

## SCHEDULE 2

### Amendments to primary and secondary legislation

## PART 1

### Amendments to FSMA

**15.** After section 194A (contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive: appropriate regulator primarily responsible for securing compliance) <sup>M1</sup> insert <sup>M2</sup>—

**“194B Contravention by relevant EEA firm of requirement in capital requirements directive or capital requirements regulation**

(1) In this section—

- (a) “relevant EEA firm” means an EEA firm falling within paragraph 5(a) or 5(b) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from capital requirements directive; and
- (b) “Article 3” means Article 3 of Directive [2001/24/EC](#) of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions.

(2) This section applies where—

- (a) a relevant EEA firm has a branch, or is providing services, in the United Kingdom; and
- (b) the appropriate regulator ascertains on the basis of information received from the home state regulator that the firm is contravening, or is at a material risk of contravening, a requirement of the capital requirements directive or capital requirements regulation.

(3) The appropriate regulator must, without delay, notify the firm's home state regulator of the need for it to take all appropriate measures to ensure that the firm remedies the contravention or averts the risk of contravention.

(4) If notice has been given under subsection (3) and the appropriate regulator considers that the home state regulator is failing to comply with its obligations in respect of the contravention or the risk of contravention, the appropriate regulator may refer the matter to EBA (and EBA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority)).

(5) The appropriate regulator may exercise its power of intervention in respect of the relevant EEA firm if—

- (a) the requirement to be imposed under section 196 is necessary and appropriate to protect against financial instability that would seriously threaten the collective interests of consumers in the United Kingdom;
- (b) the situation is an emergency;
- (c) the home state regulator has not yet taken measures to ensure the contravention or risk of contravention is remedied; and

**Changes to legislation:** The Capital Requirements Regulations 2013, Paragraph 15 is up to date with all changes known to be in force on or before 22 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (d) reorganisation measures of the kind referred to in Article 3 have not been commenced.
- (6) Any requirement imposed by virtue of paragraph (5)—
  - (a) must not favour creditors in the United Kingdom over creditors in another EEA State;
  - (b) must be rescinded if the administrative or judicial authorities of the home EEA State take reorganisation measures under Article 3;
  - (c) must be rescinded if the appropriate regulator considers that the home state regulator has taken appropriate measures to ensure the firm remedies the contravention or averts the risk of contravention
- (7) The appropriate regulator must give the firm written notice of its reasons for imposing a requirement under subsection (5).
- (8) The appropriate regulator shall inform the Commission, EBA and regulators in affected Member States of the imposition of a requirement by virtue of subsection (5).
- (9) This section is without prejudice to the powers available to the appropriate regulator under section 199.
- (10) For the purposes of this section “appropriate regulator” means the PRA in relation to a PRA-authorized person and the FCA in relation to any other person.”.

#### Marginal Citations

- M1** [Section 194A](#) was inserted by [S.I. 2007/126](#) and amended by the Financial Services Act 2012, section 12 and schedule 4 paragraph 29 and 33 and [S.I. 2012/916](#).
- M2** [Paragraph 15](#) comes into force on a date specified in a Commission delegated act. See Schedule 1.

**Changes to legislation:**

The Capital Requirements Regulations 2013, Paragraph 15 is up to date with all changes known to be in force on or before 22 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

**Changes and effects yet to be applied to :**

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)