

# FINANCIAL SERVICES ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 2 - Amendments of Financial Services and Markets Act 2000**

#### **Recognised investment exchanges and clearing houses**

#### ***Section 31: additional power to direct UK clearing houses***

388. *Section 31* inserts a new section 296A which confers an additional power of direction on the Bank over UK clearing houses. (The term “UK clearing house” is defined for the purposes of Part 18 of FSMA in section 313 of FSMA, as amended by *paragraph 36 of Schedule 8*.) This additional power of direction may only be used where the Bank is satisfied that it is necessary to do so, having regard to four public interest criteria: (1) protecting and enhancing the stability of the UK financial system; (2) maintaining public confidence in the stability of the UK financial system; (3) maintaining the continuity of the central counterparty clearing services provided by the clearing house and (4) maintaining and enhancing the financial resilience of the clearing house.
389. There are limitations on the purposes for which a direction under this power may be given: The power may not be used to require a clearing house to take steps to comply with any recognition requirements provided for in regulations made under section 286 of FSMA, any other obligation imposed upon it by or under FSMA, or any obligation imposed upon it by any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury pursuant to section 296. The power also may not be used for the purpose of compelling a UK clearing house to accept any transfer to it of the property, rights or liabilities of another clearing house.
390. Where the procedural requirements of section 298 (as amended by *paragraph 16 of Schedule 8*) applicable to the giving of directions under new section 296A are not followed (i.e. where the direction is given in reliance on section 298(7)), the Bank is required to give reasons as to (1) why the direction was given, and (2) why no prior notice that the direction was to be given was given.