



Financial Services Act 2012

2012 CHAPTER 21

PART 2

AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

Official listing

16 FCA to exercise functions under Part 6 of FSMA 2000

- (1) FSMA 2000 is amended as follows.
- (2) In each of the provisions of Part 6 (official listing etc) mentioned in subsection (3)—
 - (a) for “competent authority” or “competent authority’s”, in each place, substitute “FCA” or “FCA’s”, and
 - (b) for “the authority” or “the Authority”, in each place, substitute “the FCA”.
- (3) Those provisions are—
 - (a) sections 73A to 84;
 - (b) section 86;
 - (c) sections 87B to 87D;
 - (d) section 87G;
 - (e) sections 87J to 87O (including the italic heading before section 87J);
 - (f) sections 87Q to 88;
 - (g) sections 89A to 97 (including the italic heading before section 89H and the heading to that section);
 - (h) section 101(2);
 - (i) section 103(1).
- (4) Before section 73A insert an italic heading “*Rules*”.
- (5) In section 77(3) (discontinuance and suspension of listing), for “sections 96 and 99” substitute “section 96 and paragraph 23(6) of Schedule 1ZA”.

Status: This is the original version (as it was originally enacted).

- (6) 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”.
- (7) In section 87E (transfer by competent authority of application for approval)—
- (a) in subsection (1), for “competent authority”, in the first place, substitute “FCA”,
 - (b) in subsections (2) to (4), for “competent authority” substitute “FCA”, and
 - (c) in the heading, for “competent authority” substitute “FCA”.
- (8) In section 87F (transfer to competent authority of application for approval)—
- (a) in subsection (1)—
 - (i) for “Where the competent authority” substitute “Where the FCA”, and
 - (ii) in paragraph (b), for “competent authority” substitute “FCA”,
 - (b) in subsection (2), for “competent authority” substitute “FCA”, and
 - (c) in the heading, for “competent authority” substitute “FCA”.
- (9) In section 87H (prospectus approved in another EEA State)—
- (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”.
- (10) In section 87I (provision of information to host member State)—
- (a) in subsection (1)—
 - (i) for “competent authority”, in the first place, substitute “FCA”,
 - (ii) in paragraph (b), for “competent authority” substitute “FCA”, and
 - (iii) in paragraph (c), omit “other”,
 - (b) in subsection (1A), for “competent authority”, in the first place, substitute “FCA”, and
 - (c) in subsections (3) to (5), for “competent authority” substitute “FCA”.
- (11) In section 87P (exercise of powers at request of competent authority of another EEA State)—
- (a) in subsection (1)(c), for “competent authority”, in the second place, substitute “FCA”, and
 - (b) in subsection (2), for “competent authority” substitute “FCA”.
- (12) In section 100A (exercise of powers where UK is host member State)—
- (a) in subsections (1) and (2), for “competent authority” substitute “FCA”,
 - (b) in subsection (3), for “the authority”, in both places, substitute “the FCA”,
 - (c) in subsection (4), for “The authority” substitute “The FCA”, and
 - (d) in subsections (5) and (6), for “the authority” substitute “the FCA”.
- (13) In Schedule 10 (compensation: exemptions), for “competent authority”, in each place, substitute “FCA”.
- (14) Omit the following provisions—

Status: This is the original version (as it was originally enacted).

- (a) section 72 (Financial Services Authority to exercise functions of the competent authority under Part 6) and the italic heading before it;
- (b) section 73 (general duty of the competent authority);
- (c) section 99 (fees);
- (d) section 100 (penalties);
- (e) in section 101 (general provisions), subsections (1) and (3) to (8);
- (f) section 102 (exemption from liability in damages);
- (g) in section 103 (interpretation), subsections (2) and (3);
- (h) in section 195 (exercise of power in support of overseas regulator), subsection (4)(b);
- (i) in section 410 (international obligations), subsection (4)(b);
- (j) in section 415 (jurisdiction in civil proceedings), subsection (1)(b);
- (k) Schedule 7 (modification of Act in its application to the Financial Services Authority when acting as competent authority for purposes of Part 6);
- (l) Schedule 8 (power to transfer functions under Part 6 to other persons).

17 Discontinuance or suspension at the request of the issuer: procedure

- (1) FSMA 2000 is amended as follows.
- (2) In section 78A (discontinuance or suspension at the request of the issuer: procedure)—
 - (a) in subsection (1), for paragraphs (a) and (b) substitute—
 - “(a) immediately, if the notification under subsection (2) so provides;
 - (b) in any other case, on such date as may be provided for in that notification.”,
 - (b) in subsection (2), for “give him written notice” substitute “notify the issuer (whether in writing or otherwise)”, and
 - (c) for subsection (3) substitute—
 - “(3) The notification must—
 - (a) notify the issuer of the date on which the discontinuance or suspension took effect or will take effect, and
 - (b) notify the issuer of such other matters (if any) as are specified in listing rules.”
- (3) In section 395(13) (definition of “supervisory notice”), after “a notice” insert “or notification”.

18 Listing rules: disciplinary powers in relation to sponsors

- (1) FSMA 2000 is amended as follows.
- (2) In section 88 (provision that may be made by listing rules in relation to sponsors)—
 - (a) in subsection (3), at the end insert—
 - “(e) provide for limitations or other restrictions to be imposed on the services to which an approval relates (whether or not the approval has already been granted);
 - (f) provide for the approval of a sponsor to be suspended on the application of the sponsor.”,

Status: This is the original version (as it was originally enacted).

- (b) in subsection (4), in paragraph (a), for “for approval as a sponsor” substitute “under sponsor rules”,
 - (c) after that paragraph (but before the “or” at the end) insert—
 - “(aa) to impose limitations or other restrictions on the services to which a person's approval relates,”,
 - (d) in subsection (5), in paragraph (a), for “for approval” substitute “under sponsor rules”,
 - (e) after that paragraph (but before the “or” at the end) insert—
 - “(aa) not to impose limitations or other restrictions on the services to which a person's approval relates,”,
 - (f) in subsection (6), in paragraph (a), for “for approval” substitute “under sponsor rules”,
 - (g) after that paragraph (a) (but before the “or” at the end) insert—
 - “(aa) to impose limitations or other restrictions on the services to which a person's approval relates,”, and
 - (h) after subsection (7) insert—
 - “(8) In this section any reference to an application under sponsor rules means—
 - (a) an application for approval as a sponsor,
 - (b) an application for the suspension of an approval as a sponsor,
 - (c) an application for the withdrawal of the suspension of an approval as a sponsor, or
 - (d) an application for the withdrawal or variation of a limitation or other restriction on the services to which a sponsor's approval relates.”
- (3) The power to make provision under section 88(3)(e) of FSMA 2000 (as inserted by subsection (2)(a) above) includes power to make provision in relation to persons who were approved as sponsors before the coming into force of subsection (2)(a) above.
- (4) For section 89 substitute—

“88A Disciplinary powers: contravention of s.88(3)(c) or (e)

- (1) The FCA may take action against a sponsor under this section if it considers that the sponsor has contravened a requirement or restriction imposed on the sponsor by rules made as a result of section 88(3)(c) or (e).
- (2) If the FCA is entitled to take action under this section against a sponsor, it may do one or more of the following—
 - (a) impose a penalty on the sponsor of such amount as it considers appropriate;
 - (b) suspend, for such period as it considers appropriate, the sponsor's approval;
 - (c) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance of services to which the sponsor's approval relates as it considers appropriate;
 - (d) publish a statement to the effect that the sponsor has contravened a requirement or restriction imposed on the sponsor by rules made as a result of section 88(3)(c) or (e).

Status: This is the original version (as it was originally enacted).

- (3) The period for which a suspension or restriction is to have effect may not exceed 12 months.
- (4) A suspension may relate only to the performance in specified circumstances of a service to which the approval relates.
- (5) A restriction may, in particular, be imposed so as to require the sponsor to take, or refrain from taking, specified action.
- (6) The FCA may—
 - (a) withdraw a suspension or restriction; or
 - (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (7) The FCA may not take action against a sponsor under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the sponsor under section 88B(1).
- (8) “The limitation period” means the period of 3 years beginning with the first day on which the FCA knew that the sponsor had contravened the requirement or restriction.
- (9) For this purpose the FCA is to be treated as knowing that a sponsor has contravened a requirement or restriction if it has information from which that can reasonably be inferred.

88B Action under s.88A: procedure and right to refer to Tribunal

- (1) If the FCA proposes to take action against a sponsor under section 88A, it must give the sponsor a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal—
 - (a) to suspend an approval, or
 - (b) to impose a restriction in relation to the performance of a service,must state the period for which the suspension or restriction is to have effect.
- (4) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (5) If the FCA decides to take action against a sponsor under section 88A, it must give the sponsor a decision notice.
- (6) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (7) A decision notice about—
 - (a) the suspension of an approval, or
 - (b) the imposition of a restriction in relation to the performance of a service,must state the period for which the suspension or restriction is to have effect.

Status: This is the original version (as it was originally enacted).

- (8) A decision notice about the publication of a statement must set out the terms of the statement.
- (9) If the FCA decides to take action against a sponsor under section 88A, the sponsor may refer the matter to the Tribunal.

88C Action under s.88A: statement of policy

- (1) The FCA must prepare and issue a statement of its policy with respect to—
 - (a) the imposition of penalties, suspensions or restrictions under section 88A,
 - (b) the amount of penalties under that section, and
 - (c) the period for which suspensions or restrictions under that section are to have effect.
- (2) The FCA's policy in determining what the amount of a penalty should be, or what the period for which a suspension or restriction is to have effect should be, must include having regard to—
 - (a) the seriousness of the contravention in question in relation to the nature of the requirement concerned,
 - (b) the extent to which that contravention was deliberate or reckless, and
 - (c) whether the sponsor concerned is an individual.
- (3) The FCA may at any time alter or replace a statement issued under this section.
- (4) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replacement statement.
- (5) In exercising, or deciding whether to exercise, its power under section 88A in the case of any particular contravention, the FCA must have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.
- (6) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (7) The FCA may charge a reasonable fee for providing a person with a copy of the statement.
- (8) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

88D Statement of policy under s.88C: procedure

- (1) Before issuing a statement under section 88C, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.
- (3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).

Status: This is the original version (as it was originally enacted).

- (4) If the FCA issues the proposed statement it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with subsection (2), and
 - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.

88E Powers exercisable to advance operational objectives

- (1) The FCA may take action against a sponsor under this section if it considers that it is desirable to do so in order to advance one or more of its operational objectives.
- (2) If the FCA is entitled to take action under this section against a sponsor, it may—
 - (a) suspend, for such period as it considers appropriate, the sponsor's approval, or
 - (b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance of services to which the sponsor's approval relates as it considers appropriate.
- (3) A suspension may relate only to the performance in specified circumstances of a service to which the approval relates.
- (4) A restriction may, in particular, be imposed so as to require the sponsor to take, or refrain from taking, specified action.
- (5) The FCA may—
 - (a) withdraw a suspension or restriction, or
 - (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (6) A person against whom the FCA takes action under this section may refer the matter to the Tribunal.

88F Action under s.88E: procedure

- (1) Action against a sponsor under section 88E takes effect—
 - (a) immediately, if the notice given under subsection (3) so provides, or
 - (b) on such later date as may be specified in the notice.
- (2) If the FCA—
 - (a) proposes to take action against a sponsor under that section, or
 - (b) takes action against a sponsor under that section with immediate effect,it must give the sponsor written notice.

- (3) The notice must—
 - (a) give details of the action,
 - (b) state the FCA's reasons for taking the action and for its determination as to when the action takes effect,
 - (c) inform the sponsor that the sponsor may make representations to the FCA within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal),
 - (d) inform the sponsor of when the action takes effect,
 - (e) inform the sponsor of the right to refer the matter to the Tribunal, and
 - (f) give an indication of the procedure on such a reference.
- (4) The FCA may extend the period allowed under the notice for making representations.
- (5) If the FCA decides—
 - (a) to take the action in the way proposed, or
 - (b) if the action has taken effect, not to rescind it,
 the FCA must give the sponsor written notice.
- (6) If the FCA decides—
 - (a) not to take the action in the way proposed,
 - (b) to take action under section 88E that differs from the action originally proposed, or
 - (c) to rescind action which has taken effect,
 the FCA must give the sponsor written notice.
- (7) A notice under subsection (5) must—
 - (a) inform the sponsor of the right to refer the matter to the Tribunal, and
 - (b) give an indication of the procedure on such a reference.
- (8) A notice under subsection (6)(b) must comply with subsection (3).”
- (5) In section 392 (warning and decisions notices: application of provisions relating to third party rights and access to evidence)—
 - (a) for “section 89(2),” substitute “section 88B(1),” and
 - (b) for “section 89(3),” substitute “section 88B(5).”
- (6) In section 395(13) (meaning of “supervisory notice”), after paragraph (bza) insert—
 - “(bzb) section 88F(2), (5) or (6)(b);”.

19 Primary information providers

- (1) In Part 6 of FSMA 2000 (official listing), after section 89O insert—

“Primary information providers

89P Primary information providers

- (1) Part 6 rules may require issuers of financial instruments to use primary information providers for the purpose of giving information of a specified description to a market of a specified description.
- (2) “Primary information provider” means a person approved by the FCA for the purposes of this section.
- (3) “Specified” means specified in the Part 6 rules.
- (4) Part 6 rules made by virtue of subsection (1) may—
 - (a) provide for the FCA to maintain a list of providers;
 - (b) impose requirements on a provider in relation to the giving of information or of information of a specified description;
 - (c) specify the circumstances in which a person is qualified for being approved as a provider;
 - (d) provide for limitations or other restrictions to be imposed on the giving of information to which an approval relates (whether or not the approval has already been granted);
 - (e) provide for the approval of a provider to be suspended on the application of the provider.
- (5) If the FCA proposes—
 - (a) to refuse a person's application under information provider rules,
 - (b) to impose limitations or other restrictions on the giving of information to which a person's approval relates, or
 - (c) to cancel a person's approval as a provider otherwise than at the person's request,it must give the person a warning notice.
- (6) If the FCA decides—
 - (a) to grant the application under information provider rules,
 - (b) not to impose limitations or other restrictions on the giving of information to which a person's approval relates, or
 - (c) not to cancel the approval,it must give the person concerned written notice of its decision.
- (7) If the FCA decides—
 - (a) to refuse to grant the application under information provider rules,
 - (b) to impose limitations or other restrictions on the giving of information to which a person's approval relates, or
 - (c) to cancel the approval,it must give the person concerned a decision notice.
- (8) A person to whom a decision notice is given under this section may refer the matter to the Tribunal.

Status: This is the original version (as it was originally enacted).

- (9) In this section any reference to an application under information provider rules means—
- (a) an application for approval as a provider,
 - (b) an application for the suspension of an approval as a provider,
 - (c) an application for the withdrawal of the suspension of an approval as a provider, or
 - (d) an application for the withdrawal or variation of a limitation or other restriction on the giving of information to which a provider's approval relates.

89Q Disciplinary powers: contravention of s.89P(4)(b) or (d)

- (1) The FCA may take action against a provider under this section if it considers that the provider has contravened a requirement or restriction imposed on the provider by rules made as a result of section 89P(4)(b) or (d).
- (2) If the FCA is entitled to take action under this section against a provider, it may do one or more of the following—
 - (a) impose a penalty on the provider of such amount as it considers appropriate;
 - (b) suspend, for such period as it considers appropriate, the provider's approval;
 - (c) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the giving by the provider of information as it considers appropriate;
 - (d) publish a statement to the effect that the provider has contravened a requirement or restriction imposed on the provider by rules made as a result of section 89P(4)(b) or (d).
- (3) The period for which a suspension or restriction is to have effect may not exceed 12 months.
- (4) A suspension may relate only to the giving of information in specified circumstances.
- (5) A restriction may, in particular, be imposed so as to require the provider to take, or refrain from taking, specified action.
- (6) The FCA may—
 - (a) withdraw a suspension or restriction, or
 - (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (7) The FCA may not take action against a provider under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the provider under section 89R(1).
- (8) “The limitation period” means the period of 3 years beginning with the first day on which the FCA knew that the provider had contravened the requirement or restriction.

Status: This is the original version (as it was originally enacted).

- (9) For this purpose the FCA is to be treated as knowing that a provider has contravened a requirement or restriction if it has information from which that can reasonably be inferred.

89R Action under s.89Q: procedure and right to refer to Tribunal

- (1) If the FCA proposes to take action against a provider under section 89Q, it must give the provider a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal—
- (a) to suspend an approval, or
 - (b) to impose a restriction in relation to the giving of information,
- must state the period for which the suspension or restriction is to have effect.
- (4) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (5) If the FCA decides to take action against a provider under section 89Q, it must give the provider a decision notice.
- (6) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (7) A decision notice about—
- (a) the suspension of an approval, or
 - (b) the imposition of a restriction in relation to the giving of information,
- must state the period for which the suspension or restriction is to have effect.
- (8) A decision notice about the publication of a statement must set out the terms of the statement.
- (9) If the FCA decides to take action against a provider under section 89Q, the provider may refer the matter to the Tribunal.

89S Action under s.89Q: statement of policy

- (1) The FCA must prepare and issue a statement of its policy with respect to—
- (a) the imposition of penalties, suspensions or restrictions under section 89Q,
 - (b) the amount of penalties under that section,
 - (c) the period for which suspensions or restrictions under that section are to have effect, and
 - (d) the matters in relation to which suspensions or restrictions under that section are to have effect.
- (2) The FCA's policy in determining what the amount of a penalty should be, or what the period for which a suspension or restriction is to have effect should be, must include having regard to—
- (a) the seriousness of the contravention in question in relation to the nature of the requirement concerned,

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- (b) the extent to which that contravention was deliberate or reckless, and
 - (c) whether the provider concerned is an individual.
- (3) The FCA may at any time alter or replace a statement issued under this section.
 - (4) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replacement statement.
 - (5) In exercising, or deciding whether to exercise, its power under section 89Q in the case of any particular contravention, the FCA must have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.
 - (6) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
 - (7) The FCA may charge a reasonable fee for providing a person with a copy of the statement.
 - (8) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

89T Statement of policy under s.89S: procedure

- (1) Before issuing a statement under section 89S, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.
- (3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).
- (4) If the FCA issues the proposed statement it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with subsection (2); and
 - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.

89U Powers exercisable to advance operational objectives

- (1) The FCA may take action against a provider under this section if it considers that it is desirable to do so in order to advance one or more of its operational objectives.

Status: This is the original version (as it was originally enacted).

- (2) If the FCA is entitled to take action under this section against a provider, it may—
 - (a) suspend, for such period as it considers appropriate, the provider's approval, or
 - (b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the giving by the provider of information as it considers appropriate.
- (3) A suspension may relate only to the giving of information in specified circumstances.
- (4) A restriction may, in particular, be imposed so as to require the provider to take, or refrain from taking, specified action.
- (5) The FCA may—
 - (a) withdraw a suspension or restriction, or
 - (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (6) A person against whom the FCA takes action under this section may refer the matter to the Tribunal.

89V Action under s.89U: procedure

- (1) Action against a provider under section 89U takes effect—
 - (a) immediately, if the notice given under subsection (2) so provides, or
 - (b) on such later date as may be specified in the notice.
- (2) If the FCA—
 - (a) proposes to take action against a provider under that section, or
 - (b) takes action against a provider under that section with immediate effect,it must give the provider written notice.
- (3) The notice must—
 - (a) give details of the action,
 - (b) state the FCA's reasons for taking the action and for its determination as to when the action takes effect,
 - (c) inform the provider that the provider may make representations to the FCA within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal),
 - (d) inform the provider of when the action takes effect,
 - (e) inform the provider of the right to refer the matter to the Tribunal, and
 - (f) give an indication of the procedure on such a reference.
- (4) The FCA may extend the period allowed under the notice for making representations.
- (5) If the FCA decides—
 - (a) to take the action in the way proposed, or
 - (b) if the action has taken effect, not to rescind it,

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the FCA must give the provider written notice.

(6) If the FCA decides—

- (a) not to take the action in the way proposed,
- (b) to take action under section 89U that differs from the action originally proposed, or
- (c) to rescind action which has taken effect,

the FCA must give the provider written notice.

(7) A notice under subsection (5) must—

- (a) inform the provider of the right to refer the matter to the Tribunal, and
- (b) give an indication of the procedure on such a reference.

(8) A notice under subsection (6)(b) must comply with subsection (3).”

(2) In section 395(13) (meaning of “supervisory notice”), after paragraph (bzb) (as inserted by section 18(6)) insert—

“(bzc) section 89V(2), (5) or (6)(b);”.

20 Penalties for breach of Part 6 rules

In section 91(6) of FSMA 2000 (penalties for breach of Part 6 rules: limitation period), for “two years” substitute “3 years”.

21 Repeal of competition scrutiny power

Section 95 of FSMA 2000 (competition scrutiny) is repealed.