a) publish the direction and statement, or the notice, in such manner as it thinks fit, and

- (b) where the direction or notice relates to a particular authorised person or a particular with-profits insurer, give a copy of the direction and statement, or the notice, to that person.”

54 Page 34, leave out lines 14 to 19

55 Page 34, leave out lines 20 to 28 and insert –

“(7) Subsection (3A) does not apply where the PRA, after consulting the Treasury, decides that compliance with that subsection would be against the public interest, and at any time when this subsection excludes the application of subsection (3A) in relation to a direction under section 3I, subsection (5) also does not apply.

(8) Where the PRA decides that compliance with subsection (3A) would be against the public interest, it must from time to time review that decision and if it subsequently decides that compliance is no longer against the public interest it must –

- (a) comply with that subsection, and  
 (b) in the case of a direction under section 3I, notify the Treasury for the purposes of subsection (5).”

56 Page 35, line 37, at end insert “or 3IA”

57 Page 37, line 16, leave out from “with” to “that” in line 18 and insert –

“(a) a local weights and measures authority in England, Wales or Scotland, or

(b) the Department of Enterprise, Trade and Investment in Northern Ireland,

for the provision by the authority or department to the FCA of services which relate to activities to which this subsection applies.

(5A) Subsection (5) applies to activities”

58 Page 37, line 22, leave out “22(1A)” and insert “22(1A)(a)”

### Clause 6

59 Page 38, line 29, at end insert “, or

(b) the setting of a specified benchmark.”,”

60 Page 38, line 30, after “(1A),” insert –

“( ) after subsection (5) insert –

“(6) “Benchmark” means an index, rate or price that –

(a) is determined from time to time by reference to the state of the market,

(b) is made available to the public (whether free of charge or on payment), and

(c) is used for reference for purposes that include one or more of the following –

(i) determining the interest payable, or other sums due, under loan agreements or under other contracts relating to investments;

(ii) determining the price at which investments may be bought or sold or the value of investments;

(iii) measuring the performance of investments.””

61 Page 39, line 16, leave out “22(1A)” and insert “22(1A)(a)”

62 Page 39, line 33, at end insert –

“PART 2B

REGULATED ACTIVITIES RELATING TO THE SETTING OF BENCHMARKS

*General*

24E The matters with respect to which provisions may be made under section 22(1A)(b) include, in particular, those described in general terms in this Part of this Schedule.

*Providing information*

24F Providing any information or expression of opinion that –  
 (a) is required by another person in connection with the determination of a benchmark, and  
 (b) is provided to that person for that purpose.

*Administration*

24G (1) Administering the arrangements for determining a benchmark.  
 (2) Collecting, analysing or processing information or expressions of opinion for the purpose of the determination of a benchmark.

*Determining or publishing benchmark or publishing connected information*

24H (1) Determining a benchmark.  
 (2) Publishing a benchmark or information connected with a benchmark.””

**After Clause 8**

63 Insert the following new Clause –

**“Appointed representatives**

- (1) Section 39 of FSMA 2000 (appointed representatives) is amended as follows.
- (2) After subsection (1B) insert –
  - “(1C) Subsection (1D) applies where an authorised person (“A”) –
    - (a) has permission under Part 4A, or permission resulting from any other provision of this Act, only in relation to one or more qualifying activities,
    - (b) is a party to a contract with another authorised person (A’s “principal”) which –
      - (i) permits or requires A to carry on business of a prescribed description (“the relevant business”), and

- (ii) complies with such requirements as may be prescribed, and
  - (c) is someone for whose activities in carrying on the whole or part of the relevant business A's principal has accepted responsibility in writing.
- (1D) Sections 20(1) and (1A) and 23(1A) do not apply in relation to the carrying on by A of a relevant additional activity.
- (1E) In subsections (1C) and (1D) –
- (a) “qualifying activity” means a regulated activity which is of a prescribed kind and relates –
    - (i) to rights under a contract of the kind mentioned in paragraph 23 of Schedule 2, other than one under which the obligation of the borrower to repay is secured on land, or
    - (ii) to rights under a contract of the kind mentioned in paragraph 23B of that Schedule;
  - (b) “relevant additional activity” means a regulated activity which –
    - (i) is not one to which A's permission relates, and
    - (ii) is comprised in the carrying on of the business for which A's principal has accepted responsibility.”
- (3) For subsection (2) substitute –
- “(2) In this Act “appointed representative” means –
- (a) a person who is exempt as a result of subsection (1), or
  - (b) a person carrying on a regulated activity in circumstances where, as a result of subsection (1D), sections 20(1) and (1A) and 23(1A) do not apply.”

### Clause 9

- 64 Page 42, line 31, after “in” insert “or specified under”
- 65 Page 42, line 35, after “in” insert “or specified under”
- 66 Page 46, line 1, leave out “considers” and insert “appears to it”
- 67 Page 48, line 8, at end insert –
- “(6A) Without prejudice to the generality of subsections (1) and (2), the FCA may, in relation to an authorised person who has permission to carry on the regulated activity specified in article 24A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (which relates to bids in emission allowance auctions), exercise its power under this section to vary the Part 4A permission of the person concerned by removing that activity from those to which the permission relates if it appears to the FCA that the person has seriously and systematically infringed the provisions of paragraph 2 or 3 of Article 59 of the emission allowance auctioning regulation.”
- 68 Page 49, line 27, at end insert –
- “(5A) The FCA may refuse an application under subsection (5) if it appears to it that it is desirable to do so in order to advance any of its operational objectives.”

- 69 Page 50, line 21, at end insert –  
“(5A) The PRA may refuse an application under subsection (5) if it appears to it that it is desirable to do so in order to advance any of its objectives.”
- 70 Page 50, line 35, leave out “expires” and insert “may be expressed to expire”
- 71 Page 50, line 36, leave out “this” and insert “the imposition of a requirement that expires at the end of a specified period”
- 72 Page 58, line 40, at end insert –

*“Notification*

**55Z1 Notification of ESMA**

A regulator must notify ESMA of –

- (a) the giving by it of a Part 4A permission to an investment firm, where the regulated activities to which the permission relates are investment services and activities,
- (b) the giving by it of a Part 4A permission to a management company (as defined in section 237(2)), where the regulated activities to which the permission relates fall within paragraph 8 of Schedule 2,
- (c) the cancellation by it of a Part 4A permission of a description falling within paragraph (b), or
- (d) the cancellation by it of a Part 4A permission under section 55J(6), in reliance on any one or more of the conditions in section 55K(1)(b) to (d).

**55Z2 Notification of EBA**

(1) A regulator must notify EBA of –

- (a) the giving by it of a Part 4A permission to a credit institution, where the regulated activity to which the permission relates falls within paragraph 4 of Schedule 2,
- (b) the cancellation by it of a Part 4A permission of a description falling within paragraph (a).

(2) “Credit institution” has the meaning given in section 1H(8).”

**Clause 14**

- 73 Page 64, line 1, leave out paragraph (c) and insert –  
“( ) section 87B to 87D;”
- 74 Page 64, line 11, at end insert –  
“( ) In section 87A (criteria for approval of prospectus) –  
(a) in subsection (1), for “competent authority” substitute ““FCA”,  
(b) in subsection (7)(a), for “competent authority”, in the first place, substitute “FCA”, and  
(c) in the heading, for “competent authority” substitute “FCA”.”
- 75 Page 64, line 25, leave out from “State)” to end of line 26 and insert –  
“(a) in subsection (1), for “competent authority”, in the second and third places, substitute “FCA”, and

(b) in subsection (3A), for “competent authority” substitute “FCA”.

76 Page 64, line 32, after ““other”” insert—

“( ) in subsection (1A), for “competent authority”, in the first place, substitute “FCA”.

#### Clause 22

77 Page 78, line 37, after “directives” insert “or the emission allowance auctioning regulation”

78 Page 79, line 29, at end insert—

#### “137BA FCA general rules: cost of credit and duration of credit agreements

- (1) The power of the FCA to make general rules includes power to make rules prohibiting authorised persons from—
  - (a) entering into a regulated credit agreement that provides for—
    - (i) the payment by the borrower of charges of a specified description, or
    - (ii) the payment by the borrower over the duration of the agreement of charges that, taken with the charges paid under one or more other agreements which are treated by the rules as being connected with it, exceed, or are capable of exceeding, a specified amount;
  - (b) imposing charges of a specified description or exceeding a specified amount on a person who is the borrower under a regulated credit agreement;
  - (c) entering into a regulated credit agreement that—
    - (i) is capable of remaining in force after the end of a specified period,
    - (ii) when taken with one or more other regulated credit agreements which are treated by the rules as being connected with it, would be capable of remaining in force after the end of a specified period, or
    - (iii) is treated by the rules as being connected with a number of previous regulated credit agreements that exceeds a specified maximum;
  - (d) exercising the rights of the lender under a regulated credit agreement (as a person for the time being entitled to exercise them) in a way that enables the agreement to remain in force after the end of a specified period or enables the imposition on the borrower of charges within paragraph (a)(i) or (ii).
- (2) “Charges” means charges payable, by way of interest or otherwise, in connection with the provision of credit under the regulated credit agreement, whether or not the agreement itself makes provision for them and whether or not the person to whom they are payable is a party to the regulated credit agreement or an authorised person.
- (3) “The borrower” includes—
  - (a) any person providing a guarantee or indemnity under the regulated credit agreement, and

- (b) a person to whom the rights and duties of the borrower under the regulated credit agreement or a person falling within paragraph (a) have passed by assignment or operation of law.
- (4) In relation to an agreement entered into or obligation imposed in contravention of the rules, the rules may –
  - (a) provide for the agreement or obligation to be unenforceable against any person or specified person;
  - (b) provide for the recovery of any money or other property paid or transferred under the agreement or other obligation by any person or specified person;
  - (c) provide for the payment of compensation for any loss sustained by any person or specified person as a result of paying or transferring any money or other property under the agreement or obligation.
- (5) The provision that may be made as a result of subsection (4) includes provision corresponding to that made by section 30 (enforceability of agreements resulting from unlawful communications).
- (6) A credit agreement is a contract of the kind mentioned in paragraph 23 of Schedule 2, other than one under which the obligation of the borrower to repay is secured on land: and a credit agreement is a “regulated credit agreement” if any of the following is a regulated activity –
  - (a) entering into or administering the agreement;
  - (b) exercising or being able to exercise the rights of the lender under the agreement.
- (7) In this section –
  - (a) “specified amount” means an amount specified in or determined in accordance with the rules;
  - (b) “specified period” means a period of a duration specified in or determined in accordance with the rules;
  - (c) “specified person” means a person of a description specified in the rules;
  - (d) subject to that, “specified” means specified in the rules.”

79 Page 81, line 19, at end insert –

**“137DA Rules requiring participation in benchmark**

- (1) The power of the FCA to make general rules includes power to make rules requiring authorised persons to take specified steps in connection with the setting by a specified person of a specified benchmark.
- (2) The rules may in particular –
  - (a) require authorised persons to whom the rules apply to provide information of a specified kind, or expressions of opinion as to specified matters, to persons determined in accordance with the rules;
  - (b) make provision about the form in which and the time by which any information or expression of opinion is to be provided;
  - (c) make provision by reference to any code or other document published by the person responsible for the setting of the benchmark or by any other person determined in accordance with the rules, as the code or other document has effect from time to time.

(3) Rules making provision of the kind mentioned in subsection (2)(c) may provide that the code or other document is to be capable of affecting obligations imposed by the rules only if specified requirements are met in relation to it.

(4) In this section—  
“benchmark” has the meaning given in section 22(6);  
“specified” means specified in or determined in accordance with the rules.”

80 Page 81, line 44, after “directives” insert “or the emission allowance auctioning regulation”

81 Page 86, line 4, after “in” insert “or specified under”

82 Page 87, line 5, leave out “section 397(5)(b)” and insert “the relevant exemption provisions”

83 Page 87, line 12, at end insert—

“(4) “The relevant exemption provisions” are the following provisions of the Financial Services Act 2012—  
(a) section (*Misleading impressions*)(9)(b);  
(b) section (*Misleading statements etc in relation to benchmarks*)(4)(a).”

84 Page 89, line 22, leave out “must” and insert “may”

85 Page 92, leave out line 14

86 Page 92, line 25, after “to” insert—  
“(a) rules made by the FCA under section 137BA, or”

87 Page 97, leave out lines 13 and 14

88 Page 99, leave out lines 20 and 21 and insert “to its functions under the short selling regulation.”

#### Clause 23

89 Page 104, line 2, leave out from “Authority” to end of line 3 and insert “or “Authority’s” in each place substitute “FCA” or “FCA’s”.”

90 Page 104, line 4, leave out subsection (2) and insert—

“(2) Subsection (1) does not affect references to “the competent authority”.”

#### Clause 24

91 Page 105, line 20, at end insert “or 3IA”

#### Clause 25

92 Page 107, line 27, leave out “any part of”

93 Page 108, leave out line 25 and insert “which—  
(a) is incorporated in the United Kingdom, or  
(b) has a place of business in the United Kingdom.”

94 Page 109, leave out lines 1 to 5 and insert—

- “(2) The general condition is that the appropriate regulator considers that it is desirable to give the direction in order to advance –
- (a) in the case of the FCA, one or more of its operational objectives;
  - (b) in the case of the PRA, any of its objectives.”

95 Page 109, line 12, leave out from “that” to end of line 15 and insert “the giving of the direction is desirable for the purpose of the effective consolidated supervision of the group”.

96 Page 109, leave out line 31

97 Page 109, leave out lines 43 and 44 and insert –

- “( ) A requirement imposed by the direction may be expressed to expire at the end of a specified period, but the imposition of a requirement that expires at the end of a specified period does not affect the power to give a further direction imposing a new requirement.
- ( ) The direction –
- (a) may be revoked by the regulator which gave it by written notice to the body to which it is given, and
  - (b) ceases to be in force if the body to which it is given ceases to be a qualifying parent undertaking.”

#### Clause 27

98 Page 115, line 25, after “Act;” insert –

- “(ba) Part 2A makes provision relating to the winding up, administration or insolvency of UK clearing houses;”

#### After Clause 28

99 Insert the following new Clause –

#### “Additional power to direct UK clearing houses

After section 296 of FSMA 2000 insert –

#### “296A Additional power to direct UK clearing houses

- (1) The Bank of England may direct a UK clearing house to take, or refrain from taking, specified action if the Bank is satisfied that it is necessary to give the direction, having regard to the public interest in –
- (a) protecting and enhancing the stability of the UK financial system,
  - (b) maintaining public confidence in the stability of the UK financial system,
  - (c) maintaining the continuity of the central counterparty clearing services provided by the clearing house, and
  - (d) maintaining and enhancing the financial resilience of the clearing house.
- (2) The direction may, in particular –
- (a) specify the time for compliance with the direction,
  - (b) require the rules of the clearing house to be amended, and

- (c) override such rules (whether generally or in their application to a particular case).
- (3) The direction may not require the clearing house –
  - (a) to take any steps for the purpose of securing its compliance with –
    - (i) the recognition requirements, or
    - (ii) any obligation of a kind mentioned in section 296(1)(b) or (1A), or
  - (b) to accept a transfer of property, rights or liabilities of another clearing house.
- (4) If the direction is given in reliance on section 298(7) the Bank must, within a reasonable time of giving the direction, give the clearing house a statement of its reasons –
  - (a) for giving the direction, and
  - (b) for relying on section 298(7).
- (5) The direction is enforceable, on the application of the Bank, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (6) The Bank may revoke a direction given under this section.”

#### Clause 34

100 Page 119, line 20, at end insert –

- “(2) If the Treasury consider that it is in the public interest to do so, the Treasury may by order –
- (a) amend section 391 of FSMA 2000 by substituting for subsections (1) to (1ZB) the following –
    - “(1) Neither the regulator giving a warning notice nor a person to whom it is given or copied may publish the notice or any details concerning it.”, and
  - (b) repeal section 395(1)(d) and (2)(b) and (c) of that Act.”

#### Clause 37

101 Page 120, line 20, at end insert –

- “(ii) in paragraph (b), for “section 315” substitute “provision made by or under this Act”, and”

102 Page 121, line 27, at end insert –

- “(ii) in paragraph (c), for “section 315” substitute “provision made by or under this Act”,

103 Page 121, line 38, at end insert –

- “( ) In section 317 (the core provisions), in subsection (1), for “X” substitute “9A”.”

#### Clause 45

104 Page 128, line 27, at end insert –

- “( ) after that definition insert –

““credit-related regulated activity” has the meaning given in section 23(1B);””

#### Clause 46

- 105 Page 130, line 8, after “3B(4),” insert “3F(6),”  
 106 Page 130, line 15, after “22B” insert “or 23A”

#### Clause 48

- 107 Page 131, line 47, leave out subsection (3)  
 108 Page 132, line 7, leave out “subsections (2) and (3)” and insert “subsection (2)”  
 109 Page 132, line 12, leave out “or (3)”

#### After Clause 48

- 110 Insert the following new Clause –

#### **“Power to apply or disapply provision made by or under FSMA 2000**

- (1) The Treasury may by order provide –
- (a) for any relevant provision that would not otherwise apply in relation to transferred functions to apply in relation to those functions with such modifications as may be specified;
  - (b) for any relevant provision that would otherwise apply in relation to transferred functions not to apply in relation to them or to apply with such modifications as may be specified.
- (2) “Relevant provision” means a provision of, or made under, FSMA 2000.
- (3) “Transferred function” means a function that has been or is being transferred by an order under section 47; and section 48(4) applies for the purpose of this subsection.”

#### Clause 73

- 111 Page 145, line 6, leave out from beginning to “give” in line 7 and insert –
- “(1) This section applies where –
- (a) the Treasury consider that it is in the public interest that either regulator should undertake an investigation into any relevant events, and
  - (b) it does not appear to the Treasury that the regulator has undertaken or is undertaking an investigation (under this Part or otherwise) into those events.
- (1A) The Treasury must”
- 112 Page 145, line 18, leave out “(1)” and insert “(1A)”

#### After Clause 76

- 113 Insert the following new Clause –

**“Publication of directions**

- (1) This section applies to a direction given by the Treasury under any of the following provisions—
  - (a) section 69(4);
  - (b) section 70(5);
  - (c) section 74(5).
- (2) As soon as practicable after giving the direction, the Treasury must—
  - (a) lay before Parliament a copy of the direction, and
  - (b) publish the direction in such manner as the Treasury think fit.
- (3) Subsection (2) does not apply where the Treasury consider that publication of the direction would be against the public interest.”

**Clause 80**

**114** Page 149, line 13, leave out “, 318 or 328” and insert “or 318”

**After Clause 83**

**115** Insert the following new Clause—

**“PART 6A****OFFENCES RELATING TO FINANCIAL SERVICES****Misleading statements**

- (1) Subsection (2) applies to a person (“P”) who—
  - (a) makes a statement which P knows to be false or misleading in a material respect,
  - (b) makes a statement which is false or misleading in a material respect, being reckless as to whether it is, or
  - (c) dishonestly conceals any material facts whether in connection with a statement made by P or otherwise.
- (2) P commits an offence if P makes the statement or conceals the facts with the intention of inducing, or is reckless as to whether making it or concealing them may induce, another person (whether or not the person to whom the statement is made)—
  - (a) to enter into or offer to enter into, or to refrain from entering or offering to enter into, a relevant agreement, or
  - (b) to exercise, or refrain from exercising, any rights conferred by a relevant investment.
- (3) In proceedings for an offence under subsection (2) brought against a person to whom that subsection applies as a result of paragraph (a) of subsection (1), it is a defence for the person charged (“D”) to show that the statement was made in conformity with—
  - (a) price stabilising rules,
  - (b) control of information rules, or
  - (c) the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions

for buy-back programmes and stabilisation of financial instruments.

- (4) Subsections (1) and (2) do not apply unless—
- (a) the statement is made in or from, or the facts are concealed in or from, the United Kingdom or arrangements are made in or from the United Kingdom for the statement to be made or the facts to be concealed,
  - (b) the person on whom the inducement is intended to or may have effect is in the United Kingdom, or
  - (c) the agreement is or would be entered into or the rights are or would be exercised in the United Kingdom.”

116 Insert the following new Clause—

**“Misleading impressions**

- (1) A person (“P”) who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any relevant investments commits an offence if—
  - (a) P intends to create the impression, and
  - (b) the case falls within subsection (2) or (3) (or both).
- (2) The case falls within this subsection if P intends, by creating the impression, to induce another person to acquire, dispose of, subscribe for or underwrite the investments or to refrain from doing so or to exercise or refrain from exercising any rights conferred by the investments.
- (3) The case falls within this subsection if—
  - (a) P knows that the impression is false or misleading or is reckless as to whether it is, and
  - (b) P intends by creating the impression to produce any of the results in subsection (4) or is aware that creating the impression is likely to produce any of the results in that subsection.
- (4) Those results are—
  - (a) the making of a gain for P or another, or
  - (b) the causing of loss to another person or the exposing of another person to the risk of loss.
- (5) References in subsection (4) to gain or loss are to be read in accordance with subsections (6) to (8).
- (6) “Gain” and “loss”—
  - (a) extend only to gain or loss in money or other property of any kind;
  - (b) include such gain or loss whether temporary or permanent.
- (7) “Gain” includes a gain by keeping what one has, as well as a gain by getting what one does not have.
- (8) “Loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has.
- (9) In proceedings brought against any person (“D”) for an offence under subsection (1) it is a defence for D to show—
  - (a) to the extent that the offence results from subsection (2), that D reasonably believed that D’s conduct would not create an

- impression that was false or misleading as to the matters mentioned in subsection (1),
- (b) that D acted or engaged in the conduct –
    - (i) for the purpose of stabilising the price of investments, and
    - (ii) in conformity with price stabilising rules,
  - (c) that D acted or engaged in the conduct in conformity with control of information rules, or
  - (d) that D acted or engaged in the conduct in conformity with the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.
- (10) This section does not apply unless –
- (a) the act is done, or the course of conduct is engaged in, in the United Kingdom, or
  - (b) the false or misleading impression is created there.”

117 Insert the following new Clause –

**“Misleading statements etc in relation to benchmarks**

- (1) A person (“A”) who makes to another person (“B”) a false or misleading statement commits an offence if –
  - (a) A makes the statement in the course of arrangements for the setting of a relevant benchmark,
  - (b) A intends that the statement should be used by B for the purpose of the setting of a relevant benchmark, and
  - (c) A knows that the statement is false or misleading or is reckless as to whether it is.
- (2) A person (“C”) who does any act or engages in any course of conduct which creates a false or misleading impression as to the price or value of any investment or as to the interest rate appropriate to any transaction commits an offence if –
  - (a) C intends to create the impression,
  - (b) the impression may affect the setting of a relevant benchmark,
  - (c) C knows that the impression is false or misleading or is reckless as to whether it is, and
  - (d) C knows that the impression may affect the setting of a relevant benchmark.
- (3) In proceedings for an offence under subsection (1), it is a defence for the person charged (“D”) to show that the statement was made in conformity with –
  - (a) price stabilising rules,
  - (b) control of information rules, or
  - (c) the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.
- (4) In proceedings brought against any person (“D”) for an offence under subsection (2) it is a defence for D to show –

- (a) that D acted or engaged in the conduct—
    - (i) for the purpose of stabilising the price of investments, and
    - (ii) in conformity with price stabilising rules,
  - (b) that D acted or engaged in the conduct in conformity with control of information rules, or
  - (c) that D acted or engaged in the conduct in conformity with the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.
- (5) Subsection (1) does not apply unless the statement is made in or from the United Kingdom or to a person in the United Kingdom.
- (6) Subsection (2) does not apply unless—
- (a) the act is done, or the course of conduct is engaged in, in the United Kingdom, or
  - (b) the false or misleading impression is created there.”

**118** Insert the following new Clause—

**“Penalties**

- (1) A person guilty of an offence under this Part is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding the applicable maximum term or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.
- (2) For the purpose of subsection (1)(a) “the applicable maximum term” is—
- (a) in England and Wales, 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003);
  - (b) in Scotland, 12 months;
  - (c) in Northern Ireland, 6 months.”

**119** Insert the following new Clause—

**“Interpretation of Part 6A**

- (1) This section has effect for the interpretation of this Part.
- (2) “Investment” includes any asset, right or interest.
- (3) “Relevant agreement” means an agreement—
- (a) the entering into or performance of which by either party constitutes an activity of a kind specified in an order made by the Treasury, and
  - (b) which relates to a relevant investment.
- (4) “Relevant benchmark” means a benchmark of a kind specified in an order made by the Treasury.
- (5) “Relevant investment” means an investment of a kind specified in an order made by the Treasury.

- (6) Schedule 2 to FSMA 2000 (except paragraphs 25 and 26) applies for the purposes of subsections (3) and (5) with references to section 22 of that Act being read as references to each of those subsections.
- (7) Nothing in Schedule 2 to FSMA 2000, as applied by subsection (6), limits the power conferred by subsection (3) or (5).
- (8) “Price stabilising rules” and “control of information rules” have the same meaning as in FSMA 2000.
- (9) In this section “benchmark” has the meaning given in section 22(6) of FSMA 2000.”

**120** Insert the following new Clause –

**“Affirmative procedure for certain orders**

- (1) This section applies to the first order made under section (“*Interpretation of Part 6A*”).
- (2) This section also applies to any subsequent order made under that section which contains a statement by the Treasury that the effect of the proposed order would include one or more of the following –
  - (a) that an activity which is not specified for the purposes of subsection (3)(a) of that section would become one so specified,
  - (b) that an investment which is not a relevant investment would become a relevant investment;
  - (c) that a benchmark which is not a relevant benchmark would become a relevant benchmark.
- (3) A statutory instrument containing (alone or with other provisions) an order to which this section applies may not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.”

**121** Insert the following new Clause –

**“Consequential repeal**

Section 397 of FSMA 2000 (which relates to misleading statements and practices and is superseded by the provisions of this Part) is repealed.”

**Before Clause 84**

**122** Insert the following new Clause –

**“Objectives and conditions**

- (1) The Banking Act 2009 is amended as follows.
- (2) In section 3 (interpretation: other expressions), after “this Part –” insert –
 

““client assets” means assets which an institution has undertaken to hold for a client (whether or not on trust, and whether or not the undertaking has been complied with),”.
- (3) In section 4 (special resolution objectives), after subsection (8) insert –

- “(8A) Objective 6, which applies in any case in which client assets may be affected, is to protect those assets.
- (8B) Objective 7 is to minimise adverse effects on institutions (such as investment exchanges and clearing houses) that support the operation of financial markets.”
- (4) In section 8(2) (Condition A: private sector purchaser and bridge bank) –
- (a) in paragraph (b) for “the banking systems of the United Kingdom, or” substitute “those systems,”, and
  - (b) after paragraph (c) insert “, or
  - (d) the protection of any client assets that may be affected.”
- (5) In section 47 (restriction of partial transfers), for subsection (3) substitute –
- “(3) Provision under subsection (2) may, in particular, refer to –
- (a) particular classes of deposit;
  - (b) particular classes of client assets.”
- (6) In the Table in section 261 (index of defined terms), after the entry relating to “central counterparty clearing services”, insert –

“Client assets (Part 1) | 3”.

#### Clause 84

**123** Page 154, line 24, at end insert –

- “( ) In section 83 (supplemental), in subsection (2)(d) –
- (a) at the end of sub-paragraph (iii) insert “and”, and
  - (b) for sub-paragraphs (iv) and (v) substitute –
    - “(iv) is not subject to the restriction in section 29(3) that the securities issued by the bank were transferred under the original order (as defined in section 29(1)).”

#### Clause 86

**124** Page 156, line 1, at end insert –

- “( ) In section 1(6) of that Act (table describing provisions of Part 1), in the entry relating to sections 76 to 81, for “81” substitute “81A”.

#### After Clause 86

**125** Insert the following new Clause –

#### “Groups

- (1) The Banking Act 2009 is amended as follows.
- (2) In section 1 (overview), for the entry in the Table relating to sections 82 and 83 substitute –

“Sections 81B to 83 | Groups”.

- (3) In section 20 (directors), after subsection (1) insert—
- “(1A) Subsection (1) also applies to a director of any undertaking which is a banking group company in respect of a specified bank.”
- (4) After section 36 insert—

**“36A Directors**

- (1) A property transfer instrument may enable the Bank of England—
- (a) to remove a director of a specified bank;
  - (b) to vary the service contract of a director of a specified bank;
  - (c) to terminate the service contract of a director of a specified bank;
  - (d) to appoint a director of a specified bank.
- (2) Subsection (1) also applies to a director of any undertaking which is a banking group company in respect of a specified bank.
- (3) Appointments under subsection (1)(d) are to be on terms and conditions agreed with the Bank of England.”
- (5) For the italic heading before section 82 substitute “*Groups*”, and after that heading insert—

**“81B Sale to commercial purchaser and transfer to bridge bank**

- (1) The Bank of England may exercise a stabilisation power in respect of a banking group company in accordance with section 11(2) or 12(2) if the following conditions are met.
- (2) Condition 1 is that the PRA is satisfied that the general conditions for the exercise of a stabilisation power set out in section 7 are met in respect of a bank in the same group.
- (3) Condition 2 (which does not apply in a financial assistance case) is that the Bank of England is satisfied that the exercise of the power in respect of the banking group company is necessary, having regard to the public interest in—
- (a) the stability of the financial systems of the United Kingdom,
  - (b) the maintenance of public confidence in the stability of those systems,
  - (c) the protection of depositors, or
  - (d) the protection of any client assets that may be affected.
- (4) Condition 3 (which applies only in a financial assistance case) is that—
- (a) the Treasury have recommended the Bank of England to exercise a stabilisation power on the grounds that it is necessary to protect the public interest, and
  - (b) in the Bank’s opinion, exercise of the power in respect of the banking group company is an appropriate way to provide that protection.

- (5) Condition 4 is that the banking group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.
- (6) Before determining whether Condition 2 or 3 (as appropriate) is met, the Bank of England must consult –
  - (a) the Treasury,
  - (b) the PRA, and
  - (c) the FCA.
- (7) In exercising a stabilisation power in reliance on this section the Bank of England must have regard to the need to minimise the effect of the exercise of the power on other undertakings in the same group.
- (8) In this section “financial assistance case” means a case in which the Treasury notify the Bank of England that they have provided financial assistance in respect of a bank in the same group for the purpose of resolving or reducing a serious threat to the stability of the financial systems of the United Kingdom.

#### **81C Section 81B: supplemental**

- (1) In the following provisions references to banks include references to banking group companies –
  - (a) section 10(1), and
  - (b) section 75(5)(a).
- (2) Where the Bank of England exercises a stabilisation power in respect of a banking group company in reliance on section 81B, the provisions relating to the stabilisation powers and the bank administration procedure contained in this Act (except sections 7 and 8) and any other enactment apply (with any necessary modifications) as if the banking group company were a bank.
- (3) For the purposes of the application of section 143 (grounds for applying for bank administration order), the reference in subsection (2) to the Bank of England exercising a stabilisation power includes a case where the Bank of England intends to exercise such a power.

#### **81D Interpretation: “banking group company” &c.**

- (1) In this Part “banking group company” means an undertaking –
  - (a) which is (or, but for the exercise of a stabilisation power, would be) in the same group as a bank, and
  - (b) in respect of which any conditions specified in an order made by the Treasury are met.
- (2) An order may require the Bank of England to consult specified persons before determining whether the conditions are met.
- (3) An order –
  - (a) is to be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

- (4) If an order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without complying with subsection (3)(b) –
- (a) the order may be made, and
  - (b) the order lapses unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the order is made.
- (5) The lapse of an order under subsection (4)(b) –
- (a) does not invalidate anything done under or in reliance on the order before the lapse and at a time when neither House has declined to approve the order, and
  - (b) does not prevent the making of a new order (in new terms).
- (6) Undertakings are in the same group for the purposes of sections 81B, 81C and this section if they are group undertakings in respect of each other.
- (7) Expressions defined in the Companies Act 2006 have the same meaning in section 81B and this section as in that Act.”
- (6) In the Table in section 259 (statutory instruments), in Part 1 after the entry relating to section 78 insert –

“81D		Meaning of “banking group company”		Draft affirmative resolution (except for urgent cases)”.
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- (7) In the Table in section 261 (index of defined terms), after the entry relating to “bank insolvency order” insert –

“Banking group company | 81D”.

**126** Insert the following new Clause –

**“Application to investment firms**

- (1) The Banking Act 2009 is amended as follows.
- (2) In section 1 (overview), after the entry in the Table relating to sections 84 to 89 insert –

“Section 89A | Investment firms”.

- (3) In section 2 (interpretation: “bank”), at the end insert –
  - “(8) Section 89A applies this Part to investment firms with modifications.”
- (4) In section 75(5) (power to change law: application to other institutions), omit the “or” following paragraph (c) and after that paragraph insert –
  - “(ca) to investment firms,”.

- (5) After section 89 (and in Part 1) insert –

*“Investment firms*

**89A Application to investment firms**

- (1) This Part applies to investment firms as it applies to banks, subject to the modifications in subsection (2).
- (2) Ignore sections 1(2)(b), 4(2)(b) and (6), 5(1)(b), 7(7), 8(2)(c) and 14(5).”

- (6) After section 159 insert –

**“159A Application to investment firms**

This Part applies to investment firms as it applies to banks.”

- (7) After section 258 insert –

**“258A “Investment firm”**

- (1) In this Act “investment firm” means a UK institution which is (or, but for the exercise of a stabilisation power, would be) an investment firm for the purposes of Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions.
- (2) But “investment firm” does not include –
- (a) an institution which is also –
    - (i) a bank (within the meaning of Part 1),
    - (ii) a building society (within the meaning of section 119 of the Building Societies Act 1986), or
    - (iii) a credit union (within the meaning of section 31 of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985), or
  - (b) an institution which is of a class or description specified in an order made by the Treasury.
- (3) An order –
- (a) is to be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) If an order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without complying with subsection (3)(b) –
- (a) the order may be made, and
  - (b) the order lapses unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the order is made.
- (5) The lapse of an order under subsection (4)(b) –
- (a) does not invalidate anything done under or in reliance on the order before the lapse and at a time when neither House has declined to approve the order, and
  - (b) does not prevent the making of a new order (in new terms).

(6) In subsection (1) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom.”

(8) In the Table in section 259 (statutory instruments), in Part 7 after the entry relating to section 257 insert –

“258A	Meaning of “investment firm”	Draft affirmative resolution (except for urgent cases)”.
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(9) In the Table in section 261 (index of defined terms), after the entry relating to “inter-bank payment system”, insert –

“Investment firm	258A”.
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(10) In section 214B(1)(a) of FSMA 2000 (contribution to costs of special resolution regime) for “or credit union” substitute “, credit union or investment firm”.”

**127** Insert the following new Clause –

**“Application to UK clearing houses**

(1) The Banking Act 2009 is amended as follows.

(2) In section 1 (overview), after the entry in the Table relating to section 89A, insert –

“Sections 89B to 89G	UK clearing houses”.
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(3) In section 2 (interpretation: “bank”), after subsection (8) insert –

“(9) Section 89B applies this Part to UK clearing houses with modifications.”

(4) After section 39 insert –

**“39A Banks which are clearing houses**

Sections 89C to 89E (clearing house rules, membership and recognition) apply in relation to a bank which would be a UK clearing house but for section 89G(2) (exclusion of banks etc from definition of UK clearing house) as they apply in relation to a UK clearing house.”

(5) In section 75(5) (power to change law: application to other institutions), after paragraph (ca) insert –

“(cb) to UK clearing houses, or”.

(6) After section 89A (and in Part 1) insert –

*“UK clearing houses***89B Application to UK clearing houses**

- (1) This Part applies to UK clearing houses as it applies to banks, subject to—
- (a) the modifications specified in subsections (2) to (5), and in the Table in subsection (6), and
  - (b) any other necessary modifications.

- (2) For section 13 substitute—

**“13 Transfer of ownership**

- (1) The third stabilisation option is to transfer ownership of the UK clearing house to any person.
- (2) For that purpose the Bank of England may make one or more share transfer instruments.”

- (3) For sections 28 and 29 substitute—

**“28 Onward transfer**

- (1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a UK clearing house, in accordance with section 13(2) (“the original instrument”).
- (2) The Bank of England may make one or more onward share transfer instruments.
- (3) An onward share transfer instrument is a share transfer instrument which—
  - (a) provides for the transfer of—
    - (i) securities which were issued by the UK clearing house before the original instrument and have been transferred by the original instrument or a supplemental share transfer instrument, or
    - (ii) securities which were issued by the UK clearing house after the original instrument;
  - (b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the UK clearing house (whether the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).
- (4) An onward share transfer instrument may not transfer securities to the transferor under the original instrument.
- (5) The Bank of England may not make an onward share transfer instrument unless the transferee under the original instrument is—
  - (a) the Bank of England,
  - (b) a nominee of the Treasury, or
  - (c) a company wholly owned by the Bank of England or the Treasury.

- (6) Sections 7 and 8 do not apply to an onward share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Part).
- (7) Before making an onward share transfer instrument the Bank of England must consult—
  - (a) if the UK clearing house is a PRA-authorized person, the PRA, and
  - (b) the FCA.
- (8) Section 26 applies where the Bank of England has made an onward share transfer instrument.

## **29 Reverse share transfer**

- (1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 13(2) (“the original instrument”) providing for the transfer of securities issued by a UK clearing house to a person (“the original transferee”).
- (2) The Bank of England may make one or more reverse share transfer instruments in respect of securities issued by the UK clearing house and held by the original transferee (whether or not they were transferred by the original instrument).
- (3) If the Bank of England makes an onward share transfer instrument in respect of securities transferred by the original instrument, the Bank may make one or more reverse share transfer instruments in respect of securities issued by the UK clearing house and held by a transferee under the onward share transfer instrument (“the onward transferee”).
- (4) A reverse share transfer instrument is a share transfer instrument which—
  - (a) provides for transfer to the transferor under the original instrument (where subsection (2) applies);
  - (b) provides for transfer to the original transferee (where subsection (3) applies);
  - (c) makes other provision for the purposes of, or in connection with, the transfer of securities which are, could be or could have been transferred under paragraph (a) or (b).
- (5) The Bank of England may not make a reverse share transfer instrument under subsection (2) unless—
  - (a) the original transferee is—
    - (i) the Bank of England,
    - (ii) a company wholly owned by the Bank of England or the Treasury, or
    - (iii) a nominee of the Treasury, or
  - (b) the reverse share transfer instrument is made with the written consent of the original transferee.

- (6) The Bank of England may not make a reverse share transfer instrument under subsection (3) unless—
  - (a) the onward transferee is—
    - (i) the Bank of England,
    - (ii) a company wholly owned by the Bank of England or the Treasury, or
    - (iii) a nominee of the Treasury, or
  - (b) the reverse share transfer instrument is made with the written consent of the onward transferee.
- (7) Sections 7 and 8 do not apply to a reverse share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes including for the purposes of the application of a power under this Part).
- (8) Before making a reverse share transfer instrument the Bank of England must consult—
  - (a) if the UK clearing house is a PRA-authorized person, the PRA, and
  - (b) the FCA.
- (9) Section 26 applies where the Bank of England has made a reverse share transfer instrument.”

(4) For sections 45 and 46 substitute—

**“45 Transfer of ownership: property transfer**

- (1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a UK clearing house, in accordance with section 13(2) (“the original instrument”).
- (2) The Bank of England may make one or more property transfer instruments.
- (3) A property transfer instrument is an instrument which—
  - (a) provides for property, rights or liabilities of the UK clearing house to be transferred (whether accruing or arising before or after the original instrument);
  - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the UK clearing house (whether the transfer has been or is to be effected by the instrument or otherwise).
- (4) The Bank of England may not make a property transfer instrument in accordance with this section unless the original instrument transferred securities to—
  - (a) the Bank of England,
  - (b) a company wholly owned by the Bank of England or the Treasury, or
  - (c) a nominee of the Treasury.
- (5) Sections 7 and 8 do not apply to a property transfer instrument made in accordance with this section.

- (6) Section 42 applies where the Bank of England has made a property transfer instrument in accordance with this section.
- (7) Before making a property transfer instrument in accordance with this section, the Bank of England must consult—
  - (a) if the UK clearing house is a PRA-authorized person, the PRA, and
  - (b) the FCA.

#### **46 Transfer of ownership: reverse property transfer**

- (1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 45(2) (“the original instrument”).
  - (2) The Bank of England may make one or more reverse property transfer instruments in respect of property, rights or liabilities of the transferee under the original instrument.
  - (3) A reverse property transfer instrument is a property transfer instrument which—
    - (a) provides for transfer to the transferor under the original instrument;
    - (b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities which are, could be or could have been transferred.
  - (4) The Bank of England must not make a reverse property transfer instrument unless—
    - (a) the transferee under the original instrument is—
      - (i) the Bank of England,
      - (ii) a company wholly owned by the Bank of England or the Treasury, or
      - (iii) a nominee of the Treasury, or
    - (b) the reverse property transfer instrument is made with the written consent of the transferee under the original instrument.
  - (5) Sections 7 and 8 do not apply to a reverse property transfer instrument made in accordance with this section.
  - (6) Before making a reverse property transfer instrument in accordance with this section, the Bank of England must consult—
    - (a) if the UK clearing house is a PRA-authorized person, the PRA, and
    - (b) the FCA.
  - (7) Section 42 applies where the Bank of England has made a reverse property transfer instrument in accordance with this section.”
- (5) For section 81 substitute—

**“81 Transfer of ownership: report**

- (1) This section applies where the Bank of England makes one or more share transfer instruments in respect of a UK clearing house under section 13(2).
  - (2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments under that section.
  - (3) The report must comply with any requirements as to content specified by the Treasury.
  - (4) The report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer instrument made under section 13(2).”
- (6) The table mentioned in subsection (1)(a) is as follows –

TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
Section 1	<p>Ignore subsection (2)(b) and (c).</p> <p>In subsection (3)(c), for “to temporary public ownership” substitute “of ownership”.</p> <p>In subsection (4)(a), for “15, 16, 26 to 31 and 85” substitute “15, 26 and 28 to 31”.</p>
Section 4	<p>Ignore subsection (2)(b) and (c).</p> <p>Ignore subsection (3)(a), (b) and (ba).</p> <p>In subsection (5), for “banking” substitute “financial”.</p> <p>In subsection (6), for “protect depositors” substitute “maintain the continuity of central counterparty clearing services”.</p> <p>Ignore subsections (8A), (8B) and (9).</p>
Section 5	<p>Ignore subsection (1)(b) and (c).</p> <p>In subsection (3) –</p> <ol style="list-style-type: none"> <li>(a) for “Sections 12 and 13 require” substitute “Section 12 requires”, and</li> <li>(b) ignore the words “and temporary public ownership”.</li> </ol>
Section 6	<p>In subsection (4) –</p> <ol style="list-style-type: none"> <li>(a) after “Before” insert “issuing or”, and</li> <li>(b) ignore paragraph (d).</li> </ol> <p>In subsection (5) after “after” insert “issuing or”.</p>
Section 7	<p>In subsection (1), for “PRA” substitute “Bank of England”.</p>

## TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
	<p>In subsection (2), for the words following “satisfy the” substitute “recognition requirements”.</p> <p>The Bank of England may treat Condition 1 as met if satisfied that it would be met but for the withdrawal or possible withdrawal of critical clearing services by the UK clearing house.</p> <p>In subsection (3), for “satisfy the threshold conditions” substitute “maintain the continuity of any critical clearing services it provides while also satisfying the recognition requirements”.</p> <p>In subsection (4), for “PRA” substitute “Bank of England”.</p> <p>Ignore subsection (4A).</p> <p>In subsection (5) –</p> <ul style="list-style-type: none"> <li>(a) for “PRA” substitute “Bank of England”, and</li> <li>(b) ignore paragraph (a) unless the UK clearing house is a PRA-authorized person, in which case for “Bank of England” substitute “PRA”.</li> </ul> <p>Ignore subsections (7) and (8).</p> <p>For the purposes of section 7 –</p> <ul style="list-style-type: none"> <li>(a) “critical clearing services” means central counterparty clearing services the withdrawal of which may, in the Bank of England’s opinion, threaten the stability of the financial systems of the United Kingdom, and</li> <li>(b) “recognition requirements” means the requirements resulting from section 286 of the Financial Services and Markets Act 2000.</li> </ul>
Section 8	<p>In subsection (1), omit “in accordance with section 11(2) or 12(2)”.</p> <p>Ignore subsection (2)(c) and (d).</p> <p>In subsection (3), ignore paragraph (a) unless the UK clearing house is a PRA-authorized person.</p> <p>In subsection (4), ignore the words “in accordance with section 11(2) or 12(2)”.</p>
Section 9	Ignore section 9.
Section 11	Ignore subsection (2)(a).
Section 13	See above.
Section 14	Ignore subsection (5).

## TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
Section 16	Ignore section 16.
Section 20	Ignore subsections (2) and (4).
Section 24	In subsection (1), ignore paragraph (c) unless the UK clearing house is a PRA-authorised person.
Section 25	Ignore section 25.
Section 26	In subsection (1), for “11(2)” substitute “13(2)”.
	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
	In subsection (6), for “11(2)” substitute “13(2)”.
Sections 26A and 27	Ignore sections 26A and 27.
Sections 28 and 29	See above.
Section 30	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 31	In subsection (4), for “7, 8 and 51” substitute “7 and 8”.
	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 41	In subsection (1), ignore paragraph (c) unless the UK clearing house is a PRA-authorised person.
Section 42	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 42A	In subsection (5), for “7, 8 and 50” substitute “7 and 8”.
	In subsection (6), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 43	In subsection (6), for “7, 8 and 52” substitute “7 and 8”.
	In subsection (7), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 44	In subsection (5), for “7, 8 and 52” substitute “7 and 8”.
	In subsection (6), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Sections 45 and 46	See above.
Sections 49 to 53	Ignore sections 49 to 53.

## TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
Section 54	<p>In subsection (1), for “A compensation scheme order” substitute “An order under section 89F”.</p> <p>In subsection (4)(b), for “compensation scheme order” substitute “the order under section 89F”.</p>
Section 55	In subsection (10), for “to which section 62 applies” substitute “under section 89F”.
Section 56	In subsection (6), for “to which section 62 applies” substitute “under section 89F”.
Section 57	<p>In subsection (1), for “A compensation scheme order” substitute “An order under section 89F”.</p> <p>In subsection (4)(a), for “has had a permission under Part 4A of the Financial Services and Markets Act 2000 (regulated activities) varied or cancelled” substitute “no longer qualifies as a recognised body under Part 18 of the Financial Services and Markets Act 2000 (recognised investment exchanges and clearing houses) or is subject to a requirement imposed under that Part”.</p>
Section 58	<p>In subsection (1), for “A resolution fund order” substitute “An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred”.</p> <p>Ignore subsection (3).</p> <p>In subsection (4), for “A resolution fund order” substitute “An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred”.</p> <p>In subsection (5), for “A resolution fund order” substitute “An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred”.</p> <p>Ignore subsections (6) to (8).</p>
Section 59	Ignore section 59.
Section 60	<p>In subsection (3)(c), ignore the references to bank insolvency and bank administration.</p> <p>In subsection (4) –</p> <ul style="list-style-type: none"> <li>(a) ignore paragraphs (a) and (b), and</li> <li>(b) in paragraph (c), for “a third party compensation order” substitute “an order under section 89F”.</li> </ul>

## TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
	In subsection (5) – (a) ignore paragraph (a), and (b) in paragraph (c), for “a compensation scheme order or resolution fund order” substitute “an order under section 89F”.
Section 61	In subsection (1) – (a) ignore paragraphs (a) to (c), and (b) treat the subsection as including a reference to orders under section 89F.  Ignore subsection (2)(b).
Section 62	Ignore section 62.
Section 65	In subsection (1)(a)(ii), for “order” substitute “instrument”.
	In subsection (3) – (a) in paragraph (a), ignore the words “where subsection (1)(a)(i) applies”, and (b) ignore paragraph (b).
Section 66	In subsection (1) – (a) in paragraph (a), ignore the reference to section 11(2)(a), (b) in paragraph (d)(i), ignore the words following “England”, and (c) ignore paragraph (d)(ii).
Section 68	In subsection (1)(a), for “order” substitute “instrument”.
Section 69	In subsection (4) – (a) in paragraph (a), ignore the words “in relation to sections 63 and 64”, and (b) ignore paragraph (b).
Section 70	In subsection (3) – (a) in paragraph (a), ignore the words “in relation to section 63”, and (b) ignore paragraph (b).
Section 71	Ignore subsection (1)(a).
Section 72	Ignore subsection (1)(a).
Section 73	Ignore subsection (1)(a).
Section 79A	In subsection (2), ignore the words “share transfer instruments and”.
Section 81	See above.

## TABLE OF MODIFICATIONS

<i>Provision</i>	<i>Modification</i>
Section 81B	In subsection (1), for “or 12(2)” substitute “, 12(2) or 13(2)”.
	Ignore subsection (3)(c) and (d).
	In subsection (6), ignore paragraph (b) unless the clearing house is a PRA-authorised person.
Section 81C	In subsection (2), ignore the words “and the bank administration procedure”.
	Ignore subsection (3).
Sections and 83	82 Ignore sections 82 and 83.

**89C Clearing house rules**

- (1) A property transfer instrument made in respect of a UK clearing house may make provision about the consequences of a transfer for the rules of the clearing house.
- (2) In particular, an instrument may –
  - (a) modify or amend the rules of a UK clearing house;
  - (b) in a case where some, but not all, of the business of a UK clearing house is transferred, make provision as to the application of the rules in relation to the parts of the business that are, and are not, transferred.
- (3) Provision by virtue of this section may (but need not) be limited so as to have effect –
  - (a) for a specified period, or
  - (b) until a specified event occurs or does not occur.

**89D Clearing house membership**

- (1) A property transfer instrument made in respect of a UK clearing house may make provision about the consequences of a transfer for membership of the clearing house.
- (2) In particular, an instrument may –
  - (a) make provision modifying the terms on which a person is a member of a UK clearing house;
  - (b) in a case where some, but not all, of the business of a UK clearing house is transferred, provide for a person who was a member of the transferor to remain a member of the transferor while also becoming a member of the transferee.

**89E Recognition of transferor company**

- (1) The Bank of England may provide for a company to which the business of a UK clearing house is transferred in accordance with section 12(2) to be treated as a recognised clearing house for the purposes of the Financial Services and Markets Act 2000 –
  - (a) for a specified period, or

- (b) until a specified event occurs.
- (2) The provision may have effect—
  - (a) for a period specified in the instrument, or
  - (b) until the occurrence of an event specified or described in the instrument.
- (3) The power under this section—
  - (a) may be exercised only with the consent of the Treasury, and
  - (b) must be exercised by way of provision in a property transfer instrument (or supplemental instrument).

#### **89F Clearing house compensation orders**

- (1) The Treasury may by order make provision for protecting the financial interests of transferors and others in connection with any transfer under this Part as it applies by virtue of section 89B.
- (2) The order may make provision establishing a scheme—
  - (a) for determining whether transferors should be paid compensation, or providing for transferors to be paid compensation, and establishing a scheme for paying any compensation,
  - (b) under which transferors become entitled to the proceeds of the disposal of things transferred in specified circumstances, and to a specified extent, and
  - (c) for compensation to be paid to persons other than transferors.
- (3) An order—
  - (a) is to be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

#### **89G Interpretation: “UK clearing house” &c.**

- (1) In this Part “UK clearing house” means a clearing house—
  - (a) which is incorporated in, or formed under the law of any part of, the United Kingdom,
  - (b) which provides central counterparty clearing services, and
  - (c) in relation to which a recognition order is in force under Part 18 of the Financial Services and Markets Act 2000.
- (2) But “UK clearing house” does not include a clearing house which is also—
  - (a) a bank,
  - (b) a building society (within the meaning of section 119 of the Building Societies Act 1986),
  - (c) a credit union (within the meaning of section 31 of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985), or
  - (d) an investment firm.
- (3) Where a stabilisation power is exercised in respect of a UK clearing house, it does not cease to be a UK clearing house for the purposes of this Part if the recognition order referred to in subsection (1)(c) is later revoked.

(4) In this Part –

“central counterparty clearing services” has the same meaning as in section 155 of the Companies Act 1989 (see subsection (3A) of that section), and

“PRA-authorised person” has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000.”

(7) In the Table in section 259 (statutory instruments), in Part 1 after the entry relating to section 89 insert –

“89F	Clearing house compensation orders	Draft affirmative resolution”.
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(8) In the Table in section 261 (index of defined terms) –

(a) after the entry relating to “bridge bank share transfer instrument” insert –

“central counterparty clearing services | 89G”,

(b) after the entry relating to “partial property transfer” insert –

“PRA-authorised person | 89G”, and

(c) at the end insert –

“UK clearing house | 89G”.”

### Clause 91

128 Page 162, line 18, at end insert –

“(fa) provide for any provision of sections 162 to 165 and 174A of CCA 1974 which relates to –

(i) the powers of a local weights and measures authority in Great Britain or the Department of Enterprise, Trade and Investment in Northern Ireland in relation to compliance with any provision made by or under CCA 1974,

(ii) the powers of such an authority or that Department in relation to the commission or suspected commission of offences under any provision made by or under CCA 1974,

(iii) the powers that may be conferred by warrant on an officer of such an authority or that Department, or

(iv) things done in the exercise of any of those powers, to apply in relation to compliance with FSMA 2000 so far as relating to relevant regulated activities, in relation to the commission or suspected commission of a relevant offence or in relation to things done in the exercise of any of those powers as applied by the order;”

129 Page 162, line 20, at end insert –

- “(ga) enable the Department of Enterprise, Trade and Investment in Northern Ireland to institute proceedings in Northern Ireland for a relevant offence;”
- 130** Page 162, line 23, at end insert –
- “(2A) If an order under this section makes provision by virtue of subsection (2)(b) enabling the FCA to exercise any of its powers under sections 205 to 206A of FSMA 2000 (disciplinary measures) by reference to an act or omission that constitutes an offence under CCA 1974, the order must also make provision by virtue of subsection (2)(d) ensuring that a person in respect of whom the power has been exercised cannot subsequently be convicted of the offence by reference to the same act or omission.”
- 131** Page 162, line 24, leave out from “subsection” to “by” in line 26 and insert “(2)(fa) to (h) –
- (a) “relevant regulated activity” means an activity that is a regulated activity for the purposes of FSMA 2000”
- 132** Page 162, line 30, leave out “22(1A)” and insert “22(1A)(a)”
- 133** Page 162, line 30, at end insert –
- “(b) “relevant offence” means an offence under FSMA 2000 committed in relation to such an activity.”
- 134** Page 162, line 30, at end insert –
- “(3A) The Treasury may make provision by virtue of subsection (2)(ga) only with the consent of the Department of Enterprise, Trade and Investment in Northern Ireland.”
- 135** Page 162, line 32, leave out from “may” to “by” in line 34
- 136** Page 162, line 38, at end insert –
- “( ) In exercising their powers under this section, the Treasury must have regard to –
- (a) the importance of securing an appropriate degree of protection for consumers, and
- (b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.”
- 137** Page 163, line 2, at end insert –
- ““consumers” has the meaning given in section 1G of FSMA 2000;”

#### **After Clause 91**

- 138** Insert the following new Clause –

#### **“Suspension of licences under Part 3 of Consumer Credit Act 1974**

- (1) The Consumer Credit Act 1974 is amended as follows.
- (2) In section 32 (suspension or revocation) –
- (a) in subsection (1), omit “or suspended”,
- (b) in subsection (2) –

- (i) in paragraph (a), omit “, as the case may be,” and “, or suspend it until a specified date or indefinitely,” and
  - (ii) in paragraph (b), omit “or suspension” and “or suspend”,
  - (c) in subsection (3) –
    - (i) in paragraph (a), omit “, as the case may be,” and “, or suspend it until a specified date or indefinitely,” and
    - (ii) in paragraph (b), omit “or suspension”,
  - (d) in subsection (4) –
    - (i) in paragraph (a), omit “, as the case may be,” and “, or suspend it until a specified date or indefinitely,” and
    - (ii) in paragraph (b), omit “or suspension”,
  - (e) in subsections (6) and (7), omit “or suspension”,
  - (f) omit subsection (8),
  - (g) in subsection (9), omit “or to suspend”, and
  - (h) for the title, omit “Suspension and”.
- (3) After section 32 insert –

**“32A Power to suspend licence**

- (1) If during the currency of a licence it appears to the OFT to be urgently necessary for the protection of consumers that the licence should cease to have effect immediately or on a specified date, the OFT is to proceed as follows.
- (2) In the case of a standard licence the OFT must, by notice –
  - (a) inform the licensee that the OFT is suspending the licence from the date of the notice or from a later date specified in the notice,
  - (b) state the OFT’s reasons for the suspension,
  - (c) state either –
    - (i) that the suspension is to end on a specified date, which must be no later than the last day of the 12 months beginning with the day on which the suspension takes effect, or
    - (ii) that the duration of the suspension is to be as provided by section 32B,
  - (d) specify any provision to be made under section 34A, and
  - (e) invite the licensee to submit to the OFT in accordance with section 34ZA representations –
    - (i) as to the suspension, and
    - (ii) about the provision (if any) that is or should be made under section 34A.
- (3) In the case of a group licence the OFT must –
  - (a) give general notice that the OFT is suspending the licence from the date of the notice or from a later date specified in the notice,
  - (b) state in the notice the OFT’s reasons for the suspension,
  - (c) state in the notice either –
    - (i) that the suspension is to end on a specified date, which must be no later than the last day of the 12 months beginning with the day on which the suspension takes effect, or

- (ii) that the duration of the suspension is to be as provided by section 32B,
  - (d) specify in the notice any provision to be made under section 34A, and
  - (e) in the notice invite any licensee to submit to the OFT in accordance with section 34ZA representations as to the suspension.
- (4) In the case of a group licence issued on application the OFT must also –
- (a) inform the original applicant of the matters specified under subsection (3)(a) to (d) in the general notice, and
  - (b) invite the original applicant to submit to the OFT in accordance with section 34ZA representations as to the suspension.
- (5) Except for the purposes of sections 29 to 32 and section 33A, a licensee under a suspended licence is to be treated, in respect of the period of suspension, as if the licence had not been issued.
- (6) The suspension may, if the OFT thinks fit, be ended by notice given by it to the licensee or, in the case of a group licence, by general notice.
- (7) In this section “consumers”, in relation to a licence, means individuals who have been or may be affected by the carrying on of the business to which the licence relates, other than individuals who are themselves licensees.

### **32B Duration of suspension**

- (1) This section applies where a notice under section 32A provides for the duration of a suspension under that section to be as provided by this section.
- (2) The suspension ends at the end of the period of 12 months beginning with the day on which it takes effect, but this is subject to –
- (a) subsections (3) and (4) (where those subsections give a later time), and
  - (b) the powers of the OFT under section 32A(6) and section 33.
- (3) Subsection (4) applies where –
- (a) the OFT gives notice under section 32 that it is minded to revoke the licence, and
  - (b) it gives that notice –
    - (i) on or before giving the notice under section 32A, or
    - (ii) after giving that notice but before the end of the period of 12 months mentioned in subsection (2).
- (4) The period of suspension is to continue until –
- (a) the time of any determination by the OFT not to revoke the licence in pursuance of the notice under section 32, or
  - (b) where the OFT determines to revoke the licence in pursuance of the notice, the end of the appeal period.”
- (4) In section 33 (application to end suspension), for subsection (1) substitute –

- “(1) On an application made by a licensee the OFT may, if it thinks fit, by notice to the licensee end the suspension of a licence under section 32A, whether the suspension was for a fixed period or for a period determined in accordance with section 32B.”
- (5) In section 33A (power of OFT to impose requirements on licensees) after subsection (6) insert –
- “(6A) A requirement imposed under this section during a period of suspension cannot take effect before the end of the suspension.”
- (6) After section 34 insert –
- “34ZA Representations to OFT: suspension under section 32A**
- (1) Where this section applies to an invitation by the OFT to any person (“P”) to submit representations, the OFT must invite P, within 21 days after the notice containing the invitation is given to P or published, or such longer period as the OFT may allow –
- (a) to submit P’s representations in writing to the OFT, and
  - (b) to give notice to the OFT, if P thinks fit, that P wishes to make representations orally,
- and where notice is given under paragraph (b) the OFT must arrange for the oral representations to be heard.
- (2) The OFT must reconsider its determination under section 32A and determine whether to confirm it (with or without variation) or revoke it and in doing so must take into account any representations submitted or made under this section.
- (3) The OFT must give notice of its determination under this section to the persons who were required to be invited to submit representations about the original determination under section 32A or, where the invitation to submit representations was required to be given by general notice, must give general notice of the confirmation or revocation.”
- (7) In section 34A (winding-up of standard licensee’s business), in subsection (2) –
- (a) in paragraph (c), omit “suspend or”, and
  - (b) after paragraph (c) insert –
    - “(d) a determination to suspend such a licence under section 32A (including a determination made under section 34ZA on reconsidering a previous determination under section 32A);”.
- (8) In section 41 (appeals) after subsection (1) insert –
- “(1ZA) References in the table to a determination as to the suspension of a standard licence or group licence are to be read as references to a determination under section 34ZA to confirm a determination to suspend a standard licence or group licence.”
- (9) Nothing in this section affects the powers conferred by section 22 of FSMA 2000 or section 91 of this Act.”

**“Payment to Treasury of penalties received by Financial Services Authority**

- (1) The Financial Services Authority (“the FSA”) must in respect of its financial year beginning with 1 April 2012 and each subsequent financial year pay to the Treasury its penalty receipts after deducting its enforcement costs.
- (2) The FSA’s “penalty receipts” in respect of a financial year are any amounts received by it during the year by way of penalties imposed under FSMA 2000.
- (3) The FSA’s “enforcement costs” in respect of a financial year are the expenses incurred by it during the year in connection with—
  - (a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
  - (b) the recovery of penalties imposed under FSMA 2000.
- (4) For this purpose the FSA’s enforcement powers are—
  - (a) its powers under any of the provisions mentioned in subsection (5),
  - (b) its powers under any other enactment specified by the Treasury by order,
  - (c) its powers in relation to the investigation of relevant offences, and
  - (d) its powers in England and Wales or Northern Ireland in relation to the prosecution of relevant offences.
- (5) The provisions referred to in subsection (4)(a) are the following provisions of FSMA 2000—
  - (a) section 56 (prohibition orders),
  - (b) section 63A (penalties relating to performance of controlled functions without approval),
  - (c) section 66 (disciplinary powers in relation to approved persons),
  - (d) section 87M (public censure of issuer),
  - (e) section 89 (public censure of sponsor),
  - (f) section 89K (public censure of issuer),
  - (g) section 91 (penalties for breach of Part 6 rules),
  - (h) section 123 (penalties in case of market abuse),
  - (i) section 131G (short selling etc: power to impose penalty or issue censure),
  - (j) sections 205, 206 and 206A (disciplinary measures),
  - (k) section 249 (disqualification of auditor for breach of trust scheme rules),
  - (l) section 345 (disqualification of auditor or actuary), and
  - (m) Part 25 (injunctions and restitution).
- (6) “Relevant offences” are—
  - (a) offences under FSMA 2000,
  - (b) offences under subordinate legislation made under that Act,
  - (c) offences falling within section 402(1) of that Act, and
  - (d) any other offences specified by the Treasury by order.
- (7) The Treasury may give directions to the FSA as to how the FSA is to comply with its duty under subsection (1).
- (8) The directions may in particular—

- (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in subsection (3),
  - (b) relate to the calculation and timing of the deduction in respect of the FSA's enforcement costs, and
  - (c) specify the time when any payment is required to be made to the Treasury.
- (9) The directions may also require the FSA to provide the Treasury at specified times with information relating to—
- (a) penalties that the FSA has imposed under FSMA 2000, or
  - (b) the FSA's enforcement costs.
- (10) The Treasury must pay into the Consolidated Fund any sums received by them under this section.
- (11) The scheme operated by the FSA under paragraph 16 of Schedule 1 to FSMA 2000 is, in the case of penalties received by the FSA on or after 1 April 2012, to apply only in relation to sums retained by the FSA as a result of the deduction for which subsection (1) provides.
- (12) When section 5(2) is fully in force, the Treasury may by order repeal this section.”

**140** Insert the following new Clause—

**“Payment to Treasury of penalties received by Bank of England**

- (1) The Bank of England (“the Bank”) must in respect of each of its financial years pay to the Treasury its penalty receipts after deducting its enforcement costs.
- (2) The Bank’s “penalty receipts” in respect of a financial year are any amounts received by the Bank during the year by way of penalties imposed under any of the following provisions—
  - (a) sections 192K and 312F of FSMA 2000, and
  - (b) section 198 of the Banking Act 2009.
- (3) The Bank’s “enforcement costs” in respect of a financial year are the expenses incurred by it during the year in connection with—
  - (a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
  - (b) the recovery of penalties imposed under any of the provisions mentioned in subsection (2).
- (4) For this purpose the Bank’s enforcement powers are—
  - (a) its powers under any of the provisions mentioned in subsection (5),
  - (b) its powers under any other enactment specified by the Treasury by order,
  - (c) its powers in relation to the investigation of offences under FSMA 2000 or of any other offences specified by the Treasury by order, and
  - (d) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under FSMA 2000 or of any other offences specified by the Treasury by order.
- (5) The provisions referred to in subsection (4)(a) are as follows—

- (a) sections 192K to 192N of FSMA 2000 (parent undertakings), as applied to the Bank by Schedule 17A to that Act,
  - (b) sections 312E and 312F of that Act (disciplinary measures in relation to clearing houses),
  - (c) sections 380, 382 and 384 of that Act (injunctions and restitution), as applied to the Bank by Schedule 17A to that Act, and
  - (d) sections 197 to 200 and 202A of the Banking Act 2009 (inter-bank payment systems).
- (6) The Treasury may give directions to the Bank as to how the Bank is to comply with its duty under subsection (1).
- (7) The directions may in particular –
- (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in subsection (3),
  - (b) relate to the calculation and timing of the deduction in respect of the Bank’s enforcement costs, and
  - (c) specify the time when any payment is required to be made to the Treasury.
- (8) The directions may also require the Bank to provide the Treasury at specified times with specified information relating to –
- (a) penalties that the Bank has imposed under the provisions mentioned in subsection (2), or
  - (b) the Bank’s enforcement costs.
- (9) The Treasury must pay into the Consolidated Fund any sums received by them under this section.”

#### Clause 97

- 141** Page 165, line 20, at end insert –  
 “( ) an order under section 34(2) (power to amend sections 391 and 395 of FSMA 2000);”
- 142** Page 165, line 27, after “which” insert “section (*Affirmative procedure for certain orders*) or”

#### Clause 100

- 143** Page 166, line 41, at end insert –
- “(aa) make provision treating any relevant instrument which was made, issued or given by the Financial Services Authority under any enactment before section 5 is fully in force and is designated by the FCA, the PRA or the Bank of England (or any two or more of them) in accordance with the order –
- (i) as having been made, issued or given by the designating body or bodies;
  - (ii) as having been made, issued or given (or also made, issued or given) under a corresponding provision of this Act or of an enactment as amended by or under this Act;
- (ab) make provision enabling a body which makes a designation by virtue of paragraph (aa) to modify the instrument being designated;

- (ac) make provision treating anything done before section 5 is fully in force by persons appointed by the Financial Services Authority with the approval of the Treasury as having been done by the FCA;
- (ad) make provision treating anything done before section 5 is fully in force by persons appointed by the Prudential Regulation Authority Limited with the approval of the Treasury and the Bank of England as having been done by the PRA;”

144 Page 167, line 1, leave out “rules made,”

145 Page 167, line 20, at end insert –

- “(b) “relevant instrument” means rules, guidance, requirements or a code, scheme, statement or direction.”

### Clause 103

146 Page 167, line 35, at end insert –

“section (*Payment to Treasury of penalties received by Financial Services Authority*);”

147 Page 167, line 41, leave out “Section 94 comes” and insert “Sections 94 and (*Suspension of licences under Part 3 of Consumer Credit Act 1974*) come”

### Schedule 1

148 Page 170, line 11, leave out “Bank” and insert “Oversight Committee”

149 Page 170, leave out lines 12 to 14

150 Page 170, line 30, leave out from “stability” to end of line 31

151 Page 170, line 32, leave out “Bank” and insert “Oversight Committee”

152 Page 170, line 35, at end insert “Financial Policy”

153 Page 170, line 37, after “bankrupt,” insert “that a debt relief order (under Part 7A of the Insolvency Act 1986) has been made in respect of M,”

154 Page 170, line 42, leave out “Bank” and insert “Oversight Committee”

155 Page 171, leave out lines 3 to 5

156 Page 171, line 15, leave out “7” and insert “6”

157 Page 171, line 16, leave out “7” and insert “6”

### Schedule 2

158 Page 173, line 18, after “2” insert –

- “(a) for “director” substitute “non-executive director”, and
- (b) ”

159 Page 173, line 20, at end insert –

“( ) In paragraph 4, for “director” substitute “non-executive director”.”

160 Page 173, line 21, after “5” insert –

- “(a) in sub-paragraph (1), for “director” substitute “non-executive director”, and
- (b) ”

- 161 Page 173, line 24, leave out “director” and insert “non-executive director”
- 162 Page 173, line 28, leave out “director” and insert “non-executive director”
- 163 Page 173, line 30, leave out “director” and insert “non-executive director”
- 164 Page 173, line 32, at end insert –  
 “() In paragraph 7(2), for “director” substitute “non-executive director”.”
- 165 Page 173, line 34, after “(1),” insert –  
 “() in that provision, for “director” substitute “non-executive director”,”
- 166 Page 174, line 1, leave out sub-paragraph (8) and insert –  
 “() In paragraph 11 –  
 (a) the existing provision becomes sub-paragraph (1),  
 (b) in sub-paragraph (1)(b), for “servant” substitute “employee”,  
 (c) in sub-paragraph (1)(c)(ii), for “servants” substitute “employees”, and  
 (d) after sub-paragraph (1) insert –  
 “(2) The duties and powers that may be delegated under this paragraph do not include duties and powers that are by any enactment expressly imposed or conferred on the court of directors.””
- 167 Page 174, line 3, at end insert –  
 “(8A) After paragraph 12 insert –  
*“Publication of record of meetings*  
 12A (1) The Bank must publish a record of each meeting of the court –  
 (a) before the end of the period of 6 weeks beginning with the day of the meeting, or  
 (b) if no meeting of the court is subsequently held during that period, before the end of the period of 2 weeks beginning with the day of the next meeting.  
 (2) The record must specify any decisions taken at the meeting (including decisions to take no action) and must set out, in relation to each decision, a summary of the court’s deliberations.  
 (3) Sub-paragraphs (1) and (2) do not require the publication of information whose publication within the time required by sub-paragraph (1) would in the opinion of the court be against the public interest.  
 (4) Publication under this section is to be in such manner as the Bank thinks fit.””
- 168 Page 174, line 3, at end insert –  
 “() In paragraph 13, after sub-paragraph (3), insert –

- “(3A) But a member of the court who is the Governor or a Deputy Governor of the Bank may not be designated under paragraph (a) or (b) of sub-paragraph (3).”
- 169 Page 174, line 3, at end insert –  
“(8B) In paragraph 14(1), for “it” substitute “the Oversight Committee.”
- 170 Page 174, line 3, at end insert –  
“( ) In paragraph 15, for “director” substitute “non-executive director.”
- 171 Page 174, line 4, leave out “No provision of this paragraph” and insert “Nothing in sub-paragraphs (2) to (6)”
- 172 Page 174, line 34, leave out paragraphs (b) and (c) and insert –  
“(b) for sub-paragraph (2) substitute –  
“(2) The terms and conditions on which a person holds office as a member of the Committee appointed under section 13(2)(c) are to be such as the Oversight Committee may determine.”, and  
(c) omit sub-paragraph (3).”
- 173 Page 174, line 42, at end insert –  
“(7A) In paragraph 9 –  
(a) in sub-paragraph (1) –  
(i) for “Bank” substitute “Oversight Committee”, and  
(ii) in paragraph (a), for “the Committee’s meetings” and “the Committee’s consent” substitute “meetings of the Monetary Policy Committee” and “that Committee’s consent”, and  
(b) omit sub-paragraph (2).”
- 174 Page 175, line 10, leave out from beginning to “in” and insert –  
“(1) Section 244 of the Banking Act 2009 (immunity) is amended as follows.”
- 175 Page 175, line 13, after “Bank’s” insert “functions under the Financial Services and Markets Act 2000, of its other”
- 176 Page 175, line 14, at end insert –  
“( ) After subsection (2) insert –  
“(2A) The Bank’s functions under the Financial Services and Markets Act 2000 are to be taken to include any functions that it may exercise as a result of an appointment under any of sections 97, 166 to 169 and 284 of that Act.”
- 177 Page 175, line 15, at end insert –  
“ In section 4 of the Bank of England Act 1998 (Bank’s annual report), in subsection (4)(a), for “directors” substitute “non-executive directors”.
- 178 Page 175, line 17, at end insert –  
“ In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices), in the entry relating to the Bank of England, for “Director” substitute “non-executive director”.

In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices), in the entry relating to the Bank of England, for “Director” substitute “non-executive director”.

### Schedule 3

179 Page 175, line 30, after first “functions” insert “, in relation to the FCA,”

180 Page 178, line 9, at end insert –

*“Publication of record of meetings of governing body*

9A (1) The FCA must publish a record of each meeting of its governing body –

- (a) before the end of the period of 6 weeks beginning with the day of the meeting, or
- (b) if no meeting of the governing body is subsequently held during that period, before the end of the period of 2 weeks beginning with the day of the next meeting.

(2) The record must specify any decision taken at the meeting (including decisions to take no action) and must set out, in relation to each decision, a summary of the deliberations of the governing body.

(3) Sub-paragraphs (1) and (2) do not require the publication of information whose publication within the time required by sub-paragraph (1) would in the opinion of the governing body be against the public interest.

(4) Publication under this section is to be in such manner as the FCA thinks fit.”

181 Page 178, line 24, after “3I” insert “or 3IA”

182 Page 180, line 39, leave out from beginning to end of line 12 on page 181 and insert –

“19A(1) The FCA must in respect of each of its financial years pay to the Treasury its penalty receipts after deducting its enforcement costs.

(2) The FCA’s “penalty receipts” in respect of a financial year are any amounts received by it during the year by way of penalties imposed under this Act.

(3) The FCA’s “enforcement costs” in respect of a financial year are the expenses incurred by it during the year in connection with –

- (a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
- (b) the recovery of penalties imposed under this Act.

(4) For this purpose the FCA’s enforcement powers are –

- (a) its powers under any of the provisions mentioned in section 133(7A),
- (b) its powers under section 56 (prohibition orders),
- (c) its powers under Part 25 of this Act (injunctions and restitution),

- (d) its powers under any other enactment specified by the Treasury by order,
  - (e) its powers in relation to the investigation of relevant offences, and
  - (f) its powers in England and Wales or Northern Ireland in relation to the prosecution of relevant offences.
- (5) “Relevant offences” are –
- (a) offences under FSMA 2000,
  - (b) offences under subordinate legislation made under that Act,
  - (c) offences falling within section 402(1) of that Act,
  - (d) offences under Part 6A of the Financial Services Act 2012, and
  - (e) any other offences specified by the Treasury by order.
- (6) The Treasury may give directions to the FCA as to how the FCA is to comply with its duty under sub-paragraph (1).
- (7) The directions may in particular –
- (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in sub-paragraph (3),
  - (b) relate to the calculation and timing of the deduction in respect of the FCA’s enforcement costs, and
  - (c) specify the time when any payment is required to be made to the Treasury.
- (8) The directions may also require the FCA to provide the Treasury at specified times with specified information relating to –
- (a) penalties that the FCA has imposed under this Act, or
  - (b) the FCA’s enforcement costs.
- (9) The Treasury must pay into the Consolidated Fund any sums received by them under this paragraph.
- 19B (1) The FCA must prepare and operate a scheme (“the financial penalty scheme”) for ensuring that the amounts that, as a result of the deduction for which paragraph 19A(1) provides, are retained by the FCA in respect of amounts paid to it by way of penalties imposed under this Act are applied for the benefit of regulated persons.
- (2) “Regulated persons” means –
- (a) authorised persons,
  - (b) recognised investment exchanges,
  - (c) issuers of securities admitted to the official list, and
  - (d) issuers who have requested or approved the admission of financial instruments to trading on a regulated market.
- (3) The financial penalty scheme may, in particular, make different provision with respect to different classes of regulated person.
- (3A) The financial penalty scheme must ensure that those who have become liable to pay a penalty to the FCA in any financial year of the FCA do not receive any benefit under the scheme in the following financial year.”

- 184 Page 182, line 27, at end insert –  
“(3A) Neither section 1A(6)(d) nor the definition of “functions” in paragraph 1 applies for the purposes of sub-paragraph (2).”
- 185 Page 183, line 16, leave out from “as,” to end of line 18 and insert “a member, officer or member of staff of the FCA;”
- 186 Page 183, line 21, at end insert –  
“(1A) Anything done or omitted by a person mentioned in sub-paragraph (1)(a) or (b) while acting, or purporting to act, as a result of an appointment under any of sections 166 to 169 is to be taken for the purposes of sub-paragraph (1) to have been done or omitted in the discharge, or as the case may be purported discharge, of the FCA’s functions.”
- 187 Page 183, line 33, leave out “or a member of its governing body”
- 188 Page 184, line 39, after “by” insert “the court of directors of”
- 189 Page 185, line 1, after “by” insert “the court of directors of”
- 190 Page 185, line 3, leave out “Bank” and insert “court of directors”
- 191 Page 185, line 10, leave out “Bank” and insert “court of directors”
- 192 Page 185, line 12, leave out “Bank” and insert “court of directors”
- 193 Page 185, line 34, after first “The” insert “court of directors of the ”
- 194 Page 185, line 43, after “by” insert “the Oversight Committee of”
- 195 Page 185, line 45, leave out “the Bank” and insert “that Committee”
- 196 Page 186, leave out lines 1 to 4
- 197 Page 186, line 9, after “functions” insert “or its functions under section 2DA (strategy)”
- 198 Page 186, line 25, at end insert –  
*“Budget*
- 17A (1) The PRA must, for each of its financial years, adopt an annual budget which has been approved by the Bank.
- (2) The budget must be adopted before the start of the financial year to which it relates, except that the first budget must be adopted as soon as reasonably practicable after the coming into force of this paragraph.
- (3) The PRA may, with the approval of the Bank, vary the budget for a financial year at any time after its adoption.
- (4) The PRA must publish each budget, and each variation of a budget, in such manner as the PRA thinks fit.”
- 199 Page 186, leave out line 32
- 200 Page 186, line 33, at end insert “and of the matter mentioned in section 2G(1)(b)”
- 201 Page 186, line 35, after “3I” insert “or 3IA”

- 202 Page 187, line 20, at end insert “and the matter mentioned in section 2G(1)(b)”
- 203 Page 189, leave out lines 1 to 4 and insert –
- “26A(1) The PRA must in respect of each of its financial years pay to the Treasury its penalty receipts after deducting its enforcement costs.
- (2) The PRA’s “penalty receipts” in respect of a financial year are any amounts received by it during the year by way of penalties imposed under this Act.
- (3) The PRA’s “enforcement costs” in respect of a financial year are the expenses incurred by it during the year in connection with –
- (a) the exercise, or consideration of the possible exercise, of any of its enforcement powers in particular cases, or
- (b) the recovery of penalties imposed under this Act.
- (4) For this purpose the PRA’s enforcement powers are –
- (a) its powers under any of the provisions mentioned in section 133(7A),
- (b) its powers under section 56 (prohibition orders),
- (c) its powers under Part 25 of this Act (injunctions and restitution),
- (d) its powers under any other enactment specified by the Treasury by order,
- (e) its powers in relation to the investigation of relevant offences, and
- (f) its powers in England and Wales or Northern Ireland in relation to the prosecution of relevant offences.
- (5) “Relevant offences” are –
- (a) offences under FSMA 2000,
- (b) offences under subordinate legislation made under that Act, and
- (c) any other offences specified by the Treasury by order.
- (6) The Treasury may give directions to the PRA as to how the PRA is to comply with its duty under sub-paragraph (1).
- (7) The directions may in particular –
- (a) specify descriptions of expenditure that are, or are not, to be regarded as incurred in connection with either of the matters mentioned in sub-paragraph (3),
- (b) relate to the calculation and timing of the deduction in respect of the PRA’s enforcement costs, and
- (c) specify the time when any payment is required to be made to the Treasury.
- (8) The directions may also require the PRA to provide the Treasury at specified times with information relating to –
- (a) penalties that the PRA has imposed under FSMA 2000, or
- (b) the PRA’s enforcement costs.
- (9) The Treasury must pay into the Consolidated Fund any sums received by them under this paragraph.
- 26B The PRA must prepare and operate a scheme (“the financial penalty scheme”) for ensuring that the amounts that, as a result of the deduction for which paragraph 26A(1) provides, are retained by the PRA in respect

of amounts paid to it by way of penalties imposed under this Act are applied for the benefit of PRA-*authorised* persons.”

- 204** Page 189, line 6, leave out “*authorised*” and insert “PRA-*authorised*”
- 205** Page 189, line 6, at end insert –
- “( ) The financial penalty scheme must ensure that those who have become liable to pay a penalty to the PRA in any financial year of the PRA do not receive any benefit under the scheme in the following financial year.”
- 206** Page 190, line 6, after “Act” insert “or any of the other Acts mentioned in section 2A(6)”
- 207** Page 190, line 22, at end insert –
- “(3A) Neither section 2A(6)(d) nor the definition of “functions” in paragraph 1 applies for the purposes of sub-paragraph (2).”
- 208** Page 191, line 8, leave out from “as,” to end of line 10 and insert “a member, officer or member of staff of the PRA;”
- 209** Page 191, line 13, at end insert –
- “(1A) Anything done or omitted by a person mentioned in sub-paragraph (1)(a) or (b) while acting, or purporting to act, as a result of an appointment under any of sections 97, 166 to 169 and 284 is to be taken for the purposes of sub-paragraph (1) to have been done or omitted in the discharge, or as the case may be purported discharge, of the PRA’s functions.”
- 210** Page 191, line 25, leave out “or a member of its governing body”
- Schedule 4**
- 211** Page 198, line 39, leave out sub-paragraph (2) and insert –
- “(2) For “the Authority” or “the Authority’s”, in each place, substitute “the appropriate regulator” or “the appropriate regulator’s”.”
- 212** Page 199, line 1, leave out “(7)” and insert “(8)”
- 213** Page 199, line 2, leave out “(8)” and insert “(9)”
- 214** Page 199, line 10, leave out “(9)” and insert “(10)”
- 215** Page 199, line 13, at end insert –
- “( ) In the heading, for “Authority” substitute “appropriate regulator”.”
- 216** Page 199, line 32, leave out sub-paragraph (2) and insert –
- “(2) For “the Authority” or “the Authority’s”, in each place, substitute “the appropriate regulator” or “the appropriate regulator’s”.”
- 217** Page 199, line 34, leave out “(11)” and insert “(11A)”
- 218** Page 199, line 35, leave out “(11A)” and insert “(11B)”
- 219** Page 200, line 39, leave out sub-paragraph (4) and insert –
- “(4) In subsections (3) to (11), for “the Authority” substitute “the regulator”.”
- 220** Page 201, line 1, leave out “(10)” and insert “(11)”

**221** Page 201, line 2, leave out “(11)” and insert “(12)”

#### Schedule 5

**222** Page 204, line 5, at end insert –

“(b) after subsection (5) insert –

“(5A) “The appropriate regulator” –

- (a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA, and
- (b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA.”, and
- (c) in subsection (6), after “Any” insert “other”.”

#### Schedule 7

**223** Page 215, leave out lines 44 to 48 and insert –

“(a) the general condition in subsection (2) were that the Bank considers that it is desirable to give the direction for the purpose of the effective regulation of one or more recognised clearing houses in the group of the qualifying parent undertaking,”

**224** Page 217, line 42, at end insert –

*“Insolvency*

23A (1) The following provisions of Part 24 of this Act are to apply in relation to the Bank –

- (a) section 356 (powers to participate in proceedings: company voluntary arrangements);
- (b) section 358 (powers to participate in proceedings: trust deeds for creditors in Scotland);
- (c) section 359 (administration order);
- (d) section 362 (powers to participate in administration proceedings);
- (e) section 362A (consent to appointment of administrator);
- (f) section 363 (powers to participate in proceedings: receivership);
- (g) section 365 (powers to participate in proceedings: voluntary winding-up);
- (h) section 367 (winding-up petitions);
- (i) section 371 (powers to participate in proceedings: winding-up).

(2) Those provisions are to apply as if any reference to an authorised person or recognised UK investment exchange were a reference to a recognised clearing house.

23B In the case of any regulated activity which is carried on for the purposes of, or in connection with, the provision of clearing services, the reference to the FCA in section 375(1) is to be read as including a reference to the Bank.”

**225** Page 219, line 41, at end insert –

## “PART 2A

## WINDING UP, ADMINISTRATION OR INSOLVENCY OF UK CLEARING HOUSES

*Notice to Bank of England of preliminary steps*

- 31A (1) An application for an administration order in respect of a UK clearing house may not be determined unless the conditions below are satisfied.
- (2) A petition for a winding up order in respect of a UK clearing house may not be determined unless the conditions below are satisfied.
- (3) A resolution for voluntary winding up of a UK clearing house may not be made unless the conditions below are satisfied.
- (4) An administrator of a UK clearing house may not be appointed unless the conditions below are satisfied.
- (5) Condition 1 is that the Bank of England has been notified –
- (a) by the applicant for an administration order, that the application has been made,
  - (b) by the petitioner for a winding up order, that the petition has been presented,
  - (c) by the UK clearing house, that a resolution for voluntary winding up may be made, or
  - (d) by the person proposing to appoint an administrator, of the proposed appointment.
- (6) Condition 2 is that a copy of the notice complying with Condition 1 has been filed (in Scotland, lodged) with the court (and made available for public inspection by the court).
- (7) Condition 3 is that –
- (a) the period of 2 weeks, beginning with the day on which the notice is received, has ended, or
  - (b) the Bank of England has informed the person who gave the notice that –
    - (i) it has no objection to the order, resolution or appointment being made, and
    - (ii) it does not intend to exercise a stabilisation power under Part 1 of the Banking Act 2009.
- (8) Arranging for the giving of notice in order to satisfy Condition 1 can be a step with a view to minimising the potential loss to a UK clearing house’s creditors for the purpose of section 214 of the Insolvency Act 1986 (wrongful trading).
- (9) In this paragraph “the court” means –
- (a) in England and Wales, the High Court,
  - (b) in Scotland, the Court of Session, and
  - (c) in Northern Ireland, the High Court.

*Power to give directions to insolvency practitioner*

- 31B (1) This paragraph applies where a person has been appointed to act as an insolvency practitioner (within the meaning of section 388 of the Insolvency Act 1986 or article 3 of the Insolvency (Northern Ireland)

- Order 1989) in relation to company which is, or has been, a UK clearing house.
- (2) The Bank of England may give directions to the person if satisfied that it is desirable to give the directions, having regard to the public interest in—
    - (a) protecting and enhancing the stability of the UK financial system,
    - (b) protecting and enhancing public confidence in the stability of the UK financial system, and
    - (c) maintaining the continuity of central counterparty clearing services.
  - (3) Before giving directions the Bank of England must consult—
    - (a) the Treasury,
    - (b) (if the clearing house is a PRA-*authorised person*) the PRA, and
    - (c) the FCA.
  - (4) Directions are enforceable, on an application by the Bank of England, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
  - (5) A person is not liable for damages in respect of action or inaction in accordance with directions.
  - (6) The immunity does not extend to action or inaction—
    - (a) in bad faith, or
    - (b) in contravention of section 6(1) of the Human Rights Act 1998.”

### Schedule 8

- 226** Page 223, line 25, leave out “subsection (5)” and “subsections (5) and (6)”
- 227** Page 223, line 26, after “procedure)” insert—
- “(a) in subsections (1), (6) and (7), after “section 296” insert “or 296A”, and
  - (b) ”
- 228** Page 223, line 40, leave out from “provision)” to “substitute” in line 41 and insert “for “Authority” (in each place)”
- 229** Page 225, line 12, leave out “and (12) (in both places)” and insert “, (12) (in both places) and (13) (in the first place)”
- 230** Page 225, line 15, leave out “In section 313 (interpretation)” and insert—
- “(1) Section 313 (interpretation) is amended as follows.
  - (2) In subsection (1)—
    - (a) after the definition of “applicant” insert—
 

““central counterparty clearing services” has the same meaning as in section 155 of the Companies Act 1989 (see subsection (3A) of that section);”, and
    - (b) at the end insert—
 

“UK clearing house” means a clearing house—

      - (a) which has its head office or its registered office (or both) in the United Kingdom,

- (b) which provides central counterparty clearing services, and
- (c) in relation to which a recognition order is in force.”

(3) ”

### Schedule 9

**231** Page 226, leave out lines 14 and 15 and insert –

“(4) For subsection (2) substitute –

“(2) A contravention within subsection (1) or (1A) –

- (a) does not, except as provided by section 23(1A), make a person guilty of an offence,
- (b) does not, except as provided by section 26A, make any transaction void or unenforceable, and
- (c) does not, except as provided by subsection (3), give rise to any right of action for breach of statutory duty.”

**232** Page 226, line 17, at end insert –

“( ) After subsection (3) insert –

“(4) Subsections (1) and (1A) are subject to section 39(1D).

(5) References in this Act to an authorised person acting in contravention of this section are references to the person acting in a way that results in a contravention within subsection (1) or (1A).”

**233** Page 226, line 17, at end insert –

“2A (1) Section 23 (contravention of the general prohibition) is amended as follows.

(2) After subsection (1) insert –

“(1A) An authorised person (“A”) is guilty of an offence if A carries on a credit-related regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission –

- (a) given to that person under Part 4A, or
- (b) resulting from any other provision of this Act.

(1B) In this Act “credit-related regulated activity” means a regulated activity of a kind designated by the Treasury by order.

(1C) The Treasury may designate a regulated activity under subsection (1B) only if the activity involves a person –

- (a) entering into or administering an agreement under which the person provides another person with credit,
- (b) exercising or being able to exercise the rights of the lender under an agreement under which another person provides a third party with credit, or
- (c) taking steps to procure payment of debts due under an agreement under which another person is provided with credit.

- (1D) But a regulated activity may not be designated under subsection (1B) if the agreement in question is one under which the obligation of the borrower is secured on land.
- (1E) “Credit” includes any cash loan or other financial accommodation.
- (1F) A person guilty of an offence under subsection (1A) is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding the applicable maximum term or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.
- (1G) The “applicable maximum term” is –
- (a) in England and Wales, 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003);
  - (b) in Scotland, 12 months;
  - (c) in Northern Ireland, 6 months.”
- (3) After subsection (3) insert –
- “(4) Subsection (1A) is subject to section 39(1D).
- (5) No proceedings may be brought against a person in respect of an offence under subsection (1A) in a case where either regulator has taken action under section 205, 206 or 206A in relation to the alleged contravention within section 20(1) or (1A).”
- (4) In the heading to the section, at the end insert “or section 20(1) or (1A)”.
- 2B After section 23 insert –
- “23A Parliamentary control in relation to certain orders under section 23**
- (1) This section applies to the first order made under section 23(1B).
  - (2) This section also applies to any subsequent order made under section 23(1B) which contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order would be that an activity would become a credit-related regulated activity.
  - (3) An order to which this section applies may not be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.”
- 2C After section 26 insert –
- “26A Agreements relating to credit**
- (1) An agreement that is made by an authorised person in contravention of section 20 is unenforceable against the other party if the agreement is entered into in the course of carrying on a credit-related regulated activity involving matters falling within section 23(1C)(a).
  - (2) The other party is entitled to recover –

- (a) any money or other property paid or transferred by that party under the agreement, and
    - (b) compensation for any loss sustained by that party as a result of having parted with it.
  - (3) In subsections (1) and (2) “agreement” means an agreement –
    - (a) which is made after this section comes into force, and
    - (b) the making or performance of which constitutes, or is part of, the credit-related regulated activity.
  - (4) If the administration of an agreement involves the carrying on of a credit-related regulated activity, the agreement may not be enforced by a person for the time being exercising the rights of the lender under the agreement unless that person has permission, given under Part 4A or resulting from any other provision of this Act, in relation to that activity.
  - (5) If the taking of steps to procure payment of debts due under an agreement involves the carrying on of a credit-related regulated activity, the agreement may not be enforced by a person for the time being exercising the rights of the lender under the agreement unless the agreement is enforced in accordance with permission –
    - (a) given under Part 4A to the person enforcing the agreement, or
    - (b) resulting from any other provision of this Act.”
- 3 In section 27 (agreements made through unauthorised persons) for subsection (1) substitute –
- “(1) This section applies to an agreement that –
- (a) is made by an authorised person (“the provider”) in the course of carrying on a regulated activity,
  - (b) is not made in contravention of the general prohibition,
  - (c) if it relates to a credit-related regulated activity, is not made in contravention of section 20, and
  - (d) is made in consequence of something said or done by another person (“the third party”) in the course of –
    - (i) a regulated activity carried on by the third party in contravention of the general prohibition, or
    - (ii) a credit-related regulated activity carried on by the third party in contravention of section 20.
- (1A) The agreement is unenforceable against the other party.”
- 4 In section 28 (agreements made unenforceable by section 26 or 27) –
- (a) at the end of subsection (1) insert “, other than an agreement entered into in the course of carrying on a credit-related regulated activity”,
  - (b) in the heading to the section, at the end insert “: general cases”.
- 5 After section 28 insert –
- “28A Credit-related agreements made unenforceable by section 26, 26A or 27**
- (1) This section applies to an agreement that –

- (a) is entered into in the course of carrying on a credit-related regulated activity, and
  - (b) is unenforceable because of section 26, 26A or 27.
- (2) The amount of compensation recoverable as a result of that section is –
  - (a) the amount agreed by the parties, or
  - (b) on the application of either party, the amount specified in a written notice given by the FCA to the applicant.
- (3) If on application by the relevant firm the FCA is satisfied that it is just and equitable in the circumstances of the case, it may by written notice to the applicant allow –
  - (a) the agreement to be enforced, or
  - (b) money paid or property transferred under the agreement to be retained.
- (4) In considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the FCA must –
  - (a) if the case arises as a result of section 26 or 26A, have regard to the issue mentioned in subsection (5), or
  - (b) if the case arises as a result of section 27, have regard to the issue mentioned in subsection (6).
- (5) The issue is whether the relevant firm reasonably believed that by making the agreement the relevant firm was neither contravening the general prohibition nor contravening section 20.
- (6) The issue is whether the provider knew that the third party was (in carrying on the credit-related regulated activity) either contravening the general prohibition or contravening section 20.
- (7) An application to the FCA under this section by the relevant firm may relate to specified agreements or to agreements of a specified description or made at a specified time.
- (8) “The relevant firm” means –
  - (a) in a case falling within section 26, the person in breach of the general prohibition;
  - (b) in a case falling within section 26A or 27, the authorised person concerned.
- (9) If the FCA thinks fit, it may when acting under subsection (2)(b) or (3) –
  - (a) limit the determination in its notice to specified agreements, or agreements of a specified description or made at a specified time;
  - (b) make the determination in its notice conditional on the doing of specified acts by the applicant.

## **28B Decisions under section 28A: procedure**

- (1) A notice under section 28A(2)(b) or (3) must –
  - (a) give the FCA’s reasons for its determination, and
  - (b) give an indication of –

- (i) the right to have the matter referred to the Tribunal that is conferred by subsection (3), and
    - (ii) the procedure on such a reference.
  - (2) The FCA must, so far as it is reasonably practicable to do so, give a copy of the notice to any other person who appears to it to be affected by the determination to which the notice relates.
  - (3) A person who is aggrieved by the determination of an application under section 28A(2)(b) or (3) may refer the matter to the Tribunal.””
- 234** Page 226, line 38, at end insert –
- “( ) In section 130 (guidance), in subsection (1)(b), for “section 397 of this Act” substitute “Part 6A of the Financial Services Act 2012”.”
- 235** Page 227, line 43, leave out ““UCITS directive”” and insert ““auctioning regulation””
- 236** Page 228, line 24, at end insert –
- “( ) After subsection (1) insert –
- “(1A) Each regulator’s policy with respect to the imposition of penalties, suspensions or restrictions under this Part must include policy with respect to their imposition in relation to conduct which constitutes or may constitute an offence by virtue of section 23(1A) (authorised persons carrying on credit-related regulated activities otherwise than in accordance with permission).””
- 237** Page 229, line 13, leave out from beginning to “qualifying” in line 14 and insert “for sub-paragraph (i) (but not the “or” following it) substitute –
- “(i) which is imposed by or under this Act or by a”
- 238** Page 230, line 11, leave out from beginning to “qualifying” in line 12 and insert “for sub-paragraph (i) (but not the “or” following it) substitute –
- “(i) which is imposed by or under this Act or by a”
- 239** Page 231, line 16, leave out ““UCITS directive”” and insert ““auctioning regulation””
- 240** Page 233, line 18, leave out “and”
- 241** Page 233, line 19, at end insert “, and
- (c) for “a final notice” substitute “the notice required by subsection (2A)”.
- ( ) After that subsection insert –
- “(2A) The notice required by this subsection is –
- (a) in a case where the regulator is acting in accordance with a direction given by the Tribunal under section 133(6)(b), or by the court on an appeal from a decision by the Tribunal under section 133(6), a further decision notice, and
  - (b) in any other case, a final notice.”.”
- 242** Page 234, line 30, at end insert –

- “( ) In subsection (7A), for “the Authority” substitute “a regulator.””
- 243** Page 235, line 44, at end insert “, and  
 (d) a decision under section 391(1)(c) to publish information about the matter to which a warning notice relates.”
- 244** Page 236, line 1, leave out from “from” to end of line 3 and insert ““, that the decision” to the end and insert “that –  
 (a) a decision falling within any of paragraphs (a) to (c) of subsection (1) is taken –  
 (i) by a person not directly involved in establishing the evidence on which the decision is based, or  
 (ii) by 2 or more persons who include a person not directly involved in establishing that evidence,  
 (b) a decision falling within paragraph (d) of subsection (1) is taken –  
 (i) by a person other than the person by whom the decision was first proposed, or  
 (ii) by 2 or more persons not including the person by whom the decision was first proposed, and  
 (c) a decision falling within paragraph (d) of subsection (1) is taken in accordance with a procedure which is, as far as possible, the same as that applicable to a decision which gives rise to an obligation to give a warning notice and which falls within paragraph (b) or (c) of subsection (1).””
- 245** Page 237, line 30, at end insert –  
 “30A In section 400 (offences by a body corporate etc) after subsection (6) insert –  
 “(6A) References in this section to an offence under this Act include a reference to an offence under Part 6A of the Financial Services Act 2012 (offences relating to financial services).””
- 246** Page 237, line 31, at end insert –  
 “( ) For subsection (1) substitute –  
 “(1) In this section “offence” means –  
 (a) an offence under this Act,  
 (b) an offence under subordinate legislation made under this Act, or  
 (c) an offence under Part 6A of the Financial Services Act 2012 (offences relating to financial services).””
- 247** Page 238, line 17, leave out from “of” to end of line 18 and insert “any other offence”
- 248** Page 238, line 23, at end insert –  
 “32A In section 403 (jurisdiction and procedure in respect of offences), in subsection (7), at the end insert “or an offence under Part 6A of the Financial Services Act 2012 (offences relating to financial services).”

### Schedule 10

- 249** Page 239, line 33, at end insert –

“( ) In subsection (7), omit “board members,”.”

250 Page 242, line 11, at end insert –

“ In section 221 (powers of court), in subsection (2), after “director or” insert “other”.

In section 222 (statutory immunity), in subsection (1), omit “board member,”.”

#### Schedule 11

251 Page 243, line 17, at end insert –

“ In section 232 (powers of court), in subsection (2), after “director or” insert “other”.”

252 Page 244, line 22, at end insert –

“ In paragraph 6 (status), in sub-paragraph (2), omit “board members,”.”

#### Schedule 12

253 Page 250, line 22, at end insert –

“( ) In subsection (2) –

(a) in paragraph (a), for “or 397” substitute “or under Part 6A of the Financial Services Act 2012”, and

(b) after paragraph (b) insert –

“(ba) an authorised person may have contravened section 20 in relation to a credit-related regulated activity;”.”

254 Page 250, line 34, leave out from “for” to end of line 35 and insert ““the Authority” substitute “a regulator”,”

255 Page 250, leave out line 37 and insert –

“(g) for paragraph (k) substitute –”

256 Page 254, line 20, leave out sub-paragraph (4)

257 Page 255, leave out lines 29 and 30 and insert –

“(i) officers of, or members of the staff of, the regulator, or”

258 Page 255, line 31, leave out “directors,”

259 Page 255, line 43, leave out “or members of its governing body”

#### Schedule 13

260 Page 257, line 11, at end insert –

“1A In Part 22 (auditors and actuaries), before section 340 (and the italic heading immediately before it) insert –

*“General duties of PRA***339A General duties of PRA in relation to auditors**

- (1) The arrangements maintained by the PRA under section 2J (supervision of PRA-authorized persons) must include arrangements for—
  - (a) the sharing with auditors of PRA-authorized persons of information that the PRA is not prevented from disclosing, and
  - (b) the exchange of opinions with auditors of PRA-authorized persons.
- (2) The PRA must issue and maintain a code of practice describing how it will comply with subsection (1).
- (3) The PRA may at any time alter or replace a code issued under this section.
- (4) If a code is altered or replaced, the PRA must issue the altered or replacement code.
- (5) When the PRA issues a code under this section the PRA must—
  - (a) give a copy of the code to the Treasury, and
  - (b) publish the code in such manner as the PRA thinks fit.
- (6) The Treasury must lay before Parliament a copy of the code.
- (7) “Auditor” means an auditor appointed under or as a result of a statutory provision.””

**261** Page 257, line 17, leave out sub-paragraph (4) and insert—

“(4) For subsection (3) substitute—

“(3A) The PRA—

- (a) must make rules imposing on auditors of PRA-authorized persons such duties as may be specified in relation to co-operation with the PRA in connection with the supervision by the PRA of PRA-authorized persons, and
- (b) may make rules—
  - (i) imposing such other duties on auditors of PRA-authorized persons as may be specified, and
  - (ii) imposing such duties on actuaries acting for PRA-authorized persons as may be specified.

(3B) The FCA may make rules imposing on auditors of, or actuaries acting for, authorised persons such duties as may be specified.””

**262** Page 257, line 20, at end insert—

“( ) In subsection (5), for “(3)” substitute “(3A) or (3B)”.”

**263** Page 257, leave out lines 25 to 28 and insert—

“( ) In subsection (6), for “(3)” substitute “(3B)”.”

### Schedule 14

- 264** Page 263, line 8, before “the appropriate” insert “or recognised investment exchange,”
- 265** Page 264, line 6, at end insert –  
 “(1A) In subsections (1), (2) and (6), after “authorised person” insert “or recognised investment exchange.””
- 266** Page 264, line 24, at end insert “, and  
 (b) in paragraph (a), after “authorised person” insert “or recognised investment exchange.””
- 267** Page 264, leave out line 34 and insert –  
 “(2) For subsection (2) substitute –  
 “(2) If the administrator thinks that the company or partnership is carrying on, or has carried on –  
 (a) a regulated activity in contravention of the general prohibition, or  
 (b) a credit-related regulated activity in contravention of section 20,  
 the administrator must report the matter to the appropriate regulator without delay.””
- 268** Page 265, line 12, at end insert “, and  
 (b) in paragraph (a), after “authorised person” insert “or recognised investment exchange.””
- 269** Page 266, line 17, at end insert –  
 “(1A) In subsection (1)(a), after “authorised person” insert “or recognised investment exchange.””
- 270** Page 266, line 31, at end insert –  
 “( ) in paragraph (b), after “prohibition” insert “or a credit-related regulated activity in contravention of section 20””
- 271** Page 266, line 37, at end insert –  
 “(1A) In subsection (1)(b), after “authorised person” insert “or recognised investment exchange.””
- 272** Page 267, line 20, at end insert “, and  
 (b) in paragraph (a), after “authorised person” insert “or recognised investment exchange.””
- 273** Page 269, leave out lines 2 to 10 and insert –  
 “18 For section 370 substitute –  
**“370 Liquidator’s duty to report to FCA and PRA**  
 (1) If –  
 (a) a company is being wound up voluntarily or a body is being wound up on a petition presented by any person, and  
 (b) it appears to the liquidator that the company or body is carrying on, or has carried on –

- (i) a regulated activity in contravention of the general prohibition, or
  - (ii) a credit-related regulated activity in contravention of section 20,
- the liquidator must report the matter without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA.””
- 274** Page 269, leave out line 16
- 275** Page 269, line 19, at end insert “and  
(b) in paragraph (a), after “authorised person” insert “or recognised investment exchange”.”
- 276** Page 270, line 15, at end insert –  
“( ) in paragraph (b), for the words from “carried on” to the end substitute “carried on –  
(i) a regulated activity in contravention of the general prohibition, or  
(ii) a credit-related regulated activity in contravention of section 20”.”

#### Schedule 15

- 277** Page 272, line 2, at end insert –  
“ In paragraph 3 (status), in sub-paragraph (2), omit “board members,”.”

#### Schedule 17

- 278** Page 279, line 32, at end insert –  
“Section 81B | (a) Treat the reference to the PRA in  
| subsection (2) as a reference to the FCA.  
| (b) Ignore subsection (7)(b).”

- 279** Page 281, line 6, at end insert –  
“( ) In subsection (6), after “filed” insert “(in Scotland, lodged)”.”

#### Schedule 18

- 280** Page 286, line 16, at end insert –  
“ In section 177 (offences), in subsection (2), after “director or” insert “other”.”
- 281** Page 289, line 13, at end insert –  
“ In paragraph 8 of Schedule 6 (additional threshold conditions), in sub-paragraph (2)(b), for “the Authority” substitute “such of the FCA or the PRA as may be specified,”.”
- 282** Page 291, line 32, at end insert –

*“Lloyd’s Act 1982 (c. xiv)*

In section 7 of the Lloyd’s Act 1982 (the Disciplinary Committee and the Appeal Tribunal), in subsection (1A)(c), for “Financial Services Authority” substitute “Prudential Regulation Authority or the Financial Conduct Authority”.

**283** Page 292, line 6, leave out from “for” to end of line 7 and insert “the words from “competent authority” to the end substitute “Financial Conduct Authority to exercise its functions under Part 6 of the Financial Services and Markets Act 2000.””

**284** Page 302, line 5, at end insert –

*“Trustee Act 2000 (c. 29)*

(1) Section 29 of the Trustee Act 2000 (remuneration of certain trustees) is amended as follows.

(2) In subsection (3) –

- (a) for “an authorised institution under the Banking Act 1987” substitute “a deposit taker”, and
- (b) for “institution’s” substitute “deposit taker’s”.

(3) After that subsection insert –

“(3A) In subsection (3), “deposit taker” means –

- (a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to accept deposits, or
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits.

(3B) A reference in subsection (3A) to a person or firm with permission to accept deposits does not include a person or firm with permission to do so only for the purposes of, or in the course of, carrying on another regulated activity in accordance with that permission.

(3C) Subsections (3A) and (3B) must be read with –

- (a) section 22 of the Financial Services and Markets Act 2000,
- (b) any relevant order under that section, and
- (c) Schedule 2 to that Act.”.

**285** Page 310, line 32, at end insert –

*“Finance Act 2011 (c. 11)*

(1) Part 4 of Schedule 19 to the Finance Act 2011 (the bank levy) is amended as follows.

(2) In paragraph 37(2), in both places, for “section 213(2)(b)” substitute “section 213(3)(b)”.

(3) In paragraph 38(3)(a), for “section 139(1)” substitute “section 137B(1)”.

*Terrorism Prevention and Investigation Measures Act 2011 (c. 23)*

In Part 1 of Schedule 1 to the Terrorism Prevention and Investigation Measures Act 2011 (measures), in paragraph 5(4), for “Part 4” substitute “Part 4A”.

286 Page 311, line 16, at end insert—

*“Charities and Trustee Investment (Scotland) Act 2005 (asp 10)*

In section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (general interpretation), in the definition of “relevant financial institution”, for “Part 4” substitute “Part 4A”.

287 Page 311, line 37, at end insert—

## “PART 5

## AMENDMENT OF MEASURE OF THE NATIONAL ASSEMBLY FOR WALES

*Welsh Language (Wales) Measure 2011 (nawm 1)*

In Schedule 6 to the Welsh Language (Wales) Measure 2011 (public bodies etc: standards)—

- (a) in the Welsh text, omit the entry relating to “Awdurdod Gwasanaethau Ariannol (“*The Financial Services Authority*”)” and at the appropriate place among the entries headed “Cyffredinol” insert—

“Awdurdod Ymddygiad Ariannol (“ <i>Financial Conduct Authority</i> ”)	Safonau cyflenwi gwasanaethau
	Safonau llunio polisi
	Safonau gweithredu
	Safonau cadw cofnodion.”

- (b) in the English text, omit the entry relating to “The Financial Services Authority (“*Awdurdod Gwasanaethau Ariannol*”)” and at the appropriate place among the entries headed “General” insert—

“Financial Conduct Authority (“ <i>Awdurdod Ymddygiad Ariannol</i> ”)	Record keeping standards
	Service delivery standards
	Policy making standards
	Operational standards.”

- (c) in the Welsh text, at the appropriate place among the entries headed “Cyffredinol”, insert—

“Awdurdod Rheoleiddio Darbodus ( <i>“Prudential Regulation Authority”</i> )	Safonau cyflenwi gwasanaethau
	Safonau llunio polisi
	Safonau gweithredu
	Safonau cadw cofnodion.”

(d) in the English text, at the appropriate place among the entries headed “General”, insert—

“Prudential Regulation Authority ( <i>“Awdurdod Rheoleiddio Darbodus”</i> )	Record keeping standards
	Service delivery standards
	Policy making standards
	Operational standards.”.”

#### Schedule 19

288 Page 312, line 3, at end insert—

“Bank of England Act 1998 | Section 1(3).”

#### Schedule 20

289 Page 315, line 6, at end insert—

“(1A) The FSA may disclose to the Bank of England any information which the FSA considers that it is necessary or expedient to disclose to the Bank in preparation for the commencement of any provision of this Act conferring functions on the Bank.”

290 Page 315, line 8, leave out “sub-paragraph (1)” and insert “sub-paragraphs (1) and (1A)”

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LORDS AMENDMENTS TO THE  
FINANCIAL SERVICES BILL

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