



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XIX

LLOYD'S

Power to apply Act to Lloyd's underwriting

316 Direction by [^{F1}a regulator]

- (1) The general prohibition or (if the general prohibition is not applied under this section) a core provision applies to the carrying on of an insurance market activity by—
- (a) a member of the Society, or
 - (b) the members of the Society taken together,
- only if [^{F2}a regulator] so directs.

[^{F3}(1A) A direction under subsection (1)—

- (a) may be given by the FCA only if it considers that giving the direction is necessary or expedient for the purpose of advancing one or more of its operational objectives, and
- (b) may be given by the PRA only if it considers that giving the direction is necessary or expedient for the purpose of advancing its general objective or (if section 2C applies) the insurance objective.

(1B) A direction under subsection (1) which applies the general prohibition to a member of the Society, or to the members of the Society taken together, may be given by a regulator only with the consent of the other regulator.]

(2) A direction given under subsection (1) which applies a core provision is referred to in this Part as “an insurance market direction”.

(3) In subsection (1)—

“core provision” means a provision of this Act mentioned in section 317;
and

Status: Point in time view as at 01/04/2013.

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“insurance market activity” means a regulated activity relating to contracts of insurance written at Lloyd’s.

- (4) In deciding whether to give a direction under subsection (1), [^{F4}the regulator concerned] must have particular regard to—
- (a) the interests of policyholders and potential policyholders;
 - (b) any failure by the Society to satisfy an obligation to which it is subject as a result of a provision of the law of another EEA State which—
 - (i) gives effect to any of the insurance directives; and
 - (ii) is applicable to an activity carried on in that State by a person to whom this section applies;
 - (c) the need to ensure the effective exercise of the functions which [^{F4}the regulator concerned] has in relation to the Society as a result of [^{F5}provision made by or under this Act].
- (5) A direction under subsection (1) must be in writing.
- (6) A direction under subsection (1) applying the general prohibition may apply it in relation to different classes of person.
- (7) An insurance market direction—
- (a) must specify each core provision, class of person and kind of activity to which it applies;
 - (b) may apply different provisions in relation to different classes of person and different kinds of activity.
- (8) A direction under subsection (1) has effect from the date specified in it, which may not be earlier than the date on which it is made.
- (9) A direction under subsection (1) [^{F6}given by a regulator] must be published in the way appearing to [^{F7}the regulator] to be best calculated to bring it to the attention of the public.
- (10) [^{F8}A regulator who gives a direction under subsection (1)] may charge a reasonable fee for providing a person with a copy of the direction.
- (11) [^{F9}A regulator who gives a direction under subsection (1)] must, without delay, give the Treasury a copy of [^{F10}the direction].

Textual Amendments

- F1** Words in s. 316 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 40(5)(g)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F2** Words in s. 316(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 40(5)(a)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F3** S. 316(1A)(1B) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 40(5)(b)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F4** Words in s. 316(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 40(5)(c)(i)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F5** Words in s. 316(4)(c) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 40(5)(c)(ii)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F6** Words in s. 316(9) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 40(5)(d)(i)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

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- F7** Words in s. 316(9) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 40\(5\)\(d\)\(ii\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F8** Words in s. 316(10) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 40\(5\)\(e\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F9** Words in s. 316(11) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 40\(5\)\(f\)\(i\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F10** Words in s. 316(11) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 40\(5\)\(f\)\(ii\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

Commencement Information

- II** S. 316 wholly in force at 1.12.2001; s. 316 not in force at Royal Assent see s. 431(2); s. 316(1) in force for specified purposes at 18.6.2001 by [S.I. 2001/1820, art. 2, Sch.](#); s. 316 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538, art. 2\(1\)](#)

317 The core provisions.

- (1) The core provisions are Parts V, ^{[F11]9A}, XI, XII, XIV, XV, XVI, XXII and XXIV, sections 384 to 386 and Part XXVI.
- (2) References in an applied core provision to an authorised person are (where necessary) to be read as references to a person in the class to which the insurance market direction applies.
- (3) An insurance market direction may provide that a core provision is to have effect, in relation to persons to whom the provision is applied by the direction, with modifications.

Textual Amendments

- F11** Word in s. 317(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 40\(6\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

318 Exercise of powers through Council.

- (1) ^{[F12]A} regulator] may give a direction under this subsection to the Council or to the Society (acting through the Council) or to both.
- (2) A direction under subsection (1) is one given to the body concerned—
 - (a) in relation to the exercise of its powers generally with a view to achieving, or in support of, a specified objective; or
 - (b) in relation to the exercise of a specified power which it has, whether in a specified manner or with a view to achieving, or in support of, a specified objective.
- (3) “Specified” means specified in the direction.

^{[F13]3A} A direction under subsection (1)—

- (a) may be given by the FCA only if it considers that giving the direction is necessary or expedient for the purpose of advancing one or more of its operational objectives, and

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- (b) may be given by the PRA only if it considers that giving the direction is necessary or expedient for the purpose of advancing its general objective or (if section 2C applies) the insurance objective.]
- (4) A direction under subsection (1) may be given—
- (a) instead of giving a direction under section 316(1); or
 - (b) if [^{F14}the regulator concerned] considers it necessary or expedient to do so, at the same time as, or following, the giving of such a direction.
- (5) A direction may also be given under subsection (1) in respect of underwriting agents as if they were among the persons mentioned in section 316(1).
- (6) A direction under this section—
- (a) does not, at any time, prevent the exercise by [^{F15}a regulator] of any of its powers;
 - (b) must be in writing.
- (7) A direction under subsection (1) [^{F16}given by a regulator] must be published in the way appearing to [^{F17}the regulator] to be best calculated to bring it to the attention of the public.
- (8) [^{F18}A regulator who gives a direction under subsection (1)] may charge a reasonable fee for providing a person with a copy of the direction.
- (9) [^{F19}A regulator who gives a direction under subsection (1)] must, without delay, give the Treasury a copy of [^{F20}the direction].

Textual Amendments

- F12** Words in s. 318(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(7)(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F13** S. 318(3A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(7)(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F14** Words in s. 318(4)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(7)(c), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F15** Words in s. 318(6)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(7)(d), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F16** Words in s. 318(7) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(7)(e)(i), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F17** Words in s. 318(7) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(7)(e)(ii), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F18** Words in s. 318(8) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(7)(f), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F19** Words in s. 318(9) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(7)(g)(i), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F20** Words in s. 318(9) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(7)(g)(ii), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Commencement Information

- I2** S. 318 wholly in force at 1.12.2001; s. 318 not in force at Royal Assent see s. 431(2); s. 318(1) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 318 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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319 Consultation.

- [^{F21}(1) Before a regulator gives a direction under section 316 or 318, it must—
- (a) in a case where section 316(1B) requires the regulator to obtain the consent of the other regulator, obtain that consent,
 - (b) in any other case, consult the other regulator, and
 - (c) after complying with paragraph (a) or (b), publish a draft of the proposed direction.]
- (2) The draft must be accompanied by—
- (a) a cost benefit analysis; and
 - (b) notice that representations about the proposed direction may be made to [^{F22}the regulator] within a specified time.
- [^{F23}(3) Before a regulator gives the proposed direction—
- (a) it must have regard to any representations made to it in accordance with subsection (2)(b), and
 - (b) if it was required by subsection (1)(b) to consult the other regulator and proposes to give a direction which differs from the draft published under subsection (1) in a way which is, in the opinion of the regulator, significant, it must again consult the other regulator.]
- (4) If [^{F24}the regulator] gives the proposed direction it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with subsection (2)(b); and
 - (b) its response to them.
- (5) If the direction differs from the draft published under subsection (1) in a way which is, in the opinion of [^{F25}the regulator], significant—
- (a) [^{F25}the regulator] must (in addition to complying with subsection (4)) publish details of the difference; and
 - (b) those details must be accompanied by a cost benefit analysis.
- [^{F26}(6) Subsections (1)(c) and (2) to (5) do not apply in relation to—
- (a) a direction given by the FCA if it considers that the delay involved in complying with them would be prejudicial to the interests of consumers, as defined in section 425A, or
 - (b) a direction given by the PRA if it considers that the delay involved in complying with them would—
 - (i) be prejudicial to the safety and soundness of the Society, and the members of the Society, taken together, or
 - (ii) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policyholders.]
- (7) Neither subsection (2)(a) nor subsection (5)(b) applies if [^{F27}the regulator concerned] considers—
- (a) that, making the appropriate comparison, there will be no increase in costs; or
 - (b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.
- (8) [^{F28}A regulator who publishes a draft under subsection (1)] may charge a reasonable fee for providing a person with a copy of [^{F29}the draft].

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(9) When [^{F30}a regulator] is required to publish a document under this section it must do so in the way appearing to it to be best calculated to bring it to the attention of the public.

[^{F31}(10) “Cost benefit analysis” means—

- (a) an analysis of the costs together with an analysis of the benefits that will arise—
 - (i) if the proposed direction is given, or
 - (ii) if subsection (5)(b) applies, from the direction that has been given, and
- (b) subject to subsection (10A), an estimate of those costs and of those benefits.

(10A) If, in the opinion of the regulator concerned—

- (a) the costs or benefits referred to in subsection (10) cannot reasonably be estimated, or
- (b) it is not reasonably practicable to produce an estimate,

the cost benefit analysis need not estimate them, but must include a statement of the opinion of the regulator concerned and an explanation of it.]

(11) “The appropriate comparison” means—

- (a) in relation to subsection (2)(a), a comparison between the overall position if the direction is given and the overall position if it is not given;
- (b) in relation to subsection (5)(b), a comparison between the overall position after the giving of the direction and the overall position before it was given.

Textual Amendments

- F21** S. 319(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 40(8)(a)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F22** Words in s. 319(2)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 40(8)(b)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F23** S. 319(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 40(8)(c)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F24** Words in s. 319(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 40(8)(d)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F25** Words in s. 319(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 40(8)(d)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F26** S. 319(6) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 40(8)(e)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F27** Words in s. 319(7) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 40(8)(f)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F28** Words in s. 319(8) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 40(8)(g)(i)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F29** Words in s. 319(8) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 40(8)(g)(ii)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F30** Words in s. 319(9) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 40(8)(h)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F31** S. 319(10)(10A) substituted for s. 319(10) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 40(8)(i)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

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