

FINANCIAL SERVICES ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 6 – Investigation of Complaints Against Regulators

Sections 84 to 86: Arrangements for the investigation of complaints

543. *Section 84* requires the FCA, the PRA and the Bank (for the purpose of this Part, “the regulators”) to put in place a scheme for the prompt, independent investigation of complaints made against them in respect of their relevant functions (as defined in *section 85*), for example complaints about maladministration. They must appoint an investigator, with the approval of the Treasury, on terms and conditions reasonably designed to ensure independence from the regulators, and to ensure that complaints will be investigated under the scheme without favouring the regulators. *Section 86* requires the regulators to consult publicly on a draft of the proposed scheme, and any alteration to or replacement of the complaints scheme, to consider an report on representations received, and to publish up-to-date details of the complaints scheme.

Section 87: Investigation of complaints

544. *Section 87* deals with the operation of the complaints scheme. The regulator may decide not to investigate a complaint in accordance with the scheme where it considers that the complaint would be dealt with more appropriately in another way, for example by reference to the Tribunal. A regulator may make an initial investigation of a complaint, but it must then refer any complaint it is investigating to the investigator. The regulator must also notify the investigator of complaints it has decided not to investigate; the investigator may choose to investigate such a complaint. The investigator must report to the regulator and the complainant on the investigation, and the investigator can recommend that the regulator makes a compensatory payment to the complainant or remedies the matter, or both. The investigator can publish all or part of the report if the investigator thinks that it ought to be brought to the attention of the public and, if a report is critical of the regulator, the regulator must inform the investigator and the complainant of the steps it proposes to take in response and the investigator may require the regulator to publish all or part of that response. *Subsection (8)* permits the investigator to appoint a person to investigate on its behalf but, to ensure the independence of investigations, *subsection (9)* prevents the investigator from appointing officers and employees of the regulator against which the complaint was made.

Section 88: Exemption from liability in damages

545. *Section 88* confers on the investigator and persons appointed by the investigator immunity from liability in damages except where they act in bad faith or where damages are sought under the Human Rights Act 1998.