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2012

### Financial Services Act 2012, Chapter 21, Part 4

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# Financial Services Act 2012

## 2012 CHAPTER 21

### PART 4

#### COLLABORATION BETWEEN TREASURY AND BANK OF ENGLAND, FCA OR PRA

##### [<sup>F1</sup>57A Duty of Bank to provide information required by Treasury

- (1) The Treasury may by notice in writing require the Bank of England to provide it with information specified, or of a description specified, in the notice.
- (2) The information must be information which the Treasury consider is material to the Bank's assessment of the implications for public funds of a bank, building society, credit union or investment firm failing.
- (3) The information must be provided before the end of such reasonable period as may be specified in the notice.
- (4) The Bank's duty to provide information under this section does not apply to information which the Bank does not have in its possession.
- (5) For the purposes of this section, the cases in which a bank, building society, credit union or investment firm ("the institution") is to be regarded as failing include those where—
  - (a) the institution enters insolvency,
  - (b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to the institution, or
  - (c) the institution falls to be taken for the purposes of the Financial Services Compensation Scheme (within the meaning given by section 213 of FSMA 2000) to be unable, or likely to be unable, to satisfy claims against the institution.
- (6) In subsection (5)(a) "insolvency" includes—
  - (a) bankruptcy;
  - (b) liquidation;
  - (c) bank insolvency;

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- (d) building society insolvency;
- (e) investment bank insolvency;
- (f) administration;
- (g) bank administration;
- (h) building society special administration;
- (i) receivership;
- (j) a composition between the institution and the institution's creditors;
- (k) a scheme of arrangement of the institution's affairs.

(7) For the purposes of this section—

“bank” has the meaning given by section 2 of the Banking Act 2009,

“bank administration” has the same meaning as in that Act (see section 136 of that Act),

“bank insolvency” has the same meaning as in that Act (see section 90 of that Act),

“building society”, “building society insolvency” and “building society special administration” have the same meaning as in the Building Societies Act 1986 (see section 119 of that Act),

“credit union” means a credit union as defined by section 31 of the Credit Unions Act 1979 or a credit union as defined by Article 2(2) of the Credit Unions (Northern Ireland) Order 1985,

“investment bank insolvency” means any procedure established by regulations under section 233 of the Banking Act 2009,

“investment firm” has the same meaning as in that Act (see section 258A of that Act),

“public funds” means the Consolidated Fund and any other account or source of money which cannot be drawn or spent other than by, or with the authority of, the Treasury,

and an event has implications for public funds if it would or might involve or lead to a need for the application of public funds.

#### **Textual Amendments**

**F1** S. 57A - S. 57B inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), **ss. 36(2)**, 41(3); S.I. 2016/627, reg. 2(1)(aa)

### **57B Duty of Bank to inform Treasury about resolution plans**

(1) This section applies in relation to—

- (a) a resolution plan which includes one or more options for the exercise of a stabilisation power by the Bank of England in relation to an institution (“the institution”), and
- (b) a group resolution plan which includes one or more options for the exercise of a stabilisation power by the Bank of England in relation to a group entity (“the entity”).

(2) Unless otherwise directed under subsection (5), before adopting the plan the Bank must provide the Treasury with—

- (a) a copy of the plan,

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- [<sup>F2</sup>(b) the Bank's assessment of the risk that the failing of the institution or entity would pose to the stability of the financial system in the United Kingdom,]
- (c) the Bank's assessment of the implications for public funds—
- (i) of the exercise by the Bank of a stabilisation power in relation to the institution or the entity in accordance with the option (or each of the options) for the exercise of such a power included in the plan, and
  - (ii) if the plan includes one or more options for the use of an insolvency or administration procedure in relation to the institution or the entity, of the use of such a procedure in accordance with that option (or each of those options), and
- (d) any analysis considered by the Bank (whether or not prepared by the Bank) to be material in making the assessments mentioned in paragraph (c).
- (3) Unless otherwise directed under subsection (5), the Bank must provide the Treasury with details of—
- (a) any material changes to the plan, before those changes are adopted,
  - (b) any material changes to the Bank's assessments of the matters mentioned in subsection (2)(b) or (c), and
  - (c) any further analysis considered by the Bank (whether or not prepared by the Bank) to be material to revising the assessments mentioned in subsection (2) (c).
- (4) Where reasonably practicable the Bank must comply with subsections (2) and (3) before the Bank exercises any of its powers under section 3A of the Banking Act 2009 in relation to the institution or the entity.
- (5) The Treasury may by notice in writing—
- (a) direct the Bank not to provide it under this section with information in relation to institutions or entities specified, or of a description specified, in the notice;
  - (b) revoke a direction given under paragraph (a).
- (6) Where a direction given under subsection (5)(a) is revoked—
- (a) the Bank must provide the Treasury with the matters listed in subsection (2) (a) to (d) in relation to the institutions or entities to which the direction related as soon as reasonably practicable after the date of the revocation, and
  - (b) subsection (3) applies in relation to those institutions or entities, but this is subject to any further direction under subsection (5)(a).
- (7) For the purposes of this section—
- “failing” has the same meaning as in section 57A,
- “insolvency or administration procedure” means—
- (a) bank insolvency,
  - (b) building society insolvency,
  - (c) investment bank insolvency,
  - (d) bank administration, or
  - (e) building society special administration,
- (and those terms have the same meaning as in section 57A);
- “public funds” has the same meaning as in section 57A,
- <sup>F3</sup> ...

**Changes to legislation:** *Financial Services Act 2012, PART 4 is up to date with all changes known to be in force on or before 05 October 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

and action has implications for public funds if it would or might involve or lead to a need for the application of public funds.]

#### Textual Amendments

- F1** S. 57A - S. 57B inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), [ss. 36\(2\)](#), [41\(3\)](#); [S.I. 2016/627](#), [reg. 2\(1\)\(aa\)](#)
- F2** [S. 57B\(2\)\(b\)](#) substituted (31.12.2020) by [The Bank of England \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1297\)](#), [regs. 1\(2\)](#), [8\(2\)\(a\)](#); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F3** Words in [s. 57B\(7\)](#) omitted (31.12.2020) by virtue of [The Bank of England \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1297\)](#), [regs. 1\(2\)](#), [8\(2\)\(b\)](#); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

### 58 Duty of Bank to notify Treasury of possible need for public funds

- (1) Where it appears to the Bank of England that there is a material risk of circumstances within any of the following cases arising, the Bank must immediately notify the Treasury.
- (2) A notification under subsection (1) or section 59(2) is referred to in this Part as a “public funds notification”.
- (3) The first case is where the Treasury or the Secretary of State might reasonably be expected to regard it as appropriate to provide financial assistance to or in respect of a financial institution.
- (4) The second case is where—
  - (a) the Treasury, the Bank of England, the PRA, the FCA or the Secretary of State might reasonably be expected to regard it as appropriate to exercise any of their respective powers under Parts 1 to 3 of the Banking Act 2009, and
  - (b) the Treasury might reasonably be expected to regard it as appropriate to incur expenditure in connection with the exercise of any of those powers (whether by the Treasury, the Bank, the PRA, the FCA or the Secretary of State).
- (5) The third case is where the scheme manager of the Financial Services Compensation Scheme might reasonably be expected to request—
  - (a) a loan from the National Loans Fund under section 223B of FSMA 2000, or
  - (b) financial assistance from the Treasury,
 for the purpose of funding expenses incurred or expected to be incurred under the Financial Services Compensation Scheme.
- (6) A public funds notification must give a general indication of the matters giving rise to the notification.
- (7) A public funds notification must be given or confirmed in writing.

#### Commencement Information

- II** S. 58 in force at 1.4.2013 by [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

### 59 Duty of Bank to notify Treasury of changes

- (1) This section applies where a public funds notification has been given.

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- (2) If the Bank of England is of the opinion that the risk to which the notification relates continues but that there is a substantial change in the matters which gave rise to the notification, the Bank must notify the Treasury.
- (3) If the Bank of England is of the opinion that the risk to which the notification relates has ceased, it must notify the Treasury.
- (4) Before giving a notification under subsection (3), the Bank must consult the Treasury.
- (5) A notification under subsection (3) must be given or confirmed in writing.

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**Commencement Information**

**I2** S. 59 in force at 1.4.2013 by [S.I. 2013/423](#), art. 3, Sch.

## **60 Circumstances in which Treasury power of direction exercisable**

- (1) This section makes provision about the circumstances in which the Treasury's power of direction under section 61 is exercisable, subject to the provisions of that section.
- (2) Where a public funds notification has been given, the power of direction is exercisable by reference to the notification unless the notification has been superseded by a notification under section 59(3).
- (3) Where qualifying financial assistance has been provided, the power of direction is exercisable by reference to the provision of the assistance unless it appears to the Treasury that the assistance has been recovered.
- (4) It is immaterial for the purposes of subsection (3)—
  - (a) whether the qualifying financial assistance was provided before or after the commencement of this section, and
  - (b) whether or not a public funds notification had been given in connection with it.
- (5) For the purposes of this Part qualifying financial assistance is provided if, and only if—
  - (a) the Treasury or the Secretary of State provide financial assistance to or in respect of a financial institution,
  - (b) the Treasury incur expenditure in connection with the exercise by the Treasury, the Bank, the PRA, the FCA or the Secretary of State of any of their powers under Parts 1 to 3 of the Banking Act 2009,
  - (c) the Treasury arrange a loan from the National Loans Fund in pursuance of a request by the scheme manager of the Financial Services Compensation Scheme under section 223B of FSMA 2000, or
  - (d) the Treasury provide financial assistance to the scheme manager of that scheme for the purpose of funding expenses incurred or expected to be incurred under it.
- (6) For the purposes of this section the circumstances in which qualifying financial assistance is to be taken to have been recovered include the following—
  - (a) where, in the case of a loan, the principal of the loan has been repaid and all interest due under the terms of the loan has been paid,

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- (b) where, in the case of a guarantee or indemnity, the Treasury or the Secretary of State will not become liable under the guarantee or indemnity,
- (c) where, in a case involving the issue or transfer of shares to the Treasury in connection with the provision of qualifying financial assistance, the shares are no longer held by the Treasury.

#### **Commencement Information**

**I3** S. 60 in force at 1.4.2013 by [S.I. 2013/423](#), art. 3, [Sch.](#)

## **61 Treasury power of direction**

- (1) Subsection (2) applies where—
  - (a) the power of direction is exercisable by virtue of section 60(2) by reference to a public funds notification and the Treasury are satisfied that Condition A is met, or
  - (b) the power of direction is exercisable by virtue of section 60(3) by reference to the provision of qualifying financial assistance and the Treasury are satisfied that Condition A or Condition B is met.
- (2) The Treasury may give a direction to the Bank of England relating to one or more of the following—
  - (a) the provision by the Bank to one or more financial institutions of financial assistance other than ordinary market assistance offered by the Bank on its usual terms,
  - (b) the exercise by the Bank of any of the stabilisation powers, as defined by section 1(4) of the Banking Act 2009<sup>F4</sup> or the making by the Bank of a mandatory reduction instrument within the meaning of section 6B of that Act], or
  - (c) the exercise by the Bank of its powers under Part 3 of that Act (bank administration).
- (3) Condition A is that the giving of the direction is necessary to resolve or reduce a serious threat to the stability of the financial system of the United Kingdom which is connected—
  - (a) in case within subsection (1)(a), with the matters to which the public funds notification relates;
  - (b) in a case within subsection (1)(b), with the matters that gave rise to the provision of the qualifying financial assistance.
- (4) Condition B is that—
  - (a) the qualifying financial assistance was provided for the purpose of resolving or reducing a serious threat to the stability of the financial system of the United Kingdom, and
  - (b) the giving of the direction is necessary to protect the public interest in connection with the provision of that assistance.
- (5) References to the provision of qualifying financial assistance are to be read in accordance with section 60(5).
- (6) This section is subject to section 62.

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- (7) Nothing in this section limits the powers conferred by section 4(1) of the Bank of England Act 1946 (Treasury directions to the Bank).

#### Textual Amendments

- F4** Words in s. 61(2)(b) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **124**

#### Commencement Information

- I4** S. 61 in force at 1.4.2013 by [S.I. 2013/423](#), art. 3, **Sch.**

## 62 Directions under section 61: supplementary provisions

- (1) References in this section to a direction are to a direction under section 61.
- (2) Before giving a direction, the Treasury must consult the Bank of England.
- (3) On being given a direction, the Bank must give the Treasury one or more reports on how it is complying or intends to comply with the direction, and on such other matters relating to the direction as it considers appropriate.
- (4) The Treasury may at any time by notice to the Bank revoke a direction.
- (5) The revocation of a direction does not affect the validity of anything previously done in accordance with it.
- (6) Where the Treasury's power of direction is exercised by virtue of section 60(2) by reference to a public funds notification, the direction remains in force (unless revoked under subsection (4)) even if the public funds notification is subsequently superseded by a notification under section 59(3).
- (7) Where the Treasury's power of direction is exercised by virtue of section 60(3) by reference to the provision of qualifying financial assistance, the direction remains in force (unless revoked under subsection (4)) even if it appears to the Treasury that the qualifying financial assistance has subsequently been recovered.
- (8) Each of the following must be in writing—
  - (a) a direction,
  - (b) a report under subsection (3), and
  - (c) a notice revoking a direction.

#### Commencement Information

- I5** S. 62 in force at 1.4.2013 by [S.I. 2013/423](#), art. 3, **Sch.**

## 63 Duty to lay direction etc before Parliament

- (1) As soon as practicable after giving or revoking a direction under section 61 or receiving a report under section 62(3), the Treasury must lay before Parliament a copy of the direction, notice of revocation or report.



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- (2) But subsection (1) does not apply in a case where the Treasury consider that the publication of the direction, notice of revocation or report would be against the public interest.
- (3) Where the Treasury decide that publication of a direction, notice of revocation or report would be against the public interest, they must from time to time review that decision and if they subsequently decide that publication is no longer against the public interest they must comply with subsection (1).

**Commencement Information**

**I6** S. 63 in force at 1.4.2013 by [S.I. 2013/423](#), art. 3, [Sch.](#)

**64 Duty of Treasury, Bank and PRA to co-ordinate discharge of functions**

- (1) The Treasury (on the one hand) and the Bank of England and the PRA (on the other) must arrange to co-ordinate the discharge of their respective functions so far as they—
- (a) relate to the stability of the UK financial system, and
  - (b) affect the public interest.
- (2) In complying with subsection (1), the Treasury, the Bank and the PRA must have regard in particular to the importance of co-ordination in circumstances where the Bank has given, or is considering the giving of, a public funds notification.

**Commencement Information**

**I7** S. 64 in force at 24.1.2013 by [S.I. 2013/113](#), art. 2(1)(a), [Sch. Pt. 1](#)

**65 Memorandum of understanding: [<sup>F5</sup>resolution planning and] crisis management**

- (1) The Treasury (on the one hand) and the Bank of England and the PRA (on the other) must prepare and maintain a memorandum describing in general terms how they intend to comply with section 64 in relation to
- [<sup>F6</sup>(a) the sharing of information by the Bank about any proposals to include in a resolution plan or a group resolution plan an option for the exercise of a stabilisation power by the Bank in relation to an institution or group entity;
  - (b)] the circumstances mentioned in subsection (2) of that section.
- (2) [<sup>F7</sup>For the purposes of subsection (1)(b),] <sup>F7</sup>The memorandum must, in particular, make provision about—
- (a) what the Treasury and the Bank regard as a material risk for the purposes of section 58(1);
  - (b) steps to be taken when the Bank has given a public funds notification;
  - (c) the respective roles of the Treasury, the Bank and the PRA, in cases where the Bank has given a public funds notification, in relation to the consideration and assessment of, and taking of, steps to resolve or reduce, threats to the stability of the UK financial system;
  - (d) how the Treasury, the Bank and the PRA will co-operate in fulfilling those roles;
  - (e) the use by the Treasury of their power under section 61;

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- (f) matters connected with the Bank's compliance with a direction under that section;
  - (g) the obtaining and sharing of information.
- (3) The memorandum may make provision about such other matters as may be agreed between the Treasury, the Bank and the PRA, which must be matters that—
- (a) relate to the stability of the UK financial system or the regulation of financial services, and
  - (b) affect the public interest.
- (4) The memorandum need not make provision about the relationship between the Bank and the PRA.
- (5) The Treasury, the Bank of England and the PRA may, with the agreement of a body falling within subsection (6), include in the memorandum provisions relating to co-operation between any of them and that body in relation to matters falling within subsection (3)(a) and (b).
- (6) The bodies falling within this subsection are—
- (a) the FCA;
  - (b) the scheme manager of the Financial Services Compensation Scheme;
  - (c) any other body exercising functions that relate to the stability of the UK financial system or the regulation of financial services.
- (7) The Treasury must—
- (a) lay before Parliament a copy of the memorandum and any revised memorandum, and
  - (b) publish the memorandum as currently in force in such manner as they think fit.

#### Textual Amendments

- F5** Words in s. 65 heading inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\), ss. 36\(3\)\(c\), 41\(3\); S.I. 2016/627, reg. 2\(1\)\(aa\)](#)
- F6** Words in s. 65(1) inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\), ss. 36\(3\)\(a\), 41\(3\); S.I. 2016/627, reg. 2\(1\)\(aa\)](#)
- F7** Words in s. 65(2) inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\), ss. 36\(3\)\(b\), 41\(3\); S.I. 2016/627, reg. 2\(1\)\(aa\)](#)

#### Commencement Information

- I8** S. 65 in force at 24.1.2013 for specified purposes by [S.I. 2013/113, art. 2\(1\)\(c\), Sch. Pt. 3](#)
- I9** S. 65 in force at 1.4.2013 in so far as not already in force by [S.I. 2013/423, art. 3, Sch.](#)

## 66 Memorandum of understanding: international organisations

- (1) The Treasury, the Bank of England, the FCA and the PRA (“the UK authorities”) must prepare and maintain a memorandum describing how they intend to co-ordinate the exercise of their relevant functions so far as they relate to membership of, or relations with,<sup>F8</sup> ... international organisations.

<sup>F9</sup>(2) .....

- (3) “Relevant function”—

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- (a) in relation to the FCA or the PRA, means any of its functions;
  - (b) in relation to the Bank of England, means any of its functions relating to the stability of the UK financial system or the regulation of financial services;
  - (c) in relation to the Treasury, means any of their functions relating to the matters mentioned in paragraph (b).
- (4) The memorandum is to be made with a view to ensuring—
- (a) that, to the extent that it is appropriate to do so, the UK authorities agree consistent objectives in relation to matters of common interest;
  - (b) that, to the extent that it is appropriate to do so, they exercise their relevant functions in a way that is likely to advance those objectives;
  - (c) that they exercise their relevant functions in a way that is consistent and effective.
- (5) The memorandum must, in particular, make provision—
- (a) stating, in relation to each of the UK authorities, those international organisations of which it is a member or with which it has relations and which are concerned with matters that are related to its relevant functions;
  - (b) for there to be a committee for the purposes of the co-ordination mentioned in subsection (1);
  - (c) for that committee to include representatives of the UK authorities and to be chaired by a representative of the Treasury;
  - (d) about the procedures to be followed by the UK authorities in agreeing consistent objectives in relation to matters that materially affect 2 or more of them;
  - (e) about how the UK authorities will consult each other about the discharge of their relevant functions relating to international organisations.
- <sup>F9</sup>(6) .....
- (7) The UK authorities may, with the agreement of a body exercising functions relating to the stability of the UK financial system or the regulation of financial services, include in the memorandum provisions relating to co-operation between any of them and that body in relation to membership of, or relations with, <sup>F10</sup>... international organisations.
- (8) The Treasury must—
- (a) lay before Parliament a copy of the memorandum and any revised memorandum, and
  - (b) publish the memorandum as currently in force in such manner as they think fit.

#### Textual Amendments

- F8** Words in s. 66(1) omitted (31.12.2020) by virtue of [The Bank of England \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1297\)](#), regs. 1(2), **8(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F9** S. 66(2)(6) omitted (31.12.2020) by virtue of [The Bank of England \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1297\)](#), regs. 1(2), **8(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in s. 66(7) omitted (31.12.2020) by virtue of [The Bank of England \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1297\)](#), regs. 1(2), **8(3)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Commencement Information

- I10** S. 66 in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), art. 2(1)(c), **Sch. Pt. 3**

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**I11** S. 66 in force at 1.4.2013 in so far as not already in force by [S.I. 2013/423](#), art. 3, [Sch.](#)

## **67 Interpretation of Part 4**

- (1) This section has effect for the interpretation of this Part.
- (2) “Public funds notification” is to be read in accordance with section 58(2).
- (3) “Financial assistance” includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent).
- (4) The Treasury may by order provide that a specified activity or transaction, or class of activity or transaction, is to be or not to be treated as financial assistance for the purposes of this Part; and subsection (3) is subject to this subsection.
- (5) “Qualifying financial assistance” is to be read in accordance with section 60(5).
- [<sup>F11</sup>(6) “Group entity” has the same meaning as in the Bank Recovery and Resolution (No. 2) Order 2014 (S.I. 2014/3348).
- (7) “Group resolution plan” means a group resolution plan drawn up by the Bank under Part 5 of that Order.
- (8) “Resolution plan” means a resolution plan drawn up by the Bank under Part 5 of that Order.
- (9) “Stabilisation power” has the same meaning as in section 1(4) of the Banking Act 2009.]

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### **Textual Amendments**

**F11** S. 67(6)-(9) inserted (6.7.2016) by [Bank of England and Financial Services Act 2016 \(c. 14\)](#), ss. [36\(4\)](#), [41\(3\)](#); [S.I. 2016/627](#), reg. [2\(1\)\(aa\)](#)

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### **Commencement Information**

**I12** S. 67 in force at 24.1.2013 by [S.I. 2013/113](#), art. [2\(1\)\(a\)](#), [Sch. Pt. 1](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act power to apply conferred (temp.) by [2014 c. 21 s. 79\(4\)](#)
- Act power to apply conferred (temp.) by [2014 c. 21 s. 81\(10\)](#)