



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XIII

#### INCOMING FIRMS: INTERVENTION BY AUTHORITY

##### Modifications etc. (not altering text)

- C1** Pt. 13 modified (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 114(3)(a) (with [art. 23\(2\)](#))  
Pt. 13 extended (1.12.2001) by [S.I. 2001/2636](#), [arts. 1\(2\)\(b\)](#), 32; [S.I. 2001/3538](#), [art. 2\(1\)](#)  
Pt. 13 extended (5.10.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/3084](#), [art. 2\(7\)](#);  
[S.I. 2001/3538](#), [art. 2\(1\)](#)  
Pt 13 excluded (1.12.2001) by [S.I. 2001/3592](#), [art. 107\(2\)](#) (with [art. 23\(2\)](#))

#### *Interpretation*

#### **193 Interpretation of this Part.**

(1) In this Part—

“additional procedure” means the procedure described in section 199;

“incoming firm” means—

(a) an EEA firm which is exercising, or has exercised, its right to carry on a regulated activity in the United Kingdom in accordance with Schedule 3;  
or

(aa) [<sup>F1</sup>an EEA UCITS which is a recognised scheme under section 264; or]

(b) a Treaty firm which is exercising, or has exercised, its right to carry on a regulated activity in the United Kingdom in accordance with Schedule 4;  
and

“power of intervention” means the power conferred on the Authority by section 196.

[<sup>F2</sup>(1A) In the definition of “incoming firm” references to an EEA UCITS include, in a case where the UCITS is not a body corporate, references to its management company.]

*Status: Point in time view as at 24/01/2013.*

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- (2) In relation to an incoming firm which is an EEA firm [<sup>F3</sup>or an EEA UCITS], expressions used in this Part and in Schedule 3 have the same meaning in this Part as they have in that Schedule.

#### Textual Amendments

- F1** S. 193(1): in definition of "incoming firm" para (aa) inserted after para. (a) (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), [reg. 2\(7\)\(a\)](#)
- F2** S. 193(1A) inserted (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), [reg. 2\(7\)\(b\)](#)
- F3** Words in s. 193(2) inserted (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), [reg. 2\(7\)\(c\)](#)

### 194 General grounds on which power of intervention is exercisable.

- (1) The Authority may exercise its power of intervention in respect of an incoming firm if it appears to it that—
- (a) the firm has contravened, or is likely to contravene, a requirement which is imposed on it by or under this Act (in a case where the Authority is responsible for enforcing compliance in the United Kingdom);
  - (b) the firm has, in purported compliance with any requirement imposed by or under this Act, knowingly or recklessly given the Authority information which is false or misleading in a material particular; or
  - [<sup>F4</sup>(c) it is desirable to exercise the power in order to meet any of its regulatory objectives.]

[<sup>F5</sup>(1A) For the purposes of subsection (1)(c) it does not matter whether there is a relationship between the incoming firm and the persons whose interests will be protected by the exercise of the power of intervention.]

- (2) Subsection (3) applies to an incoming EEA firm falling within sub-paragraph (a) or (b) of paragraph 5 of Schedule 3 which is exercising an EEA right to carry on any Consumer Credit Act business in the United Kingdom.

- (3) The Authority may exercise its power of intervention in respect of the firm if [<sup>F6</sup>the Office of Fair Trading] has informed the Authority that—

- (a) the firm,
- (b) any of the firm's employees, agents or associates (whether past or present), or
- (c) if the firm is a body corporate, a controller of the firm or an associate of such a controller,

has done any of the things specified in paragraphs [<sup>F7</sup>(a) to (e) of section 25(2A)] of the <sup>M1</sup>Consumer Credit Act 1974.

- (4) "Associate", "Consumer Credit Act business" and "controller" have the same meaning as in section 203.

#### Textual Amendments

- F4** S. 194(1)(c) substituted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 3\(5\)\(a\)](#), 26(2)
- F5** S. 194(1A) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 3\(5\)\(b\)](#), 26(2)

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**F6** Words in s. 194(3) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(6); S.I. 2003/766, art. 2, Sch. (with art. 3)

**F7** Words in s. 194(3) substituted (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. 33(7), 71(2); S.I. 2007/3300, art. 3(2), Sch. 2

#### Modifications etc. (not altering text)

**C2** S. 194 applied (1.12.2001) by S.I. 2001/3592, arts. 1(2), 12(3)(b), 18(4)(b), 21(3) (with art. 23(2))  
S. 194 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, arts. 1(2), 3(5); S.I. 2001/3538, art. 2(1)

#### Commencement Information

**II** S. 194 wholly in force at 1.12.2001; s. 194 not in force at Royal Assent see s. 431(2); s. 194 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 194 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

#### Marginal Citations

**M1** 1974 c. 39.

### <sup>F8</sup> <sup>F8</sup>194A **Contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive: Authority primarily responsible for securing compliance**

- (1) This section applies if—
  - (a) a relevant EEA firm has a branch in the United Kingdom; and
  - (b) the Authority ascertains that the firm has contravened, or is contravening, a requirement falling within subsection (3) (in a case to which Article 62.2 of the markets in financial instruments directive applies).
- (2) “ Relevant EEA firm ” means an EEA firm falling within paragraph 5(a) or (b) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the markets in financial instruments directive.
- (3) A requirement falls within this subsection if it is imposed on the firm—
  - (a) by any provision of or made under this Act which implements the markets in financial instruments directive; or
  - (b) by any directly applicable Community regulation made under that directive.
- (4) The Authority must give the firm written notice which—
  - (a) requires the firm to put an end to the contravention;
  - (b) states that the Authority's power of intervention will become exercisable in relation to the firm if the firm continues the contravention; and
  - (c) indicates any requirements that the Authority proposes to impose on the firm in exercise of its power of intervention in the event of the power becoming exercisable.
- (5) The Authority may exercise its power of intervention in respect of the firm if—
  - (a) a reasonable time has expired since the giving of the notice under subsection (4);
  - (b) the firm has failed to put an end to the contravention within that time; and
  - (c) the Authority has informed the firm's home state regulator of its intention to exercise its power of intervention in respect of the firm.

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- (6) Subsection (5) applies whether or not the Authority's power of intervention is also exercisable as a result of section 194.
- (7) If the Authority exercises its power of intervention in respect of a relevant EEA firm by virtue of subsection (5), it must at the earliest opportunity inform the firm's home state regulator [<sup>F9</sup>, ESMA] and the Commission of—
- (a) the fact that the Authority has exercised that power in respect of the firm; and
  - (b) any requirements it has imposed on the firm in exercise of the power.]]
- [<sup>F10</sup>(8) If the firm has failed to put an end to the contravention as described in subsection (5) (b), the Authority may refer the matter to ESMA (and ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation ( EU ) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority )]. ]

#### Textual Amendments

- F8** S. 194A inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(1), [Sch. 1 para. 2](#)
- F9** Words in s. 194A(7) inserted (16.4.2012) by [The Financial Services \(Omnibus 1 Directive\) Regulations 2012 \(S.I. 2012/916\)](#), regs. 1, [2\(7\)\(a\)](#)
- F10** S. 194A(8) inserted (16.4.2012) by [The Financial Services \(Omnibus 1 Directive\) Regulations 2012 \(S.I. 2012/916\)](#), regs. 1, [2\(7\)\(b\)](#)

#### Modifications etc. (not altering text)

- C3** S. 194A(7) modified by S.I. 2001/3084, art. 2(8)(a) (as inserted (24.8.2012) by [The Financial Services and Markets Act 2000 \(Gibraltar\) \(Amendment\) Order 2012 \(S.I. 2012/2017\)](#), arts. 1, [2\(2\)\(e\)](#))

### 195 Exercise of power in support of overseas regulator.

- (1) The Authority may exercise its power of intervention in respect of an incoming firm at the request of, or for the purpose of assisting, an overseas regulator.
- (2) Subsection (1) applies whether or not the Authority's power of intervention is also exercisable as a result of section 194.
- (3) "An overseas regulator" means an authority in a country or territory outside the United Kingdom—
  - (a) which is a home state regulator; or
  - (b) which exercises any function of a kind mentioned in subsection (4).
- (4) The functions are—
  - (a) a function corresponding to any function of the Authority under this Act;
  - <sup>F11</sup>(b) . . . . .
  - (c) a function corresponding to any function exercised by the Secretary of State under [<sup>F12</sup>the Companies Acts (as defined in section 2 of the Companies Act 2006)];
  - (d) a function in connection with —
    - (i) the investigation of conduct of the kind prohibited by Part V of the <sup>M2</sup>Criminal Justice Act 1993 (insider dealing); or

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- (ii) the enforcement of rules (whether or not having the force of law) relating to such conduct;
  - (e) a function prescribed by regulations made for the purposes of this subsection which, in the opinion of the Treasury, relates to companies or financial services.
- (5) If—
- (a) a request to the Authority for the exercise of its power of intervention has been made by a home state regulator in pursuance of [F13an EU] obligation, or
  - (b) a home state regulator has notified the Authority that an EEA firm’s EEA authorisation has been withdrawn,
- the Authority must, in deciding whether or not to exercise its power of intervention, consider whether exercising it is necessary in order to comply with [F13an EU] obligation.
- (6) In deciding in any case in which the Authority does not consider that the exercise of its power of intervention is necessary in order to comply with [F13an EU] obligation, it may take into account in particular—
- (a) whether in the country or territory of the overseas regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;
  - (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
  - (c) the seriousness of the case and its importance to persons in the United Kingdom;
  - (d) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (7) The Authority may decide not to exercise its power of intervention, in response to a request, unless the regulator concerned undertakes to make such contribution to the cost of its exercise as the Authority considers appropriate.
- (8) Subsection (7) does not apply if the Authority decides that it is necessary for it to exercise its power of intervention in order to comply with [F13an EU] obligation.

#### Textual Amendments

- F11** S. 195(4)(b) omitted (24.1.2013 for specified purposes, 27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Financial Services Act 2012 \(c. 21\)](#), **ss. 16(14)(h)**, 122(3), Sch. 4 para. 34(5)(b) (with [Sch. 20](#)); S.I. 2013/113, [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); S.I. 2013/423, [arts. 2, 3](#), [Sch.](#)
- F12** Words in s. 195(4)(c) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), [art. 10\(1\)](#), **Sch. 4 para. 92**
- F13** Words in s. 195(5)(6)(8) substituted (22.4.2011 with application in accordance with art. 3 of the amending S.I.) by virtue of [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), **art. 6(1)(3)(4)**

#### Modifications etc. (not altering text)

- C4** S. 195 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(5); S.I. 2001/3538, **art. 2(1)**

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#### Commencement Information

- I2** S. 195 wholly in force at 1.12.2001; s. 195 not in force at Royal Assent see s. 431(2); s. 195 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), [art. 2\(2\)](#), [Sch. Pt. 2](#); s. 195 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

#### Marginal Citations

- M2** 1993 c. 36.

### <sup>[F14]</sup><sup>[F15]</sup><sup>[F14]</sup> **105A Intervention by relevant EEA firm or EEAUCITS of directive requirements: home state regulator primarily responsible for securing compliance**

- (1) This section applies if the Authority has clear and demonstrable grounds for believing—
  - (a) that a relevant EEA firm has contravened, or is contravening, a requirement falling within subsection (2) (in a case to which Article 62.1 or 62.3 of the markets in financial instruments directive applies);
  - (b) that a relevant EEAUCITS has contravened, or is contravening, a requirement falling within subsection (3) (in a case to which Article 108.4 of the UCITS directive applies).
- (2) A requirement falls within this subsection if it is imposed on the firm—
  - (a) by or under any provision adopted in the firm's home state for the purpose of implementing the markets in financial instruments directive; or
  - (b) by any directly applicable Community regulation made under that directive.
- (3) A requirement falls within this subsection if it is imposed on the EEAUCITS—
  - (a) by or under any provision adopted in the home state of the EEAUCITS for the purpose of implementing the UCITS directive; or
  - (b) by any directly applicable Community regulation or decision made under that directive.
- (4) The Authority must notify the home state regulator of the firm or EEAUCITS in writing of the situation mentioned in subsection (1).
- (5) The notice under subsection (4) must—
  - (a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the firm or EEAUCITS puts an end to the contravention;
  - (b) state that the Authority's powers of intervention are likely to become exercisable in relation to the firm or EEAUCITS if it continues the contravention; and
  - (c) indicate any requirements that the Authority proposes to impose on the firm or EEAUCITS in exercise of its power of intervention in the event of the power becoming exercisable.
- (6) The Authority may exercise its power of intervention in respect of the firm or EEAUCITS if—
  - (a) a reasonable time has expired since the giving of the notice under subsection (4); and
  - (b) conditions A to C are satisfied.
- (7) Condition A is that—

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- (a) the home state regulator of the firm or EEAUCITS has failed or refused to take measures for the purpose mentioned in subsection (5)(a); or
  - (b) any measures taken by the home state regulator have proved inadequate for that purpose.
- (8) Condition B is that the firm or EEAUCITS is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom or the orderly functioning of the markets.
- (9) Condition C is that the Authority has informed the home state regulator of the firm or EEAUCITS of its intention to exercise its power of intervention in respect of the firm or EEA UCITS.
- (10) Subsection (6) applies whether or not the Authority's power of intervention is also exercisable as a result of section 194 or 195.
- ( 11 ) If the Authority exercises its power of intervention in respect of a relevant EEA firm or EEAUCITS by virtue of subsection (6), it must at the earliest opportunity inform [<sup>F16</sup>ESMA and] the Commission of—
- (a) the fact that the Authority has exercised that power in respect of that firm or EEAUCITS; and
  - (b) any requirements it has imposed on the firm or EEAUCITS in exercise of the power.
- [ If circumstances exist which enable the Authority to exercise its power of intervention <sup>F17</sup>(11A) under subsection (6), the Authority may refer the matter to ESMA (and ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation ( EU ) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)). ]
- (12) In this section—
- “ home state ” means—
    - (a) in relation to a relevant EEA firm—
      - (i) in the case of a firm which is a body corporate, the EEA State in which the firm has its registered office or, if it has no registered office, its head office; and
      - (ii) in any other case, the EEA State in which the firm has its head office;
    - (b) in relation to a relevant EEAUCITS, the EEA State in which the UCITS is authorised pursuant to Article 5 of the UCITS directive;
  - “ relevant EEA firm ” means an EEA firm falling within paragraph 5(a) or (b) of Schedule 3 which is exercising in the United Kingdom a right deriving from the markets in financial instruments directive;
  - “ relevant EEAUCITS ” means a UCITS which is authorised pursuant to Article 5 of the UCITS directive in an EEA State other than the United Kingdom, and references to an EEAUCITS include, in a case where the UCITS is not a body corporate, references to its management company. ]]



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#### Textual Amendments

- F14** S. 195A inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(1), **Sch. 1 para. 3**
- F15** S. 195A substituted (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), **reg. 2(8)**
- F16** Words in s. 195A(11) inserted (16.4.2012) by [The Financial Services \(Omnibus 1 Directive\) Regulations 2012 \(S.I. 2012/916\)](#), regs. 1, **2(8)(a)**
- F17** S. 195A(11A) inserted (16.4.2012) by [The Financial Services \(Omnibus 1 Directive\) Regulations 2012 \(S.I. 2012/916\)](#), regs. 1, **2(8)(b)**

#### Modifications etc. (not altering text)

- C5** S. 195A(11) excluded by S.I. 2001/3084, art. 2(8)(b) (as inserted (24.8.2012) by [The Financial Services and Markets Act 2000 \(Gibraltar\) \(Amendment\) Order 2012 \(S.I. 2012/2017\)](#), arts. 1, **2(2)(e)**)

### 196 The power of intervention.

If the Authority is entitled to exercise its power of intervention in respect of an incoming firm under this Part, it may impose any requirement in relation to the firm which it could impose if—

- (a) the firm's permission was a Part IV permission; and
- (b) the Authority was entitled to exercise its power under that Part to vary that permission.

#### Modifications etc. (not altering text)

- C6** S. 196 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2), 3(5)**; S.I. 2001/3538, **art. 2(1)**
- S. 196 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b), 34-54**; S.I. 2001/3538, **art. 2(1)**
- S. 196 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 4(2)** (with art. 23(2))

#### Commencement Information

- I3** S. 196 wholly in force at 1.12.2001; s. 196 not in force at Royal Assent see s. 431(2); s. 196 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2(2), Sch. Pt. 2**; s. 196 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

### *Exercise of power of intervention*

### 197 Procedure on exercise of power of intervention.

- (1) A requirement takes effect—
  - (a) immediately, if the notice given under subsection (3) states that that is the case;
  - (b) on such date as may be specified in the notice; or
  - (c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.
- (2) A requirement may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its



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- power of intervention, considers that it is necessary for the requirement to take effect immediately (or on that date).
- (3) If the Authority proposes to impose a requirement under section 196 on an incoming firm, or imposes such a requirement with immediate effect, it must give the firm written notice.
- (4) The notice must—
- (a) give details of the requirement;
  - (b) inform the firm of when the requirement takes effect;
  - (c) state the Authority’s reasons for imposing the requirement and for its determination as to when the requirement takes effect;
  - (d) inform the firm that it may make representations to the Authority within such period as may be specified in the notice (whether or not it has referred the matter to the Tribunal); and
  - (e) inform it of its right to refer the matter to the Tribunal.
- (5) The Authority may extend the period allowed under the notice for making representations.
- (6) If, having considered any representations made by the firm, the Authority decides—
- (a) to impose the requirement proposed, or
  - (b) if it has been imposed, not to rescind the requirement,
- it must give it written notice.
- (7) If, having considered any representations made by the firm, the Authority decides—
- (a) not to impose the requirement proposed,
  - (b) to impose a different requirement from that proposed, or
  - (c) to rescind a requirement which has effect,
- it must give it written notice.
- (8) A notice given under subsection (6) must inform the firm of its right to refer the matter to the Tribunal.
- (9) A notice under subsection (7)(b) must comply with subsection (4).
- (10) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

**Modifications etc. (not altering text)**

- C7** S. 197 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2), 3(5)**; S.I. 2001/3538, **art. 2(1)**  
S. 197 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 61(4), 110(5), 115(4)** (with **art. 23(2)**)
- C8** S. 197(1)(c) excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 18(5), 21(4)** (with **art. 23(2)**)
- C9** S. 197(3) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 12(1), 18(1)(a), 20(1)** (with **art. 23(2)**)  
S. 197(3) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 72(2)** (with **art. 23(2)**)
- C10** S. 197(7) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 23(1)** (with **art. 23(2)**)

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#### Commencement Information

- I4** S. 197 wholly in force at 1.12.2001; s. 197 not in force at Royal Assent see s. 431(2); s. 197 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632, art. 2\(2\), Sch. Pt. 2](#); s. 197 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538, art. 2\(1\)](#)

### 198 Power to apply to court for injunction in respect of certain overseas insurance companies.

- (1) This section applies if the Authority has received a request made in respect of an incoming EEA firm in accordance with—
- (a) Article 20.5 of the first non-life insurance directive; <sup>F18</sup> . . .
  - [<sup>F19</sup>(b) Article 37.5 of the life assurance consolidation directive][<sup>F20</sup>; or
  - (c) Article 42.4 of the reinsurance directive]
- (2) The court may, on an application made to it by the Authority with respect to the firm, grant an injunction restraining (or in Scotland an interdict prohibiting) the firm disposing of or otherwise dealing with any of its assets.
- (3) If the court grants an injunction, it may by subsequent orders make provision for such incidental, consequential and supplementary matters as it considers necessary to enable the Authority to perform any of its functions under this Act.
- (4) “The court” means—
- (a) the High Court; or
  - (b) in Scotland, the Court of Session.

#### Textual Amendments

- F18** Word in s. 198(1)(a) omitted (10.12.2007) by virtue of [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\), reg. 2\(1\), Sch. 1 para. 3\(a\)](#)
- F19** S. 198(1)(b) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\), reg. 6\(3\)](#)
- F20** S. 198(1)(c) and preceding word inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\), reg. 2\(1\), Sch. 1 para. 3\(b\)](#)

### 199 Additional procedure for EEA firms in certain cases.

- (1) This section applies if it appears to the Authority that its power of intervention is exercisable in relation to an EEA firm exercising EEA rights in the United Kingdom (“an incoming EEA firm”) in respect of the contravention of a relevant requirement.
- (2) A requirement is relevant if—
- [<sup>F21</sup>(a) it is imposed—
    - (i) by the Authority under this Act, or
    - (ii) under any directly applicable Community regulation or decision made under a single market directive; and]
    - [<sup>F22</sup>(b) as respects its contravention, the single market directive in question provides that a procedure of the kind set out in the following provisions of this section (so far as they are relevant in the firm's case) is to apply.]

(3) The Authority must, in writing, require the firm to remedy the situation.

*Status: Point in time view as at 24/01/2013.*

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- [<sup>F23</sup>(3A) If the firm falls within paragraph 5(da) [<sup>F24</sup>or (f)] of Schedule 3, the Authority must at the same time as it gives notice to the firm under subsection (3) refer its findings to the firm's home state regulator.
- (3B) Subsections (4) to (8) apply to an incoming EEA firm other than a firm falling within paragraph 5(da) <sup>F25</sup>... of Schedule 3. ]
- (4) If the firm fails to comply with the requirement under subsection (3) within a reasonable time, the Authority must give a notice to that effect to the firm's home state regulator requesting it—
- (a) to take all appropriate measures for the purpose of ensuring that the firm remedies the situation which has given rise to the notice; and
  - (b) to inform the Authority of the measures it proposes to take or has taken or the reasons for not taking such measures.
- (5) Except as mentioned in subsection (6), the Authority may not exercise its power of intervention [<sup>F26</sup>before informing the firm's home state regulator and ] unless satisfied—
- (a) that the firm's home state regulator has failed or refused to take measures for the purpose mentioned in subsection (4)(a); or
  - (b) that the measures taken by the home state regulator have proved inadequate for that purpose.
- (6) If the Authority decides that it should exercise its power of intervention in respect of the incoming EEA firm as a matter of urgency in order to protect the interests of consumers, it may exercise that power—
- (a) before complying with subsections (3) and (4); or
  - (b) where it has complied with those subsections, before it is satisfied as mentioned in subsection (5).
- (7) In such a case the Authority must at the earliest opportunity inform the firm's home state regulator [<sup>F27</sup>, ESMA] and the Commission.
- (8) If—
- (a) the Authority has (by virtue of subsection (6)) exercised its power of intervention before complying with subsections (3) and (4) or before it is satisfied as mentioned in subsection (5), and
  - (b) the Commission decides under any of the single market directives [<sup>F28</sup>(other than the markets in financial instruments directive)] that the Authority must rescind or vary any requirement imposed in the exercise of its power of intervention,
- the Authority must in accordance with the decision rescind or vary the requirement.
- [<sup>F29</sup>(9) In the case of a firm falling within paragraph 5(da) of Schedule 3, the Authority may not exercise its power of intervention before informing the firm's home state regulator and unless satisfied—
- (a) that the firm's home state regulator has failed or refused to take all appropriate measures for the purpose of ensuring that the firm remedies the situation which gave rise to the notice under subsection (3); or
  - (b) that the measures taken by the home state regulator have proved inadequate for that purpose.]

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- [<sup>F30</sup>( 10 ) If an incoming EEA firm is exercising EEA rights under the UCITS directive, then the Authority must inform [<sup>F31</sup>ESMA and ] the Commission of any measures it has taken in the exercise of its power of intervention. ]
- [<sup>F32</sup>(11) If, in the case of a home state regulator of an incoming EEA firm exercising EEA rights under the UCITS directive, the Authority is satisfied as mentioned in subsection (5), it may refer the matter to ESMA (and ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation ( EU ) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)). ]

#### Textual Amendments

- F21** S. 199(2)(a) substituted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(9)(a)**
- F22** S. 199(2)(b) substituted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), **reg. 2(1), Sch. 1 para. 4(a)**
- F23** S. 199(3A)(3B) inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), **reg. 2(1), Sch. 1 para. 4(b)**
- F24** Words in s. 199(3A) inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(9)(b)**
- F25** Words in s. 199(3B) omitted (24.8.2012) by virtue of The Undertakings for Collective Investment in Transferable Securities (Amendment) Regulations 2012 (S.I. 2012/2015), **regs. 1, 3**
- F26** Words in s. 199(5) inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), **reg. 2(1), Sch. 1 para. 4(c)**
- F27** Words in s. 199(7) inserted (16.4.2012) by The Financial Services (Omnibus 1 Directive) Regulations 2012 (S.I. 2012/916), **regs. 1, 2(9)(a)**
- F28** Words in s. 199(2)(b)(8)(b) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), **regs. 1(2), 3(1), Sch. 1 para. 4**
- F29** S. 199(9) inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), **reg. 2(1), Sch. 1 para. 4(d)**
- F30** S. 199(10) inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(9)(d)**
- F31** Words in s. 199(10) inserted (16.4.2012) by The Financial Services (Omnibus 1 Directive) Regulations 2012 (S.I. 2012/916), **regs. 1, 2(9)(b)**
- F32** S. 199(11) inserted (16.4.2012) by The Financial Services (Omnibus 1 Directive) Regulations 2012 (S.I. 2012/916), **regs. 1, 2(9)(c)**

#### Modifications etc. (not altering text)

- C11** S. 199 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b), 37, 52(4)**; S.I. 2001/3538, **art. 2(1)**  
S. 199 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 22(6)** (with art. 23(2))
- C12** S. 199(7) modified (1.12.2001) by S.I. 2001/3084, **arts. 1(1)(b), 2(7)**; S.I. 2001/3538, **art. 2(1)**
- C13** S. 199(10) excluded by S.I. 2001/3084, **art. 2(8)(b)** (as inserted (24.8.2012) by The Financial Services and Markets Act 2000 (Gibraltar) (Amendment) Order 2012 (S.I. 2012/2017), **arts. 1, 2(2)(e)**)

#### Commencement Information

- I5** S. 199 wholly in force at 1.12.2001; s. 199 not in force at Royal Assent see s. 431(2); s. 199 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2(2), Sch. Pt. 2**; s. 199 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

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<sup>F33</sup>  
F33 199A **Management companies: loss of authorisation**

- (1) This section applies in relation to an EEA firm falling within paragraph 5(f) of Schedule 3 (“a management company”) which is providing services in the United Kingdom in the exercise of an EEA right deriving from the UCITS directive.
- (2) If the Authority has been informed by the home state regulator of the management company that it is withdrawing the management company's authorisation, the Authority must exercise its powers under this Act in such manner as it thinks fit to safeguard the interests of investors in a collective investment scheme managed by the management company in the United Kingdom.
- (3) Measures taken under subsection (2) may include decisions preventing the management company from initiating any further transactions in the United Kingdom.
- (4) In this section “ collective investment scheme ” has the same meaning as in Part 17 of this Act. ]]

**Textual Amendments**

**F33** S. 199A inserted (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), [reg. 2\(10\)](#)

**Modifications etc. (not altering text)**

**C14** S. 199A(7) modified by S.I. 2001/3084, art. 2(8)(a) (as inserted (24.8.2012) by [The Financial Services and Markets Act 2000 \(Gibraltar\) \(Amendment\) Order 2012 \(S.I. 2012/2017\)](#), arts. 1, [2\(2\)\(e\)](#))

*Supplemental*

**200 Rescission and variation of requirements.**

- (1) The Authority may rescind or vary a requirement imposed in exercise of its power of intervention on its own initiative or on the application of the person subject to the requirement.
- (2) The power of the Authority on its own initiative to rescind a requirement is exercisable by written notice given by the Authority to the person concerned, which takes effect on the date specified in the notice.
- (3) Section 197 applies to the exercise of the power of the Authority on its own initiative to vary a requirement as it applies to the imposition of a requirement.
- (4) If the Authority proposes to refuse an application for the variation or rescission of a requirement, it must give the applicant a warning notice.
- (5) If the Authority decides to refuse an application for the variation or rescission of a requirement—
  - (a) the Authority must give the applicant a decision notice; and
  - (b) that person may refer the matter to the Tribunal.

**Modifications etc. (not altering text)**

**C15** S. 200 extended (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\), 4\(2\)](#) (with [art. 23\(2\)](#))

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- C16** S. 200(2)-(5) excluded (1.12.2001) by [S.I. 2001/3592](#), **arts. 1(2), 61(4), 110(5), 115(4)** (with [art. 23\(2\)](#))
- C17** S. 200(5)(a) extended (1.12.2001) by [S.I. 2001/3592](#), **arts. 1(2), 7(3)(4)** (with [art. 23\(2\)](#))

## 201 Effect of certain requirements on other persons.

If the Authority, in exercising its power of intervention, imposes on an incoming firm a requirement of a kind mentioned in subsection (3) of section 48, the requirement has the same effect in relation to the firm as it would have in relation to an authorised person if it had been imposed on the authorised person by the Authority acting under section 45.

## 202 Contravention of requirement imposed under this Part.

- (1) Contravention of a requirement imposed by the Authority under this Part does not—
- (a) make a person guilty of an offence;
  - (b) make any transaction void or unenforceable; or
  - (c) (subject to subsection (2)) give rise to any right of action for breach of statutory duty.
- (2) In prescribed cases the contravention is actionable at the suit of a person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

### Commencement Information

- I6** S. 202 wholly in force at 3.9.2001; s. 202 not in force at Royal Assent see s. 431(2); s. 202(2) in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)](#), [Sch. Pt. 2](#); s. 202 in so far as not already in force at 3.9.2001 by [S.I. 2001/2632](#), [art. 2\(2\)](#), [Sch. Pt. 2](#)

### *Powers of <sup>F34</sup>Office of Fair Trading]*

### Textual Amendments

- F34** S. 203: words in cross-heading substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 40\(7\)\(c\)](#); [S.I. 2003/766](#), [art. 2](#), [Sch.](#) (with [art. 3](#))

## 203 Power to prohibit the carrying on of Consumer Credit Act business.

- (1) If it appears to <sup>F35</sup>the Office of Fair Trading (“the OFT”)] that subsection (4) has been, or is likely to be, contravened as respects a consumer credit EEA firm, <sup>F36</sup>it] may by written notice given to the firm impose on the firm a consumer credit prohibition.
- (2) If it appears to the <sup>F37</sup>OFT] that a restriction imposed under section 204 on an EEA consumer credit firm has not been complied with, <sup>F38</sup>it] may by written notice given to the firm impose a consumer credit prohibition.
- (3) “Consumer credit prohibition” means a prohibition on carrying on, or purporting to carry on, in the United Kingdom any Consumer Credit Act business which consists of or includes carrying on one or more listed activities.

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- (4) This subsection is contravened as respects a firm if—
- (a) the firm or any of its employees, agents or associates (whether past or present), or
  - (b) if the firm is a body corporate, any controller of the firm or an associate of any such controller,
- does any of the things specified in paragraphs [F39(a) to (e) of section 25(2A)] of the M3 Consumer Credit Act 1974.
- (5) A consumer credit prohibition may be absolute or may be imposed—
- (a) for such period,
  - (b) until the occurrence of such event, or
  - (c) until such conditions are complied with,
- as may be specified in the notice given under subsection (1) or (2).
- (6) Any period, event or condition so specified may be varied by the [F40OFT] on the application of the firm concerned.
- (7) A consumer credit prohibition may be withdrawn by written notice served by the [F40OFT] on the firm concerned, and any such notice takes effect on such date as is specified in the notice.
- (8) Schedule 16 has effect as respects consumer credit prohibitions and restrictions under section 204.
- (9) A firm contravening a prohibition under this section is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (10) In this section and section 204—
- “a consumer credit EEA firm” means an EEA firm falling within any of paragraphs (a) to (c) of paragraph 5 of Schedule 3 whose EEA authorisation covers any Consumer Credit Act business;
  - “Consumer Credit Act business” means consumer credit business, consumer hire business or ancillary credit business;
  - “consumer credit business”, “consumer hire business” and “ancillary credit business” have the same meaning as in the M4 Consumer Credit Act 1974;
  - “listed activity” means an activity listed in [F41Annex 1 to the banking consolidation directive] or the Annex to the investment services directive;
  - “associate” has the same meaning as in section [F4225(2A)] of the M5 Consumer Credit Act 1974;
  - “controller” has the meaning given by section 189(1) of that Act.

#### Textual Amendments

- F35** Words in s. 203(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 40\(7\)\(a\)](#); S.I. 2003/766, [art. 2, Sch.](#) (with art. 3)
- F36** Word in s. 203(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 40\(7\)\(a\)](#); S.I. 2003/766, [art. 2, Sch.](#) (with art. 3)
- F37** Words in s. 203(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 40\(7\)\(b\)](#); S.I. 2003/766, [art. 2, Sch.](#) (with art. 3)



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- F38** Word in s. 203(2) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(7)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F39** Words in s. 203(4) substituted (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. 33(7), 71(2); S.I. 2007/3300, art. 3(2), Sch. 2
- F40** Words in s. 203(6)(7) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(7)(c); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F41** S. 203(10): words in definition of "listed activity" substituted (22.11.2000) by S.I. 2000/2952, reg. 8(2)
- F42** S. 203(10): words in definition of "associate" substituted (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. 33(8), 71(2); S.I. 2007/3300, art. 3(2), Sch. 2

#### Modifications etc. (not altering text)

- C18** S. 203 applied (with modifications) (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2), 26(1) (with reg. 3)
- C19** S. 203 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), reg. 31(1) (with reg. 3)
- C20** S. 203(5) modified (1.12.2001) by S.I. 2001/2636, arts. 1(2)(b), 53(2); S.I. 2001/3538, art. 2(1)

#### Marginal Citations

- M3** 1974 c. 39.
- M4** 1974 c. 39.
- M5** 1974 c. 39.

## 204 Power to restrict the carrying on of Consumer Credit Act business.

- (1) In this section “restriction” means a direction that a consumer credit EEA firm may not carry on in the United Kingdom, otherwise than in accordance with such condition or conditions as may be specified in the direction, any Consumer Credit Act business which—
- (a) consists of or includes carrying on any listed activity; and
  - (b) is specified in the direction.
- (2) If it appears to the [F43OFT] that the situation as respects a consumer credit EEA firm is such that the powers conferred by section 203(1) are exercisable, the [F43OFT] may, instead of imposing a prohibition, impose such restriction as appears to [F44it] desirable.
- (3) A restriction—
- (a) may be withdrawn, or
  - (b) may be varied with the agreement of the firm concerned,
- by written notice served by the [F43OFT] on the firm, and any such notice takes effect on such date as is specified in the notice.
- (4) A firm contravening a restriction is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

#### Textual Amendments

- F43** Words in s. 204 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(8); S.I. 2003/766, art. 2, Sch. (with art. 3)

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**F44** Word in s. 204 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 40\(8\)](#); [S.I. 2003/766](#), [art. 2](#), Sch. (with art. 3)

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**Modifications etc. (not altering text)**

- C21** S. 204 extended (1.12.2001) by [S.I. 2001/2636](#), [arts. 1\(2\)\(b\)](#), 53(3); [S.I. 2001/3538](#), [art. 2\(1\)](#)
- C22** S. 204 applied (with modifications) (1.5.2009 for certain purposes and 1.11.2009 otherwise) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2), [26\(1\)](#) (with reg. 3)
- C23** S. 204 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), [reg. 31\(1\)](#) (with reg. 3)

**Status:**

Point in time view as at 24/01/2013.

**Changes to legislation:**

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