



Financial Services (Banking Reform) Act 2013

2013 CHAPTER 33

PART 5

REGULATION OF PAYMENT SYSTEMS

Relationship with other regulators

98 Duty of regulators to ensure co-ordinated exercise of functions

- (1) The following are regulators for the purposes of this section—
 - (a) the Payment Systems Regulator;
 - (b) the Bank of England;
 - (c) the FCA;
 - (d) the PRA.
- (2) The regulators must co-ordinate the exercise of their relevant functions (see subsection (5)) with a view to ensuring—
 - (a) that each regulator consults every other regulator (where not otherwise required to do so) in connection with any proposed exercise of a relevant function in a way that may have a material adverse effect on the advancement by that other regulator of any of its objectives;
 - (b) that where appropriate each regulator obtains information and advice from every other regulator in connection with the exercise of its relevant functions in relation to matters of common regulatory interest in cases where the other regulator may be expected to have relevant information or relevant expertise.
- (3) The duty in subsection (2) applies only to the extent that compliance with the duty—
 - (a) is compatible with the advancement by each regulator of any of its objectives, and

- (b) does not impose a burden on the regulators that is disproportionate to the benefits of compliance.
- (4) A function conferred on a regulator relates to matters of common regulatory interest if—
- (a) another regulator exercises similar or related functions in relation to the same persons,
 - (b) another regulator exercises functions which relate to different persons but relate to similar subject-matter, or
 - (c) its exercise could affect the advancement by another regulator of any of its objectives.
- (5) “Relevant functions” means—
- (a) in relation to the Payment Systems Regulator, its functions under this Part;
 - (b) in relation to the Bank of England, its functions under Part 5 of the Banking Act 2009 (inter-bank payment systems);
 - (c) in relation to the FCA, the functions conferred on it by or under FSMA 2000 (see section 1A(6) of that Act);
 - (d) in relation to the PRA, the functions conferred on it by or under FSMA 2000 (see section 2A(6) of that Act).
- (6) “Objectives” means—
- (a) in relation to the Payment Systems Regulator, its payment systems objectives;
 - (b) in relation to the Bank of England, its Financial Stability Objective under section 2A of the Bank of England Act 1998;
 - (c) in relation to the FCA, its strategic objective and operational objectives under section 1B of FSMA 2000;
 - (d) in relation to the PRA, its general objective under section 2B of that Act.

99 Memorandum of understanding

- (1) The following are regulators for the purposes of this section—
- (a) the Payment Systems Regulator;
 - (b) the Bank of England;
 - (c) the FCA;
 - (d) the PRA.
- (2) 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 relevant functions which relate to matters of common regulatory interest, and
 - (b) how the regulators intend to comply with section 98 in relation to the exercise of such functions.
- (3) The regulators must review the memorandum at least once in each calendar year.
- (4) The regulators must give the Treasury a copy of the memorandum and any revised memorandum.
- (5) The Treasury must lay before Parliament a copy of any document received by them under this section.

- (6) The regulators must ensure that the memorandum as currently in force is published in the way appearing to them to be best calculated to bring it to the attention of the public.
- (7) The memorandum need not relate to any aspect of compliance with section 98 if the regulators consider—
 - (a) that publication of information about that aspect would be against the public interest, or
 - (b) that that aspect is a technical or operational matter not affecting the public.
- (8) In this section—
 - (a) the reference in subsection (2)(a) to matters of common regulatory interest is to be read in accordance with section 98(4), and
 - (b) references to relevant functions are to be read in accordance with section 98(5).

100 Power of Bank to require Regulator to refrain from specified action

- (1) Where the first, second and third conditions are met, the Bank of England may give a direction under this section to the Payment Systems Regulator.
- (2) The first condition is that the Payment Systems Regulator is proposing to exercise any of its powers under this Part in relation to a participant in a regulated payment system.
- (3) The second condition is that the Bank of England is of the opinion that the exercise of the power in the manner proposed may—
 - (a) threaten the stability of the UK financial system,
 - (b) have serious consequences for business or other interests in the United Kingdom, or
 - (c) have an adverse effect on the Bank’s ability to act in its capacity as a monetary authority.
- (4) The third condition is that the Bank of England is of the opinion that the giving of the direction is necessary in order to avoid the possible consequence falling within subsection (3).
- (5) A direction under this section is a direction requiring the Payment Systems Regulator not to exercise the power or not to exercise it in a specified manner.
- (6) The direction may be expressed to have effect during a specified period or until revoked.
- (7) The Payment Systems Regulator is not required to comply with a direction under this section if or to the extent that in the opinion of the Payment Systems Regulator compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.

101 Power of FCA to require Regulator to refrain from specified action

- (1) Where the first, second and third conditions are met, the FCA may give a direction under this section to the Payment Systems Regulator.
- (2) The first condition is that the Payment Systems Regulator is proposing to exercise any of its powers under this Part in relation to a participant in a regulated payment system.

- (3) The second condition is that the FCA is of the opinion that the exercise of the power in the manner proposed may have an adverse effect on the ability of the FCA to comply with its duty under section 1B(1) of FSMA 2000 (FCA’s general duties).
- (4) The third condition is that the FCA is of the opinion that the giving of the direction is necessary in order to avoid the possible consequence falling within subsection (3).
- (5) A direction under this section is a direction requiring the Payment Systems Regulator not to exercise the power or not to exercise it in a specified manner.
- (6) The direction may be expressed to have effect during a specified period or until revoked.
- (7) The Payment Systems Regulator is not required to comply with a direction under this section if or to the extent that in the opinion of the Payment Systems Regulator compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.

102 Power of PRA to require Regulator to refrain from specified action

- (1) Where the first, second and third conditions are met, the PRA may give a direction under this section to the Payment Systems Regulator.
- (2) The first condition is that the Payment Systems Regulator is proposing to exercise any of its powers under this Part in relation to—
 - (a) a class of PRA-authorised persons, or
 - (b) a particular PRA-authorised person.
- (3) The second condition is that the PRA is of the opinion that the exercise of the power in the manner proposed may—
 - (a) threaten the stability of the UK financial system,
 - (b) result in the failure of a PRA-authorised person in a way that would have an adverse effect on the stability of the UK financial system,
 - (c) threaten the continuity of core services provided in the United Kingdom, or
 - (d) have an adverse effect on the ability of the PRA to comply with its duty under section 2B(1) of FSMA 2000 (the PRA’s general objective).
- (4) The third condition is that the PRA is of the opinion that the giving of the direction is necessary in order to avoid the possible consequence falling within subsection (3).
- (5) A direction under this section is a direction requiring the Payment Systems Regulator not to exercise the power or not to exercise it in a specified manner.
- (6) The direction may be expressed to have effect during a specified period or until revoked.
- (7) The Payment Systems Regulator is not required to comply with a direction under this section if or to the extent that in the opinion of the Payment Systems Regulator compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.
- (8) The reference in subsection (3)(b) to the “failure” of a PRA-authorised person is to be read in accordance with section 2J(3) and (4) of FSMA 2000.
- (9) In this section—

“core services” has the same meaning as in FSMA 2000 (see section 142C of that Act), and

“PRA-authorised person” has the same meaning as in FSMA 2000 (see section 2B(5) of that Act).