



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XIII

#### INCOMING FIRMS: INTERVENTION BY [F<sup>1</sup>FCA OR PRA]

##### *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 [F<sup>1</sup>regulator], having regard to the ground on which it is exercising its power of intervention, considers that it is necessary for the requirement to take effect immediately (or on that date).
- (3) If [F<sup>2</sup>a regulator] 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 [F<sup>3</sup>regulator'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 [F<sup>4</sup>regulator] 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.

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- (5) The [<sup>F5</sup>regulator] may extend the period allowed under the notice for making representations.
- (6) If, having considered any representations made by the firm, the [<sup>F5</sup>regulator] 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 [<sup>F5</sup>regulator] 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.

#### Textual Amendments

- F1** Word in s. 197(2) substituted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 4 para. 37\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, arts. 2, 3, [Sch.](#)
- F2** Words in s. 197(3) substituted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 4 para. 37\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, arts. 2, 3, [Sch.](#)
- F3** Word in s. 197(4)(c) substituted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 4 para. 37\(4\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, arts. 2, 3, [Sch.](#)
- F4** Word in s. 197(4)(d) substituted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 4 para. 37\(4\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, arts. 2, 3, [Sch.](#)
- F5** Word in s. 197(5)-(7) substituted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 4 para. 37\(5\)](#) (with [Sch. 20](#)); S.I. 2013/423, arts. 2, 3, [Sch.](#)

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

- C1** 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\(2\)](#))
- C2** S. 197(1)(c) excluded (1.12.2001) by S.I. 2001/3592, [arts. 1\(2\)](#), 18(5), 21(4) (with [art. 23\(2\)](#))
- C3** 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\(2\)](#))
- C4** 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

- 11** 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.

- [<sup>F6</sup>(1) This section applies if the appropriate regulator has received a request made in respect of an incoming EEA firm in accordance with Article 140 of the Solvency 2 Directive.]
- (2) The court may, on an application made to it by the [<sup>F7</sup>appropriate regulator] 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 [<sup>F7</sup>appropriate regulator] to perform any of its functions under this Act.
- [<sup>F8</sup>(3A) “The appropriate regulator” means whichever regulator is, at the time when the request is received, the [<sup>F9</sup>supervisory authority for the purposes of Article 140 of the Solvency 2 Directive].]
- (4) “The court” means—
- the High Court; or
  - in Scotland, the Court of Session.

#### Textual Amendments

- F6** S. 198(1) substituted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 11\(2\)](#)
- F7** Words in s. 198(1)-(3) substituted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), [s. 122\(3\)](#), [Sch. 4 para. 38\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), [arts. 2, 3](#), [Sch.](#)
- F8** S. 198(3A) inserted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), [s. 122\(3\)](#), [Sch. 4 para. 38\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), [arts. 2, 3](#), [Sch.](#)
- F9** Words in s. 198(3A) substituted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 11\(3\)](#)

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

- (1) This section applies if it appears to [<sup>F10</sup>a regulator] 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>F11</sup>(a) it is imposed—
    - by [<sup>F12</sup>that regulator] under this Act, or
    - under any directly applicable Community regulation or decision made under a single market directive; and]

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- [<sup>F13</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) [<sup>F14</sup>The regulator] must, in writing, require the firm to remedy the situation.
- [<sup>F15</sup>(3A) If the firm falls within paragraph 5(da) [<sup>F16</sup>, (f) or (h)] of Schedule 3, [<sup>F14</sup>the regulator] 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.
- [<sup>F14</sup>(3B) Subsections (4) [<sup>F17</sup>and (5)] apply to an incoming EEA firm other than a firm falling within paragraph 5(da) [<sup>F18</sup>... of Schedule 3.]
- (4) If the firm fails to comply with the requirement under subsection (3) within a reasonable time, [<sup>F14</sup>the regulator] 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 [<sup>F14</sup>the regulator] 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), [<sup>F14</sup>the regulator] may not exercise its power of intervention [<sup>F19</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.
- [<sup>F20</sup>(5A) Subsections (6) to (8) apply to an incoming EEA firm other than a firm falling within paragraph 5(da) or (h) of Schedule 3.]
- (6) If [<sup>F14</sup>the regulator] 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).
- [<sup>F21</sup>(7) In such case, the regulator must at the earliest opportunity—
- (a) where the single market directive or directly applicable Community regulation in question is the capital requirements directive or the capital requirements regulation, inform the firm's home state regulator, the Commission, EBA and any other affected regulators of other EEA States;
  - (b) in the case of any other single market directive or directly applicable Community regulation, inform the firm's home state regulator, ESMA and the Commission.
- (7A) Where the single market directive or directly applicable Community regulation in question is the capital requirements directive or the capital requirements regulation the regulator must rescind any requirement imposed on the firm where the home state regulator has taken appropriate measures in accordance with section 199B(4).]
- (8) If—

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- (a) <sup>F14</sup>the regulator] 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>F22</sup>(other than the markets in financial instruments directive)] that <sup>F14</sup>the regulator] must rescind or vary any requirement imposed in the exercise of its power of intervention,
- <sup>F14</sup>the regulator] must in accordance with the decision rescind or vary the requirement.
- <sup>F23</sup>(9) In the case of a firm falling within paragraph 5(da) of Schedule 3, <sup>F14</sup>the regulator] 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.]
- <sup>F24</sup>(10) If an incoming EEA firm is exercising EEA rights under the UCITS directive, then <sup>F14</sup>the regulator] must inform <sup>F25</sup>ESMA and] the Commission of any measures it has taken in the exercise of its power of intervention.]
- <sup>F26</sup>(11) If, in the case of a home state regulator of an incoming EEA firm exercising EEA rights under the UCITS directive, <sup>F14</sup>the regulator] 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)).]
- <sup>F27</sup>(12) Subsection (3) is not to be regarded as requiring the PRA to take action in relation to the contravention of a relevant requirement in a case where it is satisfied that the FCA is required to act, and is acting or has acted, under subsection (3)—
- (a) in relation to that requirement, or
- (b) where that requirement is imposed by rules made by the PRA, in relation to an identical requirement imposed by rules made by the FCA.]

#### Textual Amendments

- F10** Words in s. 199(1) substituted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 4 para. 39\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, arts. 2, 3, [Sch.](#)
- F11** 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\(9\)\(a\)](#)
- F12** Words in s. 199(2)(a)(i) substituted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 4 para. 39\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, arts. 2, 3, [Sch.](#)
- F13** 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\(a\)](#)
- F14** Words in s. 199(3)-(11) substituted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 4 para. 39\(4\)](#) (with [Sch. 20](#)); S.I. 2013/423, arts. 2, 3, [Sch.](#)
- F15** 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\(b\)](#)

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- F16** Words in s. 199(3A) substituted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 14(a)**
- F17** Words in s. 199(3B) substituted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 14(b)**
- F18** 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**
- F19** 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)**
- F20** S. 199(5A) inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 14(c)**
- F21** S. 199(7)(7A) substituted for s. 199(7) (coming into force in accordance with Sch. 1 of the amending S.I.) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), reg. 1(3), **Sch. 2 para. 16(a)**
- F22** 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**
- F23** 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)**
- F24** 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)**
- F25** 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)**
- F26** 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)**
- F27** S. 199(12) inserted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 4 para. 39(5)** (with Sch. 20); [S.I. 2013/423](#), arts. 2, 3, Sch.

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

- C5** 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))
- C6** 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**

- I2** 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)**

### **[<sup>F28</sup>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 [<sup>F29</sup>appropriate regulator] has been informed by the home state regulator of the management company that it is withdrawing the management company's authorisation, the [<sup>F29</sup>appropriate regulator] 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.

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[<sup>F30</sup>(4) In this section—

“the appropriate regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the UCITS directive;

“collective investment scheme” has the same meaning as in Part 17.]

#### Textual Amendments

- F28** S. 199A inserted (1.7.2011) by The Undertakings for Collective Investment in [Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), **reg. 2(10)**
- F29** Words in s. 199A(2) substituted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 4 para. 40(2)** (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.
- F30** S. 199A(4) substituted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 4 para. 40(3)** (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

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

- C7** 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)**)

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