



# Financial Services Act 2012

## 2012 CHAPTER 21

### PART 2

#### AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

##### *Control over authorised persons*

#### **26 Control over authorised persons**

- (1) FSMA 2000 is amended as follows.
- (2) In every provision of Part 12 (control over authorised persons), for “Authority” or “Authority's”, in each place (where not expressly amended by the following provisions), substitute “appropriate regulator” or “appropriate regulator's”.
- (3) In section 178 (obligation to notify an acquisition of control), after subsection (2) insert—
  - “(2A) In this Part, “the appropriate regulator” means—
    - (a) where the UK authorised person is a PRA-authorised person, the PRA;
    - (b) in any other case, the FCA.”
- (4) In section 179 (requirements for section 178 notices) in subsection (2), for “The Authority” substitute “Each regulator”.
- (5) In section 187 (approval with conditions), for subsection (2) substitute—
  - “(2) The appropriate regulator may only impose conditions where—
    - (a) if it did not impose those conditions, it would propose to object to the acquisition, or
    - (b) it is required to do so by a direction under section 187A(3)(b) or section 187B(3).”
- (6) After section 187 insert—

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**“187A Assessment: consultation by PRA with FCA**

- (1) The PRA must consult the FCA before acting under section 185.
- (2) The FCA may make representations to the PRA in relation to any of the matters set out in sections 185(2) and 186.
- (3) If the FCA considers that on the basis of the matters set out in section 186(f) there are reasonable grounds to object to the acquisition, the FCA may—
  - (a) direct the PRA to object to the acquisition, or
  - (b) direct the PRA not to approve the acquisition unless it does so subject to conditions specified in the direction (with or without other conditions).
- (4) Before giving a direction under subsection (3), the FCA must notify the PRA of its proposal to do so.
- (5) In order to comply with the obligation under subsection (1), the PRA must provide the FCA with—
  - (a) copies of—
    - (i) the section 178 notice, and
    - (ii) any document included with that notice,
  - (b) any further information provided pursuant to section 190, and
  - (c) any other information in the possession of the PRA which—
    - (i) in the opinion of the PRA, is relevant to the application, or
    - (ii) is reasonably requested by the FCA.
- (6) If the PRA acts under section 185(1)(b), it must indicate to the section 178 notice-giver any representations or directions received from the FCA.
- (7) Directions given by the FCA under this section are subject to any directions given to the FCA under section 3I or 3J.

**187B Assessment: consultation by FCA with PRA**

- (1) The FCA must consult the PRA before acting under section 185 if—
  - (a) the UK authorised person to which the section 178 notice relates has as a member of its immediate group a PRA-authorised person, or
  - (b) the section 178 notice-giver is a PRA-authorised person.
- (2) The PRA may make representations to the FCA in relation to any of the matters set out in sections 185(2) and 186.
- (3) If the PRA considers that on the basis of relevant matters there are reasonable grounds to object to the acquisition, the PRA may direct the FCA not to approve the acquisition unless it does so subject to conditions specified in the direction (with or without other conditions).
- (4) In subsection (3) “relevant matters”—
  - (a) means the matters in paragraphs (d) and (e)(i) of section 186, and
  - (b) in a case falling within subsection (1)(b) of this section, also includes the matter in paragraph (c) of section 186.

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- (5) In order to comply with the obligation under subsection (1), the FCA must provide the PRA with—
- (a) copies of—
    - (i) the section 178 notice, and
    - (ii) any document included with that notice,
  - (b) any further information provided pursuant to section 190, and
  - (c) any other information in the possession of the FCA which—
    - (i) in the opinion of the FCA, is relevant to the application, or
    - (ii) is reasonably requested by the PRA.
- (6) If the FCA acts under section 185(1)(b), it must indicate to the section 178 notice-giver any representations or directions received from the PRA.

### **187C Variation etc of conditions**

- (1) Where the PRA has imposed conditions required by a direction given by the FCA under section 187A(3)—
- (a) the FCA may direct the PRA to exercise its power under section 187(4) to vary or cancel any of those conditions;
  - (b) the PRA must consult the FCA before it exercises that power in relation to those conditions otherwise than in accordance with a direction under paragraph (a).
- (2) Where the FCA has imposed conditions required by a direction given by the PRA under section 187B(3)—
- (a) the PRA may direct the FCA to exercise its power under section 187(4) to vary or cancel any of those conditions;
  - (b) the FCA must consult the PRA before it exercises that power in relation to those conditions otherwise than in accordance with a direction under paragraph (a).”
- (7) In section 191A (objection to control), after subsection (4) insert—
- “(4A) Where the appropriate regulator is the PRA, it must consult the FCA before giving a warning notice under this section.
- (4B) Where the appropriate regulator is the FCA, it must consult the PRA before giving a warning notice under this section if—
- (a) the UK authorised person has as a member of its immediate group a PRA-authorised person, or
  - (b) the person to whom the warning notice is to be given is a PRA-authorised person.”
- (8) In section 191B (restriction notices), after subsection (2) insert—
- “(2A) Where the appropriate regulator is the PRA, it must consult the FCA before giving a restriction notice under this section.
- (2B) Where the appropriate regulator is the FCA, it must consult the PRA before giving a restriction notice under this section if—
- (a) the UK authorised person has as a member of its immediate group a PRA-authorised person, or

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- (b) the person to whom the restriction notice is to be given is a PRA-  
authorised person.”
- (9) In section 191C (orders for the sale of shares), after subsection (2) insert—
  - “(2A) Where the appropriate regulator is the PRA, it must consult the FCA before  
making an application to the court under this section.
  - (2B) Where the appropriate regulator is the FCA, it must consult the PRA before  
making an application to the court under this section if—
    - (a) the UK authorised person has as a member of its immediate group a  
PRA-authorized person, or
    - (b) the person holding the shares or voting power is a PRA-authorized  
person.”
- (10) In section 191D (obligation to notify of disposition of control), after subsection (1)  
insert—
  - “(1A) The PRA must give the FCA a copy of any notice it receives under this section.
  - (1B) The FCA must give the PRA a copy of any notice it receives under this section  
which—
    - (a) relates to a UK authorised person who has as a member of its  
immediate group a PRA-authorized person, or
    - (b) is given by a PRA-authorized person.”
- (11) In section 191E (requirements for notices under section 191D), in subsection (2), for  
“The Authority” substitute “Each regulator”.
- (12) In section 191G (interpretation), in subsection (1), after the definition of “acquisition”  
insert—
  - ““the appropriate regulator” is to be read in accordance with  
section 178(2A);”.

## 27 Powers of regulators in relation to parent undertakings

After section 192 of FSMA 2000 insert—

### “PART 12A

#### POWERS EXERCISABLE IN RELATION TO PARENT UNDERTAKINGS

##### *Introductory*

#### **192A Meaning of “qualifying authorised person”**

- (1) In this Part “qualifying authorised person” means an authorised person  
satisfying the following conditions.
- (2) Condition A is that the authorised person is a body corporate incorporated in  
the United Kingdom.
- (3) Condition B is that the authorised person is—

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- (a) a PRA-authorised person, or
  - (b) an investment firm.
- (4) The Treasury may by order—
- (a) amend subsection (3) so as to add to or restrict the descriptions of authorised person who can be qualifying authorised persons, or
  - (b) provide that while the order is in force subsection (3) is not to have effect.
- (5) Except as provided by subsection (6), an order under subsection (4) is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (6) An order under subsection (4) may be made without a draft having been laid and approved as mentioned in subsection (5) if the order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (7) An order under subsection (4) made in accordance with subsection (6)—
- (a) must be laid before Parliament after being made, and
  - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without affecting anything done under the order or the power to make a new order).
- (8) The “relevant period” is a period of 28 days beginning with the day on which the order is made.
- (9) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

### **192B Meaning of “qualifying parent undertaking”**

- (1) The parent undertaking of a qualifying authorised person or recognised UK investment exchange is for the purposes of this Part a “qualifying parent undertaking” if the following conditions are satisfied in relation to it.
- (2) Condition A is that the parent undertaking is a body corporate which—
- (a) is incorporated in the United Kingdom, or
  - (b) has a place of business in the United Kingdom.
- (3) Condition B is that the parent undertaking is not itself an authorised person, a recognised investment exchange or a recognised clearing house.
- (4) Condition C is that the parent undertaking is a financial institution of a kind prescribed by the Treasury by order.
- (5) “Recognised UK investment exchange” means a recognised investment exchange that is not an overseas investment exchange as defined in section 313(1).
- (6) The Treasury may by order—
- (a) amend subsection (4) by omitting the words “a financial institution”, and

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- (b) make any amendment of subsection (2) that they consider desirable in connection with an amendment made under paragraph (a).

### *Power of direction*

#### **192C Power to direct qualifying parent undertaking**

- (1) The appropriate regulator may give a direction under this section to a qualifying parent undertaking if either the general condition or the consolidated supervision condition is satisfied.
- (2) The general condition is that the appropriate regulator considers that it is desirable to give the direction in order to advance—
  - (a) in the case of the FCA, one or more of its operational objectives;
  - (b) in the case of the PRA, any of its objectives.
- (3) The consolidated supervision condition is that—
  - (a) the appropriate regulator is the competent authority for the purpose of consolidated supervision that is required, in relation to some or all of the members of the group of a qualifying authorised person, in pursuance of any of the directives mentioned in section 3M(3), and
  - (b) the appropriate regulator considers that the giving of the direction is desirable for the purpose of the effective consolidated supervision of the group.
- (4) In subsection (3)(a) “consolidated supervision” includes supplemental supervision.
- (5) In deciding whether to give a direction under this section, a regulator must have regard—
  - (a) to the desirability where practicable of exercising its powers in relation to authorised persons or recognised investment exchanges rather than its powers under this section, and
  - (b) to the principle that a burden or restriction which is imposed on a person should be proportionate to the benefits, considered in general terms, which are expected to result from its imposition.
- (6) “The appropriate regulator” means—
  - (a) where a direction relates to a qualifying authorised person or recognised investment exchange who is a PRA-authorised person, the FCA or the PRA;
  - (b) in any other case, the FCA.

#### **192D Requirements that may be imposed**

- (1) A direction under section 192C may require the parent undertaking—
  - (a) to take specified action, or
  - (b) to refrain from taking specified action.
- (2) A requirement may be imposed by reference to the parent undertaking's relationship with—
  - (a) its group, or

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- (b) other members of its group.
- (3) A requirement may refer to the past conduct of the parent undertaking (for example, by requiring the parent undertaking to review or take remedial action in respect of past conduct).
- (4) A requirement imposed by the direction may be expressed to expire at the end of a specified period, but the imposition of a requirement that expires at the end of a specified period does not affect the power to give a further direction imposing a new requirement.
- (5) The direction—
  - (a) may be revoked by the regulator which gave it by written notice to the body to which it is given, and
  - (b) ceases to be in force if the body to which it is given ceases to be a qualifying parent undertaking.

#### **192E Direction: procedure**

- (1) If a regulator proposes to give a direction under section 192C, or gives such a direction with immediate effect, it must give written notice to—
  - (a) the parent undertaking to which the direction is given (or to be given) (“P”), and
  - (b) any authorised person or recognised investment exchange who will, in the opinion of the regulator, be significantly affected by the direction.
- (2) In the following provisions of this section “notified person” means a person to whom notice under subsection (1) is given.
- (3) A direction under section 192C takes effect—
  - (a) immediately, if the notice under subsection (1) states that that is the case,
  - (b) on such other date as may be specified in the notice, or
  - (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.
- (4) A direction may be expressed to take effect immediately (or on a specified date) only if the regulator reasonably considers that it is necessary for the direction to take effect immediately (or on that date).
- (5) The notice under subsection (1) must—
  - (a) give details of the direction,
  - (b) state the regulator's reasons for the direction and for its determination as to when the direction takes effect,
  - (c) inform the notified person that the person may make representations to the regulator within such period as may be specified in the notice (whether or not the notified person has referred the matter to the Tribunal), and
  - (d) inform the notified person of the person's right to refer the matter to the Tribunal.
- (6) The regulator may extend the period allowed under the notice for making representations.

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- (7) If, having considered any representations made by any notified person, the regulator decides—
  - (a) to give the direction proposed, or
  - (b) if the direction has been given, not to revoke the direction,
 it must give each of the notified persons written notice.
- (8) If, having considered any representations made by any notified person, the regulator decides—
  - (a) not to give the direction proposed,
  - (b) to give a different direction, or
  - (c) to revoke a direction which has effect,
 it must give each of the notified persons written notice.
- (9) A notice given under subsection (7) must inform the notified person of the person's right to refer the matter to the Tribunal.
- (10) A notice under subsection (8)(b) must comply with subsection (5).
- (11) If a notice informs the notified person of the person's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (12) For the purposes of subsection (3)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

#### **192F Consultation between regulators**

- (1) Before the PRA gives a notice under section 192E(1) or (8)(b), it must consult the FCA.
- (2) Before the FCA gives a notice under section 192E(1) or (8)(b) in relation to the parent undertaking of a PRA-authorized person, the FCA must consult the PRA.
- (3) Before either regulator gives a notice under section 192E(1) or (8)(b) in relation to the parent undertaking of a recognised clearing house, the regulator must consult the Bank of England.

#### **192G References to Tribunal**

- (1) A notified person who is aggrieved by the exercise by either regulator of its powers in relation to directions under section 192C may refer the matter to the Tribunal.
- (2) “Notified person” is to be read in accordance with subsection (2) of section 192E, except that it includes a person to whom a notice under subsection (1) of that section ought to have been given.

#### **192H Statement of policy: directions under section 192C**

- (1) Each regulator must prepare and issue a statement of policy with respect to the giving of directions under section 192C.
- (2) A regulator may at any time alter or replace a statement issued under this section.



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- (3) If a statement issued under this section is altered or replaced, the regulator must issue the altered or replacement statement.
- (4) In exercising or deciding whether to exercise its power under section 192C in any particular case, a regulator must have regard to any statement published under this section and for the time being in force.
- (5) A statement under this section must be published by the regulator concerned in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (6) A regulator may charge a reasonable fee for providing a person with a copy of a statement published under this section.
- (7) A regulator must, without delay, give the Treasury a copy of any statement which the regulator publishes under this section.

#### **192I Statement of policy relating to directions: procedure**

- (1) Before issuing a statement of policy under section 192H, a regulator (“the issuing regulator”) must—
  - (a) consult the other regulator and the Bank of England, and
  - (b) publish a draft of the proposed statement in the way appearing to the issuing regulator to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the issuing regulator within a specified time.
- (3) Before issuing the proposed statement, the issuing regulator must have regard to any representations made to it in accordance with subsection (2).
- (4) If the issuing regulator issues the proposed statement it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2), and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (2) in a way which is, in the opinion of the issuing regulator, significant, the issuing regulator—
  - (a) must before issuing it consult the other regulator again, and
  - (b) must (in addition to complying with subsection (4)), publish details of the difference.
- (6) The issuing regulator may charge a reasonable fee for providing a person with a draft published under subsection (1)(b).
- (7) This section also applies to a proposal to alter or replace a statement.

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*Rules requiring provision of information by parent undertakings*

**192J Rules requiring provision of information by parent undertakings**

- (1) The appropriate regulator may make rules requiring qualifying parent undertakings—
  - (a) to provide to the regulator information of a specified description;
  - (b) to produce to the regulator documents of a specified description.
- (2) The rules may only specify a description of information or documents that is relevant to the exercise by the regulator of its functions.
- (3) The rules may make provision—
  - (a) as to the time within which information must be provided or documents produced;
  - (b) about the form in which any information is to be provided;
  - (c) about the place where any documents are to be produced;
  - (d) requiring information provided to be verified in a specified manner;
  - (e) requiring documents produced to be authenticated in a specified manner.
- (4) “The appropriate regulator” means—
  - (a) in relation to the parent undertaking of a qualifying authorised person who is a PRA-authorised person, the FCA or the PRA;
  - (b) in any other case, the FCA.

*Failure to comply with direction or breach of rules*

**192K Power to impose penalty or issue censure**

- (1) This section applies if a regulator is satisfied that a person who is or has been a qualifying parent undertaking (“P”) has contravened—
  - (a) a requirement of a direction given to P by that regulator under section 192C, or
  - (b) a provision of rules made by that regulator under section 192J.
- (2) The regulator may impose a penalty of such amount as it considers appropriate on—
  - (a) P, or
  - (b) any person who was knowingly concerned in the contravention.
- (3) The regulator may, instead of imposing a penalty on a person, publish a statement censuring the person.
- (4) The regulator may not take action against a person under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person under section 192L.
- (5) “The limitation period” means the period of 3 years beginning with the first day on which the regulator knew of the contravention.

- (6) For this purpose a regulator is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.

### **192L Procedure and right to refer to Tribunal**

- (1) If a regulator proposes to take action against a person under section 192K, it must give the person a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (4) If the regulator decides to take action against a person under section 192K, it must give the person a decision notice.
- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If the regulator decides to take action against a person under section 192K, the person may refer the matter to the Tribunal.

### **192M Duty on publication of statement**

After a statement under section 192K(3) is published, the regulator must send a copy of the statement to—

- (a) the person in respect of whom it is made, and
- (b) any person to whom a copy of the decision notice was given under section 393(4).

### **192N Imposition of penalties under section 192K: statement of policy**

- (1) Each regulator must prepare and issue a statement of policy with respect to—
- (a) the imposition of penalties under section 192K, and
- (b) the amount of penalties under that section.
- (2) A regulator's policy in determining what the amount of a penalty should be must include having regard to—
- (a) the seriousness of the contravention,
- (b) the extent to which the contravention was deliberate or reckless, and
- (c) whether the person on whom the penalty is to be imposed is an individual.
- (3) A regulator may at any time alter or replace a statement issued under this section.
- (4) If a statement issued under this section is altered or replaced, the regulator must issue the altered or replacement statement.

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- (5) In exercising, or deciding whether to exercise, a power under section 192K(2) in the case of any particular contravention, a regulator must have regard to any statement of policy published under this section and in force at a time when the contravention occurred.
- (6) A statement under this section must be published by the regulator concerned in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (7) A regulator may charge a reasonable fee for providing a person with a copy of the statement published under this section.
- (8) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (9) Section 192I applies in relation to a statement under this section as it applies in relation to a statement under section 192H.”