Financial Services and Markets Act 2000

2000 CHAPTER 8

F1PART I

THE REGULATOR

Textual Amendments
F1 Pt. 1A substituted for Pt. 1 (24.1.2013 for specified purposes, 19.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 6(1), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c)(2), Sch. Pts. 2, 3, 4; S.I. 2013/423, art. 3, Sch.

F1PART 1A

THE REGULATORS

CHAPTER 1

THE FINANCIAL CONDUCT AUTHORITY

The Financial Conduct Authority

1A The Financial Conduct Authority

(1) The body corporate previously known as the Financial Services Authority is renamed as the Financial Conduct Authority.

(2) The Financial Conduct Authority is in this Act referred to as “the FCA”.

(3) The FCA is to have the functions conferred on it by or under this Act.
The FCA must comply with the requirements as to its constitution set out in Schedule 1ZA.

Schedule 1ZA also makes provision about the status of the FCA and the exercise of certain of its functions.

References in this Act or any other enactment to functions conferred on the FCA by or under this Act include references to functions conferred on the FCA by or under—

(a) the Insolvency Act 1986,
(b) the Banking Act 2009,
(c) the Financial Services Act 2012,
(d) a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
(e) regulations made by the Treasury under section 8 of the European Union (Withdrawal) Act 2018.

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**Textual Amendments**

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<td>F3</td>
<td>S. 1A(6)(cza) inserted (1.10.2018) by Financial Guidance and Claims Act 2018 (c. 10), s. 37(5), Sch. 3 para. 6; S.I. 2018/1029, reg. 2(q)</td>
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<td>F4</td>
<td>S. 1A(6)(czb) inserted (20.12.2018) by Civil Liability Act 2018 (c. 29), ss. 11(10)(a), 14</td>
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<td>F5</td>
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<td>C1</td>
<td>S. 1A modified (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), regs. 1(2), 63(8) (with regs. 8, 15)</td>
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<tr>
<td>C2</td>
<td>S. 1A(3) applied (with modifications) (6.4.2018 immediately after 2016 c. 16 (N.I.), s. 8(2) comes into force) by The Financial Services Act 2012 (Mutual Societies) Order 2018 (S.I. 2018/323), art. 1, Sch. 1 para. 2(2)(a) (with art. 3)</td>
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**The FCA's general duties**

**1B The FCA's general duties**

1. In discharging its general functions the FCA must, so far as is reasonably possible, act in a way which—
   a. is compatible with its strategic objective, and
(b) advances one or more of its operational objectives.

(2) The FCA's strategic objective is: ensuring that the relevant markets (see section 1F) function well.

(3) The FCA's operational objectives are—
   (a) the consumer protection objective (see section 1C);
   (b) the integrity objective (see section 1D);
   (c) the competition objective (see section 1E).

(4) The FCA must, so far as is compatible with acting in a way which advances the consumer protection objective or the integrity objective, discharge its general functions in a way which promotes effective competition in the interests of consumers.

(5) In discharging its general functions the FCA must have regard to—
   (a) the regulatory principles in section 3B, and
   (b) the importance of taking action intended to minimise the extent to which it is possible for a business carried on—
       (i) by an authorised person or a recognised investment exchange, or
       (ii) in contravention of the general prohibition,
       to be used for a purpose connected with financial crime.

(6) For the purposes of this Chapter, the FCA's general functions are—
   (a) its function of making rules under this Act (considered as a whole),
   (b) its function of making technical standards in accordance with Chapter 2A of Part 9A;
   (c) its function of preparing and issuing codes under this Act (considered as a whole),
   (d) its functions in relation to the giving of general guidance under this Act (considered as a whole), and
   (d) its function of determining the general policy and principles by reference to which it performs particular functions under this Act.

(7) Except to the extent that an order under section 50 of the Financial Services Act 2012 (orders relating to mutual societies functions) so provides, the FCA's general functions do not include functions that are transferred functions within the meaning of section 52 of that Act.

(8) “General guidance” has the meaning given in section 139B(5).

Textual Amendments


F9 S. 1B(7A) omitted (1.1.2019) by virtue of Financial Guidance and Claims Act 2018 (c. 10), s. 37(5), Sch. 3 para. 7; S.I. 2018/1330, reg. 2(g)(i)

Modifications etc. (not altering text)

C3 S. 1B(4) restricted (26.7.2013) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(4), 61(2)
1C The consumer protection objective

(1) The consumer protection objective is: securing an appropriate degree of protection for consumers.

(2) In considering what degree of protection for consumers may be appropriate, the FCA must have regard to—
   (a) the differing degrees of risk involved in different kinds of investment or other transaction;
   (b) the differing degrees of experience and expertise that different consumers may have;
   (c) the needs that consumers may have for the timely provision of information and advice that is accurate and fit for purpose;
   (d) the general principle that consumers should take responsibility for their decisions;
   (e) the general principle that those providing regulated financial services should be expected to provide consumers with a level of care that is appropriate having regard to the degree of risk involved in relation to the investment or other transaction and the capabilities of the consumers in question;
   (f) the differing expectations that consumers may have in relation to different kinds of investment or other transaction;
   (g) any information which the consumer financial education body has provided to the FCA in the exercise of the consumer financial education function;
   (h) any information which the scheme operator of the ombudsman scheme has provided to the FCA pursuant to section 232A.

1D The integrity objective

(1) The integrity objective is: protecting and enhancing the integrity of the UK financial system.

(2) The “integrity” of the UK financial system includes—
   (a) its soundness, stability and resilience,
   (b) its not being used for a purpose connected with financial crime,
   (c) its not being affected by contraventions by persons of Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation,
   (d) the orderly operation of the financial markets, and
   (e) the transparency of the price formation process in those markets.
1E  The competition objective

(1) The competition objective is: promoting effective competition in the interests of consumers in the markets for—
   (a) regulated financial services, or
   (b) services provided by a recognised investment exchange in carrying on regulated activities in respect of which it is by virtue of section 285(2) exempt from the general prohibition.

(2) The matters to which the FCA may have regard in considering the effectiveness of competition in the market for any services mentioned in subsection (1) include—
   (a) the needs of different consumers who use or may use those services, including their need for information that enables them to make informed choices,
   (b) the ease with which consumers who may wish to use those services, including consumers in areas affected by social or economic deprivation, can access them,
   (c) the ease with which consumers who obtain those services can change the person from whom they obtain them,
   (d) the ease with which new entrants can enter the market, and
   (e) how far competition is encouraging innovation.

1F  Meaning of “relevant markets” in strategic objective

In section 1B(2) “the relevant markets” means—
   (a) the financial markets,
   (b) the markets for regulated financial services (see section 1H(2)), and
   (c) the markets for services that are provided by persons other than authorised persons in carrying on regulated activities but are provided without contravening the general prohibition.

1G  Meaning of “consumer”

(1) In sections 1B to 1E “consumers” means persons [F11 who]—
   (a) [F12 who] use, have used or may use—
      (i) regulated financial services, or
      (ii) services that are provided by persons other than authorised persons but are provided in carrying on regulated activities, [F12 who]
   (b) [F12 who] have relevant rights or interests in relation to any of those services,
   (c) [F12 who] have invested, or may invest, in financial instruments, [F13 ...]
   (d) [F12 who] have relevant rights or interests in relation to financial instruments [F14, F15 or]
   (e) [F12 who] have rights, interests or obligations that are affected by the level of a regulated benchmark][F16; or
   (f) in respect of whom a person carries on an activity which is specified in article 89G of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (seeking out etc claims) whether that activity, as carried on by that person, is a regulated activity, or is, by reason of an exclusion provided for under the 2001 Order or the 2000 Act, not a regulated activity.]
(2) A person (“P”) has a “relevant right or interest” in relation to any services within subsection (1)(a) if P has a right or interest—
   (a) which is derived from, or is otherwise attributable to, the use of the services by others, or
   (b) which may be adversely affected by the use of the services by persons acting on P’s behalf or in a fiduciary capacity in relation to P.

(3) If a person is providing a service within subsection (1)(a) as trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or may use the service.

(4) A person who deals with another person (“B”) in the course of B providing a service within subsection (1)(a) is to be treated as using the service.

(5) A person (“P”) has a “relevant right or interest” in relation to any financial instrument if P has—
   (a) a right or interest which is derived from, or is otherwise attributable to, investment in the instrument by others, or
   (b) a right or interest which may be adversely affected by the investment in the instrument by persons acting on P’s behalf or in a fiduciary capacity in relation to P.
1H Further interpretative provisions for sections 1B to 1G

(1) The following provisions have effect for the interpretation of sections 1B to 1G.

(2) “Regulated financial services” means services provided—

(a) by authorised persons in carrying on regulated activities;

(b) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(c) by authorised persons in communicating, or approving the communication by others of, invitations to engage in investment activity [F18 or to engage in claims management activity];

(d) by authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services;

(e) by persons acting as appointed representatives;

(f) by payment service providers in providing payment services;

(g) by electronic money issuers in issuing electronic money;

(h) by sponsors to issuers of securities;

(i) by primary information providers to persons who issue financial instruments.

(3) “Financial crime” includes any offence involving—

(a) fraud or dishonesty,

(b) misconduct in, or misuse of information relating to, a financial market,

(c) handling the proceeds of crime, or

(d) the financing of terrorism.

(4) “Offence” includes an act or omission which would be an offence if it had taken place in the United Kingdom.

(5) “Issuer”, except in the expression “electronic money issuer”, has the meaning given in section 102A(6).

(6) “Financial instrument” has the meaning given in section 102A(4).

(7) “Securities” has the meaning given in section 102A(2).

[“Regulated benchmark” means a benchmark, as defined in section 22(6) [F20 or (6A)], F19(7A) in relation to which any provision made under section 22(1A)(b) [F21 or (c)] has effect.]

(8) In this section—

“credit institution” means—

(a) a credit institution authorised under the [F23 capital requirements directive], or

(b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA State;

“electronic money” has the same meaning as in the Electronic Money Regulations 2011;
“electronic money issuer” means a person who is an electronic money issuer as defined in regulation 2(1) of the Electronic Money Regulations 2011 other than a person falling within paragraph (f), (g) or (j) of the definition;

“engage in claims management activity” has the meaning given in section 21;

“engage in investment activity” has the meaning given in section 21;

“financial instrument” has the meaning given in section 102A(4);

“payment services” has the same meaning as in the Payment Services Regulations [F25-2017];

“payment service provider” means a person who is a payment service provider as defined in regulation 2(1) of the Payment Services Regulations [F26-2017] other than a person falling within paragraph [F27](i) or (j) of the definition;

“primary information provider” has the meaning given in section 89P(2);

“relevant ancillary service” means any service of a kind mentioned in Section B of Annex I to the markets in financial instruments directive the provision of which does not involve the carrying on of a regulated activity;

“sponsor” has the meaning given in section 88(2).

Textual Amendments

F17 S. 1H(2)(b) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 10(2)(a) (with art. 11(2))

F18 Words in s. 1H(2)(c) inserted (E.W.S.) (6.10.2018) by Financial Guidance and Claims Act 2018 (c. 10), ss. 27(2)(a), 37(5); S.I. 2018/1045, reg. 2(a)

F19 S. 1H(7A) inserted (2.4.2013) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (S.I. 2013/655), arts. 1, 3(3)

F20 Words in s. 1H(7A) inserted (27.2.2018) by The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135), regs. 1(2), 37(a)

F21 Words in s. 1H(7A) inserted (27.2.2018) by The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135), regs. 1(2), 37(b)

F22 Words in s. 1H(8) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 10(2)(b) (with art. 11(2))

F23 Words in s. 1H(8) substituted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 2

F24 Words in s. 1H(8) inserted (E.W.S.) (6.10.2018) by Financial Guidance and Claims Act 2018 (c. 10), ss. 27(2)(b), 37(5); S.I. 2018/1045, reg. 2(a)

F25 Word in s. 1H(8) substituted (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(6), Sch. 8 para. 2(2)(a) (with reg. 3)

F26 Word in s. 1H(8) substituted (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(6), Sch. 8 para. 2(2)(b)(i) (with reg. 3)

F27 Words in s. 1H(8) substituted (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(6), Sch. 8 para. 2(2)(b)(ii) (with reg. 3)

11 Meaning of “the UK financial system”

In this Act “the UK financial system” means the financial system operating in the United Kingdom and includes—
(a) financial markets and exchanges,
(b) regulated activities (including regulated claims management activities),
and
(c) other activities connected with financial markets and exchanges.

**Textual Amendments**

F28 Words in s. 11(b) inserted (E.W.S.) (29.11.2018 for specified purposes, 1.4.2019 in so far as not already in force) by The Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018 (S.I. 2018/1253), arts. 1(2)(3), 91(3)

F29 Modifications applying if core activity not regulated by PRA

**Textual Amendments**

S. 11A and cross-heading inserted (1.1.2019) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 2, 148(5); S.I. 2018/1306, art. 2(b)

11A Modifications applying if core activity not regulated by PRA

(1) If and so long as any regulated activity is a core activity (see section 142B) without also being a PRA-regulated activity (see section 22A), the provisions of this Chapter are to have effect subject to the following modifications.

(2) Section 1B is to have effect as if—

(a) in subsection (3), after paragraph (c) there were inserted—

“(d) in relation to the matters mentioned in section 1EA(2), the continuity objective (see section 1EA).”, and

(b) in subsection (4), for “or the integrity objective,” there were substituted “, the integrity objective or (in relation to the matters mentioned in section 1EA(2)) the continuity objective,”.

(3) After section 1E there is to be taken to be inserted—

1EA “Continuity objective

(1) In relation to the matters mentioned in subsection (2), the continuity objective is: protecting the continuity of the provision in the United Kingdom of core services (see section 142C).

(2) Those matters are—

(a) Part 9B (ring-fencing);
(b) ring-fenced bodies (see section 142A);
(c) any body corporate incorporated in the United Kingdom that has a ring-fenced body as a member of its group;
(d) applications under Part 4A which, if granted, would result, or would be capable of resulting, in a person becoming a ring-fenced body.

(3) The FCA's continuity objective is to be advanced primarily by—
(a) seeking to ensure that the business of ring-fenced bodies is carried on in a way that avoids any adverse effect on the continuity of the provision in the United Kingdom of core services,
(b) seeking to ensure that the business of ring-fenced bodies is protected from risks (arising in the United Kingdom or elsewhere) that could adversely affect the continuity of the provision in the United Kingdom of core services, and
(c) seeking to minimise the risk that the failure of a ring-fenced body or of a member of a ring-fenced body's group could adversely affect the continuity of the provision in the United Kingdom of core services.

(4) In subsection (3)(c), “failure” is to be read in accordance with section 2J(3) to (4).”

Power to amend objectives

1J Power to amend objectives

The Treasury may by order amend any of the following provisions—
(a) in section 1E(1), paragraphs (a) and (b),
(b) section 1G, and
(c) section 1H(2) and (5) to (8).

Recommendations

(1) The Treasury may at any time by notice in writing to the FCA make recommendations to the FCA about aspects of the economic policy of Her Majesty's Government to which the FCA should have regard when considering—
(a) how to act in a way which is compatible with its strategic objective,
(b) how to advance one or more of its operational objectives,
(c) how to discharge the duty in section 1B(4) (duty to promote effective competition in the interests of consumers),
(d) the application of the regulatory principles in section 3B, and
(e) the matter mentioned in section 1B(5)(b) (importance of taking action to minimise the extent to which it is possible for a business to be used for a purpose connected with financial crime).

(2) The Treasury must make recommendations under subsection (1) at least once in each Parliament.

(3) The Treasury must—
(a) publish in such manner as they think fit any notice given under subsection (1), and
(b) lay a copy of it before Parliament.]

Guidance about objectives

1K Guidance about objectives

(1) The general guidance given by the FCA under section 139A must include guidance about how it intends to advance its operational objectives in discharging its general functions in relation to different categories of authorised person or regulated activity.

(2) Before giving or altering any guidance complying with subsection (1), the FCA must consult the PRA.

Supervision, monitoring and enforcement

1L Supervision, monitoring and enforcement

(1) The FCA must maintain arrangements for supervising authorised persons.

(2) The FCA must maintain arrangements designed to enable it to determine whether persons other than authorised persons are complying—

   (a) with requirements imposed on them by or under this Act, in cases where the FCA is the appropriate regulator for the purposes of Part 14 (disciplinary measures), \[^{F31}\]...

   \[^{\text{F32}}\]

   (aa) with requirements imposed on them by the Alternative Investment Fund Managers Regulations 2013, or

   (b) with requirements imposed on them by any qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

(3) The FCA must also maintain arrangements for enforcing compliance by persons other than authorised persons with relevant requirements, within the meaning of Part 14, in cases where the FCA is the appropriate regulator for the purposes of any provision of that Part.

Textual Amendments

\[^{F31}\] Word in s. 1L(2) omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 3

\[^{F32}\] S. 1L(2)(aa) inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 3

Modifications etc. (not altering text)


\[^{C10}\] S. 1L(1) applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services Act 2012 (Consumer Credit) Order 2013 (S.I. 2013/1882), arts. 1(1), 3(2)(a)
The FCA's general duty to consult

The FCA must make and maintain effective arrangements for consulting practitioners and consumers on the extent to which its general policies and practices are consistent with its general duties under section 1B.

1N The FCA Practitioner Panel

(1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as “the FCA Practitioner Panel”) to represent the interests of practitioners.

(2) The FCA must appoint one of the members of the FCA Practitioner Panel to be its chair.

(3) The Treasury's approval is required for the appointment or dismissal of the chair.

(4) The FCA must appoint to the FCA Practitioner Panel such—
   (a) persons representing authorised persons, and
   (b) persons representing recognised investment exchanges, as it considers appropriate.

(5) The FCA may appoint to the FCA Practitioner Panel such other persons as it considers appropriate.

1O The Smaller Business Practitioner Panel

(1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as “the Smaller Business Practitioner Panel”) to represent the interests of eligible practitioners.

(2) “Eligible practitioners” means authorised persons of a description specified in a statement maintained by the FCA.

(3) The FCA must appoint one of the members of the Smaller Business Practitioner Panel to be its chair.

(4) The Treasury's approval is required for the appointment or dismissal of the chair.
(5) The FCA must appoint to the Smaller Business Practitioner Panel such—
   (a) individuals who are eligible practitioners, and
   (b) persons representing eligible practitioners, as it considers appropriate.

(6) The FCA may appoint to the Smaller Business Practitioner Panel such other persons as it considers appropriate.

(7) In making the appointments, the FCA must have regard to the desirability of ensuring the representation of eligible practitioners carrying on a range of regulated activities.

(8) The FCA may revise the statement maintained under subsection (2).

(9) The FCA must—
   (a) give the Treasury a copy of the statement or revised statement without delay, and
   (b) publish the statement as for the time being in force in such manner as it thinks fit.

1P The Markets Practitioner Panel

(1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as “the Markets Practitioner Panel”) to represent the interests of practitioners who are likely to be affected by the exercise by the FCA of its functions relating to markets, including its functions under Parts 6, 8A and 18.

(2) The FCA must appoint one of the members of the Markets Practitioner Panel to be its chair.

(3) The Treasury's approval is required for the appointment or dismissal of the chair.

(4) The FCA must appoint to the Markets Practitioner Panel such persons to represent the interests of persons within subsection (5) as it considers appropriate.

(5) The persons within this subsection are—
   (a) authorised persons,
   (b) persons who issue financial instruments,
   (c) sponsors, as defined in section 88(2),
   (d) recognised investment exchanges, and
   (e) primary information providers, as defined in section 89P(2).

(6) The FCA may appoint to the Markets Practitioner Panel such other persons as it considers appropriate.

1Q The Consumer Panel

(1) Arrangements under section 1M must include the establishment and maintenance of a panel of persons (to be known as “the Consumer Panel”) to represent the interests of consumers.

(2) The FCA must appoint one of the members of the Consumer Panel to be its chair.

(3) The Treasury's approval is required for the appointment or dismissal of the chair.
(4) The FCA may appoint to the Consumer Panel such consumers, or persons representing the interests of consumers, as it considers appropriate.

(5) The FCA must secure that membership of the Consumer Panel is such as to give a fair degree of representation to those who are using, or are or may be contemplating using, services otherwise than in connection with businesses carried on by them.

(5A) If it appears to the Consumer Panel that any matter being considered by it is relevant to the extent to which the general policies and practices of the PRA are consistent with the PRA's general duties under sections 2B to 2H, it may communicate to the PRA any views relating to that matter.

(5B) The PRA may arrange to meet any of the FCA's expenditure on the Consumer Panel which is attributable to the Panel's functions under subsection (5A).

(6) Sections 425A and 425B (meaning of “consumers”) apply for the purposes of this section, but the references to consumers in this section do not include consumers who are authorised persons.

Textual Amendments

- S. 1Q(5A)(5B) inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 132, 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

Modifications etc. (not altering text)

- S. 1Q modified (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 65(3)(b)

1R Duty to consider representations made by the Panels

(1) The FCA must consider representations that are made to it in accordance with arrangements made under section 1M.

(2) The FCA must from time to time publish in such manner as it thinks fit responses to the representations.

Reviews

1S Reviews

(1) The Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the FCA has used its resources in discharging its functions.

(2) A review may be limited by the Treasury to such functions of the FCA (however described) as the Treasury may specify in appointing the person to conduct it.

(3) A review is not to be concerned with the merits of the FCA's general policy or principles in complying with its general duties under section 1B(1) and (4) ....

(4) On completion of a review, the person conducting it must make a written report to the Treasury—
(a) setting out the result of the review, and
(b) making such recommendations (if any) as the person considers appropriate.

(5) A copy of the report must be—
(a) laid before Parliament, and
(b) published in such manner as the Treasury consider appropriate.

(6) Any expenses reasonably incurred in the conduct of the review are to be met by the
Treasury out of money provided by Parliament.

(7) “Independent” means appearing to the Treasury to be independent of the FCA.

Textual Amendments
F35 Words in s. 1S(3) omitted (1.1.2019) by virtue of Financial Guidance and Claims Act 2018 (c. 10), s. 37(5), Sch. 3 para. 10; S.I. 2018/1330, reg. 2(g)(ii)

Modifications etc. (not altering text)
C14 S. 1S applied (with modifications) (6.4.2018 immediately after 2016 c. 16 (N.I.), s. 8(2) comes into force) by The Financial Services Act 2012 (Mutual Societies) Order 2018 (S.I. 2018/323), art. 1, Sch. 1 para. 2(2)(b) (with art. 3)

1T Right to obtain documents and information

(1) A person conducting a review under section 1S—
(a) has a right of access at any reasonable time to all such documents as the person
may reasonably require for the purposes of the review, and
(b) may require any person holding or accountable for any such document to
provide such information and explanation as are reasonably necessary for that
purpose.

(2) Subsection (1) applies only to documents in the custody of or under the control of
the FCA.

(3) An obligation imposed on a person as a result of the exercise of the powers conferred
by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific
performance under section 45 of the Court of Session Act 1988.

CHAPTER 2
THE PRUDENTIAL REGULATION AUTHORITY

The Prudential Regulation Authority

[F36-2A The Prudential Regulation Authority

(1) The “Prudential Regulation Authority” is the Bank of England.

(2) The Bank's functions as the Prudential Regulation Authority—
(a) are to be exercised by the Bank acting through its Prudential Regulation
Committee (see Part 3A of the Bank of England Act 1998), and
(b) are not exercisable by the Bank in any other way.

(3) References in this Act or any other enactment to the Prudential Regulation Authority do not include the Bank of England acting otherwise than in its capacity as the Prudential Regulation Authority.

(4) References in this Act to the Bank of England do not (unless otherwise provided) include the Bank acting in its capacity as the Prudential Regulation Authority.

(5) Subsections (3) and (4) do not apply to this section.

(6) Subsection (4) does not apply for the interpretation of references to the court of directors of the Bank of England, or to a Deputy Governor or committee of the Bank.

(7) The Prudential Regulation Authority is referred to in this Act as the PRA.

2AB Functions of the PRA

(1) The PRA is to have the functions conferred on it by or under this Act.

(2) Schedule 1ZB makes provision about functions of the PRA.

(3) References in this Act or any other enactment to functions conferred on the PRA by or under this Act include references to functions conferred on the PRA by or under—

(a) the Insolvency Act 1986,

(b) the Banking Act 2009,

(c) the Financial Services Act 2012, \[F37\]...

(d) a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.\[F38\] or

(e) regulations made by the Treasury under section 8 of the European Union (Withdrawal) Act 2018.\]

2B The PRA's general objective

(1) In discharging its general functions the PRA must, so far as is reasonably possible, act in a way which advances its general objective.
(2) The PRA’s general objective is: promoting the safety and soundness of PRA-authorised persons.

(3) That objective is to be advanced primarily by—
   (a) seeking to ensure that the business of PRA-authorised persons is carried on in a way which avoids any adverse effect on the stability of the UK financial system,\(^{F39}\) ...
   (b) seeking to minimise the adverse effect that the failure of a PRA-authorised person could be expected to have on the stability of the UK financial system\(^{F40}\), and
   (c) discharging its general functions in relation to the matters mentioned in subsection (4A) in a way that seeks to—
      (i) ensure that the business of ring-fenced bodies is carried on in a way that avoids any adverse effect on the continuity of the provision in the United Kingdom of core services,
      (ii) ensure that the business of ring-fenced bodies is protected from risks (arising in the United Kingdom or elsewhere) that could adversely affect the continuity of the provision in the United Kingdom of core services, and
      (iii) minimise the risk that the failure of a ring-fenced body or of a member of a ring-fenced body's group could affect the continuity of the provision in the United Kingdom of core services\(^{F41}\).

(4) The adverse effects mentioned in subsection (3)(a) and (b) may, in particular, result from the disruption of the continuity of financial services.

(4A) The matters referred to in subsection (3)(c) are—
   (a) Part 9B (ring-fencing);
   (b) ring-fenced bodies (see section 142A);
   (c) any body corporate incorporated in the United Kingdom that has a ring-fenced body as a member of its group;
   (d) applications under Part 4A which, if granted, would result, or would be capable of resulting, in a person becoming a ring-fenced body.

(5) In this Act “PRA-authorised person” means an authorised person who has permission—
   (a) given under Part 4A, or
   (b) resulting from any other provision of this Act,
   to carry on regulated activities that consist of or include one or more PRA-regulated activities (see section 22A).

(6) Subsection (1) is subject to sections 2C and 2D.
2C Insurance objective

(1) In discharging its general functions so far as relating to a PRA-regulated activity relating to the effecting or carrying out of contracts of insurance or PRA-authorised persons carrying on that activity, the PRA must, so far as is reasonably possible, act in a way—
   (a) which is compatible with its general objective and its insurance objective, and
   (b) which the PRA considers most appropriate for the purpose of advancing those objectives.

(2) The PRA’s insurance objective is: contributing to the securing of an appropriate degree of protection for those who are or may become policyholders.

(3) This section applies only if the effecting or carrying out of contracts of insurance as principal is to any extent a PRA-regulated activity.

2D Power to provide for additional objectives

(1) Subsection (2) applies to an order under section 22A which—
   (a) is made at any time after the coming into force of the first order under that section, and
   (b) contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order is that an activity would become a PRA-regulated activity.

(2) An order to which this subsection applies may specify an additional objective (“the specified objective”) in relation to specified activities that become PRA-regulated activities by virtue of the order (“the additional activities”).

(3) In discharging its general functions so far as relating to the additional activities or PRA-authorised persons carrying on those activities, the PRA must, so far as is reasonably possible, act in a way—
   (a) which is compatible with its general objective and the specified objective, and
   (b) which the PRA considers most appropriate for the purpose of advancing those objectives.

2E Strategy

(1) The PRA must—
   (a) determine its strategy in relation to its objectives, and
   (b) from time to time review, and if necessary revise, the strategy.

(2) Before determining or revising its strategy, the PRA must consult the court of directors of the Bank of England about a draft of the strategy or of the revisions.

(3) The PRA must determine its strategy within 12 months of the coming into force of this section.

(4) The PRA must carry out and complete a review of its strategy before the end of each relevant period.
(5) The relevant period is 12 months beginning with the date on which the previous review was completed, except that in the case of the first review the relevant period is the period of 12 months beginning with the date on which the strategy was determined under subsection (3).

(6) The PRA must publish its strategy.

(7) If the strategy is revised the PRA must publish the revised strategy.

(8) Publication under subsection (6) or (7) is to be in such manner as the PRA thinks fit.

2F Interpretation of references to objectives

In this Act, a reference, in relation to any function of the PRA, to the objectives of the PRA is a reference to its general objective but—

(a) so far as the function is exercisable in relation to the activity of effecting or carrying out contracts of insurance, or PRA-authorised persons carrying on that activity, is a reference to its general objective and its insurance objective;

(b) so far as the function is exercisable in relation to an activity to which an objective specified by order by virtue of section 2D(2) relates, or PRA-authorised persons carrying on that activity, is a reference to its general objective and the objective specified by the order.

2G Limit on effect of sections 2B to 2D

Nothing in sections 2B to 2D is to be regarded as requiring the PRA to ensure that no PRA-authorised person fails.

[F43] 2H Secondary competition objective and duty to have regard to regulatory principles

(1) When discharging its general functions in a way that advances its objectives (see section 2F), the PRA must so far as is reasonably possible act in a way which, as a secondary objective, facilitates effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities.

(2) In discharging its general functions, the PRA must also have regard to the regulatory principles in section 3B.]
2I  Guidance about objectives

(1) The PRA must give, and from time to time review, guidance about how it intends to advance its objectives in discharging its general functions in relation to different categories of PRA-authorised person or PRA-regulated activity.

(2) Before giving or altering any guidance complying with subsection (1), the PRA must consult the FCA.

(3) The PRA must publish the guidance as for the time being in force.

2J  Interpretation of Chapter 2

(1) For the purposes of this Chapter, the PRA's general functions are—

(a) its function of making rules under this Act (considered as a whole),

(b) its function of making technical standards in accordance with Chapter 2A of Part 9A;

(c) its function of preparing and issuing codes under this Act (considered as a whole), and

(d) its function of determining the general policy and principles by reference to which it performs particular functions under this Act.

(2) Except to the extent that an order under section 50 of the Financial Services Act 2012 (orders relating to mutual societies functions) so provides, the PRA's general functions do not include functions that are transferred functions within the meaning of section 52 of that Act.

(3) For the purposes of this Chapter, the cases in which an authorised person (“P”) is to be regarded as failing include those where—

(a) P enters insolvency,

(b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to P, or

(c) P falls to be taken for the purposes of the compensation scheme to be unable, or likely to be unable, to satisfy claims against P.

(3A) For the purposes of this Chapter, the cases in which a person (“P”) other than an authorised person is to be regarded as failing include any case where P enters insolvency.

(4) In subsections (3)(a) and (3A) “insolvency” includes—

(a) bankruptcy,

(b) liquidation,

(c) bank insolvency,

(d) administration,

(e) bank administration,

(f) receivership,

(g) a composition between P and P’s creditors, and

(h) a scheme of arrangement of P’s affairs.
Supervision

2K Arrangements for supervision of PRA-authorised persons

The PRA must maintain arrangements for supervising PRA-authorised persons.

Arrangements for consulting practitioners

2L The PRA's general duty to consult

The PRA must make and maintain effective arrangements for consulting PRA-authorised persons or, where appropriate, persons appearing to the PRA to represent the interests of such persons on the extent to which its general policies and practices are consistent with its general duties under sections 2B to 2H.

2M The PRA Practitioner Panel

(1) Arrangements under section 2L must include the establishment and maintenance of a panel of persons (to be known as “the PRA Practitioner Panel”) to represent the interests of practitioners.

(2) The PRA must appoint one of the members of the PRA Practitioner Panel to be its chair.

(3) The Treasury's approval is required for the appointment or dismissal of the chair.

(4) The PRA must appoint to the PRA Practitioner Panel such persons representing PRA-authorised persons as it considers appropriate.

(5) The PRA may appoint to the PRA Practitioner Panel such other persons as it considers appropriate.

2N Duty to consider representations

(1) The PRA must consider representations that are made to it in accordance with arrangements made under section 2L.

(2) The PRA must from time to time publish in such manner as it thinks fit responses to the representations.
CHAPTER 3

FURTHER PROVISIONS RELATING TO FCA AND PRA

Introductory

3A  Meaning of “regulator”

(1) This section has effect for the interpretation of this Act.

(2) The FCA and the PRA are the “regulators”, and references to a regulator are to be read accordingly.

(3) Subsection (2) does not affect—

(a) the meaning of the following expressions—

“home state regulator”;
“host state regulator”;
“overseas regulator”; \[^{F50}\]

(b) the meaning of “the appropriate regulator” in Part 18 ([\(^{F51}\)recognised investment exchanges, clearing houses and CSDs]) \[^{F52}\]

(c) the meaning of “regulator” in sections 410A and 410B (fees to meet certain expenses of Treasury).\[^{F53}\]

\[^{F50}\] Word in s. 3A(3)(a) omitted (1.3.2014) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), ss. 135(2)(a), 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

\[^{F51}\] \[^{F52}\] \[^{F53}\]
Regulatory principles

3B Regulatory principles to be applied by both regulators

(1) In relation to the regulators, the regulatory principles referred to in section 1B(5)(a) and [2H(2)] are as follows—

(a) the need to use the resources of each regulator in the most efficient and economic way;

(b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;

(c) the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term;

(d) the general principle that consumers should take responsibility for their decisions;

(e) the responsibilities of the senior management of persons subject to requirements imposed by or under this Act, including those affecting consumers, in relation to compliance with those requirements;

(f) the desirability where appropriate of each regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons [including different kinds of person such as mutual societies and other kinds of business organisation] subject to requirements imposed by or under this Act;

(g) the desirability in appropriate cases of each regulator publishing information relating to persons on whom requirements are imposed by or under this Act, or requiring such persons to publish information, as a means of contributing to the advancement by each regulator of its objectives;

(h) the principle that the regulators should exercise their functions as transparently as possible.

(2) “Consumer” has the meaning given in section 1G.

(3) “Objectives”, in relation to the FCA, means operational objectives.

[ "Mutual society” has the same meaning as in section 138K.]

(4) The Treasury may by order amend subsection (2).

Textual Amendments

F51 Words in s. 3A(3)(b) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(2) (with regs. 7(4), 9(1))

F52 S. 3A(3)(c) and word inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 135(2)(b), 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

F53 Word in s. 3B(1) substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 130(2), 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

F54 Words in s. 3B(1)(b) inserted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), ss. 20(2), 41(3); S.I. 2016/627, reg. 2(1)(o)
Corporate governance

3C Duty to follow principles of good governance

In managing its affairs, the FCA must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

Textual Amendments

F56 Words in s. 3C substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 29 (with Sch. 3); S.I. 2017/43, reg. 2(g)

Relationship between FCA and PRA

3D Duty of FCA and PRA to ensure co-ordinated exercise of functions

(1) The regulators must co-ordinate the exercise of their respective functions conferred by or under this Act with a view to ensuring—
   (a) that each regulator consults the other regulator (where not otherwise required to do so) in connection with any proposed exercise of a function in a way that may have a material adverse effect on the advancement by the other regulator of any of its objectives;
   (b) that where appropriate each regulator obtains information and advice from the other regulator in connection with the exercise of its functions in relation to matters of common regulatory interest in cases where the other regulator may be expected to have relevant information or relevant expertise;
   (c) that where either regulator exercises functions in relation to matters of common regulatory interest, both regulators comply with their respective duties under section 1B(5)(a) or 2H(1)(a), so far as relating to the regulatory principles in section 3B(1)(a) and (b).

(2) The duty in subsection (1) applies only to the extent that compliance with the duty—
   (a) is compatible with the advancement by each regulator of any of its objectives, and
   (b) does not impose a burden on the regulators that is disproportionate to the benefits of compliance.

(3) A function conferred on either regulator by or under this Act relates to matters of common regulatory interest if—
   (a) the other regulator exercises similar or related functions in relation to the same persons,
   (b) the other regulator exercises functions which relate to different persons but relate to similar subject-matter, or
   (c) its exercise could affect the advancement by the other regulator of any of its objectives.

(4) “Objectives”, in relation to the FCA, means operational objectives.
**3E Memorandum of understanding**

(1) The regulators must prepare and maintain a memorandum which describes in general terms—

(a) the role of each regulator in relation to the exercise of functions conferred by or under this Act which relate to matters of common regulatory interest, and

(b) how the regulators intend to comply with section 3D in relation to the exercise of such functions.

(2) The memorandum may in particular contain provisions about how the regulators intend to comply with section 3D in relation to—

(a) applications for Part 4A permission;

(b) the variation of permission;

(c) the imposition of requirements;

(d) the obtaining and disclosure of information;

(e) cases where a PRA-authorised person is a member of a group whose other members include one or more other authorised persons (whether or not PRA-authorised persons);

(f) functions under Schedule 3 (EEA passport rights) and Schedule 4 (Treaty rights);

(g) the making of rules;

(h) directions under section 138A (modification or waiver of rules);

(i) powers to appoint competent persons under Part 11 (information gathering and investigations) to conduct investigations on their behalf;

(j) functions under Part 12 (control over authorised persons);

(k) functions under Part 13 (incoming firms: intervention by regulator);

(l) functions under Part 19 (Lloyd's);

(m) functions under section 347 (record of authorised persons etc.);

(n) fees payable to either regulator.

(3) The memorandum must contain provision about the co-ordination by the regulators of—

(a) the exercise of their functions relating to membership of, and their relations with, the European Supervisory Authorities (namely, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority),

(b) their relations with regulatory bodies outside the United Kingdom, and

(c) the exercise of their functions in relation to the compensation scheme.
(4) The regulators must review the memorandum at least once in each calendar year.

(5) The regulators must give the Treasury a copy of the memorandum and any revised memorandum.

(6) The Treasury must lay before Parliament a copy of any document received by them under this section.

(7) The regulators must ensure that the memorandum as currently in force is published in the way appearing to them to be best calculated to bring it to the attention of the public.

(8) The memorandum need not relate to any aspect of compliance with section 3D if the regulators consider—
   (a) that publication of information about that aspect would be against the public interest, or
   (b) that that aspect is a technical or operational matter not affecting the public.

(9) The reference in subsection (1)(a) to matters of common regulatory interest is to be read in accordance with section 3D(3).

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**With-profits insurance policies**

(1) The regulators must prepare and maintain a memorandum which describes in general terms—
   (a) the role of each regulator in relation to the exercise of functions conferred by or under this Act so far as they relate to with-profits insurers, and
   (b) how the regulators intend to comply with section 3D in relation to the exercise of those functions so far as they relate to the effecting or carrying out of with-profits policies by with-profits insurers.

(2) The memorandum required by this section may be combined with the memorandum required by section 3E.

(3) If the memorandum required by this section is contained in a separate document, the PRA and the FCA must publish the memorandum as currently in force in such manner as they think fit.

(4) Subsections (1) to (3) apply only if the effecting or carrying out of with-profits policies is a PRA-regulated activity.

(5) For the purposes of this section—
   (a) a “with-profits policy” is a contract of insurance under which the policyholder is eligible to receive a financial benefit at the discretion of the insurer;
   (b) a “with-profits insurer” is a PRA-authorised person who has a Part 4A permission, or permission resulting from any other provision of this Act, relating to the effecting or carrying out of with-profits policies (whether or not the permission also relates to contracts of insurance of other kinds).
(6) The Treasury may by order amend the definition of “with-profits policy” applying for the purposes of this section.

### 3G Power to establish boundary between FCA and PRA responsibilities

(1) The Treasury may by order specify matters that, in relation to the exercise by either regulator of its functions relating to PRA-authorised persons, are to be, or are to be primarily, the responsibility of one regulator rather than the other.

(2) The order may—
   (a) provide that one regulator is or is not to have regard to specified matters when exercising specified functions;
   (b) require one regulator to consult the other.

### 3H Parliamentary control of orders under section 3G

(1) No order may be made under section 3G unless—
   (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
   (b) subsection (3) applies.

(2) Subsection (3) applies if an order under section 3G 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.

(3) Where this subsection applies the order—
   (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 that affecting anything done under the order or the power to make a new order).

(4) The “relevant period” is a period of 28 days beginning with the day on which the order is made.

(5) 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.

### Power of PRA to restrain proposed action by FCA

### 3I Power of PRA to require FCA to refrain from specified action

(1) Where the first, second and third conditions are met, the PRA may give a direction under this section to the FCA.

(2) The first condition is that the FCA is proposing—
   (a) to exercise any of its regulatory powers in relation to PRA-authorised persons generally, a class of PRA-authorised persons or a particular PRA-authorised person, or
   (b) to exercise any of its insolvency powers in relation to—
      (i) a PRA-authorised person,
(ii) an appointed representative whose principal, or one of whose principals, is a PRA-authorised person, or
(iii) a person who is carrying on a PRA-regulated activity in contravention of the general prohibition.

(3) In subsection (2)—
(a) “regulatory powers”, in relation to the FCA, means its powers in relation to the regulation of authorised persons, other than its powers in relation to consent for the purposes of section 55F or 55I, a power conferred on it by sections 234I to 234MJ or its powers under Part 24;
(b) “insolvency powers”, in relation to the FCA, means its powers under Part 24.

(4) The second condition is that the PRA is of the opinion that the exercise of the power in the manner proposed may—
(a) threaten the stability of the UK financial system;
(b) result in the failure of a PRA-authorised person in a way that would adversely affect the UK financial system, or
(c) threaten the continuity of core services provided in the United Kingdom.

(5) The third condition is that the PRA is of the opinion that the giving of the direction is necessary in order to avoid the possible consequence falling within subsection (4).

(6) A direction under this section is a direction requiring the FCA not to exercise the power or not to exercise it in a specified manner.

(7) The direction may be expressed to have effect during a specified period or until revoked.

(8) The FCA is not required to comply with a direction under this section if or to the extent that in the opinion of the FCA compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.

(9) The reference in subsection (4)(b) to the “failure” of a PRA-authorised person is to be read in accordance with section 2J(3) and (4).
(2) The first condition is that the FCA is proposing to exercise any of its regulatory powers in relation to with-profits insurers, a class of with-profits insurers or a particular with-profits insurer.

(3) In subsection (2) “regulatory powers”, in relation to the FCA, means its powers in relation to the regulation of authorised persons, including its powers under Part 24 (insolvency) but not its powers in relation to consent for the purposes of section 55F or 55I.

(4) The second condition is that the proposed exercise of the power relates to the provision of financial benefits under with-profits policies at the discretion of the insurer, or affects or may affect the amount, timing or distribution of financial benefits that are so provided or the entitlement to future benefits that are so provided.

(5) The third condition is that the PRA is of the opinion that the giving of the direction is desirable in order to advance the PRA’s general objective or its insurance objective.

(6) A direction under this section is a direction requiring the FCA not to exercise the power or not to exercise it in a specified manner.

(7) The direction may be expressed to have effect during a specified period or until revoked.

(8) The FCA is not required to comply with a direction under this section if or to the extent that in the opinion of the FCA compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.

(9) Subsections (1) to (8) apply only if the effecting or carrying out of with-profits policies is a PRA-regulated activity.

(10) In this section “with-profits insurer” and “with-profits policy” have the same meaning as they have for the purposes of section 3F.

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**Revocation of directions under section 3I or 3J**

(1) The PRA may at any time by notice to the FCA revoke a direction under section 3I or 3J.

(2) The revocation of a direction under section 3I or 3J does not affect the validity of anything previously done in accordance with it.
3L Further provisions about directions under section 3I or 3J

(1) Before giving a direction under section 3I or 3J, the PRA must consult the FCA.

(2) A direction under section 3I or 3J must be given or confirmed in writing, and must be accompanied by a statement of the reasons for giving it.

(3) A notice revoking a direction under section 3I or 3J must be given or confirmed in writing.

(4) The PRA must—
   (a) publish the direction and statement, or the notice, in such manner as it thinks fit, and
   (b) where the direction or notice relates to a particular authorised person or a particular with-profits insurer, give a copy of the direction and statement, or the notice, to that person.

(5) The PRA must give the Treasury a copy of—
   (a) a direction under section 3I;
   (b) a statement relating to such a direction;
   (c) a notice revoking such a direction.

(6) The Treasury must lay before Parliament any document received by them under subsection (5).

(7) Subsection (4) does not apply where the PRA, after consulting the Treasury, decides that compliance with that subsection would be against the public interest, and at any time when this subsection excludes the application of subsection (4) in relation to a direction under section 3I, subsection (6) also does not apply.

(8) Where the PRA decides that compliance with subsection (4) would be against the public interest, it must from time to time review that decision and if it subsequently decides that compliance is no longer against the public interest it must—
   (a) comply with that subsection, and
   (b) in the case of a direction under section 3I, notify the Treasury for the purposes of subsection (6).

Directions relating to consolidated supervision

3M Directions relating to consolidated supervision of groups

(1) This section applies where one of the regulators (“the supervising regulator”), but not the other, is the competent authority for the purpose of consolidated supervision that is required in relation to some or all of the members of a group (“the relevant group”) in pursuance of any of the relevant directives.

(2) “Consolidated supervision” includes supplementary supervision.

(3) The “relevant directives” are—
   (a) the [F60]capital requirements directive];
   (c) [F61].................................
PART 1A – The Regulators

CHAPTER 3 – Further provisions relating to FCA and PRA

31

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes


(4) The supervising regulator may, if it considers it necessary to do so for the effective consolidated supervision of the relevant group, give the other regulator a direction under this section.

(5) A direction under this section is a direction requiring the other regulator to exercise, or not to exercise, a relevant function in a specified manner in relation to authorised persons who are members of the relevant group.

(6) The direction may relate to members of the relevant group other than the members in respect of which consolidated supervision is required.

(7) A “relevant function”, in relation to either regulator, is a function conferred by or under this Act which relates to the regulation of authorised persons, but does not include—

(a) the regulator's function of making rules under this Act;

(b) its function of preparing and issuing codes under this Act;

(c) its function of determining the general policy and principles by reference to which it performs particular functions;

(d) the FCA's functions in relation to the giving of general guidance;

(e) the PRA's functions in relation to the giving of guidance under section 2I;

(f) the FCA's functions in relation to consent for the purposes of section 55F or 55I.

(8) The direction may not require the regulator to which it is given (“the directed regulator”) to do anything that it has no power to do, but the direction is relevant to the exercise of any discretion conferred on the directed regulator.

(9) The directed regulator must comply with the direction as soon as practicable, but this is subject to subsections (10) and (11).

(10) The directed regulator is not required to comply with a direction under this section if or to the extent that in its opinion compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.

(11) Directions given by the FCA under this section are subject to any directions given to the FCA under section 3I or 3J.

Textual Amendments

F60 Words in s. 3M(3)(a) substituted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 3(a)

F61 S. 3M(3)(c) omitted (1.1.2014) by virtue of The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 3(b)

3N  Revocation of directions under section 3M

(1) The supervising regulator may at any time by notice to the other regulator revoke a direction under section 3M.

(2) The revocation of the direction does not affect the validity of anything previously done in accordance with it.

(3) Expressions defined for the purposes of section 3M have the same meaning in this section.

3O  Further provisions about directions under section 3M

(1) Before giving a direction under section 3M, the supervising regulator must consult the other regulator.

(2) A direction under section 3M must be given or confirmed in writing, and must be accompanied by a statement of the reasons for giving it.

(3) A notice revoking a direction under section 3M must be given or confirmed in writing.

(4) The regulator to which a direction under section 3M is given must give a copy of the direction and statement to each of the authorised persons to whom the direction relates.

(5) The supervising regulator must publish the direction and statement, or the notice, in such manner as it thinks fit.

(6) But subsection (4) or (5) does not apply in a case where the regulator on which the duty is imposed considers that compliance with that subsection would be against the public interest.

(7) In a case where a regulator decides that compliance with subsection (4) or (5) would be against the public interest, the regulator must from time to time review that decision and if it subsequently decides that compliance is no longer against the public interest it must comply with the subsection.

(8) Expressions defined for the purposes of section 3M have the same meaning in this section.

3P  Consultation by regulator complying with direction

(1) If the directed regulator is required by this Act to consult any person other than the supervising regulator before exercising the relevant function to which the direction relates, the directed regulator must give the supervising regulator copies of any written representations received from the persons consulted.

(2) Expressions defined for the purposes of section 3M have the same meaning in this section.

Co-operation with Bank of England

3Q  Co-operation by FCA \textsuperscript{f63} ... with Bank of England

(1) [\textsuperscript{f64}The FCA] must take such steps as it considers appropriate to co-operate with the Bank of England in connection with—
(a) the pursuit by the Bank of its Financial Stability Objective, and
(b) the Bank's compliance with its duties under sections 58 and 59 of the Financial Services Act 2012 (duty to notify Treasury of possible need for public funds and of subsequent changes).

(2) Co-operation under subsection (1) may include the sharing of information that the FCA is not prevented from disclosing.

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**Arrangements for provision of services**

(1) The regulators may enter into arrangements with each other for the provision of services by one of them to the other.

(2) The FCA may enter into arrangements with the Bank of England for the provision of services—
   (a) by the Bank to the FCA, or
   (b) by the FCA to the Bank.

(3) Either regulator may enter into arrangements with any of the bodies specified in subsection (4) for the provision of services by the regulator to that body.

(4) Those bodies are—
   (a) the single financial guidance body (see Part 1 of the Financial Guidance and Claims Act 2018),
   (b) the scheme manager (see section 212(1)), and
   (c) the scheme operator (see section 225(2)).

(5) The FCA may enter into arrangements with—
   (a) a local weights and measures authority in England, Wales or Scotland, or
   (b) the Department of Enterprise, Trade and Investment in Northern Ireland, for the provision by the authority or department to the FCA of services which relate to activities to which this subsection applies.

(6) Subsection (5) applies to activities that are regulated activities by virtue of—
   (a) an order made under section 22(1) in relation to an investment of a kind falling within paragraph 23 or 23B of Schedule 2, or
   (b) an order made under section 22(1A)(a).

(7) Arrangements under this section are to be on such terms as may be agreed by the parties.
3S The consumer financial education body

(1) The consumer financial education body continues to have the consumer financial education function.

(2) The “consumer financial education body” means the body corporate originally established by the Financial Services Authority under section 6A of this Act (as it had effect before the passing of the Financial Services Act 2012).

(3) The consumer financial education function is to enhance—

(a) the understanding and knowledge of members of the public of financial matters (including the UK financial system), and

(b) the ability of members of the public to manage their own financial affairs.

(4) The consumer financial education function includes, in particular—

(a) promoting awareness of the benefits of financial planning;

(b) promoting awareness of the financial advantages and disadvantages in relation to particular decisions relating to different kinds of goods or services;

(c) promoting awareness of the benefits and risks associated with different kinds of financial dealing (which includes informing the FCA and other bodies of those benefits and risks);

(d) the publication of educational materials or the carrying out of other educational activities;

(e) the provision of information and advice to members of the public;

(f) assisting members of the public with the management of debt;

(g) working with other organisations which provide debt services, with a view to improving—

(i) the availability to the public of those services;

(ii) the quality of the services provided;

(iii) consistency in the services available, in the way in which they are provided and in the advice given.

(5) In subsection (4) “debt services” means debt advice or assistance with the management of debt.

(6) Schedule 1A makes further provision about the consumer financial education body.
Interpretation

3T Interpretation

In this Part “enactment” includes—
(a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
(c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;
(d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.

PART II
REGULATED AND PROHIBITED ACTIVITIES

The general prohibition

19 The general prohibition.

(1) No person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is—
   (a) an authorised person; or
   (b) an exempt person.

(2) The prohibition is referred to in this Act as the general prohibition.

Modifications etc. (not altering text)
Requirement for permission

20  Authorised persons acting without permission.

(1) If an authorised person [F71]other than a PRA-authorised person] carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission—
[F72](a) given to that person under Part 4A, or]
(b) resulting from any other provision of this Act,
he is to be taken to have contravened a requirement imposed on him by the [F73]FCA] under this Act.

[F74](1A) If a PRA-authorised person carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission given to the person under Part 4A or resulting from any other provision of this Act, the person is to be taken to have contravened—
(a) a requirement imposed by the FCA, and
(b) a requirement imposed by the PRA.]

[F75](2) A contravention within subsection (1) or (1A)—
(a) does not, except as provided by section 23(1A), make a person guilty of an offence,
(b) does not, except as provided by section 26A, make any transaction void or unenforceable, and
(c) does not, except as provided by subsection (3), give rise to any right of action for breach of statutory duty.]

(3) In prescribed cases [F76]a contravention within subsection (1) or (1A)] 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.

[F77](4) Subsections (1) and (1A) are subject to section 39(1D).

(5) References in this Act to an authorised person acting in contravention of this section are references to the person acting in a way that results in a contravention within subsection (1) or (1A).]
Financial Services and Markets Act 2000 (c. 8)
Part II – Regulated And Prohibited Activities
CHAPTER 3 – Further provisions relating to FCA and PRA

Financial promotion

21  Restrictions on financial promotion.

(1) A person ("A") must not, in the course of business, communicate an invitation or inducement to—

(a) [F78] engage in investment activity [F79], or

(b) to engage in claims management activity.

(2) But subsection (1) does not apply if—

(a) A is an authorised person; or

(b) the content of the communication is approved for the purposes of this section by an authorised person.

(3) In the case of a communication originating outside the United Kingdom, subsection (1) applies only if the communication is capable of having an effect in the United Kingdom.

(4) The Treasury may by order specify circumstances in which a person is to be regarded for the purposes of subsection (1) as—
(a) acting in the course of business;
(b) not acting in the course of business.

(5) The Treasury may by order specify circumstances (which may include compliance with financial promotion rules) in which subsection (1) does not apply.

(6) An order under subsection (5) may, in particular, provide that subsection (1) does not apply in relation to communications—
(a) of a specified description;
(b) originating in a specified country or territory outside the United Kingdom;
(c) originating in a country or territory which falls within a specified description of country or territory outside the United Kingdom; or
(d) originating outside the United Kingdom.

(7) The Treasury may by order repeal subsection (3).

(8) “Engaging in investment activity” means—
(a) entering or offering to enter into an agreement the making or performance of which by either party constitutes a controlled activity; or
(b) exercising any rights conferred by a controlled investment to acquire, dispose of, underwrite or convert a controlled investment.

(9) An activity is a controlled activity if—
(a) it is an activity of a specified kind or one which falls within a specified class of activity; and
(b) it relates to an investment of a specified kind, or to one which falls within a specified class of investment.

(10) An investment is a controlled investment if it is an investment of a specified kind or one which falls within a specified class of investment.

(F80) “Engaging in claims management activity” means entering into or offering to enter into an agreement the making or performance of which by either party constitutes a controlled claims management activity.

(10B) An activity is a “controlled claims management activity” if—
(a) it is an activity of a specified kind,
(b) it is, or relates to, claims management services, and
(c) it is carried on in Great Britain.

(11) Schedule 2 (except paragraph 26) applies for the purposes of subsections (9) and (10) with references to section 22 being read as references to each of those subsections.

(12) Nothing in Schedule 2, as applied by subsection (11), limits the powers conferred by subsection (9) or (10).

(F81) Paragraph 25 of Schedule 2 applies for the purposes of subsection (10B) with the references to section 22 in sub-paragraph (3) of that paragraph being read as references to subsection (10B).

(13) “Communicate” includes causing a communication to be made.

(14) “Investment” includes any asset, right or interest.

(15) “Specified” means specified in an order made by the Treasury.
Textual Amendments

F78 Words in s. 21(1) renumbered as s. 21(1)(a) (E.W.S.) (6.10.2018) by Financial Guidance and Claims Act 2018 (c. 10), ss. 27(3)(a)(i), 37(5); S.I. 2018/1045, reg. 2(a)

F79 S. 21(1)(b) and word inserted (E.W.S.) (6.10.2018) by Financial Guidance and Claims Act 2018 (c. 10), ss. 27(3)(a)(ii), 37(5); S.I. 2018/1045, reg. 2(a)

F80 S. 21(10A)(10B) inserted (E.W.S.) (6.10.2018) by Financial Guidance and Claims Act 2018 (c. 10), ss. 27(3)(b), 37(5); S.I. 2018/1045, reg. 2(a)

F81 S. 21(12A) inserted (E.W.S.) (6.10.2018) by Financial Guidance and Claims Act 2018 (c. 10), ss. 27(3)(c), 37(5); S.I. 2018/1045, reg. 2(a)

Modifications etc. (not altering text)


C33 S. 21 modified by S.I. 2018/1149, reg. 42 (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), 2)

C34 S. 21(1) modified (31.10.2001) by S.I. 2001/3374, art. 1, Sch. para. 6


C38 S. 21(1) excluded (3.7.2002) by Welsh Development Agency Act 1975 (c. 70), Sch. 1 para. 21 (as substituted by The Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002 (S.I. 2002/1555), arts. 1, 6


C41 S. 21(2) modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), arts. 1(2), 34, (Sch. paras. 1, 3)

C42 S. 21(2) modified (26.7.2013 for specified purposes, 2.9.2013 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(5), 59(3)


Commencement Information

I2 S. 21 wholly in force at 1.12.2001; s. 21 not in force at Royal Assent see s. 431(2); s. 21 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pt. 2; s. 21 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)
Regulated activities

22 [F82Regulated activities] (1) An activity is a regulated activity for the purposes of this Act if it is an activity of a specified kind which is carried on by way of business and—
   (a) relates to an investment of a specified kind; or
   (b) in the case of an activity of a kind which is also specified for the purposes of this paragraph, is carried on in relation to property of any kind.

[F83](1A) An activity is also a regulated activity for the purposes of this Act if it is an activity of a specified kind which is carried on by way of business and relates to—
   (a) information about a person's financial standing, F84...
   (b) the setting of a specified benchmark [F85, or]
      [administering a benchmark.]

[F86](1B) An activity is also a regulated activity for the purposes of this Act if it is an activity of a specified kind which—
   (a) is carried on by way of business in Great Britain, and
   (b) is, or relates to, claims management services.

(2) Schedule 2 makes provision supplementing this section.

(3) Nothing in Schedule 2 limits the powers conferred by [F88subsections (1) to (1B)].

(4) “Investment” includes any asset, right or interest.

(5) “Specified” means specified in an order made by the Treasury.

[F90](6) [F91For the purposes of subsection (1A)(b), “benchmark” means an index, rate or price that—
   (a) is determined from time to time by reference to the state of the market,
   (b) is made available to the public (whether free of charge or on payment), and
   (c) is used for reference for purposes that include one or more of the following—
      (i) determining the interest payable, or other sums due, under loan agreements or under other contracts relating to investments;
      (ii) determining the price at which investments may be bought or sold or the value of investments;
      (iii) measuring the performance of investments.]

[F92](6A) For the purposes of subsection (1A)(c), “benchmark” has the meaning given by Article 3 of the EU Benchmarks Regulation 2016, and “administering” a benchmark means acting as an administrator of that benchmark within the meaning of that Article.]

Textual Amendments
F82 S. 22 heading substituted (24.1.2013) by Financial Services Act 2012 (c. 21), ss. 7(1)(d), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1
F83 S. 22(1A) inserted (24.1.2013) by Financial Services Act 2012 (c. 21), ss. 7(1)(a), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1
F84 Word in s. 22(1A)(a) omitted (27.2.2018) by virtue of The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135), regs. 1(2), 38(a)
CHAPTER 3 – Further provisions relating to FCA and PRA

Part II – Regulated And Prohibited Activities

Financial Services and Markets Act 2000 (c. 8)

Modifications etc. (not altering text)

C44 S. 22 applied (1.9.2002) by 1974 c. 39, s. 16(6E)(a) (as inserted (1.9.2002) by 2001/544, arts. 2(2)(b), 90(2))


C46 S. 22 applied by S.I. 2011/141, Sch. 4 para. 1(2) (as substituted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), Sch. para. 43(a))

C47 S. 22 applied by 2009 c. 4, s. 502(1A) (as inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), Sch. para. 16(b))

C48 S. 22 applied by 2007 c. 3, s. 564B(1A) (as inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), Sch. para. 12(b))

C49 S. 22 applied by S.I. 2012/2079, reg. 2(1A) (as inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), Sch. para. 44(a)(ii))

C50 S. 22 applied by S.I. 2004/400, reg. 5(7) (as inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), Sch. para. 25(b))

C51 S. 22 applied by S.I. 2001/497, reg. 113(6) (as inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), Sch. para. 23(b))

C52 S. 22 applied by S.I. 2013/380, Sch. 6 para. 11(9) (as inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), Sch. para. 45(b))

C53 S. 22 applied by S.I. 2001/341, reg. 114(6) (as inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), Sch. para. 22(b))

C54 S. 22 applied by S.I. 2008/1741, reg. 112(5) (as inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), Sch. para. 37(b))

C55 S. 22 applied by S.I. 2008/570, Sch. para. 11(2) (as substituted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), art. 1(2)(6), Sch. para. 35)
Designation of activities requiring prudential regulation by PRA

(1) The Treasury may by order specify the regulated activities that are “PRA-regulated activities” for the purposes of this Act.

(2) An order under subsection (1) may—
   (a) provide for exceptions;
   (b) confer powers on the Treasury or either regulator;
   (c) authorise the making of rules or other instruments by either regulator for purposes of, or connected with, any relevant provision;
   (d) make provision in respect of any information or document which in the opinion of the Treasury or either regulator is relevant for purposes of, or connected with, any relevant provision;
   (e) make such consequential, transitional, or supplemental provision as the Treasury consider appropriate for purposes of, or connected with, any relevant provision.

(3) Provision made as a result of subsection (2)(e) may amend any primary or subordinate legislation, including any provision of, or made under, this Act.

(4) “Relevant provision” means this section or any provision made under this section.

Textual Amendments

F93 Ss. 22A, 22B inserted (24.1.2013) by Financial Services Act 2012 (c. 21), ss. 9, 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

Parliamentary control in relation to certain orders under section 22A

(1) This section applies to the first order made under section 22A(1).

(2) This section also applies to any subsequent order made under section 22A(1) which—
   (a) contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order would be—
      (i) that an activity would become a PRA-regulated activity, or
      (ii) that a PRA-regulated activity would become a regulated activity that is not a PRA-regulated activity, or
(b) amends primary legislation.

(3) No order to which this section applies may be made unless—
   (a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
   (b) subsection (5) applies.

(4) Subsection (5) applies if an order to which this section applies 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.

(5) Where this subsection applies the order—
   (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 that affecting anything done under the order or the power to make a new order).

(6) The “relevant period” is a period of 28 days beginning with the day on which the order is made.

(7) 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.

Textual Amendments

F93 Ss. 22A, 22B inserted (24.1.2013) by Financial Services Act 2012 (c. 21), ss. 9, 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

Offences

23 Contravention of the general prohibition [F94 or section 20(1) or (1A)].

(1) A person who contravenes the general prohibition is guilty of an offence and liable—
   (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
   (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

F95 (1A) An authorised person (“A”) is guilty of an offence if A carries on a credit-related regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission—
   (a) given to that person under Part 4A, or
   (b) resulting from any other provision of this Act.

(1B) In this Act “credit-related regulated activity” means a regulated activity of a kind designated by the Treasury by order.

(1C) The Treasury may designate a regulated activity under subsection (1B) only if the activity involves a person—
(a) entering into or administering an agreement under which the person provides another person with credit,
(b) exercising or being able to exercise the rights of the lender under an agreement under which another person provides a third party with credit, or
(c) taking steps to procure payment of debts due under an agreement under which another person is provided with credit.

(1D) But a regulated activity may not be designated under subsection (1B) if the agreement in question is one under which the obligation of the borrower is secured on land.

(1E) “Credit” includes any cash loan or other financial accommodation.

(1F) A person guilty of an offence under subsection (1A) is liable—
(a) on summary conviction, to imprisonment for a term not exceeding the applicable maximum term or a fine not exceeding the statutory maximum, or both;
(b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

(1G) The “applicable maximum term” is—
(a) in England and Wales, 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003);
(b) in Scotland, 12 months;
(c) in Northern Ireland, 6 months.

(2) In this Act “an authorisation offence” means an offence under this section.

(3) In proceedings for an authorisation offence it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(4) Subsection (1A) is subject to section 39(1D).

(5) No proceedings may be brought against a person in respect of an offence under subsection (1A) in a case where either regulator has taken action under section 205, 206 or 206A in relation to the alleged contravention within section 20(1) or (1A).
effects) of the proposed order would be that an activity would become a credit-related regulated activity.

(3) An order to which this section applies may not be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

24 False claims to be authorised or exempt.

(1) A person who is neither an authorised person nor, in relation to the regulated activity in question, an exempt person is guilty of an offence if he—

(a) describes himself (in whatever terms) as an authorised person;
(b) describes himself (in whatever terms) as an exempt person in relation to the regulated activity; or
(c) behaves, or otherwise holds himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is—

(i) an authorised person; or
(ii) an exempt person in relation to the regulated activity.

(2) In proceedings for an offence under this section it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.

(4) But where the conduct constituting the offence involved or included the public display of any material, the maximum fine for the offence is level 5 on the standard scale multiplied by the number of days for which the display continued.

25 Contravention of section 21.

(1) A person who contravenes section 21(1) is guilty of an offence and liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(2) In proceedings for an offence under this section it is a defence for the accused to show—
(a) that he believed on reasonable grounds that the content of the communication was prepared, or approved for the purposes of section 21, by an authorised person; or
(b) that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Enforceability of agreements

26 Agreements made by unauthorised persons.

(1) An agreement made by a person in the course of carrying on a regulated activity in contravention of the general prohibition is unenforceable against the other party.

(2) The other party is entitled to recover—

(a) any money or other property paid or transferred by him under the agreement; and

(b) compensation for any loss sustained by him as a result of having parted with it.

(3) “Agreement” means an agreement—

(a) made after this section comes into force; and

(b) the making or performance of which constitutes, or is part of, the regulated activity in question.

(4) This section does not apply if the regulated activity is accepting deposits.

Agreements relating to credit

(1) An agreement that is made by an authorised person in contravention of section 20 is unenforceable against the other party if the agreement is entered into in the course of carrying on a credit-related regulated activity involving matters falling within section 23(1C)(a).

(2) The other party is entitled to recover—
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(a) any money or other property paid or transferred by that party under the agreement, and

(b) compensation for any loss sustained by that party as a result of having parted with it.

(3) In subsections (1) and (2) “agreement” means an agreement—

(a) which is made after this section comes into force, and

(b) the making or performance of which constitutes, or is part of, the credit-related regulated activity.

(4) If the administration of an agreement involves the carrying on of a credit-related regulated activity, the agreement may not be enforced by a person for the time being exercising the rights of the lender under the agreement unless that person

F100

(a) has permission, given under Part 4A or resulting from any other provision of this Act, in relation to that activity

F101

(b) is an appointed representative in relation to that activity,

(c) is an exempt person in relation to that activity, or

(d) is a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity.

(5) If the taking of steps to procure payment of debts due under an agreement involves the carrying on of a credit-related regulated activity, the agreement may not be enforced by a person for the time being exercising the rights of the lender under the agreement unless

F102

(a) the agreement is enforced in accordance with permission—

F103

(i) given under Part 4A to the person enforcing the agreement, or

(ii) resulting from any other provision of this Act.

F104

(b) that person is an appointed representative in relation to that activity,

(c) that person is an exempt person in relation to that activity, or

(d) that person is a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity.

Textual Amendments

F99 S. 26A inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 5 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F100 Words in s. 26A(4) renumbered as s. 26A(4)(a) (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), ss. 27(2)(a), 41(3); S.I. 2016/627, reg. 2(1)(u)

F101 S. 26A(4)(b)-(d) inserted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), ss. 27(2)(b), 41(3); S.I. 2016/627, reg. 2(1)(u)

F102 Words in s. 26A(5) renumbered as s. 26A(5)(a) (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), ss. 27(2)(a), 41(3); S.I. 2016/627, reg. 2(1)(u)

F103 Words in s. 26A(5) renumbered as s. 26A(5)(a)(ii) (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), ss. 27(3)(a), 41(3); S.I. 2016/627, reg. 2(1)(u)

F104 S. 26A(5)(b)-(d) inserted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), ss. 27(3)(b), 41(3); S.I. 2016/627, reg. 2(1)(u)
27 Agreements made through unauthorised persons.

[\[F105\](1)] This section applies to an agreement that—

(a) is made by an authorised person ("the provider") in the course of carrying on a regulated activity,

(b) is not made in contravention of the general prohibition,

(c) if it relates to a credit-related regulated activity, is not made in contravention of section 20, and

(d) is made in consequence of something said or done by another person ("the third party") in the course of—

(i) a regulated activity carried on by the third party in contravention of the general prohibition, or

(ii) a credit-related regulated activity carried on by the third party in contravention of section 20.

[\[F106\](1ZA) But this section does not apply to a regulated credit agreement or a regulated consumer hire agreement unless the provider knows before the agreement is made that the third party had some involvement in the making of the agreement or matters preparatory to its making.]

(1A) [\[F107\] An agreement to which this section applies] is unenforceable against the other party.

(2) The other party is entitled to recover—

(a) any money or other property paid or transferred by him under the agreement; and

(b) compensation for any loss sustained by him as a result of having parted with it.

(3) "Agreement" means an agreement—

(a) made after this section comes into force; and

(b) the making or performance of which constitutes, or is part of, the regulated activity in question carried on by the provider.

(4) This section does not apply if the regulated activity is accepting deposits.

[\[F108\](5) For the purposes of subsection (1ZA)—

"regulated consumer hire agreement" has the meaning given by article 60N of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);

"regulated credit agreement” has the meaning given by article 60B of that Order.]
Agreements made unenforceable by section 26 or 27\[F109: general cases].

(1) This section applies to an agreement which is unenforceable because of section 26 or 27\[F110, other than an agreement entered into in the course of carrying on a credit-related regulated activity].

(2) The amount of compensation recoverable as a result of that section is—
   (a) the amount agreed by the parties; or
   (b) on the application of either party, the amount determined by the court.

(3) If the court is satisfied that it is just and equitable in the circumstances of the case, it may allow—
   (a) the agreement to be enforced; or
   (b) money and property paid or transferred under the agreement to be retained.

(4) In considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the court must—
   (a) if the case arises as a result of section 26, have regard to the issue mentioned in subsection (5); or
   (b) if the case arises as a result of section 27, have regard to the issue mentioned in subsection (6).

(5) The issue is whether the person carrying on the regulated activity concerned reasonably believed that he was not contravening the general prohibition by making the agreement.

(6) The issue is whether the provider knew that the third party was (in carrying on the regulated activity) contravening the general prohibition.

(7) If the person against whom the agreement is unenforceable—
   (a) elects not to perform the agreement, or
   (b) as a result of this section, recovers money paid or other property transferred by him under the agreement,

he must repay any money and return any other property received by him under the agreement.

(8) If property transferred under the agreement has passed to a third party, a reference in section 26 or 27 or this section to that property is to be read as a reference to its value at the time of its transfer under the agreement.

(9) The commission of an authorisation offence does not make the agreement concerned illegal or invalid to any greater extent than is provided by section 26 or 27.
Credit-related agreements made unenforceable by section 26, 26A or 27

(1) This section applies to an agreement that—
   (a) is entered into in the course of carrying on a credit-related regulated activity, and
   (b) is unenforceable because of section 26, 26A or 27.

(2) The amount of compensation recoverable as a result of that section is—
   (a) the amount agreed by the parties, or
   (b) on the application of either party, the amount specified in a written notice given by the FCA to the applicant.

(3) If on application by the relevant firm the FCA is satisfied that it is just and equitable in the circumstances of the case, it may by written notice to the applicant allow—
   (a) the agreement to be enforced, or
   (b) money paid or property transferred under the agreement to be retained.

(4) In considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the FCA must—
   (a) if the case arises as a result of section 26 or 26A, have regard to the issue mentioned in subsection (5), or
   (b) if the case arises as a result of section 27, have regard to the issue mentioned in subsection (6).

(5) The issue is whether the relevant firm reasonably believed that by making the agreement the relevant firm was neither contravening the general prohibition nor contravening section 20.

(6) The issue is whether the provider knew that the third party was (in carrying on the credit-related regulated activity) either contravening the general prohibition or contravening section 20.

(7) An application to the FCA under this section by the relevant firm may relate to specified agreements or to agreements of a specified description or made at a specified time.

(8) “The relevant firm” means—
(a) in a case falling within section 26, the person in breach of the general prohibition;
(b) in a case falling within section 26A or 27, the authorised person concerned.

(9) If the FCA thinks fit, it may when acting under subsection (2)(b) or (3)—
   (a) limit the determination in its notice to specified agreements, or agreements of
       a specified description or made at a specified time;
   (b) make the determination in its notice conditional on the doing of specified acts
       by the applicant.

28B Decisions under section 28A: procedure

(1) A notice under section 28A(2)(b) or (3) must—
   (a) give the FCA's reasons for its determination, and
   (b) give an indication of—
       (i) the right to have the matter referred to the Tribunal that is conferred
           by subsection (3), and
       (ii) the procedure on such a reference.

(2) The FCA must, so far as it is reasonably practicable to do so, give a copy of the notice to any other person who appears to it to be affected by the determination to which the notice relates.

(3) A person who is aggrieved by the determination of an application under section 28A(2) (b) or (3) may refer the matter to the Tribunal.

29 Accepting deposits in breach of general prohibition.

(1) This section applies to an agreement between a person (“the depositor”) and another person (“the deposit-taker”) made in the course of the carrying on by the deposit-taker of accepting deposits in contravention of the general prohibition.

(2) If the depositor is not entitled under the agreement to recover without delay any money deposited by him, he may apply to the court for an order directing the deposit-taker to return the money to him.
The court need not make such an order if it is satisfied that it would not be just and equitable for the money deposited to be returned, having regard to the issue mentioned in subsection (4).

The issue is whether the deposit-taker reasonably believed that he was not contravening the general prohibition by making the agreement.

“Agreement” means an agreement—
(a) made after this section comes into force; and
(b) the making or performance of which constitutes, or is part of, accepting deposits.

Enforceability of agreements resulting from unlawful communications.

(1) In this section—

“unlawful communication” means a communication in relation to which there has been a contravention of section 21(1);
“controlled agreement” means an agreement the making or performance of which by either party constitutes a controlled activity for the purposes of that section; and
“controlled investment” has the same meaning as in section 21.

(2) If in consequence of an unlawful communication a person enters as a customer into a controlled agreement, it is unenforceable against him and he is entitled to recover—
(a) any money or other property paid or transferred by him under the agreement; and
(b) compensation for any loss sustained by him as a result of having parted with it.

(3) If in consequence of an unlawful communication a person exercises any rights conferred by a controlled investment, no obligation to which he is subject as a result of exercising them is enforceable against him and he is entitled to recover—
(a) any money or other property paid or transferred by him under the obligation; and
(b) compensation for any loss sustained by him as a result of having parted with it.

(4) But the court may allow—
(a) the agreement or obligation to be enforced, or
(b) money or property paid or transferred under the agreement or obligation to be retained,
if it is satisfied that it is just and equitable in the circumstances of the case.

(5) In considering whether to allow the agreement or obligation to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the court must have regard to the issues mentioned in subsections (6) and (7).

(6) If the applicant made the unlawful communication, the issue is whether he reasonably believed that he was not making such a communication.

(7) If the applicant did not make the unlawful communication, the issue is whether he knew that the agreement was entered into in consequence of such a communication.

(8) “Applicant” means the person seeking to enforce the agreement or obligation or retain the money or property paid or transferred.
(9) Any reference to making a communication includes causing a communication to be made.

(10) The amount of compensation recoverable as a result of subsection (2) or (3) is—

(a) the amount agreed between the parties; or

(b) on the application of either party, the amount determined by the court.

(11) If a person elects not to perform an agreement or an obligation which (by virtue of subsection (2) or (3)) is unenforceable against him, he must repay any money and return any other property received by him under the agreement.

(12) If (by virtue of subsection (2) or (3)) a person recovers money paid or property transferred by him under an agreement or obligation, he must repay any money and return any other property received by him as a result of exercising the rights in question.

(13) If any property required to be returned under this section has passed to a third party, references to that property are to be read as references to its value at the time of its receipt by the person required to return it.

PART III

AUTHORISATION AND EXEMPTION

Authorisation

31 Authorised persons.

(1) The following persons are authorised for the purposes of this Act—

(a) a person who has a Part 4A permission to carry on one or more regulated activities;

(b) an EEA firm qualifying for authorisation under Schedule 3;

(c) a Treaty firm qualifying for authorisation under Schedule 4;

(d) a person who is otherwise authorised by a provision of, or made under, this Act.

(2) In this Act “authorised person” means a person who is authorised for the purposes of this Act.
32 Partnerships and unincorporated associations.

(1) If a firm is authorised—
   (a) it is authorised to carry on the regulated activities concerned in the name of the firm; and
   (b) its authorisation is not affected by any change in its membership.

(2) If an authorised firm is dissolved, its authorisation continues to have effect in relation to any firm which succeeds to the business of the dissolved firm.

For the purposes of this section, an individual or firm is to be regarded as succeeding to the business of a dissolved firm only if succession is to the whole or substantially the whole of the business of the former firm.

(4) “Firm” means—
   (a) a partnership; or
   (b) an unincorporated association of persons.

(5) “Partnership” does not include a partnership which is constituted under the law of any place outside the United Kingdom and is a body corporate.

Ending of authorisation

33 Withdrawal of authorisation

(1) This section applies if—
   (a) an authorised person’s Part 4A permission is cancelled; and
   (b) as a result, there is no regulated activity for which he has permission.

(2) The appropriate regulator must give a direction withdrawing that person’s status as an authorised person.

(2A) In subsection (2) “the appropriate regulator” means—
34 EEA firms.

(1) An EEA firm ceases to qualify for authorisation under Part II of Schedule 3 if it ceases to be an EEA firm as a result of—

(a) having its EEA authorisation withdrawn; or

(b) ceasing to have an EEA right in circumstances in which EEA authorisation is not required.

(2) At the request of an EEA firm, \[^{F119}\text{the appropriate regulator}\] may give a direction cancelling its authorisation under Part II of Schedule 3.

\[^{F120}\text{(2A)}\text{In subsection (2) “the appropriate regulator” means—}\]

(a) in the case of a PRA-authorised person, the PRA, and

(b) in any other case, the FCA.\]

(3) If an EEA firm has a \[^{F121}\text{Part 4A permission}\], it does not cease to be an authorised person merely because it ceases to qualify for authorisation under Part II of Schedule 3.

35 Treaty firms.

(1) A Treaty firm ceases to qualify for authorisation under Schedule 4 if its home State authorisation is withdrawn.
(2) At the request of a Treaty firm, the appropriate regulator may give a direction cancelling its Schedule 4 authorisation.

F122  In subsection (2) “the appropriate regulator” means—

(a) in the case of a PRA-authorised person, the PRA, and

(b) in any other case, the FCA.

(3) If a Treaty firm has a Part 4A permission, it does not cease to be an authorised person merely because it ceases to qualify for authorisation under Schedule 4.

Textual Amendments
F122 Words in s. 35(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. 28(2) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.
F123 S. 35(2A) 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. 28(3) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.
F124 Words in s. 35(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. 28(4) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

36 Persons authorised as a result of paragraph 1(1) of Schedule 5.

(1) At the request of a person authorised as a result of paragraph 1(1) of Schedule 5, the FCA may give a direction cancelling his authorisation as such a person.

(2) If a person authorised as a result of paragraph 1(1) of Schedule 5 has a Part 4A permission, he does not cease to be an authorised person merely because he ceases to be a person so authorised.

Textual Amendments
F125 Word in s. 36(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 3(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F126 Words in s. 36(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 3(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Exercise of EEA rights by UK firms

37 Exercise of EEA rights by UK firms.

Part III of Schedule 3 makes provision in relation to the exercise outside the United Kingdom of EEA rights by UK firms.

Commencement Information
14 S. 37 wholly in force at 1.12.2001; s. 37 not in force at Royal Assent see s. 431(2); s. 37 in force for specified purposes at 25.2.2001 by S.I. 2001/516, art. 2(c), Sch. Pt. 3; s. 37 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 37 in force for specified purposes at 3.9.2001
Exemption

38  Exemption orders.

(1) The Treasury may by order ("an exemption order") provide for—
   (a) specified persons, or
   (b) persons falling within a specified class,
   to be exempt from the general prohibition.

(2) But a person cannot be an exempt person as a result of an exemption order if he has a [F127Part 4A permission].

(3) An exemption order may provide for an exemption to have effect—
   (a) in respect of all regulated activities;
   (b) in respect of one or more specified regulated activities;
   (c) only in specified circumstances;
   (d) only in relation to specified functions;
   (e) subject to conditions.

(4) "Specified" means specified by the exemption order.

Textual Amendments

F127 Words in s. 38(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 4 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C72  S. 38(2) modified (31.10.2001) by S.I. 2001/3374, art. 1, Sch. para. 3
C77  S. 38(2) modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), arts. 1(2), 34, (Sch. paras. 1, 3)
C78  S. 38(2) modified (2.4.2013) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (S.I. 2013/655), arts. 1, 10(5)(a)
C79  S. 38(2) modified (26.7.2013 for specified purposes, 2.9.2013 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(5), 59(2)(a)
C80  S. 38(2) modified (1.4.2015) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2015 (S.I. 2015/369), arts. 1, 7(6)(a)
39  Exemption of appointed representatives.

(1) If a person (other than an authorised person)—
   (a) is a party to a contract with an authorised person (“his principal”) which—
       (i) permits or requires him to carry on business of a prescribed description, and
       (ii) complies with such requirements as may be prescribed, and
   (b) is someone for whose activities in carrying on the whole or part of that business his principal has accepted responsibility in writing,

he is exempt from the general prohibition in relation to any regulated activity comprised in the carrying on of that business for which his principal has accepted responsibility.

[F128](1ZA) But a person is not exempt as a result of subsection (1) if subsection (1A) [F129], (1AA) or (1BA) applies to the person.

[F130](1A) [F131] This subsection applies to a person—
   (a) if his principal is an investment firm [F132], a credit institution, or a person mentioned in Article 3.1 (optional exemptions) of the markets in financial instruments directive, and
   (b) so far as the business for which his principal has accepted responsibility is investment services business,

unless he is entered on the applicable register.

[F133](1AA) (a) if the person’s principal is an investment firm [F134], a credit institution, or a person mentioned in Article 3.1 (optional exemptions) of the markets in financial instruments directive, and
   (b) so far as the business for which the person’s principal has accepted responsibility is selling, or advising clients on, structured deposits as defined by Article 4.1.43 (definitions) of the markets in financial instruments directive,

unless the person is entered on the applicable register.

(1B) [F135] In subsections (1A) and (1AA) The “applicable register” is—
   (a) in the case of a person established in an EEA State (other than the United Kingdom) [F136]... , the register of tied agents maintained in that State pursuant to [F137]Article 29 of the markets in financial instruments directive; [F138]and
   (b) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .
   (c) in any other case, the record maintained by the [F139]FCA by virtue of section 347(1)(ha).]

[F140](1BA) This subsection applies to a person (“A”)—
   (a) if A’s principal is a mortgage intermediary, and
   (b) so far as the business for which A’s principal has accepted responsibility is of a kind—
(i) specified in article 25A (arranging regulated mortgage contracts), article 36A (credit broking), article 53A (advising on regulated mortgage contracts) or article 53DA (advising on regulated credit agreements the purpose of which is to acquire land) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; and

(ii) to which the mortgages directive applies,

unless A meets the requirements of subsection (1BB).

(1BB) The requirements of this subsection are—

(a) that A is entered on the record maintained by the FCA by virtue of section 347(1)(hb);

(b) that A’s principal is a person who has a Part 4A permission to carry on one or more of the regulated activities mentioned in subsection (1BA)(b)(i); and

(c) that A’s principal is not a tied mortgage intermediary.

(1C) Subsection (1D) applies where an authorised person (“A”)—

(a) has permission under Part 4A, or permission resulting from any other provision of this Act, only in relation to one or more qualifying activities,

(b) is a party to a contract with another authorised person (A’s “principal”) which—

(i) permits or requires A to carry on business of a prescribed description (“the relevant business”), and

(ii) complies with such requirements as may be prescribed, and

(c) is someone for whose activities in carrying on the whole or part of the relevant business A’s principal has accepted responsibility in writing.

(1D) Sections 20(1) and (1A) and 23(1A) do not apply in relation to the carrying on by A of a relevant additional activity.

(1E) In subsections (1C) and (1D)—

(a) “qualifying activity” means a regulated activity which is of a prescribed kind and relates—

(i) to rights under a contract of the kind mentioned in paragraph 23 of Schedule 2, other than one under which the obligation of the borrower to repay is secured on land, or

(ii) to rights under a contract of the kind mentioned in paragraph 23B of that Schedule;

(b) “relevant additional activity” means a regulated activity which—

(i) is not one to which A’s permission relates, and

(ii) is comprised in the carrying on of the business for which A’s principal has accepted responsibility.

(2) In this Act “appointed representative” means—

(a) a person who is exempt as a result of subsection (1), or

(b) a person carrying on a regulated activity in circumstances where, as a result of subsection (1D), sections 20(1) and (1A) and 23(1A) do not apply.

(3) The principal of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility.
(4) In determining whether an authorised person has complied with—
   (a) a provision contained in or made under this Act, or
   (b) a qualifying EU provision that is specified, or of a description specified, for
       the purposes of this subsection by the Treasury by order,
   anything which a relevant person has done or omitted as respects business for which
   the authorised person has accepted responsibility is to be treated as having been done
   or omitted by the authorised person.]

(5) “Relevant person” means a person who at the material time is or was an appointed
representative by virtue of being a party to a contract with the authorised person.

(6) Nothing in subsection (4) is to cause the knowledge or intentions of an appointed
representative to be attributed to his principal for the purpose of determining whether
the principal has committed an offence, unless in all the circumstances it is reasonable
for them to be attributed to him.

(7) A person carries on “investment services business” if—
   (a) the business includes providing services or carrying on activities of the kind
       mentioned in Article 4.1.29 of the markets in financial instruments
       directive, and
   (b) as a result of providing such services or carrying on such activities he is a tied
       agent or would be if he were established in an EEA State.

(8) In this section—
   “competent authority” has the meaning given in Article 4.1.26 of the markets in financial instruments directive;
   “credit institution” means—
   (a) a credit institution authorised under the capital requirements
       directive, or
   (b) an institution which would satisfy the requirements for authorisation as
       a credit institution under that directive if it had its relevant office in an
       EEA State;
   “relevant office” means—
   (a) in relation to a body corporate, its registered office or, if it has no
       registered office, its head office, and
   (b) in relation to a person other than a body corporate, the person’s head
       office.]
CHAPTER 3 – Further provisions relating to FCA and PRA
Part III – Authorisation and Exemption

Financial Services and Markets Act 2000 (c. 8)

F131 Words in s. 39(1A) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), Sch. 1 para. 1(2)(b) (with Pt. 4)


F140 Word in s. 39(1B) substituted (24.1.2013 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. 18 para. 5(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.


F142 S. 39(1C)(1E) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 10(2), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F143 S. 39(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 10(3), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F144 S. 39(4) substituted (24.1.2013 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. 18 para. 5(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F145 S. 39(7)(8) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(5), Sch. 5 para. 2(c)

F146 Word in s. 39(7)(a) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services...


F148 Words in s. 39(8) substituted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 4

Modifications etc. (not altering text)

C82 S. 39 modified (26.7.2013 for specified purposes, 2.9.2013 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(5), 59(4)


C85 S. 39(2) modified (31.10.2001) by S.I. 2001/3374, art. 1, Sch. para. 7


Commencement Information

15 S. 39 wholly in force at 1.12.2001; s. 39 not in force at Royal Assent see s. 431(2); s. 39(1) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pt. 2; s. 39 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

[F149]39A Certain tied agents operating outside United Kingdom

(1) This section applies to an authorised person whose relevant office is in the United Kingdom if—

(a) he is a party to a contract with a person (other than an authorised person) who is established—

(i) in the United Kingdom, or

(ii) in an EEA State which does not permit investment firms authorised by the competent authority of the State to appoint tied agents; and

(b) the contract is a relevant contract.

(2) A contract is a “relevant contract” if it satisfies conditions A to C.

(3) Condition A is that the contract permits or requires the person mentioned in subsection (1)(a) (the “agent”) to carry on investment services business.
(4) Condition B is that either—

(a) it is a condition of the contract that such business may only be carried on by the agent in an EEA State other than the United Kingdom; or

(b) in a case not falling within paragraph (a), the [F150 FCA] is satisfied that no such business is, or is likely to be, carried on by the agent in the United Kingdom.

(5) Condition C is that the business is of a description that, if carried on in the United Kingdom, would be prescribed for the purposes of section 39(1)(a)(i).

(6) An authorised person to whom this section applies who—

(a) enters into or continues to perform a relevant contract with an agent which does not comply with the applicable requirements,

(b) enters into or continues to perform a relevant contract without accepting or having accepted responsibility in writing for the agent's activities in carrying on investment services business,

[F151 (c) enters into a relevant contract with an agent who is not entered on—

(i) the record maintained by the FCA by virtue of section 347(1)(ha), or

(ii) the register of tied agents of another EEA State maintained pursuant to Article 29 of the markets in financial instruments directive,]}

(d) continues to perform a relevant contract with an agent when he knows or ought to know that the agent is not entered on that record [F152 or register,],

is to be taken for the purposes of this Act to have contravened a requirement imposed on him by or under this Act.

(7) The “applicable requirements” are the requirements prescribed for the purposes of subsection (1)(a)(ii) of section 39 which have effect in the case of a person to whom subsection (1A) of that section applies.

(8) A person carries on “investment services business” if—

(a) his business includes providing services or carrying on activities of the kind mentioned in [F153 Article 4.1.29] of the markets in financial instruments directive, and

(b) as a result of providing such services or carrying on such activities he is a tied agent.

(9) In this section—

“competent authority” has the meaning given in [F154 Article 4.1.26] of the markets in financial instruments directive;

“relevant office” means—

(a) in relation to a body corporate, its registered office or, if it has no registered office, its head office, and

(b) in relation to a person other than a body corporate, the person's head office.
PART IV
PERMISSION TO CARRY ON REGULATED ACTIVITIES

Textual Amendments
F155 Pt. 4A substituted for ss. 40-55 (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 11(2), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.

PART 4A
PERMISSION TO CARRY ON REGULATED ACTIVITIES

Modifications etc. (not altering text)
C91 Pt. 4A modified (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 31(6)
C92 Pt. 4A modified (7.11.2018) by The EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1149), regs. 1(2), 5-7 (with regs. 4, 8-19)
C93 Pt. 4A modified by S.I. 2018/1149, reg. 43 (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), 2)
Application for permission

55A Application for permission

(1) An application for permission to carry on one or more regulated activities may be made to the appropriate regulator by—
   (a) an individual,
   (b) a body corporate,
   (c) a partnership, or
   (d) an unincorporated association.

(2) “The appropriate regulator”, in relation to an application under this section, means
   (subject to subsection (2B))—
   (a) the PRA, in a case where—
       (i) the regulated activities to which the application relates consist of or include a PRA-regulated activity, or
       (ii) the applicant is a PRA-authorised person otherwise than by virtue of a Part 4A permission;
   (b) the FCA, in any other case.

(2A) An application under this section for permission to carry on the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 may not include an application for permission to carry on any other regulated activity.

(2B) The appropriate regulator, in relation to an application under this section for permission to carry on the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, is the FCA.

(3) An authorised person who has a permission under this Part which is in force may not apply for permission under this section.

(4) An EEA firm may not apply for permission under this section to carry on a regulated activity which it is, or would be, entitled to carry on in exercise of an EEA right, whether through a United Kingdom branch or by providing services in the United Kingdom.

(5) A permission given by the appropriate regulator under this Part or having effect as if so given is referred to in this Act as “a Part 4A permission”.

Textual Amendments


Modifications etc. (not altering text)

C94 S. 55A(3) excluded by S.I. 2011/2832, art. 5(3) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 220(a)(iii)

C95 S. 55A(3) modified (2.4.2013) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (S.I. 2013/655), arts. 1, 10(5)(b)
The threshold conditions

(1) “The threshold conditions”, in relation to a regulated activity, means the conditions set out in or specified under Schedule 6, as read with any threshold condition code made by either regulator under section 137O.

(2) Any reference in this Part to the threshold conditions for which either regulator is responsible is to be read as a reference to the conditions set out in or specified under Schedule 6 that are expressed to be relevant to the discharge by that regulator of its functions, as read with any threshold condition code made by that regulator under section 137O.

(3) In giving or varying permission, imposing or varying a requirement, or giving consent, under any provision of this Part, each regulator must ensure that the person concerned will satisfy, and continue to satisfy, in relation to all of the regulated activities for which the person has or will have permission, the threshold conditions for which that regulator is responsible.

(4) But the duty imposed by subsection (3) does not prevent a regulator, having due regard to that duty, from taking such steps as it considers are necessary, in relation to a particular person, in order to advance—

(a) in the case of the FCA, any of its operational objectives;

(b) in the case of the PRA, any of its objectives.

(5) The duty imposed by subsection (3) does not apply in relation to the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).
(2) Different provision may be made under this section—
   (a) in relation to the discharge of the functions of each regulator;
   (b) in relation to different regulated activities;
   (c) in relation to persons who carry on, or seek to carry on, activities that consist of or include a PRA-regulated activity and in relation to other persons.

55D Firms based outside EEA

(1) This section applies in relation to a person (“the non-EEA firm”)—
   (a) who is a body incorporated in, or formed under the law of, or is an individual who is a national of, any country or territory outside the EEA, and
   (b) who is carrying on a regulated activity in any country or territory outside the United Kingdom in accordance with the law of that country or territory (“the overseas state”).

(2) In determining whether the non-EEA firm is satisfying or will satisfy, and continue to satisfy, any one or more of the threshold conditions for which a UK regulator is responsible, the UK regulator may have regard to any opinion notified to it by a regulatory authority in the overseas state (“the overseas regulator”) which relates to the non-EEA firm and appears to the UK regulator to be relevant to compliance with those conditions.

(3) In considering how much weight (if any) to attach to the opinion, the UK regulator must have regard to the nature and scope of the supervision exercised in relation to the non-EEA firm by the overseas regulator.

(4) In this section “UK regulator” means the FCA or the PRA.

55E Giving permission: the FCA

(1) This section applies where the FCA is the appropriate regulator in relation to an application for permission under section 55A.

(2) The FCA may give permission for the applicant to carry on the regulated activity or activities to which the application relates or such of them as may be specified in the permission.

(3) If the applicant is a member of a group which includes a PRA-authorised person, the FCA must consult the PRA before determining the application.

(4) If it gives permission, the FCA must specify the permitted regulated activity or activities, described in such manner as the FCA considers appropriate.

(5) The FCA may—
   (a) incorporate in the description of a regulated activity such limitations (for example as to circumstances in which the activity may, or may not, be carried on) as it considers appropriate;
(b) specify a narrower or wider description of regulated activity than that to which the application relates;

c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates and is not a PRA-regulated activity.

Textual Amendments


Modifications etc. (not altering text)

C100 S. 55E modified (2.4.2013) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (S.I. 2013/655), arts. 1, 10(5)(e)

C101 Ss. 55E, 55F modified (26.7.2013 for specified purposes, 2.9.2013 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(5), 59(2)(c)


55F Giving permission: the PRA

(1) This section applies where the PRA is the appropriate regulator in relation to an application for permission under section 55A.

(2) The PRA may with the consent of the FCA give permission for the applicant to carry on the regulated activity or activities to which the application relates or such of them as may be specified in the permission.

(3) If it gives permission, the PRA must specify the permitted regulated activity or activities, described in such manner as the PRA considers appropriate.

(4) The PRA may—

(a) incorporate in the description of a regulated activity such limitations (for example as to circumstances in which the activity may, or may not, be carried on) as it considers appropriate;

(b) specify a narrower or wider description of regulated activity than that to which the application relates;

(c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates.

(5) Consent given by the FCA for the purposes of this section may be conditional on the manner in which the PRA exercises its powers under subsections (3) and (4).

(6) Subsections (3) and (4)(b) and (c) do not enable the PRA to give permission that relates only to activities that are not PRA-regulated activities, except where the applicant is a PRA-authorised person otherwise than by virtue of a Part 4A permission.
55G Giving permission: special cases

(1) “The applicant” means an applicant for permission under section 55A.

(2) If the applicant—
   (a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 39(1) or an order made under section 38(1), but
   (b) has applied for permission in relation to another regulated activity, the application is to be treated as relating to all the regulated activities which, if permission is given, the applicant will carry on.

(3) If the applicant—
   (a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 285, but
   (b) has applied for permission in relation to another regulated activity, the application is to be treated as relating only to that other regulated activity.

(4) If the applicant—
   (a) is a person to whom, in relation to a particular regulated activity, the general prohibition does not apply as a result of Part 19, but
   (b) has applied for permission in relation to another regulated activity, the application is to be treated as relating only to that other regulated activity.

(5) Subsection (6) applies where either regulator (“the responsible regulator”) receives an application for permission under section 55A which is in the regulator’s opinion similar to an application which was previously made to the other regulator and was either—
   (a) treated by the other regulator as not being a valid application to that regulator because of the regulated activities to which it related, or
   (b) refused by the other regulator after being considered.

(6) The responsible regulator must have regard to the desirability of minimising—
   (a) the additional work for the applicant in dealing with the new application, and
   (b) the time taken to deal with the new application.
Variation and cancellation of Part 4A permission

55H Variation by FCA at request of authorised person

(2) The FCA may, on the application of \[\text{an authorised person who has a Part 4A permission but is not a PRA-authorised person,}\] vary the permission by—
   (a) adding a regulated activity, other than a PRA-regulated activity, to those to which the permission relates;
   (b) removing a regulated activity from those to which the permission relates;
   (c) varying the description of a regulated activity to which the permission relates.

(3) The FCA may, on the application of \[\text{an authorised person who has a Part 4A permission but is not a PRA-authorised person,}\] cancel the permission.

(3A) The FCA may, on the application of a PRA-authorised person with a Part 4A permission, vary the permission by—
   (a) adding to the regulated activities to which the permission relates the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark),
   (b) removing that regulated activity from those to which the permission relates, or
   (c) varying the description of that regulated activity.

(3B) The FCA must consult the PRA before exercising its power under subsection (3A).

(4) The FCA may refuse an application under this section if it appears to it that it is desirable to do so in order to advance any of its operational objectives.

(4A) The FCA may also refuse an application under this section if it appears to the FCA that the authorised person would not comply with requirements in Part 5 of the Alternative Investment Fund Managers Regulations 2013 (AIFs which acquire control of non-listed companies and issuers) that would apply to the authorised person.

(5) If \[\text{on an application under subsection (2) or (3) the applicant is a member of a group which includes a PRA-authorised person, the FCA must consult the PRA before determining the application.}\]

(6) If as a result of a variation of a Part 4A permission under this section there are no longer any regulated activities for which the authorised person concerned has permission, the FCA must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.
(7) The FCA’s power to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given by it in response to an application under section 55A.

551 Variation by PRA at request of authorised person

(1) On the application of a PRA-authorised person with a Part 4A permission, the PRA may with the consent of the FCA vary the permission by—

(a) adding a regulated activity to those to which the permission relates;

(b) removing a regulated activity from those to which the permission relates;

(c) varying the description of a regulated activity to which the permission relates \[^{F169}\], but the PRA may not under this subsection add, remove or vary the description of the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).\]

(2) On the application of a PRA-authorised person with a Part 4A permission, the PRA may, after consulting the FCA, cancel the permission \[^{F170}\], but the PRA may not under this subsection cancel a permission where the only regulated activity to which the permission relates is the regulated activity in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).\]

(3) On the application of an authorised person other than a PRA-authorised person, the PRA may with the consent of the FCA vary the permission by adding to the regulated activities to which the permission relates one or more regulated activities which include a PRA-regulated activity \[^{F171}\], but the PRA may not under this subsection add the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).\]

(4) The PRA may refuse an application under this section if it appears to it that it is desirable to do so in order to advance any of its objectives.

(5) The FCA may withhold its consent to a proposed variation under this section if it appears to it that it is desirable to do so in order to advance one or more of its operational objectives.

(6) If as a result of a variation of a Part 4A permission under this section there are no longer any regulated activities for which the authorised person concerned has permission, the
PRA must, once it is satisfied after consulting the FCA that it is no longer necessary to keep the permission in force, cancel it.

(7) The PRA's power to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given by it in response to an application under section 55A.

(8) Consent given by the FCA for the purposes of subsection (1) may be conditional on the manner in which the PRA exercises its powers under section 55F(3) and (4) (as a result of subsection (7)).

Textual Amendments

| F169 | Words in s. 55I(1) inserted (27.2.2018) by The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135), regs. 1(2), 40(6)(a) |

55J Variation or cancellation on initiative of regulator

(1) Either regulator may exercise its power under this section in relation to an authorised person with a Part 4A permission (“A”) if it appears to the regulator that—

(a) A is failing, or is likely to fail, to satisfy the threshold conditions for which the regulator is responsible,

(b) A has failed, during a period of at least 12 months, to carry on a regulated activity to which the Part 4A permission relates,

(c) it is desirable to exercise the power in order to advance—

(i) in the case of the FCA, one or more of its operational objectives, or

(ii) in the case of the PRA, any of its objectives, or

(d) in the case of the FCA, A has failed to comply with a requirement in Part 5 of the Alternative Investment Fund Managers Regulations 2013 (AIFs which acquire control of non-listed companies and issuers), or it is for some other reason desirable to exercise the power for the purposes of ensuring compliance with such a requirement.

(2) The FCA's power under this section is the power—

(a) to vary the Part 4A permission by—

(i) adding a regulated activity other than a PRA-regulated activity to those to which the permission relates,

(ii) removing a regulated activity from those to which the permission relates, or

(iii) varying the description of a regulated activity to which the permission relates in a way which, if it is a PRA-regulated activity, does not, in the opinion of the FCA, widen the description, or

(b) to cancel the Part 4A permission.

(3) The PRA's power under this section is the power—

(a) in the case of a PRA-authorised person, to vary the Part 4A permission in any of the ways mentioned in section 55I(1) or to cancel it;
(b) in the case of an authorised person who is not a PRA-authorised person, to vary the Part 4A permission by adding a PRA-regulated activity to those to which the permission relates and, if the PRA does so, to vary the Part 4A permission in any of the other ways mentioned in section 55I(1).

(4) The FCA—
   (a) must consult the PRA before exercising its power under this section in relation to—
      (i) a PRA-authorised person, or
      (ii) a member of a group which includes a PRA-authorised person, and
   (b) in the case of a PRA-authorised person, may exercise the power so as to add a new activity to those to which the permission relates or to widen the description of a regulated activity to which the permission relates, only with the consent of the PRA.

[F174, but paragraph (b) does not apply in relation to the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).]

(5) The PRA—
   (a) must consult the FCA before exercising its power under this section, and
   (b) may exercise the power so as to add a new activity to those to which the permission relates or to widen the description of a regulated activity to which the permission relates, only with the consent of the FCA.

(6) Without prejudice to the generality of subsections (1) to (3), a regulator may, in relation to an authorised person who is an investment firm, exercise its power under this section to cancel the Part 4A permission if it appears to it that any of the conditions in section 55K is met.

[F175] Without prejudice to the generality of subsections (1) to (3), the FCA may, in relation to an authorised person who is a full-scope UK AIFM, exercise its power under this section to cancel the Part 4A permission if it appears to it that any of the following conditions is met—

(6A) to an authorised person who is a full-scope UK AIFM, exercise its power under this section to cancel the Part 4A permission if it appears to it that any of the following conditions is met—

(a) the person has failed, during a period of at least six months, to carry on the regulated activity of managing an AIF;

(b) the person obtained the Part 4A permission to carry on the regulated activity of managing an AIF by making a false statement or by any other irregular means;

(c) in a case where the Part 4A permission includes permission to provide the discretionary portfolio management service referred to in Article 6.4(a) of the alternative investment fund managers directive, the person no longer complies with the capital requirements regulation or the capital requirements directive;

(d) the person no longer meets the conditions that a person must meet in order to obtain a Part 4A permission to carry on the regulated activity of managing an AIF;

(e) the person has seriously or systematically infringed—
      (i) any provision of the Alternative Investment Fund Managers Regulations 2013;
      (ii) a provision of any directly applicable EU regulation made under the alternative investment fund managers directive;
(iii) any provision made by or under this Act which implements that
directive;[F178, F179]...

F180
(iv) Parliament and of the Council of 29th April 2015 on European Long-
term Investment Funds or any directly applicable regulation made
under that Regulation.[F181; or]

F182

(v) a provision of the MMF Regulation or any directly applicable
F183
regulation or decision made under that Regulation.]  

F184

Without prejudice to the generality of subsections (1) to (3), the FCA may, in relation to an authorised person who is a mortgage intermediary and who has a Part 4A permission to carry on a relevant mortgage activity, exercise its power under this section to cancel the Part 4A permission or to vary the Part 4A permission by removing a relevant mortgage activity from the activities to which the permission relates, if it appears to the FCA that any of the following conditions is met—

(a) during a period of at least six months, the person has not carried on a relevant mortgage activity;

(b) the person obtained the Part 4A permission to carry on a relevant mortgage activity by making a false statement or by any other irregular means;

(c) the person no longer meets the conditions which the person was, in accordance with Chapter 11 of the mortgages directive, required to meet in order to be granted a Part 4A permission to carry on a relevant mortgage activity; or

(d) the person has seriously or systematically infringed any provision made by or under this Act which implements the operating conditions for mortgage intermediaries set out in the mortgages directive.

(6C) In subsection (6B) “relevant mortgage activity” means—

(a) an activity of a kind specified in article 25A (arranging regulated mortgage contracts), article 53A (advising on regulated mortgage contracts) or article 53DA (advising on regulated credit agreements the purpose of which is to acquire land) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, or

F185
(b) an activity of a kind specified in article 36A of that Order (credit broking) which is referred to in Article 33(1)(a) of the mortgages directive.

F186

(7) Without prejudice to the generality of subsections (1) and (2), the FCA may, in relation to an authorised person who has permission to carry on the regulated activity specified in article 24A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (which relates to bids in emission allowance auctions), exercise its power under this section to vary the Part 4A permission of the person concerned by removing that activity from those to which the permission relates if it appears to the FCA that the person has seriously and systematically infringed the provisions of paragraph 2 or 3 of Article 59 of the emission allowance auctioning regulation.

F187

Without prejudice to the generality of subsections (1) and (2), if it appears to the FCA that there has been a serious failure, by a person with permission to carry on the regulated activity specified in article 51ZA of the Financial Services and Markets Act (Regulated Activities) Order 2001 (managing a UCITS), to comply with the requirements imposed—

(a) by or under this Act in pursuance of the UCITS Directive, F185...

(b) by the Undertakings for Collective Investment in Transferable Securities Regulations 2011, [F186 or]
the FCA may exercise its powers under this section to vary the Part 4A permission of
the person concerned by removing that activity from those to which the permission
relates, or to cancel the person’s Part 4A permission.]

[Without prejudice to the generality of subsections (1) and (2), the FCA may, in relation
to an authorised person who is an investment firm, exercise its power under this section
if it appears to it that the authorised person has failed to comply with a requirement
of the market abuse regulation or of a directly applicable EU regulation made under
the market abuse regulation.]

[Without prejudice to the generality of subsections (1) and (2), if it appears to the FCA,
in relation to a person who has a permission to carry on the regulated activity specified
in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities)
Order 2001 (administering a benchmark), that the conditions in Article 35(1) of the
EU Benchmarks Regulation 2016 are met, the FCA may exercise its powers under
this section—

(a) to vary the Part 4A permission by removing that activity from those to which
the permission relates, or

(b) to cancel the Part 4A permission.]

[Without prejudice to the generality of subsections (1) and (3), if it appears to the PRA
that there has been a serious failure by a PRA-authorised person who is an insurance
undertaking or reinsurance undertaking to comply with requirements imposed by or
under this Act in pursuance of the Solvency 2 Directive, the PRA may exercise its
powers under this section to cancel the undertaking’s Part 4A permission.

If it appears to the PRA that the conditions in section 55KA are met in relation to a
PRA-authorised person who is an insurance undertaking, reinsurance undertaking or
third-country insurance undertaking, the PRA must—

(a) in relation to the undertaking’s Part 4A permission so far as the permission
relates to the regulated activity of effecting contracts of insurance as principal
(“activity A”), exercise the PRA’s powers under this section by varying the
permission—

(i) where the permission relates to activity A in relation to both contracts
of long-term insurance and contracts of general insurance and the
conditions in section 55KA are met only in relation to the business
of the undertaking so far as relating to contracts of one of those kinds,
so as to remove activity A so far as relating to contracts of that kind
from the regulated activities to which the permission relates, and

(ii) in any other case, so as to remove activity A from the regulated
activities to which the permission relates;

(b) in relation to the undertaking’s Part 4A permission so far as the permission
relates to the regulated activity of carrying out contracts of insurance as principal
(“activity B”), exercise the PRA’s powers under this section, if it
appears to the PRA to be necessary to do so to protect the interests of the
undertaking’s policyholders, by varying the Part 4A permission—

(i) where the permission relates to activity B in relation to both contracts
of long-term insurance and contracts of general insurance and the
conditions in section 55KA are met only in relation to the business
of the undertaking so far as relating to contracts of one of the those
kinds, so as to remove activity B so far as relating to contracts of that kind from the regulated activities to which the permission relates, and
(ii) in any other case, so as to remove activity B from the regulated activities to which the permission relates.

(7C) If the effect of a variation required by subsection (7B) is to remove all the regulated activities to which the Part 4A permission relates, the PRA must instead cancel the permission.

(8) If, as a result of a variation of a Part 4A permission under this section, there are no longer any regulated activities for which the authorised person concerned has permission, the regulator responsible for the variation must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.

(9) Before cancelling under subsection (8) a Part 4A permission which relates to a person who (before the variation) was a PRA-authorised person, the regulator must consult the other regulator.

(10) The power of either regulator to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given in response to an application to that regulator under section 55A.

(11) Consent given by one regulator for the purpose of subsection (4)(b) or (5)(b) may be conditional on the manner in which the other regulator exercises its powers under section 55E(4) and (5) or 55F(3) and (4) (as a result of subsection (10)).

(12) The power of the FCA or the PRA under this section is referred to in this Part as its own-initiative variation power.

Textual Amendments

F172 Word in s. 55J(1) omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 5(a)(i)

F173 S. 55J(1)(d) and word inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 5(a)(ii)


F175 S. 55J(6A) inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 5(b)

F176 Words in s. 55J(6A)(c) substituted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 5

F177 Word in s. 55J(6A)(c)(ii) omitted (3.12.2015) by virtue of The European Long-term Investment Funds Regulations 2015 (S.I. 2015/1882), regs. 1, 3(2)(a)

F178 Word in s. 55J(6A)(c)(iii) inserted (3.12.2015) by The European Long-term Investment Funds Regulations 2015 (S.I. 2015/1882), regs. 1, 3(2)(b)


55K Investment firms: particular conditions that enable cancellation

(1) The conditions referred to in section 55J(6) are as follows—

   (a) that the firm has failed, during a period of at least 6 months, to carry on a regulated activity which is an investment service or activity for which it has a Part 4A permission;

   (b) that the firm obtained the Part 4A permission by making a false statement or by other irregular means;

   (c) that the firm no longer satisfies the requirements for authorisation pursuant to Chapter I of Title II of the markets in financial instruments directive, or pursuant to or contained in any EU legislation made under that Chapter, in relation to a regulated activity which is an investment service or activity for which it has a Part 4A permission;

   (d) that the firm has seriously and systematically infringed the operating conditions pursuant to Chapter II of Title II of the markets in financial instruments directive, or pursuant to or contained in any EU legislation made under that Chapter, in relation to a regulated activity which is an investment service or activity for which it has a Part 4A permission;

   (e) that the firm has seriously or systematically infringed the markets in financial instruments regulation.

(2) For the purposes of this section a regulated activity is an investment service or activity if it falls within the definition of “investment services and activities” in section 417(1).
Insurance undertakings, reinsurance undertakings and third-country insurance undertakings: particular conditions that enable cancellation

(1) The conditions referred to in section 55J(7B) are—

(a) that the insurance undertaking, reinsurance undertaking or third-country insurance undertaking has failed to comply with the appropriate capital requirement; and

(b) that any of the following applies—

(i) the insurance undertaking, reinsurance undertaking or third-country insurance undertaking has failed to submit a finance scheme in accordance with requirements imposed by or under this Act in pursuance of Article 139(2) of the Solvency 2 Directive, or of that provision with Article 74(7) of that directive;

(ii) the insurance undertaking, reinsurance undertaking or third-country insurance undertaking has submitted to the PRA a finance scheme that is manifestly inadequate; or

(iii) after the PRA has approved a finance scheme submitted to it, the undertaking has failed to comply with the finance scheme within a period of three months beginning with the date when the undertaking first became aware that it had failed to comply with the appropriate capital requirement to which the scheme relates.

(2) In subsection (1) “the appropriate capital requirement” means—

(a) except in a case within paragraph (b) or (c), the minimum capital requirement;

(b) in the case of an insurance undertaking or reinsurance undertaking whose Part 4A permission relates to both contracts of long-term insurance and to contracts of general insurance, requirements imposed by or under this Act in pursuance of Article 74(2) of the Solvency 2 Directive;

(c) in the case of a third-country insurance undertaking whose Part 4A permission relates both to contracts of long-term insurance and to contracts of general insurance, requirements imposed by or under this Act in pursuance of Articles 74(2) and 166 of the Solvency 2 Directive.]

Textual Amendments

F192 S. 55KA inserted (1.1.2016) by The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), Sch. 1 para. 3
55L. **Imposition of requirements by FCA**

(1) Where a person has applied (whether to the FCA or the PRA) for a Part 4A permission or the variation of a Part 4A permission, the FCA may impose on that person such requirements, taking effect on or after the giving or variation of the permission, as the FCA considers appropriate.

(2) The FCA may exercise its power under subsection (3) in relation to an authorised person with a Part 4A permission (whether given by it or by the PRA) (“A”) if it appears to the FCA that—

(a) A is failing, or is likely to fail, to satisfy the threshold conditions for which the FCA is responsible,

(b) A has failed, during a period of at least 12 months, to carry on a regulated activity to which the Part 4A permission relates, or

(c) it is desirable to exercise the power in order to advance one or more of the FCA’s operational objectives.

(3) The FCA's power under this subsection is a power—

(a) to impose a new requirement,

(b) to vary a requirement imposed by the FCA under this section, or

(c) to cancel such a requirement.

(4) The FCA's power under subsection (3) is referred to in this Part as its own-initiative requirement power.

(5) The FCA may, on the application of an authorised person with a Part 4A permission—

(a) impose a new requirement,

(b) vary a requirement imposed by the FCA under this section, or

(c) cancel such a requirement.

(6) The FCA may refuse an application under subsection (5) if it appears to it that it is desirable to do so in order to advance any of its operational objectives.

(7) The FCA must consult the PRA before imposing or varying a requirement which relates to—

(a) a person who is, or will on the granting of an application for Part 4A permission be, a PRA-authorised person, or

(b) a person who is a member of a group which includes a PRA-authorised person.
55M  Imposition of requirements by PRA

(1) Where—
   (a) a person has applied for a Part 4A permission in relation to activities which consist of or include a PRA-regulated activity,
   (b) a PRA-authorised person has applied for a Part 4A permission or the variation of a Part 4A permission, or
   (c) an authorised person other than a PRA-authorised person has applied for a Part 4A permission to be varied by adding to the regulated activities to which it relates one or more regulated activities which include a PRA-regulated activity,

   the PRA may impose on that person such requirements, taking effect on or after the giving or variation of the permission, as the PRA considers appropriate.

(2) The PRA may exercise its power under subsection (3) in relation to a PRA-authorised person with a Part 4A permission (“P”) if it appears to the PRA that—
   (a) P is failing, or is likely to fail, to satisfy the threshold conditions for which the PRA is responsible,
   (b) P has failed, during a period of at least 12 months, to carry on a regulated activity to which the Part 4A permission relates, or
   (c) it is desirable to exercise the power in order to advance any of the PRA’s objectives.

(3) The PRA’s power under this subsection is a power—
   (a) to impose a new requirement,
   (b) to vary a requirement imposed by the PRA under this section, or
   (c) to cancel such a requirement.

(4) The PRA’s power under subsection (3) is referred to in this Part as its own-initiative requirement power.

(5) The PRA may, on the application of a PRA-authorised person with a Part 4A permission—
   (a) impose a new requirement,
   (b) vary a requirement imposed by the PRA under this section, or
   (c) cancel such a requirement.

(6) The PRA may refuse an application under subsection (5) if it appears to it that it is desirable to do so in order to advance any of its objectives.

[The PRA may not exercise its powers under this section to impose a requirement relating to the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).]

(7) The PRA must consult the FCA before imposing or varying a requirement.

Textual Amendments
55N  Requirements under section 55L or 55M: further provisions

(1) A requirement may, in particular, be imposed—
   (a) so as to require the person concerned to take specified action, or
   (b) so as to require the person concerned to refrain from taking specified action.

(2) A requirement may extend to activities which are not regulated activities.

(3) A requirement may be imposed by reference to the person's relationship with—
   (a) the person's group, or
   (b) other members of the person's group.

(4) A requirement may be expressed to expire at the end of such period as the regulator imposing it may specify, but the imposition of a requirement that expires at the end of a specified period does not affect the regulator's power to impose a new requirement.

(5) A requirement may refer to the past conduct of the person concerned (for example, by requiring the person concerned to review or take remedial action in respect of past conduct).

(6) In this section “requirement” means a requirement imposed under section 55L or 55M.

55O  Imposition of requirements on acquisition of control

(1) This section applies if it appears to the appropriate regulator that—
   (a) a person has acquired control over a UK authorised person who has a Part 4A permission, but
   (b) there are no grounds for exercising its own-initiative requirement power.

(2) If it appears to the appropriate regulator that the likely effect of the acquisition of control on the UK authorised person, or on any of its activities, is uncertain, the appropriate regulator may—
   (a) impose on the UK authorised person a requirement that could be imposed by that regulator under section 55L or 55M (as the case may be) on the giving of permission, or
   (b) vary a requirement imposed by that regulator under that section on the UK authorised person.

(3) “The appropriate regulator” means—
   (a) in a case where the UK authorised person is a PRA-authorised person, the FCA or the PRA;
   (b) in any other case, the FCA.

(4) This section does not affect any duty of the appropriate regulator to consult or obtain the consent of the other regulator in connection with the imposition of the requirement.

(5) Any reference to a person having acquired control is to be read in accordance with Part 12.
55P Prohibitions and restrictions

(1) This section applies if—
   (a) on a person being given a Part 4A permission, either regulator imposes an assets requirement on that person,
   (b) an assets requirement is imposed on an authorised person, or
   (c) an assets requirement previously imposed on such a person is varied.

(2) A person on whom an assets requirement is imposed is referred to in this section as “A”.

(3) The “appropriate regulator” is the regulator which imposed the requirement.

(4) “Assets requirement” means a requirement under section 55L or 55M—
   (a) prohibiting the disposal of, or other dealing with, any of A's assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings, or
   (b) that all or any of A's assets, or all or any assets belonging to consumers but held by A or to A's order, must be transferred to and held by a trustee approved by the appropriate regulator.

(5) If the appropriate regulator—
   (a) imposes a requirement of the kind mentioned in subsection (4)(a), and
   (b) gives notice of the requirement to any institution with whom A keeps an account,
the notice has the effects mentioned in subsection (6).

(6) Those effects are that—
   (a) the institution does not act in breach of any contract with A if, having been instructed by A (or on A's behalf) to transfer any sum or otherwise make any payment out of A's account, it refuses to do so in the reasonably held belief that complying with the instruction would be incompatible with the requirement, and
   (b) if the institution complies with such an instruction, it is liable to pay to the appropriate regulator an amount equal to the amount transferred from, or otherwise paid out of, A's account in contravention of the requirement.

(7) If the appropriate regulator imposes a requirement of the kind mentioned in subsection (4)(b), no assets held by a person as trustee in accordance with the requirement may, while the requirement is in force, be released or dealt with except with the consent of the appropriate regulator.

(8) If, while a requirement of the kind mentioned in subsection (4)(b) is in force, A creates a charge over any assets of A held in accordance with the requirement, the charge is (to the extent that it confers security over the assets) void against the liquidator and any of A’s creditors.

(9) Assets held by a person as trustee (“T”) are to be taken to be held by T in accordance with any requirement mentioned in subsection (4)(b) only if—
   (a) A has given T written notice that those assets are to be held by T in accordance with the requirement, or
   (b) they are assets into which assets to which paragraph (a) applies have been transposed by T on the instructions of A.
(10) A person who contravenes subsection (7) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(11) “Charge” includes a mortgage (or in Scotland a security over property).

(12) Subsections (7) and (9) do not affect any equitable interest or remedy in favour of a person who is a beneficiary of a trust as a result of a requirement of the kind mentioned in subsection (4)(b).

Assets requirements imposed on insurance undertakings or reinsurance undertakings

(1) If either of the following cases arises in relation to an insurance undertaking, reinsurance undertaking or third-country insurance undertaking, the PRA must inform the supervisory authority of each host EEA State of that undertaking.

(2) The first case is where the PRA intends to impose an assets requirement on the undertaking because the undertaking has not complied with rules implementing Section 2 of Chapter 6 of Title 1 of the Solvency 2 Directive.

(3) The second case is where—

(a) the undertaking has notified the PRA that—

(i) the undertaking does not comply with the solvency capital requirement, or

(ii) there is a risk that at some time within the next 3 months the undertaking may not comply with the solvency capital requirement, and

(b) because the PRA is of the opinion that the financial situation of the undertaking will deteriorate after the PRA has received the notification, the PRA imposes an assets requirement on the undertaking.

(4) In this section—

(a) “assets requirement” has the same meaning as in section 55P(4); and

(b) “host EEA State” means—

(i) in relation to an insurance undertaking or reinsurance undertaking, an EEA State which is a “host Member State” for the purposes of the Solvency 2 Directive (which is to be determined in accordance with Article 13(9) of that directive);

(ii) in relation to a third-country insurance undertaking, an EEA State other than the United Kingdom from which the undertaking has received authorisation in accordance with Article 162 of the Solvency 2 Directive.]
(a) either regulator has imposed a general meeting requirement on an authorised person who is a bank, building society or investment firm,

(b) the authorised person has not complied with the general meeting requirement, and

(c) the appropriate regulator considers that the authorised person has infringed, or is likely in the near future to infringe—

(i) a relevant requirement within the meaning of section 204A; or

(ii) one or more of Articles 3 to 7, 14 to 17 or 24 to 26 of Regulation (EU) No 600/2014 of 15th May 2014 of the European Parliament and of the Council on Markets in Financial Instruments.

(2) A general meeting requirement is a requirement under section 55L or 55M that the authorised person call a general meeting of its shareholders or members.

(3) The appropriate regulator may call a general meeting of the shareholders or members of the authorised person.

(4) The appropriate regulator may propose business for consideration and decision at the general meeting.

(5) The meeting must be called in the same manner, as far as practicable, as that in which meetings are required to be called by the board of directors (or the equivalent management body) of the authorised person.

(6) For the purposes of this section—

“bank” has the meaning given in section 2 of the Banking Act 2009;

“building society” has the meaning given in the Building Societies Act 1986;

“investment firm” has the meaning given in section 258A of the Banking Act 2009;

“the appropriate regulator” means the regulator who imposed the general meeting requirement.

Exercise of power in support of overseas regulator

55Q Exercise of power in support of overseas regulator

(1) Either UK regulator's own-initiative powers may be exercised in respect of an authorised person at the request of, or for the purpose of assisting, an overseas regulator of a prescribed kind.

(2) Subsection (1) applies whether or not the UK regulator has powers which are exercisable in relation to the authorised person by virtue of any provision of Part 13.

(3) Subsection (1) does not affect any duty of one UK regulator to consult or obtain the consent of the other UK regulator in relation to the exercise of its own-initiative powers.
(4) If a request to a UK regulator for the exercise of its own-initiative powers has been made by an overseas regulator who is—
   (a) of a prescribed kind, and
   (b) acting in pursuance of provisions of a prescribed kind,
the UK regulator must, in deciding whether or not to exercise those powers in response to the request, consider whether it is necessary to do so in order to comply with an EU obligation.

(5) In deciding whether or not to do so, in any case in which the UK regulator does not consider that the exercise of its own-initiative powers is necessary in order to comply with an 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.

(6) The UK regulator may decide not to exercise its own-initiative powers, in response to a request, unless the overseas regulator concerned undertakes to make such contribution towards the cost of their exercise as the UK regulator considers appropriate.

(7) Subsection (6) does not apply if the UK regulator decides that it is necessary for it to exercise its own-initiative powers in order to comply with an EU obligation.

(8) In subsection (6) “request” means a request of a kind mentioned in subsection (1).

(9) In this section—
   (a) “UK regulator” means the FCA or the PRA;
   (b) “overseas regulator” means a regulator outside the United Kingdom;
   (c) “own-initiative powers”, in relation to the FCA or the PRA, means its own-initiative variation power and its own-initiative requirement power.

**Connected persons**

55R **Persons connected with an applicant**

(1) In considering—
   (a) an application for a Part 4A permission,
   (b) whether to vary or cancel a Part 4A permission,
   (c) whether to impose or vary a requirement under this Part, or
   (d) whether to give any consent required by any provision of this Part,
the regulator concerned may have regard to any person appearing to it to be, or likely to be, in a relationship with the applicant or a person given permission which is relevant.

(2) Before—
(a) giving permission in response to an application under section 55A made by a person who is connected with an EEA firm (other than an EEA firm falling within paragraph 5(e) of Schedule 3 (insurance and reinsurance intermediaries)) or “an EEA market operator”, or

(b) cancelling or varying a Part 4A permission given to such a person, the regulator concerned must in prescribed circumstances consult the firm’s or the market operator’s home state regulator.

(3) A person (“A”) is connected with an EEA firm if—

(a) A is a subsidiary undertaking of the firm, or
(b) A is a subsidiary undertaking of a parent undertaking of the firm.

A person (“P”) is connected with an EEA market operator if—

(a) P is an investment firm and is a subsidiary undertaking of the market operator, or
(b) P is an investment firm and is a subsidiary undertaking of a parent undertaking of the market operator.

(3A) In subsection (2)—

“EEA market operator” has the meaning given in section 312D (interpretation of Chapter 3A); and

“home state regulator”, in relation to an EEA market operator, has the meaning given in section 312D.

(3B) In subsection (2)—

“EEA market operator” has the meaning given in section 312D (interpretation of Chapter 3A); and

“home state regulator”, in relation to an EEA market operator, has the meaning given in section 312D.

Subsection (5) applies where—

(a) a credit institution (“B”) makes an application for permission under section 55A; and

(b) B is controlled by a person who also controls a credit institution, insurance undertaking or investment firm authorised in another EEA State.

Before granting B’s application for permission, the regulator concerned must consult the competent authorities of the other EEA State.

In subsections (4) and (5), “credit institution”, “insurance undertaking” and “investment firm” have the meaning given in Article 4(1) of the capital requirements regulation.

Subsection (8) applies where—

(a) an investment firm (“C”) makes an application for permission under section 55A to carry on a regulated activity which is any of the investment services and activities;

(b) the requirement for C to obtain permission under section 55A to carry on that activity derives from Chapter 1 of Title II of the markets in financial instruments directive; and

(c) C is controlled by a person who also controls—

(i) an EEA credit institution,

(ii) an EEA investment firm, or

(iii) an EEA insurance undertaking.

Before granting C’s application for permission, the regulator concerned must—
(a) in a case falling within subsection (7)(c)(i) consult the competent authorities of the other EEA State responsible for the authorisation or supervision of the credit institution;

(b) in case falling within subsection (7)(c)(ii) consult the competent authority of the other EEA State responsible for the authorisation of the investment firm;

(c) in a case falling within subsection (7)(c)(iii), consult the competent authorities of the other EEA State responsible for the authorisation or supervision of the insurance undertaking.

(9) In subsections (7)—

“controls” has the same meaning as in Article 4.1.35(b)(definitions) of the markets in financial instruments directive;

“EEA credit institution” means a credit institution, as defined by Article 4.1.27 of the markets in financial instruments directive, authorised in another EEA State pursuant to Title III of the capital requirements directive;

“EEA insurance undertaking” means an insurance undertaking, as defined by Article 13.1 of the Solvency 2 Directive, authorised in another EEA State;

“EEA investment firm” means an investment firm, as defined by Article 4.1.1 of the markets in financial instruments directive, authorised in another EEA State pursuant to Chapter 1 of Title II of that directive.]
(a) in relation to either regulator, means a Part 4A permission which is in force in relation to an EEA firm or a Treaty firm, and

(b) in relation to the FCA, also includes a Part 4A permission which is in force in relation to a person authorised as a result of paragraph 1(1) of Schedule 5.

(2) If either regulator is considering whether, and if so how, to exercise its own-initiative variation power or its own-initiative requirement power in relation to an additional Part 4A permission, it must take into account—

(a) the home state authorisation of the authorised person concerned,

(b) any relevant directive, and

(c) relevant provisions of the Treaty.

Persons whose interests are protected

55T Persons whose interests are protected

For the purpose of any provision of this Part which refers to the FCA's operational objectives, or the PRA's objectives in relation to the exercise of a power in relation to a particular person, it does not matter whether there is a relationship between that person and the persons whose interests will be protected by the exercise of the power.

Procedure

55U Applications under this Part

(1) An application for a Part 4A permission must—

(a) contain a statement of the regulated activity or regulated activities which the applicant proposes to carry on and for which the applicant wishes to have permission, and

(b) give the address of a place in the United Kingdom for service on the applicant of any notice or other document which is required or authorised to be served on the applicant under this Act.

(2) An application for the variation of a Part 4A permission must contain a statement—

(a) of the desired variation, and

(b) of the regulated activity or regulated activities which the applicant proposes to carry on if the permission is varied.

(3) An application for the variation of a requirement imposed under section 55L or 55M or for the imposition of a new requirement must contain a statement of the desired variation or requirement.

(4) An application under this Part must—

(a) be made in such manner as the regulator to which it is to be made may direct, and

(b) contain, or be accompanied by, such other information as that regulator may reasonably require.

(5) At any time after the application is received and before it is determined, the appropriate regulator may require the applicant to provide it with such further information as it
reasonably considers necessary to enable it to determine the application or, as the case requires, to decide whether to give consent.

(6) In subsection (5), the “appropriate regulator” means—
(a) in a case where the application is made to the FCA, the FCA;
(b) in a case where the application is made to the PRA, the FCA or the PRA.

(7) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(8) Each regulator may require an applicant to provide information which the applicant is required to provide to it under this section in such form, or to verify it in such a way, as the regulator may direct.

(9) The PRA must consult the FCA before—
(a) giving a direction under this section in relation to a class of applications, or
(b) imposing a requirement under this section in relation to a class of applications.

Modifications etc. (not altering text)
C113 S. 55U(1)-(4) excluded (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 31(7)
C114 S. 55U(1)-(4) excluded (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 33(5)
55V Determination of applications

(1) An application under this Part must be determined by the regulator to which it is required to be made (“the appropriate regulator”) before the end of the period of 6 months beginning with the date on which it received the completed application.

(2) The appropriate regulator may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within 12 months beginning with the date on which it received the application.

(3) Where the application cannot be determined by the appropriate regulator without the consent of the other regulator, the other regulator’s decision must also be made within the period required by subsection (1) or (2).

(4) The applicant may withdraw the application, by giving the appropriate regulator written notice, at any time before the appropriate regulator determines it.

(5) If the appropriate regulator grants an application—
   (a) for Part 4A permission,
   (b) for the variation or cancellation of a Part 4A permission,
   (c) for the variation or cancellation of a requirement imposed under section 55L or 55M, or
   (d) for the imposition of a new requirement under either of those sections, it must give the applicant written notice.

(6) The notice must state the date from which the permission, variation, cancellation or requirement has effect.

(7) A notice under this section which is given by the PRA and relates to the grant of an application for Part 4A permission or for the variation of a Part 4A permission must state that the FCA has given its consent to the grant of the application.

(8) In the case of an application for permission under this Part which—
   (a) relates to the regulated activity of managing an AIF, and
   (b) would if granted result in the applicant becoming a full-scope UK AIFM, this section has effect subject to \[F203\] of the Alternative Investment Fund Managers Regulations 2013 and, accordingly, subsections (1) to (3) do not apply.

(9) In the case of an application which—
   (a) is for a Part 4A permission or a variation of a Part 4A permission, and
   (b) relates only to the undertaking of insurance distribution activity, subsection (1) has effect as if the reference to “6 months” were to “3 months”.

(10) In this section, “insurance distribution activity” has the meaning given in article 92 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
55W Applications under this Part: communications between regulators

The PRA must as soon as practicable notify the FCA of the receipt or withdrawal of—
(a) an application for permission under section 55A,
(b) an application under section 55I, or
(c) an application under section 55M(5).

55X Determination of applications: warning notices and decision notices

(1) If a regulator proposes—
(a) to give a Part 4A permission but to exercise its power under section 55E(5) (a) or (b) or 55F(4)(a) or (b),
(b) to give a Part 4A permission but to exercise its power under section 55L(1) or 55M(1) in connection with the application for permission,
(c) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),
(d) to vary a Part 4A permission but to exercise its power under section 55L(1) or 55M(1) in connection with the application for variation, or
(e) in the case of the FCA, to exercise its power under section 55L(1) in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission,

it must give the applicant a warning notice.

(2) If a regulator proposes to refuse an application made under this Part, it must (unless subsection (3) applies) give the applicant a warning notice.

(3) This subsection applies if it appears to the regulator that—
(a) the applicant is an EEA firm,
(b) the application is made with a view to carrying on a regulated activity in a manner in which the applicant is, or would be, entitled to carry on that activity in the exercise of an EEA right whether through a United Kingdom branch or by providing services in the United Kingdom.

(4) If a regulator decides—

(a) to give a Part 4A permission but to exercise its power under section 55E(5) (a) or (b) or 55F(4)(a) or (b),
(b) to give a Part 4A permission but to exercise its power under section 55L(1) or 55M(1) in connection with the giving of the permission,
(c) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),
(d) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section 55L(1) or 55M(1) in connection with the variation,
(e) in the case of the FCA, to exercise its power under section 55L(1) in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission, or
(f) to refuse an application under this Part,

it must give the applicant a decision notice.

This section does not apply to applications to which section 55XA applies.]

Textual Amendments


Modifications etc. (not altering text)


Applications relating to administering a benchmark

(1) If the FCA decides—

(a) to give a Part 4A permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark) but to exercise its power in section 55E(5)(a) or (b) in connection with the application for permission,
(b) to give a Part 4A permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark) but to exercise its power in section 55L(1) in connection with the application for permission,
(c) to vary a Part 4A permission to include permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark) on the application of an authorised person but to exercise its power in section 55E(5)(a) or (b) in connection with the application for variation,
(d) to vary a Part 4A permission to include permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark) on the application of an authorised person but to exercise its power in section 55L(1) in connection with the application for variation,
(e) to refuse an application for a Part 4A permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark), or

(f) to refuse an application for a variation of a Part 4A permission to include permission to carry on the regulated activity specified in article 63S of the RAO (administering a benchmark),

it must give the applicant a written notice.

(2) A written notice under subsection (1) must—

(a) give details of the decision made by the FCA,

(b) state the FCA’s reasons for the decision,

(c) state whether the decision takes effect immediately or on such date as may be specified in the notice,

(d) inform the applicant that the applicant may either—

(i) request a review of the decision, and make written representations for the purpose of the review, within such period as may be specified in the notice, or

(ii) refer the matter to the Tribunal within such period as may be specified in the notice, and

(e) indicate the procedure on a reference to the Tribunal.

(3) If the applicant requests a review of the decision made by the FCA (“the original decision”), the FCA must consider any written representations made by the applicant and review the original decision.

(4) On a review under subsection (3) the FCA may make any decision (“the new decision”) the FCA could have made on the application.

(5) The FCA must give the applicant written notice of its decision on the review.

(6) If the new decision is to do any of the things mentioned in subsection (1)(a) to (f), the written notice under subsection (5) must—

(a) give details of the new decision made by the FCA,

(b) state the FCA’s reasons for the new decision,

(c) inform the applicant that the applicant may, within such period as may be specified in the notice, refer the new decision to the Tribunal, and

(d) indicate the procedure on a reference to the Tribunal.

(8) In this section “the RAO” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.]
(2) A variation of a permission or the imposition or variation of a requirement takes effect—
   (a) immediately, if the notice given under subsection (4) 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 the notice relates
       is no longer open to review.

(3) A variation of a permission, or the imposition or variation of a requirement, may be
    expressed to take effect immediately (or on a specified date) only if the regulator
    concerned, having regard to the ground on which it is exercising its own-initiative
    variation power or own-initiative requirement power, reasonably considers that it is
    necessary for the variation, or the imposition or variation of the requirement, to take
    effect immediately (or on that date).

(4) If either regulator proposes to vary a Part 4A permission or to impose or vary a
    requirement, or varies a Part 4A permission or imposes or varies a requirement, with
    immediate effect, it must give A written notice.

(5) The notice must—
   (a) give details of the variation of the permission or the requirement or its
       variation,
   (b) state the regulator's reasons for the variation of the permission or the
       imposition or variation of the requirement,
   (c) inform A that A may make representations to the regulator within such period
       as may be specified in the notice (whether or not A has referred the matter
       to the Tribunal),
   (d) inform A of when the variation of the permission or the imposition or variation
       of the requirement takes effect, and
   (e) inform A of A's right to refer the matter to the Tribunal.

(6) The regulator may extend the period allowed under the notice for making
    representations.

(7) If, having considered any representations made by A, the regulator decides—
   (a) to vary the permission, or impose or vary the requirement, in the way
       proposed, or
   (b) if the permission has been varied or the requirement imposed or varied, not
       to rescind the variation of the permission or the imposition or variation of the
       requirement,
       it must give A written notice.

(8) If, having considered any representations made by A, the regulator decides—
   (a) not to vary the permission, or impose or vary the requirement, in the way
       proposed,
   (b) to vary the permission or requirement in a different way, or impose a different
       requirement, or
   (c) to rescind a variation or requirement which has effect,
       it must give A written notice.

(9) A notice under subsection (7) must inform A of A'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 A of A'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 (2)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

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55Z Cancellation of Part 4A permission: procedure

(1) If a regulator proposes to cancel an authorised person's Part 4A permission otherwise than at the person's request, it must give the person a warning notice.

(2) If a regulator decides to cancel an authorised person's Part 4A permission otherwise than at the person's request, it must give the person a decision notice.
Notification

55Z1 Notification of ESMA

A regulator must notify ESMA of—

(a) the giving by it of a Part 4A permission to an investment firm, where the regulated activities to which the permission relates are investment services and activities,

(b) the giving by it of a Part 4A permission to a management company (as defined in section 237(2)), where the regulated activities to which the permission relates fall within paragraph 8 of Schedule 2,

(c) the cancellation by it of a Part 4A permission of a description falling within paragraph (b), or

(d) the cancellation by it of a Part 4A permission under section 55J(6), in reliance on any one or more of the conditions in section 55K(1)(b) to (d).

55Z2 Notification of EBA

(1) A regulator must notify EBA of—

(a) the giving by it of a Part 4A permission to a credit institution, where the regulated activity to which the permission relates falls within paragraph 4 of Schedule 2,

(b) the cancellation by it of a Part 4A permission of a description falling within paragraph (a) and the reasons for the cancellation; or

(c) the giving by it of a Part 4A permission to a credit institution whose head office is not in an EEA State.

(1A) A notification given in accordance with paragraph (a) or (c) of subsection (1) must contain a statement to the effect that the compensation scheme makes provision for cases where the credit institution concerned is unable, or likely to be unable, to satisfy claims against it.

(2) “Credit institution” has the meaning given in section 1H(8).
Financial Services and Markets Act 2000 (c. 8)
PART 4A – Permission to carry on regulated activities
CHAPTER 3 – Further provisions relating to FCA and PRA

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F209 S. 55Z2(1)(c) inserted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 7(c)

F210 S. 55Z2(1A) inserted (26.3.2015) by The Deposit Guarantee Scheme Regulations 2015 (S.I. 2015/486), regs. 1(2), 13(2)

Modifications etc. (not altering text)
C146 S. 55Z2 applied (with modifications) (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Permission and Approval) Order 2013 (S.I. 2013/440), arts. 1(1), 12(2)

Notification of the European bodies

A regulator must notify the European Commission and the European Banking Committee established by European Commission Decision 2004/10/EC of any authorisation granted for the purposes of the capital requirements directive to a credit institution whose head office is not in an EEA State.

References to the Tribunal

F211 S. 55Z2A inserted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 8

Textual Amendments
F211 S. 55Z2A inserted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 8

Textual Amendments
F212 S. 55Z3(3) inserted (27.2.2018) by The Financial Services and Markets Act 2000 (Benmarks Regulations 2018 (S.I. 2018/135), reg. 1(2), Sch. 2 para. 8

Modifications etc. (not altering text)

Right to refer matters to the Tribunal

(1) An applicant who is aggrieved by the determination of an application made under this Part may refer the matter to the Tribunal.

(2) An authorised person who is aggrieved by the exercise by either regulator of its own-initiative variation power or its own-initiative requirement power may refer the matter to the Tribunal.

Where there is a review under section 55XA(3) of a determination within section 55XA(1), subsection (1) applies only in relation to the determination made on the review.

Textual Amendments
Interpretation

55Z4 Interpretation of Part 4A

In this Part—

“own-initiative requirement power”, in relation to the FCA or the PRA, is to be read in accordance with section 55L(4) or 55M(4);

“own-initiative variation power”, in relation to the FCA or the PRA, is to be read in accordance with section 55J(12).]

PART V

PERFORMANCE OF REGULATED ACTIVITIES

Prohibition orders

56 Prohibition orders.

[F213](1) The FCA may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by—

(a) an authorised person,

(b) a person who is an exempt person in relation to that activity, or

(c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity.

Modifications etc. (not altering text)

C154 Pt. 5 modified (1.12.2001) by S.I. 2001/3592, arts. 1(2), 114(3)(a), 128(3)(a) (with art. 23(2))

C155 Pt. 5 modified (7.11.2018) by The EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1149), regs. 1(2), 23 (with regs. 4, 22, 26(1)(2))

C156 Pt. 5 modified by S.I. 2018/1149, reg. 69 (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), 4)
(1A) The PRA may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by—
   (a) a PRA-authorised person, or
   (b) a person who is an exempt person in relation to a PRA-regulated activity carried on by the person.

(2) A “prohibition order” is an order prohibiting the individual from performing a specified function, any function falling within a specified description or any function.

(3) A prohibition order may relate to—
   (a) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities;
   (b) all persons falling within subsection (3A) or a particular paragraph of that subsection or all persons within a specified class of person falling within a particular paragraph of that subsection.

(3A) A person falls within this subsection if the person is—
   (a) an authorised person,
   (b) an exempt person, or
   (c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to a regulated activity.

(4) An individual who performs or agrees to perform a function in breach of a prohibition order is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In proceedings for an offence under subsection (4) it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(6) A person falling within subsection (3A) must take reasonable care to ensure that no function of his, in relation to the carrying on of a regulated activity, is performed by a person who is prohibited from performing that function by a prohibition order.

(7) The regulator that has made a prohibition order may, on the application of the individual named in the order, vary or revoke it.

(7A) If—
   (a) the FCA proposes to vary or revoke a prohibition order, and
   (b) as a result of the proposed variation or revocation, an individual—
      (i) will no longer be prohibited from performing a function of interest to the PRA, or
      (ii) will be prohibited from performing such a function,
   the FCA must consult the PRA before varying or revoking the order.

(7B) A function is of interest to the PRA if it is performed in relation to a regulated activity carried on by—
   (a) a PRA-authorised person, or
   (b) a person who is an exempt person in relation to a PRA-regulated activity carried on by the person.

(7C) The PRA must consult the FCA before varying or revoking a prohibition order.
(9) “Specified” means specified in the prohibition order.

Textual Amendments

F213 S. 56(1)(1A) substituted for s. 56(1) (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 13(2), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F214 Words in s. 56(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 13(3), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F215 S. 56(3)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 13(4), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F216 S. 56(3A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 13(5), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F217 Words in s. 56(6) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 13(6), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F218 Words in s. 56(7) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 13(7)(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F219 Words in s. 56(7) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 13(7)(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F220 S. 56(7A)-(7C) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 13(8), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F221 S. 56(8) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 13(9), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C157 S. 56 amended (temp. from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, arts. 1(2), 3(3); S.I. 2001/3538, art. 2(1)
S. 56 modified (temp. from 31.10.2001) by S.I. 2001/3374, arts. 1, 11
S. 56 extended (1.12.2001) by S.I. 2001/2636, arts. 1(2)(b), 79(1); S.I. 2001/3538, art. 2(1)
C158 Ss. 56, 60 modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), art. 7
C160 S. 56(7) extended (1.12.2001) by S.I. 2001/3592, arts. 1(2), 55(5) (with art. 23(2))

Commencement Information

16 S. 56 wholly in force at 1.12.2001; s. 56 not in force at Royal Assent see s. 431(2); s. 56 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 56 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

57 Prohibition orders: procedure and right to refer to Tribunal.

(1) If [F222a regulator] proposes to make a prohibition order it must give the individual concerned a warning notice.

(2) The warning notice must set out the terms of the prohibition.
(3) If \([F223]a\) regulator decides to make a prohibition order it must give the individual concerned a decision notice.

(4) The decision notice must—
   - name the individual to whom the prohibition order applies;
   - set out the terms of the order; and
   - be given to the individual named in the order.

(5) A person against whom a decision to make a prohibition order is made may refer the matter to the Tribunal.

\([F224](6)\) If—
   - the FCA proposes to make a prohibition order, and
   - as a result of the proposed order, an individual will be prohibited from performing a function of interest to the PRA,

the FCA must consult the PRA before giving a warning notice under this section.

(7) A function is of interest to the PRA if it is performed in relation to a regulated activity carried on by—
   - a PRA-authorised person, or
   - a person who is an exempt person in relation to a PRA-regulated activity carried on by the person.

(8) The PRA must consult the FCA before giving a warning notice under this section.

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### Textual Amendments

**F222** Words in s. 57(1) substituted (1.4.2013) by [Financial Services Act 2012](https://www.legislation.gov.uk/ukpga/2012/21/contents) (c. 21), ss. 13(11), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

**F223** Words in s. 57(3) substituted (1.4.2013) by [Financial Services Act 2012](https://www.legislation.gov.uk/ukpga/2012/21/contents) (c. 21), ss. 13(11), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

**F224** S. 57(6)-(8) inserted (1.4.2013) by [Financial Services Act 2012](https://www.legislation.gov.uk/ukpga/2012/21/contents) (c. 21), ss. 13(12), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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### Modifications etc. (not altering text)

**C162** S. 57 excluded (1.12.2001) by S.I. 2001/3592, arts. 1(2), 110(3) (with art. 23(2))


**C165** S. 57(1) extended (1.12.2001) by S.I. 2001/3592, arts. 1(2), 55(1) (with art. 23(2))

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### Commencement Information

**17** S. 57 wholly in force at 1.12.2001; s. 57 not in force at Royal Assent see s. 431(2); s. 57 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 57 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)
58 Applications relating to prohibitions: procedure and right to refer to Tribunal.

(1) This section applies to an application for the variation or revocation of a prohibition order.

(2) If the appropriate regulator decides to grant the application, it must give the applicant written notice of its decision.

(3) If the appropriate regulator proposes to refuse the application, it must give the applicant a warning notice.

(4) If the appropriate regulator decides to refuse the application, it must give the applicant a decision notice.

(5) If the appropriate regulator gives the applicant a decision notice, he may refer the matter to the Tribunal.

[F226 (6) The appropriate regulator” means the regulator to which the application is made.]

Textual Amendments
F225 Words in s. 58(2)-(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 2(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F226 S. 58(6) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 2(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)
C166 S. 58 excluded (1.12.2001) by S.I. 2001/3592, arts. 1(2), 110(3) (with art. 23(2))

Commencement Information
18 S. 58 wholly in force at 1.12.2001; s. 58 not in force at Royal Assent see s. 431(2); s. 58 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 58 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

Approval

59 Approval for particular arrangements.

(1) An authorised person (“A”) must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by A in relation to the carrying on by A of a regulated activity, unless that person is acting in accordance with an approval given by the appropriate regulator under this section.

(2) An authorised person (“A”) must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by a contractor of A in relation to the carrying on by A of a regulated activity, unless that person is acting in accordance with an approval given by the appropriate regulator under this section.
“Controlled function”—
(a) in relation to the carrying on of a regulated activity by a PRA-authorised person, means a function of a description specified in rules made by the FCA or the PRA, and
(b) in relation to the carrying on of a regulated activity by any other authorised person, means a function of a description specified in rules made by the FCA.

(4) “The appropriate regulator”—
(a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA, and
(b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA with the consent of the FCA.

The PRA may specify a description of function under subsection (3)(a) only if, in relation to the carrying on of a regulated activity by a PRA-authorised person, it is satisfied that the function is a senior management function as defined in section 59ZA.

If the FCA is satisfied that a function of a description specified in rules made by the FCA under subsection (3)(a) or (b) is a senior management function as defined in section 59ZA, the FCA must designate the function in the rules as a senior management function.

If a function of a description specified in rules made by the PRA under subsection (3)(a) is a controlled function in relation to the carrying on of a regulated activity by a relevant authorised person, the PRA must designate the function in the rules as a senior management function.

For the meaning of “relevant authorised person”, see section 71A.

A regulator may not exercise the power in subsection (3) so as to provide for a function to be a controlled function in relation to the carrying on of the regulated activity of managing an AIF by an AIFM which—
(a) is also an AIF;
(b) does not manage any AIF other than itself;
(c) is a body corporate; and
(d) is not a collective investment scheme.

Neither subsection (1) nor subsection (2) applies to an arrangement which allows a person to perform a function if the question of whether he is a fit and proper person to perform the function is reserved under any of the single market directives or the emission allowance auctioning regulation to an authority in a country or territory outside the United Kingdom.

“Arrangement”—
(a) means any kind of arrangement for the performance of a function of $A$ which is entered into by $A$ or any contractor of his with another person; and

(b) includes, in particular, that other person’s appointment to an office, his becoming a partner or his employment (whether under a contract of service or otherwise).
(1) This section has effect for determining whether a function is for the purposes of section 59(6) or (6A) a senior management function.

(2) A function is a “senior management function”, in relation to the carrying on of a regulated activity by an authorised person, if—
   (a) the function will require the person performing it to be responsible for managing one or more aspects of the authorised person's affairs, so far as relating to the activity, and
   (b) those aspects involve, or might involve, a risk of serious consequences—
      (i) for the authorised person, or
      (ii) for business or other interests in the United Kingdom.

(3) In subsection (2)(a) the reference to managing one or more aspects of an authorised person's affairs includes a reference to taking decisions, or participating in the taking of decisions, about how one or more aspects of those affairs should be carried on.
59A Specifying functions as controlled functions: supplementary

(1) The FCA must—

(a) keep under review the exercise of its power under section 59(3)(a) to specify any senior management function as a controlled function, and

(b) exercise that power in a way that it considers will minimise the likelihood that approvals fall to be given by both the FCA and the PRA in respect of the performance by a person of senior management functions in relation to the carrying on of a regulated activity by the same PRA-authorised person.

(2) The FCA and the PRA must each consult the other before exercising any power under section 59(3)(a).

(3) Any reference in this section to the exercise of a power includes its exercise by way of amendment or revocation of provision previously made in the exercise of the power.

[“Senior management function” has the meaning given by section 59ZA.]

(4) “Approval” means an approval under section 59.

(5) Any expression which is used both in this section and section 59 has the same meaning in this section as in that section.

59AB Specifying functions as controlled functions: transitional provision

(1) In relation to rules made by the FCA or the PRA under section 59, the power conferred by section 137T(c) to make transitional provision includes in particular power—

(a) to provide for anything done under this Part in relation to controlled functions of a particular description to be treated as having been done in relation to controlled functions of a different description;
(b) to provide for anything done under this Part (including any application or order made, any requirement imposed and any approval or notice given) to cease to have effect, to continue to have effect, or to continue to have effect with modifications, or subject to time limits or conditions;

c) to provide for rules made by the regulator making the rules under section 59 to apply with modifications;

d) to make saving provision.

(2) The Treasury may by regulations make whatever incidental, consequential, transitional, supplemental or saving provision the Treasury consider appropriate in connection with the making of rules by the FCA or the PRA under section 59.

(3) Regulations under subsection (2) may—

(a) confer functions on the FCA or the PRA (including the function of making rules);

(b) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act).

Textual Amendments

F242 Ss. 59A, 59B inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 14(2), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F245 S. 59AB inserted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), ss. 22(2), 41(3); S.I. 2016/627, reg. 2(1)(p)

59B Role of FCA in relation to PRA decisions

(1) The FCA may arrange with the PRA that in such cases as may be described in the arrangements the PRA may give approval under section 59 without obtaining the consent of the FCA.

(2) Arrangements under this section must be in writing, and must specify the date on which they come into force.

(3) The regulators must publish any arrangements under this section in such manner as they think fit.

(4) Section 59(4)(b) has effect subject to any arrangements in force under this section.

Textual Amendments

F242 Ss. 59A, 59B inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 14(2), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

60 Applications for approval.

(1) An application for the appropriate regulator's approval under section 59 may be made by the authorised person concerned.

(2) The application must—
(a) be made in such manner as the appropriate regulator may direct; and
(b) contain, or be accompanied by, such information as the appropriate regulator may reasonably require.

(2A) If—
(a) the application is for the approval of a person to perform a designated senior management function, and
(b) the authorised person concerned is a relevant authorised person (see section 71A),

the appropriate regulator must require the application to contain, or be accompanied by, a statement setting out the aspects of the affairs of the authorised person concerned which it is intended that the person will be responsible for managing in performing the function.

(2B) A statement provided under subsection (2A) is known as a “statement of responsibilities”.

(2C) In subsection (2A) “designated senior management function” means a function designated as a senior management function under section 59(6A) or (6B).

(3) At any time after the application is received and before it is determined, the appropriate regulator may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application or, as the case requires, to decide whether to give consent.

(4) The appropriate regulator may require an applicant to present information which he is required to give under this section in such form, or to verify it in such a way, as the appropriate regulator may direct.

(5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(6) “The authorised person concerned” includes a person who has applied for permission under Part 4A and will be the authorised person concerned if permission is given.

(6A) Subsection (6) applies to references to a relevant authorised person as it applies to references to the authorised person concerned.

(7) The PRA must consult the FCA before—
(a) giving a direction under subsection (2)(a) in relation to a class of applicants, or
(b) imposing a requirement under subsection (2)(b) on a class of applicants.

(8) The PRA must as soon as practicable notify the FCA of the receipt or withdrawal of an application to the PRA, unless the case is one in which by virtue of arrangements under section 59B the consent of the FCA is not required.

(9) “The appropriate regulator”—
(a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA;
(b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA, and for the purposes of subsection (3) also includes the FCA in cases where the consent of the FCA is required.
Textual Amendments

F246 Words in s. 60 substituted (24.1.2013 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. 5 para. 4(1) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

S. 60(2A)-(2C) inserted (25.7.2014 for specified purposes, 7.3.2016 in so far as not already in force) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 20(2), 148(5); S.I. 2014/1819, art. 2(3); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

Ss. 56, 60 modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), art. 7

C174 S. 60 amended (temp. from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, arts. 1(2), 3(3); S.I. 2001/3538, art. 2(1)

S. 60 modified (temp. from 31.10.2001) by S.I. 2001/3374, arts. 1, 11

S. 60: “the authorised person concerned” extended (1.12.2001) by S.I. 2001/2511, reg. 1(1), 10; S.I. 2001/3538, art. 2(1)

S. 60 extended (1.12.2001) by S.I. 2001/3592, arts. 1(2), 50(1), 51(1), 53(1) (with art. 23(2))

C175 Ss. 56, 60 modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), art. 7


C178 S. 60(3) extended (1.12.2001) by S.I. 2001/3592, arts. 1(2), 50(5) (with art. 23(2))
110

Part V – Performance of Regulated Activities

CHAPTER 3 – Further provisions relating to FCA and PRA

Statutory Instrument Information

S. 60 wholly in force at 1.12.2001; s. 60 not in force at Royal Assent see s. 431(2); s. 60(2)(4) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 60 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 60 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

[Financial Services (Banking Reform) Act 2013 (c. 33), ss. 21, 148(5)]

F256

60A Vetting of candidates by [F257 relevant] authorised persons

110

(1) Before[F258 an] authorised person may make an application for a regulator's approval under section 59, the authorised person must be satisfied that the person in respect of whom the application is made (“the candidate”) is a fit and proper person to perform the function to which the application relates.

(2) In deciding that question, the authorised person must have regard, in particular, to whether the candidate, or any person who may perform a function on the candidate's behalf—

(a) has obtained a qualification,
(b) has undergone, or is undergoing, training,
(c) possesses a level of competence, or
(d) has the personal characteristics,

required by general rules made by the regulator in relation to persons performing functions of the kind to which the application relates.

(3) [F259 For the meaning of “relevant authorised person”, see section 71A.]

Textual Amendments

F256 S. 60A inserted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 21, 148(5); S.I. 2015/490, art. 2(1)(c) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F257 Word in s. 60A heading omitted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by virtue of Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 5(2); S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)

F258 Word in s. 60A(1) substituted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 5(3); S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)

F259 S. 60A(3) omitted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by virtue of Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 5(4); S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)

61 Determination of applications.

[F260(1) The regulator to which an application for approval is made under section 60 may grant the application only if—

(a) it is satisfied that the person in respect of whom the application is made (“the candidate”) is a fit and proper person to perform the function to which the application relates, or

(b) in a case where the application is for approval to perform a designated senior management function[F261 in relation to the carrying on of a regulated activity by a relevant authorised person (a “relevant senior”)]
management application”), it is satisfied that the condition in paragraph (a) will be met if the application is granted subject to one or more conditions (as to which, see subsection (2B)).

(2) In determining the application, the regulator may have regard (among other things) to whether the candidate, or any person who may perform a function on his behalf—
   (a) has obtained a qualification,
   (b) has undergone, or is undergoing, training,
   (c) possesses a level of competence,
   (d) has the personal characteristics,
required by general rules made by that regulator in relation to persons performing functions of the kind to which the application relates.

(2A) Subsections (1) and (2) apply in relation to the giving by the FCA of any required consent as they apply in relation to the grant of the application.

(2B) The regulator to which a relevant senior management application is made under section 60 may in particular—
   (a) grant the application subject to any conditions that the regulator considers appropriate, and
   (b) grant the application so as to give approval only for a limited period.

(2C) A regulator may exercise the power under paragraph (a) or (b) of subsection (2B) only if—
   (a) where the regulator is the FCA, it appears to the FCA that it is desirable to do so in order to advance one or more of its operational objectives, and
   (b) where the regulator is the PRA, it appears to the PRA that it is desirable to do so in order to advance any of its objectives.

(2D) Consent given by the FCA for the granting of the application may be conditional on the manner in which the PRA exercises its power under subsection (2B).

(3) The regulator to which an application is made under section 60 must, before the end of the period for consideration, determine whether—
   (a) to grant the application; or
   (b) to give a warning notice under section 62(2).

(3ZA) In the case of a relevant senior management application, the reference in subsection (3)(a) to granting the application is a reference to granting it without imposing conditions or limiting the period for which the approval has effect.

(3A) The period for consideration—
   (a) in any case where the application under section 60 is made by a person applying for permission under Part 4A (see section 60(6)), means whichever ends last of—
      (i) the period within which the application for that permission must be determined under section 55V(1) or (2), and
      (ii) the period of 3 months beginning with the date on which the regulator receives the application under section 60, and
   (b) in any other case, means the period of 3 months beginning with the date on which the regulator receives the application under section 60.
(4) If a regulator imposes a requirement under section 60(3), the period for consideration stops running on the day on which the requirement is imposed but starts running again—
(a) on the day on which the required information is received by a regulator; or
(b) if the information is not provided on a single day, on the last of the days on which it is received by a regulator.

(5) A person who makes an application under section 60 may withdraw his application by giving written notice to the regulator to which the application was made at any time before the regulator determines it, but only with the consent—
(a) the candidate; and
(b) the person by whom the candidate is to be retained to perform the function concerned, if not the applicant.

(6) In this section—
(a) “designated senior management function” means a function designated as a senior management function under section 59(6A) or (6B);
(b) any reference to a relevant authorised person includes a reference to a person who has applied for permission under Part 4A and will be a relevant authorised person if permission is given.

(7) For the meaning of “relevant authorised person”, see section 71A.]
CHAPTER 3 – Further provisions relating to FCA and PRA
Part V – Performance of Regulated Activities

Financial Services and Markets Act 2000 (c. 8)

Commencement Information

Status: This version of this Act contains provisions that are prospective.
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F269 S. 61(2B)-(2D) inserted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 23(4), 148(5); S.I. 2015/490, art. 2(1)(c) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F270 Word in s. 61(2B) omitted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by virtue of Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 6(3); S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)

F271 Words in s. 61(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 5(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F272 S. 61(3ZA) inserted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 23(5), 148(5); S.I. 2015/490, art. 2(1)(c) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F273 Word in s. 61(3ZA) omitted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by virtue of Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 6(3); S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)

F274 S. 61(3A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 5(6) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F275 Words in s. 61(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 5(7) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F276 Words in s. 61(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 5(8)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F277 Word in s. 61(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 5(8)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F278 S. 61(6)(7) inserted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 23(6), 148(5); S.I. 2015/490, art. 2(1)(c) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F279 S. 61(6)(7) omitted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by virtue of Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 6(4); S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)

Modifications etc. (not altering text)


C181 S. 61(3) modified (1.12.2001) by S.I. 2001/3592, arts. 1(2), 49(3), 53(2) (with art. 23(2))


C184 S. 61(3) excluded (1.4.2017 for specified purposes) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (S.I. 2017/488), arts. 1(2), 15(2) (with art. 16)

C185 S. 61(3) excluded (1.4.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (S.I. 2017/488), arts. 1(2), 15(2) (with art. 16)

Commencement Information

I11 S. 61 wholly in force at 1.12.2001; s. 61 not in force at Royal Assent see s. 431(2); s. 61 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 61 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)
62 Applications for approval: procedure and right to refer to Tribunal.

(1) [F280] If the regulator to which an application is made under section 60 (“an application”) decides to grant the application, it must give written notice of its decision to each of the interested parties.

(2) If [F281] the regulator to which an application is made proposes to refuse [F282] the application [F283], or to grant the application subject to conditions or for a limited period (or both), it must give a warning notice to each of the interested parties.

(3) If [F281] the regulator to which an application is made decides to refuse [F282] the application [F284], or to grant the application subject to conditions or for a limited period (or both), it must give a decision notice to each of the interested parties.

(4) If [F281] the regulator to which an application is made decides to refuse [F282] the application [F285], or to grant the application subject to conditions or for a limited period (or both), each of the interested parties may refer the matter to the Tribunal.

(5) “The interested parties”, in relation to an application, are—

(a) the applicant;

(b) the person in respect of whom the application is made (“A”); and

(c) the person by whom A’s services are to be retained, if not the applicant.

Textual Amendments

F280 Words in s. 62(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 6(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F281 Words in s. 62(2)-(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 6(3)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F282 Words in s. 62(2)-(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 6(3)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F283 Words in s. 62(2) inserted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 23(7)(a), 148(5); S.I. 2015/490, art. 2(1)(c) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F284 Words in s. 62(3) inserted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 23(7)(b), 148(5); S.I. 2015/490, art. 2(1)(c) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F285 Words in s. 62(4) inserted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 23(7)(c), 148(5); S.I. 2015/490, art. 2(1)(c) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

Modifications etc. (not altering text)


Commencement Information

112 S. 62 wholly in force at 1.12.2001; s. 62 not in force at Royal Assent see s. 431(2); s. 62 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 62 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)
Changes in responsibilities of senior managers

(1) This section applies where—
   (a) an authorised person has made an application to the appropriate regulator for approval under section 59 for a person to perform a designated senior management function,
   (b) the application contained, or was accompanied by, a statement of responsibilities under section 60(2A), and
   (c) the application has been granted.

(2) If, since the granting of the application, there has been any significant change in the aspects of the authorised person’s affairs which the person is responsible for managing in performing the function, the authorised person must provide the appropriate regulator with a revised statement of responsibilities.

(3) The appropriate regulator may require the authorised person—
   (a) to provide information which the person is required to give under this section in such form as the appropriate regulator may direct, or
   (b) to verify such information in such a way as the appropriate regulator may direct.

(4) In this section—
   “the appropriate regulator” has the same meaning as in section 60(F287), except that the reference in section 60(9)(b) to subsection (3) is to be treated as a reference to subsection (2) of this section;
   “designated senior management function” means a function designated as a senior management function under section 59(6A) or (6B).]

Textual Amendments

F286 S. 62A inserted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 24, 148(5); S.I. 2015/490, art. 2(1)(c) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))
F287 Words in s. 62A(4) inserted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), ss. 23(2), 41(3); S.I. 2016/627, reg. 2(1)(q)
F288 Words in s. 62A(4) omitted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by virtue of Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 7; S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)

Withdrawal of approval.

(1) The FCA may withdraw an approval under section 59 given by the FCA or the PRA in relation to the performance by a person of a function if the FCA considers that the person is not a fit and proper person to perform the function.

(1A) The PRA may withdraw an approval under section 59 in relation to the performance by a person (“A”) of a function if—
   (a) the PRA gave the approval, or the FCA gave the approval and the function is a relevant senior management function performed in relation to the carrying on by a PRA-authorised person of a regulated activity, and
   (b) the PRA considers that A is not a fit and proper person to perform the function.
(1B) In subsection (1A) “relevant senior management function” means a function which the PRA is satisfied is a senior management function as defined in section 59ZA (whether or not the function has been designated as such by the FCA).

(1C) Before one regulator withdraws an approval given by the other regulator, it must consult the other regulator.

(2) When considering whether to withdraw an approval, the FCA or the PRA may take into account any matter which could be taken into account in considering an application made under section 60 in respect of the performance of the function to which the approval relates (on the assumption, if it is not the case, that the application was one falling to be considered by it).

(2A) At least once a year each relevant authorised person must, in relation to every person in relation to whom an approval has been given on the application of the authorised person—

(a) consider whether there are any grounds on which a regulator could withdraw the approval under this section, and

(b) if the authorised person is of the opinion that there are such grounds, notify the regulator of those grounds.

(3) If a regulator proposes to withdraw an approval, it must give each of the interested parties a warning notice.

(4) If a regulator decides to withdraw an approval, it must give each of the interested parties a decision notice.

(5) If a regulator decides to withdraw an approval, each of the interested parties may refer the matter to the Tribunal.

(6) “The interested parties”, in relation to an approval, are—

(a) the person on whose application it was given (“A”);

(b) the person in respect of whom it was given (“B”); and

(c) the person by whom B’s services are retained, if not A.

Textual Amendments

F289 S. 63(1)-(1C) substituted for s. 63(1) (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 14(3), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F290 Words in s. 63(1A)(a) substituted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 3(2); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F291 S. 63(1B) substituted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 3(3); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F292 Words in s. 63(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 7(2)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F293 Words in s. 63(2) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 7(2)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F294 S. 63(2A) inserted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 25, 148(5); S.I. 2015/490, art. 2(1)(c) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))
F295  Word in s. 63(2A) omitted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by virtue of Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 8(a); S.I. 2018/990, reg. 2(1)(2) (with regs. 3-6)

F296  Words in s. 63(2A) omitted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by virtue of Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 8(b); S.I. 2018/990, reg. 2(1)(2) (with regs. 3-6)

F297  Words in s. 63(3)-(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 7(3)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F298  Words in s. 63(3)-(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 7(3)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)
C188  S. 63 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), arts. 1(2), 34, Sch. paras. 1, 3
C191  S. 63(1)(3)-(6) excluded (1.12.2001) by S.I. 2001/3592, arts. 1(2), 61(2) (with art. 23(2))
C192  S. 63(3) extended (1.12.2001) by S.I. 2001/3592, arts. 1(2), 52(2) (with art. 23(2))
C193  S. 63(4) modified (1.12.2001) by S.I. 2001/3592, arts. 1(2), 75(2) (with art. 23(2))

Commencement Information
I13  S. 63 wholly in force at 1.12.2001; s. 63 not in force at Royal Assent see s. 431(2); s. 63 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 63 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

variation of senior manager's approval at request of [relevant] authorised person

(1) Where an [approval] under section 59 has effect subject to conditions, the authorised person concerned may apply to the appropriate regulator to vary the approval by—
(a) varying a condition,
(b) removing a condition, or
(c) imposing a new condition.

(1A) Where an approval under section 59 has effect for a limited period, the authorised person concerned may apply to the appropriate regulator to vary the approval by—
(a) varying the period for which the approval is to have effect, or
(b) removing the limit on the period for which the approval is to have effect.

(2) “The appropriate regulator”—
(a) in the case of an application for variation of an approval in a way described in subsection (1)(a) or (b), means

variation of senior manager's approval at request of [relevant] authorised person

(1) Where an [approval] under section 59 has effect subject to conditions, the authorised person concerned may apply to the appropriate regulator to vary the approval by—
(a) varying a condition,
(b) removing a condition, or
(c) imposing a new condition.

(1A) Where an approval under section 59 has effect for a limited period, the authorised person concerned may apply to the appropriate regulator to vary the approval by—
(a) varying the period for which the approval is to have effect, or
(b) removing the limit on the period for which the approval is to have effect.

(2) “The appropriate regulator”—
(a) in the case of an application for variation of an approval in a way described in subsection (1)(a) or (b), means

[whichever of the FCA or the PRA imposed the condition concerned]
(ii) if the condition has been varied before (under this section or section 63ZB), whichever of the FCA or the PRA last varied it;  

(b) in the case of an application for variation of an approval in the way described in subsection (1)(c), means the regulator who gave the approval.

(c) in the case of an application for variation of an approval in a way described in subsection (1A), means—

(i) whichever of the FCA or the PRA imposed the limit on the period for which the approval has effect, or

(ii) if the limit has been varied before (under this section or section 63ZB), whichever of the FCA or the PRA last varied it.

(3) The PRA must consult the FCA before determining an application under this section, unless the application relates to the variation or removal of a condition or a limit on the period for which an approval has effect, which was imposed (or last varied) by the PRA in exercise of its power under section 63ZB.

(4) The regulator to which an application is made under this section must, before the end of the period for consideration, determine whether—

(a) to grant the application; or

(b) to give a warning notice under section 62(2).

(5) “The period for consideration” means the period of 3 months beginning with the date on which the regulator receives the application.

(6) The FCA may refuse an application under this section if it appears to the FCA that it is desirable to do so in order to advance one or more of its operational objectives.

(7) The PRA may refuse an application under this section if it appears to the PRA that it is desirable to do so in order to advance any of its objectives.

(7A) An application may not be made under this section for the variation or removal of a condition, or a limit on the period for which an approval has effect, where the condition or limit has effect by virtue of section 66.

(8) The following provisions apply to an application made under this section for variation of an approval as they apply to an application for approval made under section 60—section 60(2) to (8), section 61(4) and (5), section 62 but as if in subsections (2), (3) and (4) the words “, or to grant the application subject to conditions or for a limited period (or both)” were omitted.

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**Textual Amendments**

F299 Ss. 63ZA-63ZC inserted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 26, 148(5); S.I. 2015/490, art. 2(1)(c) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F300 Word in s. 63ZA heading omitted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by virtue of Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 9; S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)

F301 Words in s. 63ZA(1A) substituted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), ss. 23(3)(a), 41(3); S.I. 2016/627, reg. 2(1)(q)

F302 S. 63ZA(1A) inserted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), ss. 23(3)(b), 41(3); S.I. 2016/627, reg. 2(1)(q)
63ZB Variation of senior manager’s approval on initiative of regulator

(1) The FCA may vary an approval under section 59 given by the FCA or the PRA for the performance of a designated senior management function in relation to the carrying on of a regulated activity by an authorised person if the FCA considers that it is desirable to do so in order to advance one or more of its operational objectives.

(2) The PRA may vary an approval under section 59 for the performance of a designated senior management function in relation to the carrying on of a regulated activity by an authorised person if—

(a) either—

(i) the PRA gave the approval, or

(ii) the FCA gave the approval and the relevant authorised person is a PRA-authorised person, and

(b) the PRA considers that it is desirable to do so in order to advance any of its objectives.

(3) A regulator may vary an approval by—

(a) imposing a condition,

(b) varying a condition,

(c) removing a condition,

(d) where the approval has effect for an unlimited period, limiting the period for which the approval is to have effect,

(e) where the approval has effect for a limited period, varying that period or removing the limit on the period for which the approval is to have effect.

(4) Before one regulator varies an approval given by the other regulator, it must consult the other regulator.

(4A) Before one regulator varies an approval which was last varied by the other regulator, it must consult the other regulator.

(5) In this section “designated senior management function” means a function designated as a senior management function under section 59(6A) or (6B).

(6) For the meaning of “relevant authorised person”, see section 71A.
Exercise of power under section 63ZB: procedure

(1) This section applies to an exercise, by either regulator, of the power to vary an approval under section 63ZB.

(2) A variation takes effect—
   (a) immediately, if the notice given under subsection (4) states that that is the case,
   (b) on such date as is 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.

(3) A variation may be expressed to take effect immediately (or on a specified date) only if the regulator concerned, having regard to the ground on which it is exercising the power to vary, reasonably considers that it is necessary for the variation to take effect immediately (or on that date).

(4) If either regulator proposes to vary an approval or varies an approval with immediate effect, it must give each of the interested parties written notice.

(5) The notice must—
   (a) give details of the variation,
   (b) state the regulator’s reasons for the variation,
   (c) inform the interested parties that each of them may make representations to the regulator within such period as may be specified in the notice (whether or not any of the interested parties has referred the matter to the Tribunal),
   (d) inform the interested parties of when the variation takes effect, and
(c) inform the interested parties of the right of each of them to refer the matter to the Tribunal.

(6) “The interested parties”, in relation to an approval, are—
(a) the person on whose application it was given (“A”),
(b) the person in respect of whom it was given (“B”), and
(c) the person by whom B’s services are retained, if not A.

(7) The regulator giving the notice may extend the period allowed under the notice for making representations.

(8) If having considered the representations made by the interested parties, the regulator decides—
(a) to vary the approval, or
(b) if the variation has taken effect, not to rescind it,
it must give each of the interested parties written notice.

(9) If having considered the representations made by the interested parties, the regulator decides—
(a) not to vary the approval,
(b) to vary the approval in a different way, or
(c) if the variation has taken effect, to rescind it,
it must give each of the interested parties written notice.

(10) A notice under subsection (8) must inform the interested parties of the right of each of them to refer the matter to the Tribunal.

(11) A notice under subsection (9)(b) must comply with subsection (5).

(12) If a notice informs the interested parties of the right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(13) For the purposes of subsection (2)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

(14) “Approval” means an approval under section 59.

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**Textual Amendments**

F299 Ss. 63ZA-63ZC inserted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 26, 148(5); S.I. 2015/490, art. 2(1)(c) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F317 63ZD Statement of policy relating to conditional approval and variation

(1) Each regulator must prepare and issue a statement of its policy with respect to—
(a) its giving of approval under section 59 subject to conditions or for a limited period only, and
(b) its variation under section 63ZA or 63ZB of an approval given under section 59.

(2) A regulator may at any time alter or replace a statement issued by it under this section.
(3) If a statement issued under this section is altered or replaced by a regulator, the regulator must issue the altered or replacement statement.

(4) A statement issued 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.

(5) A regulator may charge a reasonable fee for providing a person with a copy of a statement published under this section.

(6) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

### Textual Amendments

**F317** Ss. 63ZD, 63ZE inserted (25.7.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 27, 148(5); S.I. 2014/1819, art. 2(1)(b)

### 63ZE Statement of policy: procedure

(1) Before issuing a statement of policy under section 63ZD, a regulator (“the issuing regulator”) must—
   
   (a) consult the other regulator, 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 duty of the FCA to consult the PRA under subsection (1)(a) applies only in so far as the statement of policy applies to persons whose approval under section 59 relates to the performance of a function designated by the FCA as a senior management function under section 59(6A) in relation to the carrying on by PRA-authorised persons of regulated activities.

(3) The draft must be accompanied by notice that representations about the proposal may be made to the issuing regulator within a specified time.

(4) Before issuing the proposed statement, the issuing regulator must have regard to any representations made to it in accordance with subsection (3).

(5) 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 (3), and
   
   (b) its response to them.

(6) If the statement differs from the draft published under subsection (1) in a way which is in the opinion of the issuing regulator significant, the issuing regulator—
   
   (a) must before issuing it carry out any consultation required by subsection (1) (a), and
   
   (b) must (in addition to complying with subsection (5)) publish details of the difference.

(7) The issuing regulator may charge a reasonable fee for providing a person with a draft published under subsection (1)(b).
(8) This section also applies to a proposal to alter or replace a statement.

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**Textual Amendments**

F317 Ss. 63ZD, 63ZE inserted (25.7.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 27, 148(5); S.I. 2014/1819, art. 2(1)(b)

F318 Ss. 63A-63D and preceding cross-heading inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 11, 26(2)(b)

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### 63A Power to impose penalties

(1) If the [F319]appropriate regulator] is satisfied that—
   
   (a) a person ("P") has at any time performed a controlled function without approval, and
   
   (b) at that time P knew, or could reasonably be expected to have known, that P was performing a controlled function without approval, it may impose a penalty on P of such amount as it considers appropriate.

(2) For the purposes of this section P performs a controlled function without approval at any time if at that time—
   
   (a) P performs a controlled function under an arrangement entered into by an authorised person ("A"), or by a contractor of A, in relation to the carrying on by A of a regulated activity; and
   
   (b) P, when performing the function, is not acting in accordance with an approval given under section 59.

(3) The [F319]appropriate regulator] may not impose a penalty 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 concerned under section 63B(1).

(4) “The limitation period” means the [F321]relevant period] beginning with the first day on which the [F319]appropriate regulator] knew that the person concerned had performed a controlled function without approval.

(5) For this purpose the [F319]appropriate regulator] is to be treated as knowing that a person has performed a controlled function without approval if it has information from which that can reasonably be inferred.

F332 (5A) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA, and

F323 (5B) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA.

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**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes
(a) in relation to the performance of a controlled function without approval before the day on which this subsection comes into force, the period of 3 years, and

(b) in relation to the performance of a controlled function without approval on or after that day, the period of 6 years.

(6) Any expression which is used both in this section and section 59 has the same meaning in this section as in that section.

Textual Amendments

F319 Words in s. 63A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 8(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F320 S. 63A(2)(b) substituted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 4; S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F321 Words in s. 63A(4) substituted (25.7.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 28(2), 148(5); S.I. 2014/1819, art. 2(1)(c)

F322 S. 63A(5A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 8(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F323 S. 63A(5B) inserted (25.7.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 28(3), 148(5); S.I. 2014/1819, art. 2(1)(c)

F324 Word in s. 63A(6) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 8(c) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)


63B Procedure and right to refer to Tribunal

(1) If a regulator proposes to impose a penalty on a person under section 63A, it must give the person a warning notice.

(2) A warning notice must state the amount of the penalty.

(3) If a regulator decides to impose a penalty on a person under section 63A, it must give the person a decision notice.

(4) A decision notice must state the amount of the penalty.

(5) If a regulator decides to impose a penalty on a person under section 63A, the person may refer the matter to the Tribunal.

Textual Amendments

F325 Words in s. 63B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 9 (with Sch. 20); S.I. 2013/423, art. 3, Sch.
63C Statement of policy

(1) each regulator must prepare and issue a statement of its policy with respect to—
   (a) the imposition of penalties under section 63A; and
   (b) the amount of penalties under that section.

(2) each regulator's policy in determining whether a penalty should be imposed, and what the amount of a penalty should be, must include having regard to—
   (a) the conduct of the person on whom the penalty is to be imposed;
   (b) the extent to which the person could reasonably be expected to have known that a controlled function was performed without approval;
   (c) the length of the period during which the person performed a controlled function without approval; and
   (d) whether the person on whom the penalty is to be imposed is an individual.

(3) each regulator's policy in determining whether a penalty should be imposed on a person must also include having regard to the appropriateness of taking action against the person instead of, or in addition to, taking action against an authorised person.

(4) A statement issued under this section must include an indication of the circumstances in which the regulator that has issued the statement would expect to be satisfied that a person could reasonably be expected to have known that the person was performing a controlled function without approval.

(5) A regulator may at any time alter or replace a statement issued by it under this section.

(6) If a statement issued under this section is altered or replaced by a regulator, the regulator must issue the altered or replaced statement.

(7) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(8) A statement issued under this section must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(9) The regulator may charge a reasonable fee for providing a person with a copy of the statement.

(10) In exercising, or deciding whether to exercise, its power under section 63A in the case of any particular person, a regulator must have regard to any statement of policy published by it under this section and in force at a time when the person concerned performed a controlled function without approval.
Textual Amendments

F326 Words in s. 63C(1) substituted (24.1.2013 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. 5 para. 10(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F327 Words in s. 63C(2) substituted (24.1.2013 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. 5 para. 10(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F328 Words in s. 63C(3) substituted (24.1.2013 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. 5 para. 10(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F329 Words in s. 63C(4) substituted (24.1.2013 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. 5 para. 10(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F330 Words in s. 63C(5) substituted (24.1.2013 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. 5 para. 10(5)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F331 Words in s. 63C(5) inserted (24.1.2013 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. 5 para. 10(5)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F332 Words in s. 63C(6) substituted (24.1.2013 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. 5 para. 10(6) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F333 Words in s. 63C(7) substituted (24.1.2013 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. 5 para. 10(7) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F334 Words in s. 63C(8) inserted (24.1.2013 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. 5 para. 10(8)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F335 Words in s. 63C(8) substituted (24.1.2013 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. 5 para. 10(8)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F336 Words in s. 63C(9) substituted (24.1.2013 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. 5 para. 10(9) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F337 Words in s. 63C(10) substituted (24.1.2013 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. 5 para. 10(10)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F338 Words in s. 63C(10) inserted (24.1.2013 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. 5 para. 10(10)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)


63D Statement of policy: procedure

(1) Before \[F339\] a regulator issues \[F340\] a statement under section 63C, the \[F341\] regulator must publish a draft of the proposed statement in the way appearing to the \[F342\] 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 \[F343\] regulator within a specified time.

(3) Before issuing the proposed statement, the \[F344\] regulator must have regard to any representations made to it in accordance with subsection (2).

(4) If the \[F345\] 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 (1) in a way which is, in the opinion of the \[F346\] regulator, significant, the \[F347\] regulator must (in addition to complying with subsection (4)) publish details of the difference.

(6) \[F348\] A regulator may charge a reasonable fee for providing a person with a copy of a draft published \[F349\] by it under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.]

Textual Amendments

F339 Words in s. 63D(1) substituted (24.1.2013 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. 5 para. 11(2)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F340 Word in s. 63D(1) substituted (24.1.2013 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. 5 para. 11(2)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F341 Word in s. 63D(2) substituted (24.1.2013 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. 5 para. 11(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F342 Word in s. 63D(3) substituted (24.1.2013 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. 5 para. 11(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F343 Word in s. 63D(4) substituted (24.1.2013 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. 5 para. 11(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F344 Word in s. 63D(5) substituted (24.1.2013 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. 5 para. 11(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F345 Words in s. 63D(6) substituted (24.1.2013 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. 5 para. 11(4)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F346 Words in s. 63D(6) inserted (24.1.2013 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. 5 para. 11(4)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
63E Certification of employees by [F348 relevant] authorised persons

(1) [F349 An] authorised person (“A”) must take reasonable care to ensure that no employee of A performs a specified function under an arrangement entered into by A in relation to the carrying on by A of a regulated activity, unless the employee has a valid certificate issued by A under section 63F.

(2) “Specified function”—

(a) in relation to the carrying on of a regulated activity by a PRA-authorised person, means a function of a description specified in rules made by the FCA or the PRA, and

(b) in relation to the carrying on of a regulated activity by any other authorised person, means a function of a description specified in rules made by the FCA.

(3) The FCA may specify a description of function under subsection (2)(a) or (b) only if, in relation to the carrying on of a regulated activity by [F350 an] authorised person of a particular description—

(a) the function is not a controlled function in relation to the carrying on of that activity by [F350 an] authorised person of that description, but

(b) the FCA is satisfied that the function is nevertheless a significant-harm function.

(4) The PRA may specify a description of function under subsection (2)(a) only if, in relation to the carrying on of a regulated activity by a [F351 relevant] PRA-authorised person of a particular description—

(a) the function is not a controlled function in relation to the carrying on of that activity by a [F351 relevant] PRA-authorised person of that description, but

(b) the PRA is satisfied that the function is nevertheless a significant-harm function.

(5) A function is a “significant-harm function”, in relation to the carrying on of a regulated activity by an authorised person, if—
(a) the function will require the person performing it to be involved in one or more aspects of the authorised person's affairs, so far as relating to the activity, and
(b) those aspects involve, or might involve, a risk of significant harm to the authorised person or any of its customers.

(6) Each regulator must—
(a) keep under review the exercise of its power under subsection (2) to specify any significant-harm function as a specified function, and
(b) exercise that power in a way that it considers will minimise the risk of employees of a relevant authorised persons performing significant-harm functions which they are not fit and proper persons to perform.

(7) Subsection (1) does not apply to an arrangement which allows an employee to perform a function if the question of whether the employee is a fit and proper person to perform the function is reserved under any of the single market directives or the emission allowance auctioning regulation to an authority in a country or territory outside the United Kingdom.

(8) In this section—
“controlled function” has the meaning given by section 59(3); 
“customer”—
(a) in relation to an authorised person, means a person who is using, or who is or may be contemplating using, any of the services provided by the authorised person; and
(b) in relation to an authorised person carrying on a regulated claims management activity, also means (so far as not included in paragraph (a)) a person who has or may have a claim within the meaning of section 419A in respect of which the authorised person is carrying on a regulated claims management activity.
“relevant PRA-authorised person” means a PRA-authorised person that is a relevant authorised person.

(9) In this section any reference to an employee of a person (“A”) includes a reference to a person who—
(a) personally provides, or is under an obligation personally to provide, services to A under an arrangement made between A and the person providing the services or another person, and
(b) is subject to (or to the right of) supervision, direction or control by A as to the manner in which those services are provided.

(10) For the meaning of “relevant authorised person”, see section 71A.

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Textual Amendments

F348 Word in s. 63E heading omitted (13.9.2018 for specified purposes) by virtue of Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 11(2); S.I. 2018/990, reg. 2(1)(2) (with regs. 3-6)
F349 Word in s. 63E(1) substituted (13.9.2018 for specified purposes) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 11(3); S.I. 2018/990, reg. 2(1)(2) (with regs. 3-6)
F350 Word in s. 63E(3) substituted (13.9.2018 for specified purposes) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 11(4); S.I. 2018/990, reg. 2(1)(2) (with regs. 3-6)
63F Issuing of certificates

(1) An authorised person may issue a certificate to a person under this section only if the authorised person is satisfied that the person is a fit and proper person to perform the function to which the certificate relates.

(2) In deciding whether the person is a fit and proper person to perform the function, the authorised person must have regard, in particular, to whether the person—
   (a) has obtained a qualification,
   (b) has undergone, or is undergoing, training,
   (c) possesses a level of competence, or
   (d) has the personal characteristics, required by general rules made by the appropriate regulator in relation to employees performing functions of that kind.

(3) In subsection (2) “the appropriate regulator” means—
   (a) in relation to employees of PRA-authorised persons, the FCA or the PRA, and
   (b) in relation to employees of any other authorised person, the FCA.

(4) A certificate issued by an authorised person to a person under this section must—
   (a) state that the authorised person is satisfied that the person is a fit and proper person to perform the function to which the certificate relates, and
   (b) set out the aspects of the affairs of the authorised person in which the person will be involved in performing the function.

(5) A certificate issued under this section is valid for a period of 12 months beginning with the day on which it is issued.

(6) If, after having considered whether a person is a fit and proper person to perform a specified function, an authorised person decides not to issue a certificate to the person under this section, the authorised person must give the person a notice in writing stating—
   (a) what steps (if any) the authorised person proposes to take in relation to the person as a result of the decision, and
   (b) the reasons for proposing to take those steps.
(7) [F360 An] authorised person must maintain a record of every employee who has a valid certificate issued by it under this section.

(8) Expressions used in this section and in section 63E have the same meaning in this section as they have in that section.

Textual Amendments

F356 Word in s. 63F(1) substituted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by Bank of England and Financial Services Act 2016 (c. 14), Sch. 4 para. 12(2); S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)

F357 Word in s. 63F(2) omitted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by virtue of Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 12(3); S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)

F358 Word in s. 63F(4) substituted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 12(4); S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)

F359 Word in s. 63F(6) substituted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 12(5); S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)

F360 Word in s. 63F(7) substituted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 12(6); S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)

Textual Amendments

F361 Ss. 64, 65 and cross-heading omitted (25.7.2014 for specified purposes, 7.3.2016 in so far as not already in force) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), ss. 30(2), 148(5); S.I. 2014/1819, art. 2(2)(c); S.I. 2015/490, art. 2(1)(b) (as amended by S.I. 2015/2055, art. 2(2) and with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F361 Conduct: statements and codes.

F365 Statements and codes: procedure.

F362 Conduct of approved persons and others

Textual Amendments

F362 Ss. 64A, 64B and cross-heading inserted (25.7.2014 for specified purposes, 7.3.2016 for specified purposes) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 30(3), 148(5); S.I. 2014/1819, art. 2(2)(c); S.I. 2015/490, art. 2(1)(d) (as inserted by S.I. 2015/2055, art. 2(4) and with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))
64A Rules of conduct

(1) If it appears to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives, the FCA may make rules about the conduct of the following persons—

(a) persons in relation to whom either regulator has given its approval under section 59;
(b) persons who are employees of authorised persons.
(c) persons who are directors of authorised persons.

(2) If it appears to the PRA to be necessary or expedient for the purpose of advancing any of its objectives, the PRA may make rules about the conduct of the following persons—

(a) persons in relation to whom it has given its approval under section 59;
(b) persons in relation to whom the FCA has given its approval under section 59 in respect of the performance by them of a relevant senior management function in relation to the carrying on by a PRA-authorised person of a regulated activity;
(c) persons who are employees of relevant PRA-authorised persons.
(d) persons who are directors of PRA-authorised persons.

(3) In subsection (2)—

“relevant PRA-authorised person” means a PRA-authorised person that is a relevant authorised person (see section 71A), and
“relevant senior management function” means a function which the PRA is satisfied is a senior management function as defined in section 59ZA (whether or not the function has been designated as such by the FCA).

(4) Rules made under this section must relate to the conduct of persons in relation to the performance by them of qualifying functions.

(5) In subsection (4) “qualifying function”, in relation to a person, means a function relating to the carrying on of activities (whether or not regulated activities) by—

(a) in the case of an approved person, the person on whose application approval was given, and
(b) in the case of a person who is a director of an authorised person but is not an approved person, that authorised person, and
(b) in any other case, the person's employer.

(6) In this section any reference to an employee of a person (“P”) includes a reference to a person who—

(a) personally provides, or is under an obligation personally to provide, services to P under an arrangement made between P and the person providing the services or another person, and
(b) is subject to (or to the right of) supervision, direction or control by P as to the manner in which those services are provided, and “employer” is to be read accordingly.

(7) In this section “director”, in relation to an authorised person, means a member of the board of directors, or if there is no such board, the equivalent body responsible for the management of the authorised person concerned.]
64B Rules of conduct: responsibilities of [F371 relevant] authorised persons

(1) This section applies where a regulator makes rules under section 64A (“conduct rules”).

(2) Every [F372 relevant] authorised person must—

(a) notify all relevant persons of the conduct rules that apply in relation to them, and

(b) take all reasonable steps to secure that those persons understand how those rules apply in relation to them.

(3) The steps which [F373 an] authorised person must take to comply with subsection (2)(b) include, in particular, the provision of suitable training.

(4) In this section “relevant person”, in relation to an authorised person, means—

(a) any person in relation to whom an approval is given under section 59 on the application of the authorised person, F374

(b) any employee of the authorised person [F375, and

(c) any person who is a director of the authorised person].

(5) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(6) In this section “employee”, in relation to an authorised person, has the same meaning as in section 64A.

[F376 (6A) In this section “director”, in relation to an authorised person, has the same meaning as in section 64A.]

(7) [F378 For the meaning of “relevant authorised person”, see section 71A.]
Requirement for relevant authorised persons to notify regulator of disciplinary action

(1) If—

(a) a relevant authorised person takes disciplinary action in relation to an person, and

(b) the reason, or one of the reasons, for taking that action is a reason specified in rules made by the appropriate regulator for the purposes of this section, the relevant authorised person must notify that regulator of that fact.

(2) “Disciplinary action”, in relation to a person, means any of the following—

(a) the issuing of a formal written warning;

(b) the suspension or dismissal of the person;

(c) the reduction or recovery of any of the person's remuneration.

(3) “The appropriate regulator” means—

(a) in relation to relevant authorised persons that are PRA-authorised persons, the FCA or the PRA;

(b) in relation to any other relevant authorised persons, the FCA.

(4) “Relevant person” has the same meaning as in section 64B.

(5) For the meaning of “relevant authorised person”, see section 71A.
66  Disciplinary powers.

(1) A regulator may take action against a person under this section if—
   (a) it appears to the regulator that he is guilty of misconduct; and
   (b) the regulator is satisfied that it is appropriate in all the circumstances to take action against him.

(1A) For provision about when a person is guilty of misconduct for the purposes of action by a regulator—
   (a) see section 66A, in the case of action by the FCA, and
   (b) see section 66B, in the case of action by the PRA.

(2) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(2A) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(3) If the regulator is entitled to take action under this section against a person, it may do one or more of the following—
   (a) impose a penalty on him of such amount as it considers appropriate;
   (aa) suspend, for such period as it considers appropriate, any approval of the performance by him of any function to which the approval relates;
   (ab) impose, for such period as it considers appropriate, any conditions in relation to any such approval which it considers appropriate;
   (ac) limit the period for which any such approval is to have effect;
   (b) publish a statement of his misconduct.

The period for which a suspension or condition is to have effect may not exceed two years.

(3A) A suspension, condition or limitation may have effect in relation to part of a function.
(3C) A condition may, in particular, be imposed so as to require any person to take, or refrain from taking, specified action.

(3D) The regulator taking action under this section may—

- withdraw a suspension, condition or limitation;
- vary a suspension or condition so as to reduce the period for which it has effect or otherwise to limit its effect.
- vary a limitation so as to increase the period for which the approval is to have effect.

(4) A regulator may not take action under this section after the end of the relevant period beginning with the first day on which the regulator knew of the misconduct, unless proceedings in respect of it against the person concerned were begun before the end of that period.

(5) For the purposes of subsection (4)—

- a regulator is to be treated as knowing of misconduct if it has information from which the misconduct can reasonably be inferred; and
- proceedings against a person in respect of misconduct are to be treated as begun when a warning notice is given to him under section 67(1).

“The relevant period” is—

- in relation to misconduct which occurs before the day on which this subsection comes into force, the period of 3 years, and
- in relation to misconduct which occurs on or after that day, the period of 6 years.

“Approval” means an approval given under section 59.

In relation to any time while a suspension is in force under subsection (3)(aa) in relation to part of a function, any reference in section 59 or 63A to the performance of a function includes the performance of part of a function.

(9) If at any time a condition imposed under subsection (3)(ab) is contravened, the approval in relation to the person concerned is to be treated for the purposes of sections 59 and 63A as if it had been withdrawn at that time.

Textual Amendments

- Words in s. 66(1) substituted (24.1.2013 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. 5 para. 14(2)(a)(i) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- Words in s. 66(1) inserted (24.1.2013 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. 5 para. 14(2)(a)(ii) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
- Word in s. 66(1)(a) substituted (24.1.2013 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. 5 para. 14(2)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
F389 Word in s. 66(1)(b) substituted (24.1.2013 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. 5 para. 14(2)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F390 S. 66(1A) inserted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 32(1)(a), 148(5); S.I. 2015/490, art. 2(1)(c) (as amended by S.I. 2015/2055, art. 2(3) and with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F391 S. 66(2) omitted (7.3.2016) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), ss. 32(1)(b), 148(5); S.I. 2015/490, art. 2(1)(c) (as amended by S.I. 2015/2055, art. 2(3) and with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F392 S. 66(2A) omitted (7.3.2016) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), ss. 32(1)(b), 148(5); S.I. 2015/490, art. 2(1)(c) (as amended by S.I. 2015/2055, art. 2(3) and with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F393 Word in s. 66(3) substituted (24.1.2013 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. 5 para. 14(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F394 Words in s. 66(3) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 12(2)(a), 26(2)(b)

F395 S. 66(3)(aa)(ab) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 12(2)(b), 26(2)(b)

F396 S. 66(3)(ab)(ac) substituted for s. 66(3)(ab) (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 5(2); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F397 S. 66(3A)-(3D) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 12(3), 26(2)(b)

F398 Word in s. 66(3A) substituted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 5(3); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F399 Words in s. 66(3B) substituted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 5(4); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F400 Word in s. 66(3C) substituted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 5(5); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F401 Words in s. 66(3D) substituted (24.1.2013 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. 5 para. 14(5) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F402 Words in s. 66(3D)(a) substituted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 5(6)(a); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F403 Word in s. 66(3D)(a) omitted (7.3.2016) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 5(6)(b); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F404 Word in s. 66(3D)(b) substituted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 5(6)(c); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F405 S. 66(3D)(c) inserted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 5(6)(d); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F406 Words in s. 66(4) substituted (24.1.2013 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. 5 para. 14(6)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F407 Words in s. 66(4) substituted (25.7.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 28(5), 148(5); S.I. 2014/1819, art. 2(1)(c)

F408 Words in s. 66(4) substituted (24.1.2013 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. 5 para. 14(6)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.
F409 Words in s. 66(5)(a) substituted (24.1.2013 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. 5 para. 14(7) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F410 S. 66(SZA) inserted (25.7.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 28(6), 148(5); S.I. 2014/1819, art. 2(1)(c)

F411 S. 66(5A) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(d)(e), Sch. 2 para. 8(2)

F412 S. 66(6) omitted (7.3.2016) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), ss. 32(1)(b), 148(5); S.I. 2015/490, art. 2(1)(c) (as amended by S.I. 2015/2055, art. 2(3) and with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F413 S. 66(7) omitted (7.3.2016) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), ss. 32(1)(b), 148(5); S.I. 2015/490, art. 2(1)(c) (as amended by S.I. 2015/2055, art. 2(3) and with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F414 S. 66(8)(9) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(d)(e), Sch. 2 para. 8(4)

F415 Word in s. 66(9) substituted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 5(7); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))
66A Misconduct: action by the FCA

(1) For the purposes of action by the FCA under section 66, a person is guilty of misconduct if any of conditions A to C is met in relation to the person.

(2) Condition A is that—
   (a) the person has at any time failed to comply with rules made by the FCA under section 64A, and
   (b) at that time the person was—
      (i) an approved person,
      (ii) an employee of a authorised person, or
      (iii) a director of an authorised person.

(3) Condition B is that—
   (a) the person has at any time been knowingly concerned in a contravention of a relevant requirement by an authorised person, and
   (b) at that time the person was—
      (i) an approved person in relation to the authorised person,
      (ii) in the case of a relevant authorised person, an employee of the authorised person, or
      (iii) a director of the authorised person.

(4) In this section “relevant requirement” means a requirement—
   (a) imposed by or under this Act, ...,
   (aa) imposed by the Alternative Investment Fund Managers Regulations 2013 ...,
   (ab) imposed by the Undertakings for Collective Investment in Transferable Securities Regulations 2011, or
   (b) imposed by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

(5) Condition C is that—
   (a) the person has at any time been a senior manager in relation to an authorised person,
   (b) there has at that time been (or continued to be) a contravention of a relevant requirement by the authorised person, ...,
   (c) the senior manager was at that time responsible for the management of any of the authorised person's activities in relation to which the contravention occurred, and
   (d) the senior manager did not take such steps as a person in the senior manager's position could reasonably be expected to take to avoid the contravention occurring (or continuing).

(6) ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ......
“senior manager”, in relation to \([F431an]\) authorised person, means a person who has approval under section 59 to perform a designated senior management function in relation to the carrying on by the authorised person of a regulated activity;

\([F432]\) “designated senior management function” means a function designated as a senior management function under section 59(6A) or (6B).]

(8) In this section—

“approved person”—

(a) means a person in relation to whom an approval is given under section 59, and

(b) in relation to an authorised person, means a person in relation to whom such approval is given on the application of the authorised person;

\([F434]\) “director”, in relation to an authorised person, has the same meaning as in section 64A;

“employee”, in relation to a person, has the same meaning as in section 64A.

(9) \([F434]\) For the meaning of “relevant authorised person”, see section 71A.
66B Misconduct: action by the PRA

(1) For the purposes of action by the PRA under section 66, a person is guilty of misconduct if any of conditions A to C is met in relation to the person.

(2) Condition A is that—

(a) the person has at any time failed to comply with rules made by the PRA under section 64A, and

(b) at that time the person was—

(i) an approved person, [F435]

(ii) an employee of a [F436] PRA-authorised person [F437], or

(iii) a director of a PRA-authorised person.

(3) Condition B is that—

(a) the person has at any time been knowingly concerned in a contravention of a relevant requirement by a PRA-authorised person, and

(b) at that time the person was—

(i) an approved person in respect of the performance of a relevant senior management function in relation to the carrying on by the PRA-authorised person of a regulated activity, [F438]

(ii) an employee of the PRA-authorised person, [F439]

(iii) a director of the PRA-authorised person.

(4) In this section “relevant requirement” means a requirement—

(a) imposed by or under this Act, or

(b) imposed by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.
(5) Condition C is that—

(a) the person has at any time been a senior manager in relation to a [F441 relevant] PRA-authorised person,

(b) there has at that time been (or continued to be) a contravention of a relevant requirement by the authorised person, [F442 ...]

(c) the senior manager was at that time responsible for the management of any of the authorised person’s activities in relation to which the contravention occurred [F443], and

(d) the senior manager did not take such steps as a person in the senior manager’s position could reasonably be expected to take to avoid the contravention occurring (or continuing).

(F444) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(6) For the purposes of subsection (5)—

“senior manager”, in relation to a [F445 relevant] PRA-authorised person,
means a person who has approval under section 59 to perform a designated senior management function in relation to the carrying on by the authorised person of a regulated activity;

[F446 “designated senior management function” means a function designated as a senior management function under section 59(6A) or (6B).]

(7) In this section—

“approved person”—

(a) means a person in relation to whom—

(i) the PRA has given its approval under section 59, or

(ii) the FCA has given its approval under section 59 in respect of the performance by the person of a relevant senior management function in relation to the carrying on by a PRA-authorised person of a regulated activity, and

(b) in relation to an authorised person, means a person in relation to whom approval under section 59 is given on the application of the authorised person;

[F447 “director”, in relation to an authorised person, has the same meaning as in section 64A;]

“employee”, in relation to a person, has the same meaning as in section 64A;

[F448 “relevant PRA-authorised person” means a PRA-authorised person that is a relevant authorised person;]

“relevant senior management function” means a function which the PRA is satisfied is a senior management function as defined in section 59ZA (whether or not the function has been designated as such by the FCA).

(9) [F449 For the meaning of “relevant authorised person”, see section 71A.]
Disciplinary measures: procedure and right to refer to Tribunal.

(1) If [F450a regulator] proposes to take action against a person under section 66, it must give him a warning notice [F451]; and if it proposes to take action under subsection (3) (aa) [F452], (ab) or (ac) of that section, it must also give each of the other interested parties a warning notice.
(2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

A warning notice about a proposal—

(a) to suspend an approval, or
(b) to impose a condition in relation to the performance of a function,

must state the period for which the suspension or condition is to have effect.

A warning notice about a proposal to limit the period for which an approval is to have effect must state the length of that period.

(3) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(4) If a regulator decides to take action against a person under section 66, it must give him a decision notice; and if it decides to take action under subsection (3) (aa), (ab) or (ac) of that section, it must also give each of the other interested parties a decision notice.

(5) A decision notice about the imposition of a penalty must state the amount of the penalty.

A decision notice about—

(a) the suspension of an approval, or
(b) the imposition of a condition in relation to the performance of a function,

must state the period for which the suspension or condition is to have effect.

A decision notice about limiting the period for which an approval is to have effect must state the length of that period.

(6) A decision notice about the publication of a statement must set out the terms of the statement.

(7) If a regulator decides to take action against a person under section 66, he may refer the matter to the Tribunal; and if the regulator decides to take action under section 66(3)(aa), (ab) or (ac), each of the other interested parties may also refer the matter to the Tribunal.

Approval” means an approval given under section 59.

“Other interested parties”, in relation to a person (“A”) in relation to whom approval has been given, are—

(a) the person on whose application the approval was given (“B”); and
(b) the person by whom A’s services are retained, if not B.

Textual Amendments

F450 Words in s. 67(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 15(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F451 Words in s. 67(1) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(d)(e), Sch. 2 para. 9(2)
### Financial Services and Markets Act 2000 (c. 8)

**Part V – Performance of Regulated Activities**

#### CHAPTER 3 – Further provisions relating to FCA and PRA

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<td>S. 67(2A)</td>
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### Modifications etc. (not altering text)

- **C205** Ss. 66-70 applied (with modifications) (15.1.2013) by The Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (S.I. 2012/3122), reg. 1, Sch. para. 1 (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 248(6)(a))
- **C207** Ss. 66-70 applied (with modifications) by S.I. 2011/99, Sch. 5 para. 1 (as substituted (7.3.2016) by The Financial Services (Banking Reform) Act 2013 (Consequential Amendments) Order 2016 (S.I. 2016/163), arts. 1, 4)
- **C208** Ss. 66-70 applied (with modifications) by S.I. 2009/209, Sch. 5 para. 1 (as substituted (7.3.2016) by The Financial Services (Banking Reform) Act 2013 (Consequential Amendments) Order 2016 (S.I. 2016/163), arts. 1, 3)
Publication.

After a statement under section 66 is published, the regulator publishing it must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given.

Textual Amendments

F469 Words in s. 68 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 5 para. 16 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C205 Ss. 66-70 applied (with modifications) (15.1.2013) by The Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (S.I. 2012/3122), reg. 1, Sch. para. 1 (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 248(6)(a))

C207 Ss. 66-70 applied (with modifications) by S.I. 2011/99, Sch. 5 para. 1 (as substituted (7.3.2016) by The Financial Services (Banking Reform) Act 2013 (Consequential Amendments) Order 2016 (S.I. 2016/163), arts. 1, 4)

C208 Ss. 66-70 applied (with modifications) by S.I. 2009/209, Sch. 5 para. 1 (as substituted (7.3.2016) by The Financial Services (Banking Reform) Act 2013 (Consequential Amendments) Order 2016 (S.I. 2016/163), arts. 1, 3)

C209 Ss. 66-70 applied (with modifications) S.I. 2012/3122, Sch. para. 1 (as amended) (1.4.2013) by The Financial Services (Banking Reform) Act 2013 (Consequential Amendments) Order 2016 (S.I. 2016/163), arts. 1, 5
69 Statement of policy.

(1) \[F470\] Each regulator must prepare and issue a statement of its policy with respect to—

\[F471\] (a) the imposition of penalties, suspensions, conditions or limitations under section 66;

\[F472\] (b) the amount of penalties under that section;

\[F473\] ... 

\[F474\] (c) the period for which suspensions or conditions under that section are to have effect; and

\[F475\] (d) the period for which approvals under section 59 are to have effect as a result of a limitation under section 66.

(2) \[F476\] A regulator's policy in determining what the amount of a penalty should be, or what the period for which a suspension or restriction is to have effect should be, must include having regard to—

\[F477\] (a) the seriousness of the misconduct in question in relation to the nature of the principle or requirement concerned;

\[F478\] (b) the extent to which that misconduct was deliberate or reckless; and

\[F479\] (c) whether the person against whom action is to be taken is an individual.

(3) \[F479\] A regulator may at any time alter or replace a statement issued by it under this section.

(4) If a statement issued under this section is altered or replaced by a regulator, the regulator must issue the altered or replacement statement.

(5) \[F480\] A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(6) A statement issued under this section must be published by the regulator in the way appearing to be best calculated to bring it to the attention of the public.

(7) The regulator may charge a reasonable fee for providing a person with a copy of the statement.

(8) In exercising, or deciding whether to exercise, its power under section 66 in the case of any particular misconduct, a regulator must have regard to any statement of policy.
published [^485] by it under this section and in force at the time when the misconduct in question occurred.

### Textual Amendments

**F470** Words in s. 69(1) substituted (24.1.2013 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. 5 para. 17(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

**F471** S. 69(1)(a)–(c) substituted (8.6.2010) for s. 69(1)(a)(b) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(d)(e), Sch. 2 para. 10(2)

**F472** Words in s. 69(1)(a) substituted (25.7.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 7(a); S.I. 2014/1819, art. 2(4)(b)

**F473** Word in s. 69(1)(b) omitted (25.7.2014) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 7(b); S.I. 2014/1819, art. 2(4)(b)

**F474** Word in s. 69(1)(c) substituted (25.7.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 7(c); S.I. 2014/1819, art. 2(4)(b)

**F475** S. 69(1)(d) and word inserted (25.7.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 7(d); S.I. 2014/1819, art. 2(4)(b)

**F476** Words in s. 69(2) substituted (24.1.2013 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. 5 para. 17(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

**F477** Words in s. 69(2) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(d)(e), Sch. 2 para. 10(3)(a)

**F478** Words in s. 69(2)(c) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(d)(e), Sch. 2 para. 10(3)(b)

**F479** Words in s. 69(3) substituted (24.1.2013 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. 5 para. 17(4)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

**F480** Words in s. 69(3) inserted (24.1.2013 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. 5 para. 17(4)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

**F481** Words in s. 69(4) substituted (24.1.2013 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. 5 para. 17(5) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

**F482** Words in s. 69(5) substituted (24.1.2013 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. 5 para. 17(6) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

**F483** Words in s. 69(6) inserted (24.1.2013 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. 5 para. 17(7)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

**F484** Words in s. 69(6) substituted (24.1.2013 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. 5 para. 17(7)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

**F485** Word in s. 69(7) substituted (24.1.2013 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. 5 para. 17(8) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

**F486** Words in s. 69(8) substituted (24.1.2013 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. 5 para. 17(9)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

**F487** Words in s. 69(8) inserted (24.1.2013 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. 5 para. 17(9)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
70 Statements of policy: procedure.

(1) Before a regulator issues a statement under section 69, the regulator must publish a draft of the proposed statement in the way appearing to the 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 regulator within a specified time.

(3) Before issuing the proposed statement, the regulator must have regard to any representations made to it in accordance with subsection (2).

(4) If the 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 (1) in a way which is, in the opinion of the [F493 regulator], significant, the [F493 regulator] must (in addition to complying with subsection (4)) publish details of the difference.

(6) [F494] A regulator may charge a reasonable fee for providing a person with a copy of a draft published [F495 by it] under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.
71 **Actions for damages.**

(1) A contravention of section 56(6) or 59(1) or (2) is actionable at the suit of a private 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.

(2) In prescribed cases, a contravention of that kind which would be actionable at the suit of a private person is actionable at the suit of a person who is not a private person, subject to the defences and other incidents applying to actions for breach of statutory duty.

(3) “Private person” has such meaning as may be prescribed.
Meaning of “relevant authorised person”

(1) In this Part “relevant authorised person” means a UK institution which—
   (a) meets condition A or B, and
   (b) is not an insurer.

(2) Condition A is that the institution has permission under Part 4A to carry on the regulated activity of accepting deposits.

(3) Condition B is that—
   (a) the institution is an investment firm,
   (b) it has permission under Part 4A to carry on the regulated activity of dealing in investments as principal, and
   (c) when carried on by it, that activity is a PRA-regulated activity.

(4) The Treasury may by order provide that authorised persons falling within any of the following descriptions are “relevant authorised persons” for the purposes of this Part—
   (a) non-UK institutions (or non-UK institutions of a specified description) that are credit institutions;
   (b) non-UK institutions that are investment firms of a specified description.

“Specified” means specified in the order.

(5) If the Treasury propose to make an order under subsection (4) they must consult—
   (a) the FCA,
   (b) the PRA,
   (c) any organisations that appear to them to be representative of interests substantially affected by the proposals, and
   (d) any other persons that they consider appropriate.

(6) In this section—
   (a) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom;
   (b) “non-UK institution” means an institution that is not a UK institution;
   (c) “credit institution” means any credit institution as defined in Article 4.1(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council;
   (d) “insurer” means an institution which is authorised under this Act to carry on the regulated activity of effecting or carrying out contracts of insurance as principal.

(7) Subsections (2), (3) and (6)(d) are to be read in accordance with Schedule 2, taken with any order under section 22.]]
71B. Removal of directors and senior executives

(1) If the appropriate regulator is satisfied that the conditions in section 71D(1) and (2) are met in relation to a relevant firm, the appropriate regulator may require the firm to remove—
   (a) any person who is a director of the firm;
   (b) any person who is a senior executive of the firm.

(2) If the appropriate regulator imposes a requirement under subsection (1), the regulator may also require the relevant firm—
   (a) to replace a director or senior executive who has been removed, and
   (b) to take any step needed to give effect to the replacement, including, where necessary, calling a general meeting of the firm’s shareholders or members.

71C. Temporary manager

(1) If the appropriate regulator is satisfied—
   (a) in the case of a relevant firm, that the conditions in section 71D(1), (2) and (4) are met in relation to that firm, or
   (b) in the case of a parent undertaking which is not a relevant firm, that the conditions in section 71D(1) and (4) are met in relation to that parent undertaking,
   the appropriate regulator may appoint a person to act (or one or more persons to act jointly) as a temporary manager of that firm or that parent undertaking.

(2) Where the appropriate regulator makes an appointment under subsection (1) in relation to a parent undertaking which is not a relevant firm, the regulator may also require the undertaking to remove—
   (a) all of its directors;
   (b) all of its senior executives.

(3) A temporary manager may be appointed under subsection (1)—
   (a) to replace the directors of a relevant firm or a parent undertaking where they have been removed in compliance with a requirement imposed under section 71B or subsection (2), or
   (b) to work with the directors of a relevant firm or a parent undertaking.

(4) A temporary manager has the functions specified in the instrument of appointment (see section 71F).

(5) The functions which may be specified include (amongst other things)—
   (a) ascertaining the financial position of the relevant firm or the parent undertaking;
(b) managing the business or part of the business of the relevant firm or the parent undertaking in order to preserve or restore the financial position of the firm or the parent undertaking;

(c) taking measures to restore the prudent management of the relevant firm or the parent undertaking;

(d) any function of the directors.

(6) The temporary manager may, with the consent of the appropriate regulator—

(a) require the directors to call a general meeting of the shareholders or members of the relevant firm or the parent undertaking, or

(b) in the case where all of the directors have been removed in compliance with a requirement imposed under section 71B or subsection (2), call a general meeting of the shareholders or members of the relevant firm or the parent undertaking.

(7) The temporary manager may propose business for consideration at the general meeting.

(8) If the temporary manager is being appointed to work with the directors, the appropriate regulator—

(a) may require the directors not to exercise specified functions during the period of appointment;

(b) may require the directors to consult the temporary manager, or obtain the consent of the temporary manager, before taking specified decisions or specified action.

“Specified” means specified in the requirement.

71D. Sections 71B and 71C: conditions

(1) The condition in this subsection is met in relation to a relevant firm or a parent undertaking if—

(a) there is a deterioration in the financial situation of the relevant firm or the parent undertaking which is a significant deterioration, or

(b) there is a serious infringement by the relevant firm or the parent undertaking of—

(i) a relevant requirement, or

(ii) its memorandum or articles of association or other constituent instrument.

(2) The condition in this subsection is met in relation to a relevant firm if it is not reasonably likely that the deterioration would be reversed or the infringement would be brought to an end by any measure of a kind described in Article 27(1) of the recovery and resolution directive which could be taken by the appropriate regulator under the provisions listed in subsection (3).

(3) The provisions mentioned in subsection (2) are—

(a) section 55J (variation or cancellation on initiative of regulator),

(b) section 55L (imposition of requirements by FCA),

(c) section 55M (imposition of requirements by PRA),

(d) section 55PB (requirements relating to general meetings),

(e) section 56 (prohibition orders),
(f) section 63 (withdrawal of approval),
(g) section 63ZA (variation of senior manager’s approval at request of authorised person),
(h) section 63ZB (variation of senior manager’s approval on initiative of regulator),
(i) section 63A (power to impose penalties),
(j) section 66 (disciplinary powers),
(k) Part 12A (powers exercisable in relation to parent undertakings), or
(l) Part 14 (disciplinary measures).

(4) The condition in this subsection is met if the following action would not be sufficient to reverse the deterioration or bring the infringement to an end—
(a) in the case of a relevant firm, the imposition of one or more requirements under section 71B (removal and replacement of directors and senior executives); or
(b) in the case of a parent undertaking which is not a relevant firm, the exercise of any of the appropriate regulator’s powers under Part 12A.

(5) For the purposes of this section—
(a) “relevant requirement” has the meaning given in section 204A;
(b) a deterioration in the financial situation of the relevant firm or the parent undertaking is significant if—
(i) in the case of a relevant firm, or a parent undertaking which is an authorised person, it no longer satisfies, or is likely to fail to satisfy, the threshold conditions relating to its financial resources which apply to it under Schedule 6;
(ii) in the case of a parent undertaking which is not an authorised person, the deterioration threatens the viability of the parent undertaking.

71E. Temporary manager: further provisions in relation to the appointment

(1) Before appointing a person to act as a temporary manager, the appropriate regulator must be satisfied that the person—
(a) has the qualifications, ability and knowledge to carry out the functions to be given to the temporary manager, and
(b) would not be subject to any conflict of interest as a result of the appointment.

(2) A person may not be appointed to act as a temporary manager for a period longer than one year, but is eligible for re-appointment (or further re-appointment) if subsection 71C(1) continues to apply in relation to the relevant firm or parent undertaking.

(3) The appropriate regulator may vary the terms of the appointment of a temporary manager, or remove the temporary manager, at any time.

(4) A temporary manager is not liable for damages in respect of anything done in good faith for the purposes of or in connection with the functions of the appointment (subject to section 8 of the Human Rights Act 1998).

71F. Temporary manager: instrument of appointment

(1) The power in section 71C(1) is to be exercised by an instrument of appointment.
(2) The instrument of appointment must—
   (a) specify the functions of the temporary manager,
   (b) specify the date on which the appointment of the temporary manager has effect,
   (c) specify the period for which the temporary manager is appointed, and
   (d) make provision for the resignation and replacement of the person who is appointed as the temporary manager.

(3) The instrument of appointment may—
   (a) require the temporary manager to consult the appropriate regulator or other specified person before exercising specified functions,
   (b) specify particular matters on which the appropriate regulator or other specified person must be consulted, and
   (c) provide that the temporary manager is not to exercise specified functions without the consent of the appropriate regulator or other specified person.

(4) The instrument of appointment may require the temporary manager to make reports to the appropriate regulator, at specified times or intervals, on—
   (a) the financial position of the relevant firm or the parent undertaking,
   (b) the actions taken by the temporary manager during the course of the temporary manager’s appointment,
   (c) any other specified matters.

(5) In subsections (3) and (4), “specified” means specified in the instrument of appointment.

(6) The instrument of appointment may provide for the payment of remuneration and allowances to a temporary manager.

(7) Provision under subsection (6) may provide that the amounts are—
   (a) to be paid by the appropriate regulator, or
   (b) to be determined by the appropriate regulator and paid by the relevant firm or the parent undertaking.

(8) If a temporary manager—
   (a) is appointed to replace the directors of the relevant firm or the parent undertaking, or
   (b) is appointed to work with the directors of the relevant firm or the parent undertaking and has the power to represent that firm or parent undertaking, the appropriate regulator must publish the instrument of appointment on its website.

71G. Right to refer matters to the Tribunal

(1) A relevant firm which is aggrieved by—
   (a) the imposition of a requirement on that firm under section 71B, or
   (b) the appointment, or the terms of the appointment, of a person to act as a temporary manager of that firm under section 71C(1),

   may refer the matter to the Tribunal.

(2) A parent undertaking which is aggrieved by—
(a) the imposition of a requirement on that parent undertaking under section 71C(2), or
(b) the appointment, or the terms of the appointment, of a person to act as a temporary manager of that parent undertaking under section 71C(1), may refer the matter to the Tribunal.

(3) A director (or a former director) of a relevant firm or a parent undertaking who is aggrieved by the imposition of a requirement on that director under section 71C(8) may refer the matter to the Tribunal.

(4) A director or senior executive (or a former director or senior executive) of a relevant firm or a parent undertaking who is aggrieved by the imposition of a requirement on that firm or parent undertaking under section 71B or 71C(2) may refer the matter to the Tribunal.

71H. Removal of directors and senior executives and appointment of temporary manager: procedure

(1) A requirement under section 71B or 71C(2) or (8) or the appointment of a temporary manager under section 71C(1) may be expressed to take effect immediately or on a specified date only if the appropriate regulator, having regard to the grounds for imposing the requirement or making the appointment, reasonably considers that it is necessary for the requirement or the appointment to take effect immediately or on that date.

(2) If either regulator proposes to impose a requirement on a relevant firm under section 71B or a parent undertaking under section 71C(2), or imposes such a requirement with immediate effect, it must give written notice—
(a) to that firm or parent undertaking, and
(b) to each of the directors or senior executives to whom the requirement relates (“the interested parties”).

(3) If either regulator—
(a) proposes to appoint a person to act as a temporary manager under section 71C or to vary the terms on which such a person is appointed, or
(b) makes such an appointment or variation with immediate effect,
the regulator must give written notice to the relevant firm or the parent undertaking concerned.

(4) If either regulator proposes to impose a requirement on the directors under section 71C(8), or imposes such a requirement with immediate effect, the regulator must give written notice to each director.

(5) A notice given under subsection (2) must—
(a) give details of the requirement,
(b) identify each of the directors or senior executives to whom the requirement relates,
(c) give the regulator’s reasons for imposing the requirement—
(i) in the case of a notice given to the relevant firm or the parent undertaking, in relation to each interested party;
(ii) in the case of a notice given to an interested party, in relation to that interested party,
(d) inform the relevant firm or the parent undertaking and the interested parties that each of them may make representations to the regulator within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal),

(e) state when the requirement takes effect, and

(f) inform the relevant firm or the parent undertaking and each of the interested parties of their right to refer the matter to the Tribunal.

(6) A notice given under subsection (3) must—

(a) state when the appointment or variation takes effect, and be accompanied by the instrument, or revised instrument, of appointment,

(b) give the regulator’s reasons for making the appointment or variation,

(c) inform the relevant firm or the parent undertaking that it may make representations to the regulator within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal), and

(d) inform the relevant firm or the parent undertaking of its right to refer the matter to the Tribunal.

(7) A notice given under subsection (4) must—

(a) give details of the requirement,

(b) give the regulator’s reasons for imposing the requirement,

(c) state when the requirement takes effect,

(d) inform the director that the director may make representations to the regulator within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal), and

(e) inform the director of the director’s right to refer the matter to the Tribunal.

(8) The regulator may extend the period allowed by the notice given under subsection (2), (3) or (4) for making representations.

(9) If, having considered any representations made by a person to whom notice (the “original notice”) has been given under subsection (2), (3) or (4), the regulator decides—

(a) to impose the requirement, make the appointment or vary the terms of an appointment in accordance with the original notice, or

(b) not to rescind the imposition of any such requirement or the making of any such appointment or variation which has already taken effect,

the regulator must give written notice to each person to whom the original notice was given.

(10) A notice under subsection (9) must inform the person to whom it is given of the right of that person to refer the matter to the Tribunal and give an indication of the procedure on such a reference.

(11) If, having considered any representations made by a person to whom notice (the “original notice”) has been given under subsection (2), (3) or (4), the regulator decides—

(a) to impose a requirement, make an appointment or vary the terms of an appointment in a way that is different from the requirement, appointment or variation described in the original notice,

(b) not to impose the requirement, make the appointment or vary the terms of an appointment in accordance with the original notice, or
(c) to rescind the imposition of any such requirement, or the making of any such appointment or variation that has already taken effect, the regulator must give written notice to each person to whom the original notice was given.

(12) A notice under subsection (11)(a) about the imposition of a requirement under section 71B or 71C(2) must comply with subsection (5).

(13) A notice under subsection (11)(a) about the appointment of a person as a temporary manager or the variation of the terms of the appointment of a person as a temporary manager must comply with subsection (6).

(14) A notice under subsection (11)(a) about the imposition of a requirement under section 71C(8) must comply with subsection (7).

(15) In this section, any reference to “appointment” includes “re-appointment”.

71I. Sections 71B to 71H: interpretation

(1) For the purposes of sections 71B to 71H “relevant firm” means—
   (a) a bank as defined in section 2 of the Banking Act 2009,
   (b) a building society as defined in section 119 of the Building Societies Act 1986, or
   (c) an investment firm as defined in section 258A of the Banking Act 2009.

(2) For the purposes of sections 71C to 71H, “parent undertaking” means an institution, financial holding company or mixed financial holding company which—
   (a) is incorporated in, or formed under the law of, any part of the United Kingdom,
   (b) is an EEA parent, and
   (c) either—
      (i) has a subsidiary which is an institution, or
      (ii) holds a participation (within the meaning given by Article 4.1(35) of the capital requirements regulation) in an institution.

(3) For the purposes of subsection (2), an institution, financial holding company or mixed financial holding company is an EEA parent if it is not itself the subsidiary of an institution, financial holding company or mixed financial holding company set up in any EEA state.

(4) In subsections (2) and (3)—
   “institution” means a credit institution or an investment firm as defined in Article 2.1(2) and 2.1(3) of the recovery and resolution directive;
   “financial holding company” and “mixed financial holding company” have the meanings given in Article 4.1(20) and 4.1(21) of the capital requirements regulation.

(5) For the purposes of sections 71B to 71H—
   “appropriate regulator” means—
   (a) in relation to a PRA-authorised person, the PRA,
   (b) in relation to any other authorised person, the FCA,
   (c) in relation to a parent undertaking that is not an authorised person—
PART VI

OFFICIAL LISTING

(i) the PRA, where the PRA is the consolidating supervisor in relation to that undertaking;

(ii) the FCA, where the FCA is the consolidating supervisor in relation to that undertaking;

“consolidating supervisor” means the competent authority responsible for the exercise of supervision on the basis of the consolidated situation (within the meaning of Article 4.1(47) of the capital requirements regulation) of an institution which is an EEA parent;

“director” includes, in relation to an undertaking which has no board of directors, a member of the equivalent management body responsible for the management of the undertaking concerned;

“the recovery and resolution directive” means Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms;

“senior executive”, in relation to a relevant firm or a parent undertaking, means a person who—

(a) exercises executive functions within that firm or that undertaking; and

(b) is responsible, and directly accountable to the directors, for the day to day management of that firm or that undertaking.]
**Textual Amendments**

**F500** S. 73 omitted (24.1.2013 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)(b), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

**F501** S. 73A crossheading inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(4), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

**F502** S. 73A inserted (17.3.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(3)(b), 4, Sch. 1 para. 2

**F503** Words in ss. 73A-84 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(a), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

**F504** S. 73A(3) omitted (3.7.2016) by virtue of The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 8(2)(a)

**F505** S. 73A(4)(5) added (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), Sch. 1 para. 1

**F506** S. 73A(6) inserted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1272, 1300(1)(a), Sch. 15 para. 3

**F507** Words in s. 73A(6) omitted (3.7.2016) by virtue of The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 8(2)(b)
The official list

74 The official list.

(1) The [F503FCA] must maintain the official list.

(2) The [F503FCA] may admit to the official list such securities and other things as it considers appropriate.

(3) But—
   (a) nothing may be admitted to the official list except in accordance with this Part; and
   (b) the Treasury may by order provide that anything which falls within a description or category specified in the order may not be admitted to the official list.

(4) [F508]

(5) In the following provisions of this Part—
   [F509]

   “listing” means being included in the official list in accordance with this Part.

Textual Amendments

[F503] Words in ss. 73A-84 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(a), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.


[F509] S. 74(5): definition of "security" omitted (1.7.2005) by virtue of The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), Sch. 1 para. 2

Modifications etc. (not altering text)

[C236] S. 74(5) applied (1.12.2001) by S.I. 2001/2957, arts. 1, 8(4); S.I. 2001/3538, art. 2(1)

Commencement Information

[I15] S. 74 wholly in force at 1.12.2001; s. 74 not in force at Royal Assent see s. 431(2); s. 74(4)(5) in force at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 74 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

Listing

75 Applications for listing.

(1) Admission to the official list may be granted only on an application made to the [F503FCA] in such manner as may be required by listing rules.

(2) No application for listing may be entertained by the [F503FCA] unless it is made by, or with the consent of, the issuer of the securities concerned.

(3) No application for listing may be entertained by the [F503FCA] in respect of securities which are to be issued by a body of a prescribed kind.
(4) The [F503 FCA] may not grant an application for listing unless it is satisfied that—
(a) the requirements of listing rules (so far as they apply to the application), and
(b) any other requirements imposed by [F503 the FCA] in relation to the application,
are complied with.

(5) An application for listing may be refused if, for a reason relating to the issuer, the [F503 FCA] considers that granting it would be detrimental to the interests of investors.

(6) An application for listing securities which are already officially listed in another EEA State may be refused if the issuer has failed to comply with any obligations to which he is subject as a result of that listing.

Textual Amendments
F503 Words in ss. 73A-84 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(a), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)
C237 S. 75(1) extended (1.12.2001) by S.I. 2001/2957, arts. 1, 4(2); S.I. 2001/3538, art. 2(1)

Commencement Information
116 S. 75 wholly in force at 1.12.2001; s. 75 not in force at Royal Assent see s. 431(2); s. 75(3) in force for specified purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pt. 2; s. 75(1) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 75 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

76 Decision on application.

(1) The [F503 FCA] must notify the applicant of its decision on an application for listing—
(a) before the end of the period of six months beginning with the date on which the application is received; or
(b) if within that period [F503 the FCA] has required the applicant to provide further information in connection with the application, before the end of the period of six months beginning with the date on which that information is provided.

(2) If the [F503 FCA] fails to comply with subsection (1), it is to be taken to have decided to refuse the application.

(3) If the [F503 FCA] decides to grant an application for listing, it must give the applicant written notice.

(4) If the [F503 FCA] proposes to refuse an application for listing, it must give the applicant a warning notice.

(5) If the [F503 FCA] decides to refuse an application for listing, it must give the applicant a decision notice.

(6) If the [F503 FCA] decides to refuse an application for listing, the applicant may refer the matter to the Tribunal.
77 Discontinuance and suspension of listing.

(1) The FCA may, in accordance with listing rules, discontinue the listing of any securities if satisfied that there are special circumstances which preclude normal regular dealings in them.

(2) The FCA may, in accordance with listing rules, suspend the listing of any securities.

[F510 (2A)] The FCA may discontinue under subsection (1) or suspend under subsection (2) the listing of any securities on its own initiative or on the application of the issuer of those securities.

(3) If securities are suspended under subsection (2) they are to be treated, for the purposes of section 96 and paragraph 23(6) of Schedule 1ZA, as still being listed.

[F512 (3A)] If securities have been suspended by the Bank of England under section 19, 39B or 48L of the Banking Act 2009, the FCA may, following consultation with the Bank of England, cancel the suspension.

(4) This section applies to securities whenever they were admitted to the official list.

(5) If the FCA discontinues or suspends the listing of any securities, on its own initiative, the issuer may refer the matter to the Tribunal.

Textual Amendments

F503 Words in ss. 73A-84 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(a), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.


F511 Words in s. 77(3) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(5), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1) (c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F512 S. 77(3A) inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 114

F513 Words in s. 77(5) inserted (12.7.2007) by The Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (S.I. 2007/1973), art. 5(b)
78 Discontinuance or suspension: procedure.

(1) A discontinuance or suspension [F514 by the [F503 FCA] on its own initiative] takes effect—
   (a) immediately, if the notice under subsection (2) states that that is the case;
   (b) in any other case, on such date as may be specified in that notice.

(2) If [F515 on its own initiative] the [F503 FCA]—
   (a) proposes to discontinue or suspend the listing of securities, or
   (b) discontinues or suspends the listing of securities with immediate effect,
       it must give the issuer of the securities written notice.

(3) The notice must—
   (a) give details of the discontinuance or suspension;
   (b) state the [F503 FCA's] reasons for the discontinuance or suspension and for
       choosing the date on which it took effect or takes effect;
   (c) inform the issuer of the securities that he may make representations to the
       [F503 FCA] within such period as may be specified in the notice (whether or not
       he has referred the matter to the Tribunal);
   (d) inform him of the date on which the discontinuance or suspension took effect
       or will take effect; and
   (e) inform him of his right to refer the matter to the Tribunal.

(4) The [F503 FCA] may extend the period within which representations may be made to it.

(5) If, having considered any representations made by the issuer of the securities, the
    [F503 FCA] decides—
    (a) to discontinue or suspend the listing of the securities, or
    (b) if the discontinuance or suspension has taken effect, not to cancel it,
        the [F503 FCA] must give the issuer of the securities written notice.

(6) A notice given under subsection (5) must inform the issuer of the securities of his right
    to refer the matter to the Tribunal.

(7) 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.

(8) If the [F503 FCA] decides—
    (a) not to discontinue or suspend the listing of the securities, or
    (b) if the discontinuance or suspension has taken effect, to cancel it,
        the [F503 FCA] must give the issuer of the securities written notice.
(9) The effect of cancelling a discontinuance is that the securities concerned are to be readmitted, without more, to the official list.

\[ F516 (10) \quad \text{If—} \\
\quad \text{(a) the FCA has suspended the listing of securities on its own initiative, or securities have been suspended by the Bank of England under section 19, 39B or 48L of the Banking Act 2009, and} \\
\quad \text{(b) the FCA proposes to refuse an application by the issuer for the cancellation of the suspension,} \\
\text{the FCA must give the issuer a warning notice.} \]

(11) The FCA must, having considered any representations made in response to the warning notice—

\( \text{(a) if it decides to refuse the application, give the issuer of the securities a decision notice;} \)

\( \text{(b) if it grants the application, give him written notice of its decision.} \)

(12) If the FCA decides to refuse an application for the cancellation of the suspension of listed securities, the applicant may refer the matter to the Tribunal.

(13) “Discontinuance” means a discontinuance of listing under section 77(1).

(14) “Suspension” means a suspension of listing under section 77(2) and in subsections (10) and (12), includes a suspension of listing under section 19, 39B or 48L of the Banking Act 2009.

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**Textual Amendments**

F503 Words in ss. 73A-84 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(a), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F514 Words in s. 78(1) inserted (12.7.2007) by The Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (S.I. 2007/1973), art. 6(a)

F515 Words in s. 78(2) inserted (12.7.2007) by The Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (S.I. 2007/1973), art. 6(b)

F516 S. 78(10) substituted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 115(2)

F517 Words in s. 78(14) inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 115(3)

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\[ F518 78A \text{ Discontinuance or suspension at the request of the issuer: procedure} \]

(1) A discontinuance or suspension by the FCA on the application of the issuer of the securities takes effect—

\( \text{(a) immediately, if the notification under subsection (2) so provides;} \)

\( \text{(b) in any other case, on such date as may be provided for in that notification.} \)

(2) If the FCA discontinues or suspends the listing of securities on the application of the issuer of the securities it must notify the issuer (whether in writing or otherwise).

\[ F521 (3) \text{ The notification must—} \]
(a) notify the issuer of the date on which the discontinuance or suspension took effect or will take effect, and
(b) notify the issuer of such other matters (if any) as are specified in listing rules.

(4) If the FCA proposes to refuse an application by the issuer of the securities for the discontinuance or suspension of the listing of the securities, it must give him a warning notice.

(5) The FCA must, having considered any representations made in response to the warning notice, if it decides to refuse the application, give the issuer of the securities a decision notice.

(6) If the FCA decides to refuse an application by the issuer of the securities for the discontinuance or suspension of the listing of the securities, the issuer may refer the matter to the Tribunal.

(7) If the FCA has suspended the listing of securities on the application of the issuer of the securities and proposes to refuse an application by the issuer for the cancellation of the suspension, it must give him a warning notice.

(8) The FCA must, having considered any representations made in response to the warning notice—
(a) if it decides to refuse the application for the cancellation of the suspension, give the issuer of the securities a decision notice;
(b) if it grants the application, give him written notice of its decision.

(9) If the FCA decides to refuse an application for the cancellation of the suspension of listed securities, the applicant may refer the matter to the Tribunal.

(10) “Discontinuance” means a discontinuance of listing under section 77(1).

(11) “Suspension” means a suspension of listing under section 77(2).
Listing particulars

79 Listing particulars and other documents.

(1) Listing rules may provide that securities of a kind specified in the rules may not be admitted to the official list unless—
   (a) listing particulars have been submitted to, and approved by, the FCA and published; or
   (b) in such cases as may be specified by listing rules, such document (other than listing particulars or a prospectus of a kind required by listing rules) as may be so specified has been published.

(2) “Listing particulars” means a document in such form and containing such information as may be specified in listing rules.

(3) For the purposes of this Part, the persons responsible for listing particulars are to be determined in accordance with regulations made by the Treasury.

[Listing rules made under subsection (1) may not specify securities of a kind for which an approved prospectus is required as a result of section 85.]

(4) Nothing in this section affects the general power to make listing rules.

80 General duty of disclosure in listing particulars.

(1) Listing particulars submitted to the FCA under section 79 must contain all such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of—
   (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and
   (b) the rights attaching to the securities.

(2) That information is required in addition to any information required by—
(a) listing rules, or
(b) the \[F503\] FCA, as a condition of the admission of the securities to the official list.

(3) Subsection (1) applies only to information—
(a) within the knowledge of any person responsible for the listing particulars; or
(b) which it would be reasonable for him to obtain by making enquiries.

(4) In determining what information subsection (1) requires to be included in listing particulars, regard must be had (in particular) to—
(a) the nature of the securities and their issuer;
(b) the nature of the persons likely to consider acquiring them;
(c) the fact that certain matters may reasonably be expected to be within the knowledge of professional advisers of a kind which persons likely to acquire the securities may reasonably be expected to consult; and
(d) any information available to investors or their professional advisers as a result of requirements imposed on the issuer of the securities by a recognised investment exchange, by listing rules or by or under any other enactment.

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**Textual Amendments**

\[F503\] Words in ss. 73A-84 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(a), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

81 Supplementary listing particulars.

(1) If at any time after the preparation of listing particulars which have been submitted to the \[F503\] FCA under section 79 and before the commencement of dealings in the securities concerned following their admission to the official list—
(a) there is a significant change affecting any matter contained in those particulars the inclusion of which was required by—
(i) section 80,
(ii) listing rules, or
(iii) the \[F503\] FCA, or
(b) a significant new matter arises, the inclusion of information in respect of which would have been so required if it had arisen when the particulars were prepared,
the issuer must, in accordance with listing rules, submit supplementary listing particulars of the change or new matter to the \[F503\] FCA, for its approval and, if they are approved, publish them.

(2) “Significant” means significant for the purpose of making an informed assessment of the kind mentioned in section 80(1).

(3) If the issuer of the securities is not aware of the change or new matter in question, he is not under a duty to comply with subsection (1) unless he is notified of the change or new matter by a person responsible for the listing particulars.

(4) But it is the duty of any person responsible for those particulars who is aware of such a change or new matter to give notice of it to the issuer.
(5) Subsection (1) applies also as respects matters contained in any supplementary listing particulars previously published under this section in respect of the securities in question.

Textual Amendments

F503 Words in ss. 73A-84 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(a), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

 Modifications etc. (not altering text)

C241 S. 81 modified (1.12.2001) by S.I. 2001/2957, arts. 1, 6(1)(3)(4); S.I. 2001/3538, art. 2(1)

C242 S. 81(1) extended (1.12.2001) by S.I. 2001/2957, arts. 1, 6(1)(3)(4); S.I. 2001/3538, art. 2(1)

Commencement Information

I19 S. 81 wholly in force at 1.12.2001; s. 81 not in force at Royal Assent see s. 431(2); s. 81(1)(5) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 81 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

82 Exemptions from disclosure.

(1) The [F503FCA] may authorise the omission from listing particulars of any information, the inclusion of which would otherwise be required by section 80 or 81, on the ground—

(a) that its disclosure would be contrary to the public interest;

(b) that its disclosure would be seriously detrimental to the issuer; or

(c) in the case of securities of a kind specified in listing rules, that its disclosure is unnecessary for persons of the kind who may be expected normally to buy or deal in securities of that kind.

(2) But—

(a) no authority may be granted under subsection (1)(b) in respect of essential information; and

(b) no authority granted under subsection (1)(b) extends to any such information.

(3) The Secretary of State or the Treasury may issue a certificate to the effect that the disclosure of any information (including information that would otherwise have to be included in listing particulars for which they are themselves responsible) would be contrary to the public interest.

(4) The [F503FCA] is entitled to act on any such certificate in exercising its powers under subsection (1)(a).

(5) This section does not affect any powers of the [F503FCA] under listing rules made as a result of section 101(2).

(6) “Essential information” means information which a person considering acquiring securities of the kind in question would be likely to need in order not to be misled about any facts which it is essential for him to know in order to make an informed assessment.

(7) “Listing particulars” includes supplementary listing particulars.
Registration of listing particulars.

Matters which may be dealt with by prospectus rules

(1) Prospectus rules may make provision as to—

(a) the required form and content of a prospectus (including a summary);
(b) the cases in which a summary need not be included in a prospectus;
(c) the languages which may be used in a prospectus (including a summary);
(d) the determination of the persons responsible for a prospectus;
(e) the manner in which applications to the Financial Conduct Authority for the approval of a prospectus are to be made.

(2) Prospectus rules may also make provision as to—

(a) the period of validity of a prospectus;
(b) the disclosure of the maximum price or of the criteria or conditions according to which the final offer price is to be determined, if that information is not contained in a prospectus;
(c) the disclosure of the amount of the transferable securities which are to be offered to the public or of the criteria or conditions according to which
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Financial Services and Markets Act 2000 (c. 8)
Part VI – Official Listing
CHAPTER 3 – Further provisions relating to FCA and PRA
Document Generated: 2019-12-18
Status: This version of this Act contains provisions that are prospective.
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team
to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in
the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(d)
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that amount is to be determined, if that information is not contained in a
prospectus;
the required form and content of other summary documents (including the
languages which may be used in such a document);
the ways in which a prospectus that has been approved by the [F503FCA] may
be made available to the public;
the disclosure, publication or other communication of such information as the
[F503FCA] may reasonably stipulate;
the principles to be observed in relation to advertisements in connection with
an offer of transferable securities to the public or admission of transferable
securities to trading on a regulated market and the enforcement of those
principles;
the suspension of trading in transferable securities where continued trading
would be detrimental to the interests of investors;
elections under section 87 or under Article 2.1(m)(iii) of the prospectus
directive as applied for the purposes of this Part by section 102C.

F527

(3) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .
(4) Prospectus rules may make provision for the purpose of dealing with matters arising
out of or related to any provision of the prospectus directive.
(5) In relation to cases where the home State in relation to an issuer of transferable
securities is an EEA State other than the United Kingdom, prospectus rules may make
provision for the recognition of elections made in relation to such securities under
the law of that State in accordance with Article 1.3 or 2.1(m)(iii) of the prospectus
directive.
(6) In relation to a document relating to transferable securities issued by an issuer
incorporated in a non-EEA State and drawn up in accordance with the law of that
State, prospectus rules may make provision as to the approval of that document as a
prospectus.
(7) Nothing in this section affects the [F503FCA's] general power to make prospectus rules.]

Textual Amendments

F503 Words in ss. 73A-84 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in
force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(a), 122(3) (with Sch. 20); S.I. 2013/113, art.
2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F526 Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by The Prospectus Regulations
2005 (S.I. 2005/1433), reg. 2(1), Sch. 1 para. 5
F527 S. 84(3) omitted (1.7.2012) by virtue of The Prospectus Regulations 2012 (S.I. 2012/1538), regs. 1(1),
3(1)

[F52885 Prohibition of dealing etc. in transferable securities without approved prospectus
(1) It is unlawful for transferable securities to which this subsection applies to be offered
to the public in the United Kingdom unless an approved prospectus has been made
available to the public before the offer is made.
(2) It is unlawful to request the admission of transferable securities to which this
subsection applies to trading on a regulated market situated or operating in the United


Kingdom unless an approved prospectus has been made available to the public before the request is made.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and liable—
   (a) on summary conviction, to imprisonment for a term not exceeding 3 months or a fine not exceeding the statutory maximum or both;
   (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.

(4) A contravention of subsection (1) or (2) 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.

(5) Subsection (1) applies to all transferable securities other than—
   (a) those listed in Schedule 11A;
   (b) such other transferable securities as may be specified in prospectus rules.

(6) Subsection (2) applies to all transferable securities other than—
   (a) those listed in Part 1 of Schedule 11A;
   (b) such other transferable securities as may be specified in prospectus rules.

(7) “Approved prospectus” means, in relation to transferable securities to which this section applies, a prospectus approved by the competent authority of the home State in relation to the issuer of the securities.

**Textual Amendments**

F528 Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), Sch. 1 para. 5

[F528|86] Exempt offers to the public

(1) A person does not contravene section 85(1) if—
   (a) the offer is made to or directed at qualified investors only;
   (b) the offer is made to or directed at fewer than [F530 150 persons], other than qualified investors, per EEA State;
   (c) the minimum consideration which may be paid by any person for transferable securities acquired by him pursuant to the offer is at least [F531100,000 euros] (or an equivalent amount);
   (d) the transferable securities being offered are denominated in amounts of at least [F531100,000 euros] (or equivalent amounts); [F532 ...]
   (e) the total consideration for the transferable securities being offered [F533 in the EEA States] cannot exceed [F5348,000,000] euros (or an equivalent amount). [F535; or]
   (f) the offer falls within subsection (1A).]

[F536|1A] An offer (“the current offer”) falls within this subsection if the transferable securities are being sold or placed through a financial intermediary where—
   (a) the transferable securities have previously been the subject of one or more offers to the public;
(b) in respect of one or more of those previous offers any of paragraphs (a) to (e) of subsection (1) applied;

(c) a prospectus is available for the securities which has been approved by the [F537FCA][F538 or the competent authority of another EEA State][F539 and meets either of the conditions in subsection (1B)]; and

(d) the issuer or other person who was responsible for drawing up the prospectus has given written consent to the use of the prospectus for the purpose of the current offer.]

[F540(1B) The conditions referred to in subsection (1A)(c) are—

(a) that the prospectus was approved by the FCA [F541 or the competent authority of another EEA State] no earlier than 12 months before the date the current offer is made, and is supplemented by every supplementary prospectus which was required to be submitted under section 87G; or

(b) in the case of non-equity transferable securities falling within Article 5(4)(b) of the prospectus directive, that the securities concerned have not ceased to be issued in a continuous or repeated manner.]

(2) Where—

(a) a person who is not a qualified investor (“the client”) has engaged a qualified investor falling within [F542 point (1) of Section I of Annex II to the markets in financial instruments directive] to act as his agent, and

(b) the terms on which the qualified investor is engaged enable him to make decisions concerning the acceptance of offers of transferable securities on the client's behalf without reference to the client,

an offer made to or directed at the qualified investor is not to be regarded for the purposes of subsection (1) as also having been made to or directed at the client.

(3) For the purposes of subsection (1)(b), the making of an offer of transferable securities to—

(a) trustees of a trust,

(b) members of a partnership in their capacity as such, or

(c) two or more persons jointly,

is to be treated as the making of an offer to a single person.

(4) In determining whether subsection (1)(e) is satisfied in relation to an offer (“offer A”), offer A is to be taken together with any other offer of transferable securities of the same class made by the same person which—

(a) was open at any time within the period of 12 months ending with the date on which offer A is first made; and

(b) had previously satisfied subsection (1)(e).

(5) For the purposes of this section, an amount (in relation to an amount denominated in euros) is an “equivalent amount” if it is an amount of equal value denominated wholly or partly in another currency or unit of account.

(6) The equivalent is to be calculated at the latest practicable date before (but in any event not more than 3 working days before) the date on which the offer is first made.

[F543“Qualified investor”, in relation to an offer of transferable securities, means—

(a) a person described in points (1) to (4) of Section I of Annex II to the markets in financial instruments directive, other than a person who, before the making
of the offer, has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive;

(b) a person who has made a request to one or more relevant firms to be treated as a professional client in accordance with Section II of Annex II to that directive and has not subsequently, but before the making of the offer, agreed in writing with that relevant firm (or each of those relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive;

(c) a person who is an eligible counterparty in accordance with [F544 Article 30] of that directive and has not, before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive; or

(d) a person whom—

(i) any relevant firm was authorised to continue to treat as a professional client immediately before 3 January 2018 by virtue of Article 71.6 (transitional provisions) of Directive 2004/39/EC on markets in financial instruments; and

(ii) the firm may continue to treat as a professional client from 3 January 2018 by virtue of Section II.2 of Annex II to the markets in financial instruments directive.]

[F546] (8) In subsection (7) “relevant firm” means an investment firm or credit institution acting in connection with the offer.

(9) Investment firms and credit institutions which are authorised persons must communicate their classification of their clients as being or not being qualified investors on request to an issuer subject to complying with

[F547] the data protection legislation, or

(b) any directly applicable EU legislation which is not part of the data protection legislation but which relates to data protection].

(10) In subsections (8) and (9), “credit institution” means—

(a) a credit institution authorised under the [F548 capital requirements directive]; or

(b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have one, its head office) in an EEA State.]

Textual Amendments

F529 Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), Sch. 1 para. 5

F530 Words in s. 86(1)(b) substituted (31.7.2011) by The Prospectus Regulations 2011 (S.I. 2011/1668), reg. 1(2)

F531 Words in s. 86(1)(c)(d) substituted (1.7.2012) by The Prospectus Regulations 2012 (S.I. 2012/1538), regs. 1(1), 2(1)(a)

F532 Word in s. 86(1) omitted (1.7.2012) by virtue of The Prospectus Regulations 2012 (S.I. 2012/1538), regs. 1(1), 2(1)(b)

F533 Words in s. 86(1)(c) inserted (1.7.2012) by The Prospectus Regulations 2012 (S.I. 2012/1538), regs. 1(1), 2(1)(c)
F535 S. 86(1)(f) and preceding word inserted (1.7.2012) by The Prospectus Regulations 2012 (S.I. 2012/1538), regs. 1(1), 2(1)(d)
F536 S. 86(1A) inserted (1.7.2012) by The Prospectus Regulations 2012 (S.I. 2012/1538), regs. 1(1), 2(2)
F537 Words in s. 86 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(2), 122(2), 16(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F538 Words in s. 86(1A)(c) inserted (17.12.2014) by The Payments to Governments and Miscellaneous Provisions Regulations 2014 (S.I. 2014/3293), regs. 1(2), 2(1)
F539 Words in s. 86(1A)(c) substituted (31.5.2013) by The Prospectus Regulations 2013 (S.I. 2013/1125), regs. 1, 2(a)
F540 S. 86(1B) inserted (31.5.2013) by The Prospectus Regulations 2013 (S.I. 2013/1125), regs. 1, 2(b)
F541 Words in s. 86(1B)(a) inserted (17.12.2014) by The Payments to Governments and Miscellaneous Provisions Regulations 2014 (S.I. 2014/3293), regs. 1(2), 2(1)
F542 Words in s. 86(2)(a) substituted (1.7.2012) by The Prospectus Regulations 2012 (S.I. 2012/1538), regs. 1(1), 3(2)(a)
F543 S. 86(7) substituted (1.7.2012) by The Prospectus Regulations 2012 (S.I. 2012/1538), regs. 1(1), 3(2)(b)
F546 S. 86(8)-(10) inserted (1.7.2012) by The Prospectus Regulations 2012 (S.I. 2012/1538), regs. 1(1), 3(2)(c)
F547 S. 86(9)(a)(b) substituted for words in s. 86(9) (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), Sch. 19 para. 49 (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)
F548 Words in s. 86(10)(a) substituted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 9

F549 87 Election to have prospectus

(1) A person who proposes—
   (a) to issue transferable securities to which this section applies,
   (b) to offer to the public transferable securities to which this section applies, or
   (c) to request the admission to a regulated market of transferable securities to which this section applies,
may elect, in accordance with prospectus rules, to have a prospectus in relation to the securities.

(2) If a person makes such an election, the provisions of this Part and of prospectus rules apply in relation to those transferable securities as if, in relation to an offer of the securities to the public or the admission of the securities to trading on a regulated market, they were transferable securities for which an approved prospectus would be required as a result of section 85.

(3) Listing rules made under section 79 do not apply to securities which are the subject of an election.
(4) The transferable securities to which this section applies are those which fall within any of the following paragraphs of Schedule 11A—
   (a) paragraph 2,
   (b) paragraph 4,
   (c) paragraph 8, or
   (d) paragraph 9,
where the United Kingdom is the home State in relation to the issuer of the securities.

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Textual Amendments

F549 Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), Sch. 1 para. 5

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Modifications etc. (not altering text)

C243 S. 87 extended (1.12.2001) by S.I. 2001/2957, arts. 1, 6(4); S.I. 2001/3538, art. 2(1)

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87A Criteria for approval of prospectus by [F551 FCA]

(1) The [F551 FCA] may not approve a prospectus unless it is satisfied that—
   (a) the United Kingdom is the home State in relation to the issuer of the transferable securities to which it relates,
   (b) the prospectus contains the necessary information, and
   (c) all of the other requirements imposed by or in accordance with this Part or the prospectus directive have been complied with (so far as those requirements apply to a prospectus for the transferable securities in question).

(2) The necessary information is the information necessary to enable investors to make an informed assessment of—
   (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the transferable securities and of any guarantor; and
   (b) the rights attaching to the transferable securities.

[ If, in the case of transferable securities to which section 87 applies, the prospectus (2A) states that the guarantor is a specified EEA State, the prospectus is not required to include other information about the guarantor.]

(3) The necessary information must be presented in a form which is comprehensible and easy to analyse.

(4) The necessary information must be prepared having regard to the particular nature of the transferable securities and their issuer.
(5) The prospectus must include a summary (unless the transferable securities in question are ones in relation to which prospectus rules provide that a summary is not required).

(6) The summary must convey concisely, in non-technical language and in an appropriate structure, the key information relevant to the securities which are the subject of the prospectus and, when read with the rest of the prospectus, must be an aid to investors considering whether to invest in the securities.

(a) inform, in writing, the competent authority and any competent authority of any EEA State which the applicant has requested be supplied with a certificate of approval under section 87I; and

(b) make that information available, in writing, to prospective investors.

(7) Where the prospectus for which approval is sought does not include the final offer price or the amount of transferable securities to be offered to the public, the applicant must, as soon as that element is finalised—

(a) inform, in writing, the FCA and any competent authority of any EEA State which the applicant has requested be supplied with a certificate of approval under section 87I; and

(b) make that information available, in writing, to prospective investors.

(8) “Prospectus” (except in subsection (5)) includes a supplementary prospectus.

(9) “the key information” means the information which is essential to enable investors to understand the transferable securities to which the prospectus relates and to decide whether to consider the offer further.

(10) The key information must include —

(a) the essential characteristics of, and risks associated with, the issuer and any guarantor, including their assets, liabilities and financial positions;

(b) the essential characteristics of, and risks associated with, investment in the transferable securities, including any rights attaching to the securities;

(c) the general terms of the offer, including an estimate of the expenses charged to an investor by the issuer and the person offering the securities to the public, if not the issuer;

(d) details of the admission to trading; and

(e) the reasons for the offer and proposed use of the proceeds.

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**Textual Amendments**

F551 Word in s. 87A heading substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(6)(c), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F552 Word in s. 87A(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(6)(a), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F553 S. 87A(2A) inserted (1.7.2012) by The Prospectus Regulations 2012 (S.I. 2012/1538), regs. 1(1), 2(3)

F554 S. 87A(6) substituted (1.7.2012) by The Prospectus Regulations 2012 (S.I. 2012/1538), regs. 1(1), 4(a)

F555 Words in s. 87A(7) substituted (1.7.2012) by The Prospectus Regulations 2012 (S.I. 2012/1538), regs. 1(1), 4(b)
87B Exemptions from disclosure

(1) The [F559 FCA] may authorise the omission from a prospectus of any information, the inclusion of which would otherwise be required, on the ground—

(a) that its disclosure would be contrary to the public interest;
(b) that its disclosure would be seriously detrimental to the issuer, provided that the omission would be unlikely to mislead the public with regard to any facts or circumstances which are essential for an informed assessment of the kind mentioned in section 87A(2); or
(c) that the information is only of minor importance for a specific offer to the public or admission to trading on a regulated market and unlikely to influence an informed assessment of the kind mentioned in section 87A(2).

(2) The Secretary of State or the Treasury may issue a certificate to the effect that the disclosure of any information would be contrary to the public interest.

(3) The [F559 FCA] is entitled to act on any such certificate in exercising its powers under subsection (1)(a).

(4) This section does not affect any powers of the [F559 FCA] under prospectus rules.

(5) “Prospectus” includes a supplementary prospectus.

87C Consideration of application for approval

(1) The [F559 FCA] must notify the applicant of its decision on an application for approval of a prospectus before the end of the period for consideration.

(2) The period for consideration—

(a) begins with the first working day after the date on which the application is received; but
(b) if the [F559 FCA] gives a notice under subsection (4), is to be treated as beginning with the first working day after the date on which the notice is complied with.
(3) The period for consideration is—
   (a) except in the case of a new issuer, 10 working days; or
   (b) in that case, 20 working days.

(4) The FCA may by notice in writing require a person who has applied for approval of a prospectus to provide—
   (a) specified documents or documents of a specified description, or
   (b) specified information or information of a specified description.

(5) No notice under subsection (4) may be given after the end of the period, beginning with the first working day after the date on which the application is received, of—
   (a) except in the case of a new issuer, 10 working days; or
   (b) in that case, 20 working days.

(6) Subsection (4) applies only to information and documents reasonably required in connection with the exercise by the FCA of its functions in relation to the application.

(7) The FCA may require any information provided under this section to be provided in such form as it may reasonably require.

(8) The FCA may require—
   (a) any information provided, whether in a document or otherwise, to be verified in such manner, or
   (b) any document produced to be authenticated in such manner, as it may reasonably require.

(9) The FCA must notify the applicant of its decision on an application for approval of a supplementary prospectus before the end of the period of 7 working days beginning with the date on which the application is received; and subsections (4) and (6) to (8) apply to such an application as they apply to an application for approval of a prospectus.

(10) The FCA’s failure to comply with subsection (1) or (9) does not constitute approval of the application in question.

(11) “New issuer” means an issuer of transferable securities which—
   (a) does not have transferable securities admitted to trading on any regulated market; and
   (b) has not previously offered transferable securities to the public.

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Textual Amendments

F559 Words in ss. 87B-87D substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(c), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

87D Procedure for decision on application for approval
(1) If the FCA approves a prospectus, it must give the applicant and ESMA written notice.

The written notice to ESMA must be accompanied by a copy of the prospectus as approved.

(2) If the FCA proposes to refuse to approve a prospectus, it must give the applicant written notice.

(3) The notice must state the FCA’s reasons for the proposed refusal.

(4) If the FCA decides to refuse to approve a prospectus, it must give the applicant written notice.

(5) The notice must—

(a) give the FCA’s reasons for refusing the application; and

(b) inform the applicant of his right to refer the matter to the Tribunal.

(6) If the FCA refuses to approve a prospectus, the applicant may refer the matter to the Tribunal.

(7) In this section “prospectus” includes a supplementary prospectus.

Textual Amendments

F559 Words in ss. 87B-87D substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(c), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F560 Words in s. 87D(1) inserted (8.12.2016) by The Financial Services and Markets (Disclosure of Information to the European Securities and Markets Authority etc. and Other Provisions) Regulations 2016 (S.I. 2016/1095), regs. 1, 3(2)(a)

F561 S. 87D(1A) inserted (8.12.2016) by The Financial Services and Markets (Disclosure of Information to the European Securities and Markets Authority etc. and Other Provisions) Regulations 2016 (S.I. 2016/1095), regs. 1, 3(2)(b)

Transfer of application for approval of a prospectus

87E Transfer by FCA of application for approval

(1) The FCA may transfer an application for the approval of a prospectus or a supplementary prospectus to the competent authority of another EEA State (“the transferee authority”).

(2) Before doing so, the FCA must obtain the agreement of the transferee authority and notify ESMA.

(3) The FCA must inform the applicant of the transfer within 3 working days beginning with the first working day after the date of the transfer.

(4) On making a transfer under subsection (1), the FCA ceases to have functions under this Part in relation to the application transferred.
87F Transfer to [F567FCA] of application for approval

(1) [F567Where the FCA] agrees to the transfer to it of an application for the approval of a prospectus made to the competent authority of another EEA State—
   (a) the United Kingdom is to be treated for the purposes of this Part as the home State in relation to the issuer of the transferable securities to which the prospectus relates, and
   (b) this Part applies to the application as if it had been made to the [F568FCA] but with the modification in subsection (2).

(2) Section 87C applies as if the date of the transfer were the date on which the application was received by the [F569FCA].

Textual Amendments
F562 Word in s. 87E heading substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(7)(c), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F563 Word in s. 87E(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(7)(a), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F564 Word in ss. 87E(2)-(4) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(7)(b), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F565 Words in s. 87E(2) inserted (16.4.2012) by The Financial Services (Omnibus 1 Directive) Regulations 2012 (S.I. 2012/916), regs. 1, 2(3)
F570 S. 87FA and cross-heading inserted (17.12.2014) by The Payments to Governments and Miscellaneous Provisions Regulations 2014 (S.I. 2014/3293), regs. 1(2), 3(1)
87FA. Final terms

Final terms issued in relation to a prospectus must only contain information that relates to the securities note and must not be used to supplement the prospectus.

87FB. Communication of final terms by FCA

(1) Where the FCA in its capacity as the competent authority of the home State receives final terms issued in relation to a prospectus it must communicate those final terms as follows—

- (a) where an offer of transferable securities to the public is to be made in another EEA State, to the competent authority of that EEA State, where possible before that offer begins or as soon as practicable following the making of that offer;
- (b) where transferable securities are to be admitted to trading on a regulated market in another EEA State, to the competent authority of that EEA State, where possible before that admission occurs or as soon as practicable following the admission of those transferable securities to trading on a regulated market.

(2) The FCA must communicate all final terms in relation to a prospectus it receives in its capacity as the competent authority of the home State to ESMA.

Textual Amendments

F571 S. 87FB inserted (1.1.2016) by The Payments to Governments and Miscellaneous Provisions Regulations 2014 (S.I. 2014/3293), regs. 1(2), 3(2)

87G. Supplementary prospectus

(1) Subsection (2) applies if, during the relevant period, there arises or is noted a significant new factor, material mistake or inaccuracy relating to the information included in a prospectus approved by the F572FCA.

(2) The person on whose application the prospectus was approved must, in accordance with prospectus rules, submit a supplementary prospectus containing details of the new factor, mistake or inaccuracy to the F572FCA for its approval.

(3) The relevant period begins when the prospectus is approved and ends—

- (a) with the closure of the offer of the transferable securities to which the prospectus relates; or
- (b) when trading in those securities on a regulated market begins.

But where the prospectus relates both to an offer of transferable securities to the public (3A) and the admission of those securities to trading on a regulated market, subsection (3) does not apply and the relevant period begins when the prospectus is approved and ends with the later of—

- (a) the closure of the offer to the public to which the prospectus relates, or
(b) the time when trading in those securities on a regulated markets begins.]

(4) “Significant” means significant for the purposes of making an informed assessment of the kind mentioned in section 87A(2).

(5) Any person responsible for the prospectus who is aware of any new factor, mistake or inaccuracy which may require the submission of a supplementary prospectus in accordance with subsection (2) must give notice of it to—
(a) the issuer of the transferable securities to which the prospectus relates, and
(b) the person on whose application the prospectus was approved.

(6) A supplementary prospectus must provide sufficient information to correct any mistake or inaccuracy which gave rise to the need for it.

(7) Subsection (1) applies also to information contained in any supplementary prospectus published under this section.

Textual Amendments

F572 Words in s. 87G substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(d), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F573 S. 87G(3A) inserted (1.7.2012) by The Prospectus Regulations 2012 (S.I. 2012/1538), regs. 1(1), 5(1)

Passporting

87H Prospectus approved in another EEA State

(1) A prospectus approved by the competent authority of an EEA State other than the United Kingdom is not an approved prospectus for the purposes of section 85 unless that authority has notified ESMA and provided the F575 FCA with—
(a) a certificate of approval;
(b) a copy of the prospectus as approved; and
(c) if requested by the F575 FCA, a translation of the summary of the prospectus.

(2) A document is not a certificate of approval unless it states that the prospectus—
(a) has been drawn up in accordance with the prospectus directive; and
(b) has been approved, in accordance with that directive, by the competent authority providing the certificate.

(3) A document is not a certificate of approval unless it states whether (and, if so, why) the competent authority providing it authorised, in accordance with the prospectus directive, the omission from the prospectus of information which would otherwise have been required to be included.

F576 The F575 FCA must publish on its website a list of certificates of approval provided (3A) to it in accordance with this section.

(3B) The list referred to in subsection (3A) must—
(a) be kept up-to-date,
(b) retain items on it for a period of at least 12 months, and
87I  Provision of information to host Member State

(1) The [F578 FCA] must, if requested to do so, supply the competent authority of a specified EEA State with—
   (a) a certificate of approval;
   (b) a copy of the specified prospectus (as approved by the [F579 FCA]); and
   (c) a translation of the summary of the specified prospectus (if the request states that one has been requested by the [F580 ... competent authority]).

If the [F581 FCA] supplies a certificate of approval to the competent authority of the (1A) specified EEA State, it must also supply a copy of that certificate [F582 to—
   (a) the person who made the request under this section; and
   (b) ESMA].

(2) Only the following may make a request under this section—
   (a) the issuer of the transferable securities to which the specified prospectus relates;
   (b) a person who wishes to offer the transferable securities to which the specified prospectus relates to the public in an EEA State other than (or as well as) the United Kingdom;
   (c) a person requesting the admission of the transferable securities to which the specified prospectus relates to a regulated market situated or operating in an EEA State other than (or as well as) the United Kingdom.

(3) A certificate of approval must state that the prospectus—
   (a) has been drawn up in accordance with this Part and the prospectus directive; and

c) include hyperlinks to any certificate of approval and prospectus published on the website of—
   (i) the competent authority of the EEA State which provided the certificate,
   (ii) the issuer, or
   (iii) the regulated market where admission to trading is sought.]

(4) “Prospectus” includes a supplementary prospectus.

Textual Amendments

F574 Words in s. 87H(1) inserted (16.4.2012) by The Financial Services (Omnibus 1 Directive) Regulations 2012 (S.I. 2012/916), regs. 1, 2(4)(a)

F575 Word in s. 87H(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(9)(a), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.


F577 Word in s. 87H(3A) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(9)(b), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
(b) has been approved, in accordance with those provisions, by the [F584FCA].

(4) A certificate of approval must state whether (and, if so, why) the [F584FCA] authorised, in accordance with section 87B, the omission from the prospectus of information which would otherwise have been required to be included.

(5) The [F584FCA] must comply with a request under this section—
   (a) if the prospectus has been approved before the request is made, within 3 working days beginning with [F585 the date the request is received]; or
   (b) if the request is submitted with an application for the approval of the prospectus, on the first working day after the date on which it approves the prospectus.

(6) “Prospectus” includes a supplementary prospectus.

(7) “Specified” means specified in a request made for the purposes of this section.

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Textual Amendments

F578 Word in s. 87I(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(10)(a)(i), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F579 Word in s. 87I(1)(b) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(10)(a)(ii), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F580 Word in s. 87I(1)(c) omitted (24.1.2013 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(10)(a)(iii), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F581 S. 87I(1A) inserted (16.4.2012) by The Financial Services (Omnibus 1 Directive) Regulations 2012 (S.I. 2012/916), regs. 1, 2(5)

F582 Word in s. 87I(1A) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(10)(b), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F583 Words in s. 87I(1A) substituted (1.7.2012) by The Prospectus Regulations 2012 (S.I. 2012/1538), regs. 1(1), 6(a)

F584 Word in ss. 87I(3)-(5) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(10)(c), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F585 Words in s. 87I(5)(a) substituted (1.7.2012) by The Prospectus Regulations 2012 (S.I. 2012/1538), regs. 1(1), 6(b)

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Transferable securities: powers of [F586FCA]

Textual Amendments

F586 Words in ss. 87J-87O and cross-heading substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(c), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
87J Requirements imposed as condition of approval

(1) As a condition of approving a prospectus, the [F586FCA] may by notice in writing—

(a) require the inclusion in the prospectus of such supplementary information necessary for investor protection as the [F586FCA] may specify;
(b) require a person controlling, or controlled by, the applicant to provide specified information or documents;
(c) require an auditor or manager of the applicant to provide specified information or documents;
(d) require a financial intermediary commissioned to assist either in carrying out the offer to the public of the transferable securities to which the prospectus relates or in requesting their admission to trading on a regulated market, to provide specified information or documents.

(2) “Specified” means specified in the notice.

(3) “Prospectus” includes a supplementary prospectus.

87K Power to suspend or prohibit offer to the public

(1) This section applies where a person (“the offeror”) has made an offer of transferable securities to the public [F587] ... (“the offer”).

(2) If the [F586FCA] has reasonable grounds for suspecting that an applicable provision has been infringed, it may—

(a) require the offeror to suspend the offer for a period not exceeding 10 working days;
(b) require a person not to advertise the offer, or to take such steps as the FCA may specify to suspend any existing advertisement of the offer, for a period not exceeding 10 working days.

(3) If the [F586FCA] has reasonable grounds for suspecting that it is likely that an applicable provision will be infringed, it may require the offeror to withdraw the offer.

(4) If the [F586FCA] finds that an applicable provision has been infringed, it may require the offeror to withdraw the offer.

(5) “An applicable provision” means—

(a) a provision of this Part,
(b) a provision contained in prospectus rules,
(c) any other provision made in accordance with the prospectus directive, applicable in relation to the offer.

Textual Amendments
F587 Words in s. 87K(1) omitted (17.12.2014) by virtue of The Payments to Governments and Miscellaneous Provisions Regulations 2014 (S.I. 2014/3293), regs. 1(2), 2(3)
87L. Power to suspend or prohibit admission to trading on a regulated market

(1) This section applies where a person has requested the admission of transferable securities to trading on a regulated market. 

(2) If the FCA has reasonable grounds for suspecting that an applicable provision has been infringed and the securities have not yet been admitted to trading on the regulated market in question, it may—
   (a) require the person requesting admission to suspend the request for a period not exceeding 10 working days;
   (b) require a person not to advertise the securities to which it relates, or to take such steps as the authority may specify to suspend any existing advertisement in connection with those securities, for a period not exceeding 10 working days.

(3) If the FCA has reasonable grounds for suspecting that an applicable provision has been infringed and the securities have been admitted to trading on the regulated market in question, it may—
   (a) require the market operator to suspend trading in the securities for a period not exceeding 10 working days;
   (b) require a person not to advertise the securities, or to take such steps as the authority may specify to suspend any existing advertisement in connection with those securities, for a period not exceeding 10 working days.

(4) If the FCA finds that an applicable provision has been infringed, it may require the market operator to prohibit trading in the securities on the regulated market in question.

(5) “An applicable provision” means—
   (a) a provision of this Part,
   (b) a provision contained in prospectus rules,
   (c) any other provision made in accordance with the prospectus directive, applicable in relation to the admission of the transferable securities to trading on the regulated market in question.

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87M Public censure of issuer

(1) If the FCA finds that—
   (a) an issuer of transferable securities,
   (b) a person offering transferable securities to the public, or
   (c) a person requesting the admission of transferable securities to trading on a regulated market,
is failing or has failed to comply with his obligations under an applicable provision, it may publish a statement to that effect.

(2) If the [F586FCA] proposes to publish a statement, it must give the person a warning notice setting out the terms of the proposed statement.

(3) If, after considering any representations made in response to the warning notice, the [F586FCA] decides to make the proposed statement, it must give the person a decision notice setting out the terms of the statement.

(4) “An applicable provision” means—
   (a) a provision of this Part,
   (b) a provision contained in prospectus rules,
   (c) any other provision made in accordance with the prospectus directive, applicable to a prospectus in relation to the transferable securities in question.

(5) “Prospectus” includes a supplementary prospectus.

87N Right to refer matters to the Tribunal

(1) A person to whom a decision notice is given under section 87M may refer the matter to the Tribunal.

(2) A person to whom a notice is given under section 87O may refer the matter to the Tribunal.

87O Procedure under sections 87K and 87L

(1) A requirement under section 87K or 87L takes effect—
   (a) immediately, if the notice under subsection (2) states that that is the case;
   (b) in any other case, on such date as may be specified in that notice.

(2) If the [F586FCA]—
   (a) proposes to exercise the powers in section 87K or 87L in relation to a person,
   or
   (b) exercises any of those powers in relation to a person with immediate effect, it must give that person written notice.

(3) The notice must—
   (a) give details of the [F586FCA’s] action or proposed action;
   (b) state the [F586FCA’s] reasons for taking the action in question and choosing the date on which it took effect or takes effect;
   (c) inform the recipient that he may make representations to the [F586FCA] within such period as may be specified by the notice (whether or not he has referred the matter to the Tribunal);
   (d) inform him of the date on which the action took effect or takes effect; and
   (e) inform him of his right to refer the matter to the Tribunal.

(4) The [F586FCA] may extend the period within which representations may be made to it.
(5) If, having considered any representations made to it, the FCA decides to maintain, vary or revoke its earlier decision, it must give written notice to that effect to the person mentioned in subsection (2).

(6) A notice given under subsection (5) must inform that person, where relevant, of his right to refer the matter to the Tribunal.

(7) 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.

(8) If a notice under this section relates to the exercise of the power conferred by section 87L(3), the notice must also be given to the person at whose request the transferable securities were admitted to trading on the regulated market.

87P Exercise of powers at request of competent authority of another EEA State

(1) This section applies if—

(a) the competent authority of an EEA State other than the United Kingdom has approved a prospectus,

(b) the transferable securities to which the prospectus relates have been offered to the public in the United Kingdom or their admission to trading on a regulated market has been requested, and

(c) that competent authority makes a request that the FCA assist it in the performance of its functions under the law of that State in connection with the prospectus directive.

(2) For the purpose of complying with the request mentioned in subsection (1)(c), the powers conferred by sections 87K and 87L may be exercised as if the prospectus were one which had been approved by the FCA.

(3) Section 87N does not apply to an exercise of those powers as a result of this section.

(4) Section 87O does apply to such an exercise of those powers but with the omission of subsections (3)(e), (6) and (7).]
(1) Where a person agrees to buy or subscribe for transferable securities in circumstances where the final offer price or the amount of transferable securities to be offered to the public is not included in the prospectus, he may withdraw his acceptance before the end of the withdrawal period.

(2) The withdrawal period—
   (a) begins with the investor's acceptance; and
   (b) ends at the end of the second working day after the date on which the [F591 FCA]
is informed of the information in accordance with section 87A(7).

(3) Subsection (1) does not apply if the prospectus contains—
   (a) in the case of the amount of transferable securities to be offered to the public, the criteria or conditions (or both) according to which that element will be determined, or
   (b) in the case of price, the criteria or conditions (or both) according to which that element will be determined or the maximum price.

[F592(4) A person (“P”) may withdraw P’s acceptance of an offer of transferable securities to the public before the specified time where the conditions in subsection (5) are satisfied.]

[F593(5) The conditions are that—
   (a) a prospectus which relates to an offer of transferable securities to the public has been published;
   (b) a supplementary prospectus has been published;
   (c) prior to the publication of the supplementary prospectus, P agreed to buy or subscribe for transferable securities to which the offer relates; and
   (d) the significant new factor, material mistake or inaccuracy referred to in section 87G(1) which caused the supplementary prospectus to be published arose before delivery of the securities.

(6) The specified time is—
   (a) the end of the second working day after the day on which the supplementary prospectus was published; or
   (b) such later time as may be specified in the supplementary prospectus.]

Textual Amendments

F591 Words in ss. 87Q-88 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(f), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F592 S. 87Q(4) substituted (1.7.2012) by The Prospectus Regulations 2012 (S.I. 2012/1538), regs. 1(1), 5(2) (a)
F593 S. 87Q(5)(6) inserted (1.7.2012) by The Prospectus Regulations 2012 (S.I. 2012/1538), regs. 1(1), 5(2) (b)

Registered investors

87R Register of investors

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88 **Sponsors**

(1) Listing rules may require a person to make arrangements with a sponsor for the performance by the sponsor of such services in relation to him as may be specified in the rules.

(2) “Sponsor” means a person approved by the [F591FCA] for the purposes of the rules.

(3) Listing rules made by virtue of subsection (1) may—

(a) provide for the [F591FCA] to maintain a list of sponsors;

(b) specify services which must be performed by a sponsor;

(c) impose requirements on a sponsor in relation to the provision of services or specified services;

(d) specify the circumstances in which a person is qualified for being approved as a sponsor.

(e) provide for limitations or other restrictions to be imposed on the services to which an approval relates (whether or not the approval has already been granted);

(f) provide for the approval of a sponsor to be suspended on the application of the sponsor.

(4) If the [F591FCA] proposes—

(a) to refuse a person’s application [F596 under sponsor rules],

(aa) to impose limitations or other restrictions on the services to which a person's approval relates[,] or

(b) to cancel a person’s approval as a sponsor [F598 otherwise than at his request],

it must give him a warning notice.

(5) If, after considering any representations made in response to the warning notice, the [F591FCA] decides—

(a) to grant the application [F599 under sponsor rules],

(aa) not to impose limitations or other restrictions on the services to which a person's approval relates[,] or

(b) not to cancel the approval,

it must give the person concerned, and any person to whom a copy of the warning notice was given, written notice of its decision.

(6) If, after considering any representations made in response to the warning notice, the [F591FCA] decides—

(a) to refuse to grant the application [F601 under sponsor rules],

(aa) to impose limitations or other restrictions on the services to which a person's approval relates[,] or

(b) to cancel the approval,
it must give the person concerned a decision notice.

(7) A person to whom a decision notice is given under this section may refer the matter to the Tribunal.

[F601(8) In this section any reference to an application under sponsor rules means—
(a) an application for approval as a sponsor,
(b) an application for the suspension of an approval as a sponsor,
(c) an application for the withdrawal of the suspension of an approval as a sponsor, or
(d) an application for the withdrawal or variation of a limitation or other restriction on the services to which a sponsor's approval relates.]
Public censure of sponsor.

Disciplinary powers: contravention of s.88(3)(c) or (e)

(1) The FCA may take action against a sponsor under this section if it considers that the sponsor has contravened a requirement or restriction imposed on the sponsor by rules made as a result of section 88(3)(c) or (e).

(2) If the FCA is entitled to take action under this section against a sponsor, it may do one or more of the following—
   (a) impose a penalty on the sponsor of such amount as it considers appropriate;
   (b) suspend, for such period as it considers appropriate, the sponsor's approval;
   (c) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance of services to which the sponsor's approval relates as it considers appropriate;
   (d) publish a statement to the effect that the sponsor has contravened a requirement or restriction imposed on the sponsor by rules made as a result of section 88(3)(c) or (e).

(3) The period for which a suspension or restriction is to have effect may not exceed 12 months.

(4) A suspension may relate only to the performance in specified circumstances of a service to which the approval relates.

(5) A restriction may, in particular, be imposed so as to require the sponsor to take, or refrain from taking, specified action.

(6) The FCA may—
   (a) withdraw a suspension or restriction; or
   (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(7) The FCA may not take action against a sponsor 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 sponsor under section 88B(1).

(8) “The limitation period” means the period of 3 years beginning with the first day on which the FCA knew that the sponsor had contravened the requirement or restriction.

(9) For this purpose the FCA is to be treated as knowing that a sponsor has contravened a requirement or restriction if it has information from which that can reasonably be inferred.
88B Action under s.88A: procedure and right to refer to Tribunal

(1) If the FCA proposes to take action against a sponsor under section 88A, it must give the sponsor 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—
   (a) to suspend an approval, or
   (b) to impose a restriction in relation to the performance of a service, must state the period for which the suspension or restriction is to have effect.

(4) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(5) If the FCA decides to take action against a sponsor under section 88A, it must give the sponsor a decision notice.

(6) A decision notice about the imposition of a penalty must state the amount of the penalty.

(7) A decision notice about—
   (a) the suspension of an approval, or
   (b) the imposition of a restriction in relation to the performance of a service, must state the period for which the suspension or restriction is to have effect.

(8) A decision notice about the publication of a statement must set out the terms of the statement.

(9) If the FCA decides to take action against a sponsor under section 88A, the sponsor may refer the matter to the Tribunal.
88C  Action under s.88A: statement of policy

(1) The FCA must prepare and issue a statement of its policy with respect to—
   (a) the imposition of penalties, suspensions or restrictions under section 88A,
   (b) the amount of penalties under that section, and
   (c) the period for which suspensions or restrictions under that section are to have effect.

(2) The FCA's policy in determining what the amount of a penalty should be, or what the period for which a suspension or restriction is to have effect should be, must include having regard to—
   (a) the seriousness of the contravention in question in relation to the nature of the requirement concerned,
   (b) the extent to which that contravention was deliberate or reckless, and
   (c) whether the sponsor concerned is an individual.

(3) The FCA 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 FCA must issue the altered or replacement statement.

(5) In exercising, or deciding whether to exercise, its power under section 88A in the case of any particular contravention, the FCA must have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.

(6) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(7) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

(8) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

88D  Statement of policy under s.88C: procedure

(1) Before issuing a statement under section 88C, the FCA must publish a draft of the proposed statement in the way appearing to the FCA 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 FCA within a specified time.

(3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).
(4) If the FCA 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 (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.

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**Textual Amendments**

F604 Ss. 88A-88F substituted for s. 89 (24.1.2013 for specified purposes, 19.3.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 18(4), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.; S.I. 2013/651, art. 2(a)

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**88E  Powers exercisable to advance operational objectives**

(1) The FCA may take action against a sponsor under this section if it considers that it is desirable to do so in order to advance one or more of its operational objectives.

(2) If the FCA is entitled to take action under this section against a sponsor, it may—
   (a) suspend, for such period as it considers appropriate, the sponsor's approval, or
   (b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance of services to which the sponsor's approval relates as it considers appropriate.

(3) A suspension may relate only to the performance in specified circumstances of a service to which the approval relates.

(4) A restriction may, in particular, be imposed so as to require the sponsor to take, or refrain from taking, specified action.

(5) The FCA may—
   (a) withdraw a suspension or restriction, or
   (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(6) A person against whom the FCA takes action under this section may refer the matter to the Tribunal.

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**Textual Amendments**

F604 Ss. 88A-88F substituted for s. 89 (24.1.2013 for specified purposes, 19.3.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 18(4), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.; S.I. 2013/651, art. 2(a)
88F Action under s.88E: procedure

(1) Action against a sponsor under section 88E takes effect—
   (a) immediately, if the notice given under subsection (3) so provides, or
   (b) on such later date as may be specified in the notice.

(2) If the FCA—
   (a) proposes to take action against a sponsor under that section, or
   (b) takes action against a sponsor under that section with immediate effect,
       it must give the sponsor written notice.

(3) The notice must—
   (a) give details of the action,
   (b) state the FCA's reasons for taking the action and for its determination as to
       when the action takes effect,
   (c) inform the sponsor that the sponsor may make representations to the FCA
       within such period as may be specified in the notice (whether or not the matter
       has been referred to the Tribunal),
   (d) inform the sponsor of when the action takes effect,
   (e) inform the sponsor of the right to refer the matter to the Tribunal, and
   (f) give an indication of the procedure on such a reference.

(4) The FCA may extend the period allowed under the notice for making representations.

(5) If the FCA decides—
   (a) to take the action in the way proposed, or
   (b) if the action has taken effect, not to rescind it,
       the FCA must give the sponsor written notice.

(6) If the FCA decides—
   (a) not to take the action in the way proposed,
   (b) to take action under section 88E that differs from the action originally
       proposed, or
   (c) to rescind action which has taken effect,
       the FCA must give the sponsor written notice.

(7) A notice under subsection (5) must—
   (a) inform the sponsor of the right to refer the matter to the Tribunal, and
   (b) give an indication of the procedure on such a reference.

(8) A notice under subsection (6)(b) must comply with subsection (3).]
### Transparency obligations

**Textual Amendments**
- **F605** Ss. 89A-89G and cross-heading inserted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1266(1), 1300(1)(a) (with s. 1266(2))

#### 89A Transparency rules

1. The FCA may make rules for the purposes of the transparency obligations directive.

2. The rules may include provision for dealing with any matters arising out of or related to any provision of the transparency obligations directive.

3. The FCA may also make rules—
   - (a) for the purpose of ensuring that voteholder information in respect of voting shares traded on a UK market other than a regulated market is made public or notified to the FCA;
   - (b) 

4. Rules under this section may, in particular, make provision—
   - (a) specifying how the proportion of—
     - (i) the total voting rights in respect of shares in an issuer, or
     - (ii) the total voting rights in respect of a particular class of shares in an issuer, held by a person is to be determined;
   - (b) specifying the circumstances in which, for the purposes of any determination of the voting rights held by a person (“P”) in respect of voting shares in an issuer, any voting rights held by another person in respect of voting shares in the issuer are to be regarded as held by P;
   - (c) specifying the nature of the information which must be included in any notification;
   - (d) about the form of any notification;
   - (e) requiring any notification to be given within a specified period;
   - (f) specifying the manner in which any information is to be made public and the period within which it must be made public;
   - (g) specifying circumstances in which any of the requirements imposed by rules under this section does not apply.

5. Rules under this section are referred to in this Part as “transparency rules”.

6. Nothing in sections 89B to 89G affects the generality of the power to make rules under this section.

**Textual Amendments**
- **F606** Words in ss. 89A-97 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(g), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F607 S. 89A(3)(b) omitted (1.11.2015 for specified purposes, 26.11.2015 in so far as not already in force) by virtue of The Transparency Regulations 2015 (S.I. 2015/1755), regs. 1(2)(3), 2(1)(a)
F608 Words in s. 89A(4)(b) omitted (1.11.2015 for specified purposes, 26.11.2015 in so far as not already in force) by virtue of The Transparency Regulations 2015 (S.I. 2015/1755), regs. 1(2)(3), 2(1)(b)

89B Provision of voteholder information

(1) Transparency rules may make provision for voteholder information in respect of voting shares to be notified, in circumstances specified in the rules—
   (a) to the issuer, or
   (b) to the public,
   or to both.

(2) Transparency rules may make provision for voteholder information notified to the issuer to be notified at the same time to the [F606FCA].

(3) In this Part “voteholder information” in respect of voting shares means information relating to the proportion of voting rights held by a person in respect of the shares.

(4) Transparency rules may require notification of voteholder information relating to a person—
   (a) initially, not later than such date as may be specified in the rules for the purposes of the first indent of Article 30.2 of the transparency obligations directive, and
   (b) subsequently, in accordance with the following provisions.

(5) Transparency rules under subsection (4)(b) may require notification of voteholder information relating to a person only where there is a notifiable change in the proportion of—
   (a) the total voting rights in respect of shares in the issuer, or
   (b) the total voting rights in respect of a particular class of share in the issuer, held by the person.

(6) For this purpose there is a “notifiable change” in the proportion of voting rights held by a person when the proportion changes—
   (a) from being a proportion less than a designated proportion to a proportion equal to or greater than that designated proportion,
   (b) from being a proportion equal to a designated proportion to a proportion greater or less than that designated proportion, or
   (c) from being a proportion greater than a designated proportion to a proportion equal to or less than that designated proportion.

(7) In subsection (6) “designated” means designated by the rules.

Textual Amendments
F606 Words in ss. 89A-97 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(g), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
89C Provision of information by issuers of transferable securities

(1) Transparency rules may make provision requiring the issuer of transferable securities, in circumstances specified in the rules—

(a) to make public information to which this section applies, or
(b) to notify to the FCA information to which this section applies, or to do both.

(2) In the case of every issuer, this section applies to—

(a) information required by Article 4 of the transparency obligations directive;

(b) information related to the rights attached to the transferable securities, including information about the terms and conditions of those securities which could indirectly affect those rights; ... 

(3) In the case of an issuer of debt securities, this section also applies to information required by Article 5 of the transparency obligations directive.

(4) In the case of an issuer of shares, this section also applies to—

(a) information required by Article 5 of the transparency obligations directive;

(b) voteholder information—

(i) notified to the issuer, or
(ii) relating to the proportion of voting rights held by the issuer in respect of shares in the issuer;

(d) information relating to the issuer's capital; and

(e) information relating to the total number of voting rights in respect of shares or shares of a particular class.

Textual Amendments

F606 Words in ss. 89A-97 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(g), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F609 S. 89C(2)(aa) inserted (17.12.2014) by The Payments to Governments and Miscellaneous Provisions Regulations 2014 (S.I. 2014/3293), regs. 1(2), 4(a)

F610 Word in s. 89C(2)(aa) inserted (1.11.2015 for specified purposes, 26.11.2015 in so far as not already in force) by The Transparency Regulations 2015 (S.I. 2015/1755), regs. 1(2)(3), 2(2)(a)

F611 Word in s. 89C(2)(b) omitted (1.11.2015 for specified purposes, 26.11.2015 in so far as not already in force) by virtue of The Transparency Regulations 2015 (S.I. 2015/1755), regs. 1(2)(3), 2(2)(b)

F612 S. 89C(2)(c) omitted (1.11.2015 for specified purposes, 26.11.2015 in so far as not already in force) by virtue of The Transparency Regulations 2015 (S.I. 2015/1755), regs. 1(2)(3), 2(2)(c)

F613 S. 89C(4)(b) omitted (17.12.2014) by virtue of The Payments to Governments and Miscellaneous Provisions Regulations 2014 (S.I. 2014/3293), regs. 1(2), 4(b)

89D Notification of voting rights held by issuer

(1) Transparency rules may require notification of voteholder information relating to the proportion of voting rights held by an issuer in respect of voting shares in the issuer—
(a) initially, not later than such date as may be specified in the rules for the purposes of the second indent of Article 30.2 of the transparency obligations directive, and

(b) subsequently, in accordance with the following provisions.

(2) Transparency rules under subsection (1)(b) may require notification of voteholder information relating to the proportion of voting rights held by an issuer in respect of voting shares in the issuer only where there is a notifiable change in the proportion of—

(a) the total voting rights in respect of shares in the issuer, or

(b) the total voting rights in respect of a particular class of share in the issuer, held by the issuer.

(3) For this purpose there is a “notifiable change” in the proportion of voting rights held by a person when the proportion changes—

(a) from being a proportion less than a designated proportion to a proportion equal to or greater than that designated proportion,

(b) from being a proportion equal to a designated proportion to a proportion greater or less than that designated proportion, or

(c) from being a proportion greater than a designated proportion to a proportion equal to or less than that designated proportion.

(4) In subsection (3) “designated” means designated by the rules.

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**Textual Amendments**

**F606** Words in ss. 89A-97 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(g), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

**F614 89E** Notification of proposed amendment of issuer’s constitution

89F  Transparency rules: interpretation etc

(1) For the purposes of sections 89A to 89G—

(a) the voting rights in respect of any voting shares are the voting rights attached to those shares, [F615 and]

(b) a person is to be regarded as holding the voting rights in respect of the shares—

(i) if, by virtue of those shares, he is a shareholder within the meaning of Article 2.1(e) of the transparency obligations directive;

(ii) if, and to the extent that, he is entitled to acquire, dispose of or exercise those voting rights in one or more of the cases mentioned in Article 10(a) to (h) of the transparency obligations directive;
(iii) if he holds, directly or indirectly, a financial instrument which satisfies the conditions set out in Article 13(1)(a) or (b) of the transparency obligations directive...
Textual Amendments
F606 Words in ss. 89A-97 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(g), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

89H [F606FCA's] power to call for information

(1) The [F606FCA] may by notice in writing given to a person to whom this section applies require him—
(a) to provide specified information or information of a specified description, or
(b) to produce specified documents or documents of a specified description.

(2) This section applies to—
(a) an issuer in respect of whom transparency rules have effect;
(b) a voteholder;
(c) an auditor of—
(i) an issuer to whom this section applies, or
(ii) a voteholder;
(d) a person who controls a voteholder;
(e) a person controlled by a voteholder;
(f) a director or other similar officer of an issuer to whom this section applies;
(g) a director or other similar officer of a voteholder or, where the affairs of a voteholder are managed by its members, a member of the voteholder.

(3) This section applies only to information and documents reasonably required in connection with the exercise by the [F606FCA] of functions conferred on it by or under sections 89A to 89G (transparency rules).

(4) Information or documents required under this section must be provided or produced—
(a) before the end of such reasonable period as may be specified, and
(b) at such place as may be specified.

(5) If a person claims a lien on a document, its production under this section does not affect the lien.

89I Requirements in connection with call for information

(1) The [F606FCA] may require any information provided under section 89H to be provided in such form as it may reasonably require.

(2) The [F606FCA] may require—
(a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require;
(b) any document produced to be authenticated in such manner as it may reasonably require.

(3) If a document is produced in response to a requirement imposed under section 89H, the FCA may—
(a) take copies of or extracts from the document; or
(b) require the person producing the document, or any relevant person, to provide an explanation of the document.

(4) In subsection (3)(b) “relevant person”, in relation to a person who is required to produce a document, means a person who—
(a) has been or is a director or controller of that person;
(b) has been or is an auditor of that person;
(c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or
(d) has been or is an employee of that person.

(5) If a person who is required under section 89H to produce a document fails to do so, the FCA may require him to state, to the best of his knowledge and belief, where the document is.

89J Power to call for information: supplementary provisions

(1) The FCA may require an issuer to make public any information provided to the FCA under section 89H.

(2) If the issuer fails to comply with a requirement under subsection (1), the FCA may, after seeking representations from the issuer, make the information public.

(3) In sections 89H and 89I (power of FCA to call for information)—
“control” and “controlled” have the meaning given by subsection (4) below;
“specified” means specified in the notice;
“voteholder” means a person who—
(a) holds voting rights in respect of any voting shares for the purposes of sections 89A to 89G (transparency rules),...
(b)...

(4) For the purposes of those sections a person (“A”) controls another person (“B”) if—
(a) A holds a majority of the voting rights in B,
(b) A is a member of B and has the right to appoint or remove a majority of the members of the board of directors (or, if there is no such board, the equivalent management body) of B,
(c) A is a member of B and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in B, or
(d) A has the right to exercise, or actually exercises, dominant influence or control over B.

(5) For the purposes of subsection (4)(b)—
(a) any rights of a person controlled by A, and
(b) any rights of a person acting on behalf of A or a person controlled by A,
are treated as held by A.

Textual Amendments
F622 Words in s. 89J(3) omitted (1.11.2015 for specified purposes, 26.11.2015 in so far as not already in force) by virtue of The Transparency Regulations 2015 (S.I. 2015/1755), regs. 1(2), 2(5)

Powers exercisable in case of infringement of transparency obligation

Textual Amendments
F623 Ss. 89K-89N and cross-heading inserted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1268, 1300(1)

89K Public censure of issuer

(1) If the F606FCA finds that an issuer of securities admitted to trading on a regulated market is failing or has failed to comply with an applicable transparency obligation, it may publish a statement to that effect.

(2) If the F606FCA proposes to publish a statement, it must give the issuer a warning notice setting out the terms of the proposed statement.

(3) If, after considering any representations made in response to the warning notice, the F606FCA decides to make the proposed statement, it must give the issuer a decision notice setting out the terms of the statement.

(4) A notice under this section must inform the issuer of his right to refer the matter to the Tribunal (see section 89N) and give an indication of the procedure on such a reference.

(5) In this section “transparency obligation” means an obligation under—

(a) a provision of transparency rules, or

(b) any other provision made in accordance with the transparency obligations directive.

(6) In relation to an issuer whose home State is a member State other than the United Kingdom, any reference to an applicable transparency obligation must be read subject to section 100A(2).

Textual Amendments
F606 Words in ss. 89A-97 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(g), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

89L Power to suspend or prohibit trading of securities

(1) This section applies to securities admitted to trading on a regulated market.

(2) If the F606FCA has reasonable grounds for suspecting that an applicable transparency obligation has been infringed by an issuer, it may—
(a) suspend trading in the securities for a period not exceeding 10 days,
(b) prohibit trading in the securities, or
(c) make a request to the operator of the market on which the issuer's securities are traded—
   (i) to suspend trading in the securities for a period not exceeding 10 days, or
   (ii) to prohibit trading in the securities.

(3) If the [F606 FCA] has reasonable grounds for suspecting that a provision required by the transparency obligations directive has been infringed by a voteholder of an issuer, it may—
   (a) prohibit trading in the securities, or
   (b) make a request to the operator of the market on which the issuer's securities are traded to prohibit trading in the securities.

(4) If the [F606 FCA] finds that an applicable transparency obligation has been infringed, it may require the market operator to prohibit trading in the securities.

(5) In this section “transparency obligation” means an obligation under—
   (a) a provision contained in transparency rules, or
   (b) any other provision made in accordance with the transparency obligations directive.

(6) In relation to an issuer whose home State is a member State other than the United Kingdom, any reference to an applicable transparency obligation must be read subject to section 100A(2).

Textual Amendments
F606 Words in ss. 89A-97 substitutd (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(g), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

89M Procedure under section 89L

(1) A requirement under section 89L takes effect—
   (a) immediately, if the notice under subsection (2) states that that is the case;
   (b) in any other case, on such date as may be specified in the notice.

(2) If the [F606 FCA]—
   (a) proposes to exercise the powers in section 89L in relation to a person, or
   (b) exercises any of those powers in relation to a person with immediate effect, it must give that person written notice.

(3) The notice must—
   (a) give details of the [F606 FCA's] action or proposed action;
   (b) state the [F606 FCA's] reasons for taking the action in question and choosing the date on which it took effect or takes effect;
   (c) inform the recipient that he may make representations to the [F606 FCA] within such period as may be specified by the notice (whether or not he had referred the matter to the Tribunal);
(d) inform him of the date on which the action took effect or takes effect;
(e) inform him of his right to refer the matter to the Tribunal (see section 89N) and give an indication of the procedure on such a reference.

(4) The FCA may extend the period within which representations may be made to it.

(5) If, having considered any representations made to it, the FCA decides to maintain, vary or revoke its earlier decision, it must give written notice to that effect to the person mentioned in subsection (2).

Textual Amendments

Words in ss. 89A-97 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(g), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

89N Right to refer matters to the Tribunal

A person—

(a) to whom a decision notice is given under section 89K (public censure), or
(b) to whom a notice is given under section 89M (procedure in connection with suspension or prohibition of trading),

may refer the matter to the Tribunal.

Textual Amendments

Words in ss. 89A-97 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(g), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

89NA Voting rights suspension orders

(1) The court may, on the application of the FCA and in accordance with this section, make a voting rights suspension order in respect of a person who is a voteholder in relation to shares in a particular company which are admitted to trading on a regulated market and identified in the application.

(2) A voting rights suspension order is an order which suspends the person’s exercise of voting rights attaching to the shares to which the order relates.

(3) The court may make a voting rights suspension order in respect of a person only if it is satisfied—

(a) that the person has contravened one or more relevant transparency provisions in respect of any of the shares identified in the application or any other shares in the same company which are admitted to trading on a regulated market, and
(b) that the contravention is serious enough to make it appropriate to make the order.

(4) For the purposes of subsection (3)(b), the court may, in particular, have regard to—

(a) whether the contravention was deliberate or repeated;
(b) the time taken for the contravention to be remedied;
(c) whether the voteholder ignored warnings or requests for compliance from the FCA;
(d) the size of the holding of shares to which the contravention relates;
(e) any impact of the contravention on the integrity of the UK financial system;
(f) the effect of the contravention on any company merger or takeover.

(5) A voting rights suspension order may be made in relation to some or all of the shares to which the application relates.

(6) A voting rights suspension order may be made for a specified period or an indefinite period.

(7) A voting rights suspension order takes effect—
(a) on the date specified in the order, or
(b) if no date is specified, at the time it is made.

(8) Where a voting rights suspension order has been made, the FCA, the person to whom it applies or the company which issued the shares to which it relates, may apply to the court for—
(a) a variation of the order so as to alter the period for which it has effect or the shares in relation to which it has effect, or
(b) the discharge of the order.

(9) The FCA must consult the PRA before making an application to the court under this section in relation to—
(a) a person who is a PRA-authorised person, or
(b) shares issued by a PRA-authorised person.

(10) The jurisdiction conferred by this section is exercisable—
(a) in England and Wales and Northern Ireland, by the High Court, and
(b) in Scotland, by the Court of Session.

(11) In this section—
“relevant transparency provision” means—
(a) a provision of the transparency rules which implements Article 9, 10, 12, 13 or 13a of the transparency obligations directive, or
(b) a provision otherwise made in accordance with that directive which implements any of those Articles;
“voteholder” has the meaning given by section 89J(3).]
89O Corporate governance rules

(1) The [F606 FCA] may make rules (“corporate governance rules”)—
   (a) for the purpose of implementing, enabling the implementation of or dealing
       with matters arising out of or related to, any [F626 EU] obligation relating to
       the corporate governance of issuers who have requested or approved admission
       of their securities to trading on a regulated market;
   (b) about corporate governance in relation to such issuers for the purpose of
       implementing, or dealing with matters arising out of or related to, any [F626 EU]
       obligation.

(2) “Corporate governance”, in relation to an issuer, includes—
   (a) the nature, constitution or functions of the organs of the issuer;
   (b) the manner in which organs of the issuer conduct themselves;
   (c) the requirements imposed on organs of the issuer;
   (d) the relationship between the different organs of the issuer;
   (e) the relationship between the organs of the issuer and the members of the issuer
       or holders of the issuer’s securities.

(3) The burdens and restrictions imposed by rules under this section on foreign-traded
     issuers must not be greater than the burdens and restrictions imposed on UK-traded
     issuers by—
     (a) rules under this section, and
     (b) listing rules.

(4) For this purpose—
    “foreign-traded issuer” means an issuer who has requested or approved admission
    of the issuer’s securities to trading on a regulated market situated or operating outside
    the United Kingdom;
    “UK-traded issuer” means an issuer who has requested or approved admission
    of the issuer's securities to trading on a regulated market situated or operating in the United Kingdom.

(5) This section is without prejudice to any other power conferred by this Part to make
     Part 6 rules.]

Textual Amendments

F606 Words in ss. 89A-97 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in
force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(g), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F626 Words in s. 89O(1)(a)(b) substituted (22.4.2011 with application in accordance with art. 3 of the
Primary information providers

(1) Part 6 rules may require issuers of financial instruments to use primary information providers for the purpose of giving information of a specified description to a market of a specified description.

(2) “Primary information provider” means a person approved by the FCA for the purposes of this section.

(3) “Specified” means specified in the Part 6 rules.

(4) Part 6 rules made by virtue of subsection (1) may—
   (a) provide for the FCA to maintain a list of providers;
   (b) impose requirements on a provider in relation to the giving of information or of information of a specified description;
   (c) specify the circumstances in which a person is qualified for being approved as a provider;
   (d) provide for limitations or other restrictions to be imposed on the giving of information to which an approval relates (whether or not the approval has already been granted);
   (e) provide for the approval of a provider to be suspended on the application of the provider.

(5) If the FCA proposes—
   (a) to refuse a person's application under information provider rules,
   (b) to impose limitations or other restrictions on the giving of information to which a person's approval relates, or
   (c) to cancel a person's approval as a provider otherwise than at the person's request,
   it must give the person a warning notice.

(6) If the FCA decides—
   (a) to grant the application under information provider rules,
   (b) not to impose limitations or other restrictions on the giving of information to which a person's approval relates, or
   (c) not to cancel the approval,
   it must give the person concerned written notice of its decision.

(7) If the FCA decides—
   (a) to refuse to grant the application under information provider rules,
   (b) to impose limitations or other restrictions on the giving of information to which a person's approval relates, or
   (c) to cancel the approval,
it must give the person concerned a decision notice.

(8) A person to whom a decision notice is given under this section may refer the matter to the Tribunal.

(9) In this section any reference to an application under information provider rules means—
   (a) an application for approval as a provider,
   (b) an application for the suspension of an approval as a provider,
   (c) an application for the withdrawal of the suspension of an approval as a provider, or
   (d) an application for the withdrawal or variation of a limitation or other restriction on the giving of information to which a provider's approval relates.

89Q Disciplinary powers: contravention of s.89P(4)(b) or (d)

(1) The FCA may take action against a provider under this section if it considers that the provider has contravened a requirement or restriction imposed on the provider by rules made as a result of section 89P(4)(b) or (d).

(2) If the FCA is entitled to take action under this section against a provider, it may do one or more of the following—
   (a) impose a penalty on the provider of such amount as it considers appropriate;
   (b) suspend, for such period as it considers appropriate, the provider's approval;
   (c) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the giving by the provider of information as it considers appropriate;
   (d) publish a statement to the effect that the provider has contravened a requirement or restriction imposed on the provider by rules made as a result of section 89P(4)(b) or (d).

(3) The period for which a suspension or restriction is to have effect may not exceed 12 months.

(4) A suspension may relate only to the giving of information in specified circumstances.

(5) A restriction may, in particular, be imposed so as to require the provider to take, or refrain from taking, specified action.

(6) The FCA may—
   (a) withdraw a suspension or restriction, or
   (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(7) The FCA may not take action against a provider 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 provider under section 89R(1).

(8) “The limitation period” means the period of 3 years beginning with the first day on which the FCA knew that the provider had contravened the requirement or restriction.

(9) For this purpose the FCA is to be treated as knowing that a provider has contravened a requirement or restriction if it has information from which that can reasonably be inferred.
89R  Action under s.89Q: procedure and right to refer to Tribunal

(1) If the FCA proposes to take action against a provider under section 89Q, it must give the provider 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—
   (a) to suspend an approval, or
   (b) to impose a restriction in relation to the giving of information,
must state the period for which the suspension or restriction is to have effect.

(4) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(5) If the FCA decides to take action against a provider under section 89Q, it must give the provider a decision notice.

(6) A decision notice about the imposition of a penalty must state the amount of the penalty.

(7) A decision notice about—
   (a) the suspension of an approval, or
   (b) the imposition of a restriction in relation to the giving of information,
must state the period for which the suspension or restriction is to have effect.

(8) A decision notice about the publication of a statement must set out the terms of the statement.

(9) If the FCA decides to take action against a provider under section 89Q, the provider may refer the matter to the Tribunal.

89S  Action under s.89Q: statement of policy

(1) The FCA must prepare and issue a statement of its policy with respect to—
   (a) the imposition of penalties, suspensions or restrictions under section 89Q,
   (b) the amount of penalties under that section,
   (c) the period for which suspensions or restrictions under that section are to have effect, and
   (d) the matters in relation to which suspensions or restrictions under that section are to have effect.

(2) The FCA's policy in determining what the amount of a penalty should be, or what the period for which a suspension or restriction is to have effect should be, must include having regard to—
   (a) the seriousness of the contravention in question in relation to the nature of the requirement concerned,
   (b) the extent to which that contravention was deliberate or reckless, and
   (c) whether the provider concerned is an individual.

(3) The FCA 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 FCA must issue the altered or replacement statement.

(5) In exercising, or deciding whether to exercise, its power under section 89Q in the case of any particular contravention, the FCA must have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.

(6) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(7) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

(8) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

89T Statement of policy under s.89S: procedure

(1) Before issuing a statement under section 89S, the FCA must publish a draft of the proposed statement in the way appearing to the FCA 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 FCA within a specified time.

(3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).

(4) If the FCA 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 (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.

89U Powers exercisable to advance operational objectives

(1) The FCA may take action against a provider under this section if it considers that it is desirable to do so in order to advance one or more of its operational objectives.

(2) If the FCA is entitled to take action under this section against a provider, it may—
   (a) suspend, for such period as it considers appropriate, the provider's approval, or
   (b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the giving by the provider of information as it considers appropriate.

(3) A suspension may relate only to the giving of information in specified circumstances.
(4) A restriction may, in particular, be imposed so as to require the provider to take, or refrain from taking, specified action.

(5) The FCA may—
(a) withdraw a suspension or restriction, or
(b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(6) A person against whom the FCA takes action under this section may refer the matter to the Tribunal.

89V Action under s.89U: procedure

(1) Action against a provider under section 89U takes effect—
(a) immediately, if the notice given under subsection (2) so provides, or
(b) on such later date as may be specified in the notice.

(2) If the FCA—
(a) proposes to take action against a provider under that section, or
(b) takes action against a provider under that section with immediate effect,
it must give the provider written notice.

(3) The notice must—
(a) give details of the action,
(b) state the FCA's reasons for taking the action and for its determination as to when the action takes effect,
(c) inform the provider that the provider may make representations to the FCA within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal),
(d) inform the provider of when the action takes effect,
(e) inform the provider of the right to refer the matter to the Tribunal, and
(f) give an indication of the procedure on such a reference.

(4) The FCA may extend the period allowed under the notice for making representations.

(5) If the FCA decides—
(a) to take the action in the way proposed, or
(b) if the action has taken effect, not to rescind it,
the FCA must give the provider written notice.

(6) If the FCA decides—
(a) not to take the action in the way proposed,
(b) to take action under section 89U that differs from the action originally proposed, or
(c) to rescind action which has taken effect,
the FCA must give the provider written notice.

(7) A notice under subsection (5) must—
(a) inform the provider of the right to refer the matter to the Tribunal, and
(b) give an indication of the procedure on such a reference.
(8) A notice under subsection (6)(b) must comply with subsection (3).

Storage of regulated information

(1) The FCA must ensure that there is at least one mechanism for the central storage of regulated information meeting the requirements of Article 21(2) of the transparency obligations directive and any directly applicable EU regulation made under Article 21(4) of that directive.

(2) In this section, “regulated information” has the meaning given by Article 2(1)(k) of the transparency obligations directive.

Compensation for false or misleading statements etc

(1) Any person responsible for listing particulars is liable to pay compensation to a person who has—
   (a) acquired securities to which the particulars apply; and
   (b) suffered loss in respect of them as a result of—
       (i) any untrue or misleading statement in the particulars; or
       (ii) the omission from the particulars of any matter required to be included by section 80 or 81.

(2) Subsection (1) is subject to exemptions provided by Schedule 10.

(3) If listing particulars are required to include information about the absence of a particular matter, the omission from the particulars of that information is to be treated as a statement in the listing particulars that there is no such matter.

(4) Any person who fails to comply with section 81 is liable to pay compensation to any person who has—
   (a) acquired securities of the kind in question; and
   (b) suffered loss in respect of them as a result of the failure.

(5) Subsection (4) is subject to exemptions provided by Schedule 10.

(6) This section does not affect any liability which may be incurred apart from this section.

(7) References in this section to the acquisition by a person of securities include references to his contracting to acquire them or any interest in them.
(8) No person shall, by reason of being a promoter of a company or otherwise, incur any
liability for failing to disclose information which he would not be required to disclose
in listing particulars in respect of a company’s securities—
(a) if he were responsible for those particulars; or
(b) if he is responsible for them, which he is entitled to omit by virtue of
section 82.

(9) The reference in subsection (8) to a person incurring liability includes a reference to
any other person being entitled as against that person to be granted any civil remedy
or to rescind or repudiate an agreement.

(10) “Listing particulars”, in subsection (1) and Schedule 10, includes supplementary
listing particulars.

(11) This section applies in relation to a prospectus as it applies to listing particulars, with
the following modifications—
(a) references in this section or in Schedule 10 to listing particulars,
supplementary listing particulars or sections 80, 81 or 82 are to be read,
respectively, as references to a prospectus, supplementary prospectus and
sections 87A, 87G and 87B;
(b) references in Schedule 10 to admission to the official list are to be read as
references to admission to trading on a regulated market;
(c) in relation to a prospectus, “securities” means “transferable securities”.

(12) A person is not to be subject to civil liability solely on the basis of a summary in a
prospectus unless the summary, when read with the rest of the prospectus—
(a) is misleading, inaccurate or inconsistent; or
(b) does not provide key information (as defined in section 87A(9) and (10)),
and in this subsection a summary includes any translation of it.]

Textual Amendments
F630 S. 90 words in heading substituted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1272, 1300(1)(a),
Sch. 15 para. 5
1 para. 6(2)
F632 S. 90(12) substituted (1.7.2012) by The Prospectus Regulations 2012 (S.I. 2012/1538), regs. 1(1), 7

Modifications etc. (not altering text)
C246 S. 90 restricted (1.12.2001) by S.I. 2001/2957, arts. 1, 7(3); S.I. 2001/3538, art. 2(1)

Liability for key investor information

(1) A person is not to be subject to civil liability solely on the basis of the key investor
information produced in relation to a collective investment scheme or a sub-fund of
such a scheme in accordance with rules or other provisions implementing Chapter
IX of the UCITS directive, or of any translation of that information, unless the key
investor information is misleading, inaccurate or inconsistent with the relevant parts
of the prospectus published for that collective investment scheme or sub-fund in
accordance with rules made by the FCA under section 248 of this Act.
In this section, a reference to a sub-fund of a collective investment scheme is a reference to a part of the property of the collective investment scheme which forms a separate pool where—

(a) the collective investment scheme provides arrangements for separate pooling of the contributions of the participants and the profits and income out of which payments are made to them; and

(b) the participants are entitled to exchange rights in one pool for rights in another.

Schedule 10A makes provision about the liability of issuers of securities to pay compensation to persons who have suffered loss as a result of—

(a) a misleading statement or dishonest omission in certain published information relating to the securities, or

(b) a dishonest delay in publishing such information.

(1) The Treasury may by regulations make provision about the liability of issuers of securities traded on a regulated market, and other persons, in respect of information published to holders of securities, to the market or to the public generally.

(2) Regulations under this section may amend any primary or subordinate legislation, including any provision of, or made under, this Act.
Penalties

91  [F637 Penalties for breach of Part 6 rules]

[F638][F639] (1) If the [F606 FCA] considers that—
   (a) an issuer of listed securities, or
   (b) an applicant for listing,

has contravened any provision of listing rules, it may impose on him a penalty of such amount as it considers appropriate.

[F640](1ZA) .................................................................]

[F641](1A) If the [F606 FCA] considers that—
   (a) an issuer of transferable securities,
   (b) a person offering transferable securities to the public or requesting their admission to trading on a regulated market,
   (c) an applicant for the approval of a prospectus in relation to transferable securities,
   (d) a person on whom a requirement has been imposed under section 87K or 87L, or
   (e) any other person to whom a provision of the prospectus directive applies,

has contravened a provision of this Part or of prospectus rules, or a provision otherwise made in accordance with the prospectus directive or a requirement imposed on him under such a provision, it may impose on him a penalty of such amount as it considers appropriate.]

[F642](1B) If the [F606 FCA] considers—
   (a) that a person has contravened—
      (i) a provision of transparency rules or a provision otherwise made in accordance with the transparency obligations directive, or
      (ii) a provision of corporate governance rules, or
   (b) that a person on whom a requirement has been imposed under section 89L (power to suspend or prohibit trading of securities in case of infringement of applicable transparency obligation), has contravened that requirement, it may impose on the person a penalty of such amount as it considers appropriate.]

(2) If, in the case of a contravention [F643 by a person] referred to in subsection [F644 (1), F645 (1A) or F646 (1B)(a)(ii) or (b)][F647 (“P”)], the [F606 FCA] considers that [F648 another person] who was at the material time a director of [F649 P] was knowingly concerned in the contravention, it may impose upon him a penalty of such amount as it considers appropriate.]

[F650](2A) If—
   (a) a person has contravened a provision mentioned in subsection (1B)(a)(i), and
   (b) the FCA considers that another person (“A”), who was at the material time a relevant officer of the person, was knowingly concerned in the contravention, the FCA may impose upon A a penalty of such amount as it considers appropriate.

(2B) In subsection (2A) “relevant officer” of a person means—
   (a) a director or other similar officer of the person, or
(b) if the affairs of the person are managed by its members, a member of the person.

(3) If the FCA is entitled to impose a penalty on a person under this section in respect of a particular matter it may, instead of imposing a penalty on him in respect of that matter, publish a statement censuring him.

(4) Nothing in this section prevents the FCA from taking any other steps which it has power to take under this Part.

(5) A penalty under this section is payable to the FCA.

(6) The FCA may not take action against a person under this section after the end of the period of 3 years beginning with the first day on which it knew of the contravention unless proceedings against that person, in respect of the contravention, were begun before the end of that period.

(7) For the purposes of subsection (6)—
   (a) the FCA is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred; and
   (b) proceedings against a person in respect of a contravention are to be treated as begun when a warning notice is given to him under section 92.

Textual Amendments

F606 Words in ss. 89A-97 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(g), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F637 S. 91 heading substituted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), Sch. 1 para. 7(4)

F638 S. 91(1)(2) substituted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 4, Sch. 1 para. 4

F639 S. 91(1)(1ZA) substituted for s. 91(1) (8.11.2006) by Companies Act 2006 (c. 46), ss. 1272, 1300(1)(a), Sch. 15 para. 6(2)

F640 S. 91(1ZA) omitted (3.7.2016) by virtue of The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 8(3)(a)

F641 S. 91(1A) inserted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), Sch. 1 para. 7(2)

F642 S. 91(1B) inserted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1272, 1300(1)(a), Sch. 15 para. 6(3)

F643 Words in s. 91(2) substituted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), Sch. 1 para. 7(3)(a)

F644 Words in s. 91(2) substituted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1272, 1300(1)(a), Sch. 15 para. 6(4)

F645 Word in s. 91(2) omitted (3.7.2016) by virtue of The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 8(3)(b)

F646 Words in s. 91(2) substituted (26.11.2015) by The Transparency Regulations 2015 (S.I. 2015/1755), regs. 1(3), 4(2)(a)

F647 Words in s. 91(2) substituted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), Sch. 1 para. 7(3)(b)

F648 Words in s. 91(2) substituted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), Sch. 1 para. 7(3)(c)

F649 Word in s. 91(2) substituted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), Sch. 1 para. 7(3)(d)
92 Procedure.

(1) If the [F606FCA] proposes to take action against a person under section 91, it must give him a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the proposed penalty.

(3) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.

(4) If the [F606FCA] decides to take action against a person under section 91, it must give him 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 [F606FCA] decides to take action against a person under section 91, he may refer the matter to the Tribunal.

93 Statement of policy.

(1) The [F606FCA] must prepare and issue a statement (“its policy statement”) of its policy with respect to—

(a) the imposition of penalties under section 91; and

(b) the amount of penalties under that section.

(2) The [F606FCA’s] policy in determining what the amount of a penalty should be must include having regard to—

(a) the serious nature of the contravention in question in relation to the nature of the requirement contravened;
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(b) the extent to which that contravention was deliberate or reckless; and
(c) whether the person on whom the penalty is to be imposed is an individual.

(3) The [F606: FCA] may at any time alter or replace its policy statement.

(4) If its policy statement is altered or replaced, the [F606:FCA] must issue the altered or replacement statement.

(5) In exercising, or deciding whether to exercise, its power under section 91 in the case of any particular contravention, the [F606:FCA] must have regard to any policy statement published under this section and in force at the time when the contravention in question occurred.

(6) The [F606:FCA] must publish a statement issued under this section in the way appearing to the [F606:FCA] to be best calculated to bring it to the attention of the public.

(7) The [F606:FCA] may charge a reasonable fee for providing a person with a copy of the statement.

(8) The [F606:FCA] must, without delay, give the Treasury a copy of any policy statement which it publishes under this section.

Textual Amendments
F606 Words in ss. 89A-97 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(g), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

94 Statements of policy: procedure.

(1) Before issuing a statement under section 93, the [F606:FCA] must publish a draft of the proposed statement in the way appearing to the [F606:FCA] 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 [F606:FCA] within a specified time.

(3) Before issuing the proposed statement, the [F606:FCA] must have regard to any representations made to it in accordance with subsection (2).

(4) If the [F606:FCA] 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 (1) in a way which is, in the opinion of the [F606:FCA], significant, the [F606:FCA] must (in addition to complying with subsection (4)) publish details of the difference.

(6) The [F606:FCA] may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.
Textual Amendments
F606 Words in ss. 89A-97 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(g), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Competition

F652 95 Competition scrutiny.

Miscellaneous

96 Obligations of issuers of listed securities.

(1) Listing rules may—
(a) specify requirements to be complied with by issuers of listed securities; and
(b) make provision with respect to the action that may be taken by the [F606 FCA] in the event of non-compliance.

(2) If the rules require an issuer to publish information, they may include provision authorising the [F606 FCA] to publish it in the event of his failure to do so.

(3) This section applies whenever the listed securities were admitted to the official list.

Textual Amendments
F606 Words in ss. 89A-97 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss.16(2)(3)(g), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)
C249 S. 96 applied by 2009 c. 1, s. 39B(2) (as inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 39)
C250 S. 96 applied by 2009 c. 1, s. 48L(6A) (as inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 53(6))

F655 Disclosure of information requirements

96A
Appointment by [F606FCA] of persons to carry out investigations.

(1) Subsection (2) applies if it appears to the [F606FCA] that there are circumstances suggesting that—

(a) there may have been a contravention of—

(i) a provision of this Part or of Part 6 rules, or
(ii) a provision otherwise made in accordance with the prospectus directive or the transparency obligations directive;

(b) a person who was at the material time a director of a person mentioned in section 91(1), [F656or (1A), or section 91(1B) (ignoring paragraph (a)(i) of that provision),] has been knowingly concerned in a contravention by that person of—

(i) a provision of this Part or of Part 6 rules, or
(ii) a provision otherwise made in accordance with the prospectus directive or the transparency obligations directive;

(ba) a person who was at the material time a relevant officer of a person mentioned in section 91(1B) (ignoring paragraphs (a)(ii) and (b) of that provision) has been knowingly concerned in a contravention by that person of—

(i) a provision of the transparency rules, or
(ii) a provision otherwise made in accordance with the transparency obligations directive;

(c) [F659 there may have been a contravention of section [F66985 or 87G].

(d)
(2) The [\[F606\]FCA] may appoint one or more competent persons to conduct an investigation on its behalf.

(3) Part XI applies to an investigation under subsection (2) as if—
(a) references to the investigator were appointed under section 167(1);
(b) references to the investigating authority in relation to him were to the [\[F606\]FCA];
(c) references to the offences mentioned in section 168 were to those mentioned in subsection (1)(d);
(d) references to an authorised person were references to the person under investigation.

\[\[F661\]\]In this section “relevant officer” has the meaning given by section 91(2B).]
Textual Amendments

F663 S. 99 omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Financial Services Act 2012 (c. 21), ss. 1614(c), 1223 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F664 100 Penalties.

Textual Amendments

F664 S. 100 omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Financial Services Act 2012 (c. 21), ss. 1614(d), 1223 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F665 100A Exercise of powers where UK is host member state

(1) This section applies to the exercise by the FCA of any power under this Part exercisable in case of infringement of—
   (a) a provision of prospectus rules or any other provision made in accordance with the prospectus directive, or
   (b) a provision of transparency rules or any other provision made in accordance with the transparency obligations directive,
   in relation to an issuer whose home State is a member State other than the United Kingdom.

(2) The FCA may act in such a case only in respect of the infringement of a provision required by the relevant directive.

Any reference to an applicable provision or applicable transparency obligation shall be read accordingly.

F668 (3) If the FCA finds that there has been such an infringement, it must—
   (a) give a notice to that effect to the competent authority of the person’s home State requesting it—
      (i) to take all appropriate measures for the purpose of ensuring that the person remedies the situation that has given rise to the notice, and
      (ii) to inform the FCA of the measures it proposes to take or has taken or the reasons for not taking such measures, and
   (b) notify ESMA.

F670 (4) The FCA may not act further unless satisfied—
   (a) that the competent authority of the person’s home State has failed or refused to take measures for the purpose mentioned in subsection (3)(a), or
   (b) that the measures taken by that authority have proved inadequate for that purpose.

This does not affect exercise of the powers under section 87K(2), 87L(2) or (3) or 89L(2) or (3) (powers to protect market).
(5) If the FCA is so satisfied, it must, after informing the competent authority of the person’s home State and ESMA, take all appropriate measures to protect investors.

(6) In such a case the FCA must inform the Commission of the measures at the earliest opportunity.

### Textual Amendments

F665 S. 100A inserted (8.11.2006) by Companies Act 2006 (c. 46), s. 1271, 1300(1)(a)

F666 Word in s. 100A(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(12)(a), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F667 Word in s. 100A(2) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(12)(a), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F668 S. 100A(3) substituted (16.4.2012) by The Financial Services (Omnibus 1 Directive) Regulations 2012 (S.I. 2012/916), regs. 1, 2(6)(a)

F669 Word in s. 100A(3) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(12)(b), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F670 Words in s. 100A(4) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(12)(c), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F671 Words in s. 100A(5) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(12)(d), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F672 Words in s. 100A(5) inserted (16.4.2012) by The Financial Services (Omnibus 1 Directive) Regulations 2012 (S.I. 2012/916), regs. 1, 2(6)(b)

F673 Words in s. 100A(6) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(12)(d), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F674 Words in s. 100A(6) inserted (16.4.2012) by The Financial Services (Omnibus 1 Directive) Regulations 2012 (S.I. 2012/916), regs. 1, 2(6)(c)

### Listing rules: general provisions.

F675 (1) ..............................................................

(2) Part 6 rules may authorise the FCA to dispense with or modify the application of the rules in particular cases and by reference to any circumstances.

F676 (3) ..............................................................

F677 (4) ..............................................................

F678 (5) ..............................................................

F679 (6) ..............................................................

F680 (7) ..............................................................

F681 (8) ..............................................................
Financial Services and Markets Act 2000 (c. 8)
Part VI – Official Listing
CHAPTER 3 – Further provisions relating to FCA and PRA

Status: This version of this Act contains provisions that are prospective.
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F675  S. 101(1) omitted (24.1.2013 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)(e), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F676  Words in s. 101(2) substituted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 4, Sch. 1 para. 10(a)
F677  Words in s. 101(2) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 16(2)(3)(b), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F678  S. 101(3)-(8) omitted (24.1.2013 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)(e), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F679  102 Exemption from liability in damages.

Textual Amendments

F679  S. 102 omitted (24.1.2013 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)(f), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F680  Interpretative provisions

Textual Amendments

F680  Ss. 102A-103 substituted for s. 103 (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), Sch. 1 para. 11

102A  Meaning of “securities” etc.

(1) This section applies for the purposes of this Part.

(2) “Securities” means (except in section 74(2) and the expression “transferable securities”) anything which has been, or may be, admitted to the official list.

(3) “Transferable securities” means anything which is a transferable security for the purposes of the markets in financial instruments directive, other than money-market instruments for the purposes of that directive which have a maturity of less than 12 months.

[Debt securities” has the meaning given in Article 2.1(b) of the transparency obligations directive.]

[F682  3A  “Financial instrument” has the meaning given in Article 4.1.15 of the markets in financial instruments directive.]
(5) “Non-equity transferable securities” means all transferable securities that are not equity securities, and for this purpose “equity securities” has the meaning given in Article 2.1(b) of the prospectus directive.

(6) “Issuer”—

(a) in relation to an offer of transferable securities to the public or admission of transferable securities to trading on a regulated market for which an approved prospectus is required as a result of section 85, means a legal person who issues or proposes to issue the transferable securities in question,

(b) in relation to transparency rules, means a ... person whose securities are admitted to trading on a regulated market or whose voting shares are admitted to trading on a UK market other than a regulated market, and in the case of depository receipts admitted to trading on a regulated market, the issuer is the issuer of the securities represented by the depository receipt, whether or not those securities are admitted to trading on a regulated market;

(c) in any other case, means a person who issues financial instruments.

102B Meaning of “offer of transferable securities to the public” etc.

(1) For the purposes of this Part there is an offer of transferable securities to the public if there is a communication to any person which presents sufficient information on—

(a) the transferable securities to be offered, and

(b) the terms on which they are offered,

to enable an investor to decide to buy or subscribe for the securities in question.
(2) For the purposes of this Part, to the extent that an offer of transferable securities is made to a person in the United Kingdom it is an offer of transferable securities to the public in the United Kingdom.

(3) The communication may be made—
   (a) in any form;
   (b) by any means.

(4) Subsection (1) includes the placing of securities through a financial intermediary.

(5) Subsection (1) does not include a communication in connection with trading on—
   (a) a regulated market;
   (b) a multilateral trading facility; or
   (c) a prescribed market.

(5A) The Treasury may make regulations to specify (whether by name or description) the markets which are prescribed markets for the purposes of subsection (5)(c).

(6) “Multilateral trading facility” means a multilateral system, operated by an investment firm . . . or a market operator, which brings together multiple third-party buying and selling interests in financial instruments in accordance with non-discretionary rules so as to result in a contract.

Textual Amendments

S. 102B(5)(c) substituted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 8(7)(a)

S. 102B(5A) inserted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 8(7)(b)

Words in s. 102B(6) omitted (1.4.2007 for certain purposes, 1.11.2007 otherwise) by virtue of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(5), Sch. 5 para. 6

Meaning of “home State” in relation to transferable securities

In this Part, in relation to an issuer of transferable securities, the “home State”—
   (a) in relation to transparency rules and other provisions made in accordance with the transparency obligations directive ..., is the EEA State which is the “home Member State” for the purposes of the transparency obligations directive (which is to be determined in accordance with Article 2.1(i) of that directive);
   (b) except where paragraph (a) applies, is the EEA State which is the “home Member State” for the purposes of the prospectus directive (which is to be determined in accordance with Article 2.1(m) of that directive).]
Interpretation of this Part

(1) In this Part, save where the context otherwise requires—

“listed securities” means anything which has been admitted to the official list;
“listing” has the meaning given in section 74(5);
“listing particulars” has the meaning given in section 79(2);
“listing rules” has the meaning given in section 73A;
“market operator” means a person who manages or operates the business of a regulated market;
“offer of transferable securities to the public” has the meaning given in section 102B;
“the official list” means the list maintained by the [F694 FCA] as that list has effect for the time being;
“Part 6 rules” has the meaning given in section 73A;
“prospectus rules” has the meaning given in section 73A;
“regulated market” has the meaning given in [F698 Article 4.1.21 of the markets in financial instruments directive];
“supplementary prospectus” has the meaning given in section 87G;
“transparency rules” has the meaning given by section 89A(5);
“voteholder information” has the meaning given by section 89B(3);
“working day” means any day other that a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Deals Act 1971 (c. 80) in any part of the United Kingdom.
PART VII

CONTROL OF BUSINESS TRANSFERS

[103A Meaning of “the appropriate regulator”

(1) In this Part “the appropriate regulator” means—

(a) in relation to a ring-fencing transfer scheme or a scheme (other than a ring-fencing transfer scheme) in respect of which the transferor concerned is a PRA-authorised person, the PRA;
(2) In this Part, ‘‘F707 the transferor concerned’’—

(a) in the case of an insurance business transfer scheme, is to be read in accordance with section 105(2);

(b) in the case of a banking business transfer scheme, is to be read in accordance with section 106(2);

(c) in the case of a reclaim fund business transfer scheme, means the reclaim fund to whose business the scheme relates.

(d) in the case of a ring-fencing transfer scheme, means the body to whose business the scheme relates.

Textual Amendments

F705 S. 103A inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 6 para. 2 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F706 Words in s. 103A(1)(a) substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 1 para. 3(2); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

F707 Words in Pt. VII substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 1 para. 2; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

F708 S. 103A(2)(d) inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 1 para. 3(3); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

104 Control of business transfers.

No insurance business transfer scheme F709 ... is to have effect unless an order has been made in relation to it under section 111(1).

Textual Amendments

F709 Words in s. 104 omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 22(1), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C252 S. 104 applied (1.12.2001) by S.I. 2001/3626, arts. 1, 3(a)

S. 104 modified (1.12.2001) by S.I. 2001/3639, arts. 1(1), 7 (with art. 2)

Commencement Information

I22 S. 104 partly in force; s. 104 not in force at Royal Assent see s. 431(2); s. 104 in force for specified purposes at 1.12.2001 by S.I. 2001/3538, art. 2(1)(2)

105 Insurance business transfer schemes.

(1) A scheme is an insurance business transfer scheme if it—

(a) satisfies one of the conditions set out in subsection (2);

(b) results in the business transferred being carried on from an establishment of the transferee in an EEA State; and

(c) is not an excluded scheme.

(2) The conditions are that—
(a) the whole or part of the business carried on in one or more member States by a UK authorised person who has permission to effect or carry out contracts of insurance (“[F707 the transferor concerned]”) is to be transferred to another body (“the transferee”);

(b) the whole or part of the business, so far as it consists of reinsurance, carried on in the United Kingdom through an establishment there by an EEA firm [F710 falling within paragraph 5(d) of Schedule 3 and qualifying for authorisation under that Schedule] (“[F707 the transferor concerned]”) is to be transferred to another body (“the transferee”);

(c) the whole or part of the business carried on in the United Kingdom by an authorised person who is neither a UK authorised person nor an EEA firm but who has permission to effect or carry out contracts of insurance (“[F707 the transferor concerned]”) is to be transferred to another body (“the transferee”).

(3) A scheme is an excluded scheme for the purposes of this section if it falls within any of the following cases:

(Case 1) Where [F707 the transferor concerned] is a friendly society.

(Case 2) Where—

(a) [F707 the transferor concerned] is a UK authorised person;

[F711(aa)] [F707 the transferor concerned] is not a reinsurance undertaking [F712 ...]

(b) the business to be transferred under the scheme is business which consists of the effecting or carrying out of contracts of reinsurance in one or more EEA States other than the United Kingdom; and

(c) the scheme has been approved by a court in an EEA State other than the United Kingdom or by the host state regulator.

(Case 3) Where—

(a) [F707 the transferor concerned] is a UK authorised person;

(b) the business to be transferred under the scheme is carried on in one or more countries or territories (none of which is an EEA State) and does not include policies of insurance [F713 . . . against risks arising in an EEA State; and

(c) the scheme has been approved by a court in a country or territory other than an EEA State or by the authority responsible for the supervision of that business in a country or territory in which it is carried on.

(Case 4) Where [F714 —

(a) the business to be transferred under the scheme is the whole of the business of [F707 the transferor concerned];

(b) all the policyholders are controllers of the firm or of firms within the same group as the firm which is the transferee, and,

[F715(c)] all of the policyholders who will be affected by the transfer have consented to it.

(CASE 5) Where—

(a) the business of [F707 the transferor concerned] consists solely of the effecting or carrying out of contracts of reinsurance;

(b) the business to be transferred is the whole or part of that business;
Financial Services and Markets Act 2000 (c. 8)

Part VII – Control of Business Transfers

CHAPTER 3 – Further provisions relating to FCA and PRA

(c) the scheme does not fall within Case 4;

(d) all of the policyholders who will be affected by the transfer have consented to it; and

(e) a certificate has been obtained under paragraph 2 of Schedule 12 in relation to the proposed transfer.

(4) The parties to a scheme which falls within Case 2, [F717 3, 4 or 5] may apply to the court for an order sanctioning the scheme as if it were an insurance business transfer scheme.

[F718] (5) If the scheme involves a compromise or arrangement falling within Part 27 of the Companies Act 2006 (mergers and divisions of public companies), the provisions of that Part (and Part 26 of that Act) apply accordingly but this does not affect the operation of this Part in relation to the scheme.

(8) “UK authorised person” means a body which is an authorised person and which—

(a) is incorporated in the United Kingdom; or

(b) is an unincorporated association formed under the law of any part of the United Kingdom.

(9) “Establishment” means, in relation to a person, his head office or a branch of his.

Textual Amendments

F707 Words in Pt. VII substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 1 para. 2; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

F710 Words in s. 105(2)(b) substituted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), Sch. 1 para. 2(1)(a)

F711 S. 105(3) Case 2(aa) inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), Sch. 1 para. 2(1)(b)

F712 Words in s. 105(3) omitted (1.1.2016) by virtue of The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), Sch. 1 para. 5

F713 Words in s. 105(3) Case 3(b) omitted (10.12.2007) by virtue of The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), Sch. 1 para. 2(1)(c)

F714 Words in s. 105(3) Case 4 substituted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), Sch. 1 para. 2(1)(d)(i)

F715 Words in s. 105(3) Case 4 substituted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), Sch. 1 para. 2(1)(d)(ii)

F716 S. 105(3) Case 5 inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), Sch. 1 para. 2(1)(e)

F717 Words in s. 105(4) substituted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), Sch. 1 para. 2(1)(f)

F718 S. 105(5) substituted (6.4.2008) for s. 105(5)-(7) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), Sch. 1 para. 211(1) (with arts. 6, 11, 12)

106 Banking business transfer schemes.

(1) A scheme is a banking business transfer scheme if it—

(a) satisfies one of the conditions set out in subsection (2);

(b) is one under which the whole or part of the business to be transferred includes the accepting of deposits; and

(c) is not an excluded scheme [F719 or a ring-fencing transfer scheme].
(2) The conditions are that—
   (a) the whole or part of the business carried on by a UK authorised person who has permission to accept deposits (“the transferor concerned”) is to be transferred to another body (“the transferee”);
   (b) the whole or part of the business carried on in the United Kingdom by an authorised person who is not a UK authorised person but who has permission to accept deposits (“the transferor concerned”) is to be transferred to another body which will carry it on in the United Kingdom (“the transferee”).

(3) A scheme is an excluded scheme for the purposes of this section if—
   (a) the transferor concerned is a building society or a credit union; or
   (b) the scheme is a compromise or arrangement to which Part 27 of the Companies Act 2006 (mergers and divisions of public companies) applies.

(4) For the purposes of subsection (2)(a) it is immaterial whether or not the business to be transferred is carried on in the United Kingdom.

(5) “UK authorised person” has the same meaning as in section 105.

(6) “Building society” has the meaning given in the Building Societies Act 1986.

(7) “Credit union” means a credit union within the meaning of—
   (a) the Credit Unions Act 1979;
   (b) the Credit Unions (Northern Ireland) Order 1985.

Textual Amendments
F707 Words in Pt. VII substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 1 para. 2; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
F719 Words in s. 106(1)(c) inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 1 para. 4; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
F720 S. 106(3)(b) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(1), 3(1), Sch. 1 para. 211(2) (with arts. 6, 11, 12)

Marginal Citations
M1 1986 c. 53.
M2 1979 c. 34.
M3 S.I. 1985/1205 (N.I. 12).

Reclaim fund business transfer scheme

(1) A scheme is a reclaim fund business transfer scheme if, under the scheme, the whole or part of the business carried on by a reclaim fund is to be transferred to one or more other reclaim funds.

(2) “Reclaim fund” has the meaning given by section 5(1) of the Dormant Bank and Building Society Accounts Act 2008.
Section 106B

Ring-fencing transfer scheme

(1) A scheme is a ring-fencing transfer scheme if it—

(a) is one under which the whole or part of the business carried on—

(i) by a UK authorised person, or

(ii) by a qualifying body,

is to be transferred to another body ("the transferee"),

(b) is to be made for one or more of the purposes mentioned in subsection (3), and

(c) is not an excluded scheme or an insurance business transfer scheme.

(2) "Qualifying body" means a body which—

(a) is incorporated in the United Kingdom,

(b) is a member of the group of a UK authorised person, and

(c) is not itself an authorised person.

(3) The purposes are—

(a) enabling a UK authorised person to carry on core activities as a ring-fenced body in compliance with the ring-fencing provisions;

(b) enabling the transferee to carry on core activities as a ring-fenced body in compliance with the ring-fencing provisions;

(c) making provision in connection with the implementation of proposals that would involve a body corporate whose group includes the body corporate to whose business the scheme relates becoming a ring-fenced body while one or more other members of its group are not ring-fenced bodies;

(d) making provision in connection with the implementation of proposals that would involve a body corporate whose group includes the transferee becoming a ring-fenced body while one or more other members of the transferee's group are not ring-fenced bodies.

(4) A scheme is an excluded scheme for the purposes of this section if—

(a) the body to whose business the scheme relates is a building society or credit union, or

(b) the scheme is a compromise or arrangement to which Part 27 of the Companies Act 2006 (mergers and divisions of public companies) applies.

(5) For the purposes of subsection (1)(a) it is immaterial whether or not the business to be transferred is carried on in the United Kingdom.

(6) "UK authorised person" has the same meaning as in section 105.

(7) "Building society" and "credit union" have the same meanings as in section 106.

(8) "The ring-fencing provisions" means ring-fencing rules and the duty imposed as a result of section 142G.
107 Application for order sanctioning transfer scheme.

(1) An application may be made to the court for an order sanctioning an insurance business transfer scheme [F723], a banking business transfer scheme [F724], a reclaim fund business transfer scheme or a ring-fencing transfer scheme].

(2) An application may be made by—
   (a) [F707] the transferor concerned;
   (b) the transferee; or
   (c) both.

[F725](2A) An application relating to a ring-fencing transfer scheme may be made only with the consent of the PRA.

(2B) In deciding whether to give consent, the PRA must have regard to the scheme report prepared under section 109A in relation to the ring-fencing transfer scheme.

(3) The application must be made—
   (a) if [F707] the transferor concerned] and the transferee are registered or have their head offices in the same jurisdiction, to the court in that jurisdiction;
   (b) if [F707] the transferor concerned] and the transferee are registered or have their head offices in different jurisdictions, to the court in either jurisdiction;
   (c) if the transferee is not registered in the United Kingdom and does not have his head office there, to the court which has jurisdiction in relation to [F707] the transferor concerned].

(4) “Court” means—
   (a) the High Court; or
   (b) in Scotland, the Court of Session.
108 Requirements on applicants.

(1) The Treasury may by regulations impose requirements on applicants under section 107.

(2) The court may not determine an application under that section if the applicant has failed to comply with a prescribed requirement.

(3) The regulations may, in particular, include provision—
   (a) as to the persons to whom, and periods within which, notice of an application must be given;
   (b) enabling the court to waive a requirement of the regulations in prescribed circumstances.

[F726] Scheme reports: insurance business transfer schemes]

(1) An application under section 107 in respect of an insurance business transfer scheme must be accompanied by a report on the terms of the scheme (“a scheme report”).

(2) A scheme report may be made only by a person—
   (a) appearing to the [F727] appropriate regulator to have the skills necessary to enable him to make a proper report; and
   (b) nominated or approved for the purpose by the [F727] appropriate regulator.

(3) A scheme report must be made in a form approved by the [F727] appropriate regulator.

[F728] Where the appropriate regulator is the PRA, it must consult the FCA before—
   (a) nominating or approving a person under subsection (2)(b), or
   (b) approving a form under subsection (3).

(5) Subsection (6) applies where the appropriate regulator is the FCA and either—
   (a) the transferee is a PRA-authorised person, or
   (b) [F707] the transferor concerned or the transferee has as a member of its immediate group a PRA-authorised person.

(6) The FCA must consult the PRA before—
   (a) nominating or approving a person under subsection (2)(b), or
   (b) approving a form under subsection (3).]
109 Scheme reports: ring-fencing transfer schemes

(1) An application under section 106B in respect of a ring-fencing transfer scheme must be accompanied by a report on the terms of the scheme (a "scheme report").

(2) A scheme report may be made only by a person—
   (a) appearing to the PRA to have the skills necessary to enable the person to make a proper report, and
   (b) nominated or approved for the purpose by the PRA.

(3) A scheme report must be made in a form approved by the PRA.

(4) A scheme report must state—
   (a) whether persons other than the transferor concerned are likely to be adversely affected by the scheme, and
   (b) if so, whether the adverse effect is likely to be greater than is reasonably necessary in order to achieve whichever of the purposes mentioned in section 106B(3) is relevant.

(5) The PRA must consult the FCA before—
   (a) nominating or approving a person under subsection (2)(b), or
   (b) approving a form under subsection (3).
111 Sanction of the court for business transfer schemes.

(1) This section sets out the conditions which must be satisfied before the court may make an order under this section sanctioning an insurance business transfer scheme, a banking business transfer scheme, a reclaim fund business transfer scheme or a ring-fencing transfer scheme].

(2) The court must be satisfied that—

(a) [in the case of an insurance business transfer scheme or a banking business transfer scheme,] the appropriate certificates have been obtained (as to which see Parts I and II of Schedule 12);

(aa) [in the case of a reclaim fund business transfer scheme, the appropriate certificate has been obtained (as to which see Part 2A of that Schedule);]

(ab) [in the case of a ring-fencing transfer scheme, the appropriate certificates have been obtained (as to which see Part 2B of that Schedule);]
(b) the transferee has the authorisation required (if any) to enable the business, or part, which is to be transferred to be carried on in the place to which it is to be transferred (or will have it before the scheme takes effect).

(3) The court must consider that, in all the circumstances of the case, it is appropriate to sanction the scheme.
(d) make provision as to the consequences of the transfer in relation to any [F740 occupational pension scheme (within the meaning of section 150(5) of the Finance Act 2004)] operated by or on behalf of [F707 the transferor concerned],

[F741] (2A) Subsection (2)(a) is to be taken to include power to make provision in an order—

(a) for the transfer of property or liabilities which would not otherwise be capable of being transferred or assigned;

(b) for a transfer of property or liabilities to take effect as if there were—

(i) no such requirement to obtain a person's consent or concurrence, and

(ii) no such contravention, liability or interference with any interest or right,

as there would otherwise be (in the case of a transfer apart from this section) by reason of any provision falling within subsection (2B).

(2B) A provision falls within this subsection to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which [F707 the transferor concerned] is entitled to the property or subject to the liabilities in question.

(2C) Nothing in subsection (2A) or (2B) is to be read as limiting the scope of subsection (1),

(3) If an order under subsection (1) makes provision for the transfer of property or liabilities—

(a) the property is transferred to and vests in, and

(b) the liabilities are transferred to and become liabilities of,

the transferee as a result of the order.

(4) But if any property or liability included in the order is governed by the law of any country or territory outside the United Kingdom, the order may require [F707 the transferor concerned], if the transferee so requires, to take all necessary steps for securing that the transfer to the transferee of the property or liability is fully effective under the law of that country or territory.

(5) Property transferred as the result of an order under subsection (1) may, if the court so directs, vest in the transferee free from any charge which is (as a result of the scheme) to cease to have effect.

(6) An order under subsection (1) which makes provision for the transfer of property is to be treated as an instrument of transfer for the purposes of [F742 section 770(1) of the Companies Act 2006] and any other enactment requiring the delivery of an instrument of transfer for the registration of property.

(7) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(8) If the court makes an order under section 111(1) in relation to an insurance business transfer scheme, it may by that or any subsequent order make such provision (if any) as it thinks fit—

(a) for dealing with the interests of any person who, within such time and in such manner as the court may direct, objects to the scheme;

(b) for the dissolution, without winding up, of [F707 the transferor concerned];

(c) for the reduction, on such terms and subject to such conditions (if any) as it thinks fit, of the benefits payable under—

(i) any description of policy, or

(ii) policies generally,
entered into by [F707 the transferor concerned] and transferred as a result of the scheme.

(9) If, in the case of an insurance business transfer scheme, [F707 the transferor concerned] is not an EEA firm, it is immaterial for the purposes of subsection (1)(a), (c) or (d) or subsection (2), [F744 (2A),] (3) or (4) that the law applicable to any of the contracts of insurance included in the transfer is the law of an EEA State other than the United Kingdom.

(10) The transferee must, if an insurance or banking business transfer scheme [F749 or ring-fencing transfer scheme] is sanctioned by the court, deposit two office copies of the order made under subsection (1) with the [F746 appropriate regulator] within 10 days of the making of the order.

(11) But the [F747 appropriate regulator] may extend that period.

(12) “Property” includes property, rights and powers of any description.

(13) “Liabilities” includes duties.

(14) “Shares” and “debentures” have the same meaning as in [F748 the Companies Acts (see sections 540 and 738 of the Companies Act 2006)].

(15) “Charge” includes a mortgage (or, in Scotland, a security over property).

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**Textual Amendments**

F707 Words in Pt. VII substituted (1.3.2014) by [Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 1 para. 2; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1]

F740 Words in s. 112(2)(d) substituted (6.4.2006) by [The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), art. 17]


F742 Words in s. 112(6) substituted (6.4.2008) by [The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 1(2), 3(1), Sch. 1 para. 211(3)(a) (with arts. 6, 11, 12)]

F743 S. 112(7) repealed (6.4.2008) by [The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 1(2), 3, Sch. 1 para. 211(3)(b), Sch. 2 (with arts. 6, 11, 12)]


F745 Words in s. 112(10) inserted (1.3.2014) by [Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 1 para. 11; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1]

F746 Words in s. 112(10) substituted (1.4.2013) by [Financial Services Act 2012 (c. 21), s. 122(3), Sch. 6 para. 5 (with Sch. 20); S.I. 2013/423, art. 3, Sch.]

F747 Words in s. 112(11) substituted (1.4.2013) by [Financial Services Act 2012 (c. 21), s. 122(3), Sch. 6 para. 5 (with Sch. 20); S.I. 2013/423, art. 3, Sch.]

F748 S. 112(14): words substituted (6.4.2008) for paras. (a)(b) by [The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 1(2), 3(1), Sch. 1 para. 211(3)(c) (with arts. 6, 11, 12)]

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

C258 S. 112 applied (1.12.2001) by [S.I. 2001/3626, arts. 1, 3(a)]

C259 S. 112(1) modified (1.12.2001) by [S.I. 2001/3639, arts. 1(1), 4 (with art. 2)]
Duty of regulator to provide copy of order

(1) Where the PRA receives under section 112(10) a copy of an order it must, without delay, give a copy of it to the FCA.

(2) Where the FCA receives under section 112(10) a copy of an order it must, without delay, give a copy of it to the PRA if the order relates to a scheme in respect of which—
   (a) the transferee is a PRA-authorised person, or
   (b) the transferor concerned or the transferee has as a member of its immediate group a PRA-authorised person.

Textual Amendments

F707 Words in Pt. VII substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 1 para. 2; S.I. 2014/377, art. 2(1)(a), Sch. 1

F749 S. 112ZA inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 6 para. 6 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Rights to terminate etc.

(1) Subsection (2) applies where (apart from that subsection) a person would be entitled, in consequence of anything done or likely to be done by or under this Part in connection with an insurance business transfer scheme, a banking business transfer scheme or a ring-fencing transfer scheme—
   (a) to terminate, modify, acquire or claim an interest or right; or
   (b) to treat an interest or right as terminated or modified.

(2) The entitlement—
   (a) is not enforceable in relation to that interest or right until after an order has been made under section 112(1) in relation to the scheme; and
   (b) is then enforceable in relation to that interest or right only insofar as the order contains provision to that effect.

(3) Nothing in subsection (1) or (2) is to be read as limiting the scope of section 112(1).

Textual Amendments


F751 Words in s. 112A(1) substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 1 para. 12; S.I. 2014/377, art. 2(1)(a), Sch. 1

Appointment of actuary in relation to reduction of benefits.

(1) This section applies if an order has been made under section 111(1).

(2) The court making the order may, on the application of either regulator, appoint an independent actuary—
   (a) to investigate the business transferred under the scheme; and
(b) to report to the [F753 regulator which made the application] on any reduction in the benefits payable under policies entered into by [F759 the transferee concerned] that, in the opinion of the actuary, ought to be made.

(F754) (3) An application under subsection (2) may be made by the PRA only if—

(a) [F707 the transferee concerned] or the transferee is a PRA-authorised person, or

(b) [F707 the transferee concerned] or the transferee has as a member of its immediate group a PRA-authorised person.

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Textual Amendments

F707 Words in Pt. VII substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 1 para. 2; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
F752 Words in s. 113(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 6 para. 7(2)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F753 Words in s. 113(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 6 para. 7(2)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F754 S. 113(3) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 6 para. 7(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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Modifications etc. (not altering text)

C260 S. 113 applied (1.12.2001) by S.I. 2001/3626, arts. 1, 3(a)

114 Rights of certain policyholders.

(1) This section applies in relation to an insurance business transfer scheme if—

(a) [F707 the transferee concerned] is an authorised person other than an EEA firm qualifying for authorisation under Schedule 3;

(b) the court has made an order under section 111 in relation to the scheme; and

(c) an EEA State other than the United Kingdom is, as regards any policy included in the transfer which evidences a contract of insurance [F755 (other than a contract of reinsurance)], the State of the commitment or the EEA State in which the risk is situated (“the EEA State concerned”).

(2) The court must direct that notice of the making of the order, or the execution of any instrument, giving effect to the transfer must be published by the transferee in the EEA State concerned.

(3) A notice under subsection (2) must specify such period as the court may direct as the period during which the policyholder may exercise any right which he has to cancel the policy.

(4) The order or instrument mentioned in subsection (2) does not bind the policyholder if—

(a) the notice required under that subsection is not published; or

(b) the policyholder cancels the policy during the period specified in the notice given under that subsection.

(5) The law of the EEA State concerned governs—

(a) whether the policyholder has a right to cancel the policy; and

(b) the conditions, if any, subject to which any such right may be exercised.
(6) Paragraph 6 of Schedule 12 applies for the purposes of this section as it applies for the purposes of that Schedule.

Textual Amendments
F707 Words in Pt. VII substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 1 para. 2; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
F755 Words in s. 114(1)(c) inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), Sch. 1 para. 2(2)

Modifications etc. (not altering text)
C261 S. 114 applied (1.12.2001) by S.I. 2001/3626, arts. 1, 3(a)

[F756114A] Notice of transfer of reinsurance contracts

(1) This section applies in relation to an insurance business transfer scheme if—

(a) [F709], the transferor concerned] is an authorised person other than an EEA firm qualifying for authorisation under Schedule 3;

(b) the court has made an order under section 111 in relation to the scheme; and

(c) an EEA State other than the United Kingdom is, as regards any policy included in the transfer which evidences a contract of reinsurance, the State in which the establishment of the policyholder to which the policy relates is situated at the date when the contract was entered into (“the EEA State concerned”).

(2) The court may direct that notice of the making of the order, or the execution of any instrument, giving effect to the transfer must be published by the transferee in the EEA State concerned.

Textual Amendments
F707 Words in Pt. VII substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 1 para. 2; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
F756 S. 114A inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), Sch. 1 para. 2(3)

Business transfers outside the United Kingdom

115 Certificates for purposes of insurance business transfers overseas.

Part III of Schedule 12 makes provision about certificates which the [F757]appropriate regulator] may issue in relation to insurance business transfers taking place outside the United Kingdom.

Textual Amendments
F757 Words in s. 115 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 6 para. 8 (with Sch. 20); S.I. 2013/423, art. 3, Sch.
116 **Effect of insurance business transfers authorised in other EEA States.**

(1) This section applies if, as a result of an authorised transfer, an EEA firm falling within paragraph 5(d) of Schedule 3 transfers to another body all its rights and obligations under any UK policies.

(2) This section also applies if, as a result of an authorised transfer, any of the following transfers to another body all its rights and obligations under any UK policies—

(a) an undertaking authorised in an EEA State other than the United Kingdom under Article 162 of the Solvency 2 Directive;

(b) an undertaking whose head office is not in an EEA State and which is authorised under the law of an EEA State other than the United Kingdom to carry out reinsurance activities in its territory (as mentioned in Article 174 of the Solvency 2 Directive).

(3) If appropriate notice of the execution of an instrument giving effect to the transfer is published, the instrument has the effect in law—

(a) of transferring to the transferee all the transferor’s rights and obligations under the UK policies to which the instrument applies, and

(b) if the instrument so provides, of securing the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights and obligations.

(4) No agreement or consent is required before subsection (3) has the effects mentioned.

(5) “Authorised transfer” means—

(a) in subsection (1), a transfer authorised by the supervisory authorities of the home State of the EEA firm in accordance with Article 39 of the Solvency 2 Directive;

(b) in subsection (2), a transfer authorised in an EEA State other than the United Kingdom in accordance with—

(i) Article 164 of the Solvency 2 Directive; or

(ii) the provisions in the law of that EEA State which provide for the authorisation of transfers of all or part of a portfolio of contracts of an undertaking authorised to carry out reinsurance activities in its territory (as mentioned in Article 174 of the Solvency 2 Directive).

(6) “UK policy”, in relation to an authorised transfer, means a policy evidencing a contract of insurance or reinsurance to which the applicable law is the law of a part of the United Kingdom.

(7) “Appropriate notice” means—

(a) if the UK policy evidences a contract of insurance in relation to which an EEA State other than the United Kingdom is the State of the commitment, notice given in accordance with the law of that State;

(b) if the UK policy evidences a contract of insurance where the risk is situated in an EEA State other than the United Kingdom, notice given in accordance with the law of that EEA State;

(c) in any other case, notice given in accordance with the applicable law.
[F763](7A) In this section the “home State” is the EEA State which is the “home Member State” for the purposes of the Solvency 2 Directive (which is to be determined in accordance with Article 13(8) of that directive).

(8) Paragraph 6 of Schedule 12 applies for the purposes of this section as it applies for the purposes of that Schedule.

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**Textual Amendments**

F758 Words in s. 116(1) inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), Sch. 1 para. 2(4)(a)

F759 S. 116(2) substituted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), Sch. 1 para. 2(4)(b)

F760 S. 116(2)(a)(b) substituted (1.1.2016) by The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), Sch. 1 para. 6(2)(a)

F761 S. 116(2)(c) omitted (1.1.2016) by virtue of The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), Sch. 1 para. 6(2)(b)

F762 S. 116(5)(6) substituted (1.1.2016) by The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), Sch. 1 para. 6(3)

F763 S. 116(7A) inserted (1.1.2016) by The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), Sch. 1 para. 6(4)

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**Modifications**

117 **Power to modify this Part.**

The Treasury may by regulations—

(a) provide for prescribed provisions of this Part to have effect in relation to prescribed cases with such modifications as may be prescribed;

(b) make such amendments to any provision of this Part as they consider appropriate for the more effective operation of that or any other provision of this Part.

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**PART VIII**

[F764]PROVISIONS RELATING TO MARKET ABUSE]

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**Textual Amendments**

F764 Pt. 8 heading substituted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 9(2)

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

Textual Amendments

\[F765\] Ss. 118-122 and cross-headings omitted (3.7.2016) by virtue of The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 9(3)

\[F765\] 118 Market abuse.

\[F765\] 118A Supplementary provision about certain behaviour

\[F765\] 118B Insiders

\[F765\] 118C Inside information

\[F765\] 120 Provisions included in the [\[F766\] FCA’s] code by reference to the City Code.

Textual Amendments

\[F766\] Word in s. 120 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

\[F765\] 121 Codes: procedure.

\[F765\] 122 Effect of the code.
Power to require information from issuers

(1) The FCA may require an issuer, a person discharging managerial responsibilities or a person closely associated with a person discharging managerial responsibilities to provide—
   (a) any information the FCA reasonably requires for the purpose of protecting—
      (i) the interests of users of financial markets and exchanges in the United Kingdom; or
      (ii) the orderly operation of financial markets and exchanges in the United Kingdom; or
   (b) any information or explanation the FCA reasonably requires to verify whether Article 17 (public disclosure of inside information) or Article 19 (managers’ transactions) of the market abuse regulation is being, or has been, complied with.

(2) Information required under this section must be provided—
   (a) before the end of such reasonable period as may be specified by the FCA; and
   (b) at such place as may be specified by the FCA.

(3) The FCA may require any information provided under this section to be provided in such form as it may reasonably require.

(4) The FCA may require any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require.

(5) In this section—
   “person closely associated” has the meaning given in Article 3.1(26) of the market abuse regulation (see section 131AC (meaning of “persons closely associated” in the market abuse regulation)); and
   “person discharging managerial responsibilities” has the meaning given in Article 3.1(25) of the market abuse regulation.

(6) For the meaning of “issuer” in this Part, see section 131AB.

General power to require information

(1) The FCA may, by notice in writing, require a person—
   (a) to provide specified information or information of a specified description; or
   (b) to produce specified documents or documents of a specified description.

(2) This section applies only to information and documents that the FCA reasonably requires for the purpose of the exercise by it of functions under the market abuse regulation or a supplementary EU regulation.

(3) Information or documents required under this section must be provided or produced—
(a) before the end of such reasonable period as may be specified; and
(b) at such place as may be specified.

(4) The FCA may require any information provided under this section to be provided in such form as it may reasonably require.

(5) The FCA may require—
(a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require; or
(b) any document produced to be authenticated in such manner as it may reasonably require.

(6) The FCA may exercise its powers under this section at the request of an EEA regulator where the regulator makes the request in the exercise of its functions under the market abuse regulation or a supplementary EU regulation.

(7) If such a request is made to the FCA it must, in deciding whether or not to exercise its powers under this section in response to the request, consider whether it is necessary to do so to comply with the market abuse regulation or a supplementary EU regulation.

(8) In this section “specified” means specified in the notice.

122C. Power to require information: supplementary

(1) If a document is produced in response to a requirement imposed under section 122B, the FCA may—
(a) take copies of, or extracts from, the document; or
(b) require the person producing the document, or any relevant person, to provide an explanation of the document.

(2) In subsection (1)(b) “relevant person”, in relation to a person who is required to produce a document, means a person who—
(a) has been, is, or is proposed to be, a director or controller of that person;
(b) has been or is an auditor of that person;
(c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or
(d) has been or is an employee of that person.

(3) If a person who is required under section 122B to produce a document fails to do so, the FCA may require the person to state, to the best of the person’s knowledge and belief, where the document is.

(4) A lawyer may be required under section 122B to provide the name and address of the lawyer’s client.

(5) A person (“P”) may not be required under section 122A or 122B to disclose information or produce a document in respect of which P owes an obligation of confidence by virtue of carrying on the business of banking unless condition A, B or C is met.

(6) Condition A is met if the FCA suspects that P or a member of P’s group—
(a) has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation; or
(b) has contravened, or been knowingly concerned in the contravention of—
   (i) a provision of the market abuse regulation other than Article 14 or 15 of that regulation; or
   (ii) a provision of a supplementary EU regulation.

(7) Condition B is met if the FCA suspects that the person to whom the obligation of confidence is owed or a member of that person’s group—
   (a) has contravened Article 14 or Article 15 of the market abuse regulation; or
   (b) has contravened, or been knowingly concerned in the contravention of—
      (i) a provision of the market abuse regulation other than Article 14 or 15 of that regulation; or
      (ii) a provision of a supplementary EU regulation.

(8) Condition C is met if the person to whom the obligation of confidence is owed consents to the disclosure or production.

(9) If a person claims a lien on a document, its production under section 122B does not affect the lien.

122D. Entry of premises under warrant

(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the FCA that there are reasonable grounds for believing that the conditions in subsection (2) are met.

(2) The conditions are—
   (a) that a person on whom a requirement has been imposed under section 122B or 122C has failed (wholly or in part) to comply with it; and
   (b) that on the premises specified in the warrant—
      (i) there are documents which have been required; or
      (ii) there is information which has been required.

(3) A warrant under this section shall authorise a constable—
   (a) to enter the premises specified in the warrant;
   (b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this section was issued (“the relevant kind”) or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them;
   (c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;
   (d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and
   (e) to use such force as may be reasonably necessary.

(4) A warrant under this section may be executed by any constable.

(5) The warrant may authorise persons to accompany any constable who is executing it.
(6) The powers in subsection (3) may be exercised by a person authorised by the warrant to accompany a constable; but that person may exercise those powers only in the company of, and under the supervision of, a constable.

(7) In England and Wales, sections 15(5) to (8) and 16(3) to (12) of the Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards) apply to warrants issued under this section.

(8) In Northern Ireland, Articles 17(5) to (8) and 18(3) to (12) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) apply to warrants issued under this section.

(9) In the application of this section to Scotland—
   (a) for the reference to a justice of the peace substitute a reference to a justice of the peace or a sheriff; and
   (b) for the references to information on oath substitute references to evidence on oath.

(10) The FCA may give information under subsection (1) or under section 176(1) at the request of an EEA regulator where the regulator makes the request in the exercise of its functions under the market abuse regulation or a supplementary EU regulation.

(11) The FCA must, in deciding whether or not to exercise a power referred to in subsection (10), consider whether the exercise of that power is necessary to comply with an obligation under the market abuse regulation or a supplementary EU regulation.

122E. **Retention of documents taken under section 122D**

(1) Any document of which possession is taken under section 122D (“a seized document”) may be retained so long as it is necessary to retain it (rather than copies of it) in the circumstances.

(2) A person claiming to be the owner of a seized document may apply to a magistrates’ court or (in Scotland) the sheriff for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.

(3) If, on an application under subsection (2), the court or (in Scotland) the sheriff cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.

(4) An order under subsection (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.

(5) Any right to bring proceedings (as described in subsection (4)) may only be exercised within 6 months of the date of the order made under subsection (2) or (3).

122F. **Offences**

(1) If a person (“A”) fails to comply with a requirement imposed on A under section 122B or 122C the FCA may certify that fact in writing to the court.
(2) If the court is satisfied that A failed without reasonable excuse to comply with the requirement, it may deal with A (and where A is a body corporate, any director or other officer) as if A (or as the case may be the director or officer) were in contempt.

(3) A person (“B”) who, in purported compliance with a requirement imposed on B under section 122B or 122C—
   (a) provides information which B knows to be false or misleading in a material particular; or
   (b) recklessly provides information which is false or misleading in a material particular;

is guilty of an offence.

(4) A person guilty of an offence under subsection (3) is liable—
   (a) on summary conviction—
       (i) in England and Wales, to imprisonment for a term not exceeding three months or a fine, or both;
       (ii) in Scotland, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both;
       (iii) in Northern Ireland, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both;
   (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(5) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under section 122D is guilty of an offence and liable on summary conviction—
   (a) in England and Wales, to imprisonment for a term not exceeding three months or a fine, or both;
   (b) in Scotland, to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both;
   (c) in Northern Ireland, to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.

(6) In this section—
   (a) “court” means—
       (i) the High Court;
       (ii) in Scotland, the Court of Session;
   (b) “officer”, in relation to a limited liability partnership, means a member of the partnership.

Other administrative powers

122G. Publication of information and corrective statements by issuers

(1) If condition A or B is met, the FCA may require an issuer (or emission allowance market participant) to publish—
   (a) specified information; or
   (b) a specified statement.

(2) Condition A is met if the FCA considers that the publication of the information or statement is necessary for the purpose of protecting—
(a) the interests of users of financial markets and exchanges in the United Kingdom; or
(b) the orderly operation of financial markets and exchanges in the United Kingdom.

(3) Condition B is met if—
(a) the information or statement corrects false or misleading information made public, or a false or misleading impression given to the public, by that person; and
(b) the FCA considers that the publication of the information is necessary for the purpose of the exercise by it of functions under the market abuse regulation or a supplementary EU regulation.

(4) Information or statements required to be published under this section must be published—
(a) before the end of such reasonable period as may be specified; and
(b) by any method as may be specified.

(5) If a person fails to comply with a requirement to publish information or a statement under this section, the FCA may publish the information or statement.

(6) But before doing so, the FCA must give that person an opportunity to make representations to it regarding its decision to publish the information or statement under subsection (5).

(7) In this section—
“emission allowance market participant” has the same meaning as in Article [F770 3.1.20] (definitions) of the market abuse regulation; and
“specified” means specified by the FCA.

(8) For the meaning of “issuer”, see section 131AB.

Textual Amendments


122H. Publication of corrective statements generally

(1) If condition A or B is met, the FCA may, by notice in writing, require a person to publish—
(a) specified information; or
(b) a specified statement
correcting false or misleading information made public, or a false or misleading impression given to the public, by that person.

(2) Condition A is met if the FCA considers that the publication of the information or statement is necessary for the purpose of protecting—

(a) the interests of users of financial markets and exchanges in the United Kingdom; or

(b) the orderly operation of financial markets and exchanges in the United Kingdom.

(3) Condition B is met if the FCA considers that the publication of the information or statement is necessary for the purpose of the exercise by it of functions under the market abuse regulation or a supplementary EU regulation.

(4) Information or statements required to be published under this section must be published—

(a) before the end of such reasonable period as may be specified; and

(b) by any method as may be specified.

(5) If a person fails to comply with a requirement to publish information or a statement under this section the FCA may publish the information or statement.

(6) But before doing so, the FCA must give that person an opportunity to make representations to it regarding its decision to publish the information or statement under subsection (5).

(7) In this section “specified” means specified in the notice.

Publication of corrective statements relating to benchmarks

(1) If condition A or B is met, the FCA may, by notice in writing, require a person to publish—

(a) specified information, or

(b) a specified statement,

correcting false or misleading information made public, or a false or misleading impression given to the public, by that person.

(2) Condition A is met if the FCA considers that the publication of the information or statement is necessary for the purpose of protecting the interests of users of regulated benchmarks.

(3) Condition B is met if the FCA considers that the publication of the information or statement is necessary for the purpose of the exercise by it of its functions under Article 41(1)(j) of the EU Benchmarks Regulation 2016.

(4) Information or statements required to be published under this section must be published—

(a) before the end of such reasonable period as may be specified; and

(b) by any such method as may be specified.

(5) If a person fails to comply with a requirement to publish information or a statement under this section the FCA may publish the information or statement.
(6) But before doing so, the FCA must give that person an opportunity to make representations to it regarding its decision to publish the information or statement under subsection (5).

(7) In this section—

“specified” means specified in the notice, and

“regulated benchmark” means a regulated benchmark as defined in section 425A(7).]

Textual Amendments


122I. Power to suspend trading in financial instruments

(1) The FCA may suspend trading of a financial instrument where it considers it necessary for the purpose of the exercise by it of functions under the market abuse regulation or a supplementary EU regulation.

(2) If the FCA does so the issuer of the financial instrument may refer the matter to the Tribunal.

[But subsection (2) does not apply if the financial instrument is an emission allowance.] F772

(2A) But subsection (2) does not apply if the financial instrument is an emission allowance.

(3) The FCA may—

(a) cancel a suspension under subsection (1); and

(b) impose such conditions for the cancellation to take effect as it considers appropriate.

(4) The provisions relating to suspension of listing of securities in section 78 (discontinuance or suspension: procedure) apply to a suspension of trading in a financial instrument [F773 other than an emission allowance] under subsection (1) and for the purposes of this section—

(a) the references in section 78 to listing are to be read as references to trading; and

(b) the references in section 78 to securities are to be read as references to financial instruments.

[ A suspension of trading in a financial instrument that is an emission allowance takes effect—

(a) immediately, if the FCA states that is the case; or

(b) on such later date as the FCA specify.] F774

(4A) A suspension of trading in a financial instrument that is an emission allowance takes effect—

(a) immediately, if the FCA states that is the case; or

(b) on such later date as the FCA specify.

(5) For the meaning of “issuer” in this Part, see section 131AB.

Textual Amendments

F772 S. 122I(2A) inserted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services and Markets
Financial Services and Markets Act 2000 (c. 8)
Part VIII – Provisions relating to market abuse
CHAPTER 3 – Further provisions relating to FCA and PRA

Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701), reg. 1(2)(3)(4)(6), Sch. 2 para. 10(2) (with reg. 7)


122IA Power to suspend auctioning of auctioned products on a recognised auction platform

(1) The FCA may suspend the auctioning of a relevant auctioned product at an auction conducted by a recognised auction platform where it considers it necessary for the purpose of the exercise by it of functions under the market abuse regulation or a supplementary EU regulation.

(2) If the FCA does so the recognised auction platform may refer the matter to the Tribunal.

(3) A suspension by the FCA takes place—
   (a) immediately, if the FCA specify this is the case, or
   (b) on such later date as the FCA specify.

(4) The FCA may—
   (a) cancel a suspension under subsection (1), and
   (b) impose such conditions for the cancellation to take effect as it considers appropriate.

(5) The provisions relating to the suspension and removal of financial instruments from trading set out in—
   (a) section 313B(2) to (4) (suspension or removal of financial instruments from trading: procedure), and
   (b) sections 313BA (procedure following consideration of representations) to 313BC (decisions on applications for revocation by institutions),
apply, with the modifications set out in subsection (6), to a suspension of the auctioning of a relevant auctioned product at an auction conducted by a recognised auction platform.

(6) The modifications referred to in subsection (5) are—
   (a) references to a requirement imposed on an institution under section 313A are to be read as references to the suspension of the auctioning of the relevant auctioned product;
   (b) references to an institution are to be read as references to the recognised auction platform;
   (c) in section 313B, the omission of—
      (i) subsection (2)(a)(ii);
      (ii) in subsection (3A)(d), the words “or the issuer of the financial instrument in question” and “or the issuer”;
(iii) in subsection (3A)(f), the words “or the issuer of the financial instrument in question;  
(d) the omission of section 313BA(5)(b) and (8);  
(e) the omission of section 313BB(6)(b); and  
(f) the omission of section 313BC(3)(b) and (6)(b).

(7) In this section “relevant auctioned product” means an auctioned product (as defined by Article 4 (auctioned products) of the emission allowance auctioning regulation) which is an emission allowance or based on an emission allowance.

Textual Amendments


F776 Administrative sanctions

Textual Amendments

F776 Ss. 123-123C and cross-heading substituted for s. 123 and cross-heading (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 9(5)

F776 123 Power to impose penalties or issue censure

(1) The FCA may exercise its power under subsection (2) if it is satisfied that—  
(a) a person has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation;  
(b) a person has contravened, or been knowingly concerned in the contravention of—  
(i) a provision of the market abuse regulation other than Article 14 or 15 of that regulation; or  
(ii) a provision of a supplementary EU regulation; or  
(c) a person other than an authorised person has contravened any requirement—  
(i) imposed on that person under section 122A, 122B, 122C, 122G, 122H, [F777 122HA], 122I, [F778 122IA], 123A or 123B; or  
(ii) relating to the market abuse regulation or any supplementary EU regulation imposed on that person under Part 11.

(2) The FCA’s power under this subsection is a power to impose a penalty of such amount as it considers appropriate on the person.

(3) The FCA may, instead of imposing a penalty on a person, publish a statement censuring the person.]
123A Power to prohibit individuals from managing or dealing

(1) The FCA may exercise its power under subsection (2) if it is satisfied that an individual—
   (a) has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation;
   (b) has contravened, or been knowingly concerned in the contravention of—
      (i) a provision of the market abuse regulation other than Article 14 or 15 of that regulation; or
      (ii) a provision of a supplementary EU regulation; or
   (c) has contravened a requirement imposed on that individual under this section or section 122A, 122B, 122C, 122G, 122H, 122HA, 122I, 122IA or 123B.

(2) The FCA’s power under this subsection is a power to impose one or more of the following—
   (a) a temporary prohibition on the individual holding an office or position involving responsibility for taking decisions about the management of an investment firm;
   (b) a temporary prohibition on the individual acquiring or disposing of financial instruments, whether on his or her own account or the account of a third party and whether directly or indirectly.
   (c) a temporary prohibition on the individual making a bid, on his or her own account or the account of a third party, directly or indirectly, at an auction conducted by a recognised auction platform.

(3) If the FCA is satisfied that an individual has contravened Article 14 or 15 of the market abuse regulation the FCA may impose a permanent prohibition on the individual holding an office or position involving responsibility for taking decisions about the management of an investment firm.

(4) A prohibition imposed under subsection (2) may be expressed to expire at the end of such period as the FCA may specify, but the imposition of a prohibition that expires at the end of a specified period does not affect the FCA’s power to impose a new prohibition under subsection (2).

(5) A prohibition imposed under subsection (2)(a) or (3) may be expressed to prohibit an individual holding an office or position involving responsibility for taking decisions about the management of—
   (a) a named investment firm;
   (b) an investment firm of a specified description; or
(c) any investment firm.

(6) An investment firm must take reasonable care to ensure that no individual who is subject to a prohibition under subsection (2)(a) or (3) on the holding of an office or position involving responsibility for taking decisions about the management of the firm holds such an office or position.

(7) The FCA may vary or revoke a prohibition imposed under this section.

For the meaning of “recognised auction platform” in this Part, see section 131AB.

Textual Amendments


123B. Suspending permission to carry on regulated activities etc

(1) The FCA may exercise its power under subsection (2) if it is satisfied that an authorised person—

(a) has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation;

(b) has contravened, or been knowingly concerned in the contravention of—

(i) a provision of the market abuse regulation other than Article 14 and 15 of that regulation;

(ii) a provision of a supplementary EU regulation; or

(c) has contravened a requirement imposed on that person under this section or section 122A, 122B, 122C, 122G, 122H, 123A.

(2) The FCA’s power under this subsection is a power to do either or both of the following—

(a) to suspend, for such period as it considers appropriate, any permission which the person has to carry on a regulated activity;
123C. Exercise of administrative sanctions

Any one or more of the powers under sections 123, 123A and 123B may be exercised in relation to the same contravention.

Statement of policy

124 Statement of policy.

The FCA must prepare and issue a statement of its policy with respect to the type and level of administrative sanctions it may impose on a relevant person.

(2) The FCA’s policy in determining the type and level of administrative sanctions to be imposed must take into account all relevant circumstances including, where appropriate, the matters referred to in Article 31(1) of the market abuse regulation F786 or Article 43(1) of the EU Benchmarks Regulation 2016.

(3) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(4) The FCA may at any time alter or replace a statement issued under this section.

Textual Amendments

F784 Word in s. 123B(1)(c) inserted (27.2.2018) by The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135), regs. 1(2), 42(2)

(5) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replacement statement.

(6) When imposing, or deciding whether to impose, an administrative sanction on a relevant person the FCA must have regard to any statement published under this section in force at the time of the contravention.

(7) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(8) The FCA may charge a reasonable fee for providing a person with a copy of a statement published under this section.

(9) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(10) In this section—

“administrative sanction” means—

(a) a penalty or statement of censure imposed or published under section 123;

(b) a prohibition imposed under section 123A; or

(c) a suspension or restriction imposed under section 123B; and

“relevant person” means a person—

(a) who has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation;

(b) who has contravened, or been knowingly concerned in the contravention of—

(i) a provision of the market abuse regulation other than Article 14 or 15 of that regulation; or

(ii) a provision of a supplementary EU regulation; or

(c) who has contravened—

(i) any requirement imposed on the person under section 122A, 122B, 122C, 122G, 122H, 122I, 122IA, 123A or 123B; or

(ii) in the case of a person other than an authorised person, any requirement relating to the market abuse regulation or a supplementary EU regulation imposed on the person under Part 11.
125 Statement of policy: procedure.

(1) Before issuing a statement of policy under section 124, the FCA must publish a draft of the proposed statement in the way appearing to the FCA 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 FCA within a specified time.

(3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).

(4) If the FCA 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 (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.
(f) to impose a suspension or restriction in relation to a person under section 123B;

it must give the person a warning notice.]

(2) A warning notice about a proposal to impose a penalty \[F795\] under section 123 must state the amount of the proposed penalty.

(3) A warning notice about a proposal to publish a statement \[F796\] under section 123 must set out the terms of the proposed statement.

\[F797\] (4) A warning notice about a proposal to impose a prohibition under section 123A must set out the terms of the proposed prohibition.

(5) A warning notice about a proposal to impose a suspension or restriction under section 123B must state the period for which the suspension or restriction is to have effect.]

Textual Amendments

\[F794\] S. 126(1) substituted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 9(7)(a)

\[F795\] Words in s. 126(2) inserted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 9(7)(b)

\[F796\] Words in s. 126(3) inserted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 9(7)(c)


127 Decision notices and right to refer to Tribunal.

\[F798\] (1) If the FCA decides—

(a) to impose a penalty on a person under section 123(2);
(b) to publish a statement censuring a person under section 123(3);
(c) to impose a temporary prohibition on an individual under section 123A(2)(a);
(d) to impose a temporary prohibition on an individual under section 123A(2)(b);
(e) to impose a permanent prohibition on an individual under section 123A(3);
(f) to impose a suspension or restriction in relation to a person under section 123B;

it must give the person a decision notice.]

(2) A decision notice about the imposition of a penalty \[F799\] under section 123 must state the amount of the penalty.

(3) A decision notice about the publication of a statement \[F800\] under section 123 must set out the terms of the statement.

\[F801\] (3A) A decision notice about the imposition of a prohibition under section 123A must set out the terms of the prohibition.

(3B) A decision notice about the imposition of a suspension or restriction under section 123B must state the period for which the suspension or restriction is to have effect.]
(4) If the FCA decides—

(a) to impose a penalty on a person under section 123(2);
(b) to publish a statement censuring a person under section 123(3);
(c) to impose a prohibition on an individual under section 123A; or
(d) to impose a suspension or restriction in relation to a person under section 123B;

that person may refer the matter to the Tribunal.

Consultation with the PRA in relation to administrative sanctions

(1) The FCA must consult the PRA before giving a warning notice under section 126(1)
(a), (b), (d) or (f) or a decision notice under section 127(1)(a), (b), (d) or (f) in relation
to a person who—

(a) is a PRA-authorised person; or
(b) is a member of a PRA-authorised person’s immediate group.

(2) The FCA must consult the PRA before giving a warning notice under section 126(1)
(c) or (e) or a decision notice under section 127(1)(c) or (e) if as a result of the
prohibition in question an individual would be prohibited from holding an office or
position involving responsibility for taking decisions about the management of a PRA-
authorised investment firm.

(3) The FCA must consult the PRA before varying or revoking a prohibition under
section 123A(2)(a) or (3) if as a result of the proposed variation or revocation an
individual would no longer be prohibited from holding an office or position involving
responsibility for taking decisions about the management of a PRA-authorised
investment firm.

(4) In this section “PRA-authorised investment firm” means an investment firm which is
a PRA-authorised person and carries on a regulated activity.
Miscellaneous

128 Suspension of investigations.

(1) If the [F789 FCA] considers it desirable or expedient because of the exercise or possible exercise of a relevant power, it may direct a recognised investment exchange [F805, recognised clearing house or recognised CSD]—
   (a) to terminate, suspend or limit the scope of any inquiry which the exchange [F806, clearing house or central securities depository] is conducting under its rules; or
   (b) not to conduct an inquiry which the exchange [F807, clearing house or central securities depository] proposes to conduct under its rules.

(2) A direction under this section—
   (a) must be given to the exchange [F808, clearing house or central securities depository] concerned by notice in writing; and
   (b) is enforceable, on the application of the [F789 FCA], by injunction or, in Scotland, by an order under section 45 of the M4 Court of Session Act 1988.

[F809] (3) In this section “relevant power” means the FCA’s power—
   (a) to impose a penalty or publish a statement of censure under section 123;
   (b) to impose a prohibition under section 123A;
   (c) to impose a suspension or restriction under section 123B;
   (d) to appoint a person to conduct an investigation under section 168 in a case falling within subsection (2)(d) of that section; or
   (e) to appoint a person to conduct an investigation under section 169 (investigation etc in support of an overseas regulator) in a case falling within subsection (2A) of that section.]
Power of court to impose administrative sanctions in cases of market abuse

(1) The FCA may, on an application to the court under Part 25 which relates to the market abuse regulation, request the court to consider whether it is appropriate to impose one or more of the following on the person to whom the application relates—

(a) a penalty;
(b) if the person concerned is an individual, a temporary prohibition or a permanent prohibition; or
(c) a suspension or restriction.

(2) The court may, if it considers it appropriate, make an order which does one or more of the following—

(a) requires the person concerned to pay to the FCA a penalty of such amount as the court considers appropriate;
(b) if the person concerned is an individual, imposes a temporary prohibition or a permanent prohibition on that individual; or
(c) imposes a suspension or restriction on the person concerned.

(3) But the court may impose a permanent prohibition only where it is satisfied the person concerned has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation.

(4) Section 123A(4) to (6) apply to a prohibition imposed by an order made under subsection (2) as they do to a prohibition under section 123A, but with—

(a) references to a prohibition under section 123A having effect as references to a prohibition under this section; and
(b) references to the FCA having effect as references to the court which makes the order under this section.

(5) Section 123B(4) to (6) and (8) apply to a suspension or restriction imposed by an order under subsection (2) as they do to a suspension or restriction imposed under section 123B.

(6) The court may—

(a) vary or revoke a prohibition imposed under this section;
(b) withdraw a suspension or restriction imposed under this section; or
(c) vary a suspension or a restriction imposed under this section so as to reduce the period for which it has effect or otherwise to limit its effect.

(7) In this section—

"permanent prohibition" means a permanent prohibition on an individual holding an office or position involving responsibility for taking decisions about the management of an investment firm;
"suspension or restriction" means—
(a) a suspension of any permission which a person has to carry on a regulated activity for such period as the court considers appropriate; or
(b) such limitations or other restrictions as the court considers appropriate in relation to the carrying on of a regulated activity by a person for such period as the court considers appropriate;
"temporary prohibition" means a temporary prohibition on an individual—
(a) holding an office or position involving responsibility for taking decisions about the management of an investment firm; 8813 ...
(b) acquiring or disposing of financial instruments, whether on his or her own account or the account of a third party and whether directly or indirectly 8814; or
(c) making a bid, on his or her own account or the account of a third party, directly or indirectly, at an auction conducted by a recognised auction platform.]

[8815(8) For the meaning of “recognised auction platform” in this Part, see section 131AB.]

[8816(9) An application under Part 25 relates to the market abuse regulation if—
(a) it is made under section 380 or 382 and the relevant requirement for the purposes of that section is a requirement imposed by the market abuse regulation or a supplementary EU regulation; or
(b) it is made under section 381 or 383.]
(2) The Treasury must obtain the consent of the Attorney General and the Secretary of State before issuing any guidance under this section.

(3) In this section “relevant authorities”—
   (a) in relation to England and Wales, means the Secretary of State, the [F789FCA], the Director of the Serious Fraud Office and the Director of Public Prosecutions;
   (b) in relation to Northern Ireland, means the Secretary of State, the [F789FCA], the Director of the Serious Fraud Office and the Director of Public Prosecutions for Northern Ireland.

(4) Subsections (1) to (3) do not apply to Scotland.

(5) In relation to Scotland, the Lord Advocate may from time to time, after consultation with the Treasury, issue written guidance for the purpose of helping the [F789FCA] to determine the action to be taken in cases [F818 mentioned in subsection (1)].

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**Textual Amendments**

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<tr>
<th>Amendment</th>
<th>Description</th>
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<tbody>
<tr>
<td>F789</td>
<td>Word in ss. 121-130A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
</tr>
<tr>
<td>F818</td>
<td>Words in s. 130(5) substituted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 9(12)(b)</td>
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**130A Interpretation and supplementary provision**

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**Textual Amendments**

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131 **Effect on transactions.**

The imposition of a penalty under this Part does not make any transaction void or unenforceable.

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**131A Protected Disclosures**

(1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).

(2) The first condition is that the information or other matter—
   (a) causes the person making the disclosure (the discloser) to know or suspect, or
   (b) gives him reasonable grounds for knowing or suspecting that another person has engaged in market abuse]
that another person has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation].

(3) The second condition is that the information or other matter disclosed came to the discloser in the course of his trade, profession, business or employment.

(4) The third condition is that the disclosure is made to a nominated officer as soon as is practicable after the information or other matter comes to the discloser.

(5) A disclosure to a nominated officer is a disclosure which is made to a person nominated by the discloser's employer to receive disclosures under this section, and is made in the course of the discloser's employment and in accordance with the procedure established by the employer for the purpose.

(6) For the purposes of this section, references to a person's employer include any body, association or organisation (including a voluntary organisation) in connection with whose activities the person exercises a function (whether or not for gain or reward) and references to employment must be construed accordingly.]

\[F822\] Reporting of infringements

(1) This section applies to employers who—

(a) provide regulated financial services;

(b) carry on regulated activities in reliance on the exemption in section 327; or

(c) are recognised bodies, EEA central counterparties, or third country central counterparties.

(2) Employers must have in place appropriate internal procedures for their employees to report contraventions of the market abuse regulation or any supplementary EU regulation.

(3) In this section—

“employee” and “employer” have the meaning given in section 230 of the Employment Rights Act 1996;

“recognised body” has the meaning given in section 313;

“regulated financial services” has the meaning given in section 1H.
Financial Services and Markets Act 2000 (c. 8)
Part VIII – Provisions relating to market abuse
CHAPTER 3 – Further provisions relating to FCA and PRA

Textual Amendments

131AB. Interpretation

In this Part—

“EEA regulator” means the competent authority of an EEA State other than the United Kingdom for the purposes of the market abuse regulation;

“emission allowance” has the meaning given in Article 3.1.19 (definitions) of the market abuse regulation;

“financial instrument” has the meaning given in Article 4.1.15 of the markets in financial instruments directive;

“issuer” has the meaning given in Article 3.1(21) of the market abuse regulation; and

“recognised auction platform” has the meaning given in regulation 1(3) of the Recognised Auction Platform Regulations 2011 (S.I. 2011/2699);

“supplementary EU regulation” means a directly applicable EU regulation made under the market abuse regulation.

Textual Amendments


131AC. Meaning of “persons closely associated” in the market abuse regulation

(1) In Article 3.1(26)(a) (definitions) of the market abuse regulation “partner considered to be equivalent to a spouse” includes a civil partner.

(2) In Article 3.1(26)(b) of the market abuse regulation “dependent child” means a child who—

(a) is under the age of 18 years;
(b) is unmarried; and
(c) does not have a civil partner.

(3) In this section “child” includes a stepchild.
131AD. Individual liability in respect of legal persons under Articles 8 and 12 of the market abuse regulation

(1) An individual participates in a decision by a body corporate for the purposes of Article 8.5 (insider dealing) or Article 12.4 (market manipulation) of the market abuse regulation where—

(a) the individual was an officer of the body corporate when the decision was made; and

(b) the FCA are satisfied that the individual was knowingly concerned in the decision.

(2) In this section “officer”, in relation to a body corporate, means—

(a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity; or

(b) an individual who is a controller of the body.

131AE. Liability for contraventions of Article 14 or 15 of the market abuse regulation

For the purposes of any enactment a person contravenes Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) whether the contravention is by that person alone or by that person and one or more other persons jointly or in concert.]
Short selling rules

F828 131B Short selling rules

Textual Amendments
F828 Ss. 131B-131D repealed (1.11.2012) by The Financial Services and Markets Act 2000 (Short Selling) Regulations 2012 (S.I. 2012/2554), regs. 1(1), 2(2) (with reg. 7)

F828 131C Short selling rules: definitions etc

Textual Amendments
F828 Ss. 131B-131D repealed (1.11.2012) by The Financial Services and Markets Act 2000 (Short Selling) Regulations 2012 (S.I. 2012/2554), regs. 1(1), 2(2) (with reg. 7)

F828 131D Short selling rules: procedure in urgent cases

Textual Amendments
F828 Ss. 131B-131D repealed (1.11.2012) by The Financial Services and Markets Act 2000 (Short Selling) Regulations 2012 (S.I. 2012/2554), regs. 1(1), 2(2) (with reg. 7)

Power to require information

131E Power to require information

(1) The [F829FCA] may, by notice in writing, require a person [F830]...—
   (a) to provide specified information or information of a specified description; or
   (b) to produce specified documents or documents of a specified description.

(2) This section applies only to information and documents that the [F829FCA] reasonably requires for the purpose of [F831the exercise by it of functions under the short selling regulation].

(3) Information or documents required under this section must be provided or produced—
   (a) before the end of such reasonable period as may be specified; and
   (b) at such place as may be specified.

(4) The [F829FCA] may require any information provided under this section to be provided in such form as it may reasonably require.

(5) The [F829FCA] may require—
(a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require; or
(b) any document produced to be authenticated in such manner as it may reasonably require.

The [F829FCA's] powers under this section may be exercised on a request made in the exercise of functions under the short selling regulation by—
(a) the competent authority for the purposes of that regulation of an EEA State other than the United Kingdom, or
(b) ESMA.

(5B) If a request of the kind mentioned in subsection (5A) has been made to the [F829FCA], the [F829FCA] must, in deciding whether or not to exercise its powers under this section in response to the request, consider whether it is necessary to do so to comply with the short selling regulation.

(6) In this section “specified” means specified in the notice.

131F  Power to require information: supplementary

(1) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(2) If a document is produced in response to a requirement imposed under section 131E, the [F829FCA] may—
(a) take copies of or extracts from the document; or
(b) require the person producing the document, or any relevant person, to provide an explanation of the document.

(3) In subsection (2)(b) “relevant person”, in relation to a person who is required to produce a document, means a person who—
(a) has been or is or is proposed to be a director or controller of that person;
(b) has been or is an auditor of that person;
(c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or
(d) has been or is an employee of that person.
(4) If a person who is required under section 131E to produce a document fails to do so, the Financial Conduct Authority may require the person to state, to the best of the person's knowledge and belief, where the document is.

(5) A lawyer may be required under section 131E to provide the name and address of the lawyer's client.

(6) A person ("P") may not be required under section 131E to disclose information or produce a document in respect of which P owes an obligation of confidence by virtue of carrying on the business of banking unless—

- the Financial Conduct Authority suspects that P or a member of P's group has contravened any provision of the short selling regulation;
- the Financial Conduct Authority suspects that the person to whom the obligation of confidence is owed or a member of that person’s group has contravened any provision of the short selling regulation; or
- the person to whom the obligation of confidence is owed consents to the disclosure or production.

(7) If a person claims a lien on a document, its production under section 131E does not affect the lien.

**Investigations in support of EEA regulator**

(1) If so requested by the competent authority of an EEA State other than the United Kingdom ("the EEA regulator") acting in the exercise of its functions under the short selling regulation, the Financial Conduct Authority may appoint one or more competent persons to investigate any matter.

(2) In deciding whether to comply with a request falling within subsection (1), the Financial Conduct Authority must consider whether it is necessary to do so in order to comply with the short selling regulation.

(3) Sections 170 to 177 (which relate to investigations) apply in relation to an investigator appointed under subsection (1) as they apply in relation to an investigator appointed under section 168(5).

(4) The Financial Conduct Authority may direct an investigator appointed under subsection (1) to permit a representative of the EEA regulator to attend, and take part in, any interview conducted for the purposes of the investigation.

(5) The Financial Conduct Authority is not to give a direction under subsection (4) unless it is satisfied that any information obtained by the EEA regulator as a result of the interview will be subject to safeguards equivalent to those contained in Part 23.
(6) The [F829FCA] must prepare a statement of its policy with respect to the conduct of interviews in relation to which a direction under subsection (4) has been given.

(7) The statement requires the approval of the Treasury.

(8) If the Treasury approve the statement, the [F829FCA] must publish it.

(9) No direction may be given under subsection (4) before the statement has been published.

(10) The [F829FCA] may at any time alter or replace a statement issued under subsection (6), and subsections (7) and (8) apply to an altered statement or to a replacement statement.

**Textual Amendments**

F829
Word in Pt. 8A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 25(1), 122(3) (with s. 25(2), Sch. 20); S.I. 2013/423, art. 3, Sch.

F836
Ss. 131FA-131FC inserted (1.11.2012) by The Financial Services and Markets Act 2000 (Short Selling) Regulations 2012 (S.I. 2012/2554), regs. 1(1), 2(5)

131FB. Entry of premises under warrant

(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the [F829FCA] that there are reasonable grounds for believing that the conditions in subsection (2) are satisfied.

(2) The conditions are—

(a) that a relevant person on whom a requirement has been imposed under section 131E or 131F has failed (wholly or in part) to comply with it; and

(b) that on the premises specified in the warrant—

(i) there are documents which have been required; or

(ii) there is information which has been required.

(3) A warrant under this section shall authorise a constable—

(a) to enter the premises specified in the warrant;

(b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this section was issued (“the relevant kind”) or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them;

(c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;

(d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and

(e) to use such force as may be reasonably necessary.

(4) A warrant under this section may be executed by any constable.

(5) The warrant may authorise persons to accompany any constable who is executing it.
(6) The powers in subsection (3) may be exercised by a person authorised by the warrant to accompany a constable; but that person may exercise those powers only in the company of, and under the supervision of, a constable.

(7) In England and Wales, sections 15(5) to (8) and 16(3) to (12) of the Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards) apply to warrants issued under this section.

(8) In Northern Ireland, Articles 17(5) to (8) and 18(3) to (12) of the Police and Criminal Evidence (Northern Ireland) Order 1989 apply to warrants issued under this section.

(9) In the application of this section to Scotland—
   (a) for the reference to a justice of the peace substitute a reference to a justice of the peace or a sheriff; and
   (b) for the references to information on oath substitute references to evidence on oath.

(10) The [F829 FCA] may give information under subsection (1) or under section 176(1) at the request of an EEA regulator” where the regulator makes the request in the exercise of its functions under the short selling regulation.

(11) The [F829 FCA] must, in deciding whether or not to exercise a power referred to in subsection (10), consider whether the exercise of that power is necessary to comply with an obligation under the short selling regulation.

(12) In this section—
   “EEA regulator”‘ means the competent authority of an EEA State other than the United Kingdom for the purposes of the short selling regulation;
   “relevant person” means—
   (a) an authorised person,
   (b) a person who has been an authorised person,
   (c) a person who is for the purposes of section 165 connected with an authorised person or with a person within paragraph (b).

Textual Amendments
F829 Word in Pt. 8A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 25(1), 122(3) (with s. 25(2), Sch. 20); S.I. 2013/423, art. 3, Sch.
F836 Ss. 131FA-131FC inserted (1.11.2012) by The Financial Services and Markets Act 2000 (Short Selling) Regulations 2012 (S.I. 2012/2554), regs. 1(1), 2(5)

131FC. Retention of documents taken under section 131FB

(1) Any document of which possession is taken under section 131FB (“a seized document”) may be retained so long as it is necessary to retain it (rather than copies of it) in the circumstances.

(2) A person claiming to be the owner of a seized document may apply to a magistrates’ court or (in Scotland) the sheriff for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.
(3) If on an application under subsection (2) the court or (in Scotland) the sheriff cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.

(4) An order under subsection (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.

(5) Any right to bring proceedings (as described in subsection (4)) may only be exercised within 6 months of the date of the order made under subsection (2) or (3).

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**Textual Amendments**

F836 Ss. 131FA-131FC inserted (1.11.2012) by The Financial Services and Markets Act 2000 (Short Selling) Regulations 2012 (S.I. 2012/2554), regs. 1(1), 2(5)

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**Breach of short selling regulation etc**

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**Textual Amendments**

F837 Word in cross-heading preceding s. 131G substituted (1.11.2012) by The Financial Services and Markets Act 2000 (Short Selling) Regulations 2012 (S.I. 2012/2554), regs. 1(1), 2(6)

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**131G Power to impose penalty or issue censure**

(1) This section applies if the F829 FCA is satisfied that a person has contravened—
   (a) any provision of the short selling regulation; or
   (b) any requirement imposed on the person under section 131E or 131F.

(2) The F829 FCA may impose a penalty of such amount as it considers appropriate on—
   (a) the person who contravened the provision or requirement; or
   (b) any person who was knowingly concerned in the contravention.

(3) It may, instead of imposing a penalty on a person, publish a statement censuring the person.

(4) The F829 FCA 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 131H.

(5) “The limitation period” means the period of three years beginning with the first day on which the F829 FCA knew of the contravention.

(6) For this purpose the F829 FCA is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.

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**Textual Amendments**

F829 Word in Pt. 8A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 25(1), 122(3) (with s. 25(2), Sch. 20); S.I. 2013/423, art. 3, Sch.
131H Procedure and right to refer to Tribunal

(1) If the [F829FCA] proposes to take action against a person under section 131G, 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 [F829FCA] decides to take action against a person under section 131G, 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 [F829FCA] decides to take action against a person under section 131G, the person may refer the matter to the Tribunal.

131I Duty on publication of statement

After a statement under section 131G(3) is published, the [F829FCA] 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).

131J Imposition of penalties under section 131G: statement of policy

(1) The [F829FCA] must prepare and issue a statement of its policy with respect to—

(a) the imposition of penalties under section 131G; and

(b) the amount of penalties under that section.

(2) The [F829FCA'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) The F829FCA 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 F829FCA must issue the altered or replaced statement.

(5) The F829FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(6) A statement issued under this section must be published by the F829FCA in the way appearing to the F829FCA to be best calculated to bring it to the attention of the public.

(7) The F829FCA may charge a reasonable fee for providing a person with a copy of the statement.

(8) In exercising, or deciding whether to exercise, a power under section 131G in the case of any particular contravention, the F829FCA must have regard to any statement of policy published under this section and in force at a time when the contravention occurred.

Textual Amendments
F829 Word in Pt. 8A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 25(1), 122(3) (with s. 25(2), Sch. 20); S.I. 2013/423, art. 3, Sch.

131K Statement of policy: procedure

(1) Before issuing a statement under section 131J, the F829FCA must publish a draft of the proposed statement in the way appearing to the F829FCA 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 F829FCA within a specified time.

(3) Before issuing the proposed statement, the F829FCA must have regard to any representations made to it in accordance with subsection (2).

(4) If the F829FCA 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 (1) in a way which is, in the opinion of the F829FCA, significant, the F829FCA must (in addition to complying with subsection (4)) publish details of the difference.

(6) The F829FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.]
CHAPTER 3 – Further provisions relating to FCA and PRA


textual Amendments

F829 Word in Pt. 8A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 25(1), 122(3) (with s. 25(2), Sch. 20); S.I. 2013/423, art. 3, Sch.

131Loffences

(1) If a relevant person (“A”) fails to comply with a requirement imposed on A under section 131E or 131F the [F829FCA] may certify that fact in writing to the court.

(2) If the court is satisfied that A failed without reasonable excuse to comply with the requirement, it may deal with A (and where A is a body corporate, any director or officer) as if A (or as the case may be the director or officer) were in contempt; and “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.

(3) A relevant person (“B”) who, in purported compliance with a requirement imposed on B under section 131E or 131F—
   (a) provides information which B knows to be false or misleading in a material particular, or
   (b) recklessly provides information which is false or misleading in a material particular,

   is guilty of an offence.

(4) A person guilty of an offence under subsection (3) is liable—
   (a) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both;
   (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(5) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under section 131FB is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.

(6) In relation to any contravention by a person, the [F829FCA] may not exercise both—
   (a) its powers under section 131G(2), and
   (b) its powers under subsection (1).

(7) In this section—
   “court” means—
      (a) the High Court;
      (b) in Scotland, the Court of Session;

   “relevant person” means—
      (a) an authorised person,
      (b) a person who has been an authorised person,
      (c) a person who is for the purposes of section 165 connected with an authorised person or with a person within paragraph (b).]
## PART IX

### HEARINGS AND APPEALS

**Textual Amendments**

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<tr>
<th>Code</th>
<th>Description</th>
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<td>F829</td>
<td>Word in Pt. 8A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 25(1), 122(3) (with s. 25(2), Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
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**Modifications etc. (not altering text)**

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<td>C263</td>
<td>Pt. 9 applied (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, s. 46A(7) (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 148 (with art. 13(1) Sch. 5)); S.I. 2001/3538, art. 2(1)</td>
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<td>C265</td>
<td>Pt. 9 applied (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, s. 85(4C)(4D) (as inserted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. I para. 95 (with art. 13(3), Sch. 5)); S.I. 2001/3538, art. 2(1)</td>
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<td>C267</td>
<td>Pt. 9 applied (with modifications) (15.12.2007) by The Money Laundering Regulations 2007 (S.I. 2007/2157), reg. 44(4)(8), Sch. 5 para. 2 (with reg. 44(7)) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 129(g)</td>
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<td>C268</td>
<td>Pt. 9 applied (15.12.2007) by The Transfer of Funds (Information on the Payer) Regulations 2007 (S.I. 2007/3298), reg. 13(4), Sch. 2 para. 1 (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 131(d))</td>
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<td>C269</td>
<td>Pt. 9 applied (with modifications) (15.12.2007) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 40</td>
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<td>C270</td>
<td>Pt. 9 applied (with modifications) (13.3.2008) by The Northern Rock plc Compensation Scheme Order 2008 (S.I. 2008/718), arts. 1(2), 2, Sch. paras. 15-19 (as amended (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(2), 5(2), Sch. 3 para. 158(e)-(i) and (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 139)</td>
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| C272   | Pt. 9 applied (with modifications) (1.5.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), reg. 1(2)(b)(xiii), 95, Sch. 5 para. 2 (with reg. 3) (as amended (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(2), 5(2), Sch. 3 para. 189 and (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 155(6)(b)(e) (with Sch. 2 para. 156) and (26.6.2017) by The Money
Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), Sch. 7 para. 24(9) (with regs. 8, 15)


C271 Pt. 9 applied (with modifications) (31.12.2009) by Banking Act 2009 (c. 1), ss. 202(3), 263(1) (with ss. 206, 247); S.I. 2009/3000, art. 4, Sch. para. 2 (with art. 2)

C272 Pt. 9 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, Sch. paras. 7, 8


C274 Pt. 9 applied (with modifications) (15.1.2013) by The Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (S.I. 2012/3122), reg. 1, Sch. para. 7 (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 248(6)(b)(p))

C275 Pt. 9 applied (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), reg. 1(2), 58 (with regs. 52-58)

C276 Pt. 9 applied (with modifications) (E.W.) (9.7.2013) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (S.I. 2013/1635), reg. 1, 31(1) (as amended (7.3.2016) by The Financial Services (Banking Reform) Act 2013 (Consequential Amendments) Order 2016 (S.I. 2016/163), arts. 1, 6(8))

C277 Pt. 9 applied (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, 70(1)

C278 Pt. 9 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services Act 2012 (Consumer Credit) Order 2013 (S.I. 2013/1882), arts. 1(1), 3(4)

C279 Pt. 9 applied (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), 42 (with reg. 44)


C281 Pt. 9 applied (with modifications) (12.12.2014) by The Immigration Act 2014 (Bank Accounts) Regulations 2014 (S.I. 2014/3085), reg. 1, 30

C282 Pt. 9 modified (10.1.2015) by The Bank Recovery and Resolution (No. 2) Order 2014 (S.I. 2014/3348), arts. 1(2), 67(2)

C283 Pt. 9 applied (31.3.2015) by The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(3), 56(2) (with reg. 14(1))


C285 Pt. 9 applied (1.1.2016) by The Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014 (S.I. 2014/894), reg. 1(3), 4

C286 Pt. 9 applied (with modifications) (1.1.2016) by The Small and Medium Sized Business (Credit Information) Regulations 2015 (S.I. 2015/1945), reg. 1(2), 46

C287 Pt. 9 applied (with modifications) (1.1.2016) by The Small and Medium Sized Business (Finance Platforms) Regulations 2015 (S.I. 2015/1946), reg. 1(2), 43


C291 Pt. 9 applied (with modifications) (13.10.2017) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(3)(c), Sch. 6 para. 2 (with reg. 3)

C292 Pt. 9 applied (with modifications) by S.I. 2014/2879, reg. 5C(12) (as inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 5(9) (with regs. 7(4), 9(1)))

C293 Pt. 9 applied by S.I. 2014/2879, reg. 5I(8) (as inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 5(9) (with regs. 7(4), 9(1)))

C294 Pt. 9 applied by S.I. 2014/2879, reg. 5L(3) (as inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 5(9) (with regs. 7(4), 9(1)))

C295 Pt. 9 applied by S.I. 2014/2879, reg. 5H(6) (as inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 5(9) (with regs. 7(4), 9(1)))

C296 Pt. 9 applied (with modifications) (1.1.2018) by The Packaged Retail and Insurance-based Investment Products Regulations 2017 (S.I. 2017/1127), reg. 1, Sch. 1 para. 1

C297 Pt. 9 applied (with modifications) (3.1.2018) by The Data Reporting Services Regulations 2017 (S.I. 2017/699), regs. 1(2)(b), 32


C299 Pt. 9 applied (with modifications) (1.1.2019) by The Securitisation Regulations 2018 (S.I. 2018/1288), reg. 1, Sch. 1 para. 2 (with Sch. 1 paras. 13, 14)

C300 Pt. 9 applied by S.I. 2018/1201, Sch. 3 para. 12J(5) (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), 10(2))

C301 Pt. 9 applied by S.I. 2018/1149, reg. 57 (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), 3

C302 Pt. 9 applied (with modifications) by S.I. 2018/1201, reg. 13H (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), 11)

C303 Pt. 9 applied by S.I. 2018/1201, reg. 34(5) (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), 10(3))

132 The Financial Services and Markets Tribunal.

133 Proceedings before Tribunal: general provision

(1) This section applies in the case of a reference or appeal to the Tribunal (whether made under this or any other Act) in respect of—
   (a) a decision of the FCA or the PRA;
   (b) a decision of the Bank of England; or
(c) a decision of a person relating to the assessment of any compensation or consideration under the Banking (Special Provisions) Act 2008 or the Banking Act 2009.

(1A) For the purposes of this section, in the case of a reference to the Tribunal under section 290(4A) (which relates to an application by a central securities depository under section 288A), the failure by the Bank of England to make a decision is treated as a decision to refuse the application (and accordingly is treated as falling within subsection (1)(b)).

(2) In this section—

“relevant decision” means a decision mentioned in subsection (1)(a), (b) or (c); and

“the decision-maker”, in relation to a relevant decision, means the person who made the relevant decision.

(3) Tribunal Procedure Rules may make provision for the suspension of a relevant decision which has taken effect, pending determination of the reference or appeal.

(4) The Tribunal may consider any evidence relating to the subject-matter of the reference or appeal, whether or not it was available to the decision-maker at the material time.

(5) In the case of a disciplinary reference or a reference under section 393(11), the Tribunal—

(a) must determine what (if any) is the appropriate action for the decision-maker to take in relation to the matter; and

(b) on determining the reference, must remit the matter to the decision-maker with such directions (if any) as the Tribunal considers appropriate for giving effect to its determination.

(6) In any other case, the Tribunal must determine the reference or appeal by either—

(a) dismissing it; or

(b) remitting the matter to the decision-maker with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal.

(6A) The findings mentioned in subsection (6)(b) are limited to findings as to—

(a) issues of fact or law;

(b) the matters to be, or not to be, taken into account in making the decision; and

(c) the procedural or other steps to be taken in connection with the making of the decision.

(7) The decision-maker must act in accordance with the determination of, and any direction given by, the Tribunal.

(7A) A reference is a “disciplinary reference” for the purposes of this section if it is in respect of any of the following decisions—

(a) a decision to impose a penalty under section 63A;

(b) a decision to take action under section 66;

(c) a decision to take action under section 87M;

(d) a decision to take action under section 88A;

(e) a decision to take action under section 89K;

(f) a decision to take action under section 89Q;

(g) a decision to take action under section 91;
(h) a decision to impose a penalty or publish a statement of censure under section 123, impose a prohibition under section 123A or impose a suspension or restriction under section 123B;

(i) a decision to take action under section 131G;

(j) a decision to take action under section 131S;

(k) a decision to take action under section 131S(h);

(l) a decision to take action under section 249 or 261K;

(m) a decision to take action under section 312E or 312FA;

(n) a decision to take action under section 345 or 345A.

(o) a decision to take action under section 83ZR of the Banking Act 2009.

(8) An order of the Tribunal may be enforced—

(a) in England and Wales, as if it were an order of the county court or, in Northern Ireland, as if it were an order of a county court; or

(b) in Scotland, as if it were an order of the Court of Session.
Proceedings before Tribunal: decision and supervisory notices, etc.

(1) In determining a reference made (whether under this or any other Act) as a result of a decision notice given by a body, the Tribunal may not direct the body to take action which it would not, as a result of section 388(2), have had power to take when giving the notice.

(2) . . . . . . . . . . . . . . . .

(3) . . . . . . . . . . . . . . . .

(4) The action specified in a decision notice must not be taken—

(a) during the period within which the matter to which the notice relates may be referred to the Tribunal (whether under this or any other Act); and

(b) if the matter is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of.

(5) The Tribunal may, on determining a reference (whether made under this or any other Act) in respect of a decision of the FCA or the PRA, make recommendations as to regulating provisions or its procedures.

Textual Amendments

<table>
<thead>
<tr>
<th>Marginal Citation</th>
<th>Textual Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>F852</td>
<td>Ss. 133-133B substituted (6.4.2010) for s. 133 by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(2)(e), 5(1), Sch. 2 para. 45</td>
</tr>
<tr>
<td>F853</td>
<td>Words in s. 133A(1) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 23(3)(a)(i), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
</tr>
<tr>
<td>F854</td>
<td>Words in s. 133A(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 23(3)(a)(ii), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
</tr>
<tr>
<td>F855</td>
<td>S. 133A(2) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 23(3)(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
</tr>
<tr>
<td>F856</td>
<td>S. 133A(3) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 23(3)(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
</tr>
<tr>
<td>F857</td>
<td>Words in s. 133A(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 23(3)(c), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
</tr>
<tr>
<td>F858</td>
<td>Words in s. 133A(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 23(3)(d)(i), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
</tr>
</tbody>
</table>
133B  Offences

(1) This section applies in the case of proceedings before the Tribunal in respect of—
   (a) a decision of \[F860\] the FCA or the PRA;
   (b) a decision of the Bank of England; or
   (c) a decision of a person relating to the assessment of any compensation or consideration under the \[M7\] Banking (Special Provisions) Act 2008 or the \[M8\] Banking Act 2009.

(2) A person is guilty of an offence if that person, without reasonable excuse—
   (a) refuses or fails—
      (i) to attend following the issue of a summons by the Tribunal; or
      (ii) to give evidence; or
   (b) alters, suppresses, conceals or destroys, or refuses to produce a document which he may be required to produce for the purposes of proceedings before the Tribunal.

(3) A person guilty of an offence under subsection (2)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A person guilty of an offence under subsection (2)(b) is liable—
   (a) on summary conviction, to a fine not exceeding the statutory maximum;
   (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.\[\]
Legal assistance before the Tribunal

134 Legal assistance scheme.

(1) The Lord Chancellor may by regulations establish a scheme governing the provision of legal assistance in connection with proceedings before the Tribunal.

(2) If the Lord Chancellor establishes a scheme under subsection (1), it must provide that a person is eligible for assistance only if—
   (a) he falls within subsection (3); and
   (b) he fulfils such other criteria (if any) as may be prescribed as a result of section 135(1)(d).

(3) A person falls within this subsection if he is an individual who has referred a matter to the Tribunal under section 127(4).

(4) In this Part of this Act “the legal assistance scheme” means any scheme in force under subsection (1).

135 Provisions of the legal assistance scheme.

(1) The legal assistance scheme may, in particular, make provision as to—
   (a) the kinds of legal assistance that may be provided;
   (b) the persons by whom legal assistance may be provided;
   (c) the manner in which applications for legal assistance are to be made;
   (d) the criteria on which eligibility for legal assistance is to be determined;
   (e) the persons or bodies by whom applications are to be determined;
   (f) appeals against refusals of applications;
   (g) the revocation or variation of decisions;
   (h) its administration and the enforcement of its provisions.

(2) Legal assistance under the legal assistance scheme may be provided subject to conditions or restrictions, including conditions as to the making of contributions by the person to whom it is provided.

136 Funding of the legal assistance scheme.

(1) The [F861FCA] must pay to the Lord Chancellor such sums at such times as he may, from time to time, determine in respect of the anticipated or actual cost of legal assistance provided in connection with proceedings before the Tribunal under the legal assistance scheme.

(2) In order to enable it to pay any sum which it is obliged to pay under subsection (1), the [F861FCA] must make rules requiring the payment to it by authorised persons or any class of authorised person of specified amounts or amounts calculated in a specified way.

(3) Sums received by the Lord Chancellor under subsection (1) must be paid into the Consolidated Fund.

(4) The Lord Chancellor must, out of money provided by Parliament fund the cost of legal assistance provided in connection with proceedings before the Tribunal under the legal assistance scheme.
(5) Subsection (6) applies if, as respects a period determined by the Lord Chancellor, the amount paid to him under subsection (1) as respects that period exceeds the amount he has expended in that period under subsection (4).

(6) The Lord Chancellor must—
   (a) repay, out of money provided by Parliament, the excess to the FCA; or
   (b) take the excess into account on the next occasion on which he makes a determination under subsection (1).

(7) The FCA must make provision for any sum repaid to it under subsection (6)(a)—
   (a) to be distributed among—
       (i) the authorised persons on whom a levy was imposed in the period in question as a result of rules made under subsection (2); or
       (ii) such of those persons as it may determine;
   (b) to be applied in order to reduce any amounts which those persons, or such of them as it may determine, are or will be liable to pay to the FCA, whether under rules made under subsection (2) or otherwise; or
   (c) to be partly so distributed and partly so applied.

(8) If the FCA considers that it is not practicable to deal with any part of a sum repaid to it under subsection (6)(a) in accordance with provision made by it as a result of subsection (7), it may, with the consent the Lord Chancellor, apply or dispose of that part of that sum in such manner as it considers appropriate.

(9) “Specified” means specified in the rules.
PART 9A – Rules and Guidance

CHAPTER 1 – Rule-making powers

137A The FCA's general rules

(1) The FCA may make such rules applying to authorised persons—
   (a) with respect to the carrying on by them of regulated activities, or
   (b) with respect to the carrying on by them of activities which are not regulated activities,
   as appear to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives.

(2) Rules made under this section are referred to in this Act as the FCA's general rules.

(3) The FCA’s general rules may make provision applying to authorised persons even though there is no relationship between the authorised persons to whom the rules will apply and the persons whose interests will be protected by the rules.

(4) The FCA’s general rules may contain requirements which take into account, in the case of an authorised person who is a member of a group, any activity of another member of the group.

(5) The FCA's general rules may not—
   (a) make provision prohibiting an EEA firm from carrying on, or holding itself out as carrying on, any activity which it has permission conferred by Part 2 of Schedule 3 to carry on in the United Kingdom;
(b) make provision, as respects an EEA firm, about any matter for which responsibility is, under any of the single market directives or the emission allowance auctioning regulation, reserved to the firm’s home state regulator.

[F868 (6)] The FCA’s general rules may not modify, amend or revoke any retained direct EU legislation (except retained direct EU legislation which takes the form of FCA rules).]
(a) make provision which results in that clients' money being held on trust in accordance with the rules,
(b) treat 2 or more accounts as a single account for specified purposes (which may include the distribution of money held in the accounts),
(c) authorise the retention by the authorised person of interest accruing on the clients' money, and
(d) make provision as to the distribution of such interest which is not to be retained by the authorised person.

(2) An institution with which an account is kept in pursuance of rules relating to the handling of clients' money does not incur any liability as constructive trustee if the money is wrongfully paid from the account, unless the institution permits the payment—
(a) with knowledge that it is wrongful, or
(b) having deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.

(3) Rules may—
(a) confer rights on persons to rescind agreements with, or withdraw offers to, authorised persons within a specified period, and
(b) make provision, in respect of authorised persons and persons exercising those rights, for the restitution of property and the making or recovery of payments where those rights are exercised.

(4) “Rules” means general rules of the FCA.

(5) “Specified” means specified in the rules.

137C FCA general rules: cost of credit and duration of credit agreements

(1) The power of the FCA to make general rules includes power to make rules prohibiting authorised persons from—
(a) entering into a regulated credit agreement that provides for—
   (i) the payment by the borrower of charges of a specified description, or
   (ii) the payment by the borrower over the duration of the agreement of charges that, taken with the charges paid under one or more other agreements which are treated by the rules as being connected with it, exceed, or are capable of exceeding, a specified amount;
(b) imposing charges of a specified description or exceeding a specified amount on a person who is the borrower under a regulated credit agreement;
(c) entering into a regulated credit agreement that—
   (i) is capable of remaining in force after the end of a specified period,
   (ii) when taken with one or more other regulated credit agreements which are treated by the rules as being connected with it, would be capable of remaining in force after the end of a specified period, or
   (iii) is treated by the rules as being connected with a number of previous regulated credit agreements that exceeds a specified maximum;
(d) exercising the rights of the lender under a regulated credit agreement (as a person for the time being entitled to exercise them) in a way that enables the agreement to remain in force after the end of a specified period or enables the imposition on the borrower of charges within paragraph (a)(i) or (ii).
The FCA must make rules by virtue of subsection (1)(a)(ii) and (b) in relation to one or more specified descriptions of regulated credit agreement appearing to the FCA to involve the provision of high-cost short-term credit, with a view to securing an appropriate degree of protection for borrowers against excessive charges.

(1B) Before the FCA publishes a draft of any rules to be made by virtue of subsection (1)(a)(ii) or (b), it must consult the Treasury.

(2) “Charges” means charges payable, by way of interest or otherwise, in connection with the provision of credit under the regulated credit agreement, whether or not the agreement itself makes provision for them and whether or not the person to whom they are payable is a party to the regulated credit agreement or an authorised person.

(3) “The borrower” includes—
(a) any person providing a guarantee or indemnity under the regulated credit agreement, and
(b) a person to whom the rights and duties of the borrower under the regulated credit agreement or a person falling within paragraph (a) have passed by assignment or operation of law.

(4) In relation to an agreement entered into or obligation imposed in contravention of the rules, the rules may—
(a) provide for the agreement or obligation to be unenforceable against any person or specified person;
(b) provide for the recovery of any money or other property paid or transferred under the agreement or other obligation by any person or specified person;
(c) provide for the payment of compensation for any loss sustained by any person or specified person as a result of paying or transferring any money or other property under the agreement or obligation.

(5) The provision that may be made as a result of subsection (4) includes provision corresponding to that made by section 30 (enforceability of agreements resulting from unlawful communications).

(6) A credit agreement is a contract of the kind mentioned in paragraph 23 of Schedule 2, other than one under which the obligation of the borrower to repay is secured on land: and a credit agreement is a “regulated credit agreement” if any of the following is a regulated activity—
(a) entering into or administering the agreement;
(b) exercising or being able to exercise the rights of the lender under the agreement.

(7) In this section—
(a) “specified amount” means an amount specified in or determined in accordance with the rules;
(b) “specified period” means a period of a duration specified in or determined in accordance with the rules;
(c) “specified person” means a person of a description specified in the rules;
(d) subject to that, “specified” means specified in the rules.
137D FCA general rules: product intervention

(1) The power of the FCA to make general rules includes power to make such rules ("product intervention rules") prohibiting authorised persons from doing anything mentioned in subsection (2) as appear to it to be necessary or expedient for the purpose of advancing—

   (a) the consumer protection objective or the competition objective, or
   (b) if the Treasury by order provide for this paragraph to apply, the integrity objective.

(2) Those prohibited things are—

   (a) entering into specified agreements with any person or specified person;
   (b) entering into specified agreements with any person or specified person unless requirements specified in the rules have been satisfied;
   (c) doing anything that would or might result in the entering into of specified agreements by persons or specified persons, or the holding by them of a beneficial or other kind of economic interest in specified agreements;
   (d) doing anything within paragraph (c) unless requirements specified in the rules have been satisfied.

(3) “Specified agreements” means agreements of a description specified in general rules made by the FCA.

(4) “Specified persons” means persons of a description specified in general rules made by the FCA.

(5) It is of no relevance—

   (a) whether the entering into of a specified agreement itself constitutes the carrying on of a regulated activity, or
   (b) whether, in a case within subsection (2)(c) or (d), the specified agreements are with the authorised persons concerned or anyone else.

(6) The requirements that may be specified under subsection (2)(b) or (d) include in particular—

   (a) requirements as to the terms and conditions that are to be, or are not to be, included in specified or other agreements, and
   (b) requirements limiting invitations or inducements to enter into specified or other agreements to those made to specified persons.

(7) In relation to contraventions of product intervention rules, the rules may—

   (a) provide for a relevant agreement or obligation to be unenforceable against any person or specified person;
   (b) provide for the recovery of any money or other property paid or transferred under a relevant agreement or obligation by any person or specified person;
(c) provide for the payment of compensation for any loss sustained by any person or specified person as a result of paying or transferring any money or other property under a relevant agreement or obligation.

(8) “A relevant agreement or obligation” means—

(a) a specified agreement;
(b) an agreement entered into in contravention of any rule made as a result of subsection (2)(c) or (d);
(c) an obligation to which a person is subject as a result of exercising a right conferred by an agreement within paragraph (a) or (b) of this subsection.

(9) The provision that may be made as a result of subsection (7) includes provision corresponding to that made by section 30 (enforceability of agreements resulting from unlawful communications).

(10) In this section—

(a) any reference to entering into an agreement includes inviting or inducing persons to enter into an agreement, and
(b) any reference to an agreement includes an arrangement.

137E Orders under s.137D(1)(b)

(1) No order may be made under section 137D(1)(b) unless—

(a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or
(b) subsection (3) applies.

(2) Subsection (3) applies if an order under section 137D(1)(b) 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.

(3) Where this subsection applies the order—

(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 that affecting anything done under the order or the power to make a new order).

(4) The “relevant period” is a period of 28 days beginning with the day on which the order is made.

(5) 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.
137F  Rules requiring participation in benchmark

(1) The power of the FCA to make general rules includes power to make rules requiring authorised persons to take specified steps in connection with the setting by a specified person of a specified benchmark.

(2) The rules may in particular—

(a) require authorised persons to whom the rules apply to provide information of a specified kind, or expressions of opinion as to specified matters, to persons determined in accordance with the rules;

(b) make provision about the form in which and the time by which any information or expression of opinion is to be provided;

(c) make provision by reference to any code or other document published by the person responsible for the setting of the benchmark or by any other person determined in accordance with the rules, as the code or other document has effect from time to time.

(3) Rules making provision of the kind mentioned in subsection (2)(c) may provide that the code or other document is to be capable of affecting obligations imposed by the rules only if specified requirements are met in relation to it.

(4) In this section—

[F870 “benchmark” means a benchmark within the meaning of section 22(6) or (6A);]

“specified” means specified in or determined in accordance with the rules.

Textual Amendments

F870 Words in s. 137F(4) substituted (27.2.2018) by The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135), regs. 1(2), 43(a)

137FA  FCA general rules: disclosure of information about pension scheme transaction costs etc

(1) The FCA must make general rules requiring information about some or all of the transaction costs of a relevant scheme to be given to some or all of the persons mentioned in subsection (2).

(2) Those persons are—

(a) members of the scheme,

(b) spouses or civil partners of members, and

(c) persons within the application of the scheme and qualifying or prospectively qualifying for its benefits.

(3) The FCA must make general rules requiring the publication of information about—

(a) some or all of the transaction costs of a relevant scheme, and

(b) some or all of the administration charges imposed on members of a relevant scheme.

(4) Rules made by virtue of subsection (3) may require other relevant information to be published along with information about transaction costs or administration charges in relation to a scheme.
(5) “Other relevant information” means other information which would or may assist in making comparisons between those costs or charges and costs or charges in relation to other schemes.

(6) Before the FCA publishes a draft of any rules to be made by virtue of this section, it must consult—
   (a) the Secretary of State, and
   (b) the Treasury.

(7) In determining what provision to include in the rules, the FCA must have regard to any regulations about the disclosure or publication of transaction costs or administration charges that are for the time being in force under section 113 of the Pension Schemes Act 1993.

(8) In this section—
   “administration charge” has the meaning given by paragraph 1(5) of Schedule 18 to the Pensions Act 2014;
   “money purchase scheme” has the meaning given by section 181(1) of the Pension Schemes Act 1993;
   “personal pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;
   “relevant scheme” means a money purchase scheme that is—
   (a) a personal pension scheme where direct payment arrangements (within the meaning of section 111A of the Pension Schemes Act 1993) exist in respect of one or more members of the scheme who are workers, or
   (b) a personal pension scheme which is or has been registered under section 2 of the Welfare Reform and Pensions Act 1999 (stakeholder pension schemes);
   “worker” means a person—
   (a) who is a worker for the purposes of Part 1 of the Pensions Act 2008, or
   (b) to whom a provision of Part 1 of that Act applies as if the person were a worker because of a provision of Chapter 8 of that Part;

   but for the purposes of paragraph (b), ignore section 92 of that Act.]

Textual Amendments
F871  S. 137FA inserted (18.9.2017) by Pensions Act 2014 (c. 19), ss. 44(2), 56(1); S.I. 2017/916, reg. 2(1) (with reg. 2(2))

FCA general rules: disclosure of information about the availability of pensions guidance

(1) The FCA must make general rules requiring information about the availability of pensions guidance to be given by the trustees or managers of a relevant pension scheme to members of the scheme, and survivors of members of the scheme, with subsisting rights in respect of any flexible benefits.

(2) Before the FCA publishes a draft of any rules to be made by virtue of this section, it must consult—
   (a) the Secretary of State, and
(b) the Treasury.

(3) In determining what provision to include in the rules, the FCA must have regard to any regulations that are for the time being in force under section 113 of the Pension Schemes Act 1993 concerning the giving of information about the availability of pensions guidance to members of pension schemes, and survivors of members of pension schemes, with subsisting rights in respect of any flexible benefits.

(4) In this section—

“flexible benefit” has the meaning given by section 74 of the Pension Schemes Act 2015;

“pensions guidance” means information or guidance provided by any person in pursuance of the requirements mentioned in section 4 of the Financial Guidance and Claims Act 2018 (information etc about flexible benefits under pension schemes);

“relevant pension scheme” means a pension scheme set up by a person with permission under this Act to establish—

(a) a personal pension scheme within the meaning of an order under section 22, or

(b) a stakeholder pension scheme within the meaning of such an order;

“subsisting right” has the meaning given by section 76 of the Pension Schemes Act 2015;

“survivor” has the meaning given by section 76 of the Pension Schemes Act 2015.
(4) Regulations made under subsection (3) may (amongst other things) specify criteria based on the proportion of the individual’s financial resources that is represented by the payments under the relevant annuity or the value of that annuity.

(5) The rules made by virtue of subsection (1) may include provision—
   (a) about what specified authorised persons must do to check that an individual has received appropriate advice for the purposes of those rules;
   (b) about when the check must be carried out.

(6) For the purposes of this section—
   (a) “relevant annuity” means an annuity specified (by type, value or otherwise) as a relevant annuity in regulations made by the Treasury;
   (b) “appropriate advice” means advice specified (by reference to the person giving the advice or otherwise) as appropriate advice in regulations made by the Treasury;
   (c) “specified authorised person” means an authorised person of a description specified in rules made by virtue of subsection (1).

(7) If regulations under subsection (3) or (6)(a) make provision about the value of an annuity, the regulations may also make provision about the basis on which the value of an annuity is to be calculated.

Textual Amendments
F874 S. 137FBA inserted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), ss. 33(2), 41(3); S.I. 2016/627, reg. 2(1)(x)

FCA general rules: early exit pension charges
F875 S. 137FBB
(1) The FCA must make general rules prohibiting authorised persons from—
   (a) imposing specified early exit charges on members of relevant pension schemes, and
   (b) including in relevant pension schemes provision for the imposition of specified early exit charges on members of such schemes.

(2) The rules must be made with a view to securing, so far as is reasonably possible, an appropriate degree of protection for members of relevant pension schemes against early exit charges being a deterrent on taking, converting or transferring benefits under the schemes.

(3) The rules may specify early exit charges by reference to charges of a specified class or description, or by reference to charges which exceed a specified amount.

(4) The rules made by virtue of subsection (1)(a) must prohibit the imposition of the charges after those rules come into force, whether the relevant pension scheme was established before or after those rules (or this section) came into force.

(5) In relation to a charge which is imposed, or provision for the imposition of a charge which is included in a pension scheme, in contravention of the rules, the rules may (amongst other things)—
   (a) provide for the obligation to pay the charge to be unenforceable or unenforceable to a specified extent;
(b) provide for the recovery of amounts paid in respect of the charge;
(c) provide for the payment of compensation for any losses incurred as a result of paying amounts in respect of the charge.

(6) Subject to subsection (8) an early exit charge, in relation to a member of a pension scheme, is a charge which—
(a) is imposed under the scheme when a member who has reached normal minimum pension age takes the action mentioned in subsection (7), but
(b) is only imposed, or only imposed to that extent, if the member takes that action before the member's expected retirement date.

(7) The action is the member taking benefits under the scheme, converting benefits under the scheme into different benefits or transferring benefits under the scheme to another pension scheme.

(8) The Treasury may by regulations specify matters that are not to be treated as early exit charges for the purposes of this section.

(9) For the purposes of this section—
"charge", in relation to a member of a pension scheme, includes a reduction in the value of the member's benefits under the scheme;
"expected retirement date", in relation to a member of a pension scheme, means the date determined by, or in accordance with, the scheme as the date on which the member's benefits under the scheme are expected to be taken;
"normal minimum pension age" has the same meaning as in section 279(1) of the Finance Act 2004;
"relevant pension scheme" has the same meaning as in section 137FB;
and a reference to benefits includes all or any part of those benefits.

Textual Amendments
F875 S. 137FBB inserted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), ss. 35(2), 41(3); S.I. 2016/627, reg. 2(1)(z)

FCA rules: disclosure of information about the availability of financial guidance
(1) The FCA must make general rules requiring specified authorised persons to provide information about the availability of financial guidance to the descriptions of persons specified in the rules.

(2) The rules may specify the circumstances in which the duty to provide the information applies.

(3) Before the FCA publishes a draft of any rules to be made by virtue of this section, it must consult—
(a) the Secretary of State,
(b) the Treasury, and
(c) the single financial guidance body.

(4) In this section—
"financial guidance" means information, guidance or advice provided in pursuance of the single financial guidance body's pensions guidance, debt
advice or money guidance function (see section 3 of the Financial Guidance and Claims Act 2018);

“specified authorised person” means an authorised person of a description specified in rules made by virtue of this section.

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**FCA general rules: charges for claims management services**

(1) The power of the FCA to make general rules includes power to make rules prohibiting authorised persons from—

(a) entering into a specified regulated claims management agreement that provides for the payment by a person of charges which, taken with charges payable under an agreement treated by the rules as being connected with the regulated claims management agreement (if any), are specified charges, and

(b) imposing specified charges on a person in connection with the provision of a service which is, or which is provided in connection with, a specified regulated claims management activity.

(2) The FCA must make rules by virtue of subsection (1) in relation to all regulated claims management agreements, and all regulated claims management activities, which concern claims in relation to financial products or services.

(3) The rules must be made with a view to securing an appropriate degree of protection against excessive charges for the provision of a service which is, or which is provided in connection with, a regulated claims management activity.

(4) The rules may specify charges by reference to charges of a specified class or description, or by reference to charges which exceed, or are capable of exceeding, a specified amount.

(5) In relation to an agreement entered into, or charge imposed, in contravention of the rules, the rules may (amongst other things)—

(a) provide for the agreement, or obligation to pay the charge, to be unenforceable or unenforceable to a specified extent;

(b) provide for the recovery of amounts paid under the agreement or obligation;

(c) provide for the payment of compensation for any losses incurred as a result of paying amounts under the agreement or obligation.

(6) The provision that may be made under subsection (5) includes provision corresponding to that made by section 30 (enforceability of agreements resulting from unlawful communications).

(7) In this section—

(a) “regulated claims management agreement” means an agreement, the entering into or performing of which by either party is a regulated claims management activity, and

(b) “specified” means specified in the rules, but “specified amount” means an amount specified in or determined in accordance with the rules.
137G  The PRA's general rules

(1) The PRA may make such rules applying to PRA-authorised persons—
   (a) with respect to the carrying on by them of regulated activities, or
   (b) with respect to the carrying on by them of activities which are not regulated
      activities,
   as appear to the PRA to be necessary or expedient for the purpose of advancing any
   of its objectives.

(2) Rules made under this section are referred to in this Act as the PRA's general rules.

(3) The PRA's general rules may make provision applying to PRA-authorised persons
    even though there is no relationship between the PRA-authorised persons to whom
    the rules will apply and the persons whose interests will be protected by the rules.

(4) The PRA's general rules may contain requirements which take into account, in the
    case of a PRA-authorised person who is a member of a group, any activity of another
    member of the group.

(5) The PRA's general rules may not—
   (a) make provision prohibiting an EEA firm from carrying on, or holding itself
       out as carrying on, any activity which it has permission conferred by Part 2
       of Schedule 3 to carry on in the United Kingdom;
   (b) make provision, as respects an EEA firm, about any matter for which
       responsibility is, under any of the single market directives or the emission
       allowance auctioning regulation, reserved to the firm's home state regulator.

(6) The PRA's general rules may not modify, amend or revoke any retained direct EU
    legislation (except retained direct EU legislation which takes the form of PRA rules).]
137H  General rules about remuneration

(1) This section applies where either regulator exercises its power to make general rules so as to make rules prohibiting persons, or persons of a specified description, from being remunerated in a specified way.

(2) The rules may—

(a) provide that any provision of an agreement that contravenes such a prohibition is void, and

(b) provide for the recovery of any payment made, or other property transferred, in pursuance of a provision that is void by virtue of paragraph (a).

(3) A provision that, at the time the rules are made, is contained in an agreement made before that time may not be rendered void under subsection (2)(a) unless it is subsequently amended so as to contravene a prohibition referred to in that subsection.

137I  Remuneration policies: Treasury direction to consider compliance

(1) This section applies where either regulator exercises its power to make general rules so as to make rules requiring authorised persons, or authorised persons of a description specified in the rules, to act in accordance with a remuneration policy.

(2) A “remuneration policy” is a policy about the remuneration by an authorised person of—

(a) officers,

(b) employees, or

(c) other persons,

of a description specified in the rules.

(3) The Treasury may direct the regulator to consider whether the remuneration policies of authorised persons specified in the direction (or of authorised persons of a description so specified) comply with requirements imposed by rules made by that regulator as to the contents of the policies.

(4) Before giving a direction under subsection (3), the Treasury must consult the regulator concerned.

(5) If the regulator considers that a remuneration policy of an authorised person fails to make provision which complies with the requirements mentioned in subsection (3), the regulator must take such steps as it considers appropriate to deal with the failure.
The steps that the regulator may take include requiring the remuneration policy to be revised.

(7) “Authorised person”, in relation to the PRA, means PRA-authorised person.

### 137J Rules about recovery plans: duty to consult

(1) Before either regulator prepares a draft of any general rules that require [F879a] relevant person (or [F879a] relevant person of a specified description) to prepare a recovery plan, the regulator must consult [F880 the Treasury].

[ The FCA must also consult the Bank of England.]

(F881 1A) [F887] “Relevant person” means—

(a) an institution authorised in the UK; or

(b) a qualifying parent undertaking within the meaning given by section 192B.

(3) A “recovery plan” is a document which provides for measures to be taken—

(a) by an institution authorised in the UK which is not part of a group, following a significant deterioration of the financial position of the institution, in order to restore its financial position; or

(b) in relation to a group, to achieve the stabilisation of the group as a whole, or of any institution within the group, where the group or institution is in a situation of financial stress, in order to address or remove the causes of the financial stress and restore the financial position of the group or institution.

(4) For the purposes of subsection (3)(a) the definition of “group” in section 421 applies with the omission of subsection (1)(e) and (f) of that section.

(6) In this section—

“authorised person”, in relation to the PRA, means PRA-authorised person;

[F883 “institution” means—

(a) a credit institution within the meaning given by Article 2.1(2) of Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms; or

(b) an investment firm within the meaning given by Article 2.1(3) of that directive;

“institution authorised in the UK” means an institution which is an authorised person and—

(a) a bank within the meaning given by section 2 of the Banking Act 2009;

(b) a building society within the meaning given in section 119 of the Building Societies Act 1986; or

(c) an investment firm within the meaning given by section 258A of the Banking Act 2009;]

“specified” means specified in the rules.

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**Textual Amendments**

F879 Word in s. 137J(1) substituted (10.1.2015) by The Bank Recovery and Resolution (No. 2) Order 2014 (S.I. 2014/3348), art. 1(2), Sch. 3 para. 2(2)
137K  [F884 Rules about resolution packs: duty to consult]

(1) Before [F885 either regulator] prepares a draft of any general rules that require [F886 a] relevant person (or [F886 a] relevant person of a specified description) to prepare a [F887 resolution pack], [F888 the regulator] must consult [F889 the Treasury].

[F890(1A)]

The FCA must also consult the Bank of England.

[F891(2)] “Relevant person” has the same meaning as in section 137J(2).

(3) A “[F892 resolution pack]” is a document containing information within subsection (4) or (5).

(4) Information is within this subsection if it relates to action to be taken in the event of—

(a) circumstances arising in which it is likely that the business (or any part of the business) of an authorised person will fail, or

(b) the failure of the business (or any part of the business) of an authorised person.

(5) Information is within this subsection if it would facilitate anything falling to be done by any person in consequence of that failure.

(6) An example of information within subsection (5) is information that, in the event of that failure, would facilitate—

(a) planning by the Treasury in relation to the possible exercise of any of its powers under Part 1 of the Banking Act 2009, or

(b) planning by the Bank of England in relation to the possible exercise of any of its powers under Part 1, 2 or 3 of that Act.

[F893(7)] In this section “authorised person”, in relation to the PRA, means PRA-authorised person.
137L Interpretation of sections 137J and 137K

(1) This section has effect for the interpretation of sections 137J and 137K.

(2) References to the taking of action include the taking of action by—

(a) the authorised person,
(b) any other person in the same group as the authorised person, or
(c) a partnership of which the authorised person is a member.

(3) In subsection (2)(b) the definition of “group” in section 421 applies with the omission of subsection (1)(e) and (f) of that section.

(4) References to the business of an authorised person include the business of—

(a) any person in the same group as the authorised person, and
(b) a partnership of which the authorised person is a member.

(5) For the purposes of section 137K the cases in which the business (or any part of the business) of the authorised person (“A”) is to be regarded as having failed include those where—

(a) A enters insolvency,
(b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to A, or
(c) A falls to be taken for the purposes of the compensation scheme to be unable, or likely to be unable, to satisfy claims against A.

(6) In subsection (5)(a) “insolvency” includes—

(a) bankruptcy,
(b) liquidation,
(c) bank insolvency,
(d) administration,
(e) bank administration,
(f) receivership,
(g) a composition between A and A’s creditors, and
(h) a scheme of arrangement of A’s affairs.
137N  Recovery plans and [F895 resolution packs]: restriction on duty of confidence

(1) A contractual or other requirement imposed on a person (“P”) to keep information in confidence does not apply if—
   (a) the information is or may be relevant to anything required to be done as a result of a requirement imposed by general rules made by either regulator to prepare a recovery plan or a [F896 resolution pack],
   (b) an authorised person or a skilled person requests or requires P to provide the information for the purpose of securing that those things are done, and
   (c) the regulator in question has approved the making of the request or the imposition of the requirement before it is made or imposed.

(2) An authorised person [F897] or a qualifying parent undertaking [F898] may provide information (whether received under subsection (1) or otherwise) that would otherwise be subject to a contractual or other requirement to keep it in confidence if it is provided for the purposes of anything required to be done as a result of a requirement imposed by general rules to prepare a recovery plan or a [F896 resolution pack].

(3) In this section, references to preparing a recovery plan or a [F896 resolution pack] include—
   (a) keeping [F899] that plan or pack up to date, and
   (b) collecting specified information for the purposes of [F899] that plan or pack.

(4) In this section, references to a skilled person are to a person appointed in accordance with section 166A.

(5) In this section—
   “authorised person”, in relation to rules of the PRA, means a PRA-authorised person;
   [F894] “qualifying parent undertaking” means—
   (a) a qualifying parent undertaking within the meaning given by section 192B; or
   (b) an undertaking which—
      (i) is a parent undertaking of an institution (within the meaning given in section 137J(6)) authorised in another EEA State; and
      (ii) would be a qualifying parent undertaking within the meaning given by section 192B if the institution were a qualifying authorised person within the meaning given by section 192A(1).]
   “specified” means specified in the rules.

Textual Amendments
F894  S. 137M repealed (10.1.2015) by The Bank Recovery and Resolution (No. 2) Order 2014 (S.I. 2014/3348), art. 1(2), Sch. 3 para. 4

F895  Words in s. 137N heading substituted (10.1.2015) by The Bank Recovery and Resolution (No. 2) Order 2014 (S.I. 2014/3348), art. 1(2), Sch. 3 para. 5(6)
Specific rule-making powers

137O Threshold condition code

(1) Either regulator may make rules supplementing any of the conditions for the time being set out in or specified under Schedule 6 that is expressed to be relevant to the discharge of that regulator's functions.

(2) Rules made under this section by a regulator are referred to as that regulator's “threshold condition code”.

(3) A threshold condition code may in particular—
   (a) specify requirements which a person must satisfy in order to be regarded as satisfying a particular condition in relation to any regulated activities;
   (b) specify matters which are, or may be, or are not, relevant in determining whether a person satisfies a particular condition in relation to any regulated activities.

(4) Except where a regulator's threshold condition code so provides, it is not to be regarded as limiting the matters that are, or may be, relevant in determining whether a person satisfies a particular condition in relation to any regulated activities.

(5) A threshold condition code cannot impose obligations that are enforceable against authorised persons otherwise than through the threshold conditions.

137P Control of information rules

(1) Either regulator may make rules (“control of information rules”) about the disclosure and use of information held by an authorised person (“A”).

(2) Control of information rules may—
   (a) require the withholding of information which A would otherwise be required to disclose to a person (“B”) for or with whom A does business in the course of carrying on any regulated or other activity;
   (b) specify circumstances in which A may withhold information which A would otherwise be required to disclose to B;
   (c) require A not to use for the benefit of B information—
      (i) which is held by A, and
      (ii) which A would otherwise be required to use for the benefit of B;
   (d) specify circumstances in which A may decide not to use for the benefit of B information within paragraph (c).
137Q Price stabilising rules

(1) The FCA may make rules ("price stabilising rules") as to—

(a) the circumstances and manner in which,
(b) the conditions subject to which, and
(c) the time when or the period during which,

action may be taken for the purpose of stabilising the price of investments of specified kinds.

(2) Price stabilising rules—

(a) are to be made so as to apply only to authorised persons;

\[F901\] (aa) must not apply to transactions, orders, behaviour, actions or omissions to which the market abuse regulation applies;

(b) may make different provision in relation to different kinds of investment.

(3) The FCA may make rules which, for the purposes of the relevant exemption provisions, treat a person who acts or engages in conduct in conformity with specified provisions as acting, or engaging in that conduct, in conformity with the relevant provisions of Article 5 (exemption for buy-back programmes and stabilisation) of the market abuse regulation.

(3A) “Specified provisions” means such provisions—

(a) corresponding to the relevant provisions of Article 5 of the market abuse regulation, and

(b) made by a body or authority outside the EEA as may be specified in rules made by the FCA,

as may be specified in rules made by the FCA.

(4) “The relevant exemption provisions” are the following provisions of the Financial Services Act 2012—

(a) \[F900\] section 90(9)(d); and

(b) \[F900\] section 91(4)(c).

\[F905\] (5) In this section references to Article 5 of the market abuse regulation include any directly applicable EU regulation made under that Article.

Textual Amendments

F901 S. 137Q(2)(aa) inserted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(5)(a)
F902 S. 137Q(3)(3A) substituted for s. 137Q(3) (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(5)(b)
F903 Words in s. 137Q(4)(a) substituted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(5)(c)(i)
F904 Words in s. 137Q(4)(b) substituted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(5)(c)(ii)
F905 S. 137Q(5) inserted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(5)(d)
137R Financial promotion rules

(1) The FCA may make rules applying to authorised persons about the communication by them, or their approval of the communication by others, of invitations or inducements—

(a) to engage in investment activity, [F906 or]

[F907 (aa)]

to engage in claims management activity, or

(b) to participate in a collective investment scheme.

(2) Rules under this section may, in particular, make provision about the form and content of communications.

(3) Subsection (1) applies only to communications which—

(a) if made by a person other than an authorised person, without the approval of an authorised person, would contravene section 21(1), and

(b) may be made by an authorised person without contravening section 238(1).

(4) But subsection (3) does not prevent the FCA from making rules under subsection (1) in relation to a communication that would not contravene section 21(1) if made by a person other than an authorised person, without the approval of an authorised person, if the conditions set out in subsection (5) are satisfied.

(5) Those conditions are—

(a) that the communication would not contravene subsection (1) of section 21 because it is a communication to which that subsection does not apply as a result of an order under subsection (5) of that section,

(b) that the FCA considers that any of the requirements of—

(i) Articles 24 (general principles and information to clients) and 25 (assessment of suitability and appropriateness and reporting to clients) of the markets in financial instruments directive,

[F909 (ii)]

(ii) any delegated act adopted under Article 24.13 or 25.8 of that directive,

(iii) Article 77 of the UCITS directive,

(iv) Articles 10 and 11 of the mortgages directive,

[v] Article 17 of the insurance distribution directive,

apply to the communication, and

(c) that the FCA considers that the rules are necessary to secure that the communication satisfies such of the requirements mentioned in paragraph (b) as the FCA considers apply to the communication.

(6) “Engage in investment activity” [F912 and “engage in claims management activity” have] the same meaning as in section 21.

(7) The Treasury may by order impose limitations on the power to make rules under this section.

Textual Amendments

F906 Word in s. 137R(1)(a) omitted (E.W.S.) (6.10.2018) by virtue of Financial Guidance and Claims Act 2018 (c. 10), ss. 27(5)(a), 37(5); S.I. 2018/1045, reg. 2(a)
Financial services and markets act 2000 (c. 8)

PART 9A – Rules and Guidance

CHAPTER 1 – Rule-making powers

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There are outstanding changes not yet made by the legislation.gov.uk editorial team to financial services and markets act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

137S Financial promotion rules: directions given by FCA

(1) The FCA may give a direction under this section if—

(a) an authorised person has made, or proposes to make, a communication or has approved, or proposes to approve, another person’s communication, and

(b) the FCA considers that there has been, or is likely to be, a contravention of financial promotion rules in respect of the communication or approval.

(2) A direction under this section may require the authorised person—

(a) to withdraw the communication or approval;

(b) to refrain from making the communication or giving the approval (whether or not it has previously been made or given);

(c) to publish details of the direction;

(d) to do anything else specified in the direction in relation to the communication or approval.

(3) A requirement in a direction under this section to refrain from making or approving a communication includes a requirement to refrain from making or approving another communication where—

(a) the other communication is in all material respects the same as, or substantially the same as, the communication to which the direction relates, and

(b) in all the circumstances a reasonable person would think that another direction would be given under this section in relation to the other communication.

(4) The requirements contained in a direction under this section have effect as follows—

(a) a requirement to publish details of the direction has effect at such time (if any) as the FCA gives a notice under subsection (8)(a);

(b) any other requirement takes effect immediately.

(5) If the FCA gives a direction under this section to an authorised person—

(a) it must give written notice to the authorised person, and

F907 S. 137R(1)(aa) inserted (E.W.S.) (6.10.2018) by Financial Guidance and Claims Act 2018 (c. 10), ss. 27(5)(a), 37(5); S.I. 2018/1045, reg. 2(a)


F910 Word in s. 137R(5)(b)(iii) omitted (23.5.2018 for specified purposes, 1.10.2018 in so far as not already in force) by virtue of The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), 11(a)

F911 S. 137R(5)(b)(iv) and word inserted (21.9.2015) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(4)(a), Sch. 1 para. 1(4)(b) (with Pt. 4)

F912 S. 137R(5)(b)(v) and word inserted (23.5.2018 for specified purposes, 1.10.2018 in so far as not already in force) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), 11(b)

F913 Words in s. 137R(6) substituted (E.W.S.) (6.10.2018) by Financial Guidance and Claims Act 2018 (c. 10), ss. 27(5)(b), 37(5); S.I. 2018/1045, reg. 2(a)
(b) if the direction relates to the approval by the authorised person of another person's communication, it must also give written notice to that other person.

(6) The notice must—
   (a) give details of the direction,
   (b) inform the person to whom the notice is given that the direction takes effect immediately,
   (c) state the FCA's reasons for giving the direction, and
   (d) inform the person to whom the notice is given that the person may make representations to the FCA within such period as may be specified in the notice (which may be extended by the FCA).

(7) The FCA may amend the direction if, having considered any representations made by a person to whom notice is given under subsection (5), it considers it appropriate to do so.

(8) If, having considered any such representations, the FCA decides not to revoke the direction—
   (a) the FCA must give separate written notice to the persons mentioned in subsection (5)(a) or (b), and
   (b) any such person may refer the matter to the Tribunal.

(9) A notice under subsection (8)(a) must—
   (a) give details of the direction and of any amendment of it,
   (b) state the FCA's reasons for deciding not to revoke the direction and, if relevant, for amending it,
   (c) inform the person to whom the notice is given of the person's right to refer the matter to the Tribunal, and
   (d) give an indication of the procedure on such a reference.

(10) If, having considered any representations made by a person to whom notice is given under subsection (5), the FCA decides to revoke the direction, it must give separate written notice to those persons.

(11) After the period for making representations in relation to a direction given under this section has ended, the FCA may publish such information about the direction as it considers appropriate (even if the direction is revoked).

(12) Nothing in this section requires a notice to be given to a person mentioned in subsection (5)(b) if the FCA considers it impracticable to do so.

**Rules to recover expenses relating to the single financial guidance body**

(1) The Secretary of State may, from time to time, notify the FCA of the amount of—
   (a) the expenses incurred, or expected to be incurred, by the Secretary of State under section 11 of the Financial Guidance and Claims Act 2018 (financial assistance from Secretary of State to single financial guidance body), and
   (b) any other expenses incurred, or expected to be incurred, by the Secretary of State in connection with the operation of the single financial guidance body, that the Secretary of State considers should be recovered under this section.
(2) Where the Secretary of State has notified the FCA of an amount of expenses under subsection (1), the FCA must make rules for imposing levies with a view to recovering—
   (a) the amount notified, and
   (b) expenses incurred by the FCA in connection with its functions under this section.

(3) The rules must require the payment to the FCA of specified sums, or sums calculated in a specified way, by—
   (a) authorised persons, electronic money issuers or payment service providers, or
   (b) any specified class of authorised person, electronic money issuer or payment service provider.

(4) Before the FCA publishes a draft of rules to be made under this section it must consult the Secretary of State.

(5) The rules may be made only with the consent of the Secretary of State.

(6) The Secretary of State may notify the FCA of matters that will be taken into account when deciding whether or not to give consent under subsection (5).

(7) The FCA must have regard to any matters notified under subsection (6) before publishing a draft of rules to be made under this section.

(8) The FCA must pay the Secretary of State the sums it receives under rules made under this section, apart from those paid to recover the expenses mentioned in subsection (2)(b) (which the FCA may keep).

(9) Subsection (10) applies where—
   (a) the Secretary of State has notified the FCA under subsection (1) of an amount which included expenses expected to be incurred,
   (b) the FCA has made rules to recover the amount, and paid sums received under the rules to the Secretary of State, but
   (c) the expenses expected to be incurred were not in fact incurred.

(10) The Secretary of State need not arrange for the sums received under the rules to be paid back, but must, when next notifying an amount to the FCA under subsection (1), take into account the fact that the sums received included an amount representing expenses that were not in fact incurred.

(11) In this section—
   “electronic money issuer” means a person who is an electronic money issuer for the purposes of the Electronic Money Regulations 2011 (S.I. 2011/99) as a result of falling within any of paragraphs (a) to (e) and (h) to (j) of the definition in regulation 2(1);
   “payment service provider” means a person who is a payment service provider for the purposes of the Payment Services Regulations 2017 (S.I. 2017/752) as a result of falling within any of paragraphs (a) to (h) of the definition in regulation 2(1).}
Rules to recover debt advice expenses incurred by the devolved authorities

(1) The Treasury may, from time to time, notify the FCA of the amount of the expenses incurred, or expected to be incurred, by the devolved authorities in connection with the provision of information and advice on debt to members of the public in Scotland, Wales and Northern Ireland.

(2) Where the Treasury have notified the FCA of an amount of expenses under subsection (1), the FCA must make rules for imposing levies with a view to recovering—

(a) the amount notified, and

(b) expenses incurred by the FCA in connection with its functions under this section.

(3) The rules must require the payment to the FCA of specified sums, or sums calculated in a specified way, by—

(a) authorised persons, electronic money issuers or payment service providers, or

(b) any specified class of authorised person, electronic money issuer or payment service provider.

(4) Before the FCA publishes a draft of rules to be made under this section it must consult the Treasury.

(5) The rules may be made only with the consent of the Treasury.

(6) The Treasury may notify the FCA of matters that will be taken into account when deciding whether or not to give consent under subsection (5).

(7) The FCA must have regard to any matters notified under subsection (6) before publishing a draft of rules to be made under this section.

(8) The FCA must pay the Treasury the sums it receives under rules made under this section, apart from those paid to recover the expenses mentioned in subsection (2)(b) (which the FCA may keep).

(9) Subsection (10) applies where—

(a) the Treasury have notified the FCA under subsection (1) of an amount which included expenses expected to be incurred,

(b) the FCA has made rules to recover the amount, and paid sums received under the rules to the Treasury, but

(c) the expenses expected to be incurred were not in fact incurred.

(10) The Treasury need not arrange for the sums received under the rules to be paid back, but must, when next notifying an amount to the FCA under subsection (1), take into account the fact that the sums received included an amount representing expenses that were not in fact incurred.

(11) In this section—

the “devolved authorities” means—

(a) the Scottish Ministers,

(b) the Welsh Ministers, and

(c) the Department for Communities in Northern Ireland;

“electronic money issuer” and “payment service provider” have the same meanings as in section 137SA.]
**CHAPTER 2**

**Rules: Modification, Waiver, Contravention and Procedural Provisions**

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

C335 Pt. 9A Ch. 2 applied (with modifications) by S.I. 2011/99, Sch. 3 para. 2A(2)(3) (as inserted (13.8.2017 for specified purposes, 13.10.2017 for specified purposes, 13.1.2018 in so far as not already in force) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(2)(b)(iii)(6), Sch. 8 para. 5(31)(a) (with reg. 3))

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**Textual Amendments**

F915 S. 137SB inserted (1.10.2018) by Financial Guidance and Claims Act 2018 (c. 10), ss. 14(1), 37(5); S.I. 2018/1003, reg. 2(a)

**Supplementary powers**

137T General supplementary powers

Rules made by either regulator—

(a) may make different provision for different cases and may, in particular, make different provision in respect of different descriptions of authorised persons, activity or investment,

(b) may make provision by reference to rules made by the other regulator, as those rules have effect from time to time, and

(c) may contain such incidental, supplemental, consequential and transitional provision as the regulator making the rule considers appropriate.

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


C332 S. 137T applied (with modifications) (13.8.2017 for specified purposes, 13.1.2018 in so far as not already in force) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(2)(b)(ii)(6), Sch. 6 para. 3(2) (with reg. 3)


C334 S. 137T applied (with modifications) by 2013 c. 13, Sch. 4 para. 9A(5)(6) (as inserted (26.10.2018) by The Financial Regulators Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 1(2), 10(5)(c))
Modification or waiver of rules

138A Modification or waiver of rules

(1) Either regulator may, on the application or with the consent of a person who is subject to rules made by that regulator, direct that all or any of those rules—

(a) are not to apply to that person, or

(b) are to apply to that person with such modifications as may be specified in the direction.

(2) Subsection (1) does not apply—

F916

(za) rules made by either regulator under section 64A (rules of conduct);]

F917

(za) rules made by either regulator under section 137O (threshold condition code);]

(b) rules made by the FCA under section 247 (trust scheme rules) [F917, section 248 (scheme particulars rules), section 261I (contractual scheme rules) or section 261J (contractual scheme particulars rules)].

(3) An application must be made in such manner as the regulator may direct.

(4) A regulator may not give a direction unless it is satisfied that—

(a) compliance by the person with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made, and

(b) the direction would not adversely affect the advancement of any of the regulator's objectives.

(5) In subsection (4)(b) “objectives”, in relation to the FCA, means operational objectives.

(6) A direction may be given subject to conditions.

(7) The regulator may—

(a) revoke a direction, or

(b) vary it on the application, or with the consent, of the person to whom it relates.

(8) “Direction” means a direction under this section.

Textual Amendments

F916 S. 138A(2)(za) inserted (25.7.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 8; S.I. 2014/1819, art. 2(4)(b)

F917 Words in s. 138A(2)(b) substituted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, 3(4) (with reg. 24)

Modifications etc. (not altering text)

### Financial Services and Markets Act 2000 (c. 8)

**PART 9A – Rules and Guidance**

**CHAPTER 2 – Rules: modification, waiver, contravention and procedural provisions**

**Document Generated: 2019-12-18**

**Status:** This version of this Act contains provisions that are prospective.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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| C341 | S. 138A applied by S.I. 2008/2644, art. 27(2) (as substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 147(b)(aa)(ii) |
| C343 | S. 138A applied by S.I. 2008/2546, art. 37(2) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 146(c)(aa)(ii) |
| C345 | S. 138A(1) modified by S.I. 2009/814, art. 9(2) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 167(b)(ii) |
| C347 | Ss. 138A(3)-(7) modified by S.I. 2001/1228, reg. 7(3)(4) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 41(4) |
| C348 | Ss. 138A(3)-(7) applied (with modifications) by S.R. 2004/335, reg. 7(3)(4) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 87(4) |
| C353 | S. 138A(4) excluded by S.I. 2006/3221, reg. 8(2) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 118(h)(iii) (with Sch. 2 para. 119) |
138B Publication of directions under section 138A

(1) Subject to subsection (2), a direction must be published by the regulator concerned in the way appearing to the regulator to be best calculated for bringing it to the attention of—
   (a) persons likely to be affected by it, and
   (b) persons who are, in the opinion of the regulator, likely to make an application for a similar direction.

(2) Subsection (1) does not apply if the regulator is satisfied that it is inappropriate or unnecessary to publish the direction.

(3) In deciding whether it is satisfied as mentioned in subsection (2), the regulator must—
   (a) consider whether the publication of the direction would be detrimental to the stability of the UK financial system,
   (b) take into account whether the direction relates to a rule contravention of which is actionable in accordance with section 138D,
   (c) consider whether publication of the direction would prejudice, to an unreasonable degree, the commercial interests of the person concerned or any other member of the person's immediate group, and
   (d) consider whether its publication would be contrary to an international obligation of the United Kingdom.

(4) The FCA must consult the PRA before publishing or deciding not to publish a direction which relates to—
   (a) a PRA-authorised person, or
   (b) an authorised person who has as a member of its immediate group a PRA-authorised person.

(5) For the purposes of paragraphs (c) and (d) of subsection (3), the regulator must consider whether it would be possible to publish the direction without either of the consequences mentioned in those paragraphs by publishing it without disclosing the identity of the person concerned.

(6) “Direction” means a direction under section 138A.
138C Evidential provisions

(1) If a particular rule made by either regulator so provides, contravention of the rule does not give rise to any of the consequences provided for by other provisions of this Act.

(2) A rule made by a regulator which so provides must also provide—
   (a) that contravention may be relied on as tending to establish contravention of such other rule made by that regulator as may be specified, or
   (b) that compliance may be relied on as tending to establish compliance with such other rule made by that regulator as may be specified.

(3) A rule may include the provision mentioned in subsection (1) only if the regulator making the rule considers that it is appropriate for it also to include the provision required by subsection (2).

(4) In this section “rule” does not include a rule made under—
   (a) section 137O (threshold condition code);
   (b) section 192J (provision of information by parent undertakings).

138D Actions for damages

(1) A rule made by the PRA may provide that contravention of the rule is actionable at the suit of a private 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.

(2) A contravention by an authorised person of a rule made by the FCA is actionable at the suit of a private 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.

(3) If rules made by the FCA so provide, subsection (2) does not apply to a contravention of a specified provision of the rules.

(4) In prescribed cases, a contravention of a rule which by virtue of subsection (1) or (2) would be actionable at the suit of a private person is actionable at the suit of a person who is not a private person, subject to the defences and other incidents applying to actions for breach of statutory duty.

(5) In subsections (1), (2) and (3) “rule” does not include—
   (a) Part 6 rules;
   (b) rules under section 137O (threshold condition code);
   (c) rules under section 192J (provision of information by parent undertakings);
   (d) a rule requiring an authorised person to have or maintain financial resources.

(6) “Private person” has such meaning as may be prescribed.
Textual Amendments

F918 S. 138D(5)(za) inserted (25.7.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 9; S.I. 2014/1819, art. 2(4)(b)

Modifications etc. (not altering text)


C362 S. 138D applied (with modifications) (13.8.2017 for specified purposes, 13.1.2018 in so far as not already in force) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(2)(b)(ii)(6), Sch. 6 para. 3(3) (with reg. 3)

138E Limits on effect of contravening rules

(1) A person is not guilty of an offence by reason of a contravention of a rule made by either regulator.

(2) No such contravention makes any transaction void or unenforceable.

(3) Subsection (2) does not apply in relation to—
   (a) rules made by the FCA under section 137C, F919...
   (b) product intervention rules made by the FCA under section 137D F920 F921 or
   (c) rules made by the FCA under section 137FBB F922 or
   (d) rules made by the FCA under section 137FD.

Textual Amendments

F919 Word in s. 138E(3)(a) omitted (6.7.2016) by virtue of Bank of England and Financial Services Act 2016 (c. 14), ss. 35(3)(a), 41(3); S.I. 2016/627, reg. 2(1)(z)

F920 S. 138E(3)(c) and word inserted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), ss. 35(3)(b), 41(3); S.I. 2016/627, reg. 2(1)(z)

F921 Word in s. 138E(3)(b) omitted (E.W.S.) (29.3.2019) by virtue of Financial Guidance and Claims Act 2018 (c. 10), ss. 28(3)(a), 37(5); S.I. 2019/743, reg. 2(a)

F922 S. 138E(3)(d) and word inserted (E.W.S.) (29.3.2019) by Financial Guidance and Claims Act 2018 (c. 10), ss. 28(3)(b), 37(5); S.I. 2019/743, reg. 2(a)

Modifications etc. (not altering text)


Procedural provisions

138F Notification of rules

If either regulator makes, alters or revokes any rules, that regulator must without delay give written notice to the Treasury.

The FCA must also give written notice to the Bank of England.

Subsection [138(1A)] does not apply to rules made under or by virtue of section 137FB, 137FBA, 137FC, 137FA, 137SA, 137SB, or 333T.

Textual Amendments

F923 S. 138F(1): s. 138F renumbered as s. 138F(1) (3.3.2015) by Pension Schemes Act 2015 (c. 8), s. 89(1)(a), Sch. 3 para. 72(2) (with s. 87)

F924 Words in s. 138F(1) substituted for s. 138F(1)(a)(b) (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 35(2) (with Sch. 3); S.I. 2017/43, reg. 2(g)

F925 S. 138F(1A) inserted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 35(3) (with Sch. 3); S.I. 2017/43, reg. 2(g)

F926 S. 138F(2) inserted (3.3.2015) by Pension Schemes Act 2015 (c. 8), s. 89(1)(a), Sch. 3 para. 7(3) (with s. 87)

F927 Word in s. 138F(2) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 35(4) (with Sch. 3); S.I. 2017/43, reg. 2(g)

F928 Word in s. 138F(2) inserted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), ss. 33(3), 41(3); S.I. 2016/627, reg. 2(1)(x)

F929 Word in s. 138F(2) inserted (1.1.2019) by Financial Guidance and Claims Act 2018 (c. 10), s. 37(5), Sch. 3 para. 13(b); S.I. 2018/1330, reg. 2(g)(iii)

F930 Word in s. 138F(2) inserted (10.5.2018) by Financial Guidance and Claims Act 2018 (c. 10), s. 37(1)(e)(ii), Sch. 3 para. 13(a)

F931 Word in s. 138F(2) inserted (10.10.2018) by Financial Guidance and Claims Act 2018 (c. 10), s. 37(5), Sch. 3 para. 13(c); S.I. 2018/1029, reg. 2(q)

F932 Words in s. 138F(2) omitted (1.1.2019) by virtue of Financial Guidance and Claims Act 2018 (c. 10), s. 37(5), Sch. 3 para. 13(d); S.I. 2018/1330, reg. 2(g)(iii)

F933 Words in s. 138F(2) substituted (6.7.2016) by Bank of England and Financial Services Act 2016 (c. 14), ss. 29(3), 41(3); S.I. 2016/627, reg. 2(1)(w)

Modifications etc. (not altering text)


138G  Rule-making instruments

(1) Any power conferred on either regulator to make rules is exercisable in writing.

(2) An instrument by which rules are made by either regulator ("a rule-making instrument") must specify the provision under which the rules are made.

(3) To the extent that a rule-making instrument does not comply with subsection (2), it is void.

(4) A rule-making instrument must be published by the regulator making the rule in the way appearing to that regulator to be best calculated to bring it to the attention of the public.

(5) The regulator making the rule may charge a reasonable fee for providing a person with a copy of a rule-making instrument.

(6) A person is not to be taken to have contravened any rule made by a regulator if the person shows that at the time of the alleged contravention the rule-making instrument concerned had not been made available in accordance with this section.

138H  Verification of rules

(1) The production of a printed copy of a rule-making instrument purporting to be made by a regulator—

(a) on which is endorsed a certificate signed by a member of staff of that regulator who is authorised by the regulator for that purpose, and

(b) which contains the required statements,

is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.

(2) The required statements are—

(a) that the instrument was made by the FCA or the PRA (as the case may be),

(b) that the copy is a true copy of the instrument, and
138I Consultation by the FCA

(1) Before making any rules, the FCA must—
   (a) consult the PRA, and
   (b) after doing so, publish a draft of the proposed rules in the way appearing to the FCA to be best calculated to bring them to the attention of the public.

(2) The draft must be accompanied by—
   (a) a cost benefit analysis,
   (b) an explanation of the purpose of the proposed rules,
   (c) any statement prepared under section 138K(2),
   (d) an explanation of the FCA's reasons for believing that making the proposed rules is compatible with its duties under section 1B(1) and (5)(a), and

(c) that on a specified date the instrument was made available to the public in accordance with section 138G(4).

(3) A certificate purporting to be signed as mentioned in subsection (1) is to be taken to have been properly signed unless the contrary is shown.

(4) A person who wishes in any legal proceedings to rely on a rule-making instrument may require the regulator that made the rule to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (1).
(e) notice that representations about the proposals may be made to the FCA within a specified time.

(3) Before making the proposed rules, the FCA must have regard to any representations made to it in accordance with subsection (2)(e).

(4) If the FCA makes the proposed rules, it must publish an account, in general terms, of—
   (a) the representations made to it in accordance with subsection (2)(e), and
   (b) its response to them.

(5) If the rules differ from the draft published under subsection (1)(b) in a way which is, in the opinion of the FCA, significant the FCA must publish—
   (a) details of the difference (in addition to complying with subsection (4)) together with a cost benefit analysis, and
   (b) any statement prepared under section 138K(4).

(6) The requirements to carry out a cost benefit analysis under this section do not apply in relation to rules made under—
   (a) section 136(2);  
   [ section 137FB;]
   [ section 137FBA;]
   [ section 137FC;]
   [ section 137SA;]
   [ section 137SB;]
   (b) subsection (1) of section 213 as a result of subsection (4) of that section;
   (c) section 234;
   [ section 333T;]
   (d) paragraph 23 of Schedule 1ZA;
   [ ]

(7) “Cost benefit analysis” means—
   (a) an analysis of the costs together with an analysis of the benefits that will arise—
      (i) if the proposed rules are made, or
      (ii) if subsection (5) applies, from the rules that have been made, and
   (b) subject to subsection (8), an estimate of those costs and of those benefits.

(8) If, in the opinion of the FCA—
   (a) the costs or benefits referred to in subsection (7) 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 FCA’s opinion and an explanation of it.
(9) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).

(10) Subsection (1)(a) does not apply to

(a) rules made by the FCA under section 137FB, 137FAB, 137FC, 137SA, 137SB, ... or 333T, or

(b) rules made by the FCA in relation to recognised investment exchanges under Part 18.

(11) This section is subject to section 138L.
C368 Ss. 138F-138O applied by S.I. 2018/1201, reg. 35(3) (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), 10(3))


C380 S. 138I excluded (2.4.2013) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (S.I. 2013/656), arts. 1, 9(2)

C381 Ss. 138I-138L applied (with modifications) (22.7.2013) by The Alternative Investment Fund Managers (Amendment) Regulations 2013 (S.I. 2013/1797), regs. 1(2), 6(3)-(7) (with reg. 6(2))

C382 S. 138I applied (with modifications) (22.7.2013) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) No.2 Order 2013 (S.I. 2013/1881), arts. 1(4), 61(5) (with art. 61(6)(7))

C383 S. 138I excluded (1.4.2015) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2015 (S.I. 2015/369), arts. 1, 6(2)(b)


C387 S. 138I excluded (10.5.2018) by Financial Guidance and Claims Act 2018 (c. 10), s. 37(1)(f), Sch. 5 para. 7


C390 S. 138I(2)(a) excluded (26.7.2013) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) No.2 Order 2013 (S.I. 2013/1881), arts. 1(4), 61(3) (with art. 61(6))

C391 S. 138I(2)(d) excluded (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 1 para. 6(2), 3(3) (with Sch. 12)

C392 S. 138I(2)(d) excluded (6.4.2018 immediately after 2016 c. 16 (N.I.), s. 8(2) comes into force) by The Financial Services Act 2012 (Mutual Societies) Order 2018 (S.I. 2018/323), art. 1, Sch. 1 para. 5(5)(a) (with art. 3)

138J Consultation by the PRA

(1) Before making any rules, the PRA must—

(a) consult the FCA, and

(b) after doing so, publish a draft of the proposed rules in the way appearing to the PRA to be best calculated to bring them to the attention of the public.
(2) The draft must be accompanied by—
   (a) a cost benefit analysis,
   (b) an explanation of the purpose of the proposed rules,
   (c) any statement prepared under section 138K(2),
   (d) an explanation of the PRA's reasons for believing that making the proposed rules is compatible with its duties under—
      (i) section 2B(1) or, as the case requires, section 2C(1) or 2D(3), and
      (ii) section 2H, and
   (e) notice that representations about the proposals may be made to the PRA within a specified time.

(3) Before making the proposed rules, the PRA must have regard to any representations made to it in accordance with subsection (2)(e).

(4) If the PRA makes the proposed rules, it must publish an account, in general terms, of—
   (a) the representations made to it in accordance with subsection (2)(e), and
   (b) its response to them.

(5) If the rules differ from the draft published under subsection (1)(b) in a way which is, in the opinion of the PRA, significant the PRA must publish—
   (a) details of the difference (in addition to complying with subsection (4)) together with a cost benefit analysis, and
   (b) any statement prepared under section 138K(4).

(6) The requirements to carry out a cost benefit analysis under this section do not apply in relation to rules made under—
   (a) section 136(2);
   (b) subsection (1) of section 213 as a result of subsection (4) of that section;
   (c) section 234;
   (d) paragraph 31 of Schedule 1ZB;
   (e) paragraph 12 of Schedule 1A.

(7) “Cost benefit analysis” means—
   (a) an analysis of the costs together with an analysis of the benefits that will arise—
      (i) if the proposed rules are made, or
      (ii) if subsection (5) applies, from the rules that have been made, and
   (b) subject to subsection (8), an estimate of those costs and of those benefits.

(8) If, in the opinion of the PRA—
   (a) the costs or benefits referred to in subsection (7) 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 PRA's opinion and an explanation of it.

(9) The PRA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).

(10) This section is subject to section 138L.
138K Consultation: mutual societies

(1) Subsection (2) applies where a regulator proposes to make a rule (“the proposed rule”) which would apply both to—

(a) authorised persons which are mutual societies, and

(b) other authorised persons.

(2) The regulator must prepare a statement setting out—

(a) its opinion whether or not the impact of the proposed rule on persons within subsection (1)(a) will be significantly different from its impact on persons within subsection (1)(b), and

(b) if so, details of the difference.

(3) Subsection (4) applies where a regulator makes a rule which—

(a) applies both to—

(i) authorised persons which are mutual societies, and

(ii) other authorised persons, and

(b) differs from the draft of the proposed rule published under section 138I(1)(b) or section 138J(1)(b) (as the case may be).

(4) The regulator must prepare a statement setting out—

(a) its opinion whether or not the impact of the rule is significantly different from the impact of the proposed rule on—
(i) the persons within subsection (3)(a)(i), and
(ii) those persons as compared with persons within subsection (3)(a)(ii), and

(b) if so, details of the difference.

(5) A “mutual society” is—
(a) a building society within the meaning of the Building Societies Act 1986;
(b) a friendly society within the meaning of the Friendly Societies Act 1992;
(c) a registered society within the meaning of [F950the Co-operative and Community Benefit Societies Act 2014];
(d) an EEA mutual society.

(6) An “EEA mutual society” is—
(a) a body which is a European Cooperative Society for the purposes of Council Regulation (EC) No 1435/2003 (statute for a European Cooperative Society);
(b) a body which is established as a cooperative under the law of an EEA state as mentioned in that Regulation;
(c) a body which is a cooperative or mutual undertaking of such description as the Treasury specify by order and which is established or operates in accordance with the laws of an EEA state.

**Textual Amendments**

F950 Words in s. 138K(5)(c) substituted (1.8.2014) by Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 154, Sch. 4 para. 69 (with Sch. 5)

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

C367 Ss. 138F-138O applied by S.I. 2018/1201, Sch. 3 para. 12K(3) (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), 10(2))

C368 Ss. 138F-138O applied by S.I. 2018/1201, reg. 35(3) (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), 10(3))


C381 Ss. 138I-138L applied (with modifications) (22.7.2013) by The Alternative Investment Fund Managers (Amendment) Regulations 2013 (S.I. 2013/1797), regs. 1(2), 6(3)-(7) (with reg. 6(2))


138L Consultation: general exemptions

(1) Sections 138I(1)(b) and (2) to (5) and 138K do not apply in relation to rules made by the FCA if the FCA considers that the delay involved in complying with them would be prejudicial to the interests of consumers, as defined in section 425A.

(2) Sections 138J(1)(b) and (2) to (5) and 138K do not apply in relation to rules made by the PRA if the PRA considers that the delay involved in complying with them would—

(a) be prejudicial to the safety and soundness of PRA-authorised persons, or
(b) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policyholders.

(3) The provisions listed in subsection (4) do not apply if the regulator concerned considers that, making the appropriate comparison—

(a) there will be no increase in costs, or
(b) there will be an increase in costs but that increase will be of minimal significance.

(4) Those provisions are—

(a) subsections (2)(a) and (5)(a) of section 138I;
(b) subsections (2)(a) and (5)(a) of section 138J.

(5) The “appropriate comparison” means—

(a) in relation to section 138I(2)(a) or 138J(2)(a), a comparison between the overall position if the rules are made and the overall position if the rules are not made; and
(b) in relation to section 138I(5)(a) or 138J(5)(a), a comparison between the overall position after the making of the rules and the overall position before they were made.
138M Consultation: exemptions for temporary product intervention rules

(1) Sections 138I(1)(b) and (2) to (5) and 138K do not apply in relation to product intervention rules made by the FCA if it considers that it is necessary or expedient not to comply with them for the purpose of advancing—
   (a) the consumer protection objective or the competition objective, or
   (b) if an order under section 137D(1)(b) is in force, the integrity objective.

(2) Any rules made as a result of subsection (1) (“temporary product intervention rules”) are to cease to have effect at the end of the period specified in the rules.

(3) The longest period that may be specified is the period of 12 months beginning with the day on which the rules come into force.

(4) Nothing in subsection (2) prevents the FCA from revoking temporary product intervention rules before the end of the period mentioned there.

(5) If the FCA has made temporary product intervention rules (“the initial rules”), it may not make further temporary product intervention rules containing the same, or substantially the same, provision as that contained in the initial rules until the prohibited period has ended.

(6) “The prohibited period” means the period of 12 months beginning with the day on which the period mentioned in subsection (2) ends (whether or not the initial rules have been revoked before the end of the period mentioned there).

Modifications etc. (not altering text)

C367 Ss. 138F-138O applied by S.I. 2018/1201, Sch. 3 para. 12K(3) (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), 10(2))

C368 Ss. 138F-138O applied by S.I. 2018/1201, reg. 35(3) (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), 10(3))
138N  Temporary product intervention rules: statement of policy

(1) The FCA must prepare and issue a statement of its policy with respect to the making of temporary product intervention rules.

(2) The FCA may at any time alter or replace a statement issued under this section.

(3) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replacement statement.

(4) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(5) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(6) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

138O  Statement of policy under section 138N: procedure

(1) Before issuing a statement under section 138N, the FCA must publish a draft of the proposed statement in the way appearing to the FCA 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 FCA within a specified time.

(3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).

(4) If the FCA 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 (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.

**138P. Technical standards**

(1) This Chapter applies where a power for the FCA, the PRA, the Bank of England, or any combination of them to make technical standards is substituted for the power of an EU entity to make EU tertiary legislation (“the original EU power”) by regulations made under section 8 of the European Union (Withdrawal) Act 2018.

(2) The power to make technical standards includes power to modify, amend or revoke—

(a) any technical standards made by the regulator under that power;

(b) any EU tertiary legislation made by an EU entity under the original EU power which forms part of retained EU law.

(3) Where power to make a technical standard for the same purposes (as set out in the provision creating the power) and applying to the same persons or class of persons has been given to more than one regulator, no regulator may exercise the power without the consent of the other regulator or regulators.

(4) Before a regulator makes a technical standard in which another regulator has an interest, it must consult the other regulator.

(5) For the purposes of subsection (4)—
(a) the PRA has an interest in a technical standard which—
   (i) applies to PRA-authorised persons or other persons connected to
       them, or
   (ii) may affect the exercise of the PRA’s functions under or by virtue of
       this Act or under retained EU law;
(b) the FCA has an interest in all technical standards which a regulator or the
    Payment Systems Regulator has power to amend;
(c) the Bank of England has an interest in technical standards which—
    (i) apply to central counterparties, to financial counterparties or non-
        financial counterparties within the meaning of the EMIR regulation
        or to central securities depositories, or
    (ii) may affect the exercise of the Bank’s functions under or by virtue of
        this Act, the Banking Act 2009 or retained EU law.

(6) For the purposes of this Chapter—
   (a) “EU tertiary legislation” has the meaning given in section 20 of the European
       Union (Withdrawal) Act 2018;
   (b) “regulator” means the FCA, the PRA or the Bank of England;
   (c) a person is connected with another person in the circumstances set out in
       section 165(11).

138Q. Standards instruments

(1) The power to make technical standards is to be exercised by the regulator by making
    an instrument under this section (a “standards instrument”).

(2) A standards instrument must specify the provision under which the instrument is being
    made.

(3) To the extent that a standards instrument does not comply with subsection (2), it is
    void.

(4) A standards instrument must be published by the regulator making the instrument in
    the way appearing to the regulator to be best calculated to bring it to the attention of
    the public.

(5) The Treasury must lay before Parliament a copy of each standards instrument made
    under this section.

(6) The regulator making the instrument may charge a reasonable fee for providing a
    person with a copy of a standards instrument.

138R. Treasury approval

(1) A standards instrument may be made only if it has been approved by the Treasury.

(2) The Treasury may refuse to approve a standards instrument if subsection (3) or (5)
    applies.

(3) This subsection applies if it appears to the Treasury that the instrument would—
    (a) have implications for public funds (within the meaning of section 78(2) of the
        Banking Act 2009); or
(b) prejudice any current or proposed negotiations for an international agreement between the United Kingdom and one or more other countries, international organisations or institutions.

(4) For the purposes of subsection (3), “international organisations” includes the European Union.

(5) This subsection applies if it appears to the Treasury that they may direct the regulator not to make the standards instrument under section 410 (international obligations).

(6) The Treasury must notify the regulator in writing whether or not they approve a standards instrument within four weeks after the day on which that instrument is submitted to the Treasury for approval (“the relevant period”).

(7) Provision of a draft standards instrument to the Treasury for consultation does not amount to submission of the instrument for approval.

(8) If the Treasury do not approve the instrument, they must—
   (a) set out in the notice given under subsection (6) the Treasury’s reasons for not approving the instrument;
   (b) lay before Parliament—
      (i) a copy of that notice;
      (ii) a copy of any statement made by the regulator as to its reasons for wishing to make the instrument.

(9) If the Treasury do not give notice under subsection (6) before the end of the relevant period, the Treasury is deemed to have approved the standards instrument.

138S. Application of Chapters 1 and 2

(1) The sections listed in subsection (2) apply, subject to the modifications specified in that subsection, to—
   (a) technical standards made by the FCA or the PRA as they apply to rules made by the FCA or the PRA;
   (b) technical standards made by the Bank of England, as they apply to rules made by the Bank under this Act in accordance with paragraph 10(1), (3) and (4) of Schedule 17A to this Act.

(2) The sections referred to in subsection (1) are—
   (a) section 137T (general supplementary powers), as if—
      (i) the reference in paragraph (a) to authorised persons were a reference to persons,
      (ii) the reference in paragraph (b) to rules included a reference to technical standards;
   (b) section 138C (evidential provisions);
   (c) section 138E (limit on effect of contravening rules);
   (d) section 138F (notification of rules);
   (e) section 138H (verification of rules), treating the reference in subsection (2)(c) to section 138G(4) of the Act as a reference to section 138Q(4);
   (f) section 138I (consultation by the FCA), as if—
      (i) subsection (1)(a) were omitted, and
Power of the FCA to give guidance

(1) The FCA may give guidance consisting of such information and advice as it considers appropriate—
   (a) with respect to the operation of specified parts of this Act and of any rules made by the FCA;
   (b) with respect to any other matter relating to functions of the FCA;
   (c) with respect to any other matters about which it appears to the FCA to be desirable to give information or advice.

(2) The FCA may give financial or other assistance to persons giving information or advice of a kind which the FCA could give under this section.

(3) Subsection (5) applies where the FCA proposes to give guidance to FCA-regulated persons generally, or to a class of FCA-regulated persons, in relation to rules to which those persons are subject.

(4) Subsection (5) also applies in relation to guidance which the FCA proposes to give to persons generally, or to a class of person, in relation to its functions under the short selling regulation or the market abuse regulation made under the market abuse regulation.

(5) Where this subsection applies, subsections (1), (2)(e) and (3) of section 138I (consultation) apply to the proposed guidance as they apply to proposed rules, unless the FCA considers that the delay in complying with those provisions would be prejudicial to the interests of consumers.

(6) The FCA may—
   (a) publish its guidance,
   (b) offer copies of its published guidance for sale at a reasonable price, and
   (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.
(7) In this Chapter, references to guidance given by the FCA include references to any recommendations made by the FCA to FCA-regulated persons generally, or to any class of FCA-regulated person.

(8) “Consumers” has the meaning given in section 1G.

(9) “FCA-regulated person” means—
(a) an authorised person, or
(b) any person who is otherwise subject to rules made by the FCA.
139B Notification of FCA guidance to the Treasury

(1) On giving any general guidance, the FCA must give written notice to the Treasury without delay.

(2) If the FCA alters any of its guidance, it must give written notice to the Treasury without delay.

(3) The notice under subsection (2) must include details of the alteration.

(4) If the FCA revokes any of its general guidance, it must give written notice to the Treasury without delay.

(5) “General guidance” means guidance given by the FCA under section 139A which is—

(a) given to persons generally, to FCA-regulated persons generally or to a class of FCA-regulated person,

(b) intended to have continuing effect, and

(c) given in writing or other legible form.

(6) “FCA-regulated person” has the same meaning as in section 139A.


C426 S. 139A(3) applied (6.4.2018 immediately after 2016 c. 16 (N.I.), s. 8(2) comes into force) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 89(b)

C427 S. 139A(5) excluded by S.I. 2004/454, art. 12(1) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 120(b)(ii)

C428 S. 139A(5) excluded by S.I. 2006/3259, reg. 4 (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 120(b)(ii)

CHAPTER 4

COMPETITION SCRUTINY

140A Interpretation

(1) In this Chapter—

["the CMA” means the Competition and Markets Authority.
“market in the United Kingdom” includes—

(a) so far as it operates in the United Kingdom or a part of the United Kingdom, any market which operates there and in another country or territory or in a part of another country or territory, and
(b) any market which operates only in a part of the United Kingdom;

“practices”, in relation to each regulator, means practices adopted by that regulator in the exercise of functions under this Act;

“regulating provisions” means—

(a) in relation to the FCA, any—

(i) rules of the FCA;
(ii) general guidance (as defined by section 139B(5));
(iii) ...;
(iv) ...
(v) ...
(vi) ...

(b) in relation to the PRA, any—

(i) rules of the PRA;
(ii) ...
(iii) ...

(2) ... 

(3) For the purposes of this Chapter, any reference to a feature of a market in the United Kingdom for goods or services is to be read as a reference to—

(a) the structure of the market concerned or any aspect of that structure,
(b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned, or
(c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.

(4) In subsection (3) “conduct” includes any failure to act (whether or not intentional) and any other unintentional conduct.
140B  Advice about effect of regulating provision or practice

(1) In this Chapter, any reference to the giving of “section 140B advice” to a regulator is to be read in accordance with this section.

(2) The CMA gives “section 140B advice” to a regulator if—

(a) it gives advice to the regulator under section 7 of the Enterprise Act 2002 (provision of competition advice to Ministers etc) and the advice states that in the opinion of the CMA one or more of the things mentioned in subsection (4) may cause, or contribute to, the effect mentioned in subsection (5), or might be expected to do so in the future;

(b) a report published by it under section 136 of the Enterprise Act 2002 (investigations and reports on market investigation reference) contains—

(i) a decision that one or more of the things mentioned in subsection (4) may cause, or contribute to, the effect mentioned in subsection (5), and

(ii) a recommendation that any action should be taken by that regulator.

(3) Those things are—

(a) a regulating provision or practice of the regulator,

(b) two or more regulating provisions or practices (of that regulator or of both regulators) taken together,

(c) a particular combination of regulating provision or practices (of that regulator or of both regulators), or
(d) a feature, or combination of features, of a [F964 one or more markets] in the United Kingdom that could be dealt with by regulating provision or practices (of that regulator or of both regulators).

(5) That effect is the prevention, restriction or distortion of competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

Textual Amendments

F962 S. 140B(2) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 122(1) (with art. 3)

F963 S. 140B(3) omitted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 122(2) (with art. 3)

F964 Words in s. 140B(4)(d) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 122(3) (with art. 3)

140C Consultation with regulator

Before giving section 140B advice, [F965 the CMA] must consult the regulator to which the advice is to be given.

Textual Amendments

F965 Words in s. 140C substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 123 (with art. 3)

140D Investigation powers of [F966 CMA]

[F967 (1)] Where the [F968 CMA] is deciding whether to exercise its power under section 7 of the Enterprise Act 2002 to give advice which, if given, would be section 140B advice, section 174 of that Act has effect as if—

[F969 (a)] for subsection (1) there were substituted—

“(1) For the purposes of this section, a permitted purpose is assisting the CMA in deciding whether to exercise its power under section 7 to give advice which for the purposes of Chapter 4 of Part 9A of the Financial Services and Markets Act 2000 would be section 140B advice.”, and

[F970 (2)] Where the CMA has exercised any of its powers under section 174 of the Enterprise Act 2002, as applied by subsection (1), section 174B of that Act has effect as if, after subsection (9), there were inserted—

“(10) Where the section 174 power is exercised for the purpose of assisting the CMA in deciding whether to exercise its power under section 7 to give advice which for the purposes of Chapter 4 of Part 9A of the Financial Services and...
Markets Act 2000 would be section 140B advice, the relevant day is the day when the CMA publishes that advice.”

**Textual Amendments**

F966 Word in s. 140D heading substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 124(5) (with art. 3, Sch. 2 para. 4)

F967 S. 140D renumbered as s. 140D(1) (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 124(2) (with art. 3, Sch. 2 para. 4)

F968 Word in s. 140D(1) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 124(3)(a) (with art. 3, Sch. 2 para. 4)

F969 S. 140D(1)(a)(b) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 124(3)(b) (with art. 3, Sch. 2 para. 4)

F970 S. 140D(2) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 124(4) (with art. 3, Sch. 2 para. 4)

**Publication by CMA of section 140B advice**

Where the giving of advice under section 7 of the Enterprise Act 2002 to either regulator constitutes the giving of section 140B advice, the CMA must publish that advice in such manner as it thinks fit.

**Textual Amendments**

F971 S. 140E substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 125 (with art. 3)

**Duty of CMA to send report to regulator**

(1) Where the publication of a report of the CMA under section 142 of the Enterprise Act 2002 constitutes the giving of section 140B advice to either regulator, the CMA must give a copy of the report to that regulator.

(2) The day on which the copy is given is the day on which the regulator is to be taken to receive the section 140B advice.

**Textual Amendments**

F972 Word in s. 140F heading substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 126(3) (with art. 3)

F973 Word in s. 140F(1) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 126(2)(a) (with art. 3)
140G Duty of regulator to publish response

(1) A regulator must, within 90 days after the day on which it receives section 140B advice, publish a response stating how it proposes to deal with the advice and in particular—

(a) whether it has decided to take any action, or to take no action, in response to the advice,
(b) if it has decided to take action, what action it proposes to take, and
(c) its reasons for its proposals.

(2) Publication is to be in such manner as the regulator thinks fit.

140H Role of the Treasury

(1) This section applies where—

(a) the CMA has given section 140B advice and the regulator has published a response under section 140G, and
(b) the CMA remains of the opinion that one or more of the things mentioned in section 140B(4) may cause or contribute to, the effect mentioned in section 140B(5).

(2) The CMA may refer the section 140B advice to the Treasury by sending the Treasury—

(a) a copy of the section 140B advice and of the response, and
(b) a request to consider the advice and the response.

(3) In referring the section 140B advice, the CMA may give advice to the Treasury as to what action, if any, ought to be taken by the regulator.

(4) If section 140B advice is referred to them, the Treasury may give a direction to the regulator to which the advice was given requiring the regulator to take such action as may be specified in the direction.

(5) In considering whether to give a direction and, if so, what action to specify, the Treasury must have regard to—

(a) any advice the CMA has given under subsection (3),
(b) any action which the section 140B advice suggests that the regulator should take, and
(c) the response of the regulator to the section 140B advice.

(6) The direction may not require the regulator to do anything that it has no power to do, but the existence of the direction is relevant to the exercise of any discretion conferred on the regulator.

(7) Before giving a direction under this section, the Treasury must consult the regulator to which it is to be given.

(8) If the Treasury give a direction under this section they must—
CHAPTER 5

POWER TO MAKE CONSEQUENTIAL AMENDMENTS

141A Power to make consequential amendments of references to rules etc.

(1) This section applies if—

(a) a provision of primary or subordinate legislation (whenever passed or made) contains a reference (however expressed) to rules of either regulator or to guidance of the FCA,

(b) it appears to the Treasury or the Secretary of State that the reference requires amendment in consequence of the exercise by that regulator of its power under this Part to make, alter or revoke its rules or the exercise by the FCA of its power to make, alter or revoke its guidance.

(2) The Treasury or the Secretary of State may by order make such amendment of the legislation referred to in subsection (1)(a) as appears to them to be necessary or expedient in consequence of the exercise by the regulator of the power mentioned in subsection (1)(b).

(3) The power conferred by subsection (2) includes power—

(a) to replace a reference to the rules of one regulator with a reference to the rules of the other regulator or to the rules of both regulators;

(b) to replace a reference to the rules of both regulators with a reference to the rules of one regulator.

(4) In subsection (1)(a) “subordinate legislation” does not include rules of either regulator.
PART 9B – Ring-fencing

CHAPTER 5 – Power to make consequential amendments

142A “Ring-fenced body”

(1) In this Act “ring-fenced body” means a UK institution which carries on one or more core activities (see section 142B) in relation to which it has a Part 4A permission.

(2) But “ring-fenced body” does not include—
   (a) a building society within the meaning of the Building Societies Act 1986, or
   (b) a UK institution of a class exempted by order made by the Treasury.

(3) An order under subsection (2)(b) may be made in relation to a class of UK institution only if the Treasury are of the opinion that the exemption conferred by the order would not be likely to have a significant adverse effect on the continuity of the provision in the United Kingdom of core services.

(4) Subject to that, in deciding whether and, if so, how to exercise their powers under subsection (2)(b), the Treasury must have regard to the desirability of minimising any adverse effect that the ring-fencing provisions might be expected to have on competition in the market for services provided in the course of carrying on core activities, including any adverse effect on the ease with which new entrants can enter the market.

(5) In subsection (4) “the ring-fencing provisions” means ring-fencing rules and the duty imposed as a result of section 142G.
An order under subsection (2)(b) may provide for the exemption to be subject to conditions.

(7) In this section “UK institution” means a body corporate incorporated in the United Kingdom.

142B Core activities

(1) References in this Act to a “core activity” are to be read in accordance with this section.

(2) The regulated activity of accepting deposits (whether carried on in the United Kingdom or elsewhere) is a core activity unless it is carried on in circumstances specified by the Treasury by order.

(3) An order under subsection (2) may be made only if the Treasury are of the opinion that it is not necessary for either of the following purposes that the regulated activity of accepting deposits should be a core activity when carried on in the specified circumstances.

(4) Those purposes are—

(a) to secure an appropriate degree of protection for the depositors concerned, or

(b) to protect the continuity of the provision in the United Kingdom of services provided in the course of carrying on the regulated activity of accepting deposits.

(5) The Treasury may by order provide for a regulated activity other than that of accepting deposits to be a core activity, either generally or when carried on in circumstances specified in the order.

(6) An order under subsection (5) may be made only if the Treasury are of the opinion—

(a) that an interruption of the provision of services provided in the United Kingdom in the carrying on of the regulated activity concerned could adversely affect the stability of the UK financial system or of a significant part of that system, and

(b) that the continuity of the provision of those services can more effectively be protected by treating the activity as a core activity.

142C Core services

(1) References in this Act to “core services” are to be read in accordance with this section.

(2) The following are core services—

(a) facilities for the accepting of deposits or other payments into an account which is provided in the course of carrying on the core activity of accepting deposits;

(b) facilities for withdrawing money or making payments from such an account;

(c) overdraft facilities in connection with such an account.

(3) The Treasury may by order provide that any other specified services provided in the course of carrying on the core activity of accepting deposits are also core services.

(4) If an order under section 142B(5) provides for an activity other than that of accepting deposits to be a core activity, the Treasury must by order provide that specified services provided in the course of carrying on that activity are core services.
(5) The services specified by order under subsection (4) must be services in relation to which the Treasury are of the opinion mentioned in section 142B(6)(a).

142D Excluded activities

(1) References in this Act to an “excluded activity” are to be read in accordance with this section.

(2) The regulated activity of dealing in investments as principal (whether carried on in the United Kingdom or elsewhere) is an excluded activity unless it is carried on in circumstances specified by the Treasury by order.

(3) An order under subsection (2) may be made only if the Treasury are of the opinion that allowing ring-fenced bodies to deal in investments as principal in the specified circumstances would not be likely to result in any significant adverse effect on the continuity of the provision in the United Kingdom of core services.

(4) The Treasury may by order provide for an activity other than the regulated activity of dealing in investments as principal to be an excluded activity, either generally or when carried on in circumstances specified in the order.

(5) An activity to which an order under subsection (4) relates—
   (a) need not be a regulated activity, and
   (b) may be an activity carried on in the United Kingdom or elsewhere.

(6) In deciding whether to make an order under subsection (4) in relation to any activity, the Treasury must—
   (a) have regard to the risks to which a ring-fenced body would be exposed if it carried on the activity concerned, and
   (b) consider whether the carrying on of that activity by a ring-fenced body would make it more likely that the failure of the body would have an adverse effect on the continuity of the provision in the United Kingdom of core services.

(7) An order under subsection (4) may be made only if the Treasury are of the opinion that the making of the order is necessary or expedient for the purpose of protecting the continuity of the provision in the United Kingdom of core services.

142E Power of Treasury to impose prohibitions

(1) The Treasury may by order prohibit ring-fenced bodies from—
   (a) entering into transactions of a specified kind or with persons falling within a specified class;
   (b) establishing or maintaining a branch in a specified country or territory;
   (c) holding in specified circumstances shares or voting power in companies of a specified description.

(2) In deciding whether to make an order under this section imposing a prohibition, the Treasury must—
   (a) have regard to the risks to which a ring-fenced body would be exposed if it did the thing to which the prohibition relates, and
   (b) consider whether the doing of that thing by a ring-fenced body would make it more likely that the failure of the body would have an adverse effect on the continuity of the provision in the United Kingdom of core services.
(3) An order under this section may be made only if the Treasury are of the opinion that the making of the order is necessary or expedient for the purpose of protecting the continuity of the provision in the United Kingdom of core services.

(4) An order under this section may in particular—
   (a) provide for any prohibition to be subject to exemptions specified in the order;
   (b) provide for any exemption to be subject to conditions specified in the order.

142F Orders under section 142A, 142B, 142D or 142E

(1) An order made under section 142A, 142B, 142D or 142E may—
   (a) authorise or require the making of rules by a regulator for the purposes of, or for purposes connected with, any provision of the order;
   (b) authorise the making of other instruments by a regulator for the purposes of, or for purposes connected with, any provision of the order;
   (c) refer to a publication issued by a regulator, another body in the United Kingdom or an international organisation, as the publication has effect from time to time.

(2) If the order confers powers on a regulator or authorises or requires the making of rules or other instruments by a regulator, the order may also—
   (a) impose conditions on the exercise of any power conferred on the regulator;
   (b) impose consultation requirements on the regulator;
   (c) make the exercise of a power by the regulator subject to the consent of the Treasury.

Ring-fenced bodies not to carry on excluded activities or contravene prohibitions

142G Ring-fenced bodies not to carry on excluded activities or contravene prohibitions

(1) A ring-fenced body which—
   (a) carries on an excluded activity or purports to do so, or
   (b) contravenes any provision of an order under section 142E,
   is to be taken to have contravened a requirement imposed on the body by the appropriate regulator under this Act.

(2) The contravention does not—
   (a) make a person guilty of an offence;
   (b) make a transaction void or unenforceable;
   (c) (subject to subsection (3)) give rise to any right of action for breach of statutory duty.

(3) In such cases as the Treasury may specify by order, 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.

(4) In this section “the appropriate regulator” means—
   (a) in relation to a ring-fenced body which is a PRA-authorised person, the PRA;
   (b) in relation to any other ring-fenced body, the FCA.
Ring-fencing rules

142H Ring-fencing rules

(1) In the exercise of its power to make general rules, the appropriate regulator must in particular make rules—
   (a) requiring a ring-fenced body to make arrangements to ensure the effective provision to the ring-fenced body of services and facilities that it requires in relation to the carrying on of a core activity, and
   (b) making provision for the group ring-fencing purposes applying to ring-fenced bodies and to authorised persons who are members of a ring-fenced body’s group.

(2) Section 142E(1)(c) does not affect the power of the appropriate regulator to make general rules imposing restrictions on the extent of the shares or voting power that a ring-fenced body may hold in another company, except where a restriction on the extent of the shares or voting power that the ring-fenced body may hold in the company is imposed by order under section 142E(1)(c).

(3) General rules that are required by this section or make provision falling within subsection (2) are in this Act referred to as “ring-fencing rules”.

(4) The “group ring-fencing purposes” are—
   (a) ensuring as far as reasonably practicable that the carrying on of core activities by a ring-fenced body is not adversely affected by the acts or omissions of other members of its group;
   (b) ensuring as far as reasonably practicable that in carrying on its business a ring-fenced body—
      (i) is able to take decisions independently of other members of its group, and
      (ii) does not depend on resources which are provided by a member of its group and which would cease to be available to the ring-fenced body in the event of the insolvency of the other member;
   (c) ensuring as far as reasonably practicable that the ring-fenced body would be able to continue to carry on core activities in the event of the insolvency of one or more other members of its group.

(5) Ring-fencing rules made for the group ring-fencing purposes must include—
   (a) provision restricting the power of a ring-fenced body to enter into contracts with other members of its group otherwise than on arm’s length terms;
   (b) provision restricting the payments that a ring-fenced body may make (by way of dividend or otherwise) to other members of its group;
   (c) provision requiring the disclosure to the appropriate regulator of information relating to transactions between a ring-fenced body and other members of its group;
   (d) provision requiring a ring-fenced body to ensure that its board of directors (or if there is no such board, the equivalent management body) includes to a specified extent—
      (i) members who are treated by the rules as being independent of other members of the ring-fenced body’s group,
      (ii) members who are treated by the rules as being independent of the ring-fenced body itself, and
(iii) non-executive members;
(e) provision requiring a ring-fenced body to act in accordance with a remuneration policy meeting specified requirements;
(f) provision requiring a ring-fenced body to act in accordance with a human resources policy meeting specified requirements;
(g) provision requiring arrangements made by the ring-fenced body for the identification, monitoring and management of risk to meet specified requirements;
(h) such other provision as the appropriate regulator considers necessary or expedient for any of the purposes in subsection (4).

(6) The reference in subsection (5)(e) to a remuneration policy is a reference to a policy about the remuneration of officers, employees and other persons who (in each case) are of a specified description.

(7) The reference in subsection (5)(f) to a human resources policy is a reference to a policy about the appointment and management of officers, employees and other persons who (in each case) are of a specified description.

(8) In this section—
“the appropriate regulator” means—
(a) in relation to a PRA-authorised person, the PRA;
(b) in relation to any other authorised person, the FCA;
“shares” has the meaning given in section 422;
“specified” means specified in the rules;
“voting power” has the meaning given in section 422.

142I Powers of Treasury in relation to ring-fencing rules

(1) The Treasury may by order require the appropriate regulator, as defined in section 142H(8), to include (or not to include) in ring-fencing rules specified provision relating to—
(a) any of the matters mentioned in section 142H(5)(a) to (g), or
(b) any other specified matter.

(2) The power to make an order under this section is exercisable only if the Treasury consider it necessary or expedient to do so—
(a) for any of the group ring-fencing purposes as defined in section 142H(4), or
(b) otherwise for securing the independence of ring-fenced bodies from other members of their groups.

(3) “Specified” means specified in the order.

142J Review of ring-fencing rules etc

(1) The PRA must carry out reviews of its ring-fencing rules and of any rules made by it under section 192JA (rules applying to parent undertakings of ring-fenced bodies).

(2) The first review must be completed before the end of the period of 5 years beginning with the day on which the first ring-fencing rules come into force.
(3) Subsequent reviews must be completed before the end of the period of 5 years beginning with the day on which the previous review was completed.

(4) The PRA must give the Treasury a report of each review.

(5) The Treasury must lay a copy of the report before Parliament.

(6) The PRA must publish the report in such manner as it thinks fit.

(7) If (because any ring-fenced body is not a PRA-authorised person) section 142H has the effect of requiring the FCA to make ring-fencing rules, subsections (1) to (6) apply to the FCA as they apply to the PRA.

Group restructuring powers

142K Cases in which group restructuring powers become exercisable

(1) The appropriate regulator may exercise the group restructuring powers only if it is satisfied that one or more of Conditions A to D is met in relation to a ring-fenced body that is a member of a group.

(2) Condition A is that the carrying on of core activities by the ring-fenced body is being adversely affected by the acts or omissions of other members of its group.

(3) Condition B is that in carrying on its business the ring-fenced body—
   (a) is unable to take decisions independently of other members of its group, or
   (b) depends on resources which are provided by a member of its group and which would cease to be available in the event of the insolvency of the other member.

(4) Condition C is that in the event of the insolvency of one or more other members of its group the ring-fenced body would be unable to continue to carry on the core activities carried on by it.

(5) Condition D is that the ring-fenced body or another member of its group has engaged, or is engaged, in conduct which is having, or would apart from this section be likely to have, an adverse effect on the advancement by the appropriate regulator—
   (a) in the case of the PRA, of the objective in section 2B(3)(c), or
   (b) in the case of the FCA, of the continuity objective.

(6) The appropriate regulator may not exercise the group restructuring powers in relation to any person if—
   (a) either regulator has previously exercised the group restructuring powers in relation to that person, and
   (b) the decision notice in relation to the current exercise is given before the second anniversary of the day on which the decision notice in relation to the previous exercise was given.

(7) In this section and sections 142L to 142Q “the appropriate regulator” means—
   (a) where the ring-fenced body is a PRA-authorised person, the PRA;
   (b) where it is not, the FCA.
142L Group restructuring powers

(1) In this Part “the group restructuring powers” means one or more of the powers conferred by this section.

(2) Where the appropriate regulator is the PRA, the powers conferred by this section are as follows—
   (a) in relation to the ring-fenced body, power to impose a requirement on the ring-fenced body requiring it to take any of the steps mentioned in subsection (5),
   (b) in relation to any member of the ring-fenced body's group which is a PRA-authorised person, power to impose a requirement on the PRA-authorised person requiring it to take any of the steps mentioned in subsection (6),
   (c) in relation to any member of the ring-fenced body's group which is an authorised person but not a PRA-authorised person, power to direct the FCA to impose a requirement on the authorised person requiring it to take any of the steps mentioned in subsection (6), and
   (d) in relation to a qualifying parent undertaking, power to give a direction under this paragraph to the parent undertaking requiring it to take any of the steps mentioned in subsection (6).

(3) Where the appropriate regulator is the FCA, the powers conferred by this section are as follows—
   (a) in relation to the ring-fenced body, power to impose a requirement on the ring-fenced body requiring it to take any of the steps mentioned in subsection (5),
   (b) in relation to any member of the ring-fenced body's group which is an authorised person but not a PRA-authorised person, power to impose a requirement on the authorised person requiring it to take any of the steps mentioned in subsection (6),
   (c) in relation to any member of the ring-fenced body's group which is a PRA-authorised person, power to direct the PRA to impose a requirement on the authorised person requiring it to take any of the steps mentioned in subsection (6), and
   (d) in relation to a qualifying parent undertaking, power to give a direction under this paragraph to the parent undertaking requiring it to take any of the steps mentioned in subsection (6).

(4) A parent undertaking of a ring-fenced body by reference to which the group restructuring powers are exercisable is for the purposes of this Part a “qualifying parent undertaking” if—
   (a) it is a body corporate which is incorporated in the United Kingdom and has a place of business in the United Kingdom, and
   (b) it is not itself an authorised person.

(5) The steps that the ring-fenced body may be required to take are—
   (a) to dispose of specified property or rights to an outside person;
   (b) to apply to the court under Part 7 for an order sanctioning a ring-fencing transfer scheme relating to the transfer of the whole or part of the business of the ring-fenced body to an outside person;
   (c) otherwise to make arrangements discharging the ring-fenced body from specified liabilities.

(6) The steps that another authorised person or a qualifying parent undertaking may be required to take are—
(a) to dispose of any shares in, or securities of, the ring-fenced body to an outside person;
(b) to dispose of any interest in any other body corporate that is a member of the ring-fenced body's group to an outside person;
(c) to dispose of other specified property or rights to an outside person;
(d) to apply to the court under Part 7 for an order sanctioning a ring-fencing transfer scheme relating to the transfer of the whole or part of the business of the authorised person or qualifying parent undertaking to an outside person.

(7) In subsections (5) and (6) “outside person” means a person who, after the implementation of the disposal or scheme in question, will not be a member of the group of the ring-fenced body by reference to which the powers are exercised (whether or not that body is to remain a ring-fenced body after the implementation of the disposal or scheme in question).

(8) It is immaterial whether a requirement to be imposed on an authorised person by the appropriate regulator, or by the other regulator at the direction of the appropriate regulator, is one that the regulator imposing it could impose under section 55L or 55M.

142M Procedure: preliminary notices

(1) If the appropriate regulator proposes to exercise the group restructuring powers in relation to any authorised person or qualifying parent undertaking (“the person concerned”), the regulator must give each of the relevant persons a notice (a “preliminary notice”).

(2) The preliminary notice must—
   (a) state that it is a preliminary notice,
   (b) state that the regulator proposes to exercise the group restructuring powers,
   (c) state the action which the regulator proposes to take in the exercise of those powers,
   (d) be in writing, and
   (e) give reasons for the proposed action (which must include the regulator's reasons for being satisfied as to the matters mentioned in section 142K(1)).

(3) The appropriate regulator must give a copy of the preliminary notice to the Treasury.

(4) The preliminary notice must specify a reasonable period (which may not be less than 14 days) within which any of the relevant persons may make representations to the regulator.

(5) The relevant persons are—
   (a) the person concerned,
   (b) the ring-fenced body, if not the person concerned, and
   (c) any other authorised person who will, in the opinion of the appropriate regulator, be significantly affected by the exercise of the group restructuring powers.

142N Procedure: warning notice and decision notice

(1) If the appropriate regulator has given a preliminary notice under section 142M, it must either—
(a) if, having considered any representations made by any of the relevant persons, it still proposes to exercise the group restructuring powers, give each of the relevant persons a warning notice during the warning notice period, or
(b) before the end of the warning notice period, give each of them a written notice stating that it has decided not to exercise the powers and give a copy of that notice to the Treasury.

(2) The “warning notice period” is the period—
   (a) beginning 3 months after the end of the period specified under section 142M(4) as that within which any representations must be made, and
   (b) ending 6 months after the end of that period.

(3) Before giving a warning notice under subsection (1)(a), the appropriate regulator must—
   (a) give the Treasury a draft of the notice,
   (b) provide the Treasury with any information that the Treasury may require in order to decide whether to give their consent, and
   (c) obtain the consent of the Treasury.

(4) The action specified in the warning notice may be different from that specified in the preliminary notice if—
   (a) the appropriate regulator considers that different action is appropriate as a result of any change in circumstances since the preliminary notice was given, or
   (b) the person concerned consents to the change.

(5) The regulator must, in particular, have regard to anything that—
   (a) has been done by the person concerned since the giving of the preliminary notice, and
   (b) represents action that would have been required in pursuance of the proposals in that notice.

(6) If the regulator decides to exercise the group restructuring powers it must give each of the relevant persons a decision notice.

(7) The decision notice must specify the date or dates by which each of the following must be completed—
   (a) any disposal of shares, securities or other property that is required by the notice;
   (b) any transfer of liabilities for which the notice requires arrangements to be made.

(8) The giving of consent for the purpose of subsection (4)(b) does not affect any right to refer to the Tribunal the matter to which any decision notice resulting from the warning notice relates.

(9) “The relevant persons” has the same meaning as in section 142M.

142O References to Tribunal

(1) A notified person who is aggrieved by—
   (a) the imposition by either regulator of a requirement as a result of section 142L(2)(a) or (b) or (3)(a) or (b),
(b) a requirement to be imposed as a result of the giving by one regulator to the other of a direction under section 142L(2)(c) or (3)(c), or
(c) the giving by either regulator of a direction under section 142L(2)(d) or (3)(d), may refer the matter to the Tribunal.

(2) “Notified person” means a person to whom a decision notice under section 142N(6) was given or ought to have been given.

142P Subsequent variation of requirement or direction

(1) A regulator may at any time with the consent of the person concerned vary—
   (a) a requirement imposed by it as a result of section 142L(2)(a) or (b) or (3)(a) or (b), or
   (b) a direction given by it as a result of section 142L(2)(c) or (d) or (3)(c) or (d).

(2) The person concerned may at any time apply to the appropriate regulator for the variation of—
   (a) a requirement imposed by it as a result of section 142L(2)(a) or (b) or (3)(a) or (b), or
   (b) a direction given by it as a result of section 142L(2)(c) or (d) or (3)(c) or (d).

(3) Sections 55U, 55V, 55X and 55Z3 apply to an application under subsection (2) as they apply to an application for the variation of a requirement imposed by the appropriate regulator under section 55L or 55M.

142Q Consultation etc. between regulators

(1) Where a notice under section 142M or a warning notice or decision notice under section 142N relates to a requirement to be imposed in pursuance of a direction to be given as a result of section 142L(2)(c) or (3)(c), the appropriate regulator must—
   (a) consult the other regulator before giving the notice, and
   (b) give a copy of the notice to the other regulator.

(2) The appropriate regulator must consult the other regulator before varying under section 142P a direction given as a result of section 142L(2)(c) or (3)(c).

(3) Directions given by the FCA as a result of section 142L(3)(c) are subject to any directions given to the FCA under section 31.

142R Relationship with regulators’ powers under Parts 4A and 12A

(1) Subsection (2) applies in relation to—
   (a) a ring-fenced body which is a member of a mixed group, and
   (b) a parent undertaking of such a ring-fenced body.

(2) A regulator may not exercise its general powers in relation to the ring-fenced body or parent undertaking so as to achieve either of the results in subsection (3).

(3) Those results are—
   (a) that no existing group member is a parent undertaking of the ring-fenced body;
   (b) that the ring-fenced body is not a member of a mixed group.
(4) In subsection (3)(a) “existing group member” means a person who is a member of the ring-fenced body’s group at the time when the requirement is imposed or the direction given.

(5) Except as provided by subsections (1) to (4), the provisions of sections 142K to 142Q do not limit the general powers of either regulator.

(6) For the purposes of this section, a regulator’s “general powers” are its powers under the following provisions—
   (a) section 55L or 55M (imposition of requirements in connection with Part 4A permission);
   (b) section 192C (power to direct qualifying parent undertaking).

(7) For the purposes of this section, a ring-fenced body is a member of a mixed group if a member of the ring-fenced body’s group carries on an excluded activity.

**Failure of parent undertaking to comply with direction**

142S **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 requirement of a direction given to P by that regulator as a result of section 142L(2)(d) or (3)(d).

(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 142T.

(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.

(7) The requirements that a regulator may be required to impose as a result of a direction under section 142L(2)(c) or (3)(c) include requirements that the regulator would not but for the direction have power to impose.

142T **Procedure and right to refer to Tribunal**

(1) If a regulator proposes to take action against a person under section 142S, 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 142S, 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 142S, the person may refer the matter to the Tribunal.

142U Duty on publication of statement

After a statement under section 142S(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).

142V Imposition of penalties under section 142S: statement of policy

(1) Each regulator must prepare and issue a statement of policy with respect to—

(a) the imposition of penalties under section 142S, 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.

(5) In exercising, or deciding whether to exercise, a power under section 142S(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.

Pension liabilities

142W Pension liabilities

(1) The Treasury may by regulations require a ring-fenced body to make arrangements for any one or more of the following purposes—

(a) ensuring that, except in prescribed cases, the ring-fenced body cannot become liable to meet, or contribute to the meeting of, pension liabilities which arise in connection with persons' service on or after a date specified in the regulations ("the specified date") in any employment, other than service in an employment in respect of which the employer is a ring-fenced body;

(b) ensuring that, except in prescribed cases, the default of a person other than another ring-fenced body would not result in the ring-fenced body becoming liable to meet, or contribute to the meeting of, pension liabilities arising in connection with persons' service in any employment before the specified date;

(c) to the extent that it is not possible to ensure the result mentioned in paragraph (a) or (b), minimising any potential liability falling within paragraph (a) or (b).

(2) The regulations may make provision enabling the trustees or managers of a relevant pension scheme in respect of which the employer or one of the employers is a ring-fenced body—

(a) to transfer to another relevant pension scheme all or part of the pension liabilities arising in connection with persons' service before the specified date together with all or part of the assets of the scheme, or

(b) to divide the scheme into two or more sections in relation to which prescribed conditions are met.

(3) The regulations may make provision—

(a) enabling a ring-fenced body to apply to the court in a case where the ring-fenced body has been unable to reach agreement with another person ("P") about the making of arrangements with P on commercial terms for one or more of the purposes in subsection (1), and

(b) enabling the court on such an application to order P to enter into arrangements with the ring-fenced body for those purposes on such terms as the court considers fair and reasonable in the circumstances.

(4) The regulations must provide that any terms specified by the court by virtue of provision made under subsection (3)—

(a) must be terms which, in the court's opinion, represent terms on which the arrangements might be entered into if they were being entered into for commercial reasons between willing parties dealing at arm's length, and

(b) may involve the payment of any sum by instalments.

(5) The regulations may make other provision—

(a) about the making by a ring-fenced body of arrangements for one or more of the purposes in subsection (1);

(b) about any transfer or division falling within subsection (2).
(6) The regulations may in particular—

(a) require a ring-fenced body to cease to participate in a relevant pension scheme unless the scheme is divided into two or more sections in relation to which prescribed conditions are met;

(b) provide that assets or liabilities of a relevant pension scheme may not be transferred under the arrangements to another occupational pension scheme unless the other scheme meets prescribed conditions;

(c) require ring-fenced bodies to establish new occupational pension schemes in prescribed circumstances;

(d) provide that any provision of a relevant pension scheme that might prevent the making of the arrangements, other than a provision requiring the consent of the trustees or managers of the scheme, is not to have effect in prescribed circumstances;

(e) make provision enabling the trustees or managers of a relevant pension scheme, with the consent of the employers in relation to the scheme, to modify the scheme by resolution for the purpose of enabling the arrangements to be made;

(f) require the trustees or managers of a relevant pension scheme or any employer in relation to a relevant pension scheme to give notice of prescribed matters to prescribed persons;

(g) make provision enabling the court, on an application made in accordance with the regulations by a ring-fenced body, if it appears to the court that the trustees or managers of a relevant pension scheme, or an employer in relation to such a scheme, have unreasonably refused their consent to any step that would enable the arrangements to be made, to order that the step may be taken without that consent;

(h) confer exemption from any provision of the regulations in prescribed cases;

(i) confer functions on the PRA;

(j) provide that a ring-fenced body which contravenes a prescribed requirement of the regulations is to be taken to have contravened a requirement imposed by the PRA under this Act;

(k) modify, exclude or apply (with or without modification) any primary or subordinate legislation.

(7) The Treasury may by regulations require an authorised person who will or may be a ring-fenced body or an authorised person who will or may be a member of a ring-fenced body's group to do all it can to obtain from the Pensions Regulator a clearance statement in relation to any arrangements to be made for the purpose of complying with—

(a) regulations under this section, or

(b) any provision made by or under this Part (other than this section) when the provision comes into force.

(8) A “clearance statement” is a statement issued by the Pensions Regulator under any of the following provisions—

(a) section 42 of the Pensions Act 2004 (clearance statements relating to contribution notice under section 38);

(b) section 46 of that Act (clearance statements relating to financial support directions);
(c) Article 38 of the Pensions (Northern Ireland) Order 2005 (clearance statements relating to contribution notices under article 34);
(d) Article 42 of that Order (clearance statements relating to financial support directions).

(9) In relation to a ring-fenced body that is not a PRA-authorised person, references in subsection (6) to the PRA are to be read as references to the FCA.

(10) Regulations under this section may not require ring-fenced bodies to achieve the results mentioned in subsection (1) before 1 January 2026, but this does not prevent the regulations requiring steps to be taken at any time after the regulations come into force.

**142X Further interpretative provisions for section 142W**

1. The following provisions have effect for the interpretation of section 142W and this section.

2. “Relevant pension scheme” means an occupational pension scheme that is not a money purchase scheme.

3. “Occupational pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993 or section 1 of the Pension Schemes (Northern Ireland) Act 1993 and, in relation to such a scheme, “member” and “trustees or managers” have the same meaning as in Part 1 of the Pensions Act 1995 or Part 2 of the Pensions (Northern Ireland) Order 1995.

4. “Money purchase scheme” has the meaning given in section 181(1) of the Pension Schemes Act 1993 or section 176(1) of the Pension Schemes (Northern Ireland) Act 1993.

5. “Employer”, in relation to a relevant pension scheme, means—
   (a) a person who is for the purposes of Part 1 of the Pensions Act 1995 or Part 2 of the Pensions (Northern Ireland) Order 1995 an employer in relation to the scheme, and
   (b) any other person who has or may have any liability under the scheme.

6. “Employment” has the meaning given in section 181(1) of the Pension Schemes Act 1993 or section 176(1) of the Pension Schemes (Northern Ireland) Act 1993.

7. “Pension liabilities” means liabilities attributable to or associated with the provision under a relevant pension scheme of pensions or other benefits.

8. “The court” means—
   (a) in relation to England and Wales or Northern Ireland, the High Court, and
   (b) in relation to Scotland, the Court of Session.

**Loss-absorbency requirements**

**142Y Power of Treasury in relation to loss-absorbency requirements**

1. The Treasury may by order make provision about the exercise by either regulator of its functions under this Act, so far as they are (apart from the order) capable of being exercised in relation to a relevant body so as to require the relevant body—
(a) to issue any debt instrument, or
(b) to ensure that any part of the relevant body's debt consists of debt owed by it in respect of debt instruments, or debt instruments of a particular kind.

(2) A “relevant body” is—
(a) a ring-fenced body,
(b) any other body corporate that has a Part 4A permission relating to the regulated activity of accepting deposits, or
(c) a body corporate that is a member of the group of a body falling within paragraph (a) or (b).

(3) “Debt instrument” means—
(a) a bond,
(b) any other instrument creating or acknowledging a debt, or
(c) an instrument giving rights to acquire a debt instrument.

(4) An order under this section may in particular—
(a) require the regulator to exercise its functions so as to require relevant bodies to do either or both of the things mentioned in subsection (1);
(b) limit the extent to which the regulator may require a relevant body's debt to consist of debt owed in respect of debt instruments or of debt instruments of a kind specified in the order;
(c) require the regulator—
   (i) to make, or not to make, provision by reference to specified matters, or
   (ii) to have regard, or not to have regard, to specified matters;
(d) require the regulator to consult, or obtain the consent of, the Treasury before making rules of a specified description or exercising any other specified function;
(e) impose on the regulator in connection with the exercise of a specified function procedural requirements which would not otherwise apply to the exercise of the function;
(f) refer to a publication issued by a regulator, another body in the United Kingdom or an international organisation, as the publication has effect from time to time.

(5) “Specified” means specified in the order.

General

142Z Affirmative procedure in relation to certain orders under Part 9B

(1) This section applies to an order containing provision made under any of the following provisions of this Part—
(a) section 142A(2)(b);
(b) section 142B(2) or (5);
(c) section 142C;
(d) section 142D(2) or (4);
(e) section 142E;
(f) section 142I;
(g) section 142Y.

(2) No order to which this section applies may be made unless—

(a) a draft of the order has been laid before Parliament and approved by a resolution of each House, or

(b) subsection (4) applies.

(3) Subsection (4) applies if an order under 142D(4) or 142E 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.

(4) Where this subsection applies the order—

(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 that affecting anything done under the order or the power to make a new order).

(5) The “relevant period” is a period of 28 days beginning with the day on which the order is made.

(6) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than 4 days.

142Z1 Interpretation of Part 9B

(1) This section has effect for the interpretation of this Part.

(2) Any reference to—

(a) the regulated activity of accepting deposits, or

(b) the regulated activity of dealing in investments as principal,

is to be read in accordance with Schedule 2, taken with any order under section 22.

(3) Any reference to the group restructuring powers is to be read in accordance with section 142L(1).

(4) Any reference to a qualifying parent undertaking is to be read in accordance with section 142L(4).
PART XI
INFORMATION GATHERING AND INVESTIGATIONS

Modifications etc. (not altering text)
C438 Pt. 11 modified (1.12.2001) by S.I. 2001/2657, arts. 1(1), 18(2) (which was revoked (8.10.2001) by S.I. 2001/3083, arts. 1(2), 23); S.I. 2001/3538, art. 2(1)
Pt. 11 modified (1.12.2001) by S.I. 2001/3083, arts. 1(2), 18(2)(4); S.I. 2001/3538, art. 2(1)
Pt. 11 extended (with modifications) (1.12.2001) by S.I. 2001/3646, arts. 1(1), 6-9
C439 Pt. 11 applied (with modifications) (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/209), reg. 1(2), Sch. 5 para. 3 (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 155(6)(c) (with Sch. 2 para. 156); and (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), reg. 1(2), Sch. 7 para. 24(9) (with regs. 8, 15))
C440 Pt. 11 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, Sch. para. 2
C441 Pt. 11 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), reg. 02, Sch. 3 para. 3 (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 196(5)(c); and (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2014 (S.I. 2014/366), arts. 1(4), 18(4)(b))
C442 Pt. 11 applied (with modifications) (15.1.2013) by The Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (S.I. 2012/3122), reg. 1, Sch. para. 2 (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 248(6)(b))
C443 Pt. 11 applied (with modifications) (9.7.2013) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (S.I. 2013/1635), regs. 1, 13
C444 Pt. 11 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services Act 2012 (Consumer Credit) Order 2013 (S.I. 2013/1882), arts. 1(1), 3(5)
C446 Pt. 11 applied (with modifications) (12.12.2014) by The Immigration Act 2014 (Bank Accounts) Regulations 2014 (S.I. 2014/3085), regs. 1, 14
C447 Pt. 11 applied (with modifications) (1.1.2016) by The Small and Medium Sized Business (Finance Platforms) Regulations 2015 (S.I. 2015/1946), regs. 1(2), 23
C448 Pt. 11 applied (with modifications) (1.1.2016) by The Small and Medium Sized Business (Credit Information) Regulations 2015 (S.I. 2015/1945), regs. 1(2), 26
C449 Pt. 11 applied (with modifications) (18.9.2016) by The Payment Accounts Regulations 2015 (S.I. 2015/2038), reg. 1(2)(b), Sch. 7 para. 2
C451 Pt. 11 applied (with modifications) (3.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Data Reporting Services Regulations 2017 (S.I. 2017/699), regs. 1(2)(a)(b), 33
C452 Pt. 11 applied (with modifications) (1.1.2018) by The Packaged Retail and Insurance-based Investment Products Regulations 2017 (S.I. 2017/1127), reg. 1, Sch. 1 para. 2
C453 Pt. 11 applied (with modifications) (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(6), Sch. 6 para. 4 (with reg. 3)
Powers to gather information

165 Regulators power to require information: authorised persons etc.

(1) Either regulator may, by notice in writing given to an authorised person, require him—
   (a) to provide specified information or information of a specified description; or
   (b) to produce specified documents or documents of a specified description.

(2) The information or documents must be provided or produced—
   (a) before the end of such reasonable period as may be specified; and
   (b) at such place as may be specified.

(3) An officer who has written authorisation from the regulator to do so may require an authorised person without delay—
   (a) to provide the officer with specified information or information of a specified description; or
   (b) to produce to him specified documents or documents of a specified description.

(4) This section applies only to information and documents reasonably required in connection with the exercise by either regulator of functions conferred on it by or under this Act, and
   (a) in relation to the exercise by the PRA of the powers conferred by subsections (1) and (3), information and documents reasonably required by the Bank of England in connection with the exercise by the Bank of its functions in pursuance of its financial stability objective.

(5) The regulator in question may require any information provided under this section to be provided in such form as it may reasonably require.

(6) The regulator in question may require—
   (a) any information provided, whether in a document or otherwise, to be verified in such manner, or
   (b) any document produced to be authenticated in such manner, as it may reasonably require.

(7) The powers conferred by subsections (1) and (3) may also be exercised—
   (a) by either regulator, to impose requirements on a person who is connected with an authorised person;
(b) by the FCA, to impose requirements on an operator, trustee or depositary of a scheme recognised under section 272 who is not an authorised person;
(c) by the FCA, to impose requirements on a recognised investment exchange;
(d) by the FCA, to impose requirements on a person who is connected with a recognised investment exchange.

(8) “Authorised person” includes a person who was at any time an authorised person but who has ceased to be an authorised person.


(9) “Officer” means an officer of the regulator exercising the power and includes a member of that regulator’s staff or an agent of that regulator.

(10) “Specified” means—
(a) in subsections (1) and (2), specified in the notice; and
(b) in subsection (3), specified in the authorisation.

(11) For the purposes of this section, a person is connected with another person (“A”) if he is or has at any relevant time been—
(a) a member of A’s group;
(b) a controller of A;
(c) any other member of a partnership of which A is a member; or
(d) in relation to A, a person mentioned in Part I of Schedule 15 (reading references in that Part to the authorised person as references to A).

Textual Amendments

F982 Word in s. 165 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 1(9) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F983 S. 165: words in heading inserted (8.6.2010) by Financial Services Act (c. 28), ss. 24(1), 26(2)(d)(e), {Sch. 2 para. 15}
F984 Words in s. 165(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 1(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F985 Word in s. 165(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 1(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F986 S. 165(4)(a): words in s. 165(4) renumbered as s. 165(4)(a) (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 36(2)(a) (with Sch. 3); S.I. 2017/43, reg. 2(g)
F987 Words in s. 165(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 1(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F988 S. 165(4)(b) and word inserted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 36(2)(b) (with Sch. 3); S.I. 2017/43, reg. 2(g)
F989 Words in s. 165(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 1(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F990 Words in s. 165(6) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 1(6) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F991 Words in s. 165(7) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 1(7) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
Status: This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000.

This version of this Act contains provisions that are prospective.

Modifications etc. (not altering text)


S. 165 amended (1.12.2001) by S.I. 2001/3083, arts. 1(2), 15(1); S.I. 2001/3538, art. 2(1)

C459 S. 165 modified (temp.) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), art. 8(1)(3)


C461 S. 165 applied (with modifications) (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, Sch. para. 3


C463 S. 165 applied (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), regs. 1, 71(1)(a)

C464 S. 165 modified in part (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 50(1)

C465 S. 165 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 12(9)


C469 S. 165 applied by S.I. 2018/1149, reg. 60 (as inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), 3)

Part XI – Information Gathering and Investigations

CHAPTER 5 – Power to make consequential amendments

165A PRA’s power to require information: financial stability

(1) The [165A PRA] may, by notice in writing given to a person to whom this section applies, require the person—
   (a) to provide specified information or information of a specified description; or
   (b) to produce specified documents or documents of a specified description.

(2) This section applies to—
   (a) a person who has a legal or beneficial interest in any of the assets of a relevant investment fund;
   (b) a person who is responsible for the management of a relevant investment fund;
   (c) a person (a “service provider”) who provides any service to an authorised person;
   (d) a person prescribed by an order made by the Treasury or any person of a description prescribed by such an order (and see also section 165C);
   (e) a person who is connected with a person to whom this section applies as a result of any of the above paragraphs.

(3) This section applies only to
   (a) information and documents that the [165A PRA] considers are, or might be, relevant to the stability of one or more aspects of the UK financial system,
   (b) information and documents reasonably required by the Bank of England in connection with the exercise by the Bank of its functions in pursuance of its financial stability objective.

(4) A notice may be given to a service provider, or to a person who is connected with a service provider, only if the [165A PRA] considers that—
   (a) the service or the way in which it (or any part of it) is provided, or
   (b) any failure to provide the service (or any part of it), poses, or would be likely to pose, a serious threat to the stability of the UK financial system.
(5) Information or documents required under this section must be provided or produced—
   (a) before the end of such reasonable period as may be specified; and
   (b) at such place as may be specified.

(6) The [F1002PRA] may require any information provided under this section to be provided
    in such form as it may reasonably require.

(7) The [F1002PRA] may require—
   (a) any information provided, whether in a document or otherwise, to be verified
       in such manner as it may reasonably require; or
   (b) any document produced to be authenticated in such manner as it may
       reasonably require.

[F1005] “Financial stability objective” means the objective set out in section 2A of the Bank

(8) In this section—
    “management” includes any of the activities listed in Annex II to the
    UCITS directive;
    “relevant investment fund” means an investment fund whose assets consist
    of or include financial instruments which—
    (a) are traded in the United Kingdom; or
    (b) were issued by a body incorporated in the United Kingdom;
    “service” includes facility;
    “specified” means specified in the notice.

(9) For the purposes of the definition of “relevant investment fund”—
    (a) arrangements may constitute an investment fund even if there is only one
        person participating in the arrangements; and
    (b) the reference to financial instruments has the meaning given by Article
        [F1006.4.1(15)] of the markets in financial instruments directive.

(10) For the purposes of this section a person is connected with another person (“A”) if the
    person is or has at any relevant time been—
    (a) a member of A’s group;
    (b) a controller of A;
    (c) any other member of a partnership of which A is a member; or
    (d) in relation to A, a person mentioned in Part 1 of Schedule 15 (reading
        references in that Part to the authorised person as references to A).

Textual Amendments
F1000S. 165A-165C inserted (8.6.2010) by Financial Services Act (c. 28), {ss. 18(2)}, 26(2)
F1001Word in s. 165A heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch.
12 para. 2(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1002Word in s. 165A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12
para. 2(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1003S. 165(3)(a): words in s. 165A(3) renumbered as s. 165A(3)(a) (1.3.2017) by Bank of England and
Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 37(2)(a) (with Sch. 3); S.I. 2017/43, reg.
2(g)
165B Safeguards etc in relation to exercise of power under section 165A

(1) If the [F1007]PRA proposes to impose a requirement on a person under section 165A, it must give the person a notice in writing warning the person that the [F1007]PRA is proposing to impose the requirement.

(2) The notice under subsection (1) must—
   (a) give the [F1008]PRA's reasons for proposing to impose the requirement; and
   (b) specify a reasonable period within which the person may make representations to the [F1007]PRA.

(3) The [F1007]PRA must then decide, within a reasonable period, whether to impose the requirement.

(4) Subsections (1) to (3) do not apply in any case where the [F1007]PRA is satisfied that it is necessary for the information or documents to be provided or produced without delay.

(5) If the [F1007]PRA imposes a requirement on a person under section 165A, the notice under that section must give the [F1008]PRA's reasons for imposing the requirement.

(6) The [F1007]PRA must prepare a statement of its policy with respect to the exercise of the power conferred by section 165A.

(7) The statement requires the approval of the Treasury.

(8) If the Treasury approve the statement, the [F1007]PRA must publish it.

(9) The power conferred by section 165A may not be exercised before the statement has been published.
(b) any failure to carry on those activities (or any part of them), pose, or would be likely to pose, a serious threat to the stability of the UK financial system.

(1B) Condition B is that the provision implements all or part of a recommendation made by the Financial Policy Committee of the Bank of England under section 9P of the Bank of England Act 1998.]

(2) Subject as follows, an order under section 165A(2)(d) may not be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

(3) Subsection (2) does not apply in any case where the Treasury are satisfied that it is necessary to make an order under section 165A(2)(d) without laying a draft for approval.

(4) In that case, the order—

(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 it is approved by a resolution of each House of Parliament.

(5) If an order ceases to have effect as a result of subsection (4)(b) that does not affect—

(a) anything done under it; or

(b) the power to make a new one.

(6) “Relevant period” means a period of 28 days beginning with the day on which the order is made.

(7) 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 four days.

(8) If a statutory instrument containing an order under section 165A(2)(d) would, apart from this subsection, be treated as a hybrid instrument for the purposes of the Standing Orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.]

Textual Amendments

F1000S. 165A-165C inserted (8.6.2010) by Financial Services Act (c. 28), {ss. 18(2)}, 26(2)
F1009S. 165C(1)-(1B) substituted for s. 165C(1) (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 4 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Reports by skilled persons.

(1) This section applies where either regulator has required or could require a person to whom subsection (2) applies (“the person concerned”) to provide information or produce documents with respect to any matter (“the matter concerned”).

(2) This subsection applies to—

(a) an authorised person (“A”),

(b) any other member of A's group,

(c) a partnership of which A is a member,
(d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c),
who is, or was at the relevant time, carrying on a business.

(3) The regulator mentioned in subsection (1) may either—
   (a) by notice in writing given to the person concerned, require the person concerned to provide the regulator with a report on the matter concerned, or
   (b) itself appoint a person to provide the regulator with a report on the matter concerned.

(4) When acting under subsection (3)(a), the regulator may require the report to be in such form as may be specified in the notice.

(5) The regulator must give notice of an appointment under subsection (3)(b) to the person concerned.

(6) The person appointed to make a report—
   (a) must be a person appearing to the regulator to have the skills necessary to make a report on the matter concerned, and
   (b) where the appointment is to be made by the person concerned, must be a person nominated or approved by the regulator.

(7) It is the duty of—
   (a) the person concerned, and
   (b) any person who is providing (or who has at any time provided) services to the person concerned in relation to the matter concerned,
to give the person appointed to prepare a report all such assistance as the appointed person may reasonably require.

(8) The obligation imposed by subsection (7) is enforceable, on the application of the regulator in question, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

(9) A regulator may make rules providing for expenses incurred by it in relation to an appointment under subsection (3)(b) to be payable as a fee by the person concerned.

(10) The powers conferred by this section may also be exercised by the FCA in relation to a person to whom subsection (11) applies, (and references to the person concerned are to be read accordingly).

(11) This subsection applies to—
   (a) a recognised investment exchange (“A”),
   (b) any other member of A’s group,
   (c) a partnership of which A is a member, or
   (d) a person who has at any time been a person falling within paragraph (a), (b) or (c),
who is, or was at the relevant time, carrying on a business.]

Textual Amendments
F1010 S. 166 substituted (24.1.2013 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. 12 para. 5 (with Sch. 20); S.I. 2013/113, art. 2(1)
c, Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
Appointment of skilled person to collect and update information

(1) This section applies if either regulator considers that an authorised person has contravened a requirement in rules made by that regulator to collect, and keep up to date, information of a description specified in the rules.

(2) The regulator may either—

(a) require the authorised person to appoint a skilled person to collect or update the information, or

(b) itself appoint a skilled person to do so.

(3) References in this section to a skilled person are to a person—

(a) appearing to the regulator to have the skills necessary to collect or update the information in question, and

(b) where the appointment is to be made by the authorised person, nominated or approved by the regulator.

(4) The regulator must give notice of an appointment under subsection (2)(b) to the authorised person.

(5) The skilled person may require any person to provide all such assistance as the skilled person may reasonably require to collect or update the information in question.

(6) A requirement imposed under subsection (5) is enforceable, on the application of the regulator in question, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

(7) A contractual or other requirement imposed on a person (“P”) to keep any information in confidence does not apply if—

(a) the information is or may be relevant to anything required to be done as a result of this section,

(b) an authorised person or a skilled person requests or requires P to provide the information for the purpose of securing that those things are done, and

(c) the regulator in question has approved the making of the request or the imposition of the requirement before it is made or imposed.
(8) An authorised person may provide information (whether received under subsection (7) or otherwise) that would otherwise be subject to a contractual or other requirement to keep it in confidence if it is provided for the purposes of anything required to be done as a result of this section.

(9) A regulator may make rules providing for expenses incurred by it in relation to an appointment under subsection (2)(b) to be payable as a fee by the authorised person.

(10) In this section “authorised person”, in relation to the PRA, means PRA-authorised person.

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**Appointment of investigators**

**167** Appointment of persons to carry out general investigations.

(1) If it appears to an investigating authority that there is good reason for doing so, the investigating authority may appoint one or more competent persons to conduct an investigation on its behalf into—

   (a) the nature, conduct or state of the business of a recognised investment exchange or an authorised person or of an appointed representative;

   (b) a particular aspect of that business; or

   (c) the ownership or control of a recognised investment exchange or an authorised person.

(2) If a person appointed under subsection (1) thinks it necessary for the purposes of his investigation, he may also investigate the business of a person who is or has at any relevant time been—

   (a) a member of the group of which the person under investigation (“A”) is part;

   (b) a partnership of which A is a member;

   (c) where A is an insurance undertaking, reinsurance undertaking or third-country insurance undertaking, a person who provides services to A.

(3) If a person appointed under subsection (1) decides to investigate the business of any person under subsection (2) he must give that person written notice of his decision.

(3A) If a person appointed under subsection (1) decides under subsection (2)(c) to investigate a person located in an EEA State other than the United Kingdom the person appointed must inform the supervisory authority of that EEA State prior to conducting an on-site inspection.
(4) The power conferred by this section may be exercised in relation to a former authorised person (or appointed representative) but only in relation to—
   (a) business carried on at any time when he was an authorised person (or appointed representative); or
   (b) the ownership or control of a former authorised person at any time when he was an authorised person.

(5) “Business” includes any part of a business even if it does not consist of carrying on regulated activities.

[F1019](5A) “Investigating authority” means—
   (a) in relation to a recognised investment exchange, the Secretary of State or the FCA;
   (b) in relation to an authorised person or former authorised person, the FCA or the PRA;
   (c) in relation to an appointed representative or former appointed representative, the FCA or the PRA.]

[F1020](6) References in subsection (1) to a recognised investment exchange do not include references to an overseas investment exchange (as defined by section 313(1)).]
168 Appointment of persons to carry out investigations in particular cases.

(1) Subsection (3) applies if it appears to an investigating authority that there are circumstances suggesting that—

(a) a person may be guilty of an offence under section 122F, 177, 191F, 346 or 398(1) or under Schedule 4.

(b) an offence under section 24(1) or under Part 7 of the Financial Services Act 2012 may have been committed;

(c) there may have been a breach of the general prohibition;

(d) a person has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation.

(2) Subsection (3) also applies if it appears to an investigating authority that there are circumstances suggesting that—

(a) an offence under section 20 may have been committed;

(b) there may have been a contravention of section 21 or 238; or

(c) a person has contravened a rule made by the investigating authority.

(3) The investigating authority may appoint one or more competent persons to conduct an investigation on its behalf.

(4) Subsection (5) applies if it appears to an investigating authority that there are circumstances suggesting that—

(a) a person may have contravened section 20;

(b) a person may be guilty of an offence under prescribed regulations relating to money laundering;

(c) a person may be guilty of an offence under Schedule 7 to the Counter-Terrorism Act 2008 (terrorist financing or money laundering);
(ca) a recognised investment exchange may have contravened the recognition requirements (within the meaning of Part 18);

(d) an individual may not be a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised or exempt person;

(e) an individual may have performed or agreed to perform a function in breach of a prohibition order;

(f) a person may have failed to comply with section 56(6);

(g) an authorised person may have failed to comply with section 59(1) or (2);

(h) a person in relation to whom has given its approval under section 59 may not be a fit and proper person to perform the function to which that approval relates;

(i) a person may have performed a controlled function without approval for the purposes of section 63A;

(j) a person may be guilty of misconduct for the purposes of section 66;

(ja) a person may have contravened—

(i) any provision made by or under this Act for the purpose of implementing the alternative investment fund managers directive;

(ii) any provision made by the Alternative Investment Fund Managers Regulations 2013;

(iii) implementing the UCITS Directive; or

(iv) any provision made by the Undertakings for Collective Investment in Transferable Securities Regulations 2011;

(jb) a person may have contravened—

(i) any provision made by or under this Act for the purposes of the market abuse regulation; or

(ii) a requirement imposed on that person under sections 122A to 122C, 122G to 122I, 123A or 123B;

(jc) a person may have been knowingly concerned in the contravention of—

(i) a provision of the market abuse regulation other than Article 14 (prohibition of insider dealing) or 15 (prohibition of market manipulation) of that regulation; or

(ii) a directly applicable EU regulation made under the market abuse regulation; or

(k) a person may have contravened a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

(5) The investigating authority may appoint one or more competent persons to conduct an investigation on its behalf.

(6) Investigating authority” means—

(a) in subsections (1) to (3), the FCA, the PRA or the Secretary of State;

(b) in subsections (4) and (5), the FCA or the PRA.
Textual Amendments

F1021S. 168(1)(a) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 8(2)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F1022Word in s. 168(1)(b) inserted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(8)(a)

F1023Word in s. 168(1)(b) substituted (24.1.2013 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. 12 para. 8(2)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F1024Words in s. 168(2)(a) omitted (1.1.2019) by virtue of Financial Guidance and Claims Act 2018 (c. 10), s. 3(5), Sch. 3 para. 18; S.I. 2018/1330, reg. 2(g)(v)

F1025Words in s. 168(2)(a) substituted (24.1.2013 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. 12 para. 8(3)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F1026S. 168(2)(ba) inserted (24.1.2013 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. 12 para. 8(3)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F1027S. 168(2)(d) substituted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(8)(b)

F1028Words in s. 168(4) substituted (24.1.2013 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. 12 para. 8(4)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F1029S. 168(4)(ba) inserted (27.11.2008) by Counter-Terrorism Act 2008 (c. 28), ss. 62, 100(2), Sch. 7 para. 33(3) (with s. 101(2), Sch. 7 para. 43)

F1030Words in s. 168(4)(c) substituted (8.4.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(1), Sch. 2 para. 16(2)

F1031Words in s. 168(4)(c) substituted (24.1.2013 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. 12 para. 8(4)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F1032S. 168(4)(ca) inserted (24.1.2013 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. 12 para. 8(4)(c) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F1033Words in s. 168(4)(f) substituted (24.1.2013 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. 12 para. 8(4)(d) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F1034Words in s. 168(4)(h) substituted (24.1.2013 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. 12 para. 8(4)(e) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F1035Word in s. 168(4) omitted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by virtue of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(5), Sch. 5 para. 8(a)

F1036S. 168(4)(ha) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(d)(e), Sch. 2 para. 16(3)

F1037S. 168(4)(j) and preceding word 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(5), Sch. 5 para. 8(b)


F1039Words in s. 168(4)(j) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 8(4)(f) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes
F1040 S. 168(4)(ja) inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 10

F1041 Word in s. 168(4)(ja)(i) omitted (18.3.2016) by virtue of The Undertakings for Collective Investment in Transferable Securities Regulations 2016 (S.I. 2016/225), regs. 1, 2(4)(a)

F1042 Word in s. 168(4)(ja)(ii) omitted (18.3.2016) by virtue of The Undertakings for Collective Investment in Transferable Securities Regulations 2016 (S.I. 2016/225), regs. 1, 2(4)(a)


F1046 S. 168(4)(k) substituted (24.1.2013) 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. 12 para. 8(4)(g) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F1047 Words in s. 168(5) substituted (24.1.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 8(5) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F1048 S. 168(6) substituted (24.1.2013 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. 12 para. 8(6) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)


C493 S. 168 applied (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), regs. 1, 52(4), 53(3)

C494 S. 168 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 50(2)


S. 168(3)(5) applied (1.12.2001) by S.I. 2001/3083, arts. 1(2), 18(1)(3); S.I. 2001/3538, art. 2(1)


Investigations etc. in support of overseas regulator.

(1) At the request of an overseas regulator, a regulator may—
   (a) exercise the power conferred by section 165; or
   (b) appoint one or more competent persons to investigate any matter.

(2) An investigator has the same powers as an investigator appointed under section 168(3) (as a result of subsection (1) of that section).

(2A) But where the investigator is—
   (a) appointed by the FCA, and
   (b) the appointment is in response to a request to the FCA to investigate a possible contravention by a person of Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation,

   the investigator has the same powers as an investigator appointed under section 168(3) (as a result of subsection (2) of that section).

(3) If the request has been made by a competent authority in pursuance of any EU obligation the regulator must, in deciding whether or not to exercise its investigative power, consider whether its exercise is necessary to comply with any such obligation.

(4) In deciding whether or not to exercise its investigative power, the regulator 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.

(5) The regulator may decide that it will not exercise its investigative power unless the overseas regulator undertakes to make such contribution towards the cost of its exercise as the regulator considers appropriate.
(6) Subsections (4) and (5) do not apply if the regulator considers that the exercise of its investigative power is necessary to comply with an EU obligation.

(7) If a regulator has appointed an investigator in response to a request from an overseas regulator, it may direct the investigator to permit a representative of that regulator to attend, and take part in, any interview conducted for the purposes of the investigation.

(8) A direction under subsection (7) is not to be given unless the regulator is satisfied that any information obtained by an overseas regulator as a result of the interview will be subject to safeguards equivalent to those contained in Part XXIII.

(9) Each regulator must prepare a statement of its policy with respect to the conduct of interviews in relation to which a direction under subsection (7) has been given.

(10) The statement requires the approval of the Treasury.

(11) If the Treasury approve the statement, the regulator must publish it.

(12) No direction may be given under subsection (7) before the statement has been published.

(13) “Overseas regulator” has the same meaning as in section 195.

(14) “Investigative power” means one of the powers mentioned in subsection (1).

(15) “Investigator” means a person appointed under subsection (1)(b).
Support of overseas regulator with respect to financial stability

(1) At the request of an overseas regulator, the PRA may exercise a corresponding section 165A power.

(2) An “overseas regulator” means an authority in a country or territory outside the United Kingdom which exercises functions with respect to the stability of the financial system operating in that country or territory.

(3) A “corresponding section 165A power” means a power corresponding to the one conferred by section 165A, but reading references in that section to the stability of the UK financial system as references to the stability of the financial system operating in the country or territory of the overseas regulator.

(4) The following provisions apply in relation to the exercise of the corresponding section 165A power—

(a) section 165B(1) to (5); and
(b) section 169(3), (4)(a) and (d), (5) and (6).

(5) In this section “the financial system” includes—

(a) financial markets and exchanges;
(b) activities that would be regulated activities if carried on in the United Kingdom; and
(c) other activities connected with financial markets and exchanges.

Textual Amendments

F1060 S. 169A inserted (8.6.2010) by Financial Services Act (c. 28), {ss. 18(3)}, 26(2)
F1061 Word in s. 169A(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 10 (with Sch. 20); S.I. 2013/423, art. 3, Sch.
Conduct of investigations

170 Investigations: general.

(1) This section applies if an investigating authority appoints one or more competent persons (“investigators”) under section 167 or 168(3) or (5) to conduct an investigation on its behalf.

(2) The investigating authority must give written notice of the appointment of an investigator to the person who is the subject of the investigation (“the person under investigation”).

(3) Subsections (2) and (9) do not apply if —
   (a) the investigator is appointed as a result of section 168(1) or (4) and the investigating authority believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated; or
   (b) the investigator is appointed as a result of subsection (2) of section 168.

(4) A notice under subsection (2) must—
   (a) specify the provisions under which, and as a result of which, the investigator was appointed; and
   (b) state the reason for his appointment.

(5) Nothing prevents the investigating authority from appointing a person who is a member of its staff as an investigator.

(6) An investigator must make a report of his investigation to the investigating authority.

(7) The investigating authority may, by a direction to an investigator, control—
   (a) the scope of the investigation;
   (b) the period during which the investigation is to be conducted;
   (c) the conduct of the investigation; and
   (d) the reporting of the investigation.

(8) A direction may, in particular—
   (a) confine the investigation to particular matters;
   (b) extend the investigation to additional matters;
   (c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction;
   (d) require the investigator to make such interim reports as are so specified.

(9) If there is a change in the scope or conduct of the investigation and, in the opinion of the investigating authority, the person subject to investigation is likely to be significantly prejudiced by not being made aware of it, that person must be given written notice of the change.

(10) “Investigating authority”, in relation to an investigator, means—
   [F1062]
   (a) the FCA, if the FCA appointed the investigator;
   (aa) the PRA, if the PRA appointed the investigator;
   (b) the Secretary of State, if the Secretary of State appointed the investigator.]
171 Powers of persons appointed under section 167.

(1) An investigator may require the person who is the subject of the investigation ("the person under investigation") or any person connected with the person under investigation—
   (a) to attend before the investigator at a specified time and place and answer questions; or
   (b) otherwise to provide such information as the investigator may require.

(2) An investigator may also require any person to produce at a specified time and place any specified documents or documents of a specified description.

(3) A requirement under subsection (1) or (2) may be imposed only so far as the investigator concerned reasonably considers the question, provision of information or production of the document to be relevant to the purposes of the investigation.

[F1063(3A) Where the investigation relates to a recognised investment exchange, an investigator has the additional powers conferred by sections 172 and 173 (and for this purpose references in those sections to an investigator are to be read accordingly).]

(4) For the purposes of this section and section 172, a person is connected with the person under investigation ("A") if he is or has at any relevant time been—
   (a) a member of A’s group;
   (b) a controller of A;
   (c) a partnership of which A is a member; or
   (d) in relation to A, a person mentioned in Part I or II of Schedule 15.

(5) “Investigator” means a person conducting an investigation under section 167.

(6) “Specified” means specified in a notice in writing.

[F1064(7) The reference in subsection (3A) to a recognised investment exchange does not include a reference to an overseas investment exchange (as defined by section 313(1)).]
172 Additional power of persons appointed as a result of section 168(1) or (4).

(1) An investigator has the powers conferred by section 171.

(2) An investigator may also require a person who is neither the subject of the investigation (“the person under investigation”) nor a person connected with the person under investigation—
   (a) to attend before the investigator at a specified time and place and answer questions; or
   (b) otherwise to provide such information as the investigator may require for the purposes of the investigation.

(3) A requirement may only be imposed under subsection (2) if the investigator is satisfied that the requirement is necessary or expedient for the purposes of the investigation.

(4) “Investigator” means a person appointed as a result of subsection (1) or (4) of section 168.

(5) “Specified” means specified in a notice in writing.

173 Powers of persons appointed as a result of section 168(2).

(1) Subsections (2) to (4) apply if an investigator considers that any person (“A”) is or may be able to give information which is or may be relevant to the investigation.

(2) The investigator may require A—
(a) to attend before him at a specified time and place and answer questions; or
(b) otherwise to provide such information as he may require for the purposes of the investigation.

(3) The investigator may also require A to produce at a specified time and place any specified documents or documents of a specified description which appear to the investigator to relate to any matter relevant to the investigation.

(4) The investigator may also otherwise require A to give him all assistance in connection with the investigation which A is reasonably able to give.

(5) “Investigator” means a person appointed under subsection (3) of section 168 (as a result of subsection (2) of that section).

174 Admissibility of statements made to investigators.

(1) A statement made to an investigator by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

(2) But in criminal proceedings in which that person is charged with an offence to which this subsection applies or in proceedings in relation to action to be taken against that person under section 123 [F1065 to which this subsection applies]—
   (a) no evidence relating to the statement may be adduced, and
   (b) no question relating to it may be asked,
by or on behalf of the prosecution or (as the case may be) [F1066 a regulator], unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Subsection (2) applies to any offence other than one—
   (a) under section 177(4) or 398;
   (b) under section 5 of the [M10]Perjury Act 1911 (false statements made otherwise than on oath);
   (c) under section 44(2) of the [M11]Criminal Law (Consolidation)(Scotland) Act 1995 (false statements made otherwise than on oath); or
   (d) under Article 10 of the [M12]Perjury (Northern Ireland) Order 1979.

[F1067 3A] Subsection (2) applies to proceedings in relation to action to be taken under section 123(2) or (3) against a person who may have contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation.

(4) “Investigator” means a person appointed under section 167 or 168(3) or (5) [F1068 or a person appointed under section 169 who has the powers conferred by virtue of subsection (2A) of that section].
(5) “Information requirement” means a requirement imposed by an investigator under section 171, 172, 173 or 175.
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CHAPTER 5 – Power to make consequential amendments

(b) that it might otherwise be unavailable for those purposes, it may be retained until the proceedings are concluded.]

(3) If a person who is required under this Part to produce a document fails to do so, the [F1071 regulator] or an investigator may require him to state, to the best of his knowledge and belief, where the document is.

(4) A lawyer may be required under this Part to furnish the name and address of his client.

(5) No person may be required under this Part to disclose information or produce a document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

(a) he is the person under investigation or a member of that person’s group;

(b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person’s group;

(c) the person to whom the obligation of confidence is owed consents to the disclosure or production; or

(d) the imposing on him of a requirement with respect to such information or document has been specifically authorised by the investigating authority.

(6) If a person claims a lien on a document, its production under this Part does not affect the lien.

(7) “Relevant person”, in relation to a person who is required to produce a document, means a person who—

(a) has been or is or is proposed to be a director or controller of that person;

(b) has been or is an auditor of that person;

(c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or

(d) has been or is an employee of that person.

(8) “Investigator” means a person appointed under section 167 or 168(3) or (5).

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**Textual Amendments**

F1069 Words in s. 175(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 13(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1070S. 175(2A)(2B) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 13(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1071 Word in s. 175(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 13(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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


C521 S. 175 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), reg. 17

C522 S. 175 applied (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), regs. 1, 71(2)(e)
Entry of premises under warrant.

(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, either regulator or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.

(2) The first set of conditions is—
   (a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it; and
   (b) that on the premises specified in the warrant—
      (i) there are documents which have been required; or
      (ii) there is information which has been required.

(3) The second set of conditions is—
   (a) that the premises specified in the warrant are premises of an authorised person or an appointed representative;
   (b) that there are on the premises documents or information in relation to which an information requirement could be imposed; and
   (c) that if such a requirement were to be imposed—
      (i) it would not be complied with; or
      (ii) the documents or information to which it related would be removed, tampered with or destroyed.

(4) The third set of conditions is—
   (a) that an offence mentioned in section 168 for which the maximum sentence on conviction on indictment is two years or more has been (or is being) committed by any person;
   (b) that there are on the premises specified in the warrant documents or information relevant to whether that offence has been (or is being) committed;
   (c) that an information requirement could be imposed in relation to those documents or information; and
(d) that if such a requirement were to be imposed—
   (i) it would not be complied with; or
   (ii) the documents or information to which it related would be removed,
       tampered with or destroyed.

(5) A warrant under this section shall authorise a constable—
   (a) to enter the premises specified in the warrant;
   (b) to search the premises and take possession of any documents or information
       appearing to be documents or information of a kind in respect of which a
       warrant under this section was issued (“the relevant kind”) or to take, in
       relation to any such documents or information, any other steps which may
       appear to be necessary for preserving them or preventing interference with
       them;
   (c) to take copies of, or extracts from, any documents or information appearing
       to be of the relevant kind;
   (d) to require any person on the premises to provide an explanation of any
       document or information appearing to be of the relevant kind or to state where
       it may be found; and
   (e) to use such force as may be reasonably necessary.

(5A) A warrant under this section may be executed by any constable.

(5B) The warrant may authorise persons to accompany any constable who is executing it.

(5C) The powers in subsection (5) may be exercised by a person authorised by the warrant
   to accompany a constable; but that person may exercise those powers only in the
   company of, and under the supervision of, a constable.

(6) In England and Wales, sections 15(5) to (8) and section 16(3) to (12)
    of the Police and Criminal Evidence Act 1984 (execution of search warrants and
    safeguards) apply to warrants issued under this section.

(7) In Northern Ireland, Articles 17(5) to (8) and 18(3) to (12)
    of the Police and Criminal Evidence (Northern Ireland) Order 1989 apply to warrants issued under this section.

(8) In the application of this section to Scotland—
   (a) for the references to a justice of the peace substitute references to a justice of
       the peace or a sheriff; and
   (b) for the references to information on oath substitute references to evidence on
       oath.

(9) “Investigator” means a person appointed under section 167 or 168(3) or (5).

(10) “Information requirement” means a requirement imposed—
    (a) by a regulator under section 87C, 87J, 165, 169A or 175; or
    (b) by an investigator under section 171, 172, 173 or 175.
Financial Services and Markets Act 2000 (c. 8)
Part XI – Information Gathering and Investigations
CHAPTER 5 – Power to make consequential amendments
Document Generated: 2019-12-18

Status: This version of this Act contains provisions that are prospective.
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments
F1072 Words in s. 176(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 14(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1073 S. 176(5A)-(5C) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 14(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1074 Words in s. 176(6) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 14(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1075 Words in s. 176(7) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 14(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1076 S. 176(8) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 14(6) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1077 Words in s. 176(11)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 14(7) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1078 Words in s. 176(11)(a) inserted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), Sch. 1 para. 12
F1079 Words in s. 176(11)(a) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(d)(e), Sch. 2 para. 17

Modifications etc. (not altering text)
C530 S. 176 extended (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, s. 62A (as inserted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. 1 para. 77 (with art. 13(3), Sch. 5)); S.I. 2001/3538, art. 2(1)
S. 176 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 52B (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. 1 para. 151 (with art. 13(3), Sch. 5)); S.I. 2001/3538, art. 2(1)
C535 S. 176(1)-(9) applied (1.12.2001) by S.I. 2001/1228, regs. 1(2)(c), 30(7) (with reg. 1(2)(3)); S.I. 2001/3538, art. 2(1)
C536 S. 176(1)-(8) applied (with modifications) (N.I.) (1.1.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), 30(7) (with reg. 1(2))
C537 S. 176(1)-(3) applied (with modifications) (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), regs. 1(2), 14
C538 S. 176(2) extended (1.12.2001) by S.I. 2001/3646, arts. 1(1), 13(2)
Retention of documents taken under section 176

(1) Any document of which possession is taken under section 176 (“a seized document”) may be retained so long as it is necessary to retain it (rather than copies of it) in the circumstances.

(2) A person claiming to be the owner of a seized document may apply to a magistrates’ court or (in Scotland) the sheriff for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.

(3) If on an application under subsection (2) the court or (in Scotland) the sheriff cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.

(4) An order under subsection (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.

(5) Any right to bring proceedings (as described in subsection (4)) may only be exercised within 6 months of the date of the order made under subsection (2) or (3).]

Textual Amendments

F1080 S. 176A inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 15 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C544 S. 176A applied (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), regs. 1, 71(2)(g)

C545 S. 176A applied (with modifications) (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), regs. 1(2), 14


Offences

177 Offences.

(1) If a person other than the investigator (“the defaulter”) fails to comply with a requirement imposed on him under this Part the person imposing the requirement may certify that fact in writing to the court.

(2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and in the case of a body corporate, any director or other officer) as if he were in contempt; and “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.

(3) A person who knows or suspects that an investigation is being or is likely to be conducted under this Part is guilty of an offence if—
   (a) he falsifies, conceals, destroys or otherwise disposes of a document which he knows or suspects is or would be relevant to such an investigation, or
   (b) he causes or permits the falsification, concealment, destruction or disposal of such a document,

unless he shows that he had no intention of concealing facts disclosed by the documents from the investigator.

(4) A person who, in purported compliance with a requirement imposed on him under this Part—
   (a) provides information which he knows to be false or misleading in a material particular, or
   (b) recklessly provides information which is false or misleading in a material particular,

is guilty of an offence.

(5) A person guilty of an offence under subsection (3) or (4) is liable—
   (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
   (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(6) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under section 176 is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.

(7) In this section—
   “court” means—
   (a) the High Court;
   (b) in Scotland, the Court of Session;
   “investigator appointed by the FCA” means an investigator appointed by the FCA under section 167, 168 or 169;
   “officer of the FCA” means an officer authorised by the FCA for the purposes of section 165(3).]
Part XII

CONTROL OVER AUTHORISED PERSONS

Modifications etc. (not altering text)

C556 Pt. 12 modified (1.12.2001) by S.I. 2001/3592, arts. 1(2), 114(3)(a) (with art. 23(2))


C558 Pt. 12 excluded (26.7.2013 for specified purposes, 2.9.2013 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(5), 59(7)
Notifications of acquisitions of control over UK authorised persons

Obligation to notify the appropriate regulator: acquisitions of control

1. A person who decides to acquire or increase control over a UK authorised person must give the appropriate regulator notice in writing before making the acquisition.

2. For the purposes of calculations relating to this section, the holding of shares or voting power by a person (“A1”) includes any shares or voting power held by another (“A2”) if A1 and A2 are acting in concert.

[This section does not apply if the only regulated activity for which the UK authorised person has a Part 4A permission is the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).]

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.

3. In this Part, a notice given under this section is a “section 178 notice” and a person giving notice is a “section 178 notice-giver”.

Editorial Information

X2 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments


F1085 Words in Pt. 12 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 26(2), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

X179 Requirements for section 178 notices

(1) A section 178 notice must be in such form, include such information and be accompanied by such documents as the appropriate regulator may reasonably require.

(2) Each regulator must publish a list of its requirements as to the form, information and accompanying documents for a section 178 notice.

(3) The appropriate regulator may impose different requirements for different cases and may vary or waive requirements in particular cases.

X4180 Acknowledgment of receipt

(1) The appropriate regulator must acknowledge receipt of a completed section 178 notice in writing before the end of the second working day following receipt.

(2) If the appropriate regulator receives an incomplete section 178 notice it must inform the section 178 notice-giver as soon as reasonably practicable.
Acquiring control and other changes of holding

X5 181  Acquiring control

(1) For the purposes of this Part, a person (“A”) acquires control over a UK authorised person (“B”) if any of the cases in subsection (2) begin to apply.

(2) The cases are where A holds—

(a) 10% or more of the shares in B or in a parent undertaking of B (“P”);  
(b) 10% or more of the voting power in B or P; or  
(c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

Editorial Information

X5 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

X6 182  Increasing control

(1) For the purposes of this Part, a person (“A”) increases control over a UK authorised person (“B”) whenever—

(a) the percentage of shares which A holds in B or in a parent undertaking of B (“P”) increases by any of the steps mentioned in subsection (2);  
(b) the percentage of voting power A holds in B or P increases by any of the steps mentioned in subsection (2); or  
(c) A becomes a parent undertaking of B.

(2) The steps are—

(a) from less than 20% to 20% or more;  
(b) from less than 30% to 30% or more;  
(c) from less than 50% to 50% or more.

Editorial Information

X6 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

X7 183  Reducing or ceasing to have control

(1) For the purposes of this Part, a person (“A”) reduces control over a UK authorised person (“B”) whenever—

(a) the percentage of shares which A holds in B or in a parent undertaking of B (“P”) decreases by any of the steps mentioned in subsection (2);
(b) the percentage of voting power which A holds in B or P decreases by any of the steps mentioned in subsection (2); or

(c) A ceases to be a parent undertaking of B.

(2) The steps are—

(a) from 50% or more to less than 50%;

(b) from 30% or more to less than 30%;

(c) from 20% or more to less than 20%.

(3) For the purposes of this Part, a person (“A”) ceases to have control over a UK authorised person (“B”) if A ceases to be in the position of holding—

(a) 10% or more of the shares in B or in a parent undertaking of B (“P”);

(b) 10% or more of the voting power in B or P; or

(c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

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**Editorial Information**

X7 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

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**X8 184 Disregarded holdings**

(1) For the purposes of sections 181 to 183, shares and voting power that a person holds in a UK authorised person (“B”) or in a parent undertaking of B (“P”) are disregarded in the following circumstances.

(2) Shares held only for the purposes of clearing and settling within a short settlement cycle are disregarded.

(3) Shares held by a custodian or its nominee in a custodian capacity are disregarded, provided that the custodian or nominee is only able to exercise voting power represented by the shares in accordance with instructions given in writing.

(4) Shares representing no more than 5% of the total voting power in B or P held by an investment firm are disregarded, provided that it—

(a) holds the shares in the capacity of a market maker (as defined in article F1097.4.1.7 of the markets in financial instruments directive);

(b) is authorised by its home state regulator under the markets in financial instruments directive; and

(c) neither intervenes in the management of B or P nor exerts any influence on B or P to buy the shares or back the share price.

(5) Shares held by a credit institution or investment firm in its trading book are disregarded, provided that—

(a) the shares represent no more than 5% of the total voting power in B or P; and

(b) the voting power is not used to intervene in the management of B or P.

(6) Shares held by a credit institution or an investment firm are disregarded, provided that—
(a) the shares are held as a result of performing the investment services and activities of—
   (i) underwriting a share issue; or
   (ii) placing shares on a firm commitment basis in accordance with Annex I, section A.6 of the markets in financial instruments directive; and

(b) the credit institution or investment firm—
   (i) does not exercise voting power represented by the shares or otherwise intervene in the management of the issuer; and
   (ii) retains the holding for a period of less than one year.

(7) Where a management company (as defined in Article 2.1(b) of the UCITS directive) and its parent undertaking both hold shares or voting power, each may disregard holdings of the other, provided that each exercises its voting power independently of the other.

(8) But subsection (7) does not apply if the management company—
   (a) manages holdings for its parent undertaking or a controlled undertaking of the parent undertaking;
   (b) has no discretion as to the exercise of the voting power attached to such holdings; and
   (c) may only exercise the voting power in relation to such holdings under direct or indirect instruction from—
      (i) the parent undertaking; or
      (ii) a controlled undertaking of the parent undertaking.

(9) Where an investment firm and its parent undertaking both hold shares or voting power, the parent undertaking may disregard holdings managed by the investment firm on a client by client basis and the investment firm may disregard holdings of the parent undertaking, provided that the investment firm—
   (a) has permission to provide portfolio management;
   (b) exercises its voting power independently from the parent undertaking; and
   (c) may only exercise the voting power under instructions given in writing, or has appropriate mechanisms in place for ensuring that individual portfolio management services are conducted independently of any other services.

(9A) Shares acquired for stabilisation purposes in accordance with the market abuse regulation and the Commission Delegated Regulation (EU) No. 1052/2016 of 8 March 2016 supplementing Regulation (EU) No. 596/2014 of the European Parliament and the Council with regard to the regulatory technical standards for conditions applicable to buy-back programmes and stabilisation measures are disregarded, provided that the voting power attached to those shares is not exercised or otherwise used to intervene in the management of B or P.

(10) For the purposes of this section, an undertaking is a controlled undertaking of the parent undertaking if it is controlled by the parent undertaking; and for this purpose the question of whether one undertaking controls another is to be determined in accordance with section 89J(4) and (5).
the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments


F1090 Words in s. 184(5)(b) omitted (1.11.2015 for specified purposes, 31.5.2016 in so far as not already in force) by virtue of The Transparency Regulations 2015 (S.I. 2015/1755), regs. 1(2)(4), 6(1)(a)

F1091 Words in s. 184(7) substituted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), reg. 2(6)

F1092 S. 184(8)(a) substituted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 10(a)

F1093 S. 184(8)(c)(ii) substituted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 10(b)

F1094 S. 184(9A) inserted (1.1.2015 for specified purposes, 31.5.2016 in so far as not already in force) by The Transparency Regulations 2015 (S.I. 2015/1755), regs. 1(2)(4), 6(1)(b)

F1095 Words in s. 184(9A) substituted (23.3.2019) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(2)(a), 49(e)

F1096 S. 184(10) inserted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 10(c)

Assessment procedure

X9 185 Assessment: general

(1) Where the appropriate regulator receives a section 178 notice, it must—
(a) determine whether to approve the acquisition to which it relates unconditionally; or
(b) propose to—
(i) approve the acquisition subject to conditions (see section 187); or
(ii) object to the acquisition.

(2) The appropriate regulator must—
(a) consider the suitability of the section 178 notice-giver and the financial soundness of the acquisition in order to ensure the sound and prudent management of the UK authorised person;
(b) have regard to the likely influence that the section 178 notice-giver will have on the UK authorised person; and
(c) disregard the economic needs of the market.

(3) The appropriate regulator may only object to an acquisition—
(a) if there are reasonable grounds for doing so on the basis of the matters set out in section 186; or
(b) if the information provided by the section 178 notice-giver is incomplete.
Assessment criteria

The matters specified in section 185(3)(a) are—

(a) the reputation of the section 178 notice-giver;

(b) the reputation, knowledge, skills and experience of any person who will direct the business of the UK authorised person as a result of the proposed acquisition;

(c) the financial soundness of the section 178 notice-giver, in particular in relation to the type of business that the UK authorised person pursues or envisages pursuing;

(d) whether the UK authorised person will be able to comply with its prudential requirements (including the threshold conditions in relation to all of the regulated activities for which it has or will have permission);

(e) if the UK authorised person is to become part of a group as a result of the acquisition, whether that group has a structure which makes it possible to—

   (i) exercise effective supervision;
   (ii) exchange information among regulators; and
   (iii) determine the allocation of responsibility among regulators; and

(f) whether there are reasonable grounds to suspect that in connection with the proposed acquisition—

   (i) money laundering or terrorist financing (within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing) is being or has been committed or attempted; or
   (ii) the risk of such activity could increase.
X11   Approval with conditions

(1) The appropriate regulator may impose conditions on its approval of an acquisition.

(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).

(3) The appropriate regulator may not impose conditions requiring a particular level of holding to be acquired.

(4) The appropriate regulator may vary or cancel the conditions.

Editorial Information

X11 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F1085 Words in Pt. 12 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 26(2), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1098 S. 187(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 26(5), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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.

Where the PRA notifies the FCA that it is required by section 189(1ZB) to act in a timely manner, the FCA may take action under subsection (2), (3) or (4) after the time it receives that notification only if that action is taken as soon as reasonably practicable after that time.

(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.

Textual Amendments

F1099 Ss. 187A-187C inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 26(6), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1100 S. 187A(5A) inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 117

F1101 Words in s. 187A(5A) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 38 (with Sch. 3); S.I. 2017/43, reg. 2(g)

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.

(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).

Assessment: consultation with EC competent authorities

(1) The appropriate regulator must consult any appropriate home state regulator before making a determination under section 185 and, in doing so, must comply with such requirements as to consultation as may be prescribed.

(2) Where the appropriate regulator makes a determination under section 185, it must indicate any views or reservations received from any home state regulator it consults in accordance with subsection (1).

(3) The appropriate regulator must cooperate with any equivalent consultation in relation to a UK authorised person by the home state regulator of an EEA firm.

(4) In order to comply with an obligation under subsection (1) or (3), the appropriate regulator must provide the regulator with—
   (a) any relevant information that it requests; and
   (b) any information that the appropriate regulator considers that it needs.
189  Assessment: Procedure

(1) The appropriate regulator must act under section 185 within a period of 60 working days beginning with the day on which the appropriate regulator acknowledges receipt of the section 178 notice ("the assessment period").

Where the appropriate regulator is the FCA and the section 178 notice relates to an acquisition or increase of control over a credit institution, investment firm or banking group company, the Bank of England, acting in the exercise of its functions under sections 6A to 6C of the Banking Act 2009 or under the special resolution regime under Part 1 of that Act, may direct the appropriate regulator to act under this Part in a timely manner, and to shorten the assessment period so far as reasonably practicable.

Where the appropriate regulator is the PRA and—

(a) the section 178 notice relates to an acquisition or increase of control over a credit institution, investment firm or banking group company, and

(b) the credit institution, investment firm or banking group company is one in relation to which the Bank of England is exercising its functions under sections 6A to 6C of the Banking Act 2009 or the special resolution regime under Part 1 of that Act,

the PRA must act under this Part in a timely manner, and shorten the assessment period so far as reasonably practicable.

(1B) In subsections (1A) and (1ZB)—

“banking group company” has the meaning given in section 81D of the Banking Act 2009.

(2) The assessment period may be interrupted, no more than once, in accordance with section 190.

(3) The appropriate regulator must inform the section 178 notice-giver in writing of—

(a) the duration of the assessment period;

(b) its expiry date; and

(c) any change to the expiry date by virtue of section 190.

(4) The appropriate regulator must, within two working days of acting under section 185 (and in any event no later than the expiry date of the assessment period)—
(a) notify the section 178 notice-giver that it has determined to approve the acquisition unconditionally; or
(b) give a warning notice stating that it proposes to—
   (i) approve the acquisition subject to conditions; or
   (ii) object to the acquisition.

(5) Where the appropriate regulator gives a warning notice stating that it proposes to approve the acquisition subject to conditions—
   (a) it must, in the warning notice, specify those conditions; and
   (b) the conditions take effect as interim conditions.

(6) Unless section 190A applies] the appropriate regulator is treated as having approved the acquisition if, at the expiry of the assessment period, it has neither—
   (a) given notice under subsection (4); nor
   (b) informed the section 178 notice-giver that the section 178 notice is incomplete.

(7) If the appropriate regulator decides to approve an acquisition subject to conditions or to object to an acquisition it must give the section 178 notice-giver a decision notice.

(8) Following receipt of a decision notice under this section, the section 178 notice-giver may refer the appropriate regulator’s decision to the Tribunal.
Requests for further information

(1) The [F1085] appropriate regulator] may, no later than the 50th working day of the assessment period, in writing ask the section 178 notice-giver to provide any further information necessary to complete its assessment.

[F1110] (1A) [F1111] But where a direction has been given by the Bank of England under section 189(1A) [F1112] or section 189(1ZB) applies], the appropriate regulator must, as soon as reasonably practicable, ask the section 178 notice-giver to provide any further information necessary to complete its assessment.

(2) On the first occasion that the [F1085] appropriate regulator] asks for further information, the assessment period is interrupted from the date of the request until the date the [F1085] appropriate regulator] receives the requested information (“the interruption period”).

(3) But the interruption period may not exceed 20 working days, unless subsection (4) applies.

(4) The interruption period may not exceed 30 working days if the notice-giver—

(a) is situated or regulated outside the [F1113] European Union]; or

(b) is not subject to supervision under—

(i) the UCITS directive;

(ii) the Solvency 2 Directive;

(iii) the markets in financial instruments directive; or

(iv) the capital requirements directive.

(5) The [F1085] appropriate regulator] may make further requests for information (but a further request does not result in a further interruption of the assessment period).

(6) The [F1085] appropriate regulator] must acknowledge in writing receipt of further information before the end of the second working day following receipt.
Assessment and resolution

(1) This section applies if—

(a) the appropriate regulator receives a section 178 notice in relation to a credit institution, investment firm or banking group company,

(b) as a result of a direction under section 189(1A) or the application of section 189(1ZB), the appropriate regulator is required to act under this Part in a timely manner in relation to that notice, and

(c) the appropriate regulator does not complete the assessment required by section 185 before a relevant transfer instrument has been made by the Bank of England which transfers shares issued by, or voting power in, that credit institution, investment firm or banking group company.

(2) The transfer of shares or voting takes effect in accordance with the terms of the relevant transfer instrument, but the right of the person who acquires shares under that instrument (“the acquirer”) to exercise the voting power represented by those shares is suspended.

(3) During the suspension, the voting power represented by the shares in question may be exercised by the Bank (and only by the Bank).

(4) If the appropriate regulator issues a decision notice under section 189(7) objecting to the acquisition, the Bank may direct the acquirer to sell the shares within a period specified by the Bank in the direction (“the sale period”).

(5) In determining the sale period, the Bank must take account of prevailing market conditions.

(6) The suspension provided for in subsection (2) ends—

(a) if the appropriate regulator gives notice under section 189(4)(a) or (b)(i) that it approves the acquisition, on the date of that notice, or

(b) if the Bank gives a direction under subsection (4), on the earlier of the day on which the sale period ends and the day on which the shares are sold.

(7) In this section a “relevant transfer instrument” means an instrument made by the Bank acting in the exercise of its functions under sections 6A to 6C of the Banking Act 2009 or under the special resolution regime under Part 1 of that Act, which transfers, or has the effect of transferring, shares issued by, or voting power in, the credit institution, investment firm or banking group company.

Textual Amendments


X15191 Duration of approval

(1) Approval of an acquisition (whether granted unconditionally or subject to conditions) is effective for such period as the appropriate regulator may specify in writing.

(2) Where the appropriate regulator has specified a period under subsection (1), it may extend the period.
(3) Where the \[F1085\] appropriate regulator] has not specified a period, the approval is effective for one year beginning with the date—
   (a) of the notice given under section 189(4)(a) or (b)(i);
   (b) on which the \[F1085\] appropriate regulator] is treated as having given approval under section 189(6); or
   (c) of a decision on a reference to the Tribunal which results in the person receiving approval.

Editorial Information
X15 The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments
\[F1085\] Words in Pt. 12 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 26(2), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Enforcement procedures

191A Objection by the \[F1085\] appropriate regulator]

(1) The \[F1085\] appropriate regulator] may object to a person's control over a UK authorised person in any of the circumstances specified in subsection (2).

(2) The circumstances are that the \[F1085\] appropriate regulator] reasonably believes that—
   (a) the person acquired or increased control without giving notice under section 178(1) in circumstances where notice was required;
   (b) the person is in breach of a condition imposed under section 187; or
   (c) there are grounds for objecting to control on the basis of the matters in section 186.

(3) The \[F1085\] appropriate regulator]—
   (a) must take into account whether influence exercised by the person is likely to operate to the detriment of the sound and prudent management of the UK authorised person; and
   (b) may take into account whether the person has co-operated with any information requests made or requirements imposed by the \[F1085\] appropriate regulator].

(4) If the \[F1085\] appropriate regulator] proposes to object to a person's control over a UK authorised person, it must give that person a warning notice.

Where the appropriate regulator is the PRA, it must consult the FCA before giving a \[F1115\] warning notice under this section.

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-authorized person, or
(b) the person to whom the warning notice is to be given is a PRA-authorised person.]

(5) The [F1085appropriate regulator] must consult any appropriate home state regulator before giving a warning notice under this section and, in doing so, must comply with such requirements as to consultation as may be prescribed.

(6) If the [F1085appropriate regulator] decides to object to a person's control over a UK authorised person, it must give that person a decision notice.

(7) A person to whom the [F1085appropriate regulator] gives a decision notice under this section may refer the matter to the Tribunal.

191B Restriction notices

(1) The [F1085appropriate regulator] may give notice in writing (a “restriction notice”) to a person in the following circumstances.

(2) The circumstances are that—

(a) the person has control over a UK authorised person by virtue of holding shares or voting power; and

(b) in relation to the shares or voting power, the [F1085appropriate regulator] has given the person a warning notice or a decision notice under section 189 or 191A or a final notice which confirms a decision notice given under section 189 or 191A.

[Where the appropriate regulator is the PRA, it must consult the FCA before giving a restriction notice under this section.

(2A) 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

(b) the person to whom the restriction notice is to be given is a PRA-authorised person.]

(3) In a restriction notice, the [F1085appropriate regulator] may direct that shares or voting power to which the notice relates are, until further notice, subject to one or more of the following restrictions—

(a) except by court order, an agreement to transfer or a transfer of any such shares or voting power or, in the case of unissued shares, any agreement to transfer or transfer of the right to be issued with them, is void;

(b) no voting power is to be exercisable;

(c) no further shares are to be issued in pursuance of any right of the holder of any such shares or voting power or in pursuance of any offer made to their holder;
(d) except in a liquidation, no payment is to be made of any sums due from the body corporate on any such shares, whether in respect of capital or otherwise.

Subsection (3)(a) and (b) does not apply where the voting power represented by the shares in question is suspended under section 190A(2).

(4) A restriction notice takes effect—
(a) immediately; or
(b) on such date as may be specified in the notice.

(5) A restriction notice does not extinguish rights which would be enjoyable but for the notice.

(6) A copy of the restriction notice must be served on—
(a) the UK authorised person in question; and
(b) in the case of shares or voting power held in a parent undertaking of a UK authorised person, the parent undertaking.

(7) A person to whom the appropriate regulator gives a restriction notice may refer the matter to the Tribunal.

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**Textual Amendments**

- **F1085** Words in Pt. 12 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 26(2), 122(3) (with Sch. 20); S.I. 2013/423, ar. 3, Sch.
- **F1116** S. 191B(2A)(2B) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 26(8), 122(3) (with Sch. 20); S.I. 2013/423, ar. 3, Sch.

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**191C Orders for sale of shares**

(1) The court may, on the application of the appropriate regulator, order the sale of shares or the disposition of voting power in the following circumstances.

(2) The circumstances are that—
(a) a person has control over a UK authorised person by virtue of holding the shares or voting power; and
(b) the acquisition or continued holding of the shares or voting power by that person is in contravention of a final notice which confirms a decision notice given under section 189 or section 191A.

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-authorised person, or
(b) the person holding the shares or voting power is a PRA-authorised person.

(3) Where the court orders the sale of shares or disposition of voting power it may—
(a) if a restriction notice has been given in relation to the shares or voting power, order that the restrictions cease to apply; and
(b) make any further order.

(4) Where the court makes an order under this section, it must take into account the level of holding that the person would have been entitled to acquire, or to continue to hold, without contravening the final notice.

(5) If shares are sold or voting power disposed of in pursuance of an order under this section, any proceeds, less the costs of the sale or disposition, must be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for payment of a whole or part of the proceeds.

(6) The jurisdiction conferred by this section may be exercised by the High Court and the Court of Session.

(7) The appropriate regulator must obtain the consent of the Bank of England before making an application under this section in relation to shares if the Bank has the power to direct the sale of those shares under section 190A(4).

(8) The appropriate regulator may not make an application under this section in relation to shares if the Bank of England has given a direction for the sale of those shares under section 190A(4).

Textual Amendments
F1085 Words in Pt. 12 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 26(2), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1118 S. 191C(2A)(2B) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 26(9), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Notice of reductions of control of UK authorised persons

191D Obligation to notify the [F1085 appropriate regulator]: dispositions of control

(1) A person who decides to reduce or cease to have control over a UK authorised person must give the [F1085 appropriate regulator] notice in writing before making the disposition.

[ The PRA must give the FCA a copy of any notice it receives under this section.]

(1A) 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-authorised person, or
(b) is given by a PRA-authorised person.]

(2) For the purposes of calculations relating to this section, the holding of shares or voting power by a person (“A1”) includes any shares or voting power held by another (“A2”) if A1 and A2 are acting in concert.
Financial Services and Markets Act 2000 (c. 8)

Part XII – Control Over Authorised Persons

CHAPTER 5 – Power to make consequential amendments

Textual Amendments

F1085 Words in Pt. 12 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 26(2), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1120 S. 191D(1A)(1B) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 26(10), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

191E Requirements for notices under section 191D

(1) A notice under section 191D must be in such form, include such information and be accompanied by such documents as the [F1085 appropriate regulator] may reasonably require.

(2) [F1121 Each regulator] must publish a list of its requirements as to the form, information and accompanying documents for a notice under section 191D.

(3) The [F1085 appropriate regulator] may impose different requirements for different cases and may vary or waive requirements in particular cases.

Textual Amendments

F1085 Words in Pt. 12 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 26(2), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1121 Words in s. 191E(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 26(11), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Offences

191F Offences under this Part

(1) A person who fails to comply with an obligation to notify the [F1085 appropriate regulator] under section 178(1) or 191D(1) is guilty of an offence.

(2) A person who gives notice to the [F1085 appropriate regulator] under section 178(1) and makes the acquisition to which the notice relates before the expiry date of the assessment period is guilty of an offence unless the [F1085 appropriate regulator] has approved the acquisition or given a warning notice under section 189(4)(b)(i) [F1122 or section 190A applies].

(3) A person who contravenes an interim condition in a warning notice given under section 189(4)(b)(i) or a condition in a decision notice given under section 189(7) or a final notice which confirms a decision notice under that section is guilty of an offence.

(4) A person who makes an acquisition in contravention of a warning notice given under section 189(4)(b)(ii) or a decision notice given under section 189(7) or a final notice which confirms a decision notice under that section is guilty of an offence.

[F1122 A person who fails to comply with a direction given by the Bank of England under (4A) section 190A(4) is guilty of an offence.]
(5) A person who makes an acquisition after the \(^{F1085}\) appropriate regulator's approval for the acquisition has ceased to be effective by virtue of section 191 is guilty of an offence.

(6) A person who provides information to the \(^{F1085}\) appropriate regulator which is false in a material particular is guilty of an offence.

(7) A person who breaches a direction contained in a restriction notice given under section 191B is guilty of an offence.

(8) A person guilty of an offence under subsection (1) to (3) or (5) to (7) is liable—
   (a) on summary conviction to a fine not exceeding the statutory maximum; or
   (b) on conviction on indictment, to a fine.

(9) A person guilty of an offence under subsection (4) \(^{F1124}\) or (4A) \(^{F1124}\) is liable—
   (a) on summary conviction, to a fine not exceeding the statutory maximum; or
   (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

Textual Amendments

\(^{F1085}\) Words in Pt. 12 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 26(2), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

\(^{F1122}\) Words in s. 191F(2) inserted (16.12.2016) by The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), 33(5)(a)


\(^{F1124}\) Words in s. 191F(9) inserted (16.12.2016) by The Bank Recovery and Resolution Order 2016 (S.I. 2016/1239), arts. 1(2), 33(5)(c)

Interpretation

191G Interpretation

(1) In this Part—

“acquisition” means the acquisition of control or of an increase in control over a UK authorised person;

\(^{F1126}\) “the appropriate regulator” is to be read in accordance with section 178(2A);]

“credit institution” means—

(a) a credit institution authorised under the \(^{F1126}\) capital requirements directive; or

(b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA State;

“shares” has the same meaning as in section 422;

“UK authorised person” means an authorised person who—

(a) is a body incorporated in, or an unincorporated association formed under the law of, any part of the United Kingdom; and

(b) is not a person authorised as a result of paragraph 1 of Schedule 5; and
“voting power” has the same meaning as in section 422.

(2) For the purposes of this Part, a “working day” is a day other than—
   (a) a Saturday or a Sunday; or
   (b) a day which is a bank holiday in England and Wales under the M15 Banking and Financial Dealings Act 1971.]
PART 12A – POWERS EXERCISABLE IN RELATION TO PARENT UNDERTAKINGS

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—
   (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 [F1134, a recognised clearing house or a recognised CSD].

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

Textual Amendments
F1134 Words in s. 192B(3) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(6) (with regs. 7(4), 9(1))

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
(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.

(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-authorised person, the FCA must consult the PRA.

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

Textual Amendments

F1135 Words in s. 192F(3) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 41(a) (with Sch. 3); S.I. 2017/43, reg. 2(g)

F1136 Words in s. 192F(3) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(7) (with regs. 7(4), 9(1))

F1137 Word in s. 192F(3) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 41(b) (with Sch. 3); S.I. 2017/43, reg. 2(g)

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.

(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 [F1138, where the issuing regulator is the FCA,] 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.

Textual Amendments

F1138 Words in s. 192I(1)(a) inserted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 42 (with Sch. 3); S.I. 2017/43, reg. 2(g)

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.

Textual Amendments

F1139 Rules applying to parent undertakings of ring-fenced bodies

192JA Rules applying to parent undertakings of ring-fenced bodies
(1) The appropriate regulator may make such rules applying to bodies corporate falling within subsection (2) as appear to the regulator to be necessary or expedient for the group ring-fencing purposes.

(2) A body corporate falls within this subsection if—
(a) it is incorporated in the United Kingdom or has a place of business in the United Kingdom,
(b) it is a parent undertaking of a ring-fenced body, and
(c) it is not itself an authorised person.

(3) The “group ring-fencing purposes” are the purposes set out in section 142H(4).

(4) “The appropriate regulator” means—
(a) in relation to the parent undertaking of a ring-fenced body that is a PRA-authorised person, the PRA;
(b) in any other case, the FCA.

F1139 Rules requiring parent undertakings to facilitate resolution

192JB Rules requiring parent undertakings to facilitate resolution

(1) The appropriate regulator may make rules requiring a qualifying parent undertaking to make arrangements that in the opinion of the regulator—
(a) would facilitate the preparation, maintenance, implementation and review of a recovery plan in relation to the group of the qualifying parent undertaking,
(b) are required in relation to the provision of financial support to other members of the group of the qualifying parent undertaking which encounter or are likely to encounter financial difficulties, or
(c) would allow or facilitate the exercise of the resolution powers in relation to the qualifying parent undertaking or any of its subsidiary undertakings in the event of a situation arising where all or part of the business of the parent
A “recovery plan” in relation to a group, is a document which provides for measures to be taken to achieve the stabilisation of the group as a whole, or any institution within the group, where the group or institution is in a situation of financial stress, in order to address or remove the causes of the financial stress and restore the financial position of the group or the institution.

The “resolution powers” are—

(a) the powers conferred on the Treasury and the Bank of England by or under Parts 1 to 3 of the Banking Act 2009, and

(b) any similar powers exercisable by an authority outside the United Kingdom.

The arrangements that may be required include arrangements relating to—

(a) the issue of debt instruments by the parent undertaking;

(b) the provision to a subsidiary undertaking (“S”) or a transferee by the parent undertaking, or by any other subsidiary undertaking of the parent undertaking, of such services and facilities as would be required to enable S or the transferee to operate the business, or part of the business, effectively.

(c) the review of a recovery plan by the consolidating supervisor of the qualifying parent undertaking;

(d) the entry by the parent undertaking into a group financial support agreement and provision of financial support by the parent undertaking in accordance with that agreement.

In subsection (3)—

(a) “consolidating supervisor” has the meaning given in Article 4.1(41) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;

(b) “group financial support agreement” means an agreement for the provision of financial support from one member of a group to another which satisfies the conditions set out in Article 19 of Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.

(c) “transferee” means a person to whom all or part of the business of the parent undertaking or the subsidiary undertaking could be transferred as a result of the exercise of the resolution powers.

(5) “Debt instrument” has the same meaning as in section 142Y.

(6) “The appropriate regulator” means—

(a) where the subsidiary undertakings of the qualifying parent undertaking include a ring-fenced body that is a PRA-authorised person, the PRA;

(b) where the subsidiary undertakings of the qualifying parent undertaking include one or more PRA-authorised persons but do not include any authorised person that is not a PRA-authorised person, the PRA;

(c) where the subsidiary undertakings of the qualifying parent undertaking do not include any PRA-authorised person, the FCA;

(d) in any other case, the PRA or the FCA.
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,  
(b) a provision of rules made by that regulator under section 192J or 192JB,  
(c) a requirement imposed by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

(1A) This section also applies if a regulator is satisfied that a person (“P”) who is or has been a parent undertaking of a ring-fenced body has contravened a provision of rules made by that regulator under section 192JA.

(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.

(3A) The regulator may impose, for such period as it considers appropriate, restrictions (including a temporary ban) on the exercise by any member of the management body or senior management of, or other person who works for, a qualifying parent undertaking of any functions in a PRA-authorised person, an investment firm or a qualifying parent undertaking.

(3B) The regulator may only impose restrictions under subsection (3A) on a person who was, at any time, knowingly concerned in the contravention.

(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.

[In this section—

(7) “management body” means the board of directors, or if there is no such board, the equivalent body responsible for the management of the undertaking concerned;

“member of the senior management” means a person who—

(a) exercises executive functions within a qualifying parent undertaking, and

(b) is responsible, and directly accountable to the management body, for the day to day management of that qualifying parent undertaking.

(8) A regulator which imposes a restriction on any person under subsection (3A) may—

(a) vary the restriction so as to reduce the period for which it has effect or otherwise to limit its effect, or

(b) cancel the restriction.]

Textual Amendments

F1144 Word in s. 192K(1)(a) omitted (1.1.2015) by virtue of The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 121(2)(a)

F1145 Words in s. 192K(1) inserted (31.12.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 133(2)(a), 148(5); S.I. 2014/3160, art. 2(1)(c)

F1146 Word in s. 192K(1)(b) inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 121(2)(b)

F1147 S. 192K(1)(c) inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 121(2)(c)

F1148 S. 192K(1A) inserted (21.4.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 133(2)(b), 148(5); S.I. 2016/512, art. 2(b)

F1149 S. 192K(3A)(3B) inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 121(3)

F1150 S. 192K(7)(8) inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 121(4)

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.

[ A warning notice about a proposal to impose a restriction under section 192K(3A)

(a) the terms of the restriction, and

(b) the period for which the restriction is to have effect.]
(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.

A decision notice about the imposition of a restriction under section 192K(3A) must state—

(a) the terms of the restriction, and

(b) the period for which the restriction is to have effect.

(7) If the regulator decides to take action against a person under section 192K, the person may refer the matter to the Tribunal.

Textual Amendments

F1151 S. 192L(3A) inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 122(2)

F1152 S. 192L(6B) inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 122(3)

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.

(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.

**PART XIII**

**INCOMING FIRMS: INTERVENTION BY [F1153]FCA OR PRA**

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**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

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Status: This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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Textual Amendments

F1153 Words in Pt. 13 heading 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. 30 (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

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Modifications etc. (not altering text)

C562 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))


C565 Pt. 13 applied (with modifications) (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(6), Sch. 6 para. 6 (with reg. 3)
Financial Services and Markets Act 2000 (c. 8)
Part XIII – Incoming Firms: Intervention by FCA or PRA
CHAPTER 5 – Power to make consequential amendments

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Status: This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(1) The [F1154] appropriate regulator[F1155] may exercise its power of intervention in respect of an incoming firm if it appears to it that—

(a) [F1156] an EEAUCITS which is a recognised scheme under section 264;

(aba) [F1157] an EEAIFM which is exercising, or has exercised, its right to market an AIF in the United Kingdom in accordance with Schedule 3; 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 [F1158] the FCA or the PRA by section 196.

[F1159](1A) In the definition of “incoming firm” references to an EEAUCITS include, in a case where the UCITS is not a body corporate, references to its management company.

(2) In relation to an incoming firm which is an EEA firm [F1159] or an EEAUCITS, expressions used in this Part and in Schedule 3 have the same meaning in this Part as they have in that Schedule.

Textual Amendments

F1154S. 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)

F1155 Word in s. 193(1) omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 11

F1156 Words in s. 193(1) inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 11

F1157 Words in s. 193(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. 31 (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

F1158S. 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)

F1159 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 [F1160] appropriate regulator[F1161] 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 [F1160] appropriate regulator[F1161] 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 [F1160] appropriate regulator[F1161] information which is false or misleading in a material particular; or

[F1162](c) it is desirable to exercise the power in order to [F1162] advance—

(i) in the case of the FCA, one or more of its operational objectives, and

(ii) in the case of the PRA, any of its objectives.]}
[F1163](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.

[F1164](1AA) Where an incoming firm is an EEA firm falling within paragraph 5(d) or (da) of Schedule 3, the appropriate regulator must not exercise its power of intervention under subsection (1)(c) in respect of that firm if doing so would, for the purposes of the Solvency 2 Directive, constitute financial supervision of that firm.

[F1165](1B) The “appropriate regulator” means—
(a) where the incoming firm is a PRA-authorised person, the FCA or the PRA;
(b) in any other case, the FCA.

[F1166](2) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

[F1166](3) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

[F1166](4) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

[F1167](5) The FCA may exercise its power of intervention in respect of an EEA AIFM if it appears to the FCA that the EEA AIFM has contravened, or is likely to contravene, a requirement imposed by—
(a) the Alternative Investment Fund Managers Regulations 2013;  
(b) any directly applicable EU regulation made under the alternative investment fund managers directive;
(c) Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds or any directly applicable regulation made under that Regulation; or
(d) the MMF Regulation or any directly applicable regulation or decision made under that Regulation.

[F1167](6) The FCA may exercise its powers of intervention in respect of an EEA UCITS if it appears to the FCA that the EEA UCITS has contravened, or is likely to contravene, a requirement imposed by the MMF Regulation or any directly applicable regulation or decision made under that Regulation.

(7) A reference in subsection (6) to an EEA UCITS includes, in a case where the UCITS is not a body corporate, a reference to its management company.

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**Textual Amendments**

F1160 Words in s. 194(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. 32(2)(a) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

F1161 S. 194(1)(c) substituted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 3(5)(a), 26(2)

F1162 Words in s. 194(1)(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. 32(2)(b) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

F1163 S. 194(1A) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 3(5)(b), 26(2)

F1164 S. 194(1AA) inserted (1.1.2016) by The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), Sch. 1 para. 10

F1165 S. 194(1B) 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. 32(3) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.
Section 194(2)-(4) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 10(3) (with art. 11(3))

Section 194(5) inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 12

Section 194(5) inserted (3.12.2015) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 12

Word in s. 194(5)(a) omitted (3.12.2015) by virtue of The European Long-term Investment Funds Regulations 2015 (S.I. 2015/1882), regs. 1, 3(3)(a)

Word in s. 194(5)(b) inserted (3.12.2015) by The European Long-term Investment Funds Regulations 2015 (S.I. 2015/1882), reg. 1, Sch. 1 para. 12


Section 194(5)(c) inserted (3.12.2015) by The European Long-term Investment Funds Regulations 2015 (S.I. 2015/1882), reg. 1, Sch. 1 para. 12

Section 194(5)(c) inserted (3.12.2015) by The European Long-term Investment Funds Regulations 2015 (S.I. 2015/1882), reg. 1, Sch. 1 para. 12


Modifications etc. (not altering text)

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

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)

**Contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive: [F1176]appropriate regulator] primarily responsible for securing compliance**

1. This section applies if—
   a. a relevant EEA firm has a branch in the United Kingdom; and
   b. [F1176]the appropriate regulator] ascertains that the firm has contravened, or is contravening, a requirement falling within subsection (3) (in a case to which Article [F1176]86.2] 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; [F1179]...
   b. [F1180](aa) by or under any provision of the markets in financial instruments regulation; or
   b. by any directly applicable [F1181]EU] regulation made under that directive [F1182]or the markets in financial instruments regulation].
(4) The appropriate regulator must give the firm written notice which—
   (a) requires the firm to put an end to the contravention;
   (b) states that the appropriate regulator'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 appropriate regulator proposes to impose on the firm in exercise of its power of intervention in the event of the power becoming exercisable.

(5) The appropriate regulator 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 appropriate regulator has informed the firm's home state regulator of its intention to exercise its power of intervention in respect of the firm.

(6) Subsection (5) applies whether or not the appropriate regulator's power of intervention is also exercisable as a result of section 194.

(7) If the appropriate regulator 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, ESMA and the Commission of—
   (a) the fact that the appropriate regulator has exercised that power in respect of the firm; and
   (b) any requirements it has imposed on the firm in exercise of the power.

(8) (b) the appropriate regulator 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)).

(9) Subsection (4) is not to be regarded as requiring the PRA to take action in relation to the contravention of a requirement falling within subsection (3) in a case where it is satisfied that the FCA is required to act, and is acting or has acted, under subsection (4) in relation to that requirement, or where that requirement is imposed by rules made by the PRA, in relation to an identical requirement imposed by rules made by the FCA.

(10) “The appropriate regulator” means—
   (a) where the relevant EEA firm is a PRA-authorised person, the FCA or, subject to subsection (9), the PRA;
   (b) in any other case, the FCA.

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Textual Amendments

F1175S. 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
Article 3 means Article 3 of Directive S. 194A(7) modified by S.I. 2001/3084, art. 2(8)(a) (as inserted (24.8.2012) by relevant S. 194A(7) modified by SI 2001/3084 art. 2(8)(a) (as substituted (1.4.2013) by

In this 434

Modifications etc. (not altering text)


C568 S. 194A(7) modified by SI 2001/3084 art. 2(8)(a) (as substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 58(b))

[\textbf{F1186} 194E] 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

(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

(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-authorised person and the FCA in relation to any other person.
Textual Amendments

S. 194B inserted (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. 15

Contravention by relevant EEA firm with UK branch of requirement in mortgages directive: appropriate regulator primarily responsible for securing compliance

(1) In this section “relevant EEA firm” means an EEA firm falling within paragraph 5(i) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the mortgages directive.

(2) This section applies if—

(a) a relevant EEA firm has a branch in the United Kingdom; and
(b) the appropriate regulator ascertains that the firm has contravened, or is contravening, a requirement to which Article 34(2) of the mortgages directive applies.

(3) The appropriate regulator must give the firm written notice which—

(a) requires the relevant EEA firm to put an end to the contravention;
(b) states that the appropriate regulator’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 appropriate regulator proposes to impose on the firm in exercise of its power of intervention in the event of the power becoming exercisable.

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

(a) a reasonable time has expired since the giving of the notice under subsection (3);
(b) the firm has failed to put an end to the contravention within that time; and
(c) the appropriate regulator has informed the firm’s home state regulator of its intention to exercise its power of intervention in respect of the firm.

(5) Subsection (4) applies whether or not the appropriate regulator’s power of intervention is also exercisable as a result of section 194.

(6) If the appropriate regulator exercises its power of intervention in respect of a relevant EEA firm by virtue of subsection (4), it must at the earliest opportunity inform the firm’s home state regulator and the Commission of—

(a) the fact that the appropriate regulator has exercised that power in respect of the firm; and
(b) any requirements it has imposed on the firm in exercise of the power.

(7) Subsection (3) is not to be regarded as requiring the PRA to take action in relation to the contravention of a requirement falling within subsection (2)(b) in a case where it is satisfied that the FCA is required to act, and is acting or has acted, under subsection (3) in relation to that requirement.

(8) In this section “appropriate regulator” means—
(a) where the relevant EEA firm is a PRA-authorised person, the FCA or, subject to subsection (7), the PRA;
(b) in any other case, the FCA.

Textual Amendments

[194D ]Contravention by relevant EEA firm of requirement in insurance distribution directive: appropriate regulator 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 appropriate regulator ascertains that the firm has contravened, or is contravening, a requirement to which Article 8.1 of the insurance distribution directive applies.

(2) The appropriate regulator may exercise its powers of intervention in respect of the relevant EEA firm.

(3) Subsection (2) applies whether or not the appropriate regulator’s power of intervention is also exercisable as a result of section 194, 195 or 195C.

(4) If the appropriate regulator exercises its power in respect of the relevant EEA firm by virtue of subsection (2), it must notify the home state regulator, the Commission and EIOPA without undue delay of—
   (a) the fact that the appropriate regulator has exercised that power in respect of that firm;
   (b) any requirements it has imposed on the firm in exercise of the power; and
   (c) the reasons for the exercise of that power.

(5) In this section—
   “appropriate regulator” means—
   (a) where the relevant EEA firm is a PRA-authorised person, the FCA or the PRA;
   (b) in any other case, the FCA;
   “relevant EEA firm” means an EEA firm falling within paragraph 5(e) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the insurance distribution directive.

Textual Amendments
F1188 S. 194D inserted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), 12
195 Exercise of power in support of overseas regulator.

(1) The appropriate regulator 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 power of intervention is also exercisable as a result of section 194.

(2A) “The appropriate regulator” means—

(a) where the incoming firm is a PRA-authorised person, the FCA or the PRA;  
(b) in any other case, the FCA.

(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 either regulator under this Act;

(b) a function corresponding to any function exercised by the Secretary of State under the Companies Acts (as defined in section 2 of the Companies Act 2006);

(c) a function in connection with—

(i) the investigation of conduct of the kind prohibited by Part V of the Criminal Justice Act 1993 (insider dealing); or

(ii) the enforcement of rules (whether or not having the force of law) relating to such conduct;

(d) 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 appropriate regulator for the exercise of its power of intervention has been made by a home state regulator in pursuance of an EU obligation, or

(b) a home state regulator has notified the appropriate regulator that an EEA firm’s EEA authorisation has been withdrawn, the appropriate regulator must, in deciding whether or not to exercise its power of intervention, consider whether exercising it is necessary in order to comply with EU obligation.

(6) In deciding in any case in which the appropriate regulator does not consider that the exercise of its power of intervention is necessary in order to comply with an 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 [F1195 approriate regulator] 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 [F1195 approriate regulator] considers appropriate.

(8) Subsection (7) does not apply if the [F1195 approriate regulator] decides that it is necessary for it to exercise its power of intervention in order to comply with [F1196 an EU obligation].

Textual Amendments

F1189 Words in s. 195(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. 34(2) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

F1190 Words in s. 195(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. 34(3) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

F1191 S. 195(2A) 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. 34(4) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

F1192 Words in s. 195(4)(a) 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. 34(5)(a) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

F1193 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.

F1194 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

F1195 Words in s. 195(5)-(8) 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. 34(6) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

F1196 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)

C569 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)

Commencement Information

I30 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)
Section applies if the appropriate regulator 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 86.1 or 86.3 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)\[F1201\]; or

(c) that an EEAIFM has contravened, or is contravening, a requirement falling within subsection (3A) (in a case to which Article 45.7 or 45.8 of the alternative investment fund managers 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; \[F1202\]...

(b) by any directly applicable EU regulation made under that directive \[F1205\] or the markets in financial instruments regulation.

(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.

(3A) A requirement falls within this subsection if it is imposed on the EEAIFM—

(a) by or under any provision adopted in the AIFM’s home state for the purpose of implementing the alternative investment fund managers directive; or

(b) by any directly applicable EU regulation made under that directive.

(4) The appropriate regulator must notify the home state regulator 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 appropriate regulator'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 appropriate regulator 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 appropriate regulator 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—
   (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—
   (a) in the case of a relevant EEA firm, that the firm 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;
   (b) in the case of an EEAUCITS, that the EEAUCITS is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom; or
   (c) in the case of an EEAIFM, that the AIFM is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom or the financial stability or integrity of the markets in the United Kingdom.

(9) Condition C is that the appropriate regulator 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 appropriate regulator's power of intervention is also exercisable as a result of section 194 or 195.

(11) If the appropriate regulator 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 ESMA and the Commission of—
   (a) the fact that the appropriate regulator 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.

(11A) If circumstances exist which enable the appropriate regulator to exercise its power of intervention under subsection (6), the appropriate regulator 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)).

(11B) Subsection (4) is not to be regarded as requiring the PRA to notify the home state regulator in relation to the contravention of a requirement falling within subsection (2), (3) or (3A) in a case where the PRA is satisfied that the FCA is required to act, and is acting or has acted, under subsection (4) in relation to that requirement.

(12) In this section—
   (a) the appropriate regulator” means—
      (a) in the case of a relevant EEA firm which is a PRA-authorised person, the FCA or, subject to subsection (11B), the PRA;
in any other case, the FCA;

“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;

(c) \[F1214in relation to an EEAIFM, the EEA State in which the AIFM is authorised in accordance with the alternative investment fund managers directive;\]

“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.\]

F1206S. 195A(3A) inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 13(c)

F1207S. 195A(8) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 13(d)

F1208Words 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)

F1209S. 195A(11A) inserted (16.4.2012) by The Financial Services (Omnibus 1 Directive) Regulations 2012 (S.I. 2012/916), regs. 1, 2(8)(b)

F1210S. 195A(11B) 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. 35(3) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

F1211 Words in s. 195A(11B) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 13(e)

F1212Words in s. 195A(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. 35(4) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

F1213Words in s. 195A(12) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 13(f)(i)

F1214Words in s. 195A(12) inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 13(f)(ii)

F1215Words in s. 195A(12) substituted (coming into force in accordance with reg. 1(3) of the amending S.I.) by The Alternative Investment Fund Managers (Amendment) Regulations 2013 (S.I. 2013/1797), reg. 1(3), Sch. 1 para. 1(3)

Modifications etc. (not altering text)


C571 S. 195A(11) modified by SI 2001/3084 art. 2(8)(b) (as substituted (14.3.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 58(b))

195EContravention by relevant EEA firm of requirement in mortgages directive: home state regulator primarily responsible for securing compliance

(1) In this section “relevant EEA firm” means an EEA firm falling within paragraph 5(i) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the mortgages directive.

(2) This section applies if—

(a) a relevant EEA firm has a branch, or is providing services, in the United Kingdom; and

(b) the appropriate regulator has clear and demonstrable grounds for concluding that the firm has contravened, or is contravening, a requirement to which Article 34(4) of the mortgages directive applies.

(3) The appropriate regulator must notify the relevant EEA firm’s home state regulator of the situation mentioned in subsection (2).

(4) The notice under subsection (3) must—
(a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the relevant EEA firm puts an end to the contravention;

(b) state that the appropriate regulator’s powers of intervention are likely to become exercisable in relation to the relevant EEA firm if it continues the contravention; and

(c) indicate any requirements that the appropriate regulator proposes to impose on the relevant EEA firm in exercise of its power of intervention in the event of the power becoming exercisable.

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

(a) a period of one month beginning with the date on which it gave the notification referred to in subsection (3) has expired, and

(b) conditions A to C are satisfied.

(6) Condition A is that—

(a) the home state regulator of the relevant EEA firm has failed or refused to take measures for the purpose mentioned in subsection (4)(a); or

(b) any measures taken by the home state regulator have proved inadequate for that purpose.

(7) Condition B is that the relevant EEA firm is acting in a manner which is clearly prejudicial to the interests of consumers in the United Kingdom or to the orderly functioning of the markets.

(8) Condition C is that the appropriate regulator has informed the home state regulator of the relevant EEA firm of its intention to exercise its powers of intervention in respect of the firm.

(9) Subsection (5) applies whether or not the appropriate regulator’s power of intervention is also exercisable as a result of section 194 or 195.

(10) If the appropriate regulator exercises its power of intervention in respect of the relevant EEA firm by virtue of subsection (5), it must inform the Commission and EBA, without undue delay, of—

(a) the fact that the appropriate regulator has exercised that power in respect of that firm; and

(b) any requirements it has imposed on the firm in exercise of the power.

(11) If circumstances exist which enable the appropriate regulator to exercise its power of intervention under subsection (5), 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 24th November 2010 establishing a European Supervisory Authority (European Banking Authority)).

(12) Subsection (3) is not to be regarded as requiring the PRA to notify the home state regulator in relation to the situation mentioned in subsection (2) in a case where the PRA is satisfied that the FCA is required to act, and is acting, or has acted, under subsection (3) in relation to that situation.

(13) In this section “appropriate regulator” means—
(a) where the relevant EEA firm is a PRA-authorised person, the FCA or, subject to subsection (12), the PRA;
(b) in any other case, the FCA.

**Textual Amendments**


[F1217 195C Contravention by relevant EEA firm of requirement in insurance distribution directive: home state regulator primarily responsible for securing compliance

(1) This section applies if the appropriate regulator has reason to believe that a relevant EEA firm has contravened, or is contravening, a requirement to which Article 5.1 or 8.2 of the insurance distribution directive applies, unless that firm is the subject of an agreement under section 203A (in which case, the provisions in that agreement apply).

(2) The appropriate regulator must notify the relevant EEA firm’s home state regulator of the situation mentioned in subsection (1).

(3) The notice under subsection (2) must—

(a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the relevant EEA firm puts an end to the contravention;
(b) state that the appropriate regulator’s power of intervention is likely to become exercisable in relation to the relevant EEA firm if it continues the contravention; and
(c) indicate any requirements that the appropriate regulator proposes to impose on the relevant EEA firm in exercise of its power of intervention in the event of the power becoming exercisable.

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

(a) a reasonable period of time has elapsed since the giving of the notice under subsection (2), and
(b) conditions A to C are satisfied.

(5) Condition A is that—

(i) the home state regulator of the relevant EEA firm has failed or refused to take measures for the purpose mentioned in subsection (3)(a), or
(ii) any measures taken by the home state regulator have proved inadequate for that purpose.

(6) Condition B is that the relevant EEA firm is acting in a manner which is clearly prejudicial to the interests of consumers in the United Kingdom or to the orderly functioning of the markets.

(7) Condition C is that the appropriate regulator has informed the home state regulator of the relevant EEA firm of its intention to exercise its powers of intervention in respect of the firm.
(8) The appropriate regulator may exercise its powers of intervention in respect of a relevant EEA firm without complying with subsections (2) and (4)—

(a) in a case where the relevant EEA firm has a branch in the United Kingdom, where it decides that immediate action is necessary to protect the interests of consumers, and where measures of the home state regulator are inadequate or lacking; and

(b) in any other case, where it decides that immediate action is necessary to protect the interests of consumers.

(9) Subsections (4) and (8) apply whether or not the appropriate regulator’s power of intervention is also exercisable as a result of section 194, 194D or 195.

(10) If circumstances exist which enable the appropriate regulator to exercise its power of intervention under subsection (4), the appropriate regulator may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority).

(11) If the appropriate regulator exercises its power of intervention in respect of the relevant EEA firm by virtue of subsection (4) or (8), it must notify the home state regulator, the Commission and EIOPA, without undue delay of—

(a) the fact that the appropriate regulator has exercised that power in respect of that firm;

(b) any requirements it has imposed on the firm in exercise of the power; and

(c) the reasons for the exercise of that power.

(12) Subsection (2) is not to be regarded as requiring the PRA to notify the home state regulator in relation to the situation mentioned in subsection (1) in a case where the PRA is satisfied that the FCA is required to act, and is acting, or has acted, under subsection (2) in relation to that situation.

(13) In this section—

“appropriate regulator” means—

(a) where the relevant EEA firm is a PRA-authorised person, the FCA or, subject to subsection (12), the PRA;

(b) in any other case, the FCA;

“relevant EEA firm” means an EEA firm falling within paragraph 5(e) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the insurance distribution directive.]
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 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 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 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 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.

(5) The regulator may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by the firm, the 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 [F1223 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

F1219 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.

F1220 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.

F1221 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.

F1222 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.

F1223 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)

C572 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))


C575 S. 197(1)(c) excluded (1.12.2001) by S.I. 2001/3592, arts. 1(2), 18(5), 21(4) (with art. 23(2))

C576 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))
Power to apply to court for injunction in respect of certain overseas insurance companies.

(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 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 appropriate regulator to perform any of its functions under this Act.

(3A) “The appropriate regulator” means whichever regulator is, at the time when the request is received, the supervisory authority for the purposes of Article 140 of the Solvency 2 Directive.

(4) “The court” means—
(a) the High Court; or
(b) in Scotland, the Court of Session.

Additional procedure for EEA firms in certain cases.

(1) This section applies if it appears to 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—
(a) it is imposed—
(i) by that regulator under this Act, or
(ii) under any directly applicable Community regulation or decision made under a single market directive; and]

[(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 regulator must, in writing, require the firm to remedy the situation.

[(A) If the firm falls within paragraph 5(da), (f) or (h) of Schedule 3, 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.]

(B) Subsections (4) and (5) apply to an incoming EEA firm other than a firm falling within paragraph 5(da) of Schedule 3.]

(4) If the firm fails to comply with the requirement under subsection (3) within a reasonable time, 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 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), 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 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.

[(A) 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 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).

(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—

(a) [F1232 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 [F1240 (other than the markets in financial instruments directive)] that [F1232 the regulator] must rescind or vary any requirement imposed in the exercise of its power of intervention,

[F1232 the regulator] must in accordance with the decision rescind or vary the requirement.

[F1241 (9) In the case of a firm falling within paragraph 5(da) of Schedule 3, [F1232 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.]

[F1242 (10) If an incoming EEA firm is exercising EEA rights under the UCITS directive, then [F1232 the regulator] must inform [F1243 ESMA and] the Commission of any measures it has taken in the exercise of its power of intervention.]

[F1244 (11) If, in the case of a home state regulator of an incoming EEA firm exercising EEA rights under the UCITS directive, [F1232 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)).]

[F1245 (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.]
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
S. 199(10) excluded by S.I. 2001/3084, art. 2(8)(b) (as inserted (24.8.2012) by
S. 199 applied (with modifications) (29.6.2017 for specified purposes, 3.7.2017 for specified purposes,
This section applies in relation to an
S. 199 extended (1.12.2001) by
452
F1246

Commencement Information

132 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)

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 [F1247]appropriate regulator has been informed by the home state regulator of the management company that it is withdrawing the management company's authorisation, the [F1247]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.

[F1248](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

F1246S. 199A inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), reg. 2(10)

F1247Words 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.

F1248S. 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)


Supplemental

200 Rescission and variation of requirements.

(1) [F1249]Either regulator 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 [F1250]either regulator on its own initiative to rescind a requirement is exercisable by written notice given by [F1251]the regulator 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 [F1252]regulator on its own initiative to vary a requirement as it applies to the imposition of a requirement.

(4) If the [F1253]regulator proposes to refuse an application for the variation or rescission of a requirement, it must give the applicant a warning notice.

(5) If [F1254]either regulator decides to refuse an application for the variation or rescission of a requirement—

(a) [F1255]the regulator must give the applicant a decision notice; and

(b) that person may refer the matter to the Tribunal.
Effect of certain requirements on other persons

If either regulator, in exercising its power of intervention, imposes on an incoming firm a requirement of the kind mentioned in subsection (4) of section 55P, 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 regulator acting under section 55L or 55M.

Contravention of requirement imposed under this Part.

(1) Contravention of a requirement imposed by [\(^{[F1257]}\) a regulator] 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.
PART 13A

ENHANCED SUPERVISION OF FIRMS EXERCISING RIGHTS UNDER THE INSURANCE DISTRIBUTION DIRECTIVE

Textual Amendments
F1260Pt. 13A inserted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), 14

203A. Insurance distribution directive: enhanced supervision of EEA firms by UK regulators

(1) The appropriate regulator may agree with a relevant EEA firm’s home state regulator that the appropriate regulator may exercise relevant functions in relation to the firm.

(2) The appropriate regulator must notify the firm and EIOPA of the agreement without delay.

(3) Subsection (2) does not require the PRA to notify the firm and EIOPA where the PRA is satisfied that the FCA is required to do so, or has done so, or will do so.

(4) An agreement under subsection (1) must specify which relevant functions the appropriate regulator may exercise in relation to the firm.

(5) The appropriate regulator may exercise relevant functions in relation to the firm in accordance with the agreement, as if the firm were a UK firm.

(6) In this section—

“appropriate regulator” means—

(a) where the relevant EEA firm is a PRA-authorised person, the FCA or, subject to subsection (3), the PRA;

(b) in any other case, the FCA;

“relevant functions” means any functions that may be exercised by the appropriate regulator in relation to a UK firm, that exist to implement, or enable to be implemented, obligations in Chapters IV to VII of the insurance distribution directive (or any functions that exist to deal with matters arising out of, or related to, any such obligations);

“primary place of business”, in relation to a firm, means the location from where the main business of the firm is managed;

“relevant EEA firm” means an EEA firm falling within paragraph 5(e) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the insurance distribution directive and whose primary place of business is the United Kingdom; and

“UK firm” has the meaning given in paragraph 10 of Schedule 3.

203B. Insurance distribution directive: enhanced supervision of UK firms by an EEA regulator

(1) This section applies where—

(a) a UK firm is exercising a right derived from the insurance distribution directive in an EEA State other than the United Kingdom, and
(b) that EEA State is the firm’s primary place of business.

(2) The appropriate regulator may agree with the host state regulator for that EEA State that the host state regulator may exercise relevant functions in relation to the UK firm.

(3) In this section—

“appropriate regulator” means—

(a) where the relevant UK firm is a PRA-authorised person, the FCA or the PRA;

(b) in any other case, the FCA;

“relevant functions” means any functions that may be exercised by the host state regulator in relation to a firm for whom that regulator is its home state regulator, that exist to implement, or enable to be implemented, obligations in Chapters IV to VII of the insurance distribution directive (or any functions that exist to deal with matters arising out of, or related to, any such obligations);

“host state regulator” has the meaning given in paragraph 11 of Schedule 3;

“primary place of business”, in relation to a firm, means the location from where the main business of the firm is managed;

“UK firm” has the meaning given in paragraph 10 of Schedule 3.

203C. Modification or waiver of rules where firm subject to enhanced supervision

(1) Where a firm is subject to an agreement under section 203A or 203B, the appropriate regulator may direct that all or any of its rules—

(a) do not apply to that firm, or

(b) apply to that firm with such modifications as may be specified in the direction.

(2) The appropriate regulator may not give or vary a direction unless it is satisfied that—

(a) compliance by the firm with the rules, or with the rules as unmodified, would not give effect to the agreement under section 203A or 203B (as the case may be), and

(b) the direction would not adversely affect the advancement of any of the appropriate regulator’s objectives.

(3) In subsection (2)(b) “objectives”, in relation to the FCA, means operational objectives.

(4) The appropriate regulator may—

(a) revoke a direction, or

(b) vary it on its own initiative or on the application of the firm to which it relates.

(5) In this section, “appropriate regulator” means—

(a) where the firm is a PRA-authorised person, the FCA or the PRA;

(b) in any other case, the FCA.

203D. Publication of directions under section 203C

(1) Subject to subsection (2), a direction under section 203C must be published by the appropriate regulator in the way appearing to the appropriate regulator to be the best calculated for bringing it to the attention of—

(a) persons likely to be affected, and
(b) persons who are, in the opinion of the appropriate regulator, likely to be subject to a similar direction.

(2) Subsection (1) does not apply if the appropriate regulator is satisfied that it is inappropriate or unnecessary to publish the direction.

(3) In deciding whether to publish the direction, the appropriate regulator must consider whether publication—
   (a) would be detrimental to the stability of the financial system of the United Kingdom,
   (b) would prejudice, to an unreasonable degree, the commercial interests of the person concerned, or
   (c) would be contrary to an international obligation of the United Kingdom.

(4) In this section “appropriate regulator” means—
   (a) where the firm is a PRA-authorised person, the FCA or the PRA;
   (b) in any other case, the FCA.

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**PART XIV**

**DISCIPLINARY MEASURES**

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**Meaning of “relevant requirement” and “appropriate regulator”**

(1) The following definitions apply for the purposes of this Part.

(2) “Relevant requirement” means a requirement imposed—
   (a) by or under this Act, by regulations under section 11 of the Civil Liability Act 2018,
   (b) by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order,
   (c) by the Alternative Investment Fund Managers Regulations 2013.||
(d) by the Undertakings for Collective Investment in Transferable Securities Regulations 2011.]

(3) The PRA is “the appropriate regulator” in the case of a contravention of—

(a) a requirement that is imposed under any provision of this Act by the PRA;
(b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA;
(c) a requirement under section 62A(2) where the revised statement of responsibilities is to be provided to the PRA only;[
(d) a requirement under section 64B(2) or (5) where the conduct rules concerned are made by the PRA;
(e) a requirement under section 64C(1) to notify the PRA that disciplinary action has been taken.]

Either the PRA or the FCA is “the appropriate regulator” in the case of a contravention

(a) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA;
(b) a requirement under section 60A(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA;
(c) a requirement under section 62A(2) where the revised statement of responsibilities is to be provided to the FCA and the PRA;[
(d) a requirement under section 63(2A) where the approval concerned is within section 63(1A)(a);
(e) a requirement under section 63E(1) where the authorised person concerned is a PRA-authorised person and the function concerned is of a description specified in rules made by the PRA;
(f) a requirement under section 63F(1), (2), (4), (6) or (7) where the authorised person concerned is a PRA-authorised person and the certificate concerned relates to a function of a description specified in rules made by the PRA.]
(7) The Treasury may by order amend the provisions defining “the appropriate regulator”.}
Financial penalties.

(1) If the [F1276] appropriate regulator] considers that an authorised person has contravened [F1277] a relevant requirement imposed on the person, [F1278] it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.

(2) [F1279]

(3) A penalty under this section is payable to the [F1279] regulator that imposed the penalty].
S. 206 modified (1.12.2001) by S.I. 2001/3083, arts. 1(2), 8; S.I. 2001/3538, art. 2(1)


C600 S. 206 applied (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), regs. 1, 71(1)(f)


206 Suspending permission to carry on regulated activities etc

(1) If the [F1281appropriate regulator] considers that an authorised person has contravened a relevant requirement imposed on the person, it may—

(a) suspend, for such period as it considers appropriate, any permission which the person has to carry on a regulated activity; or

(b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the carrying on of a regulated activity by the person as it considers appropriate.

[ The power conferred by subsection (1) is also exercisable by the FCA if it considers that an authorised person has contravened a requirement imposed on the person by—

(a) the Payment Services Regulations [F12832017], or

(b) the Electronic Money Regulations 2011.]

[F1284] The power conferred by subsection (1) may not be exercised in relation to a contravention of a requirement imposed under section 122A, 122B, 122C, 122G, 122H, 122I, [F1287122IA,] 123A or 123B.

(2) In subsection (1)—

“ permission ” means any permission that the authorised person has, whether given (or treated as given) by [F1287the FCA or the PRA] or conferred by any provision of this Act;

(3) The period for which a suspension or restriction is to have effect may not exceed 12 months.

(4) A suspension may relate only to the carrying on of an activity in specified circumstances.

(5) A restriction may, in particular, be imposed so as to require the person concerned to take, or refrain from taking, specified action.

(6) The [F1288appropriate regulator] may—

(a) withdraw a suspension or restriction; or
Proposal to take disciplinary measures.

(1) If [F1289 a regulator] proposes—

(b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

(7) The power under this section may (but need not) be exercised so as to have effect in relation to all the regulated activities that the person concerned carries on.

(8) Any one or more of the powers under—

(a) subsection (1)(a) and (b) of this section, and

(b) sections 205 and 206,

may be exercised in relation to the same contravention.
(a) to publish a statement in respect of an authorised person (under section 205), [F1290...]
(b) to impose a penalty on an authorised person (under section 206), [F1291 or
(c) to suspend a permission of an authorised person or impose a restriction in relation to the carrying on of a regulated activity by an authorised person (under section 206A),]
it must give the authorised person a warning notice.

(2) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(3) A warning notice about a proposal to impose a penalty, must state the amount of the penalty.

[F1292(4) A warning notice about a proposal to suspend a permission or impose a restriction must state the period for which the suspension or restriction is to have effect.]
(c) to suspend a permission or impose a restriction under section 206A (whether or not in the manner proposed), it must without delay give the authorised person concerned a decision notice.

(2) In the case of a statement, the decision notice must set out the terms of the statement.

(3) In the case of a penalty, the decision notice must state the amount of the penalty.

[F1296(3A) In the case of a suspension or restriction, the decision notice must state the period for which the suspension or restriction is to have effect.]

(4) If [F1297a regulator] decides to—

(a) publish a statement in respect of an authorised person under section 205, [F1298. . .]

(b) impose a penalty on an authorised person under section 206, [F1299 or

(c) suspend a permission of an authorised person, or impose a restriction in relation to the carrying on of a regulated activity by an authorised person, under section 206A,]

the authorised person may refer the matter to the Tribunal.

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**Textual Amendments**

F1293 Words in s. 208(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 15 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1294 Word in s. 208(1) omitted (8.6.2010) by virtue of Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(d)(e), Sch. 2 para. 19(2)

F1295S. 208(1)(c) and preceding word inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(d)(e), Sch. 2 para. 19(2)

F1296S. 208(3A) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(d)(e), Sch. 2 para. 19(3)

F1297 Words in s. 208(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 15 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1298 Word in s. 208(4) omitted (8.6.2010) by virtue of Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(d)(e), Sch. 2 para. 19(4)

F1299S. 208(4)(c) and preceding word inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(d)(e), Sch. 2 para. 19(4)

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


C609 Ss. 207-211 applied (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), regs. 1, 71(3)

C610 Ss. 207-211 applied (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), arts. 1(5), 23(4) (with Pt. 4)

C612 S. 208 excluded (1.12.2001) by S.I. 2001/3592, arts. 1(2), 61(5), 110(6) (with art. 23(2))


209 Publication.

After a statement under section 205 is published, the regulator concerned must send a copy of it to the authorised person and to any person on whom a copy of the decision notice was given under section 393(4).

Textual Amendments

Words in s. 209 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 16 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)


C609 Ss. 207-211 applied (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), regs. 1, 71(3)

C610 Ss. 207-211 applied (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), arts. 1(5), 23(4) (with Pt. 4)


210 Statements of policy.

(1) Each regulator must prepare and issue a statement of its policy with respect to—
   (a) the imposition of penalties, suspensions or restrictions under this Part; 
   (b) the amount of penalties under this Part; and 
   (c) the period for which suspensions or restrictions under this Part are to have effect.

(1A) Each regulator's policy with respect to the imposition of penalties, suspensions or restrictions under this Part must include policy with respect to their imposition in relation to conduct which constitutes or may constitute an offence by virtue of section 23(1A) (authorised persons carrying on credit-related regulated activities otherwise than in accordance with permission).
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 in question in relation to the nature of the requirement contravened;
(b) the extent to which that contravention was deliberate or reckless; and
(c) whether [F1306] the person against whom action is to be taken] is an individual.

(3) [F1307] A regulator may at any time alter or replace a statement issued [F1308] by it under this section.

(4) If a statement issued under this section is altered or [F1309] replaced by a regulator, the regulator must issue the altered or replacement statement.

(5) [F1310] A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(6) A statement issued under this section [F1311] by a regulator must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(7) In exercising, or deciding whether to exercise, its power under section 206 [F1313] or 206A [F1314] in the case of any particular contravention, [F1315] a regulator must have regard to any statement published [F1316] by it under this section and in force at the time when the contravention in question occurred.

(8) The regulator may charge a reasonable fee for providing a person with a copy of the statement.

Textual Amendments
F1301 Words in s. 210(1) substituted (24.1.2013 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. 9 para. 17(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F1302S. 210(1)(a)-(c) substituted (8.6.2010) for s. 210(1)(a)(b) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(d)(e), Sch. 2 para. 20(2)
F1303S. 210(1A) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), Sch. 9 para. 17(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F1304 Words in s. 210(2) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), Sch. 9 para. 17(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F1305S. 210(2) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(d)(e), Sch. 2 para. 20(3)(a)
F1306 Words in s. 210(2)(c) substituted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(d)(e), Sch. 2 para. 20(3)(b)
F1307 Words in s. 210(3) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), Sch. 9 para. 17(5)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F1308 Words in s. 210(3) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), Sch. 9 para. 17(5)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
S. 210 applied (with modifications) (7.6.2010) by
S. 210 applied (1.4.2013) by
S. 210 applied (6.3.2008) by
S. 210 excluded (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by

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Modifications etc. (not altering text)

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F1309 Words in s. 210(4) substituted (24.1.2013 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. 9 para. 17(6) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1310 Words in s. 210(5) substituted (24.1.2013 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. 9 para. 17(7) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1311 Words in s. 210(6) inserted (24.1.2013 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. 9 para. 17(8)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1312 Word in s. 210(6) substituted (24.1.2013 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. 9 para. 17(8)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1313 Words in s. 210(7) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(d)(e), Sch. 2 para. 20(4)

F1314 Words in s. 210(7) substituted (24.1.2013 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. 9 para. 17(9)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1315 Words in s. 210(7) inserted (24.1.2013 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. 9 para. 17(9)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1316 Word in s. 210(8) substituted (24.1.2013 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. 9 para. 17(10) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C609 Ss. 207-211 applied (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), regs. 1, 71(3)

C610 Ss. 207-211 applied (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), arts. 1(5), 23(4) (with Pt. 4)


C622 S. 210 applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2), 86(6) (with reg. 3)


C624 S. 210 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), reg. 22(2)

C625 S. 210 applied (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), reg. 53(6) (with reg. 3)

C626 S. 210 applied (with modifications) (15.1.2013) by The Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (S.I. 2012/3122), reg. 1, Sch. para. 3(1) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 248(6)(b))

C627 S. 210 applied (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 10(8) (with regs. 52-58)

C628 S. 210 applied (E.W.) (9.7.2013) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (S.I. 2013/1635), regs. 1, 29(2)

C629 S. 210 excluded (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 44(2)(8), 45(2), 47(6)

211 Statements of policy: procedure.

(1) Before a regulator issues a statement under section 210, the regulator must publish a draft of the proposed statement in the way appearing to the 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 regulator within a specified time.

(3) Before issuing the proposed statement, the regulator must have regard to any representations made to it in accordance with subsection (2).

(4) If the 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 (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with subsection (4)) publish details of the difference.

(6) A regulator may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.

Textual Amendments

F1317 Words in s. 211(1) substituted (24.1.2013 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. 9 para. 18(2)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1318 Word in s. 211(1) substituted (24.1.2013 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. 9 para. 18(2)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1319 Word in s. 211(2)-(4) substituted (24.1.2013 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. 9 para. 18(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
Financial Services and Markets Act 2000 (c. 8)
Part XIV – Disciplinary Measures
CHAPTER 5 – Power to make consequential amendments
Document Generated: 2019-12-18

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F1320 Word in s. 211(5) substituted (24.1.2013 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. 9 para. 18(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1321 Words in s. 211(6) substituted (24.1.2013 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. 9 para. 18(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C609 Ss. 207-211 applied (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), regs. 1, 71(3)

C610 Ss. 207-211 applied (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), arts. 1(5), 23(4) (with Pt. 4)

C636 Ss. 210, 211 applied (with modifications) (1.1.2018) by The Packaged Retail and Insurance-based Investment Products Regulations 2017 (S.I. 2017/1127), reg. 1, Sch. 1 para. 3


C639 S. 211 applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I. 2009/209), reg. 1(2), 86(6) (with reg. 3)

C640 S. 211 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, Sch. para. 3

C641 S. 211 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), reg. 22(2)

C642 S. 211 applied (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), reg. 53(6) (with reg. 3)

C643 S. 211 applied (with modifications) (15.1.2013) by The Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (S.I. 2012/3122), reg. 1, Sch. para. 3(1) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 248(6)(h))

C644 S. 211 applied (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 10(8) (with regs. 52-58)

C645 S. 211 applied (E.W.) (9.7.2013) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Reform Orders) Regulations 2013 (S.I. 2013/1635), reg. 1, 29(2)


C647 S. 211 applied (12.12.2014) by The Immigration Act 2014 (Bank Accounts) Regulations 2014 (S.I. 2014/3085), regs. 1, 28(2)

C648 S. 211 applied (1.1.2016) by The Small and Medium Sized Business (Credit Information) Regulations 2015 (S.I. 2015/1945), regs. 1(2), 43(1)

C649 S. 211 applied (with modifications) (1.1.2016) by The Small and Medium Sized Business (Finance Platforms) Regulations 2015 (S.I. 2015/1946), regs. 1(2), 40(1)

C650 S. 211 applied (18.9.2016) by The Payment Accounts Regulations 2015 (S.I. 2015/2038), regs. 1(2)(b), 36(6)

C651 S. 211 applied (13.8.2017) by The Payment Services Regulations 2017 (S.I. 2017/752), regs. 1(2)(a), 112(6) (with reg. 3)
PART XV

THE FINANCIAL SERVICES COMPENSATION SCHEME

The scheme manager

(1) The scheme manager” means the body corporate established by the Financial Services Authority under this section as originally enacted.

(2) The regulators must take such steps as are necessary to ensure that the scheme manager is, at all times, capable of exercising the functions conferred on it by or under this Part or Part 15A.

(3) The constitution of the scheme manager must provide for it to have—

(a) a chairman;

(aa) a chief executive (who is to be the accounting officer); and

(b) a board (which must include the chairman and chief executive) whose members are the scheme manager’s directors.

(4) The chairman, chief executive and other members of the board must be persons appointed, and liable to removal from office, by the regulators (acting, in the case of the chairman and the chief executive, with the approval of the Treasury).

(5) But the terms of their appointment (and in particular those governing removal from office) must be such as to secure their independence from the regulators in the operation of the compensation scheme.

(6) The scheme manager is not to be regarded as exercising functions on behalf of the Crown.

(7) The scheme manager’s officers and staff are not to be regarded as Crown servants.
Textual Amendments

F1322S. 212(1)(2) substituted (24.1.2013 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. 10 para. 2(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1323Word in s. 212(3) omitted (1.4.2014) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), ss. 16(2)(aa), 148(5); S.I. 2014/377, art. 2(2)(a)

F1324S. 212(3)(aa) inserted (1.4.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 16(2)(b), 148(5); S.I. 2014/377, art. 2(2)(a)

F1325Words in s. 212(3)(b) inserted (1.4.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 16(2)(c), 148(5); S.I. 2014/377, art. 2(2)(a)

F1326Words in s. 212(4) inserted (1.4.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 16(3)(a), 148(5); S.I. 2014/377, art. 2(2)(a)

F1327Word in s. 212(4) substituted (24.1.2013 for specified purposes) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 10 para. 2(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

F1328Words in s. 212(4) inserted (1.4.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 16(3)(b), 148(5); S.I. 2014/377, art. 2(2)(a)

F1329Word in s. 212(5) substituted (24.1.2013 for specified purposes) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 10 para. 2(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

F1330Words in s. 212(7) omitted (24.1.2013 in so far as not already in force) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), Sch. 10 para. 2(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

The scheme

213 The compensation scheme.

(1) The regulators must by rules made in accordance with an order under subsection (1A) establish a scheme for compensating persons in cases where—

(a) relevant persons are unable, or likely to be unable, to satisfy claims against them,

(aa) relevant exchanges are unable, or likely to be unable, to satisfy claims made against them in connection with a regulated activity relating to a trading facility carried on by the exchange, or

(b) persons who have assumed responsibility for liabilities arising from acts or omissions of relevant persons or relevant exchanges (“successors”) are unable, or likely to be unable, to satisfy claims against the successors that are based on those acts or omissions.

(1A) The Treasury must by order specify—

(a) the cases in which the FCA may, or may not, make rules under subsection (1), and

(b) the cases in which the PRA may, or may not, make rules under that subsection.

(2) The rules (taken together) are to be known as the Financial Services Compensation Scheme (but are referred to in this Act as “the compensation scheme”).

(3) The compensation scheme must, in particular, provide for the scheme manager—

(a) to assess and pay compensation, in accordance with the scheme, to claimants in respect of claims made in connection with—
(i) a regulated activity carried on (whether or not with permission) by relevant persons; and

(ii) a regulated activity relating to a trading facility carried on (whether or not in accordance with any requirements relating to that activity resulting from section 286) by relevant exchanges; and

(b) to have power to impose levies for the purpose of meeting its expenses (including in particular expenses incurred, or expected to be incurred, in paying compensation, borrowing or insuring risks)—

(i) on authorised persons, or any class of authorised person;

(ii) on recognised investment exchanges carrying on a regulated activity relating to a trading facility, or any class of such exchanges; or

(iii) on authorised persons and on recognised investment exchanges carrying on a regulated activity relating to a trading facility, or on any class of such persons and exchanges.

(4) The compensation scheme may provide for the scheme manager to have power to impose levies—

(a) on authorised persons, or any class of authorised person;

(b) on recognised investment exchanges carrying on a regulated activity relating to a trading facility, or any class of such exchanges; or

(c) on authorised persons and on recognised investment exchanges carrying on a regulated activity relating to a trading facility, or on any class of such persons and exchanges,

for the purpose of recovering the cost (whenever incurred) of establishing the scheme.

(5) In making any provision of the scheme by virtue of subsection (3)(b), the regulators must take account of the desirability of ensuring that the amount of the levies imposed on a particular—

(a) class of authorised person;

(b) class of recognised investment exchange carrying on a regulated activity relating to a trading facility; or

(c) class of authorised person and of recognised investment exchanges carrying on a regulated activity relating to a trading facility;

reflects, so far as is practicable, the amount of claims made, or likely to be made in respect of that class of person, exchange, or persons and exchanges.

(6) An amount payable to the scheme manager as a result of any provision of the scheme made by virtue of subsection (3)(b) or (4) may be recovered as a debt due to the scheme manager.

(7) Sections 214 to 217 make further provision about the scheme but are not to be taken as limiting the power conferred on the regulators by subsection (1).

(8) In those sections “specified” means specified in the scheme.

(9) In this Part (except in sections 219, 220 or 224) “relevant person” means a person who was—

(a) an authorised person at the time the act or omission giving rise to the claim against him, or against a successor falling within subsection (1)(b), took place; or

(b) an appointed representative at that time.
(10) But a person who, at that time—

(a) qualified for authorisation under Schedule 3, and

(b) fell within a prescribed category in relation to any authorised activities,

is not to be regarded as a relevant person in relation to those activities, unless the person had elected to participate in the scheme in relation to those activities at that time.

(11) In subsection (10) “authorised activities”, in relation to a person, means activities for which the person had, at the time mentioned in that subsection, permission as a result of any provision of, or made under, Schedule 3.

(12) In this Part (except in sections 220 and 224) “relevant exchange” means a body corporate or unincorporated association which was a recognised investment exchange carrying on a regulated activity relating to a trading facility at the time the act or omission giving rise to the claim against it, or against a successor falling within subsection (1)(b), took place.

(13) In this Part “regulated activity relating to a trading facility” means—

(a) the regulated activity of operating a multilateral trading facility; or

(b) the regulated activity of operating an organised trading facility.

Textual Amendments

F1331 Word in s. 213 substituted (24.1.2013 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. 10 para. 3(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.

F1332 Words in s. 213(1) inserted (24.1.2013 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. 10 para. 3(3)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.

F1333 Words in s. 213(1) substituted (24.1.2013 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. 10 para. 3(3)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.


F1337 S. 213(1A) inserted (24.1.2013 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. 10 para. 3(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.

F1338 Words in s. 213(2) inserted (24.1.2013 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. 10 para. 3(5) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.

F1339 S. 213(3)(a)(b) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services
and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701), reg. 1(2)(3)(4)(6), Sch. 2 para. 23(3)(a) (with reg. 7)


F1342Words in s. 213(9)(a) inserted (24.1.2013 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. 10 para. 3(6) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.


Modifications etc. (not altering text)


Commencement Information

134 S. 213 wholly in force at 18.6.2001; s. 213 not in force at Royal Assent see s. 431(2); s. 213(10) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pt. 2; s. 213 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.

Provisions of the scheme

214 General.

(1) The compensation scheme may, in particular, make provision—

(a) as to the circumstances in which a relevant person [\[F1345\] or relevant exchange] is to be taken (for the purposes of the scheme) to be unable, or likely to be unable, to satisfy claims made against him [\[F1346\] or it];

[F1347] (aa) as to the circumstances in which a successor falling within section 213(1)(b) is to be taken (for the purposes of the scheme) to be unable, or likely to be unable, to satisfy claims against the successor that are based on the acts or omissions of a relevant person [\[F1348\] or relevant exchange];

(b) for the establishment of different funds for meeting different kinds of claim;

(c) for the imposition of different levies in different cases;

(d) limiting the levy payable by a person in respect of a specified period;
(e) for repayment of the whole or part of a levy in specified circumstances;
(f) for a claim to be entertained only if it is made by a specified kind of claimant;
(g) for a claim to be entertained only if it falls within a specified kind of claim;
(h) as to the procedure to be followed in making a claim;
(i) for the making of interim payments before a claim is finally determined;
(j) limiting the amount payable on a claim to a specified maximum amount or a
maximum amount calculated in a specified manner;
(k) for payment to be made, in specified circumstances, to a person other than
the claimant.

(1A) Rules by virtue of subsection (1)(h) may, in particular, allow the scheme manager to
treat persons who are or may be entitled to claim under the scheme as if they had
done so.

(1B) A reference in any enactment or instrument to a claim or claimant under this Part
includes a reference to a deemed claim or claimant in accordance with subsection (1A).

(1C) Rules by virtue of subsection (1)(j) may, in particular, allow, or be subject to rules
which allow, the scheme manager to settle a class of claim by payment of sums
fixed without reference to, or by modification of, the normal rules for calculation of
maximum entitlement for individual claims.]

(2) Different provision may be made with respect to different kinds of claim.

(3) The scheme may provide for the determination and regulation of matters relating to
the scheme by the scheme manager.

(4) The scheme, or particular provisions of the scheme, may be made so as to apply only
in relation to—
   (a) activities carried on,
   (b) claimants,
   (c) matters arising, or
   (d) events occurring,
in specified territories, areas or localities.

(5) The scheme may provide for a person who—
   (a) qualifies for authorisation under Schedule 3, and
   (b) falls within a prescribed category,
to elect to participate in the scheme in relation to some or all of the activities for which
he has permission as a result of any provision of, or made under, that Schedule.

(6) The scheme may provide for the scheme manager to have power—
   (a) in specified circumstances,
   (b) but only if the scheme manager is satisfied that the claimant is entitled to
receive a payment in respect of his claim—
      (i) under a scheme which is comparable to the compensation scheme, or
      (ii) as the result of a guarantee given by a government or other authority,
to make a full payment of compensation to the claimant and recover the whole
or part of the amount of that payment from the other scheme or under that
guarantee.
Textual Amendments


F1347 S. 214(1)(aa) inserted (24.1.2013 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. 10 para. 4 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.


F1349 S. 214(1A)-(1C) inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), ss. 174(1), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

Commencement Information

135 S. 214 wholly in force at 18.6.2001; s. 214 not in force at Royal Assent see s. 431(2); s. 214(5) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pt. 2; s. 214 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.

PROSPECTIVE

1\(^{214}\)Contingency funding

(1) The Treasury may make regulations (“contingency fund regulations”) permitting the scheme manager to impose levies under section 213 for the purpose of maintaining contingency funds from which possible expenses may be paid.

(2) Contingency fund regulations may make provision about the establishment and management of contingency funds; in particular, the regulations may make provision about—

(a) the number and size of funds;
(b) the circumstances and timing of their establishment;
(c) the classes of person from whom contributions to the funds may be levied;
(d) the amount and timing of payments into and out of funds (which may include provision for different levies for different classes of person);
(e) refunds;
(f) the ways in which funds’ contents may be invested (including (i) the extent of reliance on section 223A, and (ii) the application of investment income);
(g) the purposes for which funds may be applied, but only so as to determine whether a fund is to be used (i) for the payment of compensation, (ii) for the purposes of co-operating with a bank liquidator in accordance with section 99 of the Banking Act 2009, or (iii) for contributions under section 214B;
(h) procedures to be followed in connection with funds, including the keeping of records and the provision of information.

(3) The compensation scheme may include provision about contingency funds provided that it is not inconsistent with contingency fund regulations.

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**Textual Amendments**

F1350S. 214A inserted (prosp.) by Banking Act 2009 (c. 1), ss. 170(1), 263(1)(2) (with s. 247)

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**(Contributions to costs of special resolution regime)**

(1) This section applies if—

(a) a stabilisation power under Part 1 of the Banking Act 2009 has been exercised in respect of a bank, building society [F1351], credit union or investment firm] within the meaning of that Part (“the institution”); and

(b) the Treasury think that the institution was or was likely to have been, or but for the exercise of the power would have become, unable to satisfy claims against it.

(2) The Treasury may require the scheme manager to make payments (to the Treasury or any other person) in respect of expenses of a prescribed description incurred (by the Treasury or that person) in connection with the exercise of the power.

(3) Subsection (2) is subject to section 214C (limit on amount of special resolution regime payments).

(4) In subsection (2) “expenses” includes interest at a specified rate on the difference, at any time, between—

(a) the total amount of expenses (including interest) incurred at or before that time; and

(b) the total amount recovered, or received from the scheme manager, in respect of the institution, at or before that time, by—

(i) the Treasury; and

(ii) any other person who has incurred expenses in connection with the exercise of the power that are of a description prescribed under subsection (2).

(5) Any payment made by the scheme manager under subsection (2) is to be treated for the purposes of this Part as an expense under the compensation scheme.

(6) In this section and section 214C “specified rate” means a rate specified by the Treasury.

(7) Different rates may be specified under different provisions or for different periods.

(8) A rate may be specified by reference to a rate set (from time to time) by any person.

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**Textual Amendments**

F1351S. 214B inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), ss. 171(1), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F1352Ss. 214B-214D substituted (8.4.2010) for s. 214B by Financial Services Act 2010 (c. 28), ss. 16(1), 26(1)
214C Limit on amount of special resolution regime payments

(1) The total amount of special resolution regime payments required to be made in respect of a person ("the institution") may not exceed—
   (a) notional net expenditure (see subsection (3)), minus
   (b) actual net expenditure (see subsection (4)).

(2) A "special resolution regime payment" is—
   (a) a payment under section 214B(2); or
   (b) a payment required to be made by the scheme manager by virtue of section 61 of the Banking Act 2009 (special resolution regime: compensation).

(3) Notional net expenditure is—
   (a) the total amount of expenses that would have been incurred under the compensation scheme in respect of the institution if the stabilisation power had not been exercised and the institution had been unable to satisfy claims against it, minus
   (b) the total amount that would have been likely, at the time when the power was exercised, to be recovered by the scheme manager in respect of the institution in those circumstances.

(4) Actual net expenditure is—
   (a) the total amount of expenses (other than special resolution regime payments) actually incurred by the scheme manager in respect of the institution, minus
   (b) the total amount actually recovered by the scheme manager in respect of the institution.

(5) In subsection (3)(a) "expenses" includes interest at a specified rate on the difference, at any time, between—
   (a) the total amount of expenses (including interest) that would have been incurred as mentioned in subsection (3)(a) at or before that time; and
   (b) the total amount that would have been likely to have been recovered as mentioned in subsection (3)(b) at or before that time.

(6) In subsection (4)(a) "expenses" includes interest at a specified rate on the difference, at any time, between—
   (a) the total amount of expenses (including special resolution regime payments and interest) actually incurred by the scheme manager in respect of the institution at or before that time; and
   (b) the total amount actually recovered by the scheme manager in respect of the institution at or before that time.
(7) In paragraph (b) of subsections (3) to (6) references to amounts recovered (or likely to have been recovered) by the scheme manager do not include any levy received (or likely to have been received) by it.

214D Contributions under section 214B: supplementary

(1) This section supplements sections 214B and 214C.

(2) The scheme manager must determine—

(a) the amounts of expenses (other than interest) that would have been incurred as mentioned in section 214C(3)(a); and

(b) the time or times at which those amounts would have been likely to have been incurred.

(3) The Treasury, or a person designated by the Treasury, must in accordance with regulations appoint a person (“the valuer”) to determine—

(a) the amounts that would have been likely, at the time when the stabilisation power was exercised, to be recovered as mentioned in section 214C(3)(b); and

(b) the time or times at which those amounts would have been likely to be recovered.

The person appointed under this subsection may be the person appointed as valuer under section 54 of the Banking Act 2009 in respect of the exercise of the stabilisation power.

(4) Regulations may enable the Treasury to specify principles to be applied by—

(a) the scheme manager when exercising functions under subsection (2); or

(b) the valuer when exercising functions under subsection (3).

(5) The regulations may in particular enable the Treasury to require the scheme manager or valuer—

(a) to use, or not to use, specified methods;

(b) to take specified matters into account in a specified manner; or

(c) not to take specified matters into account.

(6) Regulations—

(a) must provide for independent verification of expenses within section 214B(2);

(b) may provide for the independent verification of other matters; and

(c) may contain provision about the appointment and payment of an auditor.

(7) Regulations—

(a) must contain provision enabling the valuer to reconsider a decision;
(b) must provide a right of appeal to a court or tribunal against any decision of the valuer;
(c) may provide for payment of the valuer; and
(d) may apply (with or without modifications) or make provision corresponding to—
   (i) any provision of sections 54 to 56 of the Banking Act 2009; or
   (ii) any provision made, or that could be made, by virtue of any of those sections.

(8) Regulations may make provision for payments under section 214B(2) to be made—
   (a) before any verification required by the regulations is undertaken, and
   (b) before the limit imposed by section 214C is calculated,
subject to any necessary later adjustment.

(9) If they do so they must provide that the amount of any payment required by virtue of subsection (8) must not be such as to give rise to an expectation that an amount will be required to be repaid to the scheme manager (once any necessary verification has been undertaken and the limit imposed by section 214C has been calculated).

(10) Regulations may—
   (a) make provision supplementing section 214B or 214C or this section;
   (b) make further provision about the method by which amounts to be paid under section 214B(2) are to be determined;
   (c) make provision about timing;
   (d) make provision about procedures to be followed;
   (e) provide for discretionary functions to be exercised by a specified body or by persons of a specified class; and
   (f) make provision about the resolution of disputes (which may include provision conferring jurisdiction on a court or tribunal).

(11) “Regulations” means regulations made by the Treasury.

(12) Any payment made by the Treasury by virtue of this section is to be met out of money provided by Parliament.

(13) The compensation scheme may make provision about payments under section 214B(2) and levies in connection with such payments (except provision inconsistent with any provision made by or under section 214B or 214C or this section).]
(a) about the effect of a payment of compensation under the scheme on rights or obligations arising out of matters in connection with which the compensation was paid;
(b) giving the scheme manager a right of recovery in respect of those rights or obligations.]

(2) Such a right of recovery conferred by the scheme does not, in the event of a person's insolvency, exceed such right (if any) as the claimant would have had in that event.

(2A) Any payment made by the scheme manager under section 214B(2) in connection with the exercise of a stabilisation power in respect of a bank, building society or credit union is to be treated as a debt due to the scheme manager from that bank, building society or (as the case may be) credit union.

In subsection (2)—
“bank” has the meaning given in section 2 of the Banking Act 2009;
“building society” has the meaning given in the Building Societies Act 1986;
“credit union” means a credit union within the meaning of—
(a) the Credit Unions Act 1979; or
(b) article 2 of the Credit Unions (Northern Ireland) Order 1985.

(3) If a person other than the scheme manager makes an administration application under Schedule B1 to the 1986 Act or Schedule B1 to the 1989 Order in relation to—
(a) a company or partnership which is a relevant person; or
(b) a body corporate or unincorporated association which is a relevant exchange; the scheme manager has the same rights as are conferred on the regulators by section 362.

In subsection (3) the reference to making an administration application includes a reference to—
(a) appointing an administrator under paragraph 14 or 22 of Schedule B1 to the 1986 Act or paragraph 15 or 23 of Schedule B1 to the 1989 Order, or
(b) filing with the court a copy of notice of intention to appoint an administrator under of those paragraphs.

If a person other than the scheme manager presents a petition for the winding up of a body which is a relevant person, the scheme manager has the same rights as are conferred on the regulators by section 371.

If a person other than the scheme manager presents a bankruptcy petition to the court in relation to an individual who, or an entity which, is a relevant person, the scheme manager has the same rights as are conferred on the regulators by section 374.

Insolvency rules may be made for the purpose of integrating any procedure for which provision is made as a result of subsection (1) into the general procedure on the administration of a company or partnership or on a winding-up, bankruptcy or sequestration.

“Bankruptcy petition” means a petition to the court—
(a) under section 264 of the 1986 Act or Article 238 of the 1989 Order for a bankruptcy order to be made against an individual;
(b) under section [F1367] of the 2016 Act for the sequestration of the estate of an individual; or
(c) under section 6 of the [F1368] Act for the sequestration of the estate belonging to or held for or jointly by the members of an entity mentioned in subsection (1) of that section.

(8) “Insolvency rules” are—

(a) for England and Wales, rules made under sections 411 and 412 of the 1986 Act;

(b) for Scotland, rules made by order by the Treasury, after consultation with the Scottish Ministers, for the purposes of this section; and

(c) for Northern Ireland, rules made under Article 359 of the 1989 Order and section 55 of the [F1371] Act 1978.

(9) [F1369] ... “the 1986 Act”, “the 1989 Order” [F1370], “the 2016 Act” and “court” have the same meaning as in Part XXIV.

Textual Amendments

F1355S. 215: heading substituted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by virtue of Banking Act 2009 (c. 1), ss. 175(4), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F1356S. 215(1) substituted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), ss. 175(2), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F1357Words in s. 215(2) substituted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), ss. 175(3), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F1358S. 215(2A)(2B) inserted (26.3.2015) by The Deposit Guarantee Scheme Regulations 2015 (S.I. 2015/486), regs. 1(2), 13(3)

F1359Words in s. 215(3) substituted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, Sch. 17 para. 54(2); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, art. 2))

F1360Words in s. 215(3) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 57(2); S.R. 2006/21, art. 2 (subject to S.R. 2006/22, arts. 2-7)


F1362S. 215(3A) inserted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, Sch. 17 para. 54(3); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, art. 2))

F1363Words in s. 215(3A)(a) inserted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 57(3)(a); S.R. 2006/21, art. 2 (subject to S.R. 2006/22, arts. 2-7)

F1364Word in s. 215(3A)(b) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 57(3)(b); S.R. 2006/21, art. 2 (subject to S.R. 2006/22, arts. 2-7)


F1366Word in s. 215 substituted (24.1.2013 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. 10 para. 5 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
Continuity of long-term insurance policies.

(1) The compensation scheme may, in particular, include provision requiring the scheme manager to make arrangements for securing continuity of insurance for policyholders, or policyholders of a specified class, of relevant long-term insurers.

(2) “Relevant long-term insurers” means relevant persons who—

(a) have permission to effect or carry out contracts of long-term insurance; and

(b) are unable, or likely to be unable, to satisfy claims made against them.

(3) The scheme may provide for the scheme manager to take such measures as appear to him to be appropriate—

(a) for securing or facilitating the transfer of a relevant long-term insurer’s business so far as it consists of the carrying out of contracts of long-term insurance, or of any part of that business, to another authorised person; and

(b) for securing the issue by another authorised person to the policyholders concerned of policies in substitution for their existing policies.

(4) The scheme may also provide for the scheme manager to make payments to the policyholders concerned—
(a) during any period while he is seeking to make arrangements mentioned in subsection (1);
(b) if it appears to him that it is not reasonably practicable to make such arrangements.

(5) A provision of the scheme made by virtue of section 213(3)(b) may include power to impose levies for the purpose of meeting expenses of the scheme manager incurred in—

(a) taking measures as a result of any provision of the scheme made by virtue of subsection (3);
(b) making payments as a result of any such provision made by virtue of subsection (4).

### 217 Insurers in financial difficulties.

(1) The compensation scheme may, in particular, include provision for the scheme manager to have power to take measures for safeguarding policyholders, or policyholders of a specified class, of relevant insurers.

(2) “Relevant insurers” means relevant persons who—

(a) have permission to effect or carry out contracts of insurance; and
(b) are in financial difficulties.

(3) The measures may include such measures as the scheme manager considers appropriate for—

(a) securing or facilitating the transfer of a relevant insurer’s business so far as it consists of the carrying out of contracts of insurance, or of any part of that business, to another authorised person;
(b) giving assistance to the relevant insurer to enable it to continue to effect or carry out contracts of insurance.

(4) The scheme may provide—

(a) that if measures of a kind mentioned in subsection (3)(a) are to be taken, they should be on terms appearing to the scheme manager to be appropriate, including terms reducing, or deferring payment of, any of the things to which any of those who are eligible policyholders in relation to the relevant insurer are entitled in their capacity as such;
(b) that if measures of a kind mentioned in subsection (3)(b) are to be taken, they should be conditional on the reduction of, or the deferment of the payment of, the things to which any of those who are eligible policyholders in relation to the relevant insurer are entitled in their capacity as such;
(c) for ensuring that measures of a kind mentioned in subsection (3)(b) do not benefit to any material extent persons who were members of a relevant insurer when it began to be in financial difficulties or who had any responsibility for, or who may have profited from, the circumstances giving rise to its financial difficulties, except in specified circumstances;
(d) for requiring the scheme manager to be satisfied that any measures he proposes to take are likely to cost less than it would cost to pay compensation under the scheme if the relevant insurer became unable, or likely to be unable, to satisfy claims made against him.
(5) The scheme may provide for the [F1371 either regulator or both regulators] to have power—
   (a) to give such assistance to the scheme manager as it considers appropriate for assisting the scheme manager to determine what measures are practicable or desirable in the case of a particular relevant insurer;
   (b) to impose constraints on the taking of measures by the scheme manager in the case of a particular relevant insurer;
   (c) to require the scheme manager to provide it with information about any particular measures which the scheme manager is proposing to take.

(6) The scheme may include provision for the scheme manager to have power—
   (a) to make interim payments in respect of eligible policyholders of a relevant insurer;
   (b) to indemnify any person making payments to eligible policyholders of a relevant insurer.

(7) A provision of the scheme made by virtue of section 213(3)(b) may include power to impose levies for the purpose of meeting expenses of the scheme manager incurred in—
   (a) taking measures as a result of any provision of the scheme made by virtue of subsection (1);
   (b) making payments or giving indemnities as a result of any such provision made by virtue of subsection (6).

(8) “Financial difficulties” and “eligible policyholders” have such meanings as may be specified.
The scheme manager must ensure that the memoranda as currently in force are published in the way appearing to it to be best calculated to bring them to the attention of the public.

Annual plan and report

Textual Amendments
F1373 S. 218 cross-heading substituted (24.1.2013 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. 10 para. 8 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Annual plan

(1) The scheme manager must in respect of each of its financial years prepare an annual plan.

(2) The plan must be prepared before the start of the financial year.

(3) An annual plan in respect of a financial year must make provision about the use of the resources of the scheme manager.

(4) The plan may include material relating to periods longer than the financial year in question.

(5) Before preparing an annual plan, the scheme manager must consult such persons (if any) as the scheme manager considers appropriate.

(6) The scheme manager must publish each annual plan in the way it considers appropriate.

Textual Amendments
F1374 S. 217B inserted (24.1.2013 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. 10 para. 9 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Annual report.

(1) At least once a year, the scheme manager must make a report to the [F1375 regulators] on the discharge of its functions.

(2) The report must—
   (a) include a statement setting out the value of each of the funds established by the compensation scheme; and
   (b) comply with any requirements specified in rules made by the [F1376 regulators].

(3) The scheme manager must publish each report in the way it considers appropriate.

(4) The Treasury may—
(a) require the scheme manager to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or

(b) direct that any such provision of that Act is to apply to the scheme manager with such modifications as are specified in the direction.

(5) Compliance with any requirement under subsection (4)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.

(6) Proceedings under subsection (5) may be brought only by the Treasury.

Explanatory Notes

Textual Amendments

F1375 Word in s. 218(1) substituted (24.1.2013 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. 10 para. 10(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1376 Word in s. 218(2)(b) substituted (24.1.2013 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. 10 para. 10(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1377S. 218(4)-(6) inserted (24.1.2013 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. 10 para. 10(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

[F1378 218A Audit of accounts

(1) The scheme manager must send a copy of its annual accounts to the Comptroller and Auditor General and the Treasury as soon as is reasonably practicable.

(2) The Comptroller and Auditor General must—

(a) examine, certify and report on accounts received under this section, and

(b) send a copy of the certified accounts and the report to the Treasury.

(3) The Treasury must lay the copy of the certified accounts and the report before Parliament.

(4) The scheme manager must send a copy of the certified accounts and the report to the regulators.

(5) Except as provided by section 218(4), the scheme manager is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.

(6) In this section “annual accounts” has the meaning given by section 471 of the Companies Act 2006.

Textual Amendments

F1378S. 218ZA inserted (24.1.2013 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. 10 para. 11 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
Each regulator may make rules enabling that regulator to require authorised persons or recognised investment exchanges carrying on a regulated activity relating to a trading facility to—

(a) provide information to the scheme manager on the request of that regulator or the scheme manager; or

(b) provide information to that regulator, which may then be made available to the scheme manager by that regulator.

A requirement may be imposed only if the regulator thinks the information is of a kind that may be of use to the scheme manager in connection with functions in respect of the scheme.

A requirement under this section may apply—

(a) to authorised persons generally or only to specified persons or classes of person;

(b) to recognised investment exchanges mentioned in subsection (1) generally or only to specified exchanges or classes of exchange;

(b) to the provision of information at specified periods, in connection with specified events or in other ways.

In addition to requirements under this section, a notice under section 165 may relate to information or documents which the regulator thinks are reasonably required by the scheme manager in connection with the performance of functions in respect of the scheme; and section 165(4) is subject to this subsection.

Rules under subsection (1) shall be prepared, made and treated in the same way as (and may be combined with) the regulator’s general rules.

Textual Amendments

F1379S. 218A inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), ss. 176(1), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F1380 Word in s. 218A heading substituted (24.1.2013 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. 10 para. 12(5) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1381S. 218A(1) substituted (26.3.2015) by The Deposit Guarantee Scheme Regulations 2015 (S.I. 2015/486), regs. 1(2), 13(4)


F1383 Word in s. 218A(2) substituted (24.1.2013 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. 10 para. 12(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

218 Treasury's power to require information from scheme manager

(1) The Treasury may by notice in writing require the scheme manager to provide specified information or information of a specified description that the Treasury reasonably require in connection with the duties of the Treasury under the Government Resources and Accounts Act 2000.

(2) Information required under this section must be provided before the end of such reasonable period as may be specified.

(3) “Specified” means specified in the notice.

219 Scheme manager’s power to require information.

(1) The scheme manager may, by notice in writing require a person—

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description.

(1A) A requirement may be imposed only—

(a) on a person (P) against whom a claim has been made under the scheme,

(b) on a person (P) who is unable or likely to be unable to satisfy claims under the scheme against P,

(c) on a person (“the Third Party”) whom the scheme manager thinks was knowingly involved in matters giving rise to a claim against another person (P) under the scheme, or

(d) on a person (“the Third Party”) whom the scheme manager thinks was knowingly involved in matters giving rise to the actual or likely inability of another person (P) to satisfy claims under the scheme.

(1B) For the purposes of subsection (1A)(b) and (d) whether P is unable or likely to be unable to satisfy claims shall be determined in accordance with provision to be made by the scheme (which may, in particular—

(a) apply or replicate, with or without modifications, a provision of an enactment; and

(b) confer discretion on a specified person).

(2) The information or documents must be provided or produced—

(a) before the end of such reasonable period as may be specified; and

(b) in the case of information, in such manner or form as may be specified.
(3) This section applies only to information and documents the provision or production of which the scheme manager considers to be necessary (or likely to be necessary) for the fair determination of claims which have been or may be made against P.

(3A) Where a stabilisation power under Part 1 of the Banking Act 2009 has been exercised in respect of a bank, building society or credit union, the scheme manager may by notice in writing require the bank, building society or credit union, or the Bank of England, to provide information that the scheme manager requires for the purpose of determining the matters mentioned in section 214D(2)(a) and (b) above.

(4) If a document is produced in response to a requirement imposed under this section, the scheme manager may—

(a) take copies or extracts from the document; or

(b) require the person producing the document to provide an explanation of the document.

(5) If a person who is required under this section to produce a document fails to do so, the scheme manager may require the person to state, to the best of his knowledge and belief, where the document is.

(6) If P is insolvent, no requirement may be imposed under this section on a person to whom section 220 or 224 applies.

(7) If a person claims a lien on a document, its production under this Part does not affect the lien.

(8) “Specified” means specified in the notice given under subsection (1).

(9) Textual Amendments

F1388 Words in s. 219(1) substituted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), ss. 176(3), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F1389S. 219(1A)-(1B) inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), ss. 176(4), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F1390 Words in s. 219(3) substituted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), ss. 176(5), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F1391S. 219(3A) inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), ss. 176(6), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F1392 Words in s. 219(3A) inserted (8.4.2010) by Financial Services Act 2010 (c. 28), ss. 21(8)(a), 26(1)

F1393 Words in s. 219(3A) substituted (8.4.2010) by Financial Services Act 2010 (c. 28), ss. 21(8)(b), 26(1)

F1394 Words in s. 219(3A) substituted (8.4.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(1), Sch. 2 para. 22

F1395 Word in s. 219(6) substituted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), ss. 176(7), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F1396S. 219(8) omitted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by virtue of Banking Act 2009 (c. 1), ss. 176(8), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F1397S. 219(10) omitted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by virtue of Banking Act 2009 (c. 1), ss. 176(9), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.
220 Scheme manager’s power to inspect information held by liquidator etc.

(1) For the purpose of assisting the scheme manager to discharge its functions in relation to a claim made in respect of an insolvent relevant person \[^{F1399}\] or insolvent relevant exchange, a person to whom this section applies must permit a person authorised by the scheme manager to inspect relevant documents.

(2) A person inspecting a document under this section may take copies of, or extracts from, the document.

(3) This section applies to—

(a) the administrative receiver, administrator, liquidator \[^{F1399}\], bank liquidator \[^{F1400}\], building society liquidator\[^{F1401}\] or trustee in bankruptcy of an insolvent relevant person \[^{F1401}\] or insolvent relevant exchange;

(b) the \[^{F1402}\] trustee in the sequestration, under the Bankruptcy (Scotland) Act 2016, of the estate of an insolvent relevant person \[^{F1403}\] or insolvent relevant exchange.

(4) This section does not apply to a liquidator, administrator or trustee in bankruptcy who is—

(a) the Official Receiver;
(b) the Official Receiver for Northern Ireland; or
(c) the Accountant in Bankruptcy.

(5) “Relevant person” \[^{F1404}\] and “relevant exchange”\[^{F1405}\] have the same meaning as in section 224.

Textual Amendments

- **F1398** Words in s. 220(1) inserted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701), reg. 1(2)(3)(4)(6), Sch. 2 para. 27(2) (with reg. 7)

- **F1399** Words in s. 220(3)(a) inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), ss. 123(3), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

- **F1400** Words in s. 220(3)(a) inserted (29.3.2009) by The Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805), art. 15


- **F1402** Words in s. 220(3)(b) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, Sch. 1 para. 20(3)
Powers of court where information required.

(1) If a person (“the defaulter”)—
   (a) fails to comply with a requirement imposed under section 219, or
   (b) fails to permit documents to be inspected under section 220,
the scheme manager may certify that fact in writing to the court and the court may enquire into the case.

(2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement (or to permit the documents to be inspected), it may deal with the defaulter (and, in the case of a body corporate, any director or other officer) as if he were in contempt; and “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.

(3) “Court” means—
   (a) the High Court;
   (b) in Scotland, the Court of Session.

Textual Amendments

F1406 Word in s. 221(2) inserted (24.1.2013 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. 10 para. 13 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1407 Words in s. 221(2) inserted (6.4.2001 for E.W.S. and 13.9.2004 for N.I.) by S.I. 2001/1090, regs. 1, 9, Sch. 5 para. 21; S.R. 2004/307, reg. 9, Sch. 4 para. 17

Modifications etc. (not altering text)

C675 S. 221 extended (1.12.2001) by S.I. 2001/2967, arts. 1(2), 7(b), 8, 12(4)(b)(c); S.I. 2001/3538, art. 2(1)
Miscellaneous

221 Delegation of functions

(1) The scheme manager may arrange for any of its functions to be discharged on its behalf by another person (a “scheme agent”).

(2) Before entering into arrangements the scheme manager must be satisfied that the scheme agent—
   (a) is competent to discharge the function, and
   (b) has been given sufficient directions to enable the agent to take any decisions required in the course of exercising the function in accordance with policy determined by the scheme manager.

(3) Arrangements may include provision for payments to be made by the scheme manager to the scheme agent (which payments are management expenses of the scheme manager except where the function in question is one under Part 15A).

Textual Amendments

F1408 S. 221A inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), ss. 179(1), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F1409 Words in s. 221A(3) inserted (12.10.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(3), Sch. 2 para. 23; S.I. 2010/2480, art. 2(e)(f)

222 Statutory immunity.

(1) Neither the scheme manager nor any person who is, or is acting as, its officer, scheme agent or member of staff is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the scheme manager’s functions.

(2) Subsection (1) does not apply—
   (a) if the act or omission is shown to have been in bad faith; or
   (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

Textual Amendments

F1410 Words in s. 222(1) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), Sch. 10 para. 14 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1411 Words in s. 222(1) inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), ss. 179(2), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

C676 S. 222 modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (S.I. 2008/2546), art. 32 (with art. 30(6))

C677 S. 222 modified (7.10.2008 at 9.30 a.m.) by The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2644), art. 17 (with art. 15(8))

C678 S. 222 modified (8.10.2008 at 10.10 a.m.) by The Transfer of Rights and Liabilities to ING Order 2008 (S.I. 2008/2666), art. 14
223 Management expenses.

(1) The amount which the scheme manager may recover, from the sums levied under the scheme, as management expenses attributable to a particular period may not exceed such amount as may be fixed by the scheme as the limit applicable to that period.

(2) In calculating the amount of any levy to be imposed by the scheme manager, no amount may be included to reflect management expenses unless the limit mentioned in subsection (1) has been fixed by the scheme.

(3) “Management expenses” means expenses incurred, or expected to be incurred, by the scheme manager in connection with its functions under this Act other than those incurred—

   (a) in paying compensation;
   (b) as a result of any provision of the scheme made by virtue of section 216(3) or (4) or 217(1) or (6)[F1412];
   (c) under section 214B [F1413] or 214D.[F1414]
   (d) under Part 15A.[F1415]

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C679 S. 222 modified (8.10.2008 at 12.15 p.m.) by The Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2674), art. 18 (with art. 16(8))
(4) Interest accruing on the invested sums may be credited to the contingency fund (subject to any terms and conditions set under subsection (2)).

(5) The Treasury shall comply with any request of the scheme manager to arrange for the return of sums for the purpose of making payments out of a contingency fund (subject to any terms and conditions set under subsection (2)).]

Textual Amendments
F1415 S. 223A inserted (prosp.) by Banking Act 2009 (c. 1), ss. 172, 263(1)(2) (with s. 247)

[F1416 223B Borrowing from National Loans Fund

(1) The scheme manager may request a loan from the National Loans Fund for the purpose of funding expenses incurred or expected to be incurred under the scheme.

(2) The Treasury may arrange for money to be paid out of the National Loans Fund in pursuance of a request under subsection (1).

(3) The Treasury shall determine—
   (a) the rate of interest on a loan, and
   (b) other terms and conditions.

(4) The Treasury may make regulations—
   (a) about the amounts that may be borrowed under this section;
   (b) permitting the scheme manager to impose levies under section 213 for the purpose of meeting expenses in connection with loans under this section (and the regulations may have effect despite any provision of this Act);
   (c) about the classes of person on whom those levies may be imposed;
   (d) about the amounts and timing of those levies.

(5) The compensation scheme may include provision about borrowing under this section provided that it is not inconsistent with regulations under this section.]

Textual Amendments
F1416 S. 223B inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), ss. 173, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

[F1417 223C Payments in error

(1) Payments made by the scheme manager in error may be provided for in setting a levy by virtue of section 213, 214A, 214B or 223B.

(2) This section does not apply to payments made in bad faith.]

Textual Amendments
F1417 S. 223C inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), ss. 177, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.
224 Scheme manager’s power to inspect documents held by Official Receiver etc.

(1) If, as a result of the insolvency or bankruptcy of a relevant person or a relevant exchange, any documents have come into the possession of a person to whom this section applies, he must permit any person authorised by the scheme manager to inspect the documents for the purpose of establishing—

(a) the identity of persons to whom the scheme manager may be liable to make a payment in accordance with the compensation scheme; or

(b) the amount of any payment which the scheme manager may be liable to make.

(2) A person inspecting a document under this section may take copies or extracts from the document.

(3) In this section “relevant person” means a person who was—

(a) an authorised person at the time the act or omission which may give rise to the liability mentioned in subsection (1)(a) took place; or

(b) an appointed representative at that time.

(4) But a person who, at that time—

(a) qualified for authorisation under Schedule 3, and

(b) fell within a prescribed category,

is not to be regarded as a relevant person for the purposes of this section in relation to any activities for which he had permission as a result of any provision of, or made under, that Schedule unless he had elected to participate in the scheme in relation to those activities at that time.

(4A) In this section “relevant exchange” means a body corporate or unincorporated association carrying on a regulated activity relating to a trading facility at the time the act or omission which may give rise to the liability mentioned in subsection (1) took place.

(5) This section applies to—

(a) the Official Receiver;

(b) the Official Receiver for Northern Ireland; and

(c) the Accountant in Bankruptcy.

Textual Amendments


F1419 Words in s. 224(1) inserted (24.1.2013 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. 10 para. 15 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.


Modifications etc. (not altering text)

C680 S. 224 extended (1.12.2001) by S.I. 2001/2967, arts. 1(2), 8, 12(4)(c); S.I. 2001/3538, art. 2(1)
Discharge of functions

(1) In discharging its functions the scheme manager must have regard to—

(a) the need to ensure efficiency and effectiveness in the discharge of those functions, and

(b) the need to minimise public expenditure attributable to loans made or other financial assistance given to the scheme manager for the purposes of the scheme.

(2) In subsection (1)(b) “financial assistance” includes the giving of guarantees and indemnities and any other kind of financial assistance (actual or contingent).

Functions under the Banking Act 2009

(1) A reference in this Part to functions of the scheme manager (including a reference to functions conferred by or under this Part) includes a reference to functions conferred by or under the Banking Act 2009.

(2) Any payment required to be made by the scheme manager by virtue of section 61 of that Act (special resolution regime: compensation) is to be treated for the purposes of this Part as an expense under the compensation scheme.


**PART 15A**

**POWER TO REQUIRE FSCS MANAGER TO ACT IN RELATION TO OTHER SCHEMES**

**Textual Amendments**

F1425Pt. 15A inserted (12.10.2010) by Financial Services Act 2010 (c. 28), ss. 17, 26(3); S.I. 2010/2480, art. 2(d)

**Introduction**

224B  **Meaning of “relevant scheme” etc**

(1) The following provisions apply for the purposes of this Part.

(2) “Relevant scheme” means a scheme or arrangement (other than the FSCS) for the payment of compensation (in certain cases) to customers of persons who provide financial services or carry on a business connected with the provision of such services.

(3) References to the manager of a relevant scheme are to the person who administers it or (if there is no such person) the person responsible for making payments under it.

(4) “The FSCS” means the Financial Services Compensation Scheme (see section 213(2)).

(5) “The FSCS manager” means the scheme manager as defined by section 212(1).

(6) “Expense” includes anything that, if incurred in relation to the FSCS, would amount to an expense for the purposes of the FSCS.

(7) “Notice” means a notice in writing.

(8) In subsection (2)—

(a) “customers” includes customers outside the United Kingdom;

(b) “persons” includes persons outside the United Kingdom;

(c) references to the provision of financial services include the provision outside the United Kingdom of such services.

(9) This Part applies to cases where the manager of the relevant scheme is the Treasury or any other Minister of the Crown as it applies to cases where that manager is any other person.

*Power to require FSCS manager to act*

224C  **Power to require FSCS manager to act on behalf of manager of relevant scheme**

(1) This section applies if compensation is payable under a relevant scheme.

(2) The Treasury may by notice require the FSCS manager to exercise (on behalf of the manager of the relevant scheme) specified functions in respect of specified claims for compensation under the relevant scheme.

(3) A notice may be given only with the consent of the manager of the relevant scheme.
(4) In subsection (2) “specified” means specified, or of a description specified, in the notice.

(5) Claims or descriptions of claims may be specified by reference to the persons or description of persons whose claims they are.

224D  Cases where FSCS manager may decline to act

(1) This section applies where a notice under section 224C(2) (a “section 224C notice”) has been given in respect of a relevant scheme.

(2) The FSCS manager is not under a duty to comply with the section 224C notice if, as soon as reasonably practicable after receiving it, the FSCS manager gives a notice to the Treasury stating that a ground set out in section 224E applies.

(3) Where a notice under subsection (2) is given, the FSCS manager may recover from the manager of the relevant scheme an amount equal to the total expenses incurred by the FSCS manager in connection with the relevant scheme in the period—

(a) beginning with the giving of the section 224C notice; and

(b) ending with the giving of the notice under subsection (2).

(4) The duty to comply with the section 224C notice ceases if, after starting to comply with it, the FSCS manager gives a notice to the Treasury and the manager of the relevant scheme stating that a ground set out in section 224E applies.

(5) Where a notice under subsection (4) is given, the FSCS manager must give the Treasury such information connected with the FSCS manager's exercise of functions in relation to the relevant scheme as the Treasury may reasonably require.

(6) Any notice under this section—

(a) may be given only if, before giving it, the FSCS manager has taken reasonable steps to deal with anything that is causing the ground or grounds in question to apply; and

(b) must contain details of those steps.

224E  Grounds for declining to act

(1) This section sets out the grounds referred to in section 224D(2) and (4).

(2) The first ground is that the FSCS manager is not satisfied that it will be able to obtain any information required in order to comply with the section 224C notice.

(3) The second ground is that the FSCS manager is not satisfied that it will be able to obtain any advice or other assistance from the manager of the relevant scheme that is required in order to comply with the section 224C notice.

(4) The third ground is—

(a) that the FSCS manager has not received an amount at least equal to the total expenses it expects to incur in connection with its relevant scheme functions; and

(b) either—

(i) that there are no arrangements for the provision of funds to the FSCS manager to enable it to exercise those functions and meet those expenses; or
(ii) that the FSCS manager considers that any such arrangements are unsatisfactory.

(5) The fourth ground is that the FSCS manager considers that complying with the section 224C notice would detrimentally affect the exercise of its functions under the FSCS.

(6) The fifth ground is—
   (a) that there is no undertaking from the manager of the relevant scheme not to bring proceedings against the FSCS manager; or
   (b) that the FSCS manager considers that the terms of any such undertaking are unsatisfactory.

(7) The sixth ground is—
   (a) that there are no arrangements for the reimbursement of any expenses incurred by the FSCS manager in connection with any proceedings brought against it in respect of its relevant scheme functions (including expenses incurred in meeting any award of damages made against it); or
   (b) that the FSCS manager considers that any such arrangements are unsatisfactory.

(8) In subsection (6) references to an undertaking of the kind mentioned there are to an undertaking not to bring proceedings in respect of the FSCS manager's relevant scheme functions except proceedings in respect of an act or omission of the FSCS manager that is alleged to have been in bad faith.

(9) In this section “proceedings” includes proceedings outside the United Kingdom.

Rules

224F Rules about relevant schemes

(1) The [F1426regulators] may by rules make provision in connection with the exercise by the FSCS manager of functions in respect of relevant schemes.

(2) The provision that may be made by the rules includes any provision corresponding to provision that could be contained in the FSCS; but this is subject to subsections (3) and (4).

(3) The rules may confer on the FSCS manager a power to impose levies on authorised persons (or any class of authorised persons) for the purpose of meeting its management expenses incurred in connection with its functions in respect of relevant schemes.

(4) But if the rules confer such a power they must provide that the power may be exercised in relation to expenses incurred in connection with a relevant scheme only if the FSCS manager has tried its best to obtain reimbursement of the expenses from the manager of the relevant scheme.

(5) The rules may apply any provision of the FSCS, with or without modifications.

(6) An amount payable to the FSCS manager as a result of any provision of the rules made by virtue of subsection (3) may be recovered as a debt due to the FSCS manager.

(7) References to the FSCS manager's “management expenses” are to its expenses incurred otherwise than in paying compensation.]
PART XVI

THE OMBUDSMAN SCHEME

225 The scheme and the scheme operator.

(1) This Part provides for a scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person.

(2) The scheme is to be administered by a body corporate (“the scheme operator”).

(3) The scheme is to be operated under a name chosen by the scheme operator but is referred to in this Act as “the ombudsman scheme”.

(4) Schedule 17 makes provision in connection with the ombudsman scheme and the scheme operator.

226 Compulsory jurisdiction.

(1) A complaint which relates to an act or omission of a person (“the respondent”) in carrying on an activity to which compulsory jurisdiction rules apply is to be dealt with under the ombudsman scheme if the conditions mentioned in subsection (2) are satisfied.

(2) The conditions are that—

(a) the complainant is eligible and wishes to have the complaint dealt with under the scheme;

(b) the respondent was an authorised person or an electronic money issuer within the meaning of the Electronic Money Regulations 2011, or
a payment service provider within the meaning of the Payment Services Regulations [F14292017], at the time of the act or omission to which the complaint relates; and

(c) the act or omission to which the complaint relates occurred at a time when compulsory jurisdiction rules were in force in relation to the activity in question.

(3) “Compulsory jurisdiction rules” means rules—

(a) made by the [F1430FCA] for the purposes of this section; and

(b) specifying the activities to which they apply.

(4) Only activities which are regulated activities, or which could be made regulated activities by an order under section 22, may be specified.

(5) Activities may be specified by reference to specified categories (however described).

[F1431(5A) If the FCA specifies activities which are account information services provided by authorised payment institutions or EEA authorised payment institutions, the FCA must specify to the same extent account information services provided by registered account information service providers or, as the case may be, EEA registered account information service providers.

(5B) Expressions used in subsection (5A) and in the Payments Services Regulations 2017 have the same meaning in that subsection as they do in those Regulations.]

(6) A complainant is eligible, in relation to the compulsory jurisdiction of the ombudsman scheme, if he falls within a class of person specified in the rules as eligible.

(7) The rules—

(a) may include provision for persons other than individuals to be eligible; but

(b) may not provide for authorised persons to be eligible except in specified circumstances or in relation to complaints of a specified kind.

[F1432(7A) The rules must provide that a person within subsection (7B) is eligible in relation to a complaint to which subsection (7C) applies.

(7B) A person is within this subsection if he or she has been identified by a respondent, in carrying on an activity to which the rules apply, as—

(a) a politically exposed person;

(b) a family member of a politically exposed person; or

(c) a known close associate of a politically exposed person.

(7C) This subsection applies to a complaint—

(a) that the complainant has been incorrectly identified as a person within subsection (7B); or

(b) relating to an act or omission of the respondent in consequence of the identification of the complainant as a person within subsection (7B).

(7D) In subsection (7B), “politically exposed person”, “family member” and “known close associate” have the meanings given in regulation 35(12) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.]

(8) The jurisdiction of the scheme which results from this section is referred to in this Act as the “compulsory jurisdiction”.


226 Consumer credit jurisdiction

227 Voluntary jurisdiction.

(1) A complaint which relates to an act or omission of a person (“the respondent”) in carrying on an activity to which voluntary jurisdiction rules apply is to be dealt with under the ombudsman scheme if the conditions mentioned in subsection (2) are satisfied.

(2) The conditions are that—

(a) the complainant is eligible and wishes to have the complaint dealt with under the scheme;
(b) at the time of the act or omission to which the complaint relates, the respondent was participating in the scheme;
(c) at the time when the complaint is referred under the scheme, the respondent has not withdrawn from the scheme in accordance with its provisions;
(d) the act or omission to which the complaint relates occurred at a time when voluntary jurisdiction rules were in force in relation to the activity in question; and
(e) the complaint cannot be dealt with under the compulsory jurisdiction.

(3) “Voluntary jurisdiction rules” means rules—

(a) made by the scheme operator for the purposes of this section; and
(b) specifying the activities to which they apply.

(4) The only activities which may be specified in the rules are activities which are, or could be, specified in compulsory jurisdiction rules.

(5) Activities may be specified by reference to specified categories (however described).

(6) The rules require the FCA's approval.

(7) A complainant is eligible, in relation to the voluntary jurisdiction of the ombudsman scheme, if he falls within a class of person specified in the rules as eligible.

(8) The rules may include provision for persons other than individuals to be eligible.

(9) A person qualifies for participation in the ombudsman scheme if he falls within a class of person specified in the rules in relation to the activity in question.

(10) Provision may be made in the rules for persons other than authorised persons to participate in the ombudsman scheme.

(11) The rules may make different provision in relation to complaints arising from different activities.

(12) The jurisdiction of the scheme which results from this section is referred to in this Act as the “voluntary jurisdiction”.

(13) In such circumstances as may be specified in voluntary jurisdiction rules, a complaint—

(a) which relates to an act or omission occurring at a time before the rules came into force, and
(b) which could have been dealt with under a scheme which has to any extent been replaced by the voluntary jurisdiction,

is to be dealt with under the ombudsman scheme even though paragraph (b) or (d) of subsection (2) would otherwise prevent that.

(14) In such circumstances as may be specified in voluntary jurisdiction rules, a complaint is to be dealt with under the ombudsman scheme even though—

(a) paragraph (b) or (d) of subsection (2) would otherwise prevent that, and
(b) the complaint is not brought within the scheme as a result of subsection (13), but only if the respondent has agreed that complaints of that kind were to be dealt with under the scheme.
Determination of complaints

228 Determination under the compulsory jurisdiction.

(1) This section applies only in relation to the compulsory jurisdiction...

(2) A complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case.

(3) When the ombudsman has determined a complaint he must give a written statement of his determination to the respondent and to the complainant.

(4) The statement must—

(a) give the ombudsman’s reasons for his determination;
(b) be signed by him; and
(c) require the complainant to notify him, before a date specified in the statement, whether he accepts or rejects the determination.

(5) If the complainant notifies the ombudsman that he accepts the determination, it is binding on the respondent and the complainant and final.

(6) If, by the specified date, the complainant has not notified the ombudsman of his acceptance or rejection of the determination he is to be treated as having rejected it.

(6A) But the complainant is not to be treated as having rejected the determination by virtue of subsection (6) if—

(a) the complainant notifies the ombudsman after the specified date of the complainant's acceptance of the determination,
(b) the complainant has not previously notified the ombudsman of the complainant's rejection of the determination, and
(c) the ombudsman is satisfied that such conditions as may be prescribed by rules made by the scheme operator for the purposes of this section are satisfied.

(7) The ombudsman must notify the respondent of the outcome.
(7A) Where a determination is rejected by virtue of subsection (6), the notification under subsection (7) must contain a general description of the effect of subsection (6A).

(8) A copy of the determination on which appears a certificate signed by an ombudsman is evidence (or in Scotland sufficient evidence) that the determination was made under the scheme.

(9) Such a certificate purporting to be signed by an ombudsman is to be taken to have been duly signed unless the contrary is shown.

Textual Amendments

F1436 Words in s. 228(1) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 10(7)

F1437 Words in s. 228(4)(c) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), Sch. 11 para. 4(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1438 S. 228(6A) inserted (24.1.2013 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. 11 para. 4(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1439 S. 228(7A) inserted (24.1.2013 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. 11 para. 4(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C690 S. 228 applied (1.12.2001) by S.I. 2001/2326, arts. 1(1)(b), 6(11), 7(1); S.I. 2001/3538, art. 2(1)


C693 S. 228(2) excluded (1.12.2001) by S.I. 2001/2326, arts. 1(1)(b), 6(1)(a); S.I. 2001/3538, art. 2(1)

C694 S. 228(2) applied (with modifications) (E.W.S.) (29.11.2018 for specified purposes, 1.4.2019 in so far as not already in force) by The Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018 (S.I. 2018/1253), arts. 1(2)(3), 73(3)-(5)

C695 S. 228(4)(c)-(7) excluded (1.12.2001) by S.I. 2001/2326, arts. 1(1)(b), 6(7)(8)(9); S.I. 2001/3538, art. 2(1)

229 Awards.

(1) This section applies only in relation to the compulsory jurisdiction...

(2) If a complaint which has been dealt with under the scheme is determined in favour of the complainant, the determination may include—

(a) an award against the respondent of such amount as the ombudsman considers fair compensation for loss or damage (of a kind falling within subsection (3)) suffered by the complainant (“a money award”);

(b) a direction that the respondent take such steps in relation to the complainant as the ombudsman considers just and appropriate (whether or not a court could order those steps to be taken).
(3) A money award may compensate for—
   (a) financial loss; or
   (b) any other loss, or any damage, of a specified kind.

(4) The [F1441 FCA] may specify [F1442 for the purposes of the compulsory jurisdiction] the maximum amount which may be regarded as fair compensation for a particular kind of loss or damage specified under subsection (3)(b).

F1443 (4A) ..............................................................

(5) A money award may not exceed the monetary limit; but the ombudsman may, if he considers that fair compensation requires payment of a larger amount, recommend that the respondent pay the complainant the balance.

(6) The monetary limit is such amount as may be specified.

(7) Different amounts may be specified in relation to different kinds of complaint.

(8) A money award—
   (a) may provide for the amount payable under the award to bear interest at a rate and as from a date specified in the award; and
   (b) is enforceable by the complainant in accordance with Part III of Schedule 17

F1444 ....

(9) Compliance with a direction under subsection (2)(b)—
   (a) is enforceable by an injunction; or
   (b) in Scotland, is enforceable by an order under section 45 of the [M19 Court of Session Act 1988].

(10) Only the complainant may bring proceedings for an injunction or proceedings for an order.

F1445 (11) “Specified” means specified in compulsory jurisdiction rules.

F1446 (12) ..............................................................

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Textual Amendments

F1440 Words in s. 229(1) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 10(8)(a)

F1441 Word in s. 229(4) substituted (24.1.2013 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. 11 para. 5 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1442 Words in s. 229(4) inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 61(4), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1

F1443 S. 229(4A) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 10(8)(b)

F1444 Words in s. 229(8)(b) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 10(8)(c)
F1445 S. 229(11) substituted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 10(8)(d)

F1446 S. 229(12) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 10(8)(e)

Modifications etc. (not altering text)
C696 S. 229 applied (1.12.2001) by S.I. 2001/2326, arts. 1(1)(b), 7(1); S.I. 2001/3538, art. 2(1)
S. 229 restricted (1.12.2001) by S.I. 2001/2326, arts. 1(1)(b), 6(1)(b)(4)(5); S.I. 2001/3538, art. 2(1)


C699 S. 229(8)(b) applied (1.12.2001) by S.I. 2001/2326, arts. 1(1)(b), 6(4); S.I. 2001/3538, art. 2(1)

C700 S. 229(9)(10) applied (1.12.2001) by S.I. 2001/2326, arts. 1(1)(b), 6(5); S.I. 2001/3538, art. 2(1)

Commencement Information
I41 S. 229 wholly in force at 1.12.2001; s. 229 not in force at Royal Assent see s. 431(2); s. 229 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 229 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

Marginal Citations
M19 1988 c. 36.

230 Costs.

(1) The scheme operator may by rules (“costs rules”) provide for an ombudsman to have power, on determining a complaint under the compulsory jurisdiction, to award costs in accordance with the provisions of the rules.

(2) Costs rules require the approval of the FCA.

(3) Costs rules may not provide for the making of an award against the complainant in respect of the respondent’s costs.

(4) But they may provide for the making of an award against the complainant in favour of the scheme operator, for the purpose of providing a contribution to resources deployed in dealing with the complaint, if in the opinion of the ombudsman—

(a) the complainant’s conduct was improper or unreasonable; or

(b) the complainant was responsible for an unreasonable delay.

(5) Costs rules may authorise an ombudsman making an award in accordance with the rules to order that the amount payable under the award bears interest at a rate and as from a date specified in the order.

(6) An amount due under an award made in favour of the scheme operator is recoverable as a debt due to the scheme operator.

(7) Any other award made against the respondent is to be treated as a money award for the purposes of paragraph 16 of Schedule 17....
Reports of determinations

(1) The scheme operator must publish a report of any determination made under this Part.

(2) But if the ombudsman who makes the determination informs the scheme operator that, in the ombudsman's opinion, it is inappropriate to publish a report of that determination (or any part of it) the scheme operator must not publish a report of that determination (or that part).

(3) Unless the complainant agrees, a report of a determination published by the scheme operator may not include the name of the complainant, or particulars which, in the opinion of the scheme operator, are likely to identify the complainant.

(4) The scheme operator may charge a reasonable fee for providing a person with a copy of a report.

Textual Amendments

F1447 Words in s. 230(1) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 10(9)(a)

F1448 Word in s. 230(2) substituted (24.1.2013 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. 11 para. 6 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1449 Words in s. 230(7) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 10(9)(b)

Modifications etc. (not altering text)

C701 S. 230 applied (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, arts. 1(1), 7(1); S.I. 2001/3538, art. 2(1)
S. 230 restricted (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, arts. 1(1), 6(1)(c); S.I. 2001/3538, art. 2(1)


C703 S. 230(6)(7) applied (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, arts. 1(1), 6(6); S.I. 2001/3538, art. 2(1)

Ombudsman’s power to require information.

(1) An ombudsman may, by notice in writing given to a party to a complaint, require that party—
   (a) to provide specified information or information of a specified description; or
   (b) to produce specified documents or documents of a specified description.

(2) The information or documents must be provided or produced—
   (a) before the end of such reasonable period as may be specified; and
   (b) in the case of information, in such manner or form as may be specified.

(3) This section applies only to information and documents the production of which the ombudsman considers necessary for the determination of the complaint.

(4) If a document is produced in response to a requirement imposed under this section, the ombudsman may—
   (a) take copies or extracts from the document; or
   (b) require the person producing the document to provide an explanation of the document.

(5) If a person who is required under this section to produce a document fails to do so, the ombudsman may require him to state, to the best of his knowledge and belief, where the document is.

(6) If a person claims a lien on a document, its production under this Part does not affect the lien.

(7) “Specified” means specified in the notice given under subsection (1).
232 Powers of court where information required.

(1) If a person (“the defaulter”) fails to comply with a requirement imposed under section 231, the ombudsman may certify that fact in writing to the court and the court may enquire into the case.

(2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and, in the case of a body corporate, any director or other officer) as if he were in contempt; and “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.

(3) “Court” means—
(a) the High Court;
(b) in Scotland, the Court of Session.

Textual Amendments

F1451 Word in s. 232(2) inserted (24.1.2013 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. 11 para. 8 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.


Modifications etc. (not altering text)

C710 S. 232 applied (1.12.2001) by S.I. 2001/2326, arts. 1(1)(b), 11(5); S.I. 2001/3538, art. 2(1)


If the scheme operator considers that it has information that, in its opinion, would or might be of assistance to the FCA in advancing one or more of the FCA’s operational objectives, it must disclose that information to the FCA.
Status: This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Modifications etc. (not altering text)


233 Data protection.

In section 31 of the Data Protection Act 1998 (regulatory activity), after subsection (4), insert—

“(4A) Personal data processed for the purpose of discharging any function which is conferred by or under Part XVI of the Financial Services and Markets Act 2000 on the body established by the Financial Services Authority for the purposes of that Part are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of the function.”

Marginal Citations

M20 1998 c. 29.

Funding

234 Industry funding.

(1) For the purpose of funding—

(a) the establishment of the ombudsman scheme (whenever any relevant expense is incurred), and

(b) its operation in relation to the compulsory jurisdiction,

the [F1454FCA] may make rules requiring the payment to it or to the scheme operator, by authorised persons or any class of authorised person [F1455], any electronic money issuer within the meaning of the Electronic Money Regulations 2011][F1456] or any payment service provider within the meaning of the Payment Services Regulations [F14572017] of specified amounts (or amounts calculated in a specified way).

(2) “Specified” means specified in the rules.

Textual Amendments

F1454 Word in s. 234(1) substituted (24.1.2013 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. 11 para. 10 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1455 Words in s. 234(1) inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(a)(xiv)(b), 79, Sch. 4 para. 2(3)(b) (with reg. 3)

F1456 Words in s. 234(1) inserted (2.3.2009 for certain purposes, 1.5.2009 for certain further purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2), 126, Sch. 6 para. 1(1)(b) (with reg. 3)

F1457 Word in s. 234(1) substituted (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(6), Sch. 8 para. 2(5) (with reg. 3)
234A  Funding by consumer credit licensees etc.

Textual Amendments
F1458S. 234A omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 10(10) (with art. 11(9))

234B  Transfers of liability

(1) This section applies where a person (the “successor”) has assumed a liability (including a contingent one) of a person (the “predecessor”) who was, or (apart from this section) would have been, the respondent in respect of a complaint falling to be dealt with under the ombudsman scheme.

(2) The complaint may (but need not) be dealt with under this Part as if the successor were the respondent.

PART 16A

CONSUMER PROTECTION AND COMPETITION

Textual Amendments
F1460Pt. 16A inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 43, 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.
234C Complaints by consumer bodies

(1) A designated consumer body may make a complaint to the FCA that a feature, or combination of features, of a market in the United Kingdom for financial services [F1461 or of a market in Great Britain for claims management services] is, or appears to be, significantly damaging the interests of consumers.

[F1462 But a complaint may not be made to the FCA under this section if it is a complaint which could be made to the Payment Systems Regulator by a designated representative body under section 68 of the Financial Services (Banking Reform) Act 2013 (complaints by representative bodies).

“Designated representative body” and “the Payment Systems Regulator” have the same meaning in this subsection as they have in that section.]

(2) “Designated consumer body” means a body designated by the Treasury by order.

(3) The Treasury—

(a) may designate a body only if it appears to them to represent the interests of consumers of any description, and

(b) must publish in such manner as they think fit (and may from time to time vary) criteria to be applied by them in determining whether to make or revoke a designation.

(4) Sections 425A and 425B (meaning of “consumers”) apply for the purposes of this section, but the references to consumers in this section do not include consumers who are authorised persons.

(5) In this section—

(a) “market in the United Kingdom” has the meaning given in section 140A [F1463 (and “market in Great Britain” is to be construed accordingly)];

(b) the reference to a feature of a market in the United Kingdom for financial services [F1464, or of a market in Great Britain for claims management services,] has a meaning corresponding to that which a reference to a feature of a market in the United Kingdom for goods and services has (by virtue of section 140A(3)) for the purposes of Chapter 4 of Part 9A.

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**Textual Amendments**

F1461 Words in s. 234C(1) inserted (E.W.S.) (6.10.2018) by Financial Guidance and Claims Act 2018 (c. 10), ss. 27(6)(a), 37(5); S.I. 2018/1045, reg. 2(a)

F1462 S. 234C(1A) inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 68(6), 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

F1463 Words in s. 234C(5)(a) inserted (E.W.S.) (6.10.2018) by Financial Guidance and Claims Act 2018 (c. 10), ss. 27(6)(b)(i), 37(5); S.I. 2018/1045, reg. 2(a)

F1464 Words in s. 234C(5)(b) inserted (E.W.S.) (6.10.2018) by Financial Guidance and Claims Act 2018 (c. 10), ss. 27(6)(b)(ii), 37(5); S.I. 2018/1045, reg. 2(a)
Reference by scheme operator or regulated person

(1) A relevant person may make a reference to the FCA where it appears to that person that either the first set of conditions or the second set of conditions are satisfied.

(2) Each of the following is a “relevant person”—
   (a) the scheme operator;
   (b) a regulated person.

(3) The first set of conditions is—
   (a) that there may have been—
       (i) in the case of a reference by the scheme operator, a regular failure by one or more regulated persons to comply with requirements applicable to the carrying on by them of any activity, or
       (ii) in the case of a reference by a regulated person, a regular failure by that person to comply with requirements applicable to the carrying on by that person of any activity, and
   (b) that as a result consumers have suffered, or may suffer, loss or damage in respect of which, if they brought legal proceedings, a remedy or relief would be available in the proceedings.

(4) The reference to the failure by a regulated person (“R”) to comply with a requirement applicable to the carrying on by R of any activity includes anything done, or omitted to be done, by R in carrying on the activity—
   (a) which is a breach of a duty or other obligation, prohibition or restriction, or
   (b) which otherwise gives rise to the availability of remedy or relief in legal proceedings.

(5) It does not matter whether—
   (a) the duty or other obligation, prohibition or restriction, or
   (b) the remedy or relief,
arises as a result of any provision made by or under this or any other Act, a rule of law or otherwise.

(6) The second set of conditions is—
   (a) in the case of a reference by the scheme operator, that one or more regulated persons have, on a regular basis, acted or failed to act, in such a way that, if a complaint were made under the ombudsman scheme in relation to that conduct, the ombudsman would be likely to determine the complaint in favour of the complainant,
   (b) in the case of a reference by a regulated person, that the regulated person has, on a regular basis, acted or failed to act in such a way that, if a complaint were made under the ombudsman scheme in relation to that conduct, the ombudsman would be likely to determine the complaint in favour of the complainant, and
   (c) in either case, that—
       (i) if the complaint would fall within the compulsory jurisdiction ..., the ombudsman would be likely to make an award under section 229(2)(a) or give a direction under section 229(2)(b), or
       (ii) if voluntary jurisdiction rules made for the purposes of section 227 provide for the making of an award against a respondent or the giving of a direction that a respondent take certain steps in relation
to a complainant, and the complaint would fall within the voluntary jurisdiction, the ombudsman would be likely to make such an award or give such a direction.

(7) “Consumers” has the meaning given in section 1G.

(8) “Regulated person” means—
   (a) an authorised person;
   (b) an electronic money issuer, as defined in section 1H(8);
   (c) a payment service provider, as defined in section 1H(8).

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234E  Response by FCA

(1) The FCA must within 90 days after the day on which it receives a complaint under section 234C or a reference under section 234D publish a response stating how it proposes to deal with the complaint or reference, and in particular—
   (a) whether it has decided to take any action, or to take no action, and
   (b) if it has decided to take action, what action it proposes to take.

(2) The response must—
   (a) include a copy of the complaint or reference, and
   (b) state the FCA’s reasons for its proposals.

(3) The Treasury may by order amend subsection (1) by substituting any period for the period for the time being specified there.

234F  Section 234E: exceptions

(1) This section applies where the FCA has received a reference under section 234D from a person who is a relevant person as a result of subsection (2)(b) of that section.

(2) The duty to respond in section 234E does not apply if the FCA considers that the reference is frivolous, vexatious or has been made in bad faith.

(3) The FCA must within 90 days after the day on which it receives the reference inform the person who made it—
   (a) that the duty to respond under section 234E does not apply by virtue of this section, and
   (b) of its reasons for reaching the conclusion in paragraph (a).

(4) The Treasury may by order amend subsection (3) by substituting any period for the period for the time being specified there.

234G  Guidance

(1) The guidance given by the FCA under section 139A—
(a) must include guidance about the presentation of a reasoned case for a complaint under section 234C or a reference under section 234D, and

(b) may include guidance about such other matters as appears to the FCA to be appropriate for the purposes of section 234C or 234D.

(2) Guidance given under this section is to be taken to be general guidance as defined in section 139B(5).

**Competition**

234H Power of FCA to make request to [F1466 Competition and Markets Authority]

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**Textual Amendments**

F1466 Words in s. 234H heading substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 128(5) (with art. 3)

F1467 Subs. 234H omitted (1.4.2015) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 8 para. 2; S.I. 2014/2458, art. 3(b)(v)

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[F1468 234I The FCA's functions under Part 4 of the Enterprise Act 2002]

(1) The functions to which this subsection applies (“the concurrent functions”) are to be concurrent functions of the FCA and the Competition and Markets Authority (referred to in this Part as “the CMA”).

(2) Subsection (1) applies to the functions of the CMA under Part 4 of the Enterprise Act 2002 (market investigations), so far as those functions—

(a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and

(b) relate to the provision of financial services [F1466] or to the provision of claims management services in Great Britain.

(3) But subsection (1) does not apply to functions under the following sections of the Enterprise Act 2002—

section 166 (duty to maintain register of undertakings and orders);

section 171 (duty to publish guidance).

(4) So far as is necessary for the purposes of, or in connection with, subsections (1) and (2)—

(a) references in Part 4 of the Enterprise Act 2002 to the CMA (including references in provisions of that Act applied by that Part) are to be read as including references to the FCA, and

(b) references in that Part to section 5 of that Act are to be read as including references to section 234M of this Act.

(5) But subsection (4) does not apply—

(a) in relation to section 166 or 171 of that Act, or

(b) where the context otherwise requires.
(6) Section 130A of the Enterprise Act 2002 has effect in relation to the FCA by virtue of subsections (1) and (2) as if—
   (a) in subsection (2)(a) of that section, the reference to the acquisition or supply of goods or services of one or more than one description in the United Kingdom were a reference to the acquisition or provision in the United Kingdom of financial services, or in Great Britain of claims management services, and
   (b) in subsection (2)(b) of that section, the reference to the extent to which steps can and should be taken were a reference to the extent to which steps that might include steps under Part 4 of that Act can and should be taken.

(7) Before the CMA or the FCA first exercises any of the concurrent functions in relation to any matter, it must consult the other.

(8) Neither the CMA nor the FCA may exercise any of the concurrent functions in relation to any matter if any of those functions have been exercised in relation to that matter by the other.

Textual Amendments

**F1468** Ss. 234I-234O inserted (1.11.2014 for the insertion of ss. 234J, 234M for specified purposes and for the insertion of ss. 234N, 234O, 1.4.2015 in so far as not already in force) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 8 para. 3; S.I. 2014/2458, arts. 2(b)(aa)(i), 3(b)(v)

**F1469** Words in s. 234I(2)(b) inserted (E.W.S.) (6.10.2018) by Financial Guidance and Claims Act 2018 (c. 10), ss. 27(7)(a), 37(5); S.I. 2018/1045, reg. 2(a)

**F1470** Words in s. 234I(6)(a) inserted (E.W.S.) (6.10.2018) by Financial Guidance and Claims Act 2018 (c. 10), ss. 27(7)(b), 37(5); S.I. 2018/1045, reg. 2(a)

234J The FCA's functions under the Competition Act 1998

(1) The functions to which this subsection applies are to be concurrent functions of the FCA and the CMA.

(2) Subsection (1) applies to the functions of the CMA under the provisions of Part 1 of the Competition Act 1998, so far as relating to any of the following that relate to the provision of financial services or relate to the provision of claims management services in Great Britain—
   (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
   (b) conduct of the kind mentioned in section 18(1) of that Act,
   (c) agreements, decisions or concerted practices of the kind mentioned in Article 101(1) of the Treaty on the Functioning of the European Union, and
   (d) conduct which amounts to abuse of the kind mentioned in Article 102 of the Treaty on the Functioning of the European Union.

(3) But subsection (1) does not apply to functions under the following provisions of that Act—
   section 31D(1) to (6) (duty to publish guidance);
   section 38(1) to (6) (duty to publish guidance about penalties);
   section 40B(1) to (4) (duty to publish statement of policy on penalties);
   section 51 (rules).
(4) So far as necessary for the purposes of, or in connection with, the provisions of subsections (1) and (2), references to the CMA in Part 1 of the Competition Act 1998 are to be read as including references to the FCA.

(5) But subsection (4) does not apply—
(a) in relation to sections 31D(1) to (6), 38(1) to (6), 40B(1) to (4), 51, 52(6) and (8) and 54 of that Act, or
(b) where the context otherwise requires.

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234K Duty to consider exercise of powers under Competition Act 1998

(1) Before exercising a power listed in subsection (3), the FCA must consider whether it would be more appropriate to proceed under the Competition Act 1998.

(2) The FCA must not exercise such a power if it considers that it would be more appropriate to proceed under the Competition Act 1998.

(3) Those powers are—
(a) the power under section 55J(2) to vary or cancel a Part 4A permission;
(b) the power under section 55L to impose a requirement on an authorised person with a Part 4A permission, or to vary a requirement imposed under that section;
(c) the power to take action under section 88E;
(d) the power to take action under section 89U;
(e) the power to give a direction under section 192C;
(f) the power to impose a requirement under section 196.

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234L Provision of information and assistance to a CMA group

(1) For the purpose of assisting a CMA group in carrying out a relevant investigation, the FCA must give the CMA group—
(a) any relevant information which the FCA has in its possession, and
(b) any other assistance which the CMA group may reasonably require in relation to any matters falling within the scope of the investigation.
(2) A “relevant investigation” is an investigation carried out on a reference made by the FCA under section 131 of the Enterprise Act 2002 by virtue of section 234I.

(3) “Relevant information”, in relation to a relevant investigation, is information—
(a) which relates to matters falling within the scope of the investigation, and
(b) which—
(i) is requested by the CMA group for the purpose of the investigation, or
(ii) in the FCA’s opinion, it would be appropriate to give to the CMA group for that purpose.

(4) A CMA group, in carrying out a relevant investigation, must take into account any information given to it under this section.

(5) In this section “CMA group” has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

234M Function of keeping market under review

(1) For the purpose of the functions conferred on it by sections 234I to 234L the FCA is to have the function of keeping under review the market for financial services [F1472and the market in Great Britain for claims management services].

(2) The function conferred by subsection (1) is to be carried out with a view to (among other things) ensuring that the FCA has sufficient information to take informed decisions and to carry out its other functions effectively.

234N Exclusion of general duties

(1) Section 1B (the FCA’s general duties) does not apply in relation to anything done by the FCA in the carrying out of its functions by virtue of sections 234I to 234L.

(2) But in the carrying out of any functions by virtue of sections 234I to 234L, the FCA may have regard to any of the matters in respect of which a duty is imposed by section 1B if it is a matter to which the CMA is entitled to have regard in the carrying out of those functions.
Financial Services and Markets Act 2000 (c. 8)
Part XVII – Collective Investment Schemes
Chapter I – Interpretation

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Status: This version of this Act contains provisions that are prospective.
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments
F1468 Ss. 234I-234O inserted (1.11.2014 for the insertion of ss. 234J, 234M for specified purposes and for the insertion of ss. 234N, 234O, 1.4.2015 in so far as not already in force) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 8 para. 3; S.I. 2014/2458, arts. 2(b)(aa)(i), 3(b)(v)

234O  Supplementary provision

(1) If any question arises as to whether, by virtue of section 234I or 234J, any functions fall to be, or are capable of being, carried out by the FCA in relation to any particular case, that question is to be referred to, and determined by, the Treasury.

(2) No objection is to be taken to anything done under the Competition Act 1998 or Part 4 of the Enterprise Act 2002 by or in relation to the FCA on the ground that it should have been done by or in relation to the CMA.

Textual Amendments
F1468 Ss. 234I-234O inserted (1.11.2014 for the insertion of ss. 234J, 234M for specified purposes and for the insertion of ss. 234N, 234O, 1.4.2015 in so far as not already in force) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 8 para. 3; S.I. 2014/2458, arts. 2(b)(aa)(i), 3(b)(v)

PART XVII
COLLECTIVE INVESTMENT SCHEMES

Modifications etc. (not altering text)
C716 Pt. 27 modified (20.2.2019) by The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/325), regs. 1(3), 62

CHAPTER I
INTERPRETATION

235  Collective investment schemes.

(1) In this Part “collective investment scheme” means any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(2) The arrangements must be such that the persons who are to participate (“participants”) do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions.

(3) The arrangements must also have either or both of the following characteristics—
(a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;

(b) the property is managed as a whole by or on behalf of the operator of the scheme.

(4) If arrangements provide for such pooling as is mentioned in subsection (3)(a) in relation to separate parts of the property, the arrangements are not to be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.

(5) The Treasury may by order provide that arrangements do not amount to a collective investment scheme—

(a) in specified circumstances; or

(b) if the arrangements fall within a specified category of arrangement.

[235A Contractual schemes]

(1) In this Part “contractual scheme” means—

(a) a co-ownership scheme; or

(b) a partnership scheme.

(2) In this Part “co-ownership scheme” means a collective investment scheme which satisfies the conditions in subsection (3).

(3) The conditions are—

(a) that the arrangements constituting the scheme are contractual;

(b) that they are set out in a deed that is entered into between the operator and a depositary and meets the requirements of subsection (4);

(c) that the scheme does not constitute a body corporate, a partnership or a limited partnership;

(d) that the property subject to the scheme is held by, or to the order of, a depositary; and

(e) that either—

(i) the property is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants); or

(ii) where the arrangements constituting the scheme provide for such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property, each part is beneficially owned by the participants in that part as tenants in common (or, in Scotland, is the common property of the participants in that part).

(4) The deed—

(a) must contain a statement that the arrangements are intended to constitute a co-ownership scheme as defined in section 235A of the Financial Services and Markets Act 2000;

(b) must make provision for the issue and redemption of units;

(c) must—

(i) prohibit the transfer of units,

(ii) allow units to be transferred only if specified conditions are met, or
(iii) where the arrangements constituting the scheme provide for such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property, in relation to each separate part make provision falling within sub-paragraph (i) or (ii);

(d) must authorise the operator—

(i) to acquire, manage and dispose of property subject to the scheme; and

(ii) to enter into contracts which are binding on participants for the purposes of, or in connection with, the acquisition, management or disposal of property subject to the scheme; and

(e) must make provision requiring the operator and depositary to wind up the scheme in specified circumstances.

(5) In this Part “partnership scheme” means a collective investment scheme which satisfies the conditions in subsection (6).

(6) The conditions are—

(a) that the scheme is a limited partnership;

(b) that the limited partnership—

(i) at any time has only one general partner; and

(ii) on formation has only one limited partner, who is a person nominated by the general partner (“the nominated partner”);

(c) that the arrangements constituting the partnership are set out in a deed that is entered into between the general partner and the nominated partner;

(d) that the deed prohibits such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property; and

(e) that the deed provides that if an authorisation order is made in respect of the limited partnership under section 261D(1)—

(i) the property subject to the scheme is to be held by, or to the order of, a person appointed to be a depositary;

(ii) the limited partners, other than the nominated partner, are to be the participants in the scheme; and

(iii) the partnership is not dissolved on any person ceasing to be a limited partner provided that there remains at least one limited partner.

(7) In this section “general partner”, “limited partner” and “limited partnership” have the same meaning as in the Limited Partnerships Act 1907.

(8) In this Part “contractual scheme deed” means—

(a) in relation to a co-ownership scheme, the deed referred to in subsection (3) (b); and

(b) in relation to a partnership scheme, the deed referred to in subsection (6)(e).
236 Open-ended investment companies.

(1) In this Part “an open-ended investment company” means a collective investment scheme which satisfies both the property condition and the investment condition.

(2) The property condition is that the property belongs beneficially to, and is managed by or on behalf of, a body corporate (“BC”) having as its purpose the investment of its funds with the aim of—
   (a) spreading investment risk; and
   (b) giving its members the benefit of the results of the management of those funds by or on behalf of that body.

(3) The investment condition is that, in relation to BC, a reasonable investor would, if he were to participate in the scheme—
   (a) expect that he would be able to realize, within a period appearing to him to be reasonable, his investment in the scheme (represented, at any given time, by the value of shares in, or securities of, BC held by him as a participant in the scheme); and
   (b) be satisfied that his investment would be realized on a basis calculated wholly or mainly by reference to the value of property in respect of which the scheme makes arrangements.

(4) In determining whether the investment condition is satisfied, no account is to be taken of any actual or potential redemption or repurchase of shares or securities under—
   (a) Chapters 3 to 7 of Part 18 of the Companies Act 2006;
   (c) corresponding provisions in force in another EEA State; or
   (d) provisions in force in a country or territory other than an EEA state which the Treasury have, by order, designated as corresponding provisions.

(5) The Treasury may by order amend the definition of “an open-ended investment company” for the purposes of this Part.

Textual Amendments

F1475S. 236(4)(a) substituted (1.10.2009) for s. 236(4)(a)(b) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), Sch. 1 para. 181(3) (with art. 10)

237 Other definitions.

(1) In this Part “unit trust scheme” means a collective investment scheme under which the property is held on trust for the participants [F1476, except that it does not include a contractual scheme].

(2) In this Part—
   “trustee”, in relation to a unit trust scheme, means the person holding the property in question on trust for the participants;
   “depositary”, in relation to—
   (a) a collective investment scheme which is constituted by a body incorporated by virtue of regulations under section 262, or
   (b) any other collective investment scheme which is not a unit trust scheme,
means any person to whom the property subject to the scheme is entrusted for safekeeping;

[F1477. management company” has the meaning given in Article 2.1(b) of the UCITS directive;]

[F1478. the operator”—
(a) in relation to a unit trust scheme with a separate trustee, means the manager;

(aa) [F1479. in relation to a co-ownership scheme, means the operator appointed under the terms of the contractual scheme deed;

(ab) in relation to a partnership scheme, means the general partner;]

(b) in relation to an open-ended investment company, means that company; and

(c) in relation to an EEA UCITS which is not an open-ended investment company or unit trust scheme, means the management company for that UCITS;]

“units” means the rights or interests (however described) of the participants in a collective investment scheme.

[F1480. working day” has the meaning given in section 191G(2).]

(3) In this Part—

“an authorised unit trust scheme” means a unit trust scheme which is authorised for the purposes of this Act by an authorisation order in force under section 243;

[F1481. an authorised contractual scheme” means a contractual scheme which is authorised for the purposes of this Act by an authorisation order in force under section 261D(1);]

“an authorised open-ended investment company” means a body incorporated by virtue of regulations under section 262 in respect of which an authorisation order is in force under any provision made in such regulations by virtue of subsection (2)(l) of that section;

[F1482]... F1483 ...

“feeder UCITS” means a UCITS, or a sub-fund of a UCITS, which has been approved by the [F1484 FCA] or (where relevant) by its home state regulator to invest 85% or more of the total property which is subject to the collective investment scheme constituted by the UCITS in units of another UCITS or UCITS sub-fund (the “master UCITS”);]

“a recognised scheme” means a scheme recognised under section 264 or 272.

[F1485]... F1486 ...

“UKUCITS” means a UCITS which is an authorised unit trust scheme [F1487. an authorised contractual scheme] or an authorised open-ended investment company.]

[F1488] ... (4) In this Part, references to a sub-fund of a UCITS are references to a part of the property of the UCITS which forms a separate pool where—

(a) the UCITS provides arrangements for separate pooling of the contributions of the participants and the profits and income out of which payments are made to them; and

(b) the participants are entitled to exchange rights in one pool for rights in another.]
(5) In this Part “umbrella co-ownership scheme” means an authorised contractual scheme which satisfies the conditions in subsection (6).

(6) The conditions are—

(a) that the scheme is a co-ownership scheme;

(b) that the arrangements constituting the scheme provide for such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property; and

(c) that the participants are entitled under the terms of the scheme to exchange rights in one part for rights in another.

(7) In this Part “sub-scheme”, in relation to an umbrella co-ownership scheme, means the arrangements constituting the scheme so far as they relate to a separate part of the property.

(8) In this Part “stand-alone co-ownership scheme” means an authorised contractual scheme which—

(a) is a co-ownership scheme; and

(b) is not an umbrella co-ownership scheme.]
CHAPTER II

RESTRICTIONS ON PROMOTION

238 Restrictions on promotion.

(1) An authorised person must not communicate an invitation or inducement to participate in a collective investment scheme.

(2) But that is subject to the following provisions of this section and to section 239.

(3) Subsection (1) applies in the case of a communication originating outside the United Kingdom only if the communication is capable of having an effect in the United Kingdom.

(4) Subsection (1) does not apply in relation to—
   (a) an authorised unit trust scheme;
   (aa) an authorised contractual scheme;
   (b) a scheme constituted by an authorised open-ended investment company; or
   (c) a recognised scheme.

(5) Subsection (1) does not apply to anything done in accordance with rules made by the FCA for the purpose of exempting from that subsection the promotion otherwise than to the general public of schemes of specified descriptions.

(6) The Treasury may by order specify circumstances in which subsection (1) does not apply.

(7) An order under subsection (6) may, in particular, provide that subsection (1) does not apply in relation to communications—
   (a) of a specified description;
   (b) originating in a specified country or territory outside the United Kingdom;
   (c) originating in a country or territory which falls within a specified description of country or territory outside the United Kingdom; or
   (d) originating outside the United Kingdom.

(8) The Treasury may by order repeal subsection (3).

(9) “Communicate” includes causing a communication to be made.

(10) “Promotion otherwise than to the general public” includes promotion in a way designed to reduce, so far as possible, the risk of participation by persons for whom participation would be unsuitable.
(11) “Participate”, in relation to a collective investment scheme, means become a participant (within the meaning given by section 235(2)) in the scheme.

239 Single property schemes.

(1) The Treasury may by regulations make provision for exempting single property schemes from section 238(1).

(2) For the purposes of subsection (1) a single property scheme is a scheme which has the characteristics mentioned in subsection (3) and satisfies such other requirements as are prescribed by the regulations conferring the exemption.

(3) The characteristics are—

(a) that the property subject to the scheme (apart from cash or other assets held for management purposes) consists of—

(i) a single building (or a single building with ancillary buildings) managed by or on behalf of the operator of the scheme, or

(ii) a group of adjacent or contiguous buildings managed by him or on his behalf as a single enterprise,

with or without ancillary land and with or without furniture, fittings or other contents of the building or buildings in question; and

(b) that the units of the participants in the scheme are either dealt in on a recognised investment exchange or offered on terms such that any agreement for their acquisition is conditional on their admission to dealings on such an exchange.

(4) If regulations are made under subsection (1), the Financial Conduct Authority may make rules imposing duties or liabilities on the operator and (if any) the trustee or depositary of a scheme exempted by the regulations.

(5) The rules may include, to such extent as the Financial Conduct Authority thinks appropriate, provision for purposes corresponding to those for which provision can be made under section 248 in relation to authorised unit trust schemes.
Restriction on approval of promotion.

(1) An authorised person may not approve for the purposes of section 21 the content of a communication relating to a collective investment scheme if he would be prohibited by section 238(1) from effecting the communication himself or from causing it to be communicated.

(2) For the purposes of determining in any case whether there has been a contravention of section 21(1), an approval given in contravention of subsection (1) is to be regarded as not having been given.

Actions for damages.

If an authorised person contravenes a requirement imposed on him by section 238 or 240, section 138D applies to the contravention as it applies to a contravention mentioned in section 138D(2).

CHAPTER III

AUTHORISED UNIT TRUST SCHEMES

Applications for authorisation

(1) The manager and trustee, or proposed manager and trustee, of a unit trust scheme may apply to the FCA for—

(a) an order declaring the scheme to be an authorised unit trust scheme;

(b) an order declaring the scheme to be an authorised money market fund.

(2) The manager and trustee (or proposed manager and trustee) must be different persons.

(3) An application must be made in such manner as the FCA may direct; and must contain or be accompanied by such information as the FCA may reasonably require for the purpose of determining the application.

(4) At any time after receiving an application and before determining it, the FCA may require the applicants to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
(5) Different directions may be given, and different requirements imposed, in relation to different applications.

(6) The \(^{1494}\text{FCA}\) may require applicants to present information which they are required to give under this section in such form, or to verify it in such a way, as the \(^{1494}\text{FCA}\) may direct.

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**Textual Amendments**


F1493 Words in s. 242(3) substituted (28.6.2018 for specified purposes, 21.7.2018 in so far as not already in force) by The Money Market Funds Regulations 2018 (S.I. 2018/698), regs. 1(2), 2(5)(b)

F1494 Word in ss. 242-252A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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

C718 S. 242 extended (1.12.2001) by S.I. 2001/3592, arts. 1(2), 39(1) (with art. 23(2))

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**Commencement Information**

444 S. 242 wholly in force at 1.12.2001; s. 242 not in force at Royal Assent see s. 431(2); s. 242(3) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 242 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 242 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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243 Authorisation orders \(^{1495}\text{FCA}: \text{authorised unit trust schemes}\).

(1) If, on an application under section \(^{1496}\text{242}(1)(a)\) in respect of a unit trust scheme, the \(^{1494}\text{FCA}\)—

(a) is satisfied that the scheme complies with the requirements set out in this section,

(b) is satisfied that the scheme complies with the requirements of the trust scheme rules, and

(c) has been provided with a copy of the trust deed and a certificate signed by a solicitor to the effect that it complies with such of the requirements of this section or those rules as relate to its contents,

the \(^{1494}\text{FCA}\) may make an order declaring the scheme to be an authorised unit trust scheme.

(2) If the \(^{1494}\text{FCA}\) makes an order under subsection (1), it must give written notice of the order to the applicant.

\(^{1497}\text{F1497}(3)\) . . . . . . . . . . . . . . . . . . . . . . .

(4) The manager and the trustee must be persons who are independent of each other.

\(^{1498}\text{F1498}(5)\) The manager and the trustee must each be a body corporate incorporated in the United Kingdom or another EEA State, and the affairs of each must be administered in the country in which it is incorporated.

(5A) The trustee must have a place of business in the United Kingdom, and the manager must have a place of business in the United Kingdom or in another EEA State.]
(6) If the manager is incorporated in another EEA State, the scheme must not be one which satisfies the requirements prescribed for the purposes of section 264.

(7) The manager and the trustee must each be an authorised person and the manager must have permission to act as manager and the trustee must have permission to act as trustee.

[F1497](7A) The manager must be a fit and proper person to manage the unit trust scheme to which the application relates.

(8) The name of the scheme must not be undesirable or misleading.

(9) The purposes of the scheme must be reasonably capable of being successfully carried into effect.

(10) The participants must be entitled to have their units redeemed in accordance with the scheme at a price—
    (a) related to the net value of the property to which the units relate; and
    (b) determined in accordance with the scheme.

(11) But a scheme is to be treated as complying with subsection (10) if it requires the manager to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in that subsection.

Textual Amendments

[F1494]Word in ss. 242-252A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.


Modifications etc. (not altering text)

C719 S. 243(1) extended (1.12.2001) by S.I. 2001/2636, arts. 1(2)(b), 65(1); S.I. 2001/3538, art. 2(1)

Commencement Information

145 S. 243 wholly in force at 1.12.2001; s. 243 not in force at Royal Assent see s. 431(2); s. 243 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 243 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

[F1500]243A Authorisation orders: authorised money market funds

(1) If, on an application under section 242(1)(b) in respect of a unit trust scheme, conditions A and B are met the FCA may make an order declaring the scheme to be an authorised money market fund.
(2) Condition A is that the FCA is satisfied that the scheme will be able to comply with the requirements imposed on a money market fund under the MMF Regulation.

(3) Condition B is that—
   (a) the scheme is an authorised unit trust scheme, or
   (b) the scheme—
      (i) is the subject of an application under section 242(1)(a), and
      (ii) the conditions in section 243(1)(a) to (c) are met in relation to that application.

(4) If the FCA makes an order under subsection (1), it must give written notice of the order to the applicant.

(5) In this Chapter “authorisation order” means—
   (a) an order under section 243(1), or
   (b) an order under subsection (1) of this section.

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**Textual Amendments**

**F1500**

**F1494**
Word in ss. 242-252A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

**F1494**
Word in s. 244(1) substituted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), reg. 2(16)(a)

**F1500**
Words in s. 244(1) inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), reg. 2(16)(a)

**F1500**
Word in s. 244(1) substituted (28.6.2018 for specified purposes, 21.7.2018 in so far as not already in force) by The Money Market Funds Regulations 2018 (S.I. 2018/698), regs. 1(2), 2(8)(a)

**F1503**
S. 244(1A) inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), reg. 2(16)(b)

**F1504**
Words in s. 244(1A) inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), reg. 2(16)(b)

**F1504**
Words in s. 244(1A) substituted (28.6.2018 for specified purposes, 21.7.2018 in so far as not already in force) by The Money Market Funds Regulations 2018 (S.I. 2018/698), regs. 1(2), 2(8)(b)
Applications refused

245 Procedure when refusing an application.

(1) If the [F1494FCA] proposes to refuse an application made under section 242 it must give each of the applicants a warning notice.

(2) If the [F1494FCA] decides to refuse the application—
   (a) it must give each of the applicants a decision notice; and
   (b) either applicant may refer the matter to the Tribunal.

Certificates

246 Certificates.

(1) If the manager or trustee of a unit trust scheme which complies with the conditions necessary for it to enjoy the rights conferred by any relevant [F1495EU] instrument so requests, the [F1494FCA] may issue a certificate to the effect that the scheme complies with those conditions.

(2) Such a certificate may be issued on the making of an authorisation order in respect of the scheme or at any subsequent time.
247 Trust scheme rules.

(1) The [F1494 FCA] may make rules ("trust scheme rules") as to—

(a) the constitution, management and operation of authorised unit trust schemes;
(b) the powers, duties, rights and liabilities of the manager and trustee of any such scheme;
(c) the rights and duties of the participants in any such scheme; and
(d) the winding up of any such scheme.

(2) Trust scheme rules may, in particular, make provision—

(a) as to the issue and redemption of the units under the scheme;
(b) as to the expenses of the scheme and the means of meeting them;
(c) for the appointment, removal, powers and duties of an auditor for the scheme;
(d) for restricting or regulating the investment and borrowing powers exercisable in relation to the scheme;
(e) requiring the keeping of records with respect to the transactions and financial position of the scheme and for the inspection of those records;
(f) requiring the preparation of periodical reports with respect to the scheme and the provision of those reports to the participants and to the [F1494 FCA]; and
(g) with respect to the amendment of the scheme.

(3) Trust scheme rules may make provision as to the contents of the trust deed, including provision requiring any of the matters mentioned in subsection (2) to be dealt with in the deed.

(4) But trust scheme rules are binding on the manager, trustee and participants independently of the contents of the trust deed and, in the case of the participants, have effect as if contained in it.

(5) If—

(a) a modification is made of the statutory provisions in force in [F1506 the United Kingdom] relating to companies,
(b) the modification relates to the rights and duties of persons who hold the beneficial title to any shares in a company without also holding the legal title, and
(c) it appears to the Treasury that, for the purpose of assimilating the law relating to authorised unit trust schemes to the law relating to companies as so modified, it is expedient to modify the rule-making powers conferred on the [F1494 FCA] by this section,
the Treasury may by order make such modifications of those powers as they consider appropriate.
249  Disciplinary measures

(1) If it appears to the FCA that an auditor has failed to comply with a duty imposed on him by trust scheme rules, it may do one or more of the following—

(a) disqualify the auditor from being the auditor of any authorised unit trust scheme, authorised contractual scheme or authorised open-ended investment company;

(b) publish a statement to the effect that it appears to the FCA that the auditor has failed to comply with the duty;

(c) impose on the auditor a penalty, payable to the FCA, of such amount as the FCA considers appropriate.

(2) Sections 345B to 345E have effect in relation to the taking of action under subsection (1) as they have effect in relation to the taking of action under section 345(2).
(2) The FCA may, on the application or with the consent of any person to whom any rules apply, direct that all or any of the rules—
   (a) are not to apply to him as respects a particular scheme; or
   (b) are to apply to him, as respects a particular scheme, with such modifications as may be specified in the direction.

(3) The FCA may, on the application or with the consent of the manager and trustee of a particular scheme acting jointly, direct that all or any of the rules—
   (a) are not to apply to the scheme; or
   (b) are to apply to the scheme with such modifications as may be specified in the direction.

(4) Section 138A and subsections (1) to (3), (5) and (6) of section 138B have effect in relation to a direction under subsection (2) as they have effect in relation to a direction under section 138A(1) but with the following modifications—
   (a) any reference to the person is to be read as a reference to the person mentioned in subsection (2); and
   (c) section 138B(3)(c) is to be read, in relation to a participant of the scheme, as if the word “commercial” were omitted.

(5) Section 138A and subsections (1) to (3), (5) and (6) of section 138B have effect in relation to a direction under subsection (3) as they have effect in relation to a direction under section 138A(1) but with the following modifications—
   (a) subsection (4)(a) of section 138A is to be read as if the words “by the . . . person” were omitted;
   (b) section 138B(3)(c) and the definition of “immediate group” in section 421ZA as it applies to that section are to be read as if references to the . . . person were references to each of the manager and the trustee of the scheme;
   (c) section 138B(3)(c) is to be read, in relation to a participant of the scheme, as if the word “commercial” were omitted;
   (d) section 138B(5) is to be read as if the reference to the . . . person concerned were a reference to the scheme concerned and to its manager and trustee; and
   (e) section 138A(7) is to be read as if the reference to the . . . person were a reference to the manager and trustee of the scheme acting jointly.
Alteration of schemes and changes of manager or trustee.

This section applies where the manager of an authorised unit trust scheme proposes—

(a) to make an alteration to the scheme, other than an alteration—
   (i) to which section 252A applies; or
   (ii) to which Part 4 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011 (mergers) applies; or

(b) to replace its trustee.

(1) The manager must give written notice of the proposal to the Financial Conduct Authority.

(2) Any notice given in respect of a proposal to alter the scheme involving a change in the trust deed must be accompanied by a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the trust scheme rules.

(3) The trustee of an authorised unit trust scheme must give written notice to the Financial Conduct Authority of any proposal to replace the manager of the scheme.

(4) Effect is not to be given to any proposal of which notice has been given under subsection (1) or (3) unless—
   (a) the Financial Conduct Authority, by written notice, has given its approval to the proposal; or
   (b) one month, beginning with the date on which the notice was given, has expired without the manager or trustee having received from the Financial Conduct Authority a warning notice under section 252 in respect of the proposal.

(5) The Financial Conduct Authority must not approve a proposal to replace the manager or the trustee of an authorised unit trust scheme unless it is satisfied that, if the proposed replacement
is made, the scheme will continue to comply with the requirements of section 243(4) to (7).

252 Procedure when refusing approval of a proposal under section 251.

(1) If the FCA proposes to refuse approval of a proposal under section 251 to replace the trustee or manager of an authorised unit trust scheme, it must give a warning notice to the person by whom notice of the proposal was given under section 251(1) or (3).

(2) If the FCA proposes to refuse approval of a proposal under section 251 to alter an authorised unit trust scheme it must give separate warning notices to the manager and the trustee of the scheme.

(3) To be valid the warning notice must be received by that person before the end of one month beginning with the date on which notice of the proposal was given.

(4) If, having given a warning notice to a person, the FCA decides to refuse approval—

(a) it must give him a decision notice; and

(b) he may refer the matter to the Tribunal.
Proposal to convert to a non-feeder UCITS

(1) This section applies where the manager of an authorised unit trust scheme which is a feeder UCITS proposes to make an alteration to the scheme which—
   (a) involves a change in the trust deed, and
   (b) will enable the scheme to convert into a UCITS which is not a feeder UCITS.

(2) The manager must give written notice of the proposal to the FCA.

(3) Any notice given in respect of such a proposal must be accompanied by—
   (a) a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the trust scheme rules; and
   (b) the specified information.

(4) The FCA must, within 15 working days after the date on which it received the notice under subsection (2), give—
   (a) written notice to the manager of the scheme that the FCA approves the proposed amendments to the trust deed, or
   (b) separate warning notices to the manager and trustee of the scheme that the FCA proposes to refuse approval of the proposed amendments.

(5) Effect is not to be given to any proposal of which notice has been given under subsection (2) unless the FCA, by written notice, has given its approval to the proposal.

(6) If, having given a warning notice to a person, the FCA decides to refuse approval—
   (a) it must give that person a decision notice; and
   (b) that person may refer the matter to the Tribunal.

(7) Subsection (8) applies where—
   (a) the notice given under subsection (2) relates to a proposal to amend the trust deed of a feeder UCITS to enable it to convert into a UCITS which is not a feeder UCITS following the winding-up of its master UCITS; and
   (b) the proceeds of the winding-up are to be paid to the feeder UCITS before the date on which the feeder UCITS proposes to start investing in accordance with the new investment objectives and policy provided for in its amended trust deed and scheme rules.

(8) Where this subsection applies, the FCA may only approve the proposal subject to the conditions set out in section 283A(5) and (6).

(9) In this section, “specified” means—
   (a) specified in rules made by the FCA to implement the UCITS directive, or
   (b) specified in any directly applicable Community regulation or decision made under the UCITS directive.
Exclusion clauses

Avoidance of exclusion clauses.

Any provision of the trust deed of an authorised unit trust scheme is void in so far as it would have the effect of exempting the manager or trustee from liability for any failure to exercise due care and diligence in the discharge of his functions in respect of the scheme.

Ending of authorisation

Revocation of authorisation order otherwise than by consent.

(1) An authorisation order may be revoked by an order made by the F1528FCA if it appears to the F1528FCA that—

(a) one or more of the requirements for the making of the order are no longer satisfied;

(b) the manager or trustee of the scheme concerned has contravened a requirement imposed on him by or under this Act;

(c) the manager or trustee of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the F1528FCA information which is false or misleading in a material particular;

(d) no regulated activity is being carried on in relation to the scheme and the period of that inactivity began at least twelve months earlier; or

(e) none of paragraphs (a) to (d) applies, but it is desirable to revoke the authorisation order in order to protect the interests of participants or potential participants in the scheme.

(2) For the purposes of subsection (1)(e), the F1528FCA may take into account any matter relating to—

(a) the scheme;

(b) the manager or trustee;

(c) any person employed by or associated with the manager or trustee in connection with the scheme;

(d) any director of the manager or trustee;

(e) any person exercising influence over the manager or trustee;

(f) any body corporate in the same group as the manager or trustee;

(g) any director of any such body corporate;

(h) any person exercising influence over any such body corporate.
255 Procedure.

(1) If the [F1528FCA] proposes to make an order under section 254 revoking an authorisation order (“a revoking order”), it must give separate warning notices to the manager and the trustee of the scheme.

(2) If the [F1528FCA] decides to make a revoking order, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

256 Requests for revocation of authorisation order.

(1) An authorisation order may be revoked by an order made by the [F1528FCA] at the request of the manager or trustee of the scheme concerned.

(2) If the [F1528FCA] makes an order under subsection (1), it must give written notice of the order to the manager and trustee of the scheme concerned.

(3) The [F1528FCA] may refuse a request to make an order under this section if it considers that—

(a) the public interest requires that any matter concerning the scheme should be investigated before a decision is taken as to whether the authorisation order should be revoked; or

(b) revocation would not be in the interests of the participants or would be incompatible with [F1529an EU] obligation.

(4) If the [F1528FCA] proposes to refuse a request under this section, it must give separate warning notices to the manager and the trustee of the scheme.

(5) If the [F1528FCA] decides to refuse the request, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.
Directions.

(1) The [F1528FCA] may give a direction under this section if it appears to the [F1528FCA] that—

(a) one or more of the requirements for the making of an authorisation order are no longer satisfied;

(b) the manager or trustee of an authorised unit trust scheme has contravened, or is likely to contravene, a requirement imposed—

(i) by or under this Act;

(ii) by any directly applicable Community regulation or decision made under the UCITS directive;

(iii) by the MMF Regulation or any directly applicable regulation or decision made under that Regulation;

(c) the manager or trustee of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the [F1528FCA] information which is false or misleading in a material particular; or

(d) none of paragraphs (a) to (c) applies, but it is desirable to give a direction in order to protect the interests of participants or potential participants in such a scheme.

(2) A direction under this section may—

(a) require the manager of the scheme to cease the issue or redemption, or both the issue and redemption, of units under the scheme;

(b) require the manager and trustee of the scheme to wind it up.

(3) If the authorisation order is revoked, the revocation does not affect any direction under this section which is then in force.

(4) A direction may be given under this section in relation to a scheme in the case of which the authorisation order has been revoked if a direction under this section was already in force at the time of revocation.

(5) If a person contravenes a direction under this section, [F1534section 138D] applies to the contravention as it applies to a contravention mentioned in that section.

(6) The [F1528FCA] may, either on its own initiative or on the application of the manager or trustee of the scheme concerned, revoke or vary a direction given under this section if it appears to the [F1528FCA]—
258 Applications to the court.

(1) If the [F1528FCA] could give a direction under section 257, it may also apply to the court for an order—
   (a) removing the manager or the trustee, or both the manager and the trustee, of the scheme; and
   (b) replacing the person or persons removed with a suitable person or persons nominated by the [F1528FCA].

(2) The [F1528FCA] may nominate a person for the purposes of subsection (1)(b) only if it is satisfied that, if the order was made, the requirements of section 243(4) to (7) would be complied with.

(3) If it appears to the [F1528FCA] that there is no person it can nominate for the purposes of subsection (1)(b), it may apply to the court for an order—
   (a) removing the manager or the trustee, or both the manager and the trustee, of the scheme; and
   (b) appointing an authorised person to wind up the scheme.

(4) On an application under this section the court may make such order as it thinks fit.
(5) The court may, on the application of the F1528FCA, rescind any such order as is mentioned in subsection (3) and substitute such an order as is mentioned in subsection (1).

(6) The F1528FCA must give written notice of the making of an application under this section to the manager and trustee of the scheme concerned.

(7) The jurisdiction conferred by this section may be exercised by—
   (a) the High Court;
   (b) in Scotland, the Court of Session.

Textual Amendments
F1528Word in ss. 254-262 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

258Winding up or merger of master UCITS

(1) Subsection (2) applies if a master UCITS which has one or more feeder UCITS which are authorised unit trust schemes is wound up, whether as a result of a direction given by the F1528FCA under section 257 F1536 or 261X, an order of the court under section 258 F1537 or 261Y, rules made by the F1528FCA or otherwise.

(2) The F1528FCA must direct the manager and trustee of any authorised unit trust scheme which is a feeder UCITS of the master UCITS to wind up the feeder UCITS unless—
   (a) the F1528FCA approves under section 283A the investment by the feeder UCITS of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in units of another UCITS or master UCITS; or
   (b) the F1528FCA approves under section 252A an amendment of the trust deed of the feeder UCITS which would enable it to convert into a UCITS which is not a feeder UCITS.

(3) Subsection (4) applies if a master UCITS which has one or more feeder UCITS which are authorised unit trust schemes—
   (a) merges with another UCITS, or
   (b) is divided into two or more UCITS.

(4) The F1528FCA must direct the manager and trustee of any authorised unit trust scheme which is a feeder UCITS of the master UCITS to wind up the scheme unless—
   (a) the F1528FCA approves under section 283A the investment by the scheme of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in the units of—
      (i) the master UCITS which results from the merger;
      (ii) one of the UCITS resulting from the division; or
      (iii) another UCITS or master UCITS;
   (b) the F1528FCA approves under section 252A an amendment of the trust deed of the scheme which would enable it to convert into a UCITS which is not a feeder UCITS.]
259  Procedure on giving directions under section 257 [F1538 or 258A] and varying them on [F1539 FCA's] own initiative.

(1) A direction [F1540] under section 257 or 258A 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 direction [F1541] under section 257 may be expressed to take effect immediately (or on a specified date) only if the [F1528 FCA], having regard to the ground on which it is exercising its power under [F1542 that section], considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If the [F1528 FCA] proposes to give a direction under [F1543 section 257 or 258A, or gives a direction under either section] with immediate effect, it must give separate written notice to the manager and the trustee of the scheme concerned.

(4) The notice must—
   (a) give details of the direction;
   (b) inform the person to whom it is given of when the direction takes effect;
   (c) state the [F1528 FCA's] reasons for giving the direction and for its determination as to when the direction takes effect;
   (d) inform the person to whom it is given that he may make representations to the [F1528 FCA] within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and
   (e) inform him of his right to refer the matter to the Tribunal.

(5) If the direction imposes a requirement under section 257(2)(a), the notice must state that the requirement has effect until—
   (a) a specified date; or
   (b) a further direction.

(6) If the direction [F1544 is given under section 257(2)(b) or section 258A(2) or (4)], the scheme must be wound up—
   (a) by a date specified in the notice; or
   (b) if no date is specified, as soon as practicable.

(7) The [F1528 FCA] may extend the period allowed under the notice for making representations.
(8) If, having considered any representations made by a person to whom the notice was given, the [F1528FCA] decides—
   (a) to give the direction in the way proposed, or
   (b) if it has been given, not to revoke the direction, it must give separate written notice to the manager and the trustee of the scheme concerned.

(9) If, having considered any representations made by a person to whom the notice was given, the [F1528FCA] decides—
   (a) not to give the direction in the way proposed,
   (b) to give the direction in a way other than that proposed, or
   (c) to revoke a direction which has effect, it must give separate written notice to the manager and the trustee of the scheme concerned.

(10) A notice given under subsection (8) must inform the person to whom it is given of his right to refer the matter to the Tribunal.

(11) A notice under subsection (9)(b) must comply with subsection (4).

(12) 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.

(13) This section applies to the variation of a direction on the [F1528FCA's] own initiative as it applies to the giving of a direction.

(14) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

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Textual Amendments

F1528 Word in ss. 254-262 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1538 Words in s. 259 heading inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), reg. 2(22)(a)

F1539 Word in s. 259 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1540 Words in s. 259(1) inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), reg. 2(22)(b)

F1541 Words in s. 259(2) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, 3(10)(a)(i) (with reg. 24)

F1542 Words in s. 259(2) substituted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, 3(10)(a)(ii) (with reg. 24)

F1543 Words in s. 259(3) substituted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, 3(10)(b) (with reg. 24)

F1544 Words in s. 259(6) substituted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), reg. 2(22)(c)

Commencement Information

I52 S. 259 wholly in force at 1.12.2001; s. 259 not in force at Royal Assent see s. 431(2); s. 259 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 259 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)
260 Procedure: refusal to revoke or vary direction.

(1) If on an application under section 257(6) for a direction to be revoked or varied the [F1528FCA] proposes—
   (a) to vary the direction otherwise than in accordance with the application, or
   (b) to refuse to revoke or vary the direction,

   it must give the applicant a warning notice.

(2) If the [F1528FCA] decides to refuse to revoke or vary the direction—
   (a) it must give the applicant a decision notice; and
   (b) the applicant may refer the matter to the Tribunal.

261 Procedure: revocation of direction and grant of request for variation.

(1) If the [F1528FCA] decides on its own initiative to revoke a direction under section 257 it must give separate written notices of its decision to the manager and trustee of the scheme.

(2) If on an application under section 257(6) for a direction to be revoked or varied the [F1528FCA] decides to revoke the direction or vary it in accordance with the application, it must give the applicant written notice of its decision.

(3) A notice under this section must specify the date on which the decision takes effect.

(4) The [F1528FCA] may publish such information about the revocation or variation, in such way, as it considers appropriate.

[F1545261AInformation for home state regulator

(1) Subsection (2) applies if, in accordance with rules made by the [F1528FCA] to implement Article 66 of the UCITS directive, the [F1528FCA] is informed by the
manager of an authorised unit trust scheme which is a master UCITS that a feeder UCITS which invests in units of the scheme is an EEA UCITS.

(2) The FCA must immediately inform the home state regulator of the feeder UCITS of the investment made by that UCITS in the master UCITS.

Textual Amendments
F1528 Word in ss. 254-262 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1545 Ss. 261A, 261B inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), reg. 2(23)

261B Information for feeder UCITS

(1) The FCA must immediately inform the operator of any authorised unit trust scheme which is a feeder UCITS of an authorised unit trust scheme [an authorised contractual scheme] or an authorised open-ended investment company (the master UCITS) of—

(a) any failure of which the FCA becomes aware by the master UCITS to comply with a provision made in implementation of Chapter VIII of the UCITS directive;

(b) any warning notice or decision notice given to the master UCITS in relation to a contravention of any provision made in implementation of Chapter VIII of the UCITS directive by or under any enactment or in rules of the FCA;

(c) any information reported to the FCA pursuant to rules of the FCA made to implement Article 106(1) of the UCITS directive which relates to the master UCITS, or to one or more of its directors, or its management company, trustee, depositary or auditor.

(2) The FCA must immediately inform the operator of any authorised unit trust scheme which is a feeder UCITS of any information received from the home state regulator of the EEAUCITS in relation to—

(a) any failure by the EEAUCITS to comply with any requirement in Chapter VIII of the UCITS directive;

(b) any decision or measure imposed on the EEAUCITS under provisions implementing Chapter VIII of the UCITS directive;

(c) any information reported to the home state regulator pursuant to Article 106(1) of the UCITS directive relating to the EEAUCITS, its operator, depositary or auditor.

(3) Where the FCA has the information described in subsection (1)(a), (b) or (c) in relation to an authorised unit trust scheme which is a master UCITS for one or more feeder UCITS which are EEAUCITS, the FCA must immediately give that information to the home state regulator of each feeder UCITS established outside the United Kingdom.

Textual Amendments
F1528 Word in ss. 254-262 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
CHAPTER 3A – AUTHORISED CONTRACTUAL SCHEMES

Applications for authorisation

261C. Applications for authorisation of contractual schemes

(1) The operator and depositary, or proposed operator and depositary, of a contractual scheme may apply to the FCA for—
   (a) an order declaring the scheme to be an authorised contractual scheme;
   (b) an order declaring the scheme to be an authorised money market fund.

(2) An application under subsection (1)(a)—
   (a) must be made in such manner as the FCA may direct;
   (b) must state the name and the registered office, or if it does not have a registered office, the head office, of the operator or proposed operator and of the depositary or proposed depositary; and
   (c) in the case of a partnership scheme, must be accompanied by a copy of the certificate of registration as a limited partnership under the Limited Partnerships Act 1907.

(2A) An application under subsection (1)(b) must—
   (a) be made in such a manner as the FCA may direct, and
   (b) contain or be accompanied by such information as the FCA may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it, the FCA may require the applicants to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(4) Different directions may be given, and different requirements imposed, in relation to different applications.

(5) The FCA may require applicants to present information which they are required to give under this section in such form, or to verify it in such a way, as the FCA may direct.
261D. Authorisation orders \[^{F1551}\]: authorised contractual schemes

(1) If, on an application under section \[^{F1552}\]261C(1)(a)\] in respect of a contractual scheme, the FCA—

(a) is satisfied that the scheme complies with the requirements set out in this section and section 261E,

(b) is satisfied that the scheme complies with the requirements of contractual scheme rules, and

(c) has been provided with a copy of the contractual scheme deed and a certificate signed by a solicitor to the effect that it complies with such of the requirements of this section or those rules as relate to its contents,

the FCA may make an order declaring the scheme to be an authorised contractual scheme.

(2) If the FCA makes an order under subsection (1), it must give written notice of the order to the applicants.

\[^{F1553}\] (3) .................................................................

(4) The operator and the depositary must be persons who are independent of each other.

(5) The operator and the depositary must each be a body corporate incorporated in the United Kingdom or another EEA State, and the affairs of each must be administered in the country in which it is incorporated.

(6) The depositary must have a place of business in the United Kingdom, and the operator must have a place of business in the United Kingdom or in another EEA State.

(7) If the operator is incorporated in another EEA State, the scheme must not be one which satisfies the requirements prescribed for the purposes of section 264.

(8) The operator and the depositary must each be an authorised person, and the operator must have \[^{F1554}\]such permission as may be necessary to act as operator\] and the depositary must have permission to act as depositary.

(9) The operator must be a fit and proper person to manage the scheme to which the application relates.

(10) The name of the scheme must not be undesirable or misleading.

(11) The purposes of the scheme must be reasonably capable of being successfully carried into effect.
261E. [F1555 Authorised contractual schemes]: holding of units

(1) The participants in a contractual scheme must be entitled to have their units redeemed in accordance with the scheme at a price—
   (a) related to the net value of the property to which the units relate; and
   (b) determined in accordance with the scheme.

(2) The scheme must not allow units in the scheme to be issued to anyone other than—
   (a) a professional investor;
   (b) a large investor; or
   (c) a person who already holds units in the scheme.

(3) The scheme must require the operator, if it becomes aware that units have become vested in a person to whom as a result of subsection (2) the units could not have been issued, to redeem the units as soon as practicable.

(4) In subsection (2)—
   “professional investor” means a person who falls within one of the categories (1) to (4) of Section I of Annex II to the markets in financial instruments directive (professional clients for the purpose of that directive); and
   “large investor” means a person who, in exchange for units in the scheme, makes a payment of, or contributes property with a value of, not less than £1,000,000.
(a) the scheme is an authorised contractual scheme, or
(b) the scheme—
   (i) is the subject of an application under section 261C(1)(a), and
   (ii) the conditions in section 261D(1)(a) to (c) are met in relation to that
       application.

(4) If the FCA makes an order under subsection (1), it must give written notice of the
    order to the applicant.

(5) In this Chapter “authorisation order” means—
    (a) an order under section 261D(1), or
    (b) an order under subsection (1) of this section.

261F. Determination of applications

(1) Subject to subsection (2), an application under section 261C(1)(a) must be
determined by the FCA before the end of the period of six months beginning with the
date on which it receives the completed application.

(2) An application under section 261C(1)(a) in respect of a contractual scheme which
    is a UCITS, or an application under section 261C(1)(b), must be determined by the
    FCA before the end of two months beginning with the date on which it receives the
    application.

(3) The FCA may determine an incomplete application if it considers it appropriate to
do so; and it must in any event determine such an application within twelve months
beginning with the date on which it first receives the application.

(4) The applicants may withdraw the application, by giving the FCA written notice, at
    any time before the FCA determines it.

261G. Procedure when refusing an application

(1) If the FCA proposes to refuse an application made under section 261C, it must give
each of the applicants a warning notice.

(2) If the FCA decides to refuse the application—
(a) it must give each of the applicants a decision notice; and
(b) either applicant may refer the matter to the Tribunal.

Certificates

261H. **Certificates**

(1) If the operator of a contractual scheme which complies with the conditions necessary for it to enjoy the rights conferred by any relevant EU instrument so requests, the FCA may issue a certificate to the effect that the scheme complies with those conditions.

(2) Such a certificate may be issued on the making of an authorisation order in respect of the scheme or at any subsequent time.

Rules

261I. **Contractual scheme rules**

(1) The FCA may by rules (“contractual scheme rules”) make in relation to authorised contractual schemes provision corresponding to that which may be made under section 247 in relation to authorised unit trust schemes.

(2) For the purposes of subsection (1), section 247 is to be read with the following modifications—
   (a) a reference to trust scheme rules is to be read as a reference to contractual scheme rules;
   (b) a reference to authorised unit trust schemes is to be read as a reference to authorised contractual schemes;
   (c) a reference to the manager is to be read as a reference to the operator;
   (d) a reference to the trustee is to be read as a reference to the depositary; and
   (e) a reference to the trust deed is to be read as a reference to the contractual scheme deed.

(3) The Treasury’s power by order under section 247(5) to modify the FCA’s power to make trust scheme rules shall also be exercisable in relation to the FCA’s power to make contractual scheme rules.

(4) For the purposes of subsection (3), section 247(5) is to be read as if the reference to authorised unit trust schemes were a reference to authorised contractual schemes.

261J. **Contractual scheme particulars rules**

(1) The FCA may by rules (“contractual scheme particulars rules”) make in relation to authorised contractual schemes provision corresponding to that which may be made under section 248 in relation to authorised unit trust schemes.

(2) For the purposes of subsection (1), section 248 is to be read with the following modifications—
   (a) a reference to scheme particulars rules is to be read as a reference to contractual scheme particulars rules;
261K. Disciplinary measures

(1) If it appears to the FCA that an auditor has failed to comply with a duty imposed on the auditor by contractual scheme rules, it may do one or more of the following—

(a) disqualify the auditor from being the auditor of any authorised unit trust scheme, authorised contractual scheme or authorised open-ended investment company;

(b) publish a statement to the effect that it appears to the FCA that the auditor has failed to comply with the duty;

(c) impose on the auditor a penalty, payable to the FCA, of such amount as the FCA considers appropriate.

(2) Sections 345B to 345E have effect in relation to the taking of action under subsection (1) as they have effect in relation to the taking of action under section 345(2).

261L. Modification or waiver of rules

(1) In this section “rules” means—

(a) contractual scheme rules; or

(b) contractual scheme particulars rules.

(2) The FCA may, on the application or with the consent of any person to whom rules apply, direct that all or any of the rules—

(a) are not to apply to that person as respects a particular scheme; or

(b) are to apply to that person, as respects a particular scheme, with such modifications as may be specified in the direction.

(3) The FCA may, on the application or with the consent of the operator and depositary of a particular scheme acting jointly, direct that all or any of the rules—

(a) are not to apply to the scheme; or

(b) are to apply to the scheme with such modifications as may be specified in the direction.

(4) Section 138A and subsections (1) to (3), (5) and (6) of section 138B have effect in relation to a direction under subsection (2) as they have effect in relation to a direction under section 138A(1) but with the following modifications—

(a) any reference to the person is to be read as a reference to the person mentioned in subsection (2); and

(b) section 138B(3)(c) is to be read, in relation to a participant in the scheme, as if the word “commercial” were omitted.

(5) Section 138A and subsections (1) to (3), (5) and (6) of section 138B have effect in relation to a direction under subsection (3) as they have effect in relation to a direction under section 138A(1) but with the following modifications—

(a) subsection (4)(a) of section 138A is to be read as if the words “by the person” were omitted;
(b) section 138B(3)(c) and the definition of “immediate group” in section 421ZA as it applies to that section are to be read as if references to the person were references to each of the operator and the depositary of the scheme;
(c) section 138B(3)(c) is to be read, in relation to a participant in the scheme, as if the word “commercial” were omitted;
(d) section 138B(5) is to be read as if the reference to the person concerned were a reference to the scheme concerned and to its operator and depositary; and
(e) section 138A(7) is to be read as if the reference to the person were a reference to the operator and depositary of the scheme acting jointly.

Co-ownership schemes: rights and liabilities of participants

261M. Contracts

(1) In this section “authorised contract” means a contract which the operator of a co-ownership scheme is authorised to enter into on behalf of the relevant participants for the purposes of, or in connection with, the acquisition, management or disposal of property subject to the scheme (but does not include a contract by which a person becomes a participant in the scheme).

(2) The relevant participants are—
   (a) in the case of a contract relating to a stand-alone co-ownership scheme, the participants in the scheme;
   (b) in the case of a contract relating to an umbrella co-ownership scheme, the participants in the sub-scheme of the umbrella co-ownership scheme to which the contract relates.

(3) The operator on behalf of the relevant participants may—
   (a) exercise rights under an authorised contract;
   (b) bring and defend proceedings for the resolution of any matter relating to an authorised contract; and
   (c) take action in relation to the enforcement of any judgment given in such proceedings.

(4) The relevant participants may not themselves do any of the things mentioned in subsection (3), but this does not affect their rights as against the operator.

(5) A person who enters into a contract which purports to be an authorised contract is deemed to have actual knowledge of the scope of the authority given to the operator by the contractual scheme deed.

(6) The validity of an authorised contract is not to be called into question on the ground that a participant lacks capacity to authorise the operator to enter into such a contract.

(7) An authorised contract must make provision for any property which is acquired under or by virtue of the contract to be held by, or to the order of, the depositary of the scheme concerned.

261N. Effect of becoming or ceasing to be a participant

(1) A person who at any time becomes a participant in a relevant scheme acquires the rights and becomes subject to the liabilities to which the other participants in the
relevant scheme are entitled or subject at that time under, or in connection with, authorised contracts.

(2) A person who ceases to be a participant in a relevant scheme ceases to have any of the rights and to be subject to any of the liabilities to which a participant in the relevant scheme is entitled or subject under, or in connection with, authorised contracts.

(3) In this section—
   (a) “authorised contract” has the meaning given in section 261M(1); and
   (b) each of the following is a “relevant scheme”—
      (i) a stand-alone co-ownership scheme; and
      (ii) a sub-scheme of an umbrella co-ownership scheme.

261O. Limited liability

(1) The debts of a relevant scheme are to be paid by the operator out of the property subject to the relevant scheme.

(2) The participants in a relevant scheme are not liable for the debts of the relevant scheme beyond the amount of the property subject to the relevant scheme which is available to the operator to meet the debts.

(3) In this section—
   (a) a reference to the debts of a relevant scheme is a reference to debts and obligations incurred under, or in connection with, authorised contracts;
   (b) “authorised contract” has the meaning given in section 261M(1); and
   (c) “relevant scheme” has the meaning given in section 261N(3).

261P. Segregated liability in relation to umbrella co-ownership schemes

(1) The property subject to a sub-scheme of an umbrella co-ownership scheme must not be used to discharge any liabilities of, or meet any claims against, any person other than the participants in that sub-scheme.

(2) Any provision contained in any contract, agreement or other document is void in so far as it is inconsistent with subsection (1), and any transaction involving the application of property in contravention of that subsection is void.

(3) The FCA may give a direction under section 261X(2) in relation to a sub-scheme of an umbrella co-ownership scheme as if the sub-scheme were an authorised contractual scheme, but this subsection does not enable the FCA to apply to the court for an order under section 261Y in relation to a sub-scheme of an umbrella co-ownership scheme.

(4) Where such a direction is given, the reference in section 261Z1(6) to the scheme is to be read as a reference to the sub-scheme concerned.

Alterations

261Q. Alteration of contractual schemes and changes of operator or depositary

(1) This section applies where the operator of an authorised contractual scheme proposes to make an alteration to the scheme, other than an alteration—
   (a) to which section 261S applies; or
(b) to which Part 4 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011 (mergers) applies.

(2) The operator must give written notice of the proposal to the FCA.

(3) Any notice given in respect of a proposal to alter the scheme involving a change in the contractual scheme deed must be accompanied by a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the contractual scheme rules.

(4) The operator of an authorised contractual scheme must give written notice to the FCA of any proposal to replace the depositary of the scheme.

(5) The depositary of an authorised contractual scheme must give written notice to the FCA of any proposal to replace the operator of the scheme.

(6) Effect is not to be given to any proposal of which notice has been given under subsection (2), (4) or (5) unless—
   (a) the FCA, by written notice, has given its approval to the proposal; or
   (b) one month, beginning with the date on which the notice was given, has expired without the operator or the depositary having received from the FCA a warning notice under section 261R in respect of the proposal.

(7) The FCA must not approve a proposal to replace the operator or the depositary of an authorised contractual scheme unless it is satisfied that, if the proposed replacement is made, the scheme will continue to comply with the requirements of section 261D(4) to (9).

261R. Procedure when refusing approval of a proposal under section 261Q

(1) If the FCA proposes to refuse approval of a proposal under section 261Q to replace the depositary or operator of an authorised contractual scheme, it must give a warning notice to the person by whom notice of the proposal was given under section 261Q(4) or (5).

(2) If the FCA proposes to refuse approval of a proposal under section 261Q to alter an authorised contractual scheme, it must give separate warning notices to the operator and the depositary of the scheme.

(3) To be valid the warning notice must be received by the person to whom it is given before the end of one month beginning with the date on which notice of the proposal was given.

(4) If, having given a warning notice to a person, the FCA decides to refuse approval—
   (a) it must give that person a decision notice; and
   (b) that person may refer the matter to the Tribunal.

261S. Proposal to convert to a non-feeder UCITS

(1) This section applies where the operator of an authorised contractual scheme which is a feeder UCITS proposes to make an alteration to the scheme which—
   (a) involves a change in the contractual scheme deed, and
   (b) will enable the scheme to convert into a UCITS which is not a feeder UCITS.

(2) The operator must give written notice of the proposal to the FCA.
(3) Any notice given in respect of such a proposal must be accompanied by—
   (a) a certificate signed by a solicitor to the effect that the change will not affect
       the compliance of the deed with the contractual scheme rules; and
   (b) the specified information.

(4) The FCA must, within 15 working days after the date on which it received the notice
    under subsection (2), give—
   (a) written notice to the operator of the scheme that the FCA approves the
       proposed amendments to the contractual scheme deed, or
   (b) separate warning notices to the operator and depositary of the scheme that the
       FCA proposes to refuse approval of the proposed amendments.

(5) Effect is not to be given to any proposal of which notice has been given under
    subsection (2) unless the FCA, by written notice, has given its approval to the proposal.

(6) If, having given a warning notice to a person, the FCA decides to refuse approval—
    (a) it must give that person a decision notice; and
    (b) that person may refer the matter to the Tribunal.

(7) Subsection (8) applies where—
    (a) the notice given under subsection (2) relates to a proposal to amend the
        contractual scheme deed of a feeder UCITS to enable it to convert into a
        UCITS which is not a feeder UCITS following the winding-up of its master
        UCITS; and
    (b) the proceeds of the winding-up are to be paid to the feeder UCITS before
        the date on which the feeder UCITS proposes to start investing in accordance
        with the new investment objectives and policy provided for in its amended
        contractual scheme deed and contractual scheme rules.

(8) Where this subsection applies, the FCA may only approve the proposal subject to the
    conditions set out in section 283A(5) and (6).

(9) In this section “specified” means—
    (a) specified in rules made by the FCA to implement the UCITS directive, or
    (b) specified in any directly applicable EU regulation or decision made under the
        UCITS directive.

Exclusion clauses

261T. Avoidance of exclusion clauses

Any provision—
   (a) of the contractual scheme deed of an authorised contractual scheme, or
   (b) in the case of an authorised contractual scheme which is a partnership scheme,
       of the contract under which the depositary of the scheme is appointed,
   is void in so far as it would have the effect of exempting the operator or the depositary
   from liability for any failure to exercise due care and diligence in the discharge of its
   functions in respect of the scheme.
261U. **Revocation of authorisation order otherwise than by consent**

(1) An authorisation order may be revoked by an order made by the FCA if it appears to the FCA that—

   (a) one or more of the requirements for the making of the order are no longer satisfied;

   (b) the operator or depositary of the scheme concerned has contravened a requirement imposed on the operator or depositary by or under this Act;

   (c) the operator or depositary of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the FCA information which is false or misleading in a material particular;

   (d) no regulated activity is being carried on in relation to the scheme and the period of that inactivity began at least twelve months earlier; or

   (e) none of paragraphs (a) to (d) applies, but it is desirable to revoke the authorisation order in order to protect the interests of participants or potential participants in the scheme.

(2) For the purposes of subsection (1)(e), the FCA may take into account any matter relating to—

   (a) the scheme;

   (b) the operator or depositary;

   (c) any person employed by or associated with the operator or depositary in connection with the scheme;

   (d) any director of the operator or depositary;

   (e) any person exercising influence over the operator or depositary;

   (f) any body corporate in the same group as the operator or depositary;

   (g) any director of any such body corporate;

   (h) any person exercising influence over any such body corporate.

261V. **Procedure for revoking authorisation order**

(1) If the FCA proposes to make an order under section 261U revoking an authorisation order (“a revoking order”), it must give separate warning notices to the operator and the depositary of the scheme.

(2) If the FCA decides to make a revoking order, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

261W. **Requests for revocation of authorisation order**

(1) An authorisation order may be revoked by an order made by the FCA at the request of the operator or depositary of the scheme concerned.

(2) If the FCA makes an order under subsection (1), it must give written notice of the order to the operator and depositary of the scheme concerned.

(3) The FCA may refuse a request to make an order under this section if it considers that—
(a) the public interest requires that any matter concerning the scheme should be investigated before a decision is taken as to whether the authorisation order should be revoked; or

(b) revocation would not be in the interests of the participants or would be incompatible with an EU obligation.

(4) If the FCA proposes to refuse a request under this section, it must give separate warning notices to the operator and the depositary of the scheme.

(5) If the FCA decides to refuse the request, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

Powers of intervention

261X. Directions

(1) The FCA may give a direction under this section if it appears to the FCA that—

(a) one or more of the requirements for the making of an authorisation order are no longer satisfied;

(b) the operator or depositary of an authorised contractual scheme has contravened, or is likely to contravene, a requirement imposed—

(i) by or under this Act; \(^{F1559}\) ...

(ii) by any directly applicable EU regulation or decision made under the UCITS directive; \(^{F1560}\) or

(iii) by the MMF Regulation or any directly applicable regulation or decision made under that Regulation; \(^{F1561}\)

(c) the operator or depositary of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the FCA information which is false or misleading in a material particular; or

(d) none of paragraphs (a) to (c) applies, but it is desirable to give a direction in order to protect the interests of participants or potential participants in such a scheme.

(2) A direction under this section may—

(a) require the operator of the scheme to cease the issue or redemption, or both the issue and redemption, of units under the scheme;

(b) require the operator and depositary of the scheme to wind it up.

(3) If the authorisation order is revoked, the revocation does not affect any direction under this section which is then in force.

(4) A direction may be given under this section in relation to a scheme in the case of which the authorisation order has been revoked.

(5) If a person contravenes a direction under this section, section 138D applies to the contravention as it applies to a contravention mentioned in that section.

(6) The FCA may revoke or vary a direction given under this section, either on its own initiative or on the application of a person to whom the direction was given, if it appears to the FCA—

(a) in the case of revocation, that it is no longer necessary for the direction to take effect or continue in force;
(b) in the case of variation, that the direction should take effect or continue in force in a different form.

Textual Amendments

261Y. Applications to the court

(1) If the FCA could give a direction under section 261X, it may also apply to the court for an order—
   (a) removing the operator or the depositary, or both the operator and the depositary, of the scheme; and
   (b) replacing the person or persons removed with a suitable person or persons nominated by the FCA.

(2) The FCA may nominate a person for the purposes of subsection (1)(b) only if it is satisfied that, if the order was made, the requirements of section 261D(4) to (9) would be complied with.

(3) If it appears to the FCA that there is no person it can nominate for the purposes of subsection (1)(b), it may apply to the court for an order—
   (a) removing the operator or the depositary, or both the operator and the depositary, of the scheme; and
   (b) appointing an authorised person to wind up the scheme.

(4) On an application under this section the court may make such order as it thinks fit.

(5) The court may, on the application of the FCA, rescind any such order as is mentioned in subsection (3) and substitute such an order as is mentioned in subsection (1).

(6) The FCA must give written notice of the making of an application under this section to the operator and depositary of the scheme concerned.

(7) The jurisdiction conferred by this section may be exercised by—
   (a) the High Court;
   (b) in Scotland, the Court of Session.

261Z. Winding up or merger of master UCITS

(1) Subsection (2) applies if a master UCITS which has one or more feeder UCITS which are authorised contractual schemes is wound up, whether as a result of a direction given by the FCA under section 257 or 261X, an order of the court under section 258 or 261Y, rules made by the FCA or otherwise.

(2) The FCA must direct the operator and depositary of any authorised contractual scheme which is a feeder UCITS of the master UCITS to wind up the feeder UCITS unless—
(a) the FCA approves under section 283A the investment by the feeder UCITS of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in units of another UCITS or master UCITS; or
(b) the FCA approves under section 261S an amendment of the contractual scheme deed of the feeder UCITS which would enable it to convert into a UCITS which is not a feeder UCITS.

(3) Subsection (4) applies if a master UCITS which has one or more feeder UCITS which are authorised contractual schemes—
(a) merges with another UCITS, or
(b) is divided into two or more UCITS.

(4) The FCA must direct the operator and depositary of any authorised contractual scheme which is a feeder UCITS of the master UCITS to wind up the scheme unless—
(a) the FCA approves under section 283A the investment by the scheme of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in the units of—
(i) the master UCITS which results from the merger;
(ii) one of the UCITS resulting from the division; or
(iii) another UCITS or master UCITS;
(b) the FCA approves under section 261S an amendment of the contractual scheme deed of the scheme concerned which would enable it to convert into a UCITS which is not a feeder UCITS.

261Z1. Procedure on giving directions under section 261X or 261Z and varying them on FCA’s own initiative

(1) A direction under section 261X or 261Z 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 direction under section 261X may be expressed to take effect immediately (or on a specified date) only if the FCA, having regard to the ground on which it is exercising its power under that section, considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If the FCA proposes to give a direction under section 261X or 261Z, or gives a direction under either section with immediate effect, it must give separate written notice to the operator and the depositary of the scheme concerned.

(4) The notice must—
(a) give details of the direction;
(b) inform the person to whom it is given of when the direction takes effect;
(c) state the FCA’s reasons for giving the direction and for its determination as to when the direction takes effect;
(d) inform the person to whom it is given that representations may be made to the FCA within such period as may be specified in it (whether or not the matter has been referred to the Tribunal); and
(e) inform the person to whom it is given of the right to refer the matter to the Tribunal.

(5) If the direction imposes a requirement under section 261X(2)(a), the notice must state that the requirement has effect until—

(a) a specified date; or

(b) a further direction.

(6) If the direction is given under section 261X(2)(b) or section 261Z(2) or (4), the scheme must be wound up—

(a) by a date specified in the notice; or

(b) if no date is specified, as soon as practicable.

(7) The FCA may extend the period allowed under the notice for making representations.

(8) If, having considered any representations made by a person to whom the notice was given, the FCA decides—

(a) to give the direction in the way proposed, or

(b) if it has been given, not to revoke the direction, it must give separate written notice to the operator and the depositary of the scheme concerned.

(9) If, having considered any representations made by a person to whom the notice was given, the FCA decides—

(a) not to give the direction in the way proposed,

(b) to give the direction in a way other than that proposed, or

(c) to revoke a direction which has effect, it must give separate written notice to the operator and the depositary of the scheme concerned.

(10) A notice given under subsection (8) must inform the persons to whom it is given of the right to refer the matter to the Tribunal.

(11) A notice under subsection (9)(b) must comply with subsection (4).

(12) If a notice informs a person of the right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(13) This section applies to the variation of a direction on the FCA’s own initiative as it applies to the giving of a direction.

(14) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

261Z2. Procedure: refusal to revoke or vary direction

(1) If on an application under section 261X(6) for a direction to be revoked or varied the FCA proposes—

(a) to vary the direction otherwise than in accordance with the application, or

(b) to refuse to revoke or vary the direction, it must give the applicant a warning notice.

(2) If the FCA decides to refuse to revoke or vary the direction—
(a) it must give the applicant a decision notice; and
(b) the applicant may refer the matter to the Tribunal.

261Z3. Procedure: revocation of direction and grant of request for variation

(1) If the FCA decides on its own initiative to revoke a direction under section 261X it must give separate written notice of its decision to the operator and the depositary of the scheme.

(2) If on an application under section 261X(6) for a direction to be revoked or varied the FCA decides to revoke the direction or vary it in accordance with the application, it must give the applicant written notice of its decision.

(3) A notice under this section must specify the date on which the decision takes effect.

(4) The FCA may publish such information about the revocation or variation, in such way, as it considers appropriate.

261Z4. Information for home state regulator

(1) Subsection (2) applies if, in accordance with rules made by the FCA to implement Article 66 of the UCITS directive, the FCA is informed by the operator of an authorised contractual scheme which is a master UCITS that a feeder UCITS which invests in units of the scheme is an EEAUCITS.

(2) The FCA must immediately inform the home state regulator of the feeder UCITS of the investment made by that UCITS in the master UCITS.

261Z5. Information for feeder UCITS

(1) The FCA must immediately inform the operator of any authorised contractual scheme which is a feeder UCITS of an authorised unit trust scheme, an authorised contractual scheme or an authorised open-ended investment company (the master UCITS) of—

(a) any failure of which the FCA becomes aware by the master UCITS to comply with a provision made in implementation of Chapter VIII of the UCITS directive;

(b) any warning notice or decision notice given to the master UCITS in relation to a contravention of any provision made in implementation of Chapter VIII of the UCITS directive by or under any enactment or in rules of the FCA;

(c) any information reported to the FCA pursuant to rules of the FCA made to implement Article 106(1) of the UCITS directive which relates to the master UCITS, or to one or more of its directors, or its management company, trustee, depositary or auditor.

(2) The FCA must immediately inform the operator of any authorised contractual scheme which is a feeder UCITS of an EEAUCITS of any information received from the home state regulator of the EEAUCITS in relation to—

(a) any failure by the EEAUCITS to comply with any requirement in Chapter VIII of the UCITS directive;

(b) any decision or measure imposed on the EEAUCITS under provisions implementing Chapter VIII of the UCITS directive;
(c) any information reported to the home state regulator pursuant to Article 106(1) of the UCITS directive relating to the EEAUCITS, its operator, depositary or auditor.

(3) Where the FCA has the information described in subsection (1)(a), (b) or (c) in relation to an authorised contractual scheme which is a master UCITS for one or more feeder UCITS which are EEAUCITS, the FCA must immediately give that information to the home state regulator of each feeder UCITS established outside the United Kingdom.

CHAPTER IV

OPEN-ENDED INVESTMENT COMPANIES

262 Open-ended investment companies.

(1) The Treasury may by regulations make provision for—

(a) facilitating the carrying on of collective investment by means of open-ended investment companies;

(b) regulating such companies.

(2) The regulations may, in particular, make provision—

(a) for the incorporation and registration in the United Kingdom of bodies corporate;

(b) for a body incorporated by virtue of the regulations to take such form as may be determined in accordance with the regulations;

(c) as to the purposes for which such a body may exist, the investments which it may issue and otherwise as to its constitution;

(d) as to the management and operation of such a body and the management of its property;

(e) as to the powers, duties, rights and liabilities of such a body and of other persons, including—

(i) the directors or sole director of such a body;

(ii) its depositary (if any);

(iii) its shareholders, and persons who hold the beneficial title to shares in it without holding the legal title;

(iv) its auditor; and

(v) any persons who act or purport to act on its behalf;

(f) as to the merger of one or more such bodies and the division of such a body;

(g) for the appointment and removal of an auditor for such a body;

(h) as to the winding up and dissolution of such a body;

(i) for such a body, or any director or depositary of such a body, to be required to comply with directions given by the FCA;

(j) enabling the FCA to apply to a court for an order removing and replacing any director or depositary of such a body;

(k) for the carrying out of investigations by persons appointed by the FCA or the Secretary of State;

(l) corresponding to any provision made in relation to unit trust schemes by Chapter III of this Part.
(3) Regulations under this section may—
   (a) impose criminal liability;
   (b) confer functions on the [F1528FCA];
   (c) in the case of provision made by virtue of subsection (2)(l), authorise the making of rules by the [F1528FCA];
   (d) confer jurisdiction on any court or on the Tribunal;
   (e) provide for fees to be charged by the [F1528FCA in connection with the carrying out of any of its functions under the regulations (including fees payable on a periodical basis);
   (f) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act);
   (g) make consequential amendments, repeals and revocations of any such legislation;
   (h) modify or exclude any rule of law.

(4) The provision that may be made by virtue of subsection (3)(f) includes provision extending or adapting any power to make subordinate legislation.

(5) Regulations under this section may, in particular—
   (a) revoke the M21Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996; and
   (b) provide for things done under or in accordance with those regulations to be treated as if they had been done under or in accordance with regulations under this section.]
CHAPTER V

RECOGNISED OVERSEAS SCHEMES

Schemes constituted in other EEA States

264 Schemes constituted in other EEA States.

(1) A collective investment scheme constituted in another EEA State is a recognised scheme if—

(a) it satisfies such requirements as are prescribed for the purposes of this section; and

(b) the home state regulator of the operator of the scheme has transmitted to the FCA notice of the operator’s intention to invite persons in the United Kingdom to participate in the scheme; and

(c) the notice from the home state regulator—

(i) complies with the requirements of any directly applicable Community regulation or decision made under the UCITS directive, and

(ii) is accompanied by such other information as may be prescribed.

(2) . . .

(3) . . .

(4) . . .

(5) For the purposes of this section a collective investment scheme is constituted in another EEA State (“the home state”) if—

(a) it is constituted under the law of the home state by a contract or under a trust and is managed by a body corporate incorporated under the law of any EEA State; or

(b) it takes the form of an open-ended investment company incorporated under the law of the home state.

(6) The operator of a recognised scheme may give written notice to the FCA that he desires the scheme to be no longer recognised by virtue of this section.

(7) On the giving of notice under subsection (6), the scheme ceases to be a recognised scheme.

Textual Amendments

F1563 Word in s. 264(1)(a) omitted (1.7.2011) by virtue of The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), reg. 2(24)(a)

F1564S. 264(1)(b)(c) substituted for s. 264(1)(b) (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), reg. 2(24)(b)

F1565 Words in s. 264 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1566s. 264(2)(3)(4) omitted (1.7.2011) by virtue of The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), reg. 2(24)(c)

F1567 Words in s. 264(5) inserted (24.8.2012) by The Undertakings for Collective Investment in Transferable Securities (Amendment) Regulations 2012 (S.I. 2012/2015), regs. 1, 4(a)
265 Representations and references to the Tribunal.

266 Disapplication of rules.

(1) Apart from—

(a) financial promotion rules, and

(b) rules under section 283(1),

rules made by the [F1572]FCA under this Act do not apply to the operator, trustee or depositary of a scheme in relation to the carrying on by him of regulated activities for which he has permission in that capacity.

[F1573](1A) But subsection (1) does not affect the application of rules to an operator of a scheme if the operator is an EEA firm falling within paragraph 5(f) of Schedule 3 who qualifies for authorisation under that Schedule.

(2) “Scheme” means a scheme which is a recognised scheme by virtue of section 264.
267 Power of [F1574FCA] to suspend promotion of scheme.

(1) Subsection (2) applies if it appears to the [F1574FCA] that the operator of a scheme has communicated an invitation or inducement in relation to the scheme in a manner contrary to financial promotion rules.

(2) The [F1574FCA] may direct that—
   (a) the exemption from subsection (1) of section 238 provided by subsection (4) (c) of that section is not to apply in relation to the scheme; and
   (b) subsection (5) of that section does not apply with respect to things done in relation to the scheme.

(3) A direction under subsection (2) has effect—
   (a) for a specified period;
   (b) until the occurrence of a specified event; or
   (c) until specified conditions are complied with.

(4) The [F1574FCA] may, either on its own initiative or on the application of the operator of the scheme concerned, vary a direction given under subsection (2) if it appears to the [F1574FCA] that the direction should take effect or continue in force in a different form.

(5) The [F1574FCA] may, either on its own initiative or on the application of the operator of the recognised scheme concerned, revoke a direction given under subsection (2) if it appears to the [F1574FCA]—
   (a) that the conditions specified in the direction have been complied with; or
   (b) that it is no longer necessary for the direction to take effect or continue in force.

(6) If an event is specified, the direction ceases to have effect (unless revoked earlier) on the occurrence of that event.

(7) For the purposes of this section and sections 268 and 269—
   (a) the scheme’s home State is the EEA State in which the scheme is constituted (within the meaning given by section 264);
   (b) the competent authorities in the scheme’s home State are the authorities in that State who are responsible for the authorisation of collective investment schemes.

(8) “Scheme” means a scheme which is a recognised scheme by virtue of section 264.

(9) “Specified”, in relation to a direction, means specified in it.

Textual Amendments

F1574 Word in s. 267 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 13(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1575 Word in s. 267(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 13(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1576 Word in s. 267(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 13(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1577 Word in s. 267(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 13(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1578Word in s. 267(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 13(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

268 Procedure on giving directions under section 267 and varying them on F1579FCA's own initiative.

(1) A direction under section 267 takes effect—
   (a) immediately, if the notice given under subsection (3)(a) 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 direction may be expressed to take effect immediately (or on a specified date) only if the F1580FCA, having regard to its reasons for exercising its power under section 267, considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If F1581the FCA proposes to give a direction under section 267, or gives such a direction with immediate effect, it must—
   (a) give the operator of the scheme concerned written notice; and
   (b) inform the competent authorities in the scheme’s home State of its proposal or (as the case may be) of the direction.

(4) The notice must—
   (a) give details of the direction;
   (b) inform the operator of when the direction takes effect;
   (c) state the F1582FCA's reasons for giving the direction and for its determination as to when the direction takes effect;
   (d) inform the operator that he may make representations to the F1583FCA within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and
   (e) inform him of his right to refer the matter to the Tribunal.

(5) The F1584FCA may extend the period allowed under the notice for making representations.

(6) Subsection (7) applies if, having considered any representations made by the operator, the F1585FCA decides—
   (a) to give the direction in the way proposed, or
   (b) if it has been given, not to revoke the direction.

(7) F1586The FCA must—
   (a) give the operator of the scheme concerned written notice; and
   (b) inform the competent authorities in the scheme’s home State of the direction.

(8) Subsection (9) applies if, having considered any representations made by a person to whom the notice was given, the F1587FCA decides—
   (a) not to give the direction in the way proposed,
   (b) to give the direction in a way other than that proposed, or
   (c) to revoke a direction which has effect.
(9) The FCA must—
   (a) give the operator of the scheme concerned written notice; and
   (b) inform the competent authorities in the scheme’s home State of its decision.

(10) A notice given under subsection (7)(a) must inform the operator of his right to refer the matter to the Tribunal.

(11) A notice under subsection (9)(a) given as a result of subsection (8)(b) must comply with subsection (4).

(12) 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.

(13) This section applies to the variation of a direction on the own initiative as it applies to the giving of a direction.

(14) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

Textual Amendments

<table>
<thead>
<tr>
<th>Amendment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>F1579</td>
<td>Word in s. 268 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 14(d) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
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<td>F1580</td>
<td>Word in s. 268(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 14(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
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<td>F1581</td>
<td>Words in s. 268(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 14(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
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<td>F1582</td>
<td>Word in s. 268(4)(c) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 14(c) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
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<td>F1583</td>
<td>Word in s. 268(4)(d) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 14(d) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
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<td>F1584</td>
<td>Word in s. 268(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 14(d) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
</tr>
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<td>F1585</td>
<td>Word in s. 268(6) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 14(d) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
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<td>F1586</td>
<td>Words in s. 268(7) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 14(e) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
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<td>F1587</td>
<td>Word in s. 268(8) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 14(f) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
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<td>F1588</td>
<td>Words in s. 268(9) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 14(g) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
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<td>F1589</td>
<td>Word in s. 268(13) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 14(h) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
</tr>
</tbody>
</table>

269 Procedure on application for variation or revocation of direction.

(1) If, on an application under subsection (4) or (5) of section 267, the FCA proposes—
   (a) to vary a direction otherwise than in accordance with the application, or
   (b) to refuse the application,
   it must give the operator of the scheme concerned a warning notice.
(2) If, on such an application, the FCA decides—
   (a) to vary a direction otherwise than in accordance with the application, or
   (b) to refuse the application,
   it must give the operator of the scheme concerned a decision notice.

(3) If the application is refused, the operator of the scheme may refer the matter to the Tribunal.

(4) If, on such an application, the FCA decides to grant the application it must give the operator of the scheme concerned written notice.

(5) If the FCA decides on its own initiative to revoke a direction given under section 267 it must give the operator of the scheme concerned written notice.

(6) The FCA must inform the competent authorities in the scheme’s home State of any notice given under this section.

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Textual Amendments

F1590 Word in s. 269(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 15(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1591 Word in s. 269(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 15(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1592 Word in s. 269(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 15(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1593 Word in s. 269(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 15(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1594 Words in s. 269(6) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 15(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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Textual Amendments

F1595 Ss. 270, 271 and crossheading omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 18

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F1595 270 Schemes authorised in designated countries or territories.

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F1595 271 Procedure.
Individually recognised overseas schemes

(1) The Financial Conduct Authority (FCA) may, on the application of the operator of a collective investment scheme which—
   (a) is managed in a country or territory outside the United Kingdom,
   (b) does not satisfy the requirements prescribed for the purposes of section 264, and
   (c) appears to the FCA to satisfy the requirements set out in the following provisions of this section,
make an order declaring the scheme to be a recognised scheme.

(2) Adequate protection must be afforded to participants in the scheme.

(3) The arrangements for the scheme’s constitution and management must be adequate.

(4) The powers and duties of the operator and, if the scheme has a trustee or depositary, of the trustee or depositary must be adequate.

(5) In deciding whether the matters mentioned in subsection (3) or (4) are adequate, the FCA must have regard to—
   (a) any rule of law, and
   (b) any matters which are, or could be, the subject of rules, applicable in relation to comparable authorised schemes.

(6) “Comparable authorised schemes” means whichever of the following the FCA considers the most appropriate, having regard to the nature of scheme in respect of which the application is made—
   (a) authorised unit trust schemes;
   (aa) authorised contractual schemes which are co-ownership schemes;
   (ab) authorised contractual schemes which are partnership schemes;
   (b) authorised open-ended investment companies;
   (c) any two or more of the kinds of collective investment scheme mentioned in paragraphs (a) to (b).

(7) The scheme must take the form of an open-ended investment company or (if it does not take that form) the operator must be a body corporate.

(8) The operator of the scheme must—
   (a) if an authorised person, have permission to act as operator;
   (b) if not an authorised person, be a fit and proper person to act as operator.

(9) The trustee or depositary (if any) of the scheme must—
   (a) if an authorised person, have permission to act as trustee or depositary;
   (b) if not an authorised person, be a fit and proper person to act as trustee or depositary.

(10) The operator and the trustee or depositary (if any) of the scheme must be able and willing to co-operate with the FCA by the sharing of information and in other ways.
(11) The name of the scheme must not be undesirable or misleading.

(12) The purposes of the scheme must be reasonably capable of being successfully carried into effect.

(13) The participants must be entitled to have their units redeemed in accordance with the scheme at a price related to the net value of the property to which the units relate and determined in accordance with the scheme.

(14) But a scheme is to be treated as complying with subsection (13) if it requires the operator to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in that subsection.

(15) Subsection (13) is not to be read as imposing a requirement that the participants must be entitled to have their units redeemed (or sold as mentioned in subsection (14)) immediately following a demand to that effect.

**Textual Amendments**

F1596 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1597 Word in s. 272(1) inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 19(a)

F1598 S. 272(1)(c) omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 19(b)

F1599 S. 272(6)(aa)(ab) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, 3(14)(a) (with reg. 24)

F1600 S. 272(6)(c) substituted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, 3(14)(b) (with reg. 24)

**Commencement Information**

I56 S. 272 wholly in force at 1.12.2001; s. 272 not in force at Royal Assent see s. 431(2); s. 272 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 272 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

### 273 Matters that may be taken into account.

For the purposes of subsections (8)(b) and (9)(b) of section 272, the [F1596FCA] may take into account any matter relating to—

(a) any person who is or will be employed by or associated with the operator, trustee or depositary in connection with the scheme;

(b) any director of the operator, trustee or depositary;

(c) any person exercising influence over the operator, trustee or depositary;

(d) any body corporate in the same group as the operator, trustee or depositary;

(e) any director of any such body corporate;

(f) any person exercising influence over any such body corporate.
274 Applications for recognition of individual schemes.

(1) An application under section 272 for an order declaring a scheme to be a recognised scheme must be made to the [F1596FCA] by the operator of the scheme.

(2) The application—
   (a) must be made in such manner as the [F1596FCA] may direct;
   (b) must contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act;
   (c) must contain or be accompanied by such information as the [F1596FCA] may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it, the [F1596FCA] may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(4) Different directions may be given, and different requirements imposed, in relation to different applications.

(5) The [F1596FCA] may require an applicant to present information which he is required to give under this section in such form, or to verify it in such a way, as the [F1596FCA] may direct.
275 Determination of applications.

(1) An application under section 272 must be determined by the [F1596FCA] before the end of the period of six months beginning with the date on which it receives the completed application.

(2) The [F1596FCA] may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it first receives the application.

(3) If the [F1596FCA] makes an order under section 272(1), it must give written notice of the order to the applicant.

Textual Amendments

F1596 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C743 S. 275 modified (20.2.2019) by The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/325), reg. 1(3), 68
C744 S. 275(1)(2) modified (1.12.2001) by S.I. 2001/3592, arts. 1(2), 44(2)(3) (with art. 23(2))

Commencement Information

159 S. 275 wholly in force at 1.12.2001; s. 275 not in force at Royal Assent see s. 431(2); s. 275 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 275 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

276 Procedure when refusing an application.

(1) If the [F1596FCA] proposes to refuse an application made under section 272 it must give the applicant a warning notice.

(2) If the [F1596FCA] decides to refuse the application—

(a) it must give the applicant a decision notice; and
(b) the applicant may refer the matter to the Tribunal.

Textual Amendments

F1596 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Commencement Information

160 S. 276 wholly in force at 1.12.2001; s. 276 not in force at Royal Assent see s. 431(2); s. 276 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 276 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

277 Alteration of schemes and changes of operator, trustee or depositary.

(1) The operator of a scheme recognised by virtue of section 272 must give written notice to the [F1596FCA] of any proposed alteration to the scheme.
(2) Effect is not to be given to any such proposal unless—
   (a) the [F1596FCA], by written notice, has given its approval to the proposal; or
   (b) one month, beginning with the date on which notice was given under subsection (1), has expired without the [F1596FCA] having given written notice to the operator that it has decided to refuse approval.

(3) At least one month before any replacement of the operator, trustee or depositary of such a scheme, notice of the proposed replacement must be given to the [F1596FCA]—
   (a) by the operator, trustee or depositary (as the case may be); or
   (b) by the person who is to replace him.

[F1601](4) If a change is made, or is to be made, to the law which applies to such a scheme in the country or territory in which it is managed and the change affects or will affect any of the matters mentioned at section 272(2) to (4), the operator of the scheme must give written notice of the change to the FCA—
   (a) at least one month before the change takes effect; or
   (b) if that is not reasonably practicable, as soon as it is reasonably practicable to do so.

(5) A notice under this section—
   (a) must be given in such manner as the FCA may direct; and
   (b) where the notice is given under subsection (1) or (3), must include such information as the FCA may direct for the purpose of determining whether the requirements for the making of an order under section 272 in respect of the scheme would continue to be satisfied following the alteration or replacement that is the subject of the notice.]

Textual Amendments
F1596 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1601 S. 277(4)(5) inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 20

Modifications etc. (not altering text)
C745 S. 277(1) amended (temp. from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, arts. 1(2), 3(9); S.I. 2001/3538, art. 2(1)
   S. 277(1) extended (1.12.2001) by S.I. 2001/3592, arts. 1(2), 45(1) (with art. 23(2))
C746 S. 277(2)(b) modified (1.12.2001) by S.I. 2001/3592, arts. 1(2), 45(2) (with art. 23(2))
C747 S. 277(3) extended (1.12.2001) by S.I. 2001/3592, arts. 1(2), 45(3) (with art. 23(2))

Commencement Information
I61 S. 277 wholly in force at 1.12.2001; s. 277 not in force at Royal Assent see s. 431(2); s. 277 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 277 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

[F1602 Regular provision of information relating to compliance with requirements for recognition]

(1) The operator of a scheme recognised by virtue of section 272 must provide to the FCA such information as the FCA may direct, at such times as the FCA may direct, for the
purpose of determining whether the requirements for the making of an order under section 272 in respect of the scheme continue to be satisfied.

(2) A direction under subsection (1) may not require information to be provided within the period of 12 months beginning with the date on which information was last required to be provided to the FCA in respect of the scheme pursuant to a requirement under section 274(2)(c) or a direction under subsection (1) or section 277(5)(b).

(3) The information must be provided in such manner as the FCA may direct.

Textual Amendments
F1602S. 277A inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 21

F1603

Textual Amendments
F1603S. 278 crossheading omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 22

278 Rules as to scheme particulars.

The FCA may make rules imposing duties or liabilities on the operator of a scheme recognised under section 272 for purposes corresponding to those for which rules may be made under section 248 in relation to authorised unit trust schemes.

Textual Amendments
F1596 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1604 Words in s. 278 omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 23

279 Revocation of recognition.

The FCA may... revoke an order under section 272 if it appears to the FCA—

(a) that the operator, trustee or depositary of the scheme has contravened a requirement imposed on him by or under this Act;
(b) that the operator, trustee or depositary of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the information which is false or misleading in a material particular;
(c) that one or more of the requirements for the making of the order are no longer satisfied; or
(d) that none of paragraphs (a) to (c) applies, but it is undesirable in the interests of the participants or potential participants that the scheme should continue to be recognised.
280 Procedure.

(1) If the \[F1596\] FCA proposes to \[F1607\] make an order under section 279] revoking a recognition order, it must give a warning notice to the operator and (if any) the trustee or depositary of the scheme.

(2) If the \[F1596\] FCA decides to \[F1608\] ... make an order under that section—
   
   (a) it must without delay give a decision notice to the operator and (if any) the trustee or depositary of the scheme; and

   (b) the operator or the trustee or depositary may refer the matter to the Tribunal.

281 Directions.

(1) In this section a “relevant recognised scheme” means a scheme recognised under section \[F1609\] ... 272.

(2) If it appears to the \[F1596\] FCA that—
   
   (a) the operator, trustee or depositary of a relevant recognised scheme has contravened, or is likely to contravene, a requirement imposed on him by or under this Act,

   (b) the operator, trustee or depositary of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the \[F1596\] FCA information which is false or misleading in a material particular,
(c) one or more of the requirements for the recognition of a such a scheme are no longer satisfied, or
(d) none of paragraphs (a) to (c) applies, but the exercise of the power conferred by this section is desirable in order to protect the interests of participants or potential participants in a relevant recognised scheme who are in the United Kingdom,
it may direct that the scheme is not to be a recognised scheme for a specified period or until the occurrence of a specified event or until specified conditions are complied with.

Textual Amendments
F1596 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1609 Words in s. 281(1) omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 26(a)
F1610 Words in s. 281(2)(c) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 26(b)

282 Procedure on giving directions under section 281 and varying them otherwise than as requested.
(1) A direction 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 direction may be expressed to take effect immediately (or on a specified date) only if the FCA, having regard to the ground on which it is exercising its power under section 281, considers that it is necessary for the direction to take effect immediately (or on that date).
(3) If the FCA proposes to give a direction under section 281, or gives such a direction with immediate effect, it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.
(4) The notice must—
   (a) give details of the direction;
   (b) inform the person to whom it is given of when the direction takes effect;
   (c) state the FCA's reasons for giving the direction and for its determination as to when the direction takes effect;
   (d) inform the person to whom it is given that he may make representations to the FCA within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and
   (e) inform him of his right to refer the matter to the Tribunal.
(5) The [F1596FCA] may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by a person to whom the notice was given, the [F1596FCA] decides—
   (a) to give the direction in the way proposed, or
   (b) if it has been given, not to revoke the direction,
   it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.

(7) If, having considered any representations made by a person to whom the notice was given, the [F1596FCA] decides—
   (a) not to give the direction in the way proposed,
   (b) to give the direction in a way other than that proposed, or
   (c) to revoke a direction which has effect,
   it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.

(8) A notice given under subsection (6) must inform the person to whom it is given of his 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.

(11) This section applies to the variation of a direction on the [F1596FCA's] own initiative as it applies to the giving of a direction.

(12) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

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**Textual Amendments**

F1596 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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**Facilities and information in UK**

283  **Facilities and information in UK.**

(1) The [F1596FCA] may make rules requiring operators of recognised schemes to maintain in the United Kingdom, or in such part or parts of it as may be specified, such facilities as the [F1596FCA] thinks desirable in the interests of participants and as are specified in rules.

(2) The [F1596FCA] may by notice in writing require the operator of any recognised scheme to include such explanatory information as is specified in the notice in any communication of his which—
   (a) is a communication of an invitation or inducement of a kind mentioned in section 21(1); and
   (b) names the scheme.
(3) In the case of a communication originating outside the United Kingdom, subsection (2) only applies if the communication is capable of having an effect in the United Kingdom.

283A Master-feeder structures

(1) The operator of a UK UCITS may not invest a higher proportion of the property which is subject to the collective investment scheme constituted by that UCITS in units of another UCITS than is permitted by rules made by the [F1596FCA] implementing Article 55 of the UCITS directive unless the investment is approved by the [F1596FCA] in accordance with this section.

(2) An application for approval under subsection (1) of an investment must be made by the operator of the UK UCITS in such manner, and accompanied by such information, as is required by rules made by the [F1596FCA].

(3) The [F1596FCA] must grant an application made under subsection (2) if it is satisfied—

(a) that the UCITS, its operator, trustee or depositary and auditor and the UCITS in which it proposes to invest, and its operator, have complied with—

(i) the requirements laid down in Chapter VIII of the UCITS directive, and

(ii) any other requirements imposed by the [F1596FCA] in relation to the application;

(b) in a case where the application is made by the operator of a feeder UCITS in respect of the investment of the proceeds of the winding-up of its master UCITS, that the proceeds of the winding up are to be paid to the feeder UCITS before the date on which the investment is to be made.

(4) In a case within subsection (3)(b), approval must be subject to the conditions in subsections (5) and (6).
(5) The first condition is that the feeder UCITS is to receive the proceeds of the winding-up—
   (a) in cash; or
   (b) wholly or partly in assets other than cash in a case where the feeder UCITS so elects and each of the following so permits—
      (i) the decision of the master UCITS that it should be wound up;
      (ii) the trust deed [F1612, contractual scheme deed] or instrument of incorporation of the feeder UCITS; and
      (iii) either the agreement between the feeder UCITS and its master UCITS, or the internal conduct of business rules operated by the feeder UCITS and the master UCITS in accordance with rules made by the [F1596FCA].

(6) The second condition is that cash received by the feeder UCITS in accordance with paragraph (5)(a) may not be reinvested before the date on which the feeder UCITS proposes to invest in the new UCITS, except for the purpose of efficient cash management.

(7) The [F1596FCA] must, within 15 working days of the date on which the [F1596FCA] had received all the information required in relation to the application, give written notice to the operator—
   (a) that the [F1596FCA] approves its application, or
   (b) that the [F1596FCA] objects to the application.

(8) Following receipt of notice that the [F1596FCA] objects to the application, the operator may refer the [F1596FCA's] decision to the Tribunal.

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### Textual Amendments

**F1596** Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

**F1612** Words in s. 283A(5)(b)(ii) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, 3(15) (with reg. 24)

### 283B Reports on derivative instruments

(1) An authorised person who is the management company in relation to a UCITS must report to the [F1596FCA] at specified intervals of not more than 12 months about any investment in derivative instruments during the specified period to which the report relates.

(2) The report must be in the specified form and contain the specified information.

(3) The [F1596FCA] must review the regularity and completeness of the information provided by each management company under subsection (1).

(4) In this section, “specified” means specified—
   (a) in rules made by the [F1596FCA] to implement the UCITS directive, or
   (b) in any directly applicable Community regulation or decision made under the UCITS directive.]
CHAPTER VI
INVESTIGATIONS

284 Power to investigate.

(1) An investigating authority may appoint one or more competent persons to investigate on its behalf—

(a) the affairs of, or of the manager or trustee of, any authorised unit trust scheme,
(b) the affairs of, or of the operator, trustee or depositary of, any recognised scheme so far as relating to activities carried on in the United Kingdom, or
(c) the affairs of, or of the operator, trustee or depositary of, any other collective investment scheme except a body incorporated by virtue of regulations under section 262,

if it appears to the investigating authority that it is in the interests of the participants or potential participants to do so or that the matter is of public concern.

(2) A person appointed under subsection (1) to investigate the affairs of, or of the manager, trustee, operator or depositary of, any scheme (scheme “A”), may also, if he thinks it necessary for the purposes of that investigation, investigate—

(a) the affairs of, or of the manager, trustee, operator or depositary of, any other such scheme as is mentioned in subsection (1) whose manager, trustee, operator or depositary is the same person as the manager, trustee, operator or depositary of scheme A;
(b) the affairs of such other schemes and persons (including bodies incorporated by virtue of regulations under section 262 and the directors and depositaries of such bodies) as may be prescribed.

(3) If the person appointed to conduct an investigation under this section (“B”) considers that a person (“C”) is or may be able to give information which is relevant to the investigation, B may require C—

(a) to produce to B any documents in C’s possession or under his control which appear to B to be relevant to the investigation,
(b) to attend before B, and
(c) otherwise to give B all assistance in connection with the investigation which C is reasonably able to give,

and it is C’s duty to comply with that requirement.

(4) Subsections (5) to (9) of section 170 apply if an investigating authority appoints a person under this section to conduct an investigation on its behalf as they apply in the case mentioned in subsection (1) of that section.

(5) Section 174 applies to a statement made by a person in compliance with a requirement imposed under this section as it applies to a statement mentioned in that section.
(6) Subsections (2) to (4) and (6) of section 175 and section 177 have effect as if this section were contained in Part XI.

(7) Subsections (1) to (9) of section 176 apply in relation to a person appointed under subsection (1) as if—
   (a) references to an investigator were references to a person so appointed;
   (b) references to an information requirement were references to a requirement imposed under section 175 or under subsection (3) by a person so appointed;
   (c) the premises mentioned in subsection (3)(a) were the premises of a person whose affairs are the subject of an investigation under this section or of an appointed representative of such a person.

(8) No person may be required under this section to disclose information or produce a document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless subsection (9) or (10) applies.

(9) This subsection applies if—
   (a) the person to whom the obligation of confidence is owed consents to the disclosure or production; or
   (b) the imposing on the person concerned of a requirement with respect to information or a document of a kind mentioned in subsection (8) has been specifically authorised by the investigating authority.

(10) This subsection applies if the person owing the obligation of confidence or the person to whom it is owed is—
   (a) the manager, trustee, operator or depositary of any collective investment scheme which is under investigation;
   (b) the director of a body incorporated by virtue of regulations under section 262 which is under investigation;
   (c) any other person whose own affairs are under investigation.

(11) “Investigating authority” means [F1613the FCA] or the Secretary of State.
PART 17A – Transformer Vehicles

Chapter VI – Investigations

Textual Amendments
F1614 Pt. 17A inserted (4.5.2016) by Bank of England and Financial Services Act 2016 (c. 14), ss. 31(2), 41(1)

284A Transformer vehicles

(1) In this section “transformer vehicle” means an undertaking (“A”) which—
   (a) is established for the purposes of carrying on the activities mentioned in subsection (2), or
   (b) carries on those activities.

(2) The activities referred to in subsection (1) are—
   (a) assuming risk from another undertaking (“B”), and
   (b) fully funding A's exposure to that risk by issuing investments where the repayment rights of the investors are subordinated to A's obligations to B in respect of the risk.

(3) The Treasury may by regulations make provision for facilitating, and provision for regulating—
   (a) the establishment and operation of transformer vehicles;
   (b) the activities mentioned in subsection (2);
   (c) the trading of investments issued by transformer vehicles.

(4) Regulations under subsection (3) may (amongst other things) make provision—
   (a) for the incorporation and registration in the United Kingdom of bodies corporate;
   (b) for a body incorporated by virtue of the regulations to take such form and name as may be determined in accordance with the regulations;
   (c) as to the purposes for which such a body may exist and the investments which it may issue;
   (d) as to the constitution, ownership, management and operation of such a body;
   (e) for such a body to comprise different parts;
   (f) for such parts to have legal personality distinct from that of the body;
   (g) as to the holding and management of the assets and liabilities of such a body, including provision for the segregation of assets and liabilities relating to different risks;
   (h) as to the powers, duties, rights and liabilities of such a body and of other persons, including—
      (i) its directors and other officers;
      (ii) its shareholders, and persons who hold the beneficial title to shares in it without holding the legal title;
      (iii) its auditor;
      (iv) any persons holding assets for it;
      (v) any persons who act or purport to act on its behalf;
(5) If regulations under subsection (3) make the provision mentioned in subsection (4)(e) references in subsection (4) to a body include its constituent parts.

(6) Regulations under subsection (3) may—
   (a) impose criminal liability;
   (b) confer functions on the FCA or the PRA (including the functions of making rules and giving directions);
   (c) authorise the FCA or the PRA to require the Council of Lloyd's to exercise functions on its behalf (including functions conferred otherwise than by the regulations);
   (d) confer jurisdiction on any court or on the Tribunal;
   (e) provide for fees to be charged by the FCA or the PRA in connection with the carrying out of any of their functions under the regulations (including fees payable on a periodical basis);
   (f) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act);
   (g) make consequential amendments, repeals and revocations of any such legislation;
   (h) modify or exclude any rule of law.

(7) Regulations under subsection (3) may make the provision mentioned in subsection (6)(c) only with the consent of the Council of Lloyd's.

(8) The provision that may be made by virtue of subsection (6)(f) includes provision extending or adapting any power to make subordinate legislation.

(9) Regulations under subsection (3) may provide that a reference in the regulations to, or to any provision of, legislation (including an EU instrument and legislation of a country or territory outside the United Kingdom) is to be construed as a reference to that legislation or that provision as amended from time to time.

(10) In this section—
   “investment” includes any asset, right or interest;
   “primary legislation” means an Act, an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales, or Northern Ireland legislation;
   “subordinate legislation” means an instrument made under primary legislation.

(11) If a statutory instrument containing regulations under this section would, apart from this subsection, be treated as a hybrid instrument for the purposes of the Standing Orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.]
PART XVIII

RECOGNISED INVESTMENT EXCHANGES, CLEARING HOUSES AND CSDS

Textual Amendments
F1615 Pt. 18 heading substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(8) (with regs. 7(4), 9(1))

Modifications etc. (not altering text)

CHAPTER I

EXEMPTION

General

285 Exemption for recognised bodies etc.

(1) In this Act—

(a) “recognised investment exchange” means an investment exchange in relation to which a recognition order is in force;

(b) “recognised clearing house” means—

(i) a central counterparty in relation to which a recognition order is in force (in this Part referred to as a “recognised central counterparty”), or

(ii) a clearing house which provides clearing services in the United Kingdom without doing so as a central counterparty, and in relation to which a recognition order is in force;

(c) “EEA central counterparty” means a person established in an EEA State other than the United Kingdom who has been authorised by the competent authority of that State as a central counterparty pursuant to Article 17 of the EMIR regulation; F1618...

(d) “third country central counterparty” means a person established in a State which is not an EEA State who has been recognised by ESMA as a central counterparty pursuant to Article 25 of the EMIR regulation.

(e) “recognised CSD” means a central securities depository in relation to which a recognition order is in force;

(f) “EEA CSD” means a person established in an EEA State other than the United Kingdom who has been authorised by the competent authority of that State as a central securities depository pursuant to Article 16 of the CSD regulation; and

(g) “third country CSD” means a central securities depository established in a State which is not an EEA State which has been recognised by ESMA pursuant to Article 25 of the CSD regulation.
(2) A recognised investment exchange is exempt from the general prohibition as respects any regulated activity—

(a) which is carried on as a part of the exchange’s business as an investment exchange;

(b) which is carried on for the purposes of, or in connection with, the provision by the exchange of services designed to facilitate the provision of clearing services by another person.

(3) A recognised clearing house which is not a recognised central counterparty is exempt from the general prohibition as respects any regulated activity—

(a) which is carried on for the purposes of, or in connection with, the provision of clearing services by the clearing house, or

(b) which is carried on for the purposes of, or in connection with, the provision by the clearing house of services designed to facilitate the provision of clearing services by another person.

(3ZA) Subsections (2) and (3) do not apply in respect of the regulated activity specified in article 63S of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (administering a benchmark).

(3A) A recognised central counterparty is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the services or activities specified in its recognition order.

(3B) An EEA central counterparty is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the services or activities specified in its authorisation granted pursuant to Article 17 of the EMIR regulation.

(3C) A third country central counterparty is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the services or activities specified in its recognition by ESMA pursuant to Article 25 of the EMIR regulation.

(3D) A recognised CSD is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with—

(a) the core services listed in Section A of the Annex to the CSD regulation which the central securities depository is authorised to provide pursuant to Article 16 or 19(1)(a) or (c) of that regulation, or

(b) any non-banking-type ancillary services listed in or permitted under Section B of that Annex which the central securities depository is authorised to provide, including services notified under Article 19 of the CSD regulation.

(3E) An EEA CSD is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the services and activities covered by its authorisation granted pursuant to Article 16 of the CSD regulation (including additional services authorised or notified under Article 19 of that regulation).

(3F) But where Article 23(2) of the CSD regulation applies to an EEA CSD, the EEA CSD is exempt from the general prohibition as mentioned in subsection (3E) only if Article 23(6) of that regulation is complied with.
(3G) A third country CSD is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the services and activities covered by its recognition by ESMA pursuant to Article 25 of the CSD regulation.

(3H) But a recognised CSD, an EEA CSD or a third country CSD is not exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, any banking-type ancillary service listed in or permitted under Section C of the Annex to the CSD regulation.

(4) The Treasury may by order amend paragraph (b) of subsection (2) or (3).

Textual Amendments

F1616. S. 285 heading substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(9)(a) (with regs. 7(4), 9(1))

F1617. S. 285(1)(b)-(d) substituted for s. 285(1)(b) and word (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(3)(a) (with regs. 52-58)

F1618. Word in s. 285(1) omitted (28.11.2017) by virtue of The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(9)(b)(i) (with regs. 7(4), 9(1))

F1619. S. 285(1)(e)-(g) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(9)(b)(ii) (with regs. 7(4), 9(1))

F1620. S. 285(2)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 28(2), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1621. Words in s. 285(3) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(3)(b) (with regs. 52-58)

F1622. Words in s. 285(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 28(3), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.


F1624. S. 285(3A)(3C) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(3)(c) (with regs. 52-58)

F1625. S. 285(3D)-(3H) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(9)(c) (with regs. 7(4), 9(1))

F1626. S. 285(4) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 28(4), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Powers exercisable in relation to recognised bodies

(1) For the purposes of this Part, the FCA is “the appropriate regulator” in relation to recognised investment exchanges.

(2) For the purposes of this Part, the Bank of England is “the appropriate regulator” in relation to recognised clearing houses, recognised CSDs and EEA CSDs.

(3) In Schedule 17A—

(a) Part 1 makes provision for a memorandum of understanding between the appropriate regulators, and between the FCA and the PRA, with respect to the exercise of their functions in relation to recognised bodies;
(b) Part 2 applies certain provisions of this Act in relation to the Bank of England in consequence of the conferring of functions on the Bank under this Part of this Act;

(c) Part 3 makes provision relating to the winding up, administration or insolvency of \[F1632\]recognised clearing houses\[F1633\] and recognised CSDs; and

(d) Part 4 makes provision about fees.

Textual Amendments

F1627 S. 285A inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 29(1), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F1628 S. 285A heading substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(10)(a) (with regs. 7(4), 9(1))

F1629 Words in s. 285A(2) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(10)(b) (with regs. 7(4), 9(1))

F1630 Words in s. 285A(3)(a) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 43 (with Sch. 3); S.I. 2017/43, reg. 2(g)

F1631 Word in s. 285A(3)(a) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(10)(c)(i) (with regs. 7(4), 9(1))

F1632 Words in s. 285A(3)(c) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(4) (with regs. 52-58)

F1633 Words in s. 285A(3)(c) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(10)(c)(ii) (with regs. 7(4), 9(1))

286 Qualification for recognition.

(1) The Treasury may make regulations setting out the requirements—

(a) which must be satisfied by an investment exchange \[F1634\], clearing house or central securities depository if it is to qualify as a body in respect of which \[F1635\] the appropriate regulator \[F1636\] may make a recognition order under this Part; and

(b) which, if a recognition order is made, it must continue to satisfy if it is to remain a recognised body.

(2) But if regulations contain provision as to the default rules of an investment exchange \[F1637\], clearing house or central securities depository, or as to proceedings taken under such rules by such a body, they require the approval of the Secretary of State.

(3) “Default rules” means rules of an investment exchange \[F1637\], clearing house or central securities depository which provide for the taking of action in the event of a person’s appearing to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the exchange \[F1637\], clearing house or central securities depository.

(4) “Market contract” means—

(a) a contract to which Part VII of the \[M23\] Companies Act 1989 applies as a result of section 155 of that Act or a contract to which Part V of the \[M23\] Companies (No. 2)(Northern Ireland) Order 1990 applies as a result of Article 80 of that Order; and
(b) such other kind of contract as may be prescribed.

Regulations under subsection (1) may confer power on the appropriate regulator to make rules for the purposes of the regulations or of any specified provision made by the regulations.

(5) Requirements resulting from this section are referred to in this Part as “recognition requirements”.

In the case of an investment exchange, requirements resulting from this section are in addition to requirements which must be satisfied by the exchange as a result of section 290(1A) before the FCA may make a recognition order declaring the exchange to be a recognised investment exchange.

Textual Amendments

F1634 Words in s. 286(1)(a) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, 2(11)(a) (with regs. 7(4), 9(1))

F1635 Words in s. 286(1)(a) substituted (24.1.2013 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. 8 para. 2(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1636 Words in s. 286(2) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, 2(11)(b) (with regs. 7(4), 9(1))

F1637 Words in s. 286(3) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, 2(11)(c) (with regs. 7(4), 9(1))


F1639 S. 286(4F) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 30, 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F1640 S. 286(6) 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), reg. 1(2), 3(2), Sch. 2 para. 2

F1641 Words in s. 286(6) substituted (24.1.2013 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. 8 para. 2(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Marginal Citations

M23 1989 c. 40.
Applications for recognition

287 Application by an investment exchange.

(1) Any body corporate or unincorporated association may apply to [F1642 the FCA] for an order declaring it to be a recognised investment exchange for the purposes of this Act.

(2) The application must be made in such manner as [F1643 the FCA] may direct and must be accompanied by—
   (a) a copy of the applicant’s rules;
   (b) a copy of any guidance issued by the applicant;
   (c) the required particulars; and
   (d) such other information as [F1643 the FCA] may reasonably require for the purpose of determining the application.

(3) The required particulars are—
   (a) particulars of any arrangements which the applicant has made, or proposes to make, for the provision [F1644 by another person] of clearing services in respect of transactions effected on the exchange;
   (b) if the applicant proposes to provide [F1645 services falling within section 285(2)(b)] in respect of transactions other than those effected on the exchange, particulars of the criteria which the applicant will apply when determining to whom it will provide those services [F1646];
   (c) a programme of operations which includes the types of business the applicant proposes to undertake and the applicant's proposed organisational structure;
   (d) such particulars of the persons who effectively direct the business and operations of the exchange as [F1647 the FCA] may reasonably require;
   (e) such particulars of the ownership of the exchange, and in particular of the identity and scale of interests of the persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly, as [F1648 the FCA] may reasonably require.

[F1649 Subsection (3)(c) to (e) does not apply to an application by an overseas applicant.]

Textual Amendments

F1642 Words in s. 287(1) substituted (24.1.2013 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. 8 para. 3(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F1643 Words in s. 287(2) substituted (24.1.2013 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. 8 para. 3(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F1644 Words in s. 287(3)(a) inserted (24.1.2013 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. 8 para. 3(3)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F1645 Words in s. 287(3)(b) substituted (24.1.2013 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. 8 para. 3(3)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F1646S. 287(3)(c)-(e) 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(2), Sch. 2 para. 3(a)
Application by an investment exchange: persons connected with an applicant

(1) Subsection (2) applies where—
   (a) a body corporate or unincorporated association (“A”) makes an application under section 287 for an order declaring it to be a recognised investment exchange; and
   (b) A is—
       (i) connected with an EEA credit institution or EEA insurance undertaking; or
       (ii) controlled by a person who also controls an EEA credit institution or EEA insurance undertaking.

(2) Before making a recognition order declaring A to be a recognised investment exchange under section 290, the FCA must consult the competent authority responsible for the supervision of the EEA credit institution or EEA insurance undertaking.

(3) A is connected with an EEA credit institution or EEA insurance undertaking if—
   (a) A is a subsidiary undertaking of the EEA credit institution or EEA insurance undertaking; or
   (b) A is a subsidiary undertaking of a parent undertaking of the EEA credit institution or EEA insurance undertaking.

(4) In this section—
   “control” has the same meaning as in Article 4.1.35(b) (definitions) of the markets in financial instruments directive;
   “EEA credit institution” means a credit institution (as defined by Article 4.1.27 of the markets in financial instruments directive) authorised in another EEA State under the capital requirements directive;
   “EEA insurance undertaking” means an insurance undertaking (as defined by Article 13.1 of the Solvency 2 Directive) authorised in another EEA State.
Application by a clearing house.

[F1651] (A1) This section applies only in relation to an application by a clearing house.

[F1652] (1) A body corporate or unincorporated association which is established in the United Kingdom may, where it intends to provide clearing services as a central counterparty, apply to the Bank of England in accordance with Article 17 of the EMIR regulation for an order granting authorisation for the purposes of that Article and declaring it to be a recognised central counterparty for the purposes of this Act.

(1A) A body corporate or unincorporated association may, where it intends to provide clearing services in the United Kingdom without doing so as a central counterparty, apply to the Bank of England for an order declaring it to be for the purposes of this Act a recognised clearing house which is not a recognised central counterparty.

(2) [F1654] An application under subsection (1A) must be made in such manner as [F1655] the Bank of England may direct and must be accompanied by—

(a) a copy of the applicant’s rules;
(b) a copy of any guidance issued by the applicant;
(c) the required particulars; and
(d) such other information as [F1655] the Bank may reasonably require for the purpose of determining the application.

(3) The required particulars are—

(a) if the applicant makes, or proposes to make, clearing arrangements with a recognised investment exchange, particulars of those arrangements;
(b) if the applicant proposes to provide clearing services [F1655] or services falling within section 285(3)(b) for persons other than recognised investment exchanges, particulars of the criteria which it will apply when determining to whom it will provide those services.

Textual Amendments


F1652 S. 288(1)(1A) substituted for s. 288(1) (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(5)(a) (with regs. 52-58)

F1653 Words in s. 288(2) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(5)(b) (with regs. 52-58)

F1654 Words in s. 288(2) substituted (24.1.2013 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. 8 para. 4(3)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1655 Words in s. 288(2)(d) substituted (24.1.2013 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. 8 para. 4(3)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
Application by a central securities depository

Where a legal person which is established in the United Kingdom intends—

(a) to operate a securities settlement system referred to in point (3) of Section A of the Annex to the CSD regulation, and

(b) to provide at least one other core service listed in Section A of that Annex, it may apply to the Bank of England in accordance with Article 17 of the CSD regulation and any directly applicable EU regulation made under that Article for an order granting authorisation for the purposes of Article 16 of that regulation and declaring it to be a recognised CSD for the purposes of this Act.

289 Applications: supplementary.

(1) At any time after receiving an application and before determining it, the appropriate regulator may require the applicant to provide such further information as it reasonably considers necessary to enable it to determine the application.

(2) Information which requires in connection with an application must be provided in such form, or verified in such manner, as may direct.

(3) Different directions may be given, or requirements imposed, by the appropriate regulator with respect to different applications.

(4) In relation to an application under section 288(1), this section does not apply to information which can be required under Article 17 of the EMIR regulation.

(5) In relation to an application under section 288A, this section applies only in relation to information which the Bank of England may require in connection with recognition requirements which do not derive from the CSD regulation or any directly applicable EU regulation made under the CSD regulation.

Textual Amendments

F1658 Words in s. 289(1) substituted (24.1.2013 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. 8 para. 5 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1657 Words in s. 288(3)(b) inserted (24.1.2013 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. 8 para. 4(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
290  Recognition orders.

[1 F1663](1) If it appears to the appropriate regulator that the applicant satisfies the recognition requirements applicable in its case, the regulator may—

(a) where the application is made under section 287, make a recognition order declaring the applicant to be a recognised investment exchange;

(b) where the application is made under section 288(1) and Article 17 of the EMIR regulation allows authorisation to be granted, make a recognition order (“a central counterparty recognition order”) granting authorisation for the purposes of that Article and declaring the applicant to be a recognised central counterparty;

(c) where the application is made under section 288(1A), make a recognition order declaring the applicant to be a recognised clearing house which is not a recognised central counterparty; or

(d) where the application is made under section 288A, make a recognition order (a “CSD recognition order”) granting authorisation for the purposes of Article 16 of the CSD regulation and declaring the applicant to be a recognised CSD.

[1 F1664](1A) In the case of an application for an order declaring the applicant to be a recognised investment exchange, the reference in subsection (1) to the recognition requirements applicable in its case includes a reference to requirements contained in any directly applicable EU regulation made under the markets in financial instruments directive or the markets in financial instruments regulation.

(1B) In the case mentioned in subsection (1A), the application must be determined by the FCA before the end of the period of six months beginning with the date on which it receives the completed application.

(1C) Subsection (1B) does not apply in the case of an application by an overseas applicant.

[1 F1667](1D) A central counterparty recognition order must specify the services or activities linked to clearing which the applicant may provide or perform and the classes of financial instruments covered by the order.

[1 F1668](1E) A CSD recognition order must specify—

(a) the core services listed in Section A of the Annex to the CSD regulation which the applicant is authorised to provide pursuant to Article 16 or 19(1)(a) or (c) of that regulation, and

(b) any non-banking-type ancillary services listed in or permitted under Section B of that Annex which the applicant is authorised to provide, including services notified under Article 19 of the CSD regulation.
(1F) A CSD recognition order must also record the terms of any of the following authorisations granted to the CSD under the CSD regulation or notifications made by the CSD under that regulation—

(a) an authorisation under Article 19(1) of the CSD regulation to outsource a core service under Article 30 of that regulation,

(b) an authorisation under Article 19(1)(d) of the CSD regulation (settlement of cash leg of securities settlement system in the books of another settlement agent),

(c) an authorisation under Article 19(1)(c) of the CSD regulation (setting up interoperable link),

(d) a notification under Article 19(5) of the CSD regulation (other CSD links),

(e) an authorisation under Article 54 or 56 of the CSD regulation to provide (in accordance with Article 54(2)(a) or (b)) any banking-type ancillary service listed in or permitted under Section C of the Annex to that regulation, and

(f) an authorisation to provide investment services and activities in addition to the services explicitly listed in Sections A and B of the Annex to the CSD regulation.

(2)...

(3) In considering an application made under section 287 or 288(1A), the appropriate regulator may have regard to any information which it considers is relevant to the application.

(4) A recognition order must specify a date on which it is to take effect.

(4A) If the Bank of England has not made a decision in relation to an application under section 288A within six months of that application being complete, the applicant may refer the matter to the Tribunal.

(4B) For the purposes of subsection (4A), an application is “complete” when the Bank of England informs the applicant that it is complete pursuant to Article 17(3) of the CSD regulation.

(5) Section 298 has effect in relation to a decision to refuse to make a recognition order in respect of an investment exchange or a clearing house which is not a central counterparty—

(a) as it has effect in relation to a decision to revoke such an order; and

(b) as if references to a recognised body were references to the applicant.

(5A) Section 298 has effect in relation to a decision to refuse an application under section 288A—

(a) as it has effect in relation to a decision to make a revocation order under section 297(1B); and

(b) as if references to a recognised body were references to the applicant.

(6)...

(7) Where—

(a) a body corporate or unincorporated association has made an application under section 288(1), and

(b) the Bank of England has determined that application in accordance with Article 17 of the EMIR regulation,
any previous recognition order under section 290(1)(c) or 292(2)(b) shall cease to be valid.

Textual Amendments

F1663 S. 290(1) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(7)(a) (with regs. 52-58)

F1664 Word in s. 290(1)(b) omitted (28.11.2017) by virtue of The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(15)(a)(i) (with regs. 7(4), 9(1))

F1665 S. 290(1)(d) and word inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(15)(a)(ii) (with regs. 7(4), 9(1))

F1666 S. 290(1A)-(1C) 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(2), Sch. 2 para. 4

F1667 Word in s. 290(1A) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701), reg. 1(2)(3)(4)(6), Sch. 2 para. 31(a) (with reg. 7)

F1668 Words in s. 290(1A) inserted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701), reg. 1(2)(3)(4)(6), Sch. 2 para. 31(b) (with reg. 7)

F1669 Words in s. 290(1B) substituted (24.1.2013 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. 8 para. 6(3) (with Sch. 20); S.I. 2013/113, Sch. 2 para. 31(a) (with regs. 72-78)

F1670 S. 290(1D) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(7)(b) (with regs. 52-58)

F1671 S. 290(1E)(1F) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/7064),regs. 1, 2(15)(b) (with regs. 7(4), 9(1))

F1672 S. 290(2) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), Sch. 8 para. 6(4) (with Sch. 20); S.I. 2013/113, Sch. 2 para. 31(c) (with regs. 72-78)

F1673 Words in s. 290(3) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(7)(c) (with regs. 52-58)

F1674 Words in s. 290(3) substituted (24.1.2013 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. 8 para. 6(5) (with Sch. 20); S.I. 2013/113, Sch. 2 para. 31(d) (with regs. 72-78)

F1675 S. 290(4A)(4B) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/7064), regs. 1, 2(15)(c) (with regs. 7(4), 9(1))

F1676 Words in s. 290(5) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(7)(d) (with regs. 52-58)

F1677 S. 290(5A) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/7064), regs. 1, 2(15)(d) (with regs. 7(4), 9(1))

F1678 S. 290(6) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), Sch. 8 para. 6(6) (with Sch. 20); S.I. 2013/113, Sch. 2 para. 31(e) (with regs. 72-78)
Variation of central counterparty recognition order

(1) On an application made to it in accordance with Article 15 of the EMIR regulation, the Bank of England may in accordance with Article 17 of that regulation vary a central counterparty recognition order by specifying an additional service or activity or class of financial instruments.

(2) Where Article 20(5) of the EMIR regulation applies, the Bank of England may vary a central counterparty recognition order by removing a service or activity or class of financial instruments from those specified in the order.

(3) The Bank of England may at any time vary a central counterparty recognition order for the purpose of correcting an error in, or omission from, the order.

Variation of CSD recognition order

(1) Where the Bank of England—

(a) grants an authorisation in accordance with Article 19(1), 54 or 56 of the CSD regulation,

(b) receives a notification under Article 19 of that regulation, or

(c) decides to withdraw authorisation for a service, activity or financial instrument in accordance with Article 20(4) or 57(4) of that regulation, the Bank of England must vary the CSD recognition order accordingly.

(2) Where an authorisation to provide investment services and activities in addition to the services explicitly listed in Sections A and B of the Annex to the CSD regulation is granted, varied or withdrawn, the Bank of England must vary the CSD recognition order accordingly.

(3) The Bank of England may at any time vary a CSD recognition order for the purpose of correcting an error in, or omission from, the order.
Refusal of recognition on ground of excessive regulatory provision

(1) The appropriate regulator must not make a recognition order if it appears to it that an existing or proposed regulatory provision of the applicant in connection with—

(a) the applicant’s business as an investment exchange,

(b) the provision by the applicant of clearing services,

(c) the provision by the applicant of services falling within section 285(2)(b) or (3)(b),

imposes or will impose an excessive requirement on the persons affected (directly or indirectly) by it.

(2) The reference in section 290(1) (making of recognition order) to satisfying the applicable recognition requirements shall be read accordingly.

(3) Expressions used in subsection (1) above that are defined for the purposes of section 300A (power of appropriate regulator to disallow excessive regulatory provision) have the same meaning as in that section.

(4) The provisions of section 300A(3) and (4) (determination whether regulatory provision excessive) apply for the purposes of this section as for the purposes of section 300A.

(5) Section 298 has effect in relation to a decision under this section to refuse a recognition order—

(a) as it has effect in relation to a decision to revoke such an order, and

(b) as if references to a recognised body were references to the applicant.

(6) This section does not apply to an application for recognition as an overseas investment exchange, an overseas clearing house, a recognised central counterparty or a recognised CSD.

Textual Amendments

S. 290A inserted (20.12.2006) by Investment Exchanges and Clearing Houses Act 2006 (c. 55), ss. 4, 5(2)

Words in s. 290A(1) substituted (24.1.2013 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. 8 para. 7(2)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Words in s. 290A(1) substituted (24.1.2013 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. 8 para. 7(2)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Word in s. 290A(1)(a) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), Sch. 8 para. 7(2)(c) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Words in s. 290A(1)(c) and word inserted (24.1.2013 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. 8 para. 7(2)(c) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Words in s. 290A(3) substituted (24.1.2013 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. 8 para. 7(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
291 Liability in relation to recognised body’s regulatory functions.

(1) A recognised body and its officers and staff are not to be liable in damages for anything done or omitted in the discharge of the recognised body’s regulatory functions unless it is shown that the act or omission was in bad faith.

(2) But subsection (1) does not prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

(3) “Regulatory functions” means the functions of the recognised body so far as relating to, or to matters arising out of, the obligations to which the body is subject under or by virtue of this Act.

292 Overseas investment exchanges and overseas clearing houses.

(1) An application under section 287 or [F1690288(1A)] by an overseas applicant must contain the address of a place in the United Kingdom for the service on the applicant of notices or other documents required or authorised to be served on it under this Act.

(2) If it appears to [F1691]the appropriate regulator that an overseas applicant satisfies the requirements of subsection (3) it may make a recognition order declaring the applicant to be—

(a) a recognised investment exchange;
(b) a recognised clearing house [F1692]which is not a central counterparty].

(3) The requirements are that—

[F1693](a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with—

(i) recognition requirements, other than any such requirements which are expressed in regulations under section 286 not to apply for the purposes of this paragraph, and

(ii) requirements contained in any directly applicable EU regulation made under the markets in financial instruments directive or the markets in financial instruments regulation;]
(b) there are adequate procedures for dealing with a person who is unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the investment exchange or clearing house;

(c) the applicant is able and willing to co-operate with [F1694 the appropriate regulator] by the sharing of information and in other ways;

(d) adequate arrangements exist for co-operation between [F1695 the appropriate regulator] and those responsible for the supervision of the applicant in the country or territory in which the applicant’s head office is situated.

(4) In considering whether it is satisfied as to the requirements mentioned in subsection (3) (a) and (b), [F1696 the appropriate regulator] is to have regard to—

(a) the relevant law and practice of the country or territory in which the applicant’s head office is situated;

(b) the rules and practices of the applicant.

(5) In relation to an overseas applicant and a body or association declared to be a recognised investment exchange or recognised clearing house by a recognition order made by virtue of subsection (2)—

(a) the reference in section 313(2) to recognition requirements is to be read as a reference to matters corresponding to the matters in respect of which provision is made in the recognition requirements;

(b) sections 296(1) and 297(2) have effect as if the requirements mentioned in section 296(1)(a) and section 297(2)(a) were those of subsection (3)(a), (b), and (c) of this section;

(c) section 297(2) has effect as if the grounds on which a recognition order may be revoked under that provision included the ground that in the opinion of [F1697 the appropriate regulator] arrangements of the kind mentioned in subsection (3)(d) no longer exist.

[F1698 (6) Where a recognised clearing house is authorised as an EEA central counterparty or recognised as a third country central counterparty, any previous recognition order under section 290(1)(c) or 292(2)(b) shall cease to be valid.]

Textual Amendments

F1690 Word in s. 292(1) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(10)(a) (with regs. 52-58)

F1691 Words in s. 292(2) substituted (24.1.2013 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. 8 para. 8 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1692 Words in s. 292(2)(b) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(10)(b) (with regs. 52-58)


F1694 Words in s. 292(3)(c) substituted (24.1.2013 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. 8 para. 8 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
Publication of information by recognised investment exchange

(1) A recognised investment exchange must as soon as practicable after a recognition order is made in respect of it publish such particulars of the ownership of the exchange as the Financial Conduct Authority may reasonably require.

(2) The particulars published under subsection (1) must include particulars of the identity and scale of interests of the persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly.

(3) If an ownership transfer takes place in relation to a recognised investment exchange, the exchange must as soon as practicable after becoming aware of the transfer publish such particulars relating to the transfer as the Financial Conduct Authority may reasonably require.

(4) "Ownership transfer", in relation to an exchange, means a transfer of ownership which gives rise to a change in the persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly.

(5) A recognised investment exchange must publish such particulars of any decision it makes to suspend or remove a financial instrument from trading on a regulated market operated by it as the Financial Conduct Authority may reasonably require.

(6) The Financial Conduct Authority may determine the manner of publication under subsections (1), (3) and (5) and the timing of publication under subsection (5).

(7) This section does not apply to an overseas investment exchange.


293 Notification requirements.

(1) The [F1704appropriate regulator] may make rules requiring a recognised body to give it—
   (a) notice of such events relating to the body as may be specified; and
   (b) such information in respect of those events as may be specified.

(2) The rules may also require a recognised body to give the [F1704appropriate regulator], at such times or in respect of such periods as may be specified, such information relating to the body as may be specified.

(3) An obligation imposed by the rules extends only to a notice or information which the [F1704appropriate regulator] may reasonably require for the exercise of its functions under this Act [F1705or [F1706for the purposes of] Directive 2016/1148/EU of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security network and information systems across the Union].

(4) The rules may require information to be given in a specified form and to be verified in a specified manner.

(5) If a recognised body—
   (a) alters or revokes any of its rules or guidance, or
   (b) makes new rules or issues new guidance,
   it must give written notice to the [F1707appropriate regulator] without delay.

[F1708(5A) In relation to a recognised CSD, in subsection (5), “guidance” means guidance issued, or any recommendation made, in writing or other legible form and intended to have continuing effect, by the recognised CSD to—
   (a) all or any class of its members, or
   (b) persons using or seeking to use its services, with respect to any of the services or activities specified in its recognition order.]

(6) If a recognised investment exchange makes a change—

Supervision

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**Textual Amendments**

F1700 Word in s. 292A(1) substituted (24.1.2013 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. 8 para. 9 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1701 Word in s. 292A(3) substituted (24.1.2013 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. 8 para. 9 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1702 Word in s. 292A(5) substituted (24.1.2013 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. 8 para. 9 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1703 Word in s. 292A(6) substituted (24.1.2013 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. 8 para. 9 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
(a) in the arrangements it makes for the provision \[^{F1709}\] by another person of clearing services in respect of transactions effected on the exchange, or
(b) in the criteria which it applies when determining to whom it will provide \[^{F1710}\] services falling within section 285(2)(b),
it must give written notice to \[^{F1711}\] the FCA and the Bank of England without delay.

(7) If a recognised clearing house makes a change—
(a) in the recognised investment exchanges for whom it provides clearing services \[^{F1712}\] or services falling within section 285(3)(b), or
(b) in the criteria which it applies when determining to whom (other than recognised investment exchanges) it will provide clearing services \[^{F1713}\] or services falling within section 285(3)(b),
it must give written notice to \[^{F1714}\] the Bank of England and the FCA without delay.

\[^{F1715}\] In subsections (1) and (2), “recognised body” includes an EEA CSD.

(8) Subsections (5) to (7) do not apply to an overseas investment exchange or an overseas clearing house.

(9) “Specified” means specified in \[^{F1716}\] the appropriate regulator's rules.

**Textual Amendments**

\[^{F1704}\] Words in s. 293(1)-(3) substituted (24.1.2013 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. 8 para. 10(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

\[^{F1705}\] Words in s. 293(3) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(18)(a) (with regs. 7(4), 9(1))

\[^{F1706}\] Words in s. 293(3) substituted (27.2.2018) by The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135), regs. 1(2), 67

\[^{F1707}\] Words in s. 293(5) substituted (24.1.2013 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. 8 para. 10(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

\[^{F1708}\] S. 293(5A) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(18)(b) (with regs. 7(4), 9(1))

\[^{F1709}\] Words in s. 293(6)(a) inserted (24.1.2013 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. 8 para. 10(3)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

\[^{F1710}\] Words in s. 293(6)(b) substituted (24.1.2013 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. 8 para. 10(3)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

\[^{F1711}\] Words in s. 293(6) substituted (24.1.2013 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. 8 para. 10(3)(c) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

\[^{F1712}\] Words in s. 293(7)(a) inserted (24.1.2013 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. 8 para. 10(4)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

\[^{F1713}\] Words in s. 293(7)(b) inserted (24.1.2013 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. 8 para. 10(4)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

\[^{F1714}\] Words in s. 293(7) substituted (24.1.2013 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. 8 para. 10(4)(c) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
The appropriate regulator may require a recognised body to give the appropriate regulator such information as the appropriate regulator reasonably requires in order to satisfy itself that the body is complying with any qualifying EU provision that is specified, or of a description specified, for the purposes of this section by the Treasury by order.

The Bank of England may require an EEA CSD which provides any services referred to in the Annex to the CSD regulation in the United Kingdom to give the Bank reports on those services and statistical information relating to those services, at such times or in respect of such periods as may be specified by the Bank.

(3) A requirement under subsection (2) extends only to information which the Bank may reasonably require for the exercise of its functions under the CSD regulation or any directly applicable EU regulation made under the CSD regulation.]}

Textual Amendments

F1717S. 293A substituted (24.1.2013 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. 8 para. 11 (with Sch. 20); S.I. 2013/113, art. 2(1)c), Sched. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1718S. 293A(1): s. 293A renumbered as s. 293A(1) (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(19)a) (with regs. 7(4), 9(1))

F1719S. 293A(2) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(19)b) (with regs. 7(4), 9(1))

294  Modification or waiver of rules.

(1) The [F1720appropriate regulator] may, on the application or with the consent of a recognised body, direct that rules made under section 293 or 295—

(a) are not to apply to the body; or

(b) are to apply to the body with such modifications as may be specified in the direction.

(2) An application must be made in such manner as the [F1721appropriate regulator] may direct.

(3) Subsections (4) to (6) apply to a direction given under subsection (1).

(4) The [F1722appropriate regulator] may not give a direction unless it is satisfied that—
(a) compliance by the recognised body with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made; and

(b) the direction would not result in undue risk to persons whose interests the rules are intended to protect.

(5) A direction may be given subject to conditions.

(6) The [F1723] appropriate regulator may—

(a) revoke a direction; or

(b) vary it on the application, or with the consent, of the recognised body to which it relates.

[F1724] (7) In this section, “recognised body”, in relation to rules made under section 293, includes an EEA CSD.

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Textual Amendments

F1720 Words in s. 294(1) substituted (24.1.2013 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. 8 para. 12 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1721 Words in s. 294(2) substituted (24.1.2013 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. 8 para. 12 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1722 Words in s. 294(4) substituted (24.1.2013 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. 8 para. 12 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1723 Words in s. 294(6) substituted (24.1.2013 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. 8 para. 12 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1724 S. 294(7) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(20) (with regs. 7(4), 9(1))

Modifications etc. (not altering text)

C756 S. 294 amended (temp. from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, arts. 1(2), 3(10); S.I. 2001/3538, art. 2(1)

Commencement Information

I69 S. 294 wholly in force at 3.9.2001; s. 294 not in force at Royal Assent see s. 431(2); s. 294(2) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 294 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2 Sch. Pt. 2

295 Notification: overseas investment exchanges and overseas clearing houses.

(1) At least once a year, every overseas investment exchange and overseas clearing house must provide [F1725] the appropriate regulator] with a report.

(2) The report must contain a statement as to whether any events have occurred which are [F1724] likely to affect the appropriate regulator’s assessment of whether it is satisfied as to the requirements set out in section 292(3)].

(3) The report must also contain such information as may be specified in rules made by [F1724] the appropriate regulator].
Textual Amendments
F1725 Words in s. 295(1) substituted (24.1.2013 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. 8 para. 13(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F1726 Words in s. 295(2) substituted (24.1.2013 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. 8 para. 13(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F1727 Words in s. 295(3) substituted (24.1.2013 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. 8 para. 13(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F1728 S. 295(4) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), Sch. 8 para. 13(5) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Commencement Information
I70 S. 295 wholly in force at 1.12.2001; s. 295 not in force at Royal Assent see s. 431(2); s. 295 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 295 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

295 On-site inspection of EEA CSDs

(1) For the purposes of Article 24(1) of the CSD regulation (co-operation in relation to branches of EEA CSDs), the Bank of England may, on giving reasonable notice and at any reasonable time, carry out an on-site inspection of any branch maintained by an EEA CSD in the United Kingdom.

(2) Before carrying out an on-site inspection under subsection (1), the Bank of England must inform the competent authority of the EEA State in which the EEA CSD is established.

(3) The Bank of England’s power under subsection (1) is enforceable, on the application of the Bank of England, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

Textual Amendments
F1729 S. 295A inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(21) (with regs. 7(4), 9(1))

296 Appropriate regulator's power to give directions.

(1) This section applies if it appears to the appropriate regulator that a recognised body—

(a) has failed, or is likely to fail, to satisfy the recognition requirements; or

(b) has failed to comply with any other obligation imposed on it by or under this Act.
(1A) This section also applies if it appears to the appropriate regulator that a recognised body has failed, or is likely to fail, to comply with any obligation imposed on it by or under any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury.

(1B) This section also applies in the circumstances described in the second sub-paragraph of Article 24(5) of the CSD regulation if it appears to the Bank of England that it is appropriate to give a direction to an EEA CSD in relation to any services referred to in the Annex to the CSD regulation which the EEA CSD provides in the United Kingdom, in order to ensure its compliance with obligations arising from the CSD regulation or any directly applicable EU regulation made under the CSD regulation.

(2) The regulator concerned may direct the recognised body or EEA CSD to take specified steps for the purpose of securing the body’s compliance with—
(a) the recognition requirements; or
(b) any obligation of the kind in question.

(2A) In the case of a recognised body other than an overseas investment exchange or overseas clearing house, those steps may include—
(a) the granting to the regulator concerned of access to the premises of the body for the purpose of inspecting—
(i) those premises; or
(ii) any documents on the premises which appear to the regulator concerned to be relevant for the purpose mentioned in subsection (2);
(b) the suspension of the carrying on of any regulated activity by the body for the period specified in the direction.

(2B) In the case of an EEA CSD, the steps mentioned in subsection (2) may include—
(a) the granting to the Bank of England of access to any premises of the EEA CSD situated in the United Kingdom for the purpose of inspecting—
(i) those premises; or
(ii) any documents on the premises which appear to the Bank of England to be relevant for the purpose mentioned in subsection (2)(b);
(b) the suspension for the period specified in the direction of the carrying on in the United Kingdom by the EEA CSD of any activity in respect of which the EEA CSD is exempt from the general prohibition.

(3) A direction under this section is enforceable, on the application of the regulator concerned, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

(4) The fact that a rule made by a recognised body has been altered in response to a direction given by an appropriate regulator does not prevent it from being subsequently altered or revoked by the recognised body.

Textual Amendments
F1730 Words in s. 296 heading substituted (24.1.2013 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. 8 para. 14(8) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.
F1731 Words in s. 296(1) substituted (24.1.2013 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. 8 para. 14(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.

F1732 S. 296(1A) 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(2), Sch. 2 para. 7(a)

F1733 Words in s. 296(1A) substituted (24.1.2013 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. 8 para. 14(3)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.

F1734 Words in s. 296(1A) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(22)(a) (with regs. 7(4), 9(1))

F1735 Words in s. 296(1A) substituted (24.1.2013 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. 8 para. 14(3)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.

F1736 S. 296(1B) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(22)(b) (with regs. 7(4), 9(1))

F1737 Words in s. 296(2) substituted (24.1.2013 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. 8 para. 14(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.

F1738 Words in s. 296(2) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(22)(c) (with regs. 7(4), 9(1))

F1739 S. 296(2A) 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(2), Sch. 2 para. 7(b)

F1740 Words in s. 296(2A) substituted (24.1.2013 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. 8 para. 14(5)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.

F1741 Words in s. 296(2A)(a) substituted (24.1.2013 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. 8 para. 14(5)(b)(i) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.

F1742 Words in s. 296(2A)(a) substituted (24.1.2013 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. 8 para. 14(5)(b)(ii) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.

F1743 Words in s. 296(2A)(b) substituted (24.1.2013 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. 8 para. 14(5)(c) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.

F1744 S. 296(2B) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(22)(d) (with regs. 7(4), 9(1))

F1745 Words in s. 296(3) substituted (24.1.2013 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. 8 para. 14(6) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.

F1746 Words in s. 296(4) substituted (24.1.2013 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. 8 para. 14(7) (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C757 S. 296 amended (temp. from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, arts. 1(2), 3(11); S.I. 2001/3538, art. 2(1)

C758 S. 296 applied by 1989 c. 40, s. 169(2A) (as inserted (28.11.2017) by The Central Securities Depositories Regulations 1989 (S.I. 2017/1064), regs. 1, 3(15)(a) (with regs. 7(4), 9(1)))
Additional power to direct recognised central counterparties

(1) The Bank of England may direct a recognised central counterparty to take, or refrain from taking, specified action if the Bank is satisfied that it is necessary to give the direction, having regard to the public interest in—

(a) protecting and enhancing the stability of the UK financial system,
(b) maintaining public confidence in the stability of the UK financial system,
(c) maintaining the continuity of the clearing services provided by the recognised central counterparty, and
(d) maintaining and enhancing the financial resilience of the recognised central counterparty.

(2) The direction may, in particular—

(a) specify the time for compliance with the direction,
(b) require the rules of the recognised central counterparty to be amended, and
(c) override such rules (whether generally or in their application to a particular case).

(3) The direction may not require the recognised central counterparty—

(a) to take any steps for the purpose of securing its compliance with—

(i) the recognition requirements, or
(ii) any obligation of a kind mentioned in section 296(1)(b) or (1A), or
(b) to accept a transfer of property, rights or liabilities of another recognised central counterparty.

(4) If the direction is given in reliance on section 298(7) the Bank must, within a reasonable time of giving the direction, give the recognised central counterparty a statement of its reasons—

(a) for giving the direction, and
(b) for relying on section 298(7).

(5) The direction is enforceable, on the application of the Bank, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

(6) The Bank may revoke a direction given under this section.

Textual Amendments

F1747 S. 296A inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 31, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1748 Words in s. 296A heading substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(11)(a) (with regs. 52-58)

F1749 Words in s. 296A(1) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(11)(b)(i) (with regs. 52-58)
297 Revoking recognition.

(1) A recognition order [F1755] in respect of a recognised investment exchange or in respect of a recognised clearing house which is not a recognised central counterparty [F1756] may be revoked by an order made by [F1757] the appropriate regulator [F1758] at the request, or with the consent, of the recognised body concerned.

[F1754](1A) A central counterparty recognition order may be revoked by an order made by the Bank of England in accordance with Article 20 of the EMIR regulation.

[F1755](1B) A CSD recognition order may be revoked by an order made by the Bank of England in accordance with Article 20 of the CSD regulation.

(2) If it appears to [F1759] the appropriate regulator [F1760] that a recognised body [F1761] which is not a recognised central counterparty [F1762] or a recognised CSD [F1763]—

(a) is failing, or has failed, to satisfy the recognition requirements, or

(b) is failing, or has failed, to comply with any other obligation imposed on it by or under this Act,

it may make an order revoking the recognition order for that body even though the body does not wish the order to be made.

[F1759](2A) If it appears to [F1760] the appropriate regulator [F1761] that a recognised body [F1762] which is not a recognised central counterparty [F1763] or a recognised CSD [F1764]—

(a) has not carried on the business of an investment exchange [F1765] or (as the case may be) of a clearing house [F1766] during the period of twelve months beginning with the day on which the recognition order took effect in relation to it,

(b) has not carried on the business of an investment exchange [F1767] or (as the case may be) of a clearing house [F1768] at any time during the period of six months ending with the relevant day, or

(c) has failed, or is likely to fail, to comply with any obligation imposed on it by a directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury,

it may make an order revoking the recognition order for that body even though the body does not wish the order to be made.

(2B) The “relevant day”, for the purposes of paragraph (b) of subsection (2A), is the day on which the power to make an order under that subsection is exercised.

(2C) Subsection (2A) does not apply to an overseas investment exchange [F1769] or overseas clearing house.

[F1768](2D) If it appears to the Bank of England that a recognised central counterparty [F1769] or a recognised CSD has failed, or is likely to fail, to comply with an obligation imposed on it by or under Article 4 or 15 of the SFT regulation it may make an order revoking the recognition order for that body even though the body does not wish the order to be made.
(3) An order under this section (“a revocation order”) must specify the date on which it is to take effect.

(4) In the case of a revocation order made under subsection (2) [F1779 or (2A)], the specified date must not be earlier than the end of the period of three months beginning with the day on which the order is made.

(5) A revocation order may contain such transitional provisions as [F1774] the appropriate regulator thinks necessary or expedient.

[F1775(6) Where [F1773] the appropriate regulator makes an order revoking the recognition order for a body that is a recognised investment exchange, it must notify ESMA.]
Directions and revocation: procedure.

(1) Before giving a direction under section 296 [F1774 or 296A], or making a revocation order under section [F1778 297(1B), (2)], [F1776 297(2A) or (2D)], [F1777 the appropriate regulator] must—

(a) give written notice of its intention to do so to the recognised body concerned;

(b) .........................................................

(c) .........................................................

(2) A notice under subsection (1) must—

(a) state why [F1778 the appropriate regulator] intends to give the direction or make the order; and

(b) draw attention to the right to make representations conferred by subsection (3).

(3) Before the end of the period for making representations—

(a) the recognised body,

(b) .........................................................

(c) .........................................................

may make representations to [F1773 the appropriate regulator].
(4) The period for making representations is such period as is specified in the notice (which may, in any particular case, be extended by the appropriate regulator).

(5) In deciding whether to—
   (a) give a direction, or
   (b) make a revocation order,
   the appropriate regulator must have regard to any representations made in accordance with subsection (3).

(6) When the appropriate regulator has decided whether to give a direction under section 296 or 296A or to make the proposed revocation order, it must—
   (a) give the recognised body written notice of its decision;
   (aa) in the case of a direction under section 296 given to a recognised CSD or an EEA CSD or a revocation order under section 297(1B), give the recognised CSD or EEA CSD reasons for its decision.

(7) If the appropriate regulator reasonably considers it necessary to do so, it may give a direction under section 296 or 296A—
   (a) without following the procedure set out in this section; or
   (b) if the appropriate regulator has begun to follow that procedure, regardless of whether the period for making representations has expired.

(7A) Subsection (7) does not apply in relation to a direction given to a recognised CSD or EEA CSD under section 296.

(7B) But in the circumstances described in the second sub-paragraph of Article 24(5) of the CSD regulation, the Bank of England may give a direction to an EEA CSD under section 296 without following the procedure set out in subsections (1) to (5).

(8) If the appropriate regulator has, in relation to a particular matter, followed the procedure set out in subsections (1) to (5), it need not follow it again if, in relation to that matter, it decides to take action other than that specified in its notice under subsection (1).

In this section, “recognised body” includes an EEA CSD.
Chapter I – Exemption
Part XVIII – Recognised investment exchanges, clearing houses and CSDs
Financial Services and Markets Act 2000 (c. 8)

Textual Amendments

F1774 Words in s. 298(1) inserted (24.1.2013 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. 8 para. 16(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1775 Word in s. 298(1) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 224(a) (with regs. 7(4), 9(1))

F1776 Words in s. 298(1) substituted (13.7.2016) by The Financial Services and Markets Act 2000 (Transparency of Securities Financing Transactions and of Reuse) Regulations 2016 (S.I. 2016/715), reg. 1(2), Sch. 1 para. 1(3)(a)

F1777 Words in s. 298(1) substituted (24.1.2013 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. 8 para. 16(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1778S. 298(1)(b) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 32(2), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1779S. 298(1)(c) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 32(2), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1780 Words in s. 298(2)(a) substituted (24.1.2013 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. 8 para. 16(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1781S. 298(3)(b) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 32(3), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1782S. 298(3)(c) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 32(3), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1783 Words in s. 298(3) substituted (24.1.2013 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. 8 para. 16(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1784S. 298(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 32(4), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1785 Words in s. 298(5) substituted (24.1.2013 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. 8 para. 16(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1786 Words in s. 298(6) substituted (24.1.2013 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. 8 para. 16(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1787 Words in s. 298(6) inserted (24.1.2013 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. 8 para. 16(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1788S. 298(6)(b) and word omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 32(5), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1789S. 298(6)(aa) and word inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 224(b) (with regs. 7(4), 9(1))


F1791S. 298(6A)(aa)-(ac) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 224(c) (with regs. 7(4), 9(1))

F1792 Words in s. 298(7) substituted (24.1.2013 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. 8 para. 16(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1793 Words in s. 298(7) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 32(6), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
Complaints about recognised bodies.

(1) The [F1798]appropriate regulator] must make arrangements for the investigation of any relevant complaint about a recognised body.

(2) “Relevant complaint” means a complaint which the [F1799]appropriate regulator] considers is relevant to the question of whether the body concerned should remain a recognised body.

Extension of functions of Tribunal.

(1) If the Treasury are satisfied that the condition mentioned in subsection (2) is satisfied, they may by order confer functions on the Tribunal with respect to disciplinary proceedings—

(a) of one or more investment exchanges in relation to which a recognition order under section 290 is in force or of such investment exchanges generally,
(b) of one or more clearing houses in relation to which a recognition order under that section is in force or of such clearing houses generally; or

c) of one or more central securities depositaries in relation to which a recognition order under that section is in force or of such central securities depositaries generally.

(2) The condition is that it is desirable to exercise the power conferred under subsection (1) with a view to ensuring that—

(a) decisions taken in disciplinary proceedings with respect to which functions are to be conferred on the Tribunal are consistent with—

(i) decisions of the Tribunal in cases arising under Part VIII; and

(ii) decisions taken in other disciplinary proceedings with respect to which the Tribunal has functions as a result of an order under this section; or

(b) the disciplinary proceedings are in accordance with the Convention rights.

(3) An order under this section may modify or exclude any provision made by or under this Act with respect to proceedings before the Tribunal.

(4) “Disciplinary proceedings” means proceedings under the rules of an investment exchange, clearing house or central securities depositary in relation to a contravention of Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation by a person subject to the rules.

300A  Power of [F1805 appropriate regulator] to disallow excessive regulatory provision

(1) This section applies where a recognised body proposes to make any regulatory provision in connection [F1806 with—

(a) its business as an investment exchange,
(b) the provision by it of clearing services, or
(c) the provision by it of services falling within section 285(2)(b) or (3)(b).]

(2) If it appears to the [F1807 appropriate regulator]—

(a) that the proposed provision will impose a requirement on persons affected (directly or indirectly) by it, and
(b) that the requirement is excessive,

the [F1807 appropriate regulator] may direct that the proposed provision must not be made.

(3) A requirement is excessive if—

(a) it is not required under [F1808 EU] law or any enactment or rule of law in the United Kingdom, and

(b) either—

(i) it is not justified as pursuing a reasonable regulatory objective, or
(ii) it is disproportionate to the end to be achieved.

(4) In considering whether a requirement is excessive the [F1809 appropriate regulator] must have regard to all the relevant circumstances, including—

(a) the effect of existing legal and other requirements,
(b) the global character of financial services and markets and the international mobility of activity,
(c) the desirability of facilitating innovation, and
(d) the impact of the proposed provision on market confidence.

(5) In this section “requirement” includes any obligation or burden.

(6) Any provision made in contravention of a direction under this section is of no effect.

Textual Amendments

F1805 Words in s. 300A heading substituted (24.1.2013 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. 8 para. 18(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1806 Words in s. 300A(1) substituted (24.1.2013 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. 8 para. 18(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1807 Words in s. 300A(2) substituted (24.1.2013 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. 8 para. 18(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1808 Word in s. 300A(3)(a) 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(2)-(5)

F1809 Words in s. 300A(4) substituted (24.1.2013 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. 8 para. 18(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
Duty to notify proposal to make regulatory provision

(1) A recognised body that proposes to make any regulatory provision must give written notice of the proposal to the appropriate regulator without delay.

(2) The appropriate regulator may by rules under section 293 (notification requirements)—
   (a) specify descriptions of regulatory provision in relation to which, or circumstances in which, the duty in subsection (1) above does not apply, or
   (b) provide that the duty applies only to specified descriptions of regulatory provision or in specified circumstances.

(3) The appropriate regulator may also by rules under that section—
   (a) make provision as to the form and contents of the notice required, and
   (b) require the body to provide such information relating to the proposal as may be specified in the rules or as the appropriate regulator may reasonably require.

Restriction on making provision before the appropriate regulator decides whether to act

(1) Where notice of a proposal to make regulatory provision is required to be given to the appropriate regulator under section 300B, the provision must not be made—
   (a) before that notice is given, or
   (b) subject to the following provisions of this section, before the end of the initial period.

(2) The initial period is—
   (a) the period of 30 days beginning with the day on which the appropriate regulator receives notice of the proposal, or
   (b) if any consultation period announced by the body in relation to the proposal ends after that 30-day period, the end of the consultation period.

(3) If before the end of the initial period the appropriate regulator notifies the body that it is calling in the proposal, the provisions of section 300D (consideration by the appropriate regulator whether to disallow proposed provision) apply as to when the provision may be made.

(4) If—
   (a) before the end of the initial period the appropriate regulator notifies the body that it is not calling in the proposal, or
   (b) the initial period ends without the appropriate regulator having notified the body that it is calling in the proposal,
   the body may then make the proposed provision.
(5) Any provision made in contravention of this section is of no effect.

300D Consideration by \[F1818\] appropriate regulator\] whether to disallow proposed provision

(1) This section applies where the \[F1819\] appropriate regulator\] notifies a recognised body that it is calling in a proposal to make regulatory provision.

(2) The \[F1819\] appropriate regulator\] must publish a notice—

(a) giving details of the proposed provision,

(b) stating that it has called in the proposal in order to consider whether to disallow it, and

(c) specifying a period during which representations with respect to that question may be made to it.

(3) The \[F1819\] appropriate regulator\] may extend the period for making representations.

(4) The \[F1819\] appropriate regulator\] must notify the body of its decision whether to disallow the provision not later than 30 days after the end of the period for making representations, and must publish the decision and the reasons for it.

(5) The body must not make the provision unless and until—

(a) the \[F1820\] appropriate regulator\] notifies it of its decision not to disallow it, or

(b) the 30-day period specified in subsection (4) ends without the \[F1821\] appropriate regulator\] having notified any decision.

(6) If \[F1822\] the appropriate regulator\] notifies the body of its decision to disallow the provision and that decision is questioned in legal proceedings—
(a) the body must not make the provision until those proceedings, and any proceedings on appeal, are finally determined,

(b) if [F1825] the appropriate regulator[s] decision is quashed and the matter is remitted to it for reconsideration, the court may give directions as to the period within which [F1824] the regulator concerned [is to complete its reconsideration, and

(c) the body must not make the provision until—
   (i) [F1825] the appropriate regulator[s] notifies it of its decision on reconsideration not to disallow the provision, or
   (ii) the period specified by the court ends without [F1826] the appropriate regulator[s] having notified any decision.

(7) Any provision made in contravention of subsection (5) or (6) is of no effect.

**Textual Amendments**

F1810 Ss. 300B-300E inserted (20.12.2006) by Investment Exchanges and Clearing Houses Act 2006 (c. 55), ss. 2, 3, 5(2) (with s. 5(3))

F1818 Words in s. 300D heading substituted (24.1.2013 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. 8 para. 21(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1819 Words in s. 300D(1)-(4) substituted (24.1.2013 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. 8 para. 21(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1820 Words in s. 300D(5)(a) substituted (24.1.2013 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. 8 para. 21(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1821 Words in s. 300D(5)(b) substituted (24.1.2013 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. 8 para. 21(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1822 Words in s. 300D(6) substituted (24.1.2013 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. 8 para. 21(3)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1823 Words in s. 300D(6)(b) substituted (24.1.2013 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. 8 para. 21(3)(b)(ii) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1824 Words in s. 300D(6)(b) substituted (24.1.2013 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. 8 para. 21(3)(b)(ii) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1825 Words in s. 300D(6)(c)(i) substituted (24.1.2013 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. 8 para. 21(3)(c) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1826 Words in s. 300D(6)(c)(ii) substituted (24.1.2013 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. 8 para. 21(3)(c) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

**300E Power to disallow excessive regulatory provision: supplementary**

(1) In sections 300A to 300D—
   (a) “regulatory provision” means any rule, guidance, arrangements, policy or practice, and
(b) references to making provision shall be read accordingly as including, as the case may require, issuing guidance, entering into arrangements or adopting a policy or practice.

(2) For the purposes of those sections a variation of a proposal is treated as a new proposal.

(3) Those sections do not apply to an overseas investment exchange, overseas clearing house, recognised central counterparty or recognised CSD.

### Textual Amendments

**F1810** Ss. 300B-300E inserted (20.12.2006) by Investment Exchanges and Clearing Houses Act 2006 (c. 55), ss. 2, 3, 5(2) (with s. 5(3))

**F1827** Words in s. 300E(3) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(13) (with regs. 52-58)

**F1828** Words in s. 300E(3) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(26) (with regs. 7(4), 9(1))

### Other matters

#### 301 Supervision of certain contracts.

(1) The Secretary of State and the Treasury, acting jointly, may by regulations provide for—

(a) Part VII of the Companies Act 1989 (financial markets and insolvency), and

(b) Part V of the Companies (No. 2)(Northern Ireland) Order 1990, to apply to relevant contracts as it applies to contracts connected with a recognised body.

(2) “Relevant contracts” means contracts of a prescribed description in relation to which settlement arrangements are provided by a person for the time being included in a list (“the list”) maintained by the Bank of England for the purposes of this section.

(3) Regulations may be made under this section only if the Secretary of State and the Treasury are satisfied, having regard to the extent to which the relevant contracts concerned are contracts of a kind dealt in by persons supervised by the FCA or the Bank of England, that it is appropriate for the arrangements mentioned in subsection (2) to be supervised by the Bank.

(4) The approval of the Treasury is required for—

(a) the conditions set by the Bank of England for admission to the list; and

(b) the arrangements for admission to, and removal from, the list.

(5) If the Treasury withdraw an approval given by them under subsection (4), all regulations made under this section and then in force are to be treated as suspended.

(6) But if—

(a) the Bank of England changes the conditions or arrangements (or both), and

(b) the Treasury give a fresh approval under subsection (4),
the suspension of the regulations ends on such date as the Treasury may, in giving the fresh approval, specify.

   (a) publish the list as for the time being in force; and
   (b) provide a certified copy of it to any person who wishes to refer to it in legal proceedings.

(8) A certified copy of the list is evidence (or in Scotland sufficient evidence) of the contents of the list.

(9) A copy of the list which purports to be certified by or on behalf of the [F1835Bank of England] is to be taken to have been duly certified unless the contrary is shown.

(10) Regulations under this section may, in relation to a person included in the list—
   (a) apply (with such exceptions, additions and modifications as appear to the Secretary of State and the Treasury to be necessary or expedient) such provisions of, or made under, this Act as they consider appropriate;
   (b) provide for the provisions of Part VII of the [M30Companies Act 1989] and Part V of the [M31Companies (No. 2)(Northern Ireland) Order 1990] to apply (with such exceptions, additions or modifications as appear to the Secretary of State and the Treasury to be necessary or expedient).

Textual Amendments

F1829 Words in s. 301(2) substituted (24.1.2013 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. 8 para. 22(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1830 Words in s. 301(3) substituted (24.1.2013 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. 8 para. 22(3)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1831 Words in s. 301(3) substituted (24.1.2013 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. 8 para. 22(3)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1832 Words in s. 301(4)(a) substituted (24.1.2013 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. 8 para. 22(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1833 Words in s. 301(6)(a) substituted (24.1.2013 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. 8 para. 22(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1834 Words in s. 301(7) substituted (24.1.2013 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. 8 para. 22(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1835 Words in s. 301(9) substituted (24.1.2013 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. 8 para. 22(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Marginal Citations

M28 1989 c. 40.
M30 1989 c. 40.
CHAPTER 1A
CONTROL OVER RECOGNISED INVESTMENT EXCHANGE

Textual Amendments
F1836Pt. 18 Ch. 1A substituted (21.3.2009) by virtue of The Financial Services and Markets Act 2000 (Controllers) Regulations 2009 (S.I. 2009/534), reg. 5, Sch. 2 (with reg. 8)

Notices of acquisitions of control over recognised investment exchanges

301A Obligation to notify [F1837] the FCA: acquisitions of control

(1) A person who decides to acquire or increase control over a recognised investment exchange must give [F1837] the FCA notice in writing before making the acquisition.

(2) A person who acquires or increases control over a recognised investment exchange in circumstances where notice is not required under subsection (1) must give [F1837] the FCA notice in writing before the end of 14 days beginning with—
   (a) the day the person acquired or increased the control; or
   (b) if later, the day on which the person first became aware that the control had been acquired or increased.

(3) For the purposes of calculations relating to this section, the holding of shares or voting power by a person (“A1”) includes any shares or voting power held by another (“A2”) if A1 and A2 are acting in concert.

(4) A notice given under this section is a “section 301A notice” and a person giving notice is a “section 301A notice-giver”.

[F1840] (5) Nothing in this Chapter applies to an overseas investment exchange.

Textual Amendments
F1837 Words in s. 301A heading substituted (24.1.2013 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. 8 para. 23 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F1838 Words in s. 301A(1) substituted (24.1.2013 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. 8 para. 23 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F1839 Words in s. 301A(2) substituted (24.1.2013 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. 8 para. 23 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F1840 S. 301A(5) inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), 5(2)

301B Requirements for section 301A notices

(1) A section 301A notice must be in such form, include such information and be accompanied by such documents as the [F1841] FCA may reasonably require.
(2) The [F1841FCA] must publish a list of its requirements as to the form, information and accompanying documents for a section 301A notice.

(3) The [F1841FCA] may impose different requirements for different cases and may vary or waive requirements in particular cases.

Textual Amendments

F1841 Word in s. 301B(1)-(3) substituted (24.1.2013 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. 8 para. 24 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

301C Acknowledgment of receipt

(1) The [F1842FCA] must acknowledge receipt of a section 301A notice in writing before the end of the second working day following receipt.

(2) If the [F1843FCA] receives an incomplete section 301A notice it must inform the section 301A notice-giver as soon as reasonably practicable.

Textual Amendments

F1842 Word in s. 301C(1) substituted (24.1.2013 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. 8 para. 25 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1843 Word in s. 301C(2) substituted (24.1.2013 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. 8 para. 25 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Acquiring and increasing control

301D Acquiring and increasing control

(1) For the purposes of this Chapter, a person (“A”) acquires control over a recognised investment exchange (“B”) if any of the cases in subsection (2) begin to apply.

(2) The cases are where A holds—

(a) 20% or more of the shares in B or in a parent undertaking of B (“P”);
(b) 20% or more of the voting power in B or P; or
(c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

(3) For the purposes of this Chapter, a person (“A”) increases control over a recognised investment exchange (“B”) whenever—

(a) the percentage of shares which A holds in B or in a parent undertaking of B (“P”) increases from less than 50% to 50% or more;
(b) the percentage of voting power A holds in B or P increases from less than 50% to 50% or more; or
(c) A becomes a parent undertaking of B.
301E Disregarded holdings

(1) For the purpose of section 301D, shares and voting power that a person holds in a recognised investment exchange (“B”) or in a parent undertaking of B (“P”) are disregarded in the following circumstances.

(2) Shares held only for the purposes of clearing and settling within a short settlement cycle are disregarded.

(3) Shares held by a custodian or its nominee in a custodian capacity are disregarded, provided that the custodian or nominee is only able to exercise voting power represented by the shares in accordance with instructions given in writing.

(4) Shares representing no more than 5% of the total voting power in B or P held by an investment firm are disregarded, provided that it—
   (a) holds the shares in the capacity of a market maker (as defined in article [F1844]4.1.7 of the markets in financial instruments directive);
   (b) is authorised by its home state regulator under the markets in financial instruments directive; and
   (c) neither intervenes in the management of B or P nor exerts any influence on B or P to buy the shares or back the share price.

(5) Shares held by a credit institution or investment firm in its trading book are disregarded, provided that—
   (a) the shares represent no more than 5% of the total voting power in B or P; and
   (b) the voting power is not exercised nor otherwise used to intervene in the management of B or P.

(6) Shares held by a credit institution or an investment firm are disregarded, provided that—
   (a) the shares are held as a result of performing the investment services and activities of—
      (i) underwriting a share issue; or
      (ii) placing shares on a firm commitment basis in accordance with Annex I, section A.6 of the markets in financial instruments directive; and
   (b) the credit institution or investment firm—
      (i) does not exercise voting power represented by the shares or otherwise intervene in the management of the issuer; and
      (ii) retains the holding for a period of less than one year.

(7) Where a management company (as defined in [F1846]Article 2.1(b) of the UCITS directive) and its parent undertaking both hold shares or voting power, each may disregard holdings of the other, provided that each exercises its voting power independently of the other.

(8) But subsection (7) does not apply if the management company—
   (a) manages holdings for its parent undertaking or a controlled undertaking of the parent undertaking;]
   (b) has no discretion as to the exercise of the voting power attached to such holdings; and
   (c) may only exercise the voting power in relation to such holdings under direct or indirect instruction from—
      (i) the parent undertaking; or
(9) Where an investment firm and its parent undertaking both hold shares or voting power, the parent undertaking may disregard holdings managed by the investment firm on a client by client basis and the investment firm may disregard holdings of the parent undertaking, provided that the investment firm—
(a) has permission to provide portfolio management;
(b) exercises its voting power independently from the parent undertaking; and
(c) may only exercise the voting power under instructions given in writing, or has appropriate mechanisms in place for ensuring that individual portfolio management services are conducted independently of any other services.

(9A) Shares acquired for stabilisation purposes in accordance with the market abuse regulation and Commission Delegated Regulation (EU) No. 1052/2016 of 8 March 2016 supplementing Regulation (EU) No. 596/2014 of the European Parliament and the Council with regard to the regulatory technical standards for conditions applicable to buy-back programmes and stabilisation measures are disregarded, provided that the voting power attached to those shares is not exercised or otherwise used to intervene in the management of B or P.

(10) For the purposes of this section, an undertaking is a controlled undertaking of the parent undertaking if it is controlled by the parent undertaking; and for this purpose the question of whether one undertaking controls another is to be determined in accordance with section 89J(4) and (5).
(a) determine whether to approve the acquisition to which it relates; or
(b) propose to object to the acquisition.

(2) In making its determination the [F1852FCA] must—
   (a) consider the suitability of the section 301A notice-giver and the financial
       soundness of the acquisition in order to ensure the sound and prudent
       management of the recognised investment exchange in question; and
   (b) have regard to the likely influence that the section 301A notice-giver will have
       on the recognised investment exchange.

(3) The [F1852FCA] may only object to an acquisition if it is not satisfied that the approval
    requirement is met.

(4) The approval requirement is that the acquisition in question by the notice-giver does
    not pose a threat to the sound and prudent management of any financial market
    operated by the recognised investment exchange.

Textual Amendments
F1852 Word in s. 301F(1)-(3) substituted (24.1.2013 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. 8 para. 26 (with Sch. 20); S.I.
2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

301G Assessment: Procedure

(1) The [F1852FCA] must act under section 301F within a period three months from the date
    the [F1852FCA] receives the completed section 301A notice (“the assessment period”).

(2) The [F1854FCA] must inform the section 301A notice-giver in writing of—
   (a) the duration of the assessment period; and
   (b) its expiry date.

(3) The [F1854FCA] must, within two working days of acting under section 301F (and in
    any event no later than the expiry date of the assessment period)—
   (a) notify the section 301A notice-giver that it has determined to approve the
       acquisition; or
   (b) in the case of a proposed objection to an acquisition, give a warning notice.

(4) The [F1854FCA] is treated as having approved the acquisition if, at the expiry of the
    assessment period, it has neither—
   (a) given notice under subsection (3); nor
   (b) informed the section 301A notice-giver that the notice is incomplete.

(5) If the [F1854FCA] decides to object to an acquisition it must give the section 301A
    notice-giver a decision notice.

(6) Following receipt of a decision notice under this section, the section 301A notice-
    giver may refer [F1855the FCA’s] decision to the Tribunal.
Duration of approval

(1) Approval of an acquisition is effective for such period as the FCA may specify in writing.

(2) Where the FCA has specified a period under subsection (1), it may extend the period.

(3) Where the FCA has not specified a period, the approval is effective for one year beginning with the date—
   (a) of the notice given under section 301G(3)(a);
   (b) on which the FCA is treated as having given approval under section 301G(5); or
   (c) of a decision on a reference to the Tribunal which results in the person receiving approval.

Enforcement procedures

Objections by the FCA

(1) The FCA may object to a person's control over a recognised investment exchange in any of the circumstances specified in subsection (2).

(2) The circumstances are that the FCA reasonably believes that—
   (a) the person acquired or increased control without giving notice under section 301A in circumstances where notice was required; and

Textual Amendments

F1853 Word in s. 301G(1) substituted (24.1.2013 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. 8 para. 27(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1854 Word in s. 301G(2)-(5) substituted (24.1.2013 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. 8 para. 27(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1855 Words in s. 301G(6) substituted (24.1.2013 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. 8 para. 27(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1856 Words in s. 301H(1) substituted (24.1.2013 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. 8 para. 28 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1857 Words in s. 301H(2) substituted (24.1.2013 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. 8 para. 28 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1858 Words in s. 301H(3) substituted (24.1.2013 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. 8 para. 28 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
(b) there are grounds for objecting to control on the basis of the approval requirement in section 301F(4).

(3) If the [F1859FCA] proposes to object to a person's control over a recognised investment exchange, it must give that person a warning notice.

(4) If the [F1859FCA] decides to object to a person's control over a UK authorised person, it must give that person a decision notice.

(5) A person to whom the [F1859FCA] gives a decision notice under this section may refer the matter to the Tribunal.

301J Restriction notices

(1) The [F1860FCA] may give notice in writing (a “restriction notice”) to a person in the following circumstances.

(2) The circumstances are that—

(a) the person has control over a recognised investment exchange by virtue of holding shares or voting power; and

(b) in relation to the shares or voting power, the [F1861FCA] has given the person a warning notice or a decision notice under section 301G or 301I or a final notice which confirms a decision notice given under section 301G or 301I.

(3) In a restriction notice, the [F1862FCA] may direct that shares or voting power to which the notice relates are, until further notice, subject to one or more of the following restrictions—

(a) except by court order, an agreement to transfer or a transfer of any such shares or voting power or, in the case of unissued shares, any agreement to transfer or transfer of the right to be issued with them, is void;

(b) no voting power is to be exercisable;

(c) no further shares are to be issued in pursuance of any right of the holder of any such shares or voting power or in pursuance of any offer made to their holder;

(d) except in a liquidation, no payment is to be made of any sums due from the body corporate on any such shares, whether in respect of capital or otherwise.

(4) A restriction notice takes effect—

(a) immediately; or

(b) on such date as may be specified in the notice.

(5) A restriction notice does not extinguish rights which would be enjoyable but for the notice.

(6) A copy of the restriction notice must be served on—

(a) the recognised investment exchange in question; and

(b) in the case of shares or voting power held in a parent undertaking of a recognised investment exchange, the parent undertaking.
(7) A person to whom the [F1863 FCA] gives a restriction notice may refer the matter to the Tribunal.

**Textual Amendments**

F1860 Word in s. 301J(1) substituted (24.1.2013 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. 8 para. 30 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1861 Word in s. 301J(2)(b) substituted (24.1.2013 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. 8 para. 30 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1862 Word in s. 301J(3) substituted (24.1.2013 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. 8 para. 30 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1863 Word in s. 301J(7) substituted (24.1.2013 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. 8 para. 30 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

### 301K Orders for sale of shares

(1) The court may, on the application of [F1864 the FCA], order the sale of shares or the disposition of voting power in the following circumstances.

(2) The circumstances are that—

   (a) a person has control over a recognised investment exchange by virtue of holding the shares or voting power; and

   (b) the acquisition or continued holding of the shares or voting power by that person is in contravention of a final notice which confirms a decision notice given under section 301G or section 301I.

(3) Where the court orders the sale of shares or disposition of voting power it may—

   (a) if a restriction notice has been given in relation to the shares or voting power, order that the restrictions cease to apply; and

   (b) make any further order.

(4) Where the court makes an order under this section, it must take into account the level of holding that the person would have been entitled to acquire, or to continue to hold, without contravening the final notice.

(5) If shares are sold or voting power disposed of in pursuance of an order under this section, any proceeds, less the costs of the sale or disposition, must be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for payment of a whole or part of the proceeds.

(6) The jurisdiction conferred by this section may be exercised by the High Court and the Court of Session.
Offences

301L  Offences under this Chapter

(1) A person who fails to comply with an obligation to notify the FCA under section 301A(1) or (2) is guilty of an offence.

(2) A person who gives notice to the FCA under section 301A(1) and makes the acquisition to which the notice relates before the expiry date of the assessment period is guilty of an offence unless the FCA has approved the acquisition.

(3) A person who makes an acquisition in contravention of a warning notice or a decision notice given under section 301G or a final notice which confirms a decision notice under that section is guilty of an offence.

(4) A person who makes an acquisition after the FCA's approval for the acquisition has ceased to be effective by virtue of section 301H is guilty of an offence.

(5) A person who provides information to the FCA which is false in a material particular is guilty of an offence.

(6) A person who breaches a direction contained in a restriction notice given under section 301J is guilty of an offence.

(7) A person guilty of an offence under subsection (1), (2) or (4) to (6) is liable—
   (a) on summary conviction to a fine not exceeding the statutory maximum; or
   (b) on conviction on indictment, to a fine.

(8) A person guilty of an offence under subsection (3) is liable—
   (a) on summary conviction, to a fine not exceeding the statutory maximum; or
   (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(9) It is a defence for a person charged with an offence under subsection (1) in relation to section 301A(2) to show that the person had, at the time of the alleged offence, no knowledge of the act or circumstances by virtue of which the duty to notify the FCA arose.
F1867 Words in s. 301L(4) substituted (24.1.2013 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. 8 para. 32(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1868 Words in s. 301L(5) substituted (24.1.2013 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. 8 para. 32(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1869 Words in s. 301L(9) substituted (24.1.2013 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. 8 para. 32(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Interpretation

301M Interpretation

(1) In this Chapter—

“acquisition” means the acquisition of control or of an increase in control over a recognised investment exchange;

“credit institution” means—

(a) a credit institution authorised under the [F1870 capital requirements directive]; or

(b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA State; and

“shares” and “voting power” have the same meaning as in section 422.

(2) For the purposes of this Chapter, a “working day” is a day other than—

(a) a Saturday or a Sunday; or

(b) a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.”

Textual Amendments

F1870 Words in s. 301M(1) substituted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 18

CHAPTER II

COMpetition Scrutiny

F1871 Pt. 18 Ch. 2 omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 34(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
Role of Office of Fair Trading

Textual Amendments
F1872 S. 303: cross-heading substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(10)(f); S.I. 2003/766, art. 2, Sch. (with art. 3)

F1873 Initial report by OFT.

Textual Amendments
F1871 Pt. 18 Ch. 2 omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 34(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1873 S. 303: words in sidenote substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(10)(f); S.I. 2003/766, art. 2, Sch. (with art. 3)

F1874 Further reports by OFT.

Textual Amendments
F1871 Pt. 18 Ch. 2 omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 34(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1874 Words in s. 304 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(11)(a); S.I. 2003/766, art. 2, Sch. (with art. 3)

F1875 Investigations by OFT.

Textual Amendments
F1871 Pt. 18 Ch. 2 omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 34(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1875 Words in s. 305 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(12); S.I. 2003/766, art. 2, Sch. (with art. 3)

Role of Competition Commission

F1876 Consideration by Competition Commission.
Textual Amendments
F1871Pt. 18 Ch. 2 omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 34(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Role of the Treasury

F1871307 Recognition orders: role of the Treasury.

Textual Amendments
F1871Pt. 18 Ch. 2 omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 34(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1871308 Directions by the Treasury.

Textual Amendments
F1871Pt. 18 Ch. 2 omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 34(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1871309 Statements by the Treasury.

Textual Amendments
F1871Pt. 18 Ch. 2 omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 34(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1871310 Procedure on exercise of certain powers by the Treasury.

Textual Amendments
F1871Pt. 18 Ch. 2 omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 34(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
CHAPTER III

EXCLUSION FROM THE COMPETITION ACT 1998

311 The Chapter I prohibition.

Textual Amendments
F1876 Pt. 18 Ch. 3 omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 34(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

312 The Chapter II prohibition.

Textual Amendments
F1876 Pt. 18 Ch. 3 omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 34(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

CHAPTER 3A

PASSPORT RIGHTS

Textual Amendments
F1877 Pt. 18 Ch. 3A (ss. 312A-312D) 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(2), Sch. 2 para. 15 (with reg. 5)

Modifications etc. (not altering text)

EEA market operators in United Kingdom

312A Exercise of passport rights by EEA market operator

(1) An EEA market operator may, in pursuance of the right under the applicable provision, make arrangements in the United Kingdom to facilitate access to, or use of, a specified trading venue operated by it if—

(a) the operator has given its home state regulator notice of its intention to make such arrangements; and
(b) the home state regulator has given [F1879] the FCA notice of the operator's intention.

(2) In making arrangements under subsection (1), the operator is exempt from the general prohibition as respects any regulated activity which is carried on as a part of its business of operating the [F1880] venue in question, or in connection with, or for the purposes of, that business.

(3) "Specified" means specified in the notice referred to in subsection (1)(a).

(4) This section does not apply to an overseas investment exchange.

Textual Amendments


F1879 Words in s. 312A(1)(b) substituted (24.1.2013 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. 8 para. 33 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.


312B Removal of passport rights from EEA market operator

(1) The [F1881] FCA may prohibit an EEA market operator from making or, as the case may be, continuing arrangements in the United Kingdom, in pursuance of the applicable provision, to facilitate access to, or use of, a [F1882] trading venue operated by the operator if—

(a) the [F1881] FCA has clear and demonstrable grounds for believing that the operator has contravened a relevant requirement, and

(b) the [F1881] FCA has first complied with subsections (3) to (9).

(2) A requirement is relevant if it is imposed—

(a) by the operator's home state regulator in the implementation of the markets in financial instruments directive or any [F1883] EU legislation made under that directive;

(b) by provision implementing that directive, or any [F1883] EU legislation made under it, in the operator's home state;

(c) by any directly applicable EU regulation made under that directive or that regulation;

(3) The [F1884] FCA must notify the operator and its home state regulator of its finding under subsection (1)(a).

(4) The notice to the home state regulator under subsection (3) must—

(a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the operator puts an end to the contravention; and
(b) state that the FCA proposes to exercise the power under subsection (1) if the operator continues the contravention.

(5) The FCA may not exercise the power under subsection (1) unless satisfied—

(a) either—

(i) that the home state regulator has failed or refused to take measures for the purpose mentioned in subsection (4)(a); or

(ii) that the measures taken by the home state regulator have proved inadequate for that purpose; and

(b) that the operator is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom or the orderly functioning of the financial markets.

(6) If the FCA is satisfied as mentioned in subsection (5), it must give written notice to—

(a) the operator, and

(b) the home state regulator,

of its intention to exercise the power under subsection (1).

(7) A notice under subsection (6) must—

(a) state why the FCA intends to exercise its power under subsection (1), and

(b) in the case of the notice to the operator, inform the operator that it may make representations to the FCA before the end of the representation period.

(8) The representation period is—

(a) the period of two months beginning with the date on which the notice is given to the operator; or

(b) such longer period as the FCA may allow in a particular case.

(9) If, having considered any representations made by the operator, the FCA decides to exercise the power under subsection (1), it must—

(a) notify the operator in writing that it will be prohibited from making or, as the case may be, continuing the arrangements mentioned in that subsection from the date specified in the notice; and

(b) notify the home state regulator of the action to be taken in relation to the operator.

(10) If the FCA exercises the power under subsection (1) it must at the earliest opportunity notify the Commission and ESMA of the action taken in relation to the operator.

(11) The exemption conferred on an operator by section 312A(2) ceases to apply if the FCA exercises the power under subsection (1) in relation to the operator.

(12) The right to make the arrangements mentioned in subsection (1) may be reinstated in relation to the operator (together with the exemption mentioned in subsection (11)) if the FCA is satisfied that the contravention which led to the FCA exercising the power under subsection (1) has been remedied.

(13) If the FCA 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).]
Recognised investment exchanges operating in EEA States (other than the United Kingdom)

312C Exercise of passport rights by recognised investment exchange

(1) Subject to subsection (4), a recognised investment exchange may, in pursuance of the right under the applicable provision, make arrangements in an EEA State (other than the United Kingdom) to facilitate access to, or use of, a [F1898 trading venue] operated by the exchange (“the relevant arrangements”).

(2) The exchange must give the [F1899 FCA] written notice of its intention to make the relevant arrangements which—

(a) describes the arrangements, and

(b) identifies the EEA State in which it intends to make them.

(3) The [F1899 FCA] must, within one month of receiving a notice under subsection (2), send a copy of it to the host state regulator.

(4) The exchange may not make the relevant arrangements until the [F1899 FCA] has complied with subsection (3).

(5) Subsection (6) applies if the [F1899 FCA] receives a request for information—

(a) under the second sub-paragraph of Article [F1900 34.7] of the markets in financial instruments directive (in the case of relevant arrangements relating to a multilateral trading facility [F1901 or an organised trading facility]), or

(b) under the third sub-paragraph of Article [F1902 53.6] of that directive (in the case of relevant arrangements relating to a regulated market),

from the host state regulator.

(6) The [F1899 FCA] must, as soon as reasonably practicable, comply with the request.

(7) ”Host state regulator” means the competent authority (within the meaning of Article [F1903 4.1.26] of the markets in financial instruments directive) of the EEA State in which the exchange intends to make, or has made, the relevant arrangements.

(8) This section does not apply to an overseas investment exchange.

Textual Amendments


F1899 Word in s. 312C(2)-(6) substituted (24.1.2013 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. 8 para. 35 (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F1900 Word in s. 312C(5)(a) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services


Interpretation

312D Interpretation of Chapter 3A

In this Chapter—

“the applicable provision” means—

(a) in the case of arrangements relating to a multilateral trading facility, Article 34.6 of the markets in financial instruments directive; and

(b) in the case of arrangements relating to a regulated market, the first subparagraph of Article 53.6 of that directive;

“EEA market operator” means a person who is a market operator (within the meaning of Article 4.1.18 of the markets in financial instruments directive) whose home state is an EEA State other than the United Kingdom;

“home state”, in relation to an EEA market operator, means the EEA State in which it has its registered office, or if it has no registered office, its head office;

“home state regulator” means the competent authority (within the meaning of Article 4.1.26 of the markets in financial instruments directive) of the EEA State which is the home state in relation to the EEA market operator concerned.

Textual Amendments


312E  Public censure

(1) If the appropriate regulator considers that a recognised body has contravened a relevant requirement imposed on the body, it may publish a statement to that effect.

(1A) In the circumstances described in the second sub-paragraph of Article 24(5) of the CSD regulation, if the Bank of England considers that an EEA CSD has contravened a relevant requirement imposed on it, it may publish a statement to that effect.

(2) Where the FCA is the appropriate regulator, a requirement is a “relevant requirement” for the purposes of this Chapter if it is—

(a) a requirement that is imposed by or under any provision of this Part that relates to a recognised investment exchange,

(b) a requirement that is imposed under any other provision of this Act by the FCA that relates to a recognised investment exchange,

(c) a requirement that is imposed by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order, or

(d) a requirement that is imposed by this Act and whose contravention constitutes an offence that the FCA has power to prosecute under this Act (see section 401).

(3) Where the Bank of England is the appropriate regulator, a requirement is a “relevant requirement” for the purposes of this Chapter if it is—

(a) a requirement that is imposed by or under any provision of this Part that relates to a recognised clearing house, a recognised CSD or an EEA CSD,

(b) a requirement that is imposed under any other provision of this Act by the Bank,

(c) a requirement that is imposed by or under a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order, or

(d) a requirement that is imposed by this Act and whose contravention constitutes an offence that the Bank has power to prosecute under this Act (see section 401, as applied by paragraph 31 of Schedule 17A).
312F Financial penalties

(1) If the appropriate regulator considers that a recognised body has contravened a relevant requirement imposed on the body, it may impose on the body a penalty, in respect of the contravention, of such amount as it considers appropriate.

(2) In the circumstances described in the second sub-paragraph of Article 24(5) of the CSD regulation, if the Bank of England considers that an EEA CSD has contravened a relevant requirement imposed on it, it may impose on it a penalty, in respect of the contravention, of such amount as it considers appropriate.

Central securities depositories: further disciplinary measures

(1) If the Bank of England considers that a contravention by a recognised CSD of a relevant requirement occurred with the consent or connivance of, or was attributable to any neglect on the part of, a member of the management body or other person who effectively controls the business of the recognised CSD, the Bank of England may do one or both of the following—
(a) publish a statement to that effect;
(b) impose on that person a penalty, in respect of the contravention, of such amount as it considers appropriate.

(2) If the Bank of England considers that a member of the management body or other person who effectively controls the business of a recognised CSD is responsible for a contravention by the central securities depository of a relevant requirement, it may do one or more of the following—
(a) publish a statement to that effect;
(b) impose on that person a penalty, in respect of the contravention, of such amount as it considers appropriate;
(c) prohibit that person from holding an office or position involving responsibility for taking decisions about the management of the recognised CSD.

(3) A prohibition under subsection (2)(c) may apply—
(a) for a specified period,
(b) until further notice, or
(c) for repeated serious contraventions, permanently.

(4) The Bank of England may, on the application of the person subject to a prohibition under subsection (2)(c), vary or revoke the prohibition.

(5) In the circumstances described in the second sub-paragraph of Article 24(5) of the CSD regulation, this section applies in relation to an EEA CSD as it applies in relation to a recognised CSD.

Textual Amendments
F1914S. 312FA inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(29) (with regs. 7(4), 9(1))

312G Proposal to take disciplinary measures
F1915(1) If the appropriate regulator proposes to impose a sanction—
(a) on a recognised body under section 312E or 312F, or
(b) on a person under section 312FA,
it must give the body or person (as the case may be) a warning notice.

(2) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(3) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

(4) A warning notice about a proposal to impose a prohibition must specify the extent of the prohibition.

(5) In this section, “recognised body” includes an EEA CSD.
312H Decision notice

(F1917) (1) If the appropriate regulator decides to impose a sanction—
   (a) on a recognised body under section 312E or 312F, or
   (b) on a person under section 312FA,
   it must give the body or person (as the case may be) a decision notice.

   (2) In the case of a statement, the decision notice must set out the terms of the statement.

   (3) In the case of a penalty, the decision notice must state the amount of the penalty.

   (3A) In the case of a prohibition, the decision notice must specify the extent of the prohibition.

   (3B) The sanction which the appropriate regulator decides to impose may differ from that proposed in the warning notice.

(F1918) (4) If the appropriate regulator decides to impose a sanction—
   (a) on a recognised body under section 312E or 312F, or
   (b) on a person under section 312FA,
   the body or person (as the case may be) may refer the matter to the Tribunal.

   (5) In this section, “recognised body” includes an EEA CSD.

Textual Amendments

F1915S 312G(1) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(30)(a) (with regs. 7(4), 9(1))

F1916S 312G(4)(5) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(30)(b) (with regs. 7(4), 9(1))

Modifications etc. (not altering text)


312I  Publication

After an appropriate regulator publishes a statement under section 312E \[F1921\] or 312FA, it must send a copy of the statement to—

(a) the recognised body \[F1922\], EEA CSD or person \[F1923\] concerned, and

(b) any person to whom a copy of the decision notice was given under section 393(4).

312J  Statement of policy

(1) Each appropriate regulator must prepare and issue a statement of its policy with respect to—

(a) the imposition of penalties under \[F1924\] sections 312F and 312FA and prohibitions under section 312FA, \[F1925\]...

(b) the amount of penalties under \[F1926\] those sections \[F1927\]; and

(c) the period for which prohibitions under section 312FA are to have effect.

(2) An appropriate regulator's policy in determining what the amount of a penalty should be \[F1928\], or what the period for which a prohibition is to have effect should be, must include having regard to—

(a) the seriousness of the contravention in question in relation to the nature of the requirement concerned, \[F1929\]...

(b) the extent to which that contravention was deliberate or reckless \[F1930\]; and

(c) whether the person against whom action is to be taken is an individual.

(3) An appropriate regulator may at any time alter or replace a statement issued by it under this section.
(4) If a statement issued by an appropriate regulator under this section is altered or replaced, the regulator must issue the altered or replacement statement.

(5) In exercising, or deciding whether to exercise, its power under section 312F or 312FA in the case of any particular contravention, an appropriate regulator must have regard to any statement of policy published by it under this section and in force at a time when the contravention in question occurred.

(6) A statement issued by an appropriate regulator under this section must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(7) An appropriate regulator may charge a reasonable fee for providing a person with a copy of the statement.

(8) An appropriate regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

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### Textual Amendments

<table>
<thead>
<tr>
<th>F1923</th>
<th>Words in s. 312J(1)(a) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(33)(a)(i) (with regs. 7(4), 9(1))</th>
</tr>
</thead>
<tbody>
<tr>
<td>F1924</td>
<td>Word in s. 312J(1) omitted (28.11.2017) by virtue of The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(33)(a)(ii) (with regs. 7(4), 9(1))</td>
</tr>
<tr>
<td>F1925</td>
<td>Words in s. 312J(1)(b) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(33)(a)(iii) (with regs. 7(4), 9(1))</td>
</tr>
<tr>
<td>F1926</td>
<td>S. 312J(1)(c) and word inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(33)(a)(iv) (with regs. 7(4), 9(1))</td>
</tr>
<tr>
<td>F1927</td>
<td>Words in s. 312J(2) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(33)(b)(i) (with regs. 7(4), 9(1))</td>
</tr>
<tr>
<td>F1928</td>
<td>Word in s. 312J(2) omitted (28.11.2017) by virtue of The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(33)(b)(ii) (with regs. 7(4), 9(1))</td>
</tr>
<tr>
<td>F1929</td>
<td>S. 312J(2)(c) and word inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(33)(b)(iii) (with regs. 7(4), 9(1))</td>
</tr>
<tr>
<td>F1930</td>
<td>Words in s. 312J(5) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(33)(c) (with regs. 7(4), 9(1))</td>
</tr>
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</table>

### Modifications etc. (not altering text)

| C771 | S. 312J applied by S.I. 2014/2879, reg. 5C(8) (as inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 5(9) (with regs. 7(4), 9(1))) |

### 312K Statement of policy: procedure

(1) Before issuing a statement under section 312J, an appropriate regulator must publish a draft of the proposed statement in the way appearing to the 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 regulator within a specified time.

(3) Before issuing the proposed statement, the regulator must have regard to any representations made to it in accordance with subsection (2).
(4) If the 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 (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with subsection (4)) publish details of the difference.

(6) An appropriate regulator may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.

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**Interpretation of Part XVIII.**

(1) In this Part—

   “application” means an application for a recognition order made under section 287 [F1931, 288 or 288A];
   “applicant” means a [F1932 person who] has applied for a recognition order;

   [F1934, central counterparty” means a body corporate or unincorporated association which interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;]
   [F1934, “central counterparty recognition order” means a recognition order made under section 290(1)(b);]
   [F1934, “clearing”, in relation to a central counterparty, means the process of establishing positions, including the calculation of net obligations and ensuring that financial instruments, cash, or both, are available to secure the exposures arising from those positions; and “clearing services”, in relation to a central counterparty, is to be read accordingly;]
   [F1935, CSD recognition order” means a recognition order made under section 290(1)(d);]
   [F1935, EEA CSD” has the meaning given in section 285;]
   [F1934, the EMIR regulation” means Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, and any reference to the requirements contained in that Regulation includes a reference to
requirements contained in any directly applicable EU regulation made under its provisions;]
[F1936] “multilateral trading facility” has the meaning given in Article 4.1.22 of the markets in financial instruments directive;]
[F1937] “organised trading facility” has the meaning given in Article 4.1.23 of the markets in financial instruments directive;]
[F1938] “overseas applicant” means a body corporate or association which has neither its head office nor its registered office in the United Kingdom and which has applied for a recognition order;
[F1939] “overseas investment exchange” means a body corporate or association which has neither its head office nor its registered office in the United Kingdom and in relation to which a recognition order is in force;
[F1940] “overseas clearing house” means a body corporate or association which is not a central counterparty and has neither its head office nor its registered office in the United Kingdom and in relation to which a recognition order is in force;
[F1941] “recognised body” means a recognised investment exchange, a recognised clearing house or a recognised CSD;
[F1942] “recognised central counterparty” has the meaning given in section 285;
[F1943] “recognised clearing house” has the meaning given in section 285;
[F1944] “recognised CSD” has the meaning given in section 285;
[F1945] “recognised investment exchange” has the meaning given in section 285;
[F1946] “recognition order” means an order made under section 290 or 292;
[F1947] “recognition requirements” has the meaning given by section 286;
[F1948] “regulated market” has the meaning given in Article 4.1.21 of the markets in financial instruments directive;
[F1949] “remedial direction” has the meaning given in section 308(8);
[F1950] “revocation order” has the meaning given in section 297.
[F1951] “trading venue” means a multilateral trading facility, a regulated market or an organised trading facility.]
[F1952] (1A) For the purposes of this Part, a clearing house does not include a central securities depository.]
(F2) References in this Part to rules of an investment exchange (or a clearing house or a central securities depository) are to rules made, or conditions imposed, by the investment exchange (or the clearing house or central securities depository) with respect to—
(a) recognition requirements;
(b) admission of persons to, or their exclusion from the use of, its facilities; or
(c) matters relating to its constitution.
(F3) References in this Part to guidance issued by an investment exchange are references to guidance issued, or any recommendation made, in writing or other legible form and intended to have continuing effect, by the investment exchange to—
(a) all or any class of its members or users, or
(b) persons seeking to become members of the investment exchange or to use its facilities,
with respect to any of the matters mentioned in subsection (2)(a) to (c).

(4) References in this Part to guidance issued by a clearing house are to guidance issued, or any recommendation made, in writing or other legible form and intended to have continuing effect, by the clearing house to—
(a) all or any class of its members, or
(b) persons using or seeking to use its services,
with respect to the provision by it or its members of clearing services [F1947 or services falling within section 285(3)(b)].

Textual Amendments

F1931 Words in s. 313(1) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(34)(a)(i) (with regs. 7(4), 9(1))
F1932 Words in s. 313(1) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(34)(a)(ii) (with regs. 7(4), 9(1))
F1933 Words in s. 313(1) omitted (1.4.2013) by virtue of The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(14)(c) (with regs. 52-58)
F1934 Words in s. 313(1) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(14)(a) (with regs. 52-58)
F1935 Words in s. 313(1) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(34)(a)(iv) (with regs. 7(4), 9(1))
F1939 Words in s. 313 omitted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 129 (with art. 3)
F1940 Words in s. 313(1) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(14)(b) (with regs. 52-58)
F1941 Words in s. 313(1) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(34)(a)(iiii) (with regs. 7(4), 9(1))


**313A [F1949 FCA’s] power to require suspension or removal of financial instruments from trading**

(1) The [F1950 FCA] may, for the purpose of protecting—

(a) the interests of investors, or

(b) the orderly functioning of the financial markets, require an institution [F1951 or a class of institutions] to suspend or remove a financial instrument from trading.

[F1952 (2)] If the [F1950 FCA] exercises the power conferred by subsection (1), the matter may be referred to the Tribunal by—

(a) the institution or, as the case may be, any institution in the class, or

(b) the issuer of the financial instrument (if any).]

(3) In this section, “trading” includes trading otherwise than on a [F1953 trading venue].

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**Textual Amendments**

- **F1949** Word in Pt. 18A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 36(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

- **F1950** Word in Pt. 18A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 36(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

- **F1951** Words in s. 313A(1) inserted (9.4.2010) by The Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010 (S.I. 2010/1193), reg. 2(2)

- **F1952** S. 313A(2) substituted (9.4.2010) by The Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010 (S.I. 2010/1193), reg. 2(3)

- **F1953** Words in s. 313A(3) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services

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**Notes**


- **F1955** S. 313(1A) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(34)(b) (with regs. 7(3)(a)(4), 9(1)).

- **F1956** Words in s. 313(2) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(34)(c) (with regs. 7(4), 9(1)).

- **F1957** Words in s. 313(4) inserted (24.1.2013 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. 8 para. 36(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

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**Status:** This version of this Act contains provisions that are prospective.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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**PART 18A
SUSPENSION AND REMOVAL OF FINANCIAL INSTRUMENTS FROM TRADING**

Textual Amendments

313B Suspension or removal of financial instruments from trading: procedure

(1) A requirement imposed on an institution under section 313A (a “relevant requirement”) takes effect—
   (a) immediately, if the notice given under subsection (2) states that this is the case;
   (b) in any other case, on such date as may be specified in the notice.

(2) If the [F1950 FCA] proposes to impose a relevant requirement on an institution, [F1954 or a class of institutions,] or imposes such a requirement with immediate effect, it must give written notice to [F1955 FCA’s]
   give notice—
   (a) by written notice to—
        (i) the institution or, as the case may be, each institution in the class, and
        (ii) the issuer of the financial instrument in question (if any); or
   (b) by publishing a notice by means of a regulatory information service.

(3) A notice given under subsection (2)(a) must—
   (a) give details of the relevant requirement;
   (b) state the [F1949 FCA’s] reasons for imposing the requirement and choosing the date on which it took effect or takes effect;
   (c) inform the recipient that he may make representations to the [F1950 FCA] within such period as may be specified by the notice (whether or not he has referred the matter to the Tribunal);
   (d) inform him of the date on which the requirement took effect or takes effect;
   (e) inform him of his right to refer the matter to the Tribunal and give an indication of the procedure on such a reference.

(3A) A notice published under subsection (2)(b) must—
   (a) give details of the relevant requirement;
   (b) specify the institution, or the class of institutions, to which it applies;
   (c) state the [F1949 FCA’s] reasons for imposing the requirement and choosing the date on which it took effect or takes effect;
   (d) state that any institution to which the requirement applies or the issuer of the financial instrument in question may make representations to the [F1950 FCA] within such period as may be specified by the notice (whether or not the institution or the issuer has referred the matter to the Tribunal);
   (e) state the date on which the requirement took effect or takes effect; and
   (f) state that any institution to which the requirement applies or the issuer of the financial instrument in question has a right to refer the matter to the Tribunal, and give an indication of the procedure on such a reference.

(4) The [F1958 FCA] may extend the period within which representations may be made to it.

(5) [F1958]

(6) [F1958]

(7) [F1958]
Procedure following consideration of representations

(1) This section applies where, within the period specified under section 313B(3), (3A) or (4), representations are made to the [F1950 FCA] in relation to a requirement that it has proposed to impose or has imposed under section 313A.

(2) The [F1950 FCA] must decide whether to impose the requirement or (in the case of a requirement that has been imposed) whether to revoke it.

(3) In the case of a requirement that the [F1950 FCA] has proposed to impose on a class of institutions, the [F1950 FCA] may decide to impose the requirement—
   (a) on the class;
   (b) on the class apart from one or more specified members of it; or
   (c) only on one or more specified members of the class.

(4) In the case of a requirement that the [F1950 FCA] has imposed on a class of institutions, the [F1950 FCA] may decide to revoke it in relation to—
   (a) the class;
   (b) the class apart from one or more specified members of it; or
   (c) one or more specified members of the class only.

(5) The [F1950 FCA] must give written notice of its decision to—
   (a) any institution which has made representations, and
   (b) the issuer of the financial instrument in question (if any).
(6) In the case of a requirement that the \[F1950FCA\] has proposed to impose or has imposed on a class, the \[F1950FCA\] must also give notice of its decision by publishing it by means of a regulatory information service unless the decision is—
   (a) to impose the requirement on the class, or
   (b) not to revoke the requirement in relation to the class or any member of it.

(7) An institution to which notice is required to be given under subsection (5) may refer the matter to the Tribunal if the \[F1949FCA's\] decision is that the requirement will be imposed on, or will continue to apply to, the institution.

(8) An issuer to whom notice is required to be given under subsection (5) may refer the matter to the Tribunal if the \[F1949FCA's\] decision is that the requirement will be imposed on, or will continue to apply to, the institution or (in the case of a requirement relating to a class) any of the institutions in the class.

(9) A notice given under subsection (5) must inform the recipient if the recipient has a right to refer the matter to the Tribunal.

Textual Amendments
F1949 Word in Pt. 1A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 36(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1950 Word in Pt. 1A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 36(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1959 Ss. 313BA-313BE inserted (9.4.2010) by The Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010 (S.I. 2010/1193), reg. 4

313BB Revocation of requirements: applications by institutions

(1) This section applies where the \[F1950FCA\] has imposed a requirement on an institution or a class of institutions under section 313A.

(2) The institution or any of the institutions in the class may apply to the \[F1950FCA\] for the revocation of the requirement.

(3) The \[F1950FCA\] must decide whether to revoke the requirement.

(4) In the case of a requirement imposed on a class of institutions, the \[F1950FCA\] may decide to revoke it in relation to—
   (a) the class;
   (b) the class apart from one or more specified members of it; or
   (c) one or more specified members of the class only.

(5) The \[F1950FCA\] must give a warning notice if—
   (a) in the case of a requirement imposed on an institution, the \[F1950FCA\] proposes not to revoke the requirement, or
   (b) in the case of a requirement imposed on a class, the \[F1950FCA\] proposes to make a decision which would have the effect that the requirement continues to apply to the applicant (whether or not it would have the effect that it continues to apply to other members of the class).

(6) The warning notice must be given to—
313BC Decisions on applications for revocation by institutions

(1) This section applies where, having considered any representations made in response to a warning notice, the FCA has decided whether to grant an application for revocation made under section 313BB.

(2) The FCA must give written notice in accordance with subsection (3) if—
   (a) in the case of a requirement imposed on an institution, the FCA decides to revoke the requirement, or
   (b) in the case of a requirement imposed on a class, the FCA makes a decision which has the effect that the requirement will no longer apply to the applicant (whether or not it will continue to apply to other members of the class).

(3) The written notice must be given to—
   (a) the applicant, and
   (b) the issuer of the financial instrument in question (if any).

(4) If the FCA is required to give written notice under subsection (2) in relation to a requirement imposed on a class, the FCA must also give notice of its decision by publishing it by means of a regulatory information service.

(5) The FCA must give a decision notice in accordance with subsection (6) if—
   (a) in the case of a requirement imposed on an institution, the FCA decides not to revoke the requirement, or
   (b) in the case of a requirement imposed on a class, the FCA makes a decision which has the effect that the requirement will continue to apply to the applicant (whether or not it will continue to apply to other members of the class).

(6) The decision notice must be given to—
   (a) the applicant, and
   (b) the issuer of the financial instrument in question (if any).

(7) If the FCA is required to give a decision notice in relation to a requirement imposed on a class, the FCA must also give notice of its decision by publishing it by means of a regulatory information service.

(8) If the FCA gives a decision notice, the recipient may refer the matter to the Tribunal.
313BD  Revocation of requirements: applications by issuers

(1) This section applies where the [F1950FCA] has imposed a requirement on an institution or a class of institutions under section 313A.

(2) The issuer of the financial instrument may apply to the [F1950FCA] for the revocation of the requirement.

(3) The [F1950FCA] must decide whether to revoke the requirement.

(4) In the case of a requirement imposed on a class of institutions, the [F1950FCA] may decide to revoke it in relation to—
   (a) the class;
   (b) the class apart from one or more specified members of it; or
   (c) one or more specified members of the class only.

(5) The [F1950FCA] must give the issuer a warning notice if—
   (a) in the case of a requirement imposed on an institution, the [F1950FCA] proposes not to revoke the requirement, or
   (b) in the case of a requirement imposed on a class, the [F1950FCA] proposes not to revoke the requirement or to revoke it in relation to—
      (i) the class apart from one or more specified members of it, or
      (ii) one or more specified members of the class only.

313BE  Decisions on applications for revocation by issuers

(1) This section applies where, having considered any representations made in response to a warning notice, the [F1950FCA] has decided whether to grant an application for revocation made under section 313BD.

(2) The [F1950FCA] must give written notice to the issuer if the [F1950FCA] decides to revoke the requirement.

(3) If the [F1950FCA] is required to give written notice under subsection (2) in relation to a requirement imposed on a class, the [F1950FCA] must also give notice of its decision by publishing it by means of a regulatory information service.

(4) The [F1950FCA] must give the issuer a decision notice if—
(a) in the case of a requirement imposed on an institution, the [F1950 FCA] decides not to revoke the requirement, or
(b) in the case of a requirement imposed on a class, the [F1950 FCA] decides not to revoke the requirement or makes a decision to revoke the requirement in relation to—
   (i) the class apart from one or more specified members of it, or
   (ii) one or more specified members of the class only.

(5) If the [F1950 FCA] is required to give a decision notice under subsection (4)(b), it must also give notice of its decision by publishing it by means of a regulatory information service.

(6) If the [F1950 FCA] gives a decision notice under subsection (4), the issuer may refer the matter to the Tribunal.

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Textual Amendments

F1950 Word in Pt. 18A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 36(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F1959 Ss. 313BA-313BE inserted (9.4.2010) by The Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010 (S.I. 2010/1193), reg. 4

F1960 313C Notification in relation to suspension or removal of a financial instrument from trading

(1) The FCA must take the steps in subsection (2) to (4) if it imposes a requirement on an institution under section 313A to—
   (a) suspend or remove a financial instrument from trading; or
   (b) suspend or remove a derivative which relates, or is referenced, to the financial instrument from trading to support the objectives of a suspension or removal mentioned in paragraph (a).

(2) The FCA must require any trading venue or systematic internaliser which falls under its jurisdiction and trades the same instrument or derivative to suspend or remove the instrument or derivative from trading if a suspension or removal mentioned in subsection (1) was due to—
   (a) suspected market abuse;
   (b) a take-over bid; or
(c) the non-disclosure of inside information about the issuer or the instrument.

(3) But the FCA is not obliged to impose a requirement under subsection (2) if it could cause significant damage to the interests of investors or the orderly functioning of the market.

(4) The FCA must—

(a) inform ESMA and the competent authorities of every other EEA State of—

(i) a decision to impose a requirement under section 313A;

(ii) a decision to revoke a requirement imposed under section 313A;

(iii) a decision to impose, not to impose, or to revoke a requirement under subsection (2); and

(b) publish a decision mentioned in paragraph (a)(i) to (iii) in such a manner as it considers appropriate unless the decision has already been published under section 313B(2)(b) or 313BE(5).

313CB. Suspension or removal of a financial instrument from a trading by a trading venue: FCA duties

(1) The FCA must take the steps in subsections (2), (4), and (5) if a person specified in subsection (6) operating a trading venue in the United Kingdom informs the FCA it has made a decision—

(a) to suspend or remove a financial instrument from trading on the trading venue because the instrument no longer complies with the venue’s rules, or

(b) to suspend or remove a derivative which relates, or is referenced, to the financial instrument from trading on the trading venue to support the objectives of a suspension or removal mentioned in paragraph (a).

(2) The FCA must require any other trading venue or any systematic internaliser which falls under its jurisdiction and trades the same instrument or derivative to suspend or remove the instrument or derivative from trading if a suspension or removal mentioned in subsection (1) was due to—

(a) suspected market abuse;

(b) a take-over bid; or

(c) the non-disclosure of inside information about the issuer or the instrument.

(3) But the FCA is not obliged to impose a requirement under subsection (2) if it could cause significant damage to the interests of investors or the orderly functioning of the market.

(4) The FCA must revoke a requirement imposed under subsection (2) if the person mentioned in subsection (1) informs the FCA it has lifted the suspension mentioned in that subsection.
(5) The FCA must—
   (a) inform ESMA and the competent authorities of every other EEA State of
       any decision to impose, not to impose, or to revoke a requirement under
       subsection (2),
   (b) provide ESMA and those competent authorities with an explanation if
       the decision is not to impose a requirement under subsection (2) because
       subsection (3) applies, and
   (c) publish any decision mentioned in paragraph (a) in such a manner as it
       considers appropriate.

(6) The specified persons for the purposes of subsection (6) are—
   (a) a recognised investment exchange,
   (b) an investment firm with a Part 4A permission to carry on a regulated activity
       which is any of the investment services and activities,
   (c) a credit institution authorised under the capital requirements directive.
(2A) But the FCA is not obliged to impose a requirement under subsection (2) if it could cause significant damage to the interests of investors or the orderly functioning of the market.

(3) The FCA must revoke a requirement imposed under subsection (2) if the competent authority of the other EEA State informs the FCA it has lifted the suspension or removal mentioned in subsection (1).

(4) For the purposes of subsection (1) the FCA is informed of a decision mentioned in subsection (1)(a) or (b) when the competent authority that made the decision, the competent authority of any other EEA State, or ESMA informs the FCA of the decision for the purposes of Article 32.2 or 52.2 of the markets in financial instrument directive.]

313D  Interpretation of Part 18A

[F1962 (1)]

[F1963 "competent authority" has the meaning given in Article 4.1.26 (definitions) of the markets in financial instruments directive;]

[F1963 "derivative" means a derivative referred to in points (4) to (10) of Section C of Annex 1 to the markets in financial instruments directive;]

"financial instrument" has the meaning given in Article [F1964 4.1.15] of the markets in financial instruments directive;

"institution" means—

(a) a recognised investment exchange, other than an overseas investment exchange (within the meaning of Part 18);

(b) an investment firm;

(c) a credit institution authorised under the [F1965 capital requirements directive], when carrying on investment services and activities; or

(d) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA State,

but does not include an EEA firm qualifying for authorisation under Schedule 3;

"issuer", in relation to a financial instrument, means the person who issued the instrument;

[F1963 "market abuse" means a contravention of Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or 15 (prohibition of market manipulation) of the market abuse regulation;]
[\textbf{F1963.} “non-disclosure of inside information” means a failure to disclose inside information, as defined by Article 7 (inside information) of the market abuse regulation, in contravention of Article 17 (public disclosure of inside information) of that Regulation;]

[\textbf{F1967.} “regulated information” has the meaning given in Article 2(1)(k) of the transparency obligations directive (as defined in section 103 of this Act);]

[\textbf{F1968.} “regulatory information service” means—

(a) a service approved by the [\textbf{F1950} FCA] to disseminate regulated information in accordance with rules made under section 89A of this Act, or

(b) a service established in an EEA state other than the United Kingdom which is used for the dissemination of regulated information for the purposes of Article 21 of the transparency obligations directive;]

[\textbf{F1969} …

[\textbf{F1963.} “systematic internaliser” has the meaning given in Article 4.1.20 of the markets in financial instruments directive;]

[\textbf{F1963.} “trading venue” has the meaning given in Article 4.1.24 of the markets in financial instruments directive.]

In this Part a trading venue or systematic internaliser falls under the FCA’s jurisdiction if—

(a) the United Kingdom is the home Member State (as defined by Article 4.1.55 of the markets in financial instruments directive) of—

(i) in the case of a trading venue which is a regulated market (as defined by Article 4.1.21 of the directive), the regulated market;

(ii) in the case of a trading venue which is a multilateral trading facility (as defined by Article 4.1.22 of the directive), the person operating the facility;

(iii) in the case of a trading venue which is an organised trading facility (as defined by Article 4.1.23 of the directive), the person operating the facility; or

(iv) in the case of a systematic internaliser, the systematic internaliser; or

(b) in the case of a systematic internaliser [\textbf{F1971.} which] does not fall within the FCA’s jurisdiction by virtue of paragraph (a)—

(i) it has established a branch (as defined by Article 4.1.30 of the directive) in the United Kingdom; and

(ii) the FCA considers that it is necessary to impose a requirement on the systematic internaliser under section 313CA(2), 313CB(2), or 313CC(2) for the purposes of Article 32.2 or 52.2 of the markets in financial instruments directive.]
PART XIX

LLOYD'S

General

314  [F1972Regulators'] general duty.

[F1972(1) So far as it is appropriate to do so for the purpose of advancing one or more of its operational objectives, the FCA must keep itself informed about—

(a) the way in which the Council supervises and regulates the market at Lloyd's, and
(b) the way in which regulated activities are being carried on in that market.

(1A) So far as it is appropriate to do so for the purpose of advancing its general objective or (if section 2C applies) its insurance objective, the PRA must keep itself informed about—

(a) the way in which the Council supervises and regulates the market at Lloyd's, and
(b) the way in which any PRA-regulated activities are being carried on in that market.]

(2) Each regulator must keep under review the desirability of exercising—

(a) any of its powers under this Part;
(b) any powers which it has in relation to the Society as a result of provision made by or under this Act.

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**Textual Amendments**

F1972 Word in s. 314 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(2)(c), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1973 S. 314(1)(A) substituted for s. 314(1) (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(2)(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1974 Words in s. 314(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(2)(b)(i), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F1975 Words in s. 314(2)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(2)(b)(ii), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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[F1976 314 The PRA's objectives in relation to Lloyd's etc

(1) This section modifies—

(a) the effect of sections 2B and 2C (the PRA's general objective and insurance objective), and
(b) the effect of section 3I (power of PRA to require FCA to refrain from specified action),

in relation to anything done, or proposed to be done, by the PRA under or for the purposes of this Part.

(2) This section applies only if PRA-authorised persons include—

(a) the Society, or
(b) other persons who carry on regulated activities in relation to anything done at Lloyd's.

(3) Section 2B(2) and (3) have effect as if references to PRA-authorised persons (or a PRA-authorised person) were references to the Society, and the members of the Society, taken together (and sections 2G and 2J(3) are to be read accordingly).

(4) Section 2C(1) has effect as if the reference to the discharge of the PRA's general functions so far as relating to the activity mentioned there were a reference to the discharge of its general functions so far as relating to the carrying on by the Society or other persons of PRA-regulated activities in relation to anything done at Lloyd's.

(5) Section 3I(4)(b) has effect as if the reference to a PRA-authorised person were a reference to the Society, and the members of the Society, taken together.]

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**Textual Amendments**

F1976 S. 314A inserted (24.1.2013) by Financial Services Act 2012 (c. 21), ss. 40(3), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3
The Society

315 The Society: regulated activities

(1) This section applies if an activity carried on by the Society is of a kind specified in an order made under section 22 (regulated activities).

(2) The order may provide that the Society is not to be subject to any requirement of this Act concerning the registered office of a body corporate.

Textual Amendments
F1977S. 315 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(4), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Power to apply Act to Lloyd’s underwriting

316 Direction by [F1979 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 [F1979 a regulator] so directs.

[F1980(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

“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), [F1981 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 the Solvency 2 Directive; 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 the regulator concerned has in relation to the Society as a result of 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) given by a regulator must be published in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(10) 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) A regulator who gives a direction under subsection (1) must, without delay, give the Treasury a copy of the direction.

Textual Amendments
F1978 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.
F1979 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.
F1980 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.
F1981 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.
F1982 Words in s. 316(4)(b)(i) substituted (1.1.2016) by The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), Sch. 1 para. 12
F1983 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.
F1984 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.
F1985 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.
F1986 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.
F1987 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.
317 The core provisions.

(1) The core provisions are Parts V, 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.

318 Exercise of powers through Council.

(1) 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.

(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

(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 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 [F1993] a regulator of any of its powers;
   (b) must be in writing.

(7) A direction under subsection (1) [F1994] given by a regulator must be published in the way appearing to [F1996] the regulator to be best calculated to bring it to the attention of the public.

(8) [F1996] 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) [F1997] A regulator who gives a direction under subsection (1) must, without delay, give the Treasury a copy of [F1998] the direction.

Textual Amendments
F1990 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.
F1991 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.
F1992 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.
F1993 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.
F1994 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.
F1995 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.
F1996 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.
F1997 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.
F1998 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
173 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 so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

319 Consultation.
[F1999] (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
      [F2000 the regulator] within a specified time.

[F2001] (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 [F2002 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 [F2003 the regulator], significant—
    (a) [F2003 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.

[F2004] (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 [F2005 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) [F2006 A regulator who publishes a draft under subsection (1)] may charge a reasonable fee for providing a person with a copy of [F2007 the draft].

(9) When [F2008 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.

[F2009] (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.

Former underwriting members

320 Former underwriting members.

(1) A former underwriting member may carry out each contract of insurance that he has underwritten at Lloyd’s whether or not he is an authorised person.

(2) If he is an authorised person, any [Part 4A permission] that he has does not extend to his activities in carrying out any of those contracts.
(3) The PRA may impose on a former underwriting member such requirements as appear to it to be appropriate for the purpose of protecting policyholders against the risk that he may not be able to meet his liabilities.

(4) A person on whom a requirement is imposed may refer the matter to the Tribunal.

(5) In the event that the activity of effecting or carrying out contracts of insurance as principal is not to any extent a PRA-regulated activity, the function conferred on the PRA by subsection (3) is exercisable instead by the FCA.

(6) Accordingly, in that case—

(a) references in section 321 to the PRA are to be read as references to the FCA, and

(b) the reference in section 321(13) to the FCA is to be read as a reference to the PRA.

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Textual Amendments

F2010 Words in s. 320(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(9)(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2011 Words in s. 320(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(9)(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2012S. 320(5)(6) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(9)(c), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Commencement Information

S. 320 wholly in force at 1.12.2001; s. 320 not in force at Royal Assent see s. 431(2); s. 320(3)(4) in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 320 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

321 Requirements imposed under section 320.

(1) A requirement imposed under section 320 takes effect—

(a) immediately, if the notice given under subsection (2) states that that is the case;

(b) in any other case, on such date as may be specified in that notice.

(2) If the PRA proposes to impose a requirement on a former underwriting member (“A”) under section 320, or imposes such a requirement on him which takes effect immediately, it must give him written notice.

(3) The notice must—

(a) give details of the requirement;

(b) state the PRA’s reasons for imposing it;

(c) inform A that he may make representations to the PRA within such period as may be specified in the notice (whether or not he has referred the matter to the Tribunal);

(d) inform him of the date on which the requirement took effect or will take effect, and

(e) inform him of his right to refer the matter to the Tribunal.

(4) The PRA may extend the period allowed under the notice for making representations.
(5) If, having considered any representations made by A, the PRA decides—
   (a) to impose the proposed requirement, or
   (b) if it has been imposed, not to revoke it, it must give him written notice.

(6) If the PRA decides—
   (a) not to impose a proposed requirement, or
   (b) to revoke a requirement that has been imposed, it must give A written notice.

(7) If the PRA decides to grant an application by A for the variation or revocation of a requirement, it must give him written notice of its decision.

(8) If the PRA proposes to refuse an application by A for the variation or revocation of a requirement it must give him a warning notice.

(9) If the PRA, having considered any representations made in response to the warning notice, decides to refuse the application, it must give A a decision notice.

(10) A notice given under—
    (a) subsection (5), or
    (b) subsection (9) in the case of a decision to refuse the application, must inform A of his right to refer the matter to the Tribunal.

(11) If the PRA decides to refuse an application for a variation or revocation of the requirement, the applicant may refer the matter to the Tribunal.

(12) 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.

[F2018] (13) Before giving a notice under any provision of this section, the PRA must consult the FCA.

Textual Amendments

F2013 Words in s. 321(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(10)(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2014 Words in s. 321(3)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(10)(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2015 Word in s. 321(3)(c) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(10)(c), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2016 Word in s. 321(4)-(9) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(10)(c), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2017 Word in s. 321(11) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(10)(c), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2018 S. 321(13) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(10)(d), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Commencement Information

I75 S. 321 wholly in force at 1.12.2001; s. 321 not in force at Royal Assent see s. 431(2); s. 321 in force for certain purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 321 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)
322 Rules applicable to former underwriting members.

(1) The PRA may make rules imposing such requirements on persons to whom the rules apply as appear to it to be appropriate for protecting policyholders against the risk that those persons may not be able to meet their liabilities.

(2) The rules may apply to—
   (a) former underwriting members generally; or
   (b) to a class of former underwriting member specified in them.

(3) Section 319 applies to the making of proposed rules under this section as it applies to the giving of a proposed direction under section 316.

(4) Part 9A (except sections 137T, 138F, 138G and 138H) does not apply to rules made under this section.

(5) In the event that the activity of effecting or carrying out contracts of insurance as principal is not to any extent a PRA-regulated activity, the function conferred on the PRA by subsection (1) is exercisable instead by the FCA.

Textual Amendments

F2019 Words in s. 322(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(11)(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2020 Words in s. 322(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(11)(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2021 S. 322(5) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 40(11)(e), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Commencement Information

176 S. 322 wholly in force at 1.12.2001; s. 322 not in force at Royal Assent see s. 431(2); s. 322 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 322 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

Transfers of business done at Lloyd's

323 Transfer schemes.

The Treasury may by order provide for the application of any provision of Part VII (with or without modification) in relation to schemes for the transfer of the whole or any part of the business carried on by one or more members of the Society or former underwriting members.

Supplemental

324 Interpretation of this Part.

(1) In this Part—
   “arranging deals”, in relation to the investments to which this Part applies, has the same meaning as in paragraph 3 of Schedule 2;
“former underwriting member” means a person ceasing to be an underwriting member of the Society on, or at any time after, 24 December 1996; and

“participation in Lloyd’s syndicates”, in relation to the secondary market activity, means the investment described in sub-paragraph (1) of paragraph 21 of Schedule 2.

(2) A term used in this Part which is defined in Lloyd’s Act 1982 has the same meaning as in that Act.

Marginal Citations
M32 1982 c.xiv.

PART XX

PROVISION OF FINANCIAL SERVICES BY MEMBERS OF THE PROFESSIONS

Modifications etc. (not altering text)
C773 Pt. 20 modified (E.W.S.) by S.I. 2000/119, Sch. 4 para. 11 (as substituted (1.7.2009 in accordance with art. 1(1)(c) of S.I. 2009/1587) by S.I. 2009/1587, art. 3(11))

325 [F2023FCA's] general duty.

(1) The [F2023FCA] must keep itself informed about—

(a) the way in which designated professional bodies supervise and regulate the carrying on of exempt regulated activities by members of the professions in relation to which they are established;

(b) the way in which such members are carrying on exempt regulated activities.

(2) In this Part—

“exempt regulated activities” means regulated activities which may, as a result of this Part, be carried on by members of a profession which is supervised and regulated by a designated professional body without breaching the general prohibition; and

“members”, in relation to a profession, means persons who are entitled to practise the profession in question and, in practising it, are subject to the rules of the body designated in relation to that profession, whether or not they are members of that body.

(3) The [F2023FCA] must keep under review the desirability of exercising any of its powers under this Part.

(4) Each designated professional body must co-operate with the [F2023FCA], by the sharing of information and in other ways, in order to enable the [F2023FCA] to perform its functions under this Part.
326 Designation of professional bodies.

(1) The Treasury may by order designate bodies for the purposes of this Part.

(2) A body designated under subsection (1) is referred to in this Part as a designated professional body.

(3) The Treasury may designate a body under subsection (1) only if they are satisfied that—
   (a) the basic condition, and
   (b) one or more of the additional conditions,
   are met in relation to it.

(4) The basic condition is that the body has rules applicable to the carrying on by members of the profession in relation to which it is established of regulated activities which, if the body were to be designated, would be exempt regulated activities.

(5) The additional conditions are that—
   (a) the body has power under any enactment to regulate the practice of the profession;
   (b) being a member of the profession is a requirement under any enactment for the exercise of particular functions or the holding of a particular office;
   (c) the body has been recognised for the purpose of any enactment other than this Act and the recognition has not been withdrawn;
   (d) the body is established in an EEA State other than the United Kingdom and in that State—
      (i) the body has power corresponding to that mentioned in paragraph (a);
      (ii) there is a requirement in relation to the body corresponding to that mentioned in paragraph (b); or
      (iii) the body is recognised in a manner corresponding to that mentioned in paragraph (c).


(7) “Recognised” means recognised by—
   (a) a Minister of the Crown;
   (b) the Scottish Ministers;
(c) a Northern Ireland Minister;
(d) a Northern Ireland department or its head.

327 Exemption from the general prohibition.

(1) The general prohibition does not apply to the carrying on of a regulated activity by a person (“P”) if—
   (a) the conditions set out in subsections (2) to (7) are satisfied; F2024...
   (aa) where the activity is the provision of a service listed in Section A of Annex 1 of the markets in financial instruments directive relating to a financial instrument, the condition set out in subsection (7A) is also satisfied; and]
   (b) there is not in force—
      (i) a direction under section 328, or
      (ii) an order under section 329,
which prevents this subsection from applying to the carrying on of that activity by him.

(2) P must be—
   (a) a member of a profession; or
   (b) controlled or managed by one or more such members.

(3) P must not receive from a person other than his client any pecuniary reward or other advantage, for which he does not account to his client, arising out of his carrying on of any of the activities.

(4) The manner of the provision by P of any service in the course of carrying on the activities must be incidental to the provision by him of professional services.

(5) P must not carry on, or hold himself out as carrying on, a regulated activity other than—
   (a) one which rules made as a result of section 332(3) allow him to carry on; or
   (b) one in relation to which he is an exempt person.

(6) The activities must not be of a description, or relate to an investment of a description, specified in an order made by the Treasury for the purposes of this subsection.

(7) The activities must be the only regulated activities carried on by P (other than regulated activities in relation to which he is an exempt person).

F2026(7A) The condition mentioned in subsection (1)(aa) is that—
   (a) the service is provided in an incidental manner in the course of a professional activity for the purposes of the markets in financial instruments directive; and
   (b) the professional activity concerned is the provision of professional services.

(7B) In subsection (7A) a service is provided in an incidental manner in the course of a professional activity for the purposes of the markets in financial instruments directive if the applicable conditions are satisfied.

(7C) The applicable conditions for the purposes of subsection (7B) are those set out in Article 4(a) to (c) of Commission Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.]
“Professional services” means services—
(a) which do not constitute carrying on a regulated activity, and
(b) the provision of which is supervised and regulated by a designated professional body.

[Textual Amendments]

Textual Amendments

Modifications etc. (not altering text)
C775 S. 327(5)-(7) restricted (1.12.2001) by S.I. 2001/544, arts. 2(1), 13(1); S.I. 2001/3538, art. 2(1)

Commencement Information
178 S. 327 wholly in force at 1.12.2001; s. 327 not in force at Royal Assent see s. 431(2); s. 327(6) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pt. 2; s. 327 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

328 Directions in relation to the general prohibition.
(1) The [FCA] may direct that section 327(1) is not to apply to the extent specified in the direction.
(2) A direction under subsection (1)—
(a) must be in writing;
(b) may be given in relation to different classes of person or different descriptions of regulated activity.
(3) A direction under subsection (1) must be published in the way appearing to the [FCA] to be best calculated to bring it to the attention of the public.
(4) The [FCA] may charge a reasonable fee for providing a person with a copy of the direction.
(5) The \([F2028]FCA\) must, without delay, give the Treasury a copy of any direction which it gives under this section.

(6) The \([F2028]FCA\) may exercise the power conferred by subsection (1) only if it is satisfied either—

(a) that it is desirable to do so in order to protect the interests of clients; or

(b) that it is necessary to do so in order to comply with an \([F2030]EU\) obligation imposed by the \([F2031]insurance distribution directive\) or \([F2032]Directive 2008/48/EC\) of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC.

(7) In considering whether it is \([F2033]satisfied\) of the matter specified in subsection (6) (a), the \([F2028]FCA\) must have regard amongst other things to the effectiveness of any arrangements made by any designated professional body—

(a) for securing compliance with rules made under section 332(1);

(b) for dealing with complaints against its members in relation to the carrying on by them of exempt regulated activities;

(c) in order to offer redress to clients who suffer, or claim to have suffered, loss as a result of misconduct by its members in their carrying on of exempt regulated activities;

(d) for co-operating with the \([F2028]FCA\) under section 325(4).

(8) In this Part “clients” means—

(a) persons who use, have used or are or may be contemplating using, any of the services provided by a member of a profession in the course of carrying on exempt regulated activities;

(b) persons who have rights or interests which are derived from, or otherwise attributable to, the use of any such services by other persons; or

(c) persons who have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them.

(9) If a member of a profession is carrying on an exempt regulated activity in his capacity as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or are or may be contemplating using services provided by that person in his carrying on of that activity.

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**Textual Amendments**

- **F2028** Word in s. 328 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 16 para. 2 (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- **F2029** S. 328(6) substituted (14.1.2005) by The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), reg. 9(a)
- **F2030** Words in s. 328(6)(b) 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)
- **F2031** Words in s. 328(6)(b) substituted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), 18(1)
- **F2032** Words in s. 328(6)(b) inserted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 10(12)
329 Orders in relation to the general prohibition.

(1) Subsection (2) applies if it appears to the [F2034FCA] that a person to whom, as a result of section 327(1), the general prohibition does not apply is not a fit and proper person to carry on regulated activities in accordance with that section.

(2) The [F2034FCA] may make an order disapplying section 327(1) in relation to that person to the extent specified in the order.

(3) The [F2034FCA] may, on the application of the person named in an order under subsection (1), vary or revoke it.

(4) “Specified” means specified in the order.

(5) If a partnership is named in an order under this section, the order is not affected by any change in its membership.

(6) If a partnership named in an order under this section is dissolved, the order continues to have effect in relation to any partnership which succeeds to the business of the dissolved partnership.

(7) For the purposes of subsection (6), a partnership is to be regarded as succeeding to the business of another partnership only if—

(a) the members of the resulting partnership are substantially the same as those of the former partnership; and

(b) succession is to the whole or substantially the whole of the business of the former partnership.

Textual Amendments

F2034 Word in s. 329 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 16 para. 3 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)


330 Consultation.

(1) Before giving a direction under section 328(1), the [F2035FCA] must publish a draft of the proposed direction.
(2) The draft must be accompanied by—
   a cost benefit analysis; and
   notice that representations about the proposed direction may be made to the [F2035FCA] within a specified time.

(3) Before giving the proposed direction, the [F2035FCA] must have regard to any representations made to it in accordance with subsection (2)(b).

(4) If the [F2035FCA] gives the proposed direction it must publish an account, in general terms, of—
   the representations made to it in accordance with subsection (2)(b); and
   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 the [F2035FCA], significant—
   the [F2035FCA] must (in addition to complying with subsection (4)) publish details of the difference; and
   those details must be accompanied by a cost benefit analysis.

(6) Subsections (1) to (5) do not apply if the [F2035FCA] considers that the delay involved in complying with them would prejudice the interests of consumers.

(7) Neither subsection (2)(a) nor subsection (5)(b) applies if the [F2035FCA] considers—
   that, making the appropriate comparison, there will be no increase in costs; or
   that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.

(8) The [F2035FCA] may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(9) When the [F2035FCA] 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.

(10) Cost benefit analysis” means—
   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
   subject to subsection (10A), an estimate of those costs and of those benefits.

(10A) If, in the opinion of the FCA—
   the costs or benefits referred to in subsection (10) cannot reasonably be estimated, or
   it is not reasonably practicable to produce an estimate,
the cost benefit analysis need not estimate them, but must include a statement of the FCA’s opinion and an explanation of it.

(11) “The appropriate comparison” means—
   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;
   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.
331 Procedure on making or varying orders under section 329.

(1) If the [F2037FCA] proposes to make an order under section 329, it must give the person concerned a warning notice.

(2) The warning notice must set out the terms of the proposed order.

(3) If the [F2037FCA] decides to make an order under section 329, it must give the person concerned a decision notice.

(4) The decision notice must—
   (a) name the person to whom the order applies;
   (b) set out the terms of the order; and
   (c) be given to the person named in the order.

(5) Subsections (6) to (8) apply to an application for the variation or revocation of an order under section 329.

(6) If the [F2037FCA] decides to grant the application, it must give the applicant written notice of its decision.

(7) If the [F2037FCA] proposes to refuse the application, it must give the applicant a warning notice.

(8) If the [F2037FCA] decides to refuse the application, it must give the applicant a decision notice.

(9) A person—
   (a) against whom the [F2037FCA] have decided to make an order under section 329, or
   (b) whose application for the variation or revocation of such an order the [F2037FCA] had decided to refuse,
may refer the matter to the Tribunal.

(10) The [F2037FCA] may not make an order under section 329 unless—
   (a) the period within which the decision to make to the order may be referred to the Tribunal has expired and no such reference has been made; or
   (b) if such a reference has been made, the reference has been determined.
332 Rules in relation to persons to whom the general prohibition does not apply.

(1) The FCA may make rules applicable to persons to whom, as a result of section 327(1), the general prohibition does not apply.

(2) The power conferred by subsection (1) is to be exercised for the purpose of ensuring that clients are aware that such persons are not authorised persons.

(3) A designated professional body must make rules—

(a) applicable to members of the profession in relation to which it is established who are not authorised persons; and

(b) governing the carrying on by those members of regulated activities (other than regulated activities in relation to which they are exempt persons).

(4) Rules made in compliance with subsection (3) must be designed to secure that, in providing a particular professional service to a particular client, the member carries on only regulated activities which arise out of, or are complementary to, the provision by him of that service to that client.

(5) Rules made by a designated professional body under subsection (3) require the approval of the FCA.

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Textual Amendments

F2038 Word in s. 332 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 16 para. 6 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

C779 S. 332(3)(b) restricted (1.12.2001) by S.I. 2001/544, arts. 2(1), 13(1); S.I. 2001/3538, art. 2(1)

333 False claims to be a person to whom the general prohibition does not apply.

(1) A person who—

(a) describes himself (in whatever terms) as a person to whom the general prohibition does not apply, in relation to a particular regulated activity, as a result of this Part, or

(b) behaves, or otherwise holds himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is such a person,

is guilty of an offence if he is not such a person.

(2) In proceedings for an offence under this section it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.

(4) But where the conduct constituting the offence involved or included the public display of any material, the maximum fine for the offence is level 5 on the standard scale multiplied by the number of days for which the display continued.
PART 20B

ILLEGAL MONEY LENDING

333S Financial assistance for action against illegal money lending

(1) The Treasury may make grants or loans, or give any other form of financial assistance, to any person for the purpose of taking action against illegal money lending.

(2) Taking action against illegal money lending includes—
   (a) investigating illegal money lending and offences connected with illegal money lending;
   (b) prosecuting, or taking other enforcement action in respect of, illegal money lending and offences connected with illegal money lending;
   (c) providing education, information and advice about illegal money lending, and providing support to victims of illegal money lending;
   (d) undertaking or commissioning research into the effectiveness of activities of the kind described in paragraphs (a) to (c);
   (e) providing advice, assistance and support (including financial support) to, and oversight of, persons engaged in activities of the kind described in paragraphs (a) to (c).

(3) A grant, loan or other form of financial assistance under subsection (1) may be made or given on such terms as the Treasury consider appropriate.


333T Funding of action against illegal money lending

(1) The Treasury must, from time to time, notify the FCA of the amount of the Treasury’s illegal money lending costs.
(2) The FCA must make rules requiring authorised persons, or any specified class of authorised person, to pay to the FCA specified amounts, or amounts calculated in a specified way, with a view to recovering the amount notified under subsection (1).

(3) The amounts to be paid under the rules may include a component to recover the expenses of the FCA in collecting the payments (“collection costs”).

(4) Before the FCA publishes a draft of the rules it must consult the Treasury.

(5) The rules may be made only with the consent of the Treasury.

(6) The Treasury may notify the FCA of matters that they will take into account when deciding whether or not to give consent for the purposes of subsection (5).

(7) The FCA must have regard to any matters notified under subsection (6) before publishing a draft of rules to be made under this section.

(8) The FCA must pay to the Treasury the amounts that it receives under rules made under this section apart from amounts in respect of its collection costs (which it may keep).

(9) The Treasury must pay into the Consolidated Fund the amounts received by them under subsection (8).

(10) In this section the “Treasury's illegal money lending costs” means the expenses incurred, or expected to be incurred, by the Treasury—

(a) in connection with providing grants, loans, or other financial assistance to any person (under section 333S or otherwise) for the purpose of taking action against illegal money lending;

(b) in undertaking or commissioning research relating to taking action against illegal money lending.

(11) The Treasury may by regulations amend the definition of the “Treasury's illegal money lending costs”.

(12) In this section “illegal money lending” and “taking action against illegal money lending” have the same meaning as in section 333S.

**PART XXI**

**MUTUAL SOCIETIES**

**Friendly societies**

334 The Friendly Societies Commission.

(1) .................................................

(2) .................................................

(3) The enactments relating to friendly societies which are mentioned in Part I of Schedule 18 are amended as set out in that Part.

(4) Part II of Schedule 18—
(a) removes certain restrictions on the ability of incorporated friendly societies to form subsidiaries and control corporate bodies; and
(b) makes connected amendments.

**Textual Amendments**

F2041 S. 334(1) repealed (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 54(1)(a), 122(3) (with s. 54(2), Sch. 20); S.I. 2013/423, art. 3, Sch.

F2042 S. 334(2) repealed (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 54(1)(a), 122(3) (with s. 54(2), Sch. 20); S.I. 2013/423, art. 3, Sch.

**Commencement Information**

F79 S. 334 wholly in force at 1.12.2001; s. 334 not in force at Royal Assent see s. 431(2); s. 334(1)(2) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), Sch. Pt. 1; s. 334 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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**335 The Registry of Friendly Societies.**

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**Textual Amendments**

F2043 S. 335 repealed (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 54(1)(b), 122(3) (with s. 54(2), Sch. 20); S.I. 2013/423, art. 3, Sch.

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**Building societies**

**336 The Building Societies Commission.**

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**Textual Amendments**

F2044 S. 336 repealed (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 54(1)(c), 122(3) (with s. 54(2), Sch. 20); S.I. 2013/423, art. 3, Sch.

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**337 The Building Societies Investor Protection Board.**

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**Textual Amendments**

F2045 S. 337 repealed (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 54(1)(d), 122(3) (with s. 54(2), Sch. 20); S.I. 2013/423, art. 3, Sch.
Industrial and provident societies and credit unions

338 Industrial and provident societies and credit unions.

Supplemental

339 Supplemental provisions.

PART XXII

AUDITORS AND ACTUARIES

General duties of regulator

339A General duties of PRA in relation to auditors

(1) The arrangements maintained by the PRA under section 2K (supervision of PRA-authorised persons) must include arrangements for—
(a) the sharing with auditors of PRA-authorised persons of information that the PRA is not prevented from disclosing, and
(b) the exchange of opinions with auditors of PRA-authorised persons.

(2) The PRA must issue and maintain a code of practice describing how it will comply with subsection (1).

(3) The PRA may at any time alter or replace a code issued under this section.

(4) If a code is altered or replaced, the PRA must issue the altered or replacement code.

(5) When the PRA issues a code under this section the PRA must—
   (a) give a copy of the code to the Treasury, and
   (b) publish the code in such manner as the PRA thinks fit.

(6) The Treasury must lay before Parliament a copy of the code.

(7) “Auditor” means an auditor appointed under or as a result of a statutory provision.]

339C Duty to meet auditors of certain institutions

(1) The FCA must make arrangements for meetings to take place at least once a year between—
   (a) the FCA, and
   (b) the auditor of any PRA-authorised person to which section 339C applies.

(2) The PRA must make arrangements for meetings to take place at least once a year between—
   (a) the PRA, and
   (b) the auditor of any PRA-authorised person to which section 339C applies.

(3) The annual report of each regulator must include the number of meetings that have taken place during the period to which the report relates between the regulator and auditors of PRA-authorised persons to which section 339C applies.

(4) In subsection (3) “the annual report” means—
   (a) in relation to the FCA, every report which it is required by paragraph 11 of Schedule 1ZA to make to the Treasury, and
   (b) in relation to the PRA, every report which it is required by paragraph 19 of Schedule 1ZB to make to the Treasury.

(5) In this section “auditor” means an auditor appointed under or as a result of a statutory provision.

Textual Amendments

F2050 Ss. 339B, 339C inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 134(2), 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

339C PRA-authorised persons to which this section applies

(1) This section applies to a PRA-authorised person which—
   (a) is a UK institution,
(b) meets condition A or B,
(c) is not an insurer or a credit union, and
(d) is, in the opinion of the PRA, important to the stability of the UK financial system.

(2) Condition A is that the person has permission under Part 4A to carry on the regulated activity of accepting deposits.

(3) Condition B is that—
(a) the person is an investment firm that has permission under Part 4A to carry on the regulated activity of dealing in investments as principal, and
(b) when carried on by the person, that activity is a PRA-regulated activity.

(4) In this section—
(a) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom;
(b) “insurer” means an institution which is authorised under this Act to carry on the regulated activity of effecting or carrying out contracts of insurance as principal;
(c) “credit union” means a credit union as defined by section 31 of the Credit Unions Act 1979 or a credit union as defined by Article 2(2) of the Credit Unions (Northern Ireland) Order 1985.

(5) Subsections (2), (3) and (4)(b) are to be read in accordance with Schedule 2, taken together with any order under section 22.]

Textual Amendments
F2050 Ss. 339B, 339C inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 134(2), 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

Appointment

340 Appointment.

(1) [F2051 The appropriate regulator may make rules requiring] an authorised person, or an authorised person falling within a specified class—
(a) to appoint an auditor, or
(b) to appoint an actuary,
if he is not already under an obligation to do so imposed by another enactment.

(2) [F2052 The appropriate regulator may make rules requiring] an authorised person, or an authorised person falling within a specified class—
(a) to produce periodic financial reports; and
(b) to have them reported on by an auditor or an actuary.

[F2053 (3A) The PRA—
(a) must make rules imposing on auditors of PRA-authorised persons such duties as may be specified in relation to co-operation with the PRA in connection with the supervision by the PRA of PRA-authorised persons, and
(b) may make rules—]
(i) imposing such other duties on auditors of PRA-authorised persons as may be specified, and
(ii) imposing such duties on actuaries acting for PRA-authorised persons as may be specified.

(3B) The FCA may make rules imposing on auditors of, or actuaries acting for, authorised persons such duties as may be specified.

(4) Rules under subsection (1) may make provision—
(a) specifying the manner in which and time within which an auditor or actuary is to be appointed;
(b) requiring the [F2054] regulator making the rules to be notified of an appointment;
(c) enabling the [F2054] regulator making the rules to make an appointment if no appointment has been made or notified;
(d) as to remuneration;
(e) as to the term of office, removal and resignation of an auditor or actuary.

(5) An auditor or actuary appointed as a result of rules under subsection (1), or on whom duties are imposed by rules under subsection [F2055]—
(a) must act in accordance with such provision as may be made by rules; and
(b) is to have such powers in connection with the discharge of his functions as may be provided by rules.

[F2056](5A) In subsections (1) and (2) “the appropriate regulator” means—
(a) in the case of a PRA-authorised person, the PRA;
(b) in any other case, the FCA.

(6) In subsections (1) to [F2057] “auditor” or “actuary” means an auditor, or actuary, who satisfies such requirements as to qualifications, experience and other matters (if any) as may be specified.

(7) “Specified” means specified in rules.

[F2058](8) The powers conferred by this section enable only the making of such rules as appear to the regulator making them to be necessary or expedient—
(a) in the case of the FCA, for the purpose of advancing one or more of its operational objectives, or
(b) in the case of the PRA, for the purpose of advancing any of its objectives.

Textual Amendments

F2051 Words in s. 340(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 13 para. 3(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2052 Words in s. 340(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 13 para. 3(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2053 S. 340(3A)(3B) substituted for s. 340(3) (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 13 para. 3(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2054 Words in s. 340(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 13 para. 3(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2055 Words in s. 340(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 13 para. 3(6) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2056 S. 340(5A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 13 para. 3(7) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
Access to books etc.

(1) An appointed auditor of, or an appointed actuary acting for, an authorised person—
   (a) has a right of access at all times to the authorised person’s books, accounts and vouchers; and
   (b) is entitled to require from the authorised person’s officers such information and explanations as he reasonably considers necessary for the performance of his duties as auditor or actuary.

(2) “Appointed” means appointed under or as a result of this Act.

Information given by auditor or actuary to a regulator.

(1) This section applies to a person who is, or has been, an auditor of an authorised person or recognised investment exchange, appointed under or as a result of a statutory provision.

(2) This section also applies to a person who is, or has been, an actuary acting for an authorised person and appointed under or as a result of a statutory provision.

(3) An auditor or actuary does not contravene any duty to which he is subject merely because he gives to—
   (a) information on a matter of which he has, or had, become aware in his capacity as auditor of, or actuary acting for, the authorised person or recognised investment exchange, or
   (b) his opinion on such a matter,
   if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of that regulator.

(4) Subsection (3) applies whether or not the auditor or actuary is responding to a request from the regulator.

(5) The Treasury may make regulations prescribing circumstances in which an auditor or actuary must communicate matters to a regulator as mentioned in subsection (3).

(6) It is the duty of an auditor or actuary to whom any such regulations apply to communicate a matter to a regulator in the circumstances prescribed by the regulations.
(6A) If the authorised person concerned is a credit institution or an investment firm, and an auditor or actuary communicates a matter to a regulator in accordance with the regulations, the matter must be disclosed simultaneously to the management body of the authorised person, unless there are compelling reasons not to do so.

(7) The matters to be communicated to a regulator in accordance with the regulations may include matters relating to persons other than the authorised person or recognised investment exchange concerned.

(8) In subsection (6A) “credit institution” and “investment firm” have the same meaning as in Article 4(1) of the capital requirements regulation.
343 Information given by auditor or actuary to [F2069 a regulator]: persons with close
links.

(1) This section applies to a person who—

(a) is, or has been, an auditor of an authorised person [F2070 or recognised
investment exchange,] appointed under or as a result of a statutory provision; and

(b) is, or has been, an auditor of a person (“CL”) who has close links with the
authorised person [F2071 or recognised investment exchange].

(2) This section also applies to a person who—

(a) is, or has been, an actuary acting for an authorised person and appointed under
or as a result of a statutory provision; and

(b) is, or has been, an actuary acting for a person (“CL”) who has close links with
the authorised person.

(3) An auditor or actuary does not contravene any duty to which he is subject merely
because he gives to [F2072 a regulator]—

(a) information on a matter concerning the authorised person [F2073 or recognised
investment exchange] of which he has, or had, become aware in his capacity
as auditor of, or actuary acting for, CL, or

(b) his opinion on such a matter,

if he is acting in good faith and he reasonably believes that the information or opinion
is relevant to any functions of [F2074 that regulator].

(4) Subsection (3) applies whether or not the auditor or actuary is responding to a request
from the [F2075 regulator].

(5) The Treasury may make regulations prescribing circumstances in which an auditor or
actuary must communicate matters to [F2076 a regulator] as mentioned in subsection (3).

(6) It is the duty of an auditor or actuary to whom any such regulations apply to
communicate a matter to [F2076 a regulator] in the circumstances prescribed by the
regulations.

[F2077 (6A) If the authorised person concerned is a credit institution or an investment firm, and
an auditor or actuary communicates a matter to a regulator in accordance with the
regulations, the matter must be disclosed simultaneously to the management body of
the authorised person, unless there are compelling reasons not to do so.]

(7) The matters to be communicated to [F2076 a regulator] in accordance with the regulations
may include matters relating to persons other than the authorised person [F2078 or
recognised investment exchange] concerned.

(8) CL has close links with the authorised person [F2079 or recognised investment exchange]
concerned (“A”) if CL is—

(a) a parent undertaking of A;

(b) a subsidiary undertaking of A;

(c) a parent undertaking of a subsidiary undertaking of A; or

(d) a subsidiary undertaking of a parent undertaking of A.

(9) “Subsidiary undertaking” includes all the instances mentioned in Article 1(1) and (2)
of the Seventh Company Law Directive in which an entity may be a subsidiary of an
undertaking.
344 Duty of auditor or actuary resigning etc. to give notice.

(1) This section applies to an auditor or actuary to whom section 342 applies.

(2) He must without delay notify the [F2081] appropriate regulator if he—
(a) is removed from office by an authorised person \[F2082\] or recognised investment exchange; 
(b) resigns before the expiry of his term of office with such a person; or 
(c) is not re-appointed by such a person.

(3) If he ceases to be an auditor of, or actuary acting for, such a person, he must without delay notify the \[F2083\] appropriate regulator—
(a) of any matter connected with his so ceasing which he thinks ought to be drawn to the \[F2083\] regulator's attention; or
(b) that there is no such matter.

\[F2084\] (4) In this section “the appropriate regulator” means—
(a) in the case of an auditor of, or an actuary acting for, a PRA-authorised person, the PRA; 
(b) in any other case, the FCA.

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**Textual Amendments**

\[F2081\] Words in s. 344 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 13 para. 6(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

\[F2082\] Words in s. 344(2)(a) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 13 para. 6(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

\[F2083\] Word in s. 344(3)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 13 para. 6(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

\[F2084\] S. 344(4) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 13 para. 6(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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

C782 Ss. 341-346 applied (with modifications) (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(6), Sch. 6 para. 7 (with reg. 3)

C789 Ss. 341-346 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, Sch. 5 para. 4 (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 155(6)(d) (with Sch. 2 para. 156))

C790 S. 344 applied (with modifications) (3.1.2018) by The Data Reporting Services Regulations 2017 (S.I. 2017/699), regs. 1(2)(b), 34


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\[F2085\] **Disciplinary measures**

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**Textual Amendments**

\[F2085\] Ss. 345-345E and cross-heading substituted for s. 345 (24.1.2013 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. 13 para. 7(1) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
Disciplinary measures: FCA

(1) Subsection (2) applies if it appears to the FCA that an auditor or actuary to whom section 342 applies—
   (a) has failed to comply with a duty imposed on the auditor or actuary by rules made by the FCA, or
   (b) has failed to comply with a duty imposed under this Act to communicate information to the FCA.

(2) The FCA may do one or more of the following—
   (a) disqualify the auditor or actuary from being the auditor of, or (as the case may be) from acting as an actuary for, any authorised person or any particular class of authorised person;
   (b) disqualify the auditor from being the auditor of any recognised investment exchange or any particular class of recognised investment exchange;
   (c) publish a statement to the effect that it appears to the FCA that the auditor or (as the case may be) actuary has failed to comply with the duty;
   (d) impose on the auditor or actuary a penalty, payable to the FCA, of such amount as the FCA considers appropriate.

(3) If an auditor or actuary has been disqualified by the PRA under section 345A(4)(a), the FCA may disqualify the auditor or actuary, so long as the disqualification under that provision remains in force, from being the auditor of, or (as the case may be) from acting as an actuary for—
   (a) any FCA-authorised person,
   (b) any particular class of FCA-authorised person,
   (c) any recognised investment exchange, or
   (d) any particular class of recognised investment exchange.

(4) In subsection (3) “FCA-authorised person” means an authorised person who is not a PRA-authorised person.

(5) Where under subsection (2) or (3) the FCA disqualifies a person from being the auditor of an authorised person or recognised investment exchange or class of authorised person or recognised investment exchange and that authorised person or recognised investment exchange is also, or any person within that class is also, a recognised clearing house [F2086 or a recognised CSD], the FCA must—
   (a) notify the Bank of England, and
   (b) notify the disqualified person that it has made a notification under paragraph (a).

(6) The FCA may remove any disqualification imposed under paragraph (a) or (b) of subsection (2) if satisfied that the disqualified person will in future comply with the duty in question.

(7) The FCA may at any time remove any disqualification imposed under subsection (3).

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Textual Amendments

F2086 Words in s. 345(5) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(35) (with reg. 7(4), 9(1))
345A Disciplinary measures: PRA

(1) The following provisions of this section have effect only if the Treasury, by order made after consultation with the PRA, so provide.

(2) Subsection (3) applies if it appears to the PRA that an auditor or actuary to whom section 342 applies—
   (a) has failed to comply with a duty imposed on the auditor or actuary by rules made by the PRA, or
   (b) has failed to comply with a duty imposed under this Act to communicate information to the PRA.

(3) The PRA may exercise one or more of the specified powers.

(4) The specified powers are such one or more of the following as may be specified in the order under subsection (1)—
   (a) to disqualify the auditor or actuary from being the auditor of, or (as the case may be) from acting as an actuary for, any PRA-authorised person or any particular class of PRA-authorised person;
   (b) to publish a statement to the effect that it appears to the PRA that the auditor or (as the case may be) actuary has failed to comply with the duty;
   (c) to impose on the auditor or actuary a penalty, payable to the PRA, of such amount as the PRA considers appropriate.

(5) Where the PRA disqualifies a person under subsection (4)(a) it must—
   (a) notify the FCA, and
   (b) notify the person concerned that it has made a notification under paragraph (a).

(6) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(7) The PRA may remove any disqualification imposed under subsection (4)(a) if satisfied that the disqualified person will in future comply with the duty in question.
345B Procedure and right to refer to Tribunal

(1) If the FCA proposes to act under section 345(2) or the PRA proposes to act under section 345A(3), it must give the auditor or actuary to whom the action would relate 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 FCA decides to act under section 345(2) or the PRA decides to act under section 345A(3), it must give the auditor or actuary to whom the action would relate 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 FCA decides to act under section 345(2) or the PRA decides to act under section 345A(3), the auditor or actuary concerned may refer the matter to the Tribunal.

345C Duty on publication of statement

After a statement under section 345(2)(c) or 345A(4)(b) is published, the regulator that published it must send a copy of the statement to—

(a) the auditor or actuary, and
(b) any person to whom a copy of the decision notice was given under section 393(4).

345D Imposition of penalties on auditors or actuaries: statement of policy

(1) The FCA must prepare and issue a statement of its policy with respect to—

(a) the imposition of penalties under section 345(2)(d), and
(b) the amount of penalties under that provision.

(2) If by virtue of an order under section 345A(1), the PRA has power to impose penalties under section 345A(4)(c), the PRA must prepare and issue a statement of its policy with respect to—

(a) the imposition of penalties under section 345A(4)(c), and

Modifications etc. (not altering text)

C782 Ss. 341-346 applied (with modifications) (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(6), Sch. 6 para. 7 (with reg. 3)
(b) the amount of penalties under that provision.

(3) 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, and
   (b) the extent to which the contravention was deliberate or reckless.

(4) A regulator may at any time alter or replace a statement issued under this section.

(5) If a statement issued under this section is altered or replaced, the regulator must issue the altered or replacement statement.

(6) A regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(7) A statement issued under this section must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(8) In deciding whether to exercise a power under section 345(2)(d) in the case of any particular contravention, the FCA must have regard to any statement of policy published by it under this section and in force at a time when the contravention occurred.

(9) In deciding whether to exercise a power under section 345A(4)(c) in the case of any particular contravention, the PRA must have regard to any statement of policy published by it under this section and in force at a time when the contravention occurred.

(10) A regulator may charge a reasonable fee for providing a person with a copy of the statement.

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**345E Statements of policy: procedure**

(1) Before a regulator issues a statement under section 345D, the regulator must publish a draft of the proposed statement in the way appearing to the 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 regulator within a specified time.

(3) Before issuing the proposed statement, the regulator must have regard to any representations made to it in accordance with subsection (2).

(4) If the 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.

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

C782 Ss. 341-346 applied (with modifications) (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(6), Sch. 6 para. 7 (with reg. 3)
(5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with subsection (4)) publish details of the difference.

(6) A regulator may charge a reasonable fee for providing a person with a copy of a draft under subsection (1).

(7) This section also applies to a proposal to alter or replace a statement.

**Offence**

**346 Provision of false or misleading information to auditor or actuary.**

(1) An authorised person who knowingly or recklessly gives an appointed auditor or actuary information which is false or misleading in a material particular is guilty of an offence and liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(2) Subsection (1) applies equally to an officer, controller or manager of an authorised person.

(3) “Appointed” means appointed under or as a result of this Act.

**PART XXIII**

**PUBLIC RECORD, DISCLOSURE OF INFORMATION AND CO-OPERATION**

**The public record**

**347 The record of authorised persons etc.**

(1) The [F2888FCA] must maintain a record of every—
(a) person who appears to the F2088FCA to be an authorised person;
(b) authorised unit trust scheme;
F2096
(ba) authorised contractual scheme;
(c) authorised open-ended investment company;
(d) recognised scheme;
(e) recognised investment exchange;
F2091
(f) ..................................................
(g) individual to whom a prohibition order relates;
(h) approved person; F2092 ...
F2093
(ha) person to whom subsection (2A) applies; F2094 ...
F2095
(hb) appointed representative to whom subsection (2B) applies;
F2096
(hc) appointed representative to whom subsection (2C) applies; and
(i) person falling within such other class (if any) as the F2088FCA may determine.

(2) The record must include such information as the F2088FCA considers appropriate and at
least the following information—
(a) in the case of a person appearing to the F2088FCA to be an authorised person—
   (i) information as to the services which he holds himself out as able to
   provide; and
   (ii) any address of which the F2088FCA is aware at which a notice or other
document may be served on him;
(b) in the case of an authorised unit trust scheme, the name and address of the
   manager and trustee of the scheme;
F2097
(ba) in the case of an authorised contractual scheme, the name and address of the
   operator and depositary of the scheme;
(c) in the case of an authorised open-ended investment company, the name and
   address of—
   (i) the company;
   (ii) if it has only one director, the director; and
   (iii) its depositary (if any);
(d) in the case of a recognised scheme, the name and address of—
   (i) the operator of the scheme; and
   (ii) any representative of the operator in the United Kingdom;
(e) in the case of a recognised investment exchange F2098 . . . the name and address
   of the exchange F2099 . . . ;
(f) in the case of an individual to whom a prohibition order relates—
   (i) his name; and
   (ii) details of the effect of the order;
(g) in the case of a person who is an approved person—
   (i) his name;
   (ii) the name of the F2100authorised person concerned;
   (iii) if the approved person is performing a controlled function under
   an arrangement with a contractor of the F2101authorised person
   concerned, the name of the contractor.
F2102
(iv) in a case where the authorised person concerned is a relevant
    authorised person, whether or not the person is a senior manager;]
(h) in the case of an approved person who is a senior manager in relation to an authorised person—
   (i) whether a final notice has been given to the person under section 390; and
   (ii) if so, any information about the matter to which the notice relates which has been published under section 391(4).

(i) in the case of a mortgage intermediary—
   (i) the names of the persons within the management who are responsible for the activities specified by article 25A (arranging regulated mortgage contracts), article 36A (credit broking), article 53A (advising on regulated mortgage contracts) and article 53DA (advising on regulated credit agreements the purpose of which is to acquire land) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; and
   (ii) whether the mortgage intermediary is a tied mortgage intermediary or not;

(j) in the case of an appointed representative to whom subsection (2B) applies, the name of the mortgage intermediary on whose behalf the appointed representative acts;

This subsection applies to—

(a) an appointed representative to whom subsection (1A) of section 39 applies for whom the applicable register (as defined by subsection (1B) of that section) is the record maintained by virtue of subsection (1)(ha) above;

(b) a person mentioned in subsection (1)(a) of section 39A if—
   (i) the contract with an authorised person to which he is party complies with the applicable requirements (as defined by subsection (7) of that section), and
   (ii) the authorised person has accepted responsibility in writing for the person's activities in carrying on investment services business (as defined by subsection (8) of that section); and

(c) any person not falling within paragraph (a) or (b) in respect of whom the FCA considers that a record must be maintained for the purpose of securing compliance with Article 29.3 of the markets in financial instruments directive (registration of tied agents).

This subsection applies to an appointed representative to whom section 39(1BA) applies or to whom that subsection would apply if the requirements of section 39(1BB) were not met.

This subsection applies to an appointed representative of an authorised person who has a Part 4A permission by virtue of regulation 4 or 7 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XXXX).

(3) If it appears to the FCA that a person in respect of whom there is an entry in the record as a result of one of the paragraphs of subsection (1) has ceased to be a person to whom that paragraph applies, the FCA may remove the entry from the record.

But if a person ceases to be a person to whom one of the paragraphs of subsection (1) applies as a result of—
(a) a cancellation of that person’s Part 4A permission under section 55J(6) because one or more of the conditions in 55K(1)(b) to (d) was met; or
(b) a cancellation of that person’s Part 4A permission to carry on regulated activities as an exempt investment firm under section 55J(1) to (3) because—
   (i) the person has contravened a requirement imposed on that person by or under the Act for the purposes of Article 3.2(a) of the markets in financial instruments directive; and
   (ii) one or more of the conditions mentioned in Article 8(b) to (d) of the directive was met;

the power conferred by subsection (3) is not exercisable for a period of five years from the date on which the person ceased to be a person to whom subsection (1) applied.

(3B) Where the power conferred by subsection (3) is not exercisable in respect of an entry in the record as a result of subsection (3A) the FCA must—
   (a) make a note in the record that it considers the person to whom the entry relates has ceased to be person to whom one of the paragraphs of subsection (1) applies as a result of a cancellation of that person’s Part 4A permission for a reason mentioned in subsection (3A)(a) or (b); and
   (b) state why it considers that is the case.

(4) But if the FCA decides not to remove the entry, it must—
   (a) make a note to that effect in the record; and
   (b) state why it considers that the person has ceased to be a person to whom that paragraph applies in any case where it has not already done so under subsection (3B).

(4A) If the FCA cancels or varies the Part 4A permission of a mortgage intermediary and as a result the person to whom the entry relates no longer has a Part 4A permission to carry on a relevant mortgage activity within the meaning of section 55J(6C), the FCA must delete mention of such permission from the record without undue delay.

(5) The FCA must—
   (a) make the record available for inspection by members of the public in a legible form at such times and in such place or places as the FCA may determine; and
   (b) provide a certified copy of the record, or any part of it, to any person who asks for it—
      (i) on payment of the fee (if any) fixed by the FCA; and
      (ii) in a form (either written or electronic) in which it is legible to the person asking for it.

(6) The FCA may—
   (a) publish the record, or any part of it;
   (b) exploit commercially the information contained in the record, or any part of that information.

(7) “Authorised unit trust scheme”, “authorised contractual scheme”, “authorised open-ended investment company” and “recognised scheme” have the same meaning as in Part XVII, and associated expressions are to be read accordingly.

(8) “Approved person” means a person in relation to whom the FCA or the PRA has given its approval under section 59 and “controlled function” and “arrangement” have the same meaning as in that section.
In this section—

(a) an investment firm; and
(b) has a Part 4A permission;

but to whom Title II of the markets in financial instruments directive does not apply by virtue of Article 3 of the directive..

“relevant authorised person” has the same meaning as in Part 5 (see section 71A),

“senior manager”, in relation to an authorised person, means a person who has approval under section 59 to perform a designated senior management function in relation to the carrying on by the authorised person of a regulated activity, and

“designated senior management function” has the meaning given by section 59ZB.

The authorised person concerned”, in relation to an approved person, means the person on whose application approval was given.

Textual Amendments

F2088 Word in s. 347(1)-(6) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 16(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.


F2090 S. 347(1)(ba) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, 3(16)(a) (with reg. 24)

F2091 S. 347(1)(f) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 16(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2092 Word in s. 347(1) omitted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by virtue of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(5), Sch. 5 para. 12(a)

F2093 S. 347(1)(ha) 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(5), Sch. 5 para. 12(b)


F2097 S. 347(2)(ba) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, 3(16)(b) (with reg. 24)

F2098 Words in s. 347(2)(e) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 16(4)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2099 Words in s. 347(2)(e) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 16(4)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2100 Words in s. 347(2)(g)(ii) substituted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 11; S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F2101 Words in s. 347(2)(g)(iii) substituted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 11; S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F2102 S. 347(2)(g)(iv) inserted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 34(2)(a), 148(5); S.I. 2015/490, art. 2(1)(c) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F2103 Words in s. 347(2)(g)(iv) omitted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by virtue of Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 19(2)(a); S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)

F2104 S. 347(2)(h) inserted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 34(2)(b), 148(5); S.I. 2015/490, art. 2(1)(c) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F2105 Word in s. 347(2)(h) substituted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 19(2)(b); S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)


F2107 S. 347(2A) 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(5), Sch. 5 para. 12(c)


F2110 S. 347(2B) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), Sch. 1 para. 1(7)(c) (with Pt. 4)


Activities) (Amendment) Order 2006 (S.I. 2006/1969) arts. 1(2)(b), 5, {Sch. para. 9}

Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004, (Sch. para. 10


148(5); S.I. 2015/490, art. 2(1)(c) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))


F2121 Words in s. 347(8A) omitted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by virtue of Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 19(3)(a); S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)

F2120 Word in s. 347(8A) substituted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 19(3)(b); S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)

F2121 Words in s. 347(8A) substituted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 19(3)(c); S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)

F2122S. 347(9) substituted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 34(4), 148(5); S.I. 2015/490, art. 2(1)(c) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

Modifications etc. (not altering text)
C794 S. 347 excluded by S.I. 2013/1881, art. 56(2E) (as inserted 17.3.2016 for specified purposes, 20.3.2016 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 (S.I. 2016/392), arts. 1(2)(3)(b), 7(2) (with Pt. 5)

Commencement Information
Duty of PRA to disclose information relevant to the record

(1) The PRA must, for the purpose of assisting the FCA to comply with its duty under section 347—
   (a) notify the FCA if the information included in the record as required under section 347(2)(a) appears to the PRA to be incomplete or inaccurate,
   (b) if it makes a prohibition order relating to an individual, provide the FCA with information falling within section 347(2)(f) in relation to that order,
   (c) where it is the appropriate regulator in relation to an approved person, provide the FCA with information falling within section 347(2)(g) in relation to that approved person, and
   (d) where the FCA has notified the PRA that it considers it appropriate to include in the record information of a certain description, disclose to the FCA such information of that description as the PRA has in its possession.

(2) The duty to provide information under this section does not apply to information which the PRA reasonably believes is in the possession of the FCA.

(3) Subsection (1) does not require or authorise the disclosure of information whose disclosure is prohibited by or under section 348.

(4) This section is without prejudice to any other power to disclose information.

(5) In this section references to the “record” are to the record maintained under section 347.

Textual Amendments

F2123 S. 347A inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 17 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Disclosure of information

348 Restrictions on disclosure of confidential information by [F2124 FCA, PRA] etc.

(1) Confidential information must not be disclosed by a primary recipient, or by any person obtaining the information directly or indirectly from a primary recipient, without the consent of—
   (a) the person from whom the primary recipient obtained the information; and
   (b) if different, the person to whom it relates.

(2) In this Part “confidential information” means information which—
   (a) relates to the business or other affairs of any person;
   (b) was received by the primary recipient for the purposes of, or in the discharge of, any functions of the [F2125 FCA, the PRA]... or the Secretary of State under any provision made by or under this Act; and
   (c) is not prevented from being confidential information by subsection (4).

(3) It is immaterial for the purposes of subsection (2) whether or not the information was received—
   (a) by virtue of a requirement to provide it imposed by or under this Act;
   (b) for other purposes as well as purposes mentioned in that subsection.
(4) Information is not confidential information if—
   (a) it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section; or
   (b) it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.

(5) Each of the following is a primary recipient for the purposes of this Part—
   (a) the FCA;
   (aa) the Bank of England;
   (b) the Secretary of State;
   (zd) a person appointed to act as a temporary manager by the FCA or the PRA under section 71C;
   (d) a person appointed to collect or update information under section 166A or to make a report under section 166;
   (e) any person who is or has been employed by a person mentioned in paragraphs (a) to (c);
   (ea) a person who is or has been engaged to provide services to a person mentioned in those paragraphs;
   (f) any auditor or expert instructed by a person mentioned in those paragraphs.

(6) In subsection (5)(f) “expert” includes—
   (a) a competent person appointed by the FCA under section 97;
   (b) a competent person appointed by the FCA, the PRA or the Secretary of State to conduct an investigation under Part XI;

(7) Nothing in this section applies to information received by a primary recipient for the purposes of, or in the discharge of, any functions of the FCA under the Competition Act 1998 or the Enterprise Act 2002 by virtue of Part 16A of this Act.

(For provision about the disclosure of such information, see Part 9 of the Enterprise Act 2002.)

(8) In this section references to the Bank of England include the Bank acting in its capacity as the PRA.

Textual Amendments

F2124 Words in s. 348 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 18(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2125 Words in s. 348(2)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 18(2)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2126 Words in s. 348(2)(b) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 18(2)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2127 S. 348(5)(a)(aa) substituted for s. 348(5)(a) (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 18(3)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2128 Words in s. 348(5)(aa) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 45(2) (with Sch. 3); S.I. 2017/43, reg. 2(g)
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<td>1.12.2001</td>
<td>S. 348 extended</td>
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<td>2.12.2001</td>
<td>S. 348(6)(d) inserted</td>
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<td>1.4.2013</td>
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<td>Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18(9)(c) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
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<td>1.4.2013</td>
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<td>1.4.2013</td>
<td>Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18(9)(e) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
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<td>1.4.2013</td>
<td>Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18(9)(f) (with Sch. 20); S.I. 2013/423, art. 3, Sch.</td>
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</table>
exceptions from section 348.

(1) Section 348 does not prevent a disclosure of confidential information which is—

(a) made for the purpose of facilitating the carrying out of a public function; and

(b) permitted by regulations made by the Treasury under this section.
(2) The regulations may, in particular, make provision permitting the disclosure of confidential information or of confidential information of a prescribed kind—
   (a) by prescribed recipients, or recipients of a prescribed description, to any person for the purpose of enabling or assisting the recipient to discharge prescribed public functions;
   (b) by prescribed recipients, or recipients of a prescribed description, to prescribed persons, or persons of prescribed descriptions, for the purpose of enabling or assisting those persons to discharge prescribed public functions;
   (c) by the [F2139FCA or the PRA] to the Treasury or the Secretary of State for any purpose;
   (d) by any recipient if the disclosure is with a view to or in connection with prescribed proceedings.

(3) The regulations may also include provision—
   (a) making any permission to disclose confidential information subject to conditions (which may relate to the obtaining of consents or any other matter);
   (b) restricting the uses to which confidential information disclosed under the regulations may be put.

[F2140(3A) Section 348 does not apply to—
   (a) the disclosure by a recipient to which subsection (3B) applies of confidential information disclosed to it by the [F2141FCA or the PRA] in reliance on subsection (1);
   (b) the disclosure of such information by a person obtaining it directly or indirectly from a recipient to which subsection (3B) applies.

(3B) This subsection applies to—
   (a) the Panel on Takeovers and Mergers;
   (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
   (c) any other person or body that exercises public functions, under legislation in an EEA State other than the United Kingdom, that are similar to the [F2142functions of the FCA or the PRA] or those of the Panel on Takeovers and Mergers.]

(4) In relation to confidential information, each of the following is a “recipient”—
   (a) a primary recipient;
   (b) a person obtaining the information directly or indirectly from a primary recipient.

(5) “Public functions” includes—
   (a) functions conferred by or in accordance with any provision contained in any enactment or subordinate legislation;
   (b) functions conferred by or in accordance with any provision contained in the [F2143EU] Treaties or any [F2143EU] instrument;
   (c) similar functions conferred on persons by or under provisions having effect as part of the law of a country or territory outside the United Kingdom;
   (d) functions exercisable in relation to prescribed disciplinary proceedings.

(6) “Enactment” includes—
   (a) an Act of the Scottish Parliament;
Northern Ireland legislation.

(7) “Subordinate legislation” has the meaning given in the Interpretation Act 1978 and also includes an instrument made under an Act of the Scottish Parliament or under Northern Ireland legislation.

(8) F2144..............................
S. 349 applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 43
S. 349 applied (with modifications) (2.3.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(a), 95, Sch. 5 para. 5 (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 155(6)(e) (with Sch. 2 para. 156))
S. 349 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, Sch. para. 4
S. 349 applied (with modifications) (15.1.2013) by The Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (S.I. 2012/3122), reg. 1, Sch. para. 4 (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 248(6)(ii)(m))
S. 349 applied (with modifications) (E.W.) (9.7.2013) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (S.I. 2013/1635), regs. 1, 11(1)
S. 349 applied (with modifications) by 2009 c. 1, s. 89L (as inserted (1.1.2015) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 196(5)(f))
S. 349 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, Sch. para. 4
S. 349 applied (with modifications) (15.1.2013) by The Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (S.I. 2012/3122), reg. 1, Sch. para. 4 (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 248(6)(ii)(m))
S. 349 applied (with modifications) (E.W.) (9.7.2013) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (S.I. 2013/1635), regs. 1, 11(1)
S. 349 applied (with modifications) by 2009 c. 1, s. 89L (as inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 103)
S. 349 applied (with modifications) by S.I. 2004/1045, reg. 18(5) (as inserted (10.1.2015) by The Bank Recovery and Resolution (No. 2) Order 2014 (S.I. 2014/3348), art. 1(2), Sch. 3 para. 105(c))
S. 349 applied (with modifications) by S.I. 2004/1045, reg. 38(8) (as added (10.1.2015) by The Bank Recovery and Resolution (No. 2) Order 2014 (S.I. 2014/3348), art. 1(2), Sch. 3 para. 105(c))
S. 349 applied (with modifications) (18.9.2016) by The Payment Accounts Regulations 2015 (S.I. 2015/2038), reg. 1(2)(b), Sch. 7 para. 3
S. 349 applied (with modifications) (3.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Data Reporting Services Regulations 2017 (S.I. 2017/699), regs. 1(2)(a)(b), 35
S. 349 applied (with modifications) (13.10.2017) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(3)(c), Sch. 6 para. 8 (with reg. 3)
S. 349 applied (with modifications) (27.2.2018) by The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/1288), reg. 1, Sch. 1 para. 5 (with Sch. 1 paras. 13, 14)

Commencement Information
183 S. 349 wholly in force at 18.6.2001; s. 349 not in force at Royal Assent see s. 431(2); s. 349 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pt. 2; s. 349 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.

Marginal Citations
M33 1978 c. 30.
Disclosure of information by the Inland Revenue.

(1) No obligation as to secrecy imposed by statute or otherwise prevents the disclosure of Revenue information to—

(a) the FCA or the PRA, if the disclosure is made for the purpose of assisting or enabling that regulator to discharge its functions under this or any other Act, or
(b) the Secretary of State, if the disclosure is made for the purpose of assisting in the investigation of a matter under section 168 or with a view to the appointment of an investigator under that section.

(2) A disclosure may only be made under subsection (1) by or under the authority of the Commissioners of Inland Revenue.

(3) Section 348 does not apply to Revenue information.

(4) Information obtained as a result of subsection (1)(b) may not be used except—

(a) for the purpose of deciding whether to appoint an investigator under section 168;
(b) in the conduct of an investigation under section 168;
(c) in criminal proceedings brought against a person under this Act or the Criminal Justice Act 1993 as a result of an investigation under section 168;
(d) for the purpose of taking action under this Act against a person as a result of an investigation under section 168;
(e) in proceedings before the Tribunal as a result of action taken as mentioned in paragraph (d).

(5) Information obtained as a result of subsection (1) may not be disclosed except—

(a) by or under the authority of the Commissioners of Inland Revenue;
(b) in proceedings mentioned in subsection (4)(c) or (e) or with a view to their institution.

(6) Subsection (5) does not prevent the disclosure of information obtained as a result of subsection (1) to a person to whom it could have been disclosed under subsection (1).

(7) “Revenue information” means information held by a person which it would be an offence under section 182 of the Finance Act 1989 for him to disclose.


717


S. 350 restricted (7.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), ss. 17(6), 53(1), Sch. 2 Pt. 2 para. 18 (with s. 22); S.I. 2005/1126, art. 2(1)

Commencement Information

S. 350 wholly in force 3.9.2001; s. 350 not in force at Royal Assent see s. 431(2); s. 350(3)(7) in force at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 350 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2

Marginal Citations

M34 1993 c. 36.

351 Competition information.

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Textual Amendments

F2147 S. 351 omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 21 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

351 Disclosure under the UCITS directive

(1) This section applies in relation to a disclosure made by a person who falls within subsection (2) for the purpose of compliance with requirements set out in rules made by [F2149the FCA or the PRA] to implement Chapter VIII of the UCITS directive.

(2) The following persons fall within this subsection—

(a) the auditor of an authorised unit trust scheme [F2150or authorised contractual scheme] that is a master UCITS;

(b) the trustee of an authorised unit trust scheme that is a master UCITS;

(c) the auditor of an authorised unit trust scheme [F2152or authorised contractual scheme] that is a feeder UCITS;

(d) the trustee of an authorised unit trust scheme that is a feeder UCITS; [F2153...]

(e) a person acting on behalf of a person within any of paragraphs (a) to (da)]

(3) A disclosure to which this section applies is not to be taken as a contravention of any duty to which the person making the disclosure is subject.

(4) In this section, “authorised unit trust scheme”, [F2156“authorised contractual scheme”], “master UCITS” and “feeder UCITS” have the meaning given in section 237.]
352 Offences.

(1) A person who discloses information in contravention of section 348 or 350(5) is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable—
   (a) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both;
   (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(3) A person is guilty of an offence if, in contravention of any provision of regulations made under section 349, he uses information which has been disclosed to him in accordance with the regulations.

(4) A person is guilty of an offence if, in contravention of subsection (4) of section 350, he uses information which has been disclosed to him in accordance with that section.

(5) A person guilty of an offence under subsection (3) or (4) is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.

(6) In proceedings for an offence under this section it is a defence for the accused to prove—
   (a) that he did not know and had no reason to suspect that the information was confidential information or that it had been disclosed in accordance with section 350;
   (b) that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.
Modifications etc. (not altering text)

C856 S. 352 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, s. 53A (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 152); S.I. 2001/3538, art. 2(1)


S. 352 extended (1.12.2001) by S.I. 2001/3648, arts. 1, 3(2)

C857 S. 352 applied (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), regs. 16(2), 50(3) (with reg. 3)

C858 S. 352 modified (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), reg. 50(4) (with reg. 3)

C859 S. 352 applied (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), reg. 16(2)(3) (with reg. 3)

C860 S. 352 applied (with modifications) (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), reg. 50(3)-(6) (with reg. 3)

C861 S. 352 applied (with modifications) (5.5.2004) by The Credit Institutions (Reorganisation and Winding up) Regulations 2004 (S.I. 2004/1045), regs. 18, 38

C862 S. 352 applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 43

C863 S. 352 applied (2.3.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(a), 95, Sch. 5 para. 5 (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 155(6)(e) (with Sch. 2 para. 156))

C864 S. 352 applied (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, Sch. para. 4

C865 S. 352 applied (9.2.2011 for certain purposes and 30.4.2011 otherwise) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(a)(xiv)(b), 62, Sch. 3 para. 6 (with reg. 3)

C866 S. 352 applied (with modifications) (15.1.2013) by The Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (S.I. 2012/3122), reg. 1, Sch. para. 4 (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 248(b)(i)(mi))

C867 S. 352 applied (with modifications) (E.W.) (9.7.2013) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (S.I. 2013/1635), regs. 1, 11(1)


C869 S. 352 applied (with modifications) by 2009 c. 1, s. 89L (as inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 103)

C870 S. 352 applied (with modifications) by S.I. 2004/1045, reg. 18(5) (as inserted (10.1.2015) by The Bank Recovery and Resolution (No. 2) Order 2014 (S.I. 2014/3348), art. 1(2), Sch. 3 para. 10(5)(e))

C871 S. 352 applied (with modifications) by S.I. 2004/1045, reg. 38(8) (as added (10.1.2015) by The Bank Recovery and Resolution (No. 2) Order 2014 (S.I. 2014/3348), art. 1(2), Sch. 3 para. 10(5)(e))


C873 S. 352 applied (with modifications) (1.1.2016) by The Small and Medium Sized Business (Credit Information) Regulations 2015 (S.I. 2015/1945), regs. 1(2), 25(1)

C874 S. 352 applied (with modifications) (1.1.2016) by The Small and Medium Sized Business (Finance Platforms) Regulations 2015 (S.I. 2015/1946), regs. 1(2), 22(1)

C875 S. 352 applied (with modifications) (18.9.2016) by The Payment Accounts Regulations 2015 (S.I. 2015/2038), reg. 1(2)(b), Sch. 7 para. 3
353 Removal of other restrictions on disclosure.

(1) The Treasury may make regulations permitting the disclosure of any information, or of information of a prescribed kind—

(a) by prescribed persons for the purpose of assisting or enabling them to discharge prescribed functions under this Act or any rules or regulations made under it;

(b) by prescribed persons, or persons of a prescribed description, to the FCA or the PRA for the purpose of assisting or enabling the either of them to discharge prescribed functions.

(2) Regulations under this section may not make any provision in relation to the disclosure of confidential information by primary recipients or by any person obtaining confidential information directly or indirectly from a primary recipient.

(3) If a person discloses any information as permitted by regulations under this section the disclosure is not to be taken as a contravention of any duty to which he is subject.

Textual Amendments

F2157 Words in s. 353(1)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 23(1)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2158 Words in s. 353(1)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 23(1)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2159 S. 353(1)(c) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 10(13)
353A Information received from Bank of England

(1) The FCA must not disclose to any person specially protected information.

(2) “Specially protected information” is information in relation to which the first and second conditions are met.

(3) The first condition is that the FCA received the information from the Bank of England.

(4) The second condition is that the Bank notified the FCA that the Bank held the information for the purpose of its functions with respect to any of the following—

(a) monetary policy;
(b) financial operations intended to support financial institutions for the purposes of maintaining stability;
(c) the provision of private banking services and related services.

(5) The notification referred to in subsection (4) must be—

(a) in writing, and
(b) given before, or at the same time as, the Bank discloses the information.

(6) The prohibition in subsection (1) does not apply—

(a) ...;
(b) where the Bank has consented to disclosure of the information;
(c) to information which has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section;
(d) to information which the FCA is required to disclose in pursuance of any EU obligation.
(7) In this section references to disclosure by or to \(^{F2166}\) the FCA or by the Bank include references to disclosure by or to—

(a) persons who are, or are acting as,—

(i) officers of, or members of the staff of, the \(^{F2167}\) FCA, or

(ii) officers, employees or agents of the Bank, or

(b) auditors, experts, contractors or investigators appointed by the \(^{F2168}\) FCA or the Bank under powers conferred by this Act or otherwise.

(8) References to disclosure by \(^{F2169}\) the FCA do not include references to disclosure between persons who fall within any paragraph of subsection (7)(a) or (b) in relation to \(^{F2170}\) the FCA.

(9) \(^{F2171}\) The FCA must take such steps as are reasonable in the circumstances to prevent the disclosure of specially protected information, in cases not excluded by subsection (6), by those who are or have been—

(a) its officers or members of staff (including persons acting as its officers or members of staff);

(b) auditors, experts, contractors or investigators appointed by the \(^{F2172}\) FCA under powers conferred by this Act or otherwise;

(c) persons to whom the \(^{F2173}\) FCA has delegated any of its functions.

[ In this section references to the Bank of England include the Bank acting in its capacity as the PRA.]

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**Textual Amendments**

- **F2161** Words in s. 353A(1) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 46(2) (with Sch. 3); S.I. 2017/43, reg. 2(g)
- **F2162** Words in s. 353A(3) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 46(3) (with Sch. 3); S.I. 2017/43, reg. 2(g)
- **F2163** Word in s. 353A(4) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 46(4) (with Sch. 3); S.I. 2017/43, reg. 2(g)
- **F2164** S. 353A(6)(a) omitted (1.3.2017) by virtue of Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 46(5)(a) (with Sch. 3); S.I. 2017/43, reg. 2(g)
- **F2165** Word in s. 353A(6)(d) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 46(5)(b) (with Sch. 3); S.I. 2017/43, reg. 2(g)
- **F2166** Words in s. 353A(7) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 46(6)(a) (with Sch. 3); S.I. 2017/43, reg. 2(g)
- **F2167** Word in s. 353A(7)(a)(i) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 46(6)(b) (with Sch. 3); S.I. 2017/43, reg. 2(g)
- **F2168** Word in s. 353A(7)(b) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 46(6)(b) (with Sch. 3); S.I. 2017/43, reg. 2(g)
- **F2169** Words in s. 353A(8) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 46(7)(a) (with Sch. 3); S.I. 2017/43, reg. 2(g)
- **F2170** Words in s. 353A(8) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 46(7)(b) (with Sch. 3); S.I. 2017/43, reg. 2(g)
- **F2171** Words in s. 353A(9) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 46(8)(a) (with Sch. 3); S.I. 2017/43, reg. 2(g)
- **F2172** Word in s. 353A(9)(b) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 46(8)(b) (with Sch. 3); S.I. 2017/43, reg. 2(g)
- **F2173** Word in s. 353A(9)(c) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 46(8)(b) (with Sch. 3); S.I. 2017/43, reg. 2(g)
Co-operation

354 Authority’s duty to co-operate with others.

(1) The FCA must take such steps as it considers appropriate to co-operate with other persons (whether in the United Kingdom or elsewhere) who have functions—
   (a) similar to those of the FCA, or
   (b) in relation to the prevention or detection of financial crime.

(2) The persons referred to in subsection (1) do not include the Bank of England or the PRA (but see sections 3D and 3Q).

(3) The FCA must take such steps as it considers appropriate to co-operate with—
   (a) the Panel on Takeovers and Mergers;
   (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
   (c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the FCA to be similar to those of the Panel on Takeovers and Mergers.

(4) Co-operation may include the sharing of information which the FCA is not prevented from disclosing.

(5) “Financial crime” has the meaning given in section 1H(3).
354B  PRA's duty to co-operate with others

(1) The PRA must take such steps as it considers appropriate to co-operate with—
   (a) other persons (whether in the United Kingdom or elsewhere) who have functions similar to those of the PRA, and
   (b) other bodies that have functions relevant to financial stability.

(2) The persons referred to in subsection (1) do not include the FCA (but see section 3D).

(3) Co-operation may include the sharing of information which the PRA is not prevented from disclosing.

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Textual Amendments

F2175Ss. 354A-354C substituted for s. 354 (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 12 para. 25 (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2177Words in s. 354B(2) substituted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 47 (with Sch. 3); S.I. 2017/43, reg. 2(g)

F2178PRA's duty to provide information to Bank of England

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Textual Amendments

F2178S. 354C omitted (1.3.2017) by virtue of Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 48 (with Sch. 3); S.I. 2017/43, reg. 2(g)

F2179Provision of information to ESMA, the Commission and other EEA States

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Textual Amendments

F2179Ss. 354D-354G and cross-heading inserted (8.12.2016) by The Financial Services and Markets (Disclosure of Information to the European Securities and Markets Authority etc. and Other Provisions) Regulations 2016 (S.I. 2016/1095), regs. 1, 3(3)

354D.  Information under the markets in financial instruments directive

(1) The appropriate regulator must give ESMA—
   (a) information about any general difficulties encountered by UK investment firms in relation to their establishment of a branch or their provision of investment services and activities in a country or territory other than an EEA State;
   (b) a return for each calendar year showing aggregated information about all—
(i) cases dealt with under section 177(2) (failure to comply with information gathering and investigation requirements treated as contempt of court) where the requirement was imposed in connection with the regulator’s markets in financial instruments directive functions;

(ii) convictions for an offence under section 177(3), (4) or (6) where the proceedings were instituted by the regulator in connection with the regulator’s markets in financial instruments directive functions;

(iii) final notices and supervisory notices given by the regulator in relation to the contravention of a markets in financial instruments directive requirement;

(c) information about any complaint and redress procedures of the kind referred to in Article 75.1 of the markets in financial instruments directive which are available in the United Kingdom; and

(d) information about, and the final judgment of the court in relation to, any convictions where the proceedings were instituted by the regulator in connection with the regulator’s functions under the markets in financial instruments directive or the markets in financial instruments regulation.

(2) The appropriate regulator must also give the information specified in subsection (1) (a) to the Commission.

(3) The PRA is the “appropriate regulator”—

(a) for the purposes of subsection (1)(a), in relation to UK investment firms which are PRA-authorised persons;

(b) for the purposes of subsection (1)(b)(i), where the case relates to a failure to comply with a requirement imposed by the PRA or by a person appointed by the PRA;

(c) for the purposes of subsection (1)(b)(ii), where the conviction is for an offence in relation to which the PRA is the appropriate regulator under section 401(3A);

(d) for the purposes of subsection (1)(b)(iii), where the notice was given by the PRA; and

(e) for the purposes of subsection (1)(c), where the procedure is only available in relation to investment firms which are PRA-authorised persons.

(4) The FCA is the “appropriate regulator” in any other case.

(5) The FCA must give ESMA—

(a) notice of any determination which the FCA makes in relation to any shares in compliance with Article 14 of the markets in financial instruments regulation;

(b) a list of the regulated markets (within the meaning given by Article 4.1.21 of the markets in financial instruments directive) for which the United Kingdom is the home Member State (within the meaning given by Article 4.1.55(b) of that directive); and

(c) notice of any change to that list.

(6) The FCA must also give the information specified in subsection (5)(b) and (c) to all EEA States other than the United Kingdom.

(7) Section 424A (meaning of “investment firm”) has effect for the purposes of this section as if subsections (3) and (4) were omitted.
(8) In this section—

“final notice” means a notice given under section 390;

“markets in financial instruments directive function” means a function conferred by any provision made by or under this Act to the extent that it implements the markets in financial instruments directive;

“markets in financial instruments directive requirement” means a requirement imposed—

(a) by or under any provision made by or under this Act which implements the markets in financial instruments directive; or

(b) by any directly applicable EU regulation made under the markets in financial instruments directive;

“supervisory notice” has the meaning given by section 395(13); and

“UK investment firm” means an investment firm whose home Member State (within the meaning given by Article 4.1.55(a) of the markets in financial instruments directive) is the United Kingdom.

Textual Amendments


354E. Competent authorities under the markets in financial instruments directive: designation and co-operation

(1) The Treasury must inform the Commission, ESMA and the competent authorities established in EEA States other than the United Kingdom—

(a) of the identity of the authority (or authorities) for the time being designated by the Treasury under Article 67.1 of the markets in financial instruments directive (designation of authorities competent to carry out duties under that directive); and

(b) if more than one authority is designated, of the division of responsibilities between them.
(2) The Treasury must inform the Commission, ESMA and EEA States other than the United Kingdom of the identity of the authority for the time being designated by the Treasury under [F2188 Article 79.1] of the markets in financial instruments directive as a contact point for the purposes of that directive (obligation to co-operate with competent authorities of other member States).

(3) Subsection (4) applies where the FCA or the PRA has good reason to suspect that any person, other than an authorised person who has a Part 4A permission or a recognised investment exchange, has acted or is acting in an EEA State other than the United Kingdom in a manner contrary to the markets in financial instruments directive.

(4) The FCA must give a competent authority established in that State and ESMA notice of those suspicions, together with information, which is as specific as reasonably practicable under the circumstances, about the reason for those suspicions.

(5) Subsections (6) and (7) apply where a competent authority established in an EEA State other than the United Kingdom informs the FCA that it has good reason to suspect that an authorised person who has a Part 4A permission or a recognised investment exchange has acted or is acting in a manner contrary to the markets in financial instruments directive.

(6) If the information relates to a PRA-authorised person, the FCA must inform the PRA.

(7) The FCA must inform the competent authority and ESMA—
   (a) of the outcome of any action taken by the FCA or PRA in response to receiving that information; and
   (b) if reasonably practicable under the circumstances, of significant interim developments resulting from that action.

(8) Subsections (9) and (10) apply where the FCA receives a request by a competent authority established in an EEA State other than the United Kingdom—
   (a) under [F2189 Article 80] of the markets in financial instruments directive for co-operation in carrying out any investigation, on-the-spot verification or supervisory activity; or
   (b) for the supply of information required for the purposes referred to in [F2189 Article 81.1] of that directive.

(9) If the request relates to a PRA-authorised person, the FCA must inform the PRA.

(10) Where the FCA or the PRA refuses on the grounds in [F2191 Article 83(a) or (b)] of the markets in financial instruments directive to act on the request, the FCA must give the competent authority and ESMA notice of the refusal, together with as much detailed information as possible about the reasons for the refusal.

(11) The PRA must provide the FCA with information required by the FCA for the purposes of complying with subsections (4), (7) and (10).

(12) In this section “competent authority” means an authority designated by an EEA State under [F2192 Article 67.1] of the markets in financial instruments directive.
354F. Information under the transparency obligations directive

(1) The FCA must give ESMA notice of any exemption which the FCA grants from a requirement referred to in Article 23.1 of the transparency obligations directive (requirement relating to the provision of information by issuers of transferable securities situated in third countries).

(2) “Transparency obligations directive” has the meaning given in section 103(1).

354G. Information under the UCITS directive

(1) The FCA must give the Commission and ESMA—
   (a) information about any general difficulties which UKUCITS (within the meaning given in section 237(3)) encounter in marketing their units in a country or territory other than an EEA State; and
   (b) the lists referred to in the third sub-paragraph of Article 52.4 of the UCITS directive (categories of bonds and of authorised issuers) and the notice required to be attached to those lists (specifying the status of guarantees offered).

(2) The Treasury must inform the Commission and ESMA—
   (a) of the identity of the authority (or authorities) for the time being designated by the Treasury under Article 97.1 of the UCITS directive (designation of authorities competent to carry out duties under that directive);
   (b) if more than one authority is designated, of the division of responsibilities between them; and
   (c) of the names of the authorities with which the authority (or authorities) so designated may exchange information pursuant to Article 103.1 and 103.4 of the UCITS directive.

(3) The Treasury must also give the information specified in subsection (2)(c) to all other EEA States.

(4) In this section “units” means the rights or interests (however described) of the participants in a UK UCITS.

354H. Information under the Insurance Distribution Directive

(1) The FCA and the PRA must give the Commission information about any general difficulties which UK insurance distributors encounter—
(a) in establishing themselves, or
(b) in carrying out insurance distribution or reinsurance distribution,
in any territory or country other than an EEA State.

(2) In this section—

“UK insurance distributor” is an insurance distributor, reinsurance intermediary or reinsurance undertaking (within the meanings in Article 2.1(5), (7) and (8) of the insurance distribution directive) whose home member state (within the meaning of Article 2.1(10) of the insurance distribution directive) is the United Kingdom;

“insurance distribution” has the meaning given in Article 2.1(1) of the insurance distribution directive; and

“reinsurance distribution” has the meaning given in Article 2.1(2) of the insurance distribution directive.]

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**Textual Amendments**

F2193S. 354H inserted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), 15

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**PART XXIV**

**INSOLVENCY**

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**Interpretation**

355 Interpretation of this Part.

(1) In this Part—

F2194...

“the 1986 Act” means the Insolvency Act 1986;
“the 1989 Order” means the Insolvency (Northern Ireland) Order 1989;
[F2195, “the 2016 Act” means the Bankruptcy (Scotland) Act 2016;]

“body” means a body of persons—

(a) over which the court has jurisdiction under any provision of, or made under, the 1986 Act (or the 1989 Order); but

(b) which is not a building society, a friendly society or [F2196 a registered society]; and

“court” means—

(a) the court having jurisdiction for the purposes of the 1985 Act or the 1986 Act; or

(b) in Northern Ireland, the High Court.


[\text{F2197}^1] “creditors’ decision procedure” has the meaning given by section 379ZA(11) of the 1986 Act;

[\text{F2198}^1] “PRA-regulated person” means a person who—

(a) is or has been a PRA-authorised person,

(b) is or has been an appointed representative whose principal (or one of whose principals) is, or was, a PRA-authorised person, or

(c) is carrying on or has carried on a PRA-regulated activity in contravention of the general prohibition.

[\text{F2199}^1] “qualifying decision procedure” has the meaning given by section 246ZE(11) of the 1986 Act.

(2) In this Part “insurer” has such meaning as may be specified in an order made by the Treasury.

\textbf{Textual Amendments}

\textit{F2194} Words in s. 355(1) omitted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034, art. 1, \textit{Sch. 1 para. 204}(a))

\textit{F2195} Words in s. 355(1) inserted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034, art. 1, \textit{Sch. 1 para. 204}(b))

\textit{F2196} Words in s. 355(1) substituted (1.8.2014) by Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 154, \textit{Sch. 4 para. 70} (with Sch. 5)


\textit{F2198} Words in s. 355(1) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), \textit{Sch. 14 para. 2} (with Sch. 20); S.I. 2013/423, art. 3, Sch.


\textbf{Modifications etc. (not altering text)}


\textbf{Marginal Citations}

\textit{M36} 1986 c. 45.

\textit{M37} S.I. 1989/2405 (N.I. 19).

\textit{Voluntary arrangements}

356 [\textit{F2200}] Powers of FCA and PRA\cite{F2201} to participate in proceedings: company voluntary arrangements.

\textit{F2201}(1) Where a voluntary arrangement has effect under Part I of the 1986 Act in respect of a company or insolvent partnership which is an authorised person, \textit{F2202} or recognised investment exchange, the appropriate regulator\cite{F2203} may apply to the court under section 6 or 7 of that Act.

\textit{F2203}(2) Where a voluntary arrangement has been approved under Part II of the 1989 Order in respect of a company or insolvent partnership which is an authorised person, \textit{F2204} or
recognised investment exchange, the appropriate regulator may apply to the court under Article 19 or 20 of that Order.

(3) If a person other than a regulator makes an application to the court in relation to the company or insolvent partnership under any of those provisions, the appropriate regulator is entitled to be heard at any hearing relating to the application.

(4) "The appropriate regulator" means—
   (a) in the case of a PRA-authorised person—
      (i) for the purposes of subsections (1) and (2), the FCA or the PRA, and
      (ii) for the purposes of subsection (3), each of the FCA and the PRA;
   (b) in any other case, the FCA.

(5) If either regulator makes an application to the court under any of those provisions in relation to a PRA-authorised person, the other regulator is entitled to be heard at any hearing relating to the application.

Textual Amendments

F2200 Words in s. 356 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 3(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2201S. 356(1) substituted (1.1.2003 subject to transitional provisions in arts. 3-5 of the commencing S.I.) by 2000 c. 39, s. 15(3)(a); S.I. 2002/2711, art. 2
F2202 Words in s. 356(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 3(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2203S. 356(2) substituted (1.1.2003 subject to transitional provisions in arts. 3-5 of the commencing S.I.) by 2000 c. 39, s. 15(3)(b); S.I. 2002/2711, art. 2
F2204 Words in s. 356(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 3(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2205 Words in s. 356(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 3(3)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2206 Word in s. 356(3) substituted (1.1.2003 subject to transitional provisions in arts. 3-5 of the commencing S.I.) by 2000 c. 39, s. 15(3)(c); S.I. 2002/2711, art. 2
F2207 Words in s. 356(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 3(3)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2208S. 356(4)(5) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 3(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C889 S. 356 applied (with modifications) (6.4.2001) by S.I. 2001/1090, regs. 1, 6
C891 S. 356 applied (with modifications) (E.W.S.) (6.4.2014) by The Industrial and Provident Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 (S.I. 2014/229), arts. 1, 6 (with art. 10)
(2) Subsections \([2211(2A)]\) to (6) apply if such an order is made on the application of such a person.

\([2212(2A)]\) Where under section 257 of the 1986 Act the individual’s creditors are asked to decide whether to approve the proposed voluntary arrangement—

(a) notice of the creditors’ decision procedure must be given to the appropriate regulator; and

(b) the appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) the creditors’ decision procedure by which the decision is made.

(2B) Notice of the decision made by the creditors’ decision procedure is to be given to the appropriate regulator by the nominee or the nominee’s replacement under section 256(3) or 256A(4) of the 1986 Act.

(3) A person appointed for the purpose by the \([2210\text{ appropriate regulator}]\) is entitled to attend any meeting of creditors of the debtor summoned under \([2213\text{ Article 231 of the 1989 Order}]\).

(4) Notice of the result of a meeting so summoned is to be given to the \([2210\text{ appropriate regulator}]\) by the chairman of the meeting.

(5) The \([2210\text{ appropriate regulator}]\) may apply to the court—

(a) under section 262 of the 1986 Act (or Article 236 of the 1989 Order); or

(b) under section 263 of the 1986 Act (or Article 237 of the 1989 Order).

(6) If a person other than \([2214\text{ a regulator}]\) makes an application to the court under any provision mentioned in subsection (5), \([2215\text{ the appropriate regulator}]\) is entitled to be heard at any hearing relating to the application.

\([2216(7)]\) “The appropriate regulator” means—

\([2217(a)]\) in the case of a PRA-authorised person, each of the FCA and the PRA, except that the references in subsections (2A)(b) and (3) to a person appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;]

(b) in any other case, the FCA.

(8) If either regulator makes an application to the court under any of the provisions mentioned in subsection (5) in relation to a PRA-authorised person, the other regulator is entitled to be heard at any hearing relating to the application.

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**Textual Amendments**

- **F2209** Words in s. 357 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 4(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- **F2210** Words in s. 357(1)-(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 4(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
Powers of FCA and PRA to participate in proceedings: trust deeds for creditors in Scotland.

(1) This section applies where a trust deed has been granted by or on behalf of a debtor who is an authorised person or recognised investment exchange.

(2) The trustee must, as soon as practicable after he becomes aware that the debtor is an authorised person or recognised investment exchange, send to the appropriate regulator—

(a) in every case, a copy of the trust deed;

(b) where any other document or information is sent to every creditor known to the trustee in pursuance of section 170 of the 2016 Act, a copy of such document or information.

(3) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(4) The appropriate regulator must be given the same notice as the creditors of any meeting of creditors held in relation to the trust deed.

(5) A person appointed for the purpose by the appropriate regulator is entitled to attend and participate in (but not to vote at) any such meeting of creditors as if that regulator were a creditor under the deed.

(6) This section does not affect any right a regulator has as a creditor of a debtor who is an authorised person or recognised investment exchange.

(6A) "The appropriate regulator” means—

(a) in the case of a PRA-authorised person—

(i) for the purposes of subsections (2) ... and (4), each of the FCA and the PRA, and

(ii) for the purposes of subsection (5), the FCA or the PRA;

(b) in any other case, the FCA.

(7) Expressions used in this section and in the 2016 Act have the same meaning in this section as in that Act.
Administration orders

F2219 Words in s. 358(1) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 5(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2220 Words in s. 358(2) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 5(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2221 Words in s. 358(2)-(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 5(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2222 Words in s. 358(2)(b) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, Sch. 1 para. 20(5)(a)
F2223 S. 358(3) omitted (30.11.2016) by virtue of The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, Sch. 1 para. 20(5)(b)
F2224 Words in s. 358(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 5(4)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2225 Words in s. 358(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 5(4)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2226 Words in s. 358(6) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 5(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2227 Words in s. 358(6) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 5(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2228 S. 358(6A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 5(6) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2229 Word in s. 358(6A)(a) omitted (30.11.2016) by virtue of The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, Sch. 1 para. 20(5)(c)
F2230 Word in s. 358(7) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, Sch. 1 para. 20(5)(d)

(1) The Financial Services Act 2012 or Schedule B1 to the 1989 Order in relation to a company or insolvent partnership which—
   (a) is or has been an authorised person or recognised investment exchange, or
   (b) is or has been an appointed representative, or
   (c) is carrying on or has carried on a regulated activity in contravention of the general prohibition.

F2235 The PRA may make an administration application under Schedule B1 to the 1986 Act or Schedule B1 to the 1989 Order in relation to a company or insolvent partnership which is a PRA-regulated person.

(2) Subsection (3) applies in relation to an administration application made (or a petition presented) by a regulator by virtue of this section.

(3) Any of the following shall be treated for the purpose of paragraph 11(a) of Schedule B1 to the 1986 Act or paragraph 12(a) of Schedule B1 to the 1989 Order as unable to pay its debts—
   (a) a company or partnership in default on an obligation to pay a sum due and payable under an agreement,
   (b) an authorised deposit taker in default on an obligation to pay a sum due and payable in respect of a relevant deposit.
(c) an authorised reclaim fund in default on an obligation to pay a sum payable as a result of a claim made by virtue of section 1(2)(b) or 2(2)(b) of the Dormant Bank and Building Society Accounts Act 2008.

(4) In this section—

“agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the company or partnership,

“authorised deposit taker” means a person with a permission to accept deposits (but not a person who has a permission to accept deposits only for the purpose of carrying on another regulated activity in accordance with that permission),

“authorised reclaim fund” means a reclaim fund within the meaning given by section 5(1) of the Dormant Bank and Building Society Accounts Act 2008 that is authorised for the purposes of this Act;

“company” means a company—

(a) in respect of which an administrator may be appointed under Schedule B1 to the 1986 Act, or

(b) in respect of which an administrator may be appointed under Schedule B1 to the 1989 Order,

“relevant deposit” shall, ignoring any restriction on the meaning of deposit arising from the identity of the person making the deposit, be construed in accordance with—

(a) section 22,

(b) any relevant order under that section, and

(c) Schedule 2.

(5) The definition of “authorised deposit taker” in subsection (4) shall be construed in accordance with—

(a) section 22,

(b) any relevant order under that section, and

(c) Schedule 2.

Textual Amendments

F2231 S. 359 substituted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, Sch. 17 para. 55 (with s. 249(1)-(3); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, art. 2)

F2232 Word in s. 359(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 6(2)(a) (with Sch. 20; S.I. 2013/423, art. 3, Sch.

F2233 Words in s. 359(1) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 58(2); S.R. 2006/21, art. 2 (subject to S.R. 2006/22, arts. 2-7)

F2234 Words in s. 359(1)(a) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 6(2)(b) (with Sch. 20; S.I. 2013/423, art. 3, Sch.

F2235S. 359(1A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 6(3) (with Sch. 20; S.I. 2013/423, art. 3, Sch.

F2236 Words in s. 359(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 6(4) (with Sch. 20; S.I. 2013/423, art. 3, Sch.
360 Insurers.

(1) The Treasury may by order provide that such provisions of Part II of the 1986 Act (or Part III of the 1989 Order) as may be specified are to apply in relation to insurers with such modifications as may be specified.

(2) An order under this section—

(a) may provide that such provisions of this Part as may be specified are to apply in relation to the administration of insurers in accordance with the order with such modifications as may be specified; and

(b) requires the consent of the Secretary of State.

(3) “Specified” means specified in the order.
[F2244]361 Administrator’s duty to report to [F2245]FCA and PRA

(1) This section applies where a company or partnership is—
   (a) in administration within the meaning of Schedule B1 to the 1986 Act, or
   (b) in administration within the meaning of Schedule B1 to the 1989 Order.

[F2246](2) If the administrator thinks that the company or partnership is carrying on, or has carried on—
   (a) a regulated activity in contravention of the general prohibition, or
   (b) a credit-related regulated activity in contravention of section 20,
   the administrator must report the matter to the appropriate regulator without delay.

[F2247](2A) ”The appropriate regulator” means—
   (a) where the regulated activity is a PRA-regulated activity, the FCA and the PRA;
   (b) in any other case, the FCA.

[F2248](3) Subsection (2) does not apply where—
   (a) the administration arises out of an administration order made on an application made or petition presented by a regulator, and
   (b) the regulator's application or petition depended on a contravention by the company or partnership of the general prohibition.
Powers of FCA and PRA to participate in proceedings.

(1) This section applies if a person makes an administration application under Schedule B1 to the 1986 Act or Schedule B1 to the 1989 Order in relation to a company or partnership which—
   (a) is, or has been, an authorised person or recognised investment exchange;
   (b) is, or has been, an appointed representative; or
   (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

(1A) This section also applies in relation to—
   (a) the appointment under paragraph 14 or 22 of Schedule B1 to the 1986 Act or paragraph 15 or 23 of Schedule B1 to the 1989 Order of an administrator of a company of a kind described in subsection (1)(a) to (c), or
   (b) the filing with the court of a copy of notice of intention to appoint an administrator under any of those paragraphs.

(1B) This section also applies in relation to—
   (a) the appointment under paragraph 22 of Schedule B1 to the 1986 Act (as applied by order under section 420 of the 1986 Act), or under paragraph 23 of Schedule B1 to the 1989 Order (as applied by order under Article 364 of the 1989 Order), of an administrator of a partnership of a kind described in subsection (1)(a) to (c), or
   (b) the filing with the court of a copy of notice of intention to appoint an administrator under either of those paragraphs (as so applied).

(2) The appropriate regulator is entitled to be heard—
   (a) at the hearing of the administration application or the petition; and
   (b) at any other hearing of the court in relation to the company or partnership under Part II of the 1986 Act (or Part III of the 1989 Order).

(3) Any notice or other document required to be sent to a creditor of the company or partnership must also be sent to the appropriate regulator.

(4) The appropriate regulator may apply to the court under paragraph 74 of Schedule B1 to the 1986 Act or paragraph 75 of Schedule B1 to the 1989 Order.

(4A) In respect of an application under subsection (4)—
   (a) paragraph 74(1)(a) and (b) shall have effect as if for the words “harm the interests of the applicant (whether alone or in common with some or all other members or creditors)” there were substituted the words “harm the interests of some or all members or creditors”, and
   (b) paragraph 75(1)(a) and (b) of Schedule B1 to the 1989 Order shall have effect as if for the words “harm the interests of the applicant (whether alone or in common with some or all other members or creditors)” there were substituted the words harm the interests of some or all members or creditors.

(5) A person appointed for the purpose by the appropriate regulator is entitled—
   (a) to attend any meeting of creditors of the company or partnership summoned under any enactment;
   (b) to attend any meeting of a committee established under paragraph 57 of Schedule B1 to the 1986 Act or paragraph 58 of Schedule B1 to the 1989 Order; and
(c) to make representations as to any matter for decision at such a meeting.

[F2266]The appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) a qualifying decision procedure by which a decision about any matter is sought from the creditors of the company or partnership.

(6) If, during the course of the administration of a company, a compromise or arrangement is proposed between the company and its creditors, or any class of them, the appropriate regulator may apply to the court under section 896 or 899 of the Companies Act 2006.

[F2268]“The appropriate regulator” means—

(a) where the company or partnership is a PRA-regulated person, each of the FCA and the PRA, except that the references in subsections (5) and (5A) to a person appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;

(b) in any other case, the FCA.

(8) But where the administration application was made by a regulator “the appropriate regulator” does not include that regulator.

Textual Amendments

F2249 Words in s. 362 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 8(6) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2250 Words in s. 362(1) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 8(2)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2251 Words in s. 362(1) substituted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, Sch. 17 para. 57(a) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, art. 2)

F2252 Words in s. 362(1) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 60(2); S.R. 2006/21, art. 2 (subject to S.R. 2006/22, arts. 2-7)

F2253 Words in s. 362(1)(a) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 8(2)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2254S. 362(1A) inserted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, Sch. 17 para. 57(b) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, art. 2)

F2255 Words in s. 362(1A)(a) inserted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 60(3)(a); S.R. 2006/21, art. 2 (subject to S.R. 2006/22, arts. 2-7)

F2256 Word in s. 362(1A)(b) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 60(3)(b); S.R. 2006/21, art. 2 (subject to S.R. 2006/22, arts. 2-7)

F2257S. 362(1B) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 8(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2258 Words in s. 362(2)-(6) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 8(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2259 Words in s. 362(2)(a) substituted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, Sch. 17 para. 57(c) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, art. 2)
Paragraph 22 of Schedule B1 to the 1986 Act (including that paragraph as an administrator of the company or partnership may not be appointed under a section applicable to a company.

This section applies in relation to a company.

S. 362 modified (21.2.2009) by

S. 362 applied (with modifications) (6.4.2001) by

Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by

Those provisions

Changes to legislation:

S. 362(6) applied (with modifications) (8.2.2011 with application in accordance with reg. 27(a) of the 1 Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 (S.I. 2014/229)

S. 362 applied (with modifications) (E.W.S.) (6.4.2014) by

Order 2009 (S.I. 2009/317)

Regulations (Northern Ireland) 2004 (S.R. 2004/307)

S. 362(7)(8) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 8(5)

(with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C901 S. 362 applied (with modifications) (6.4.2001) by S.I. 2001/1090, regs. 1, 6


C903 S. 362 modified (21.2.2009) by The Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 (S.I. 2009/317), art. 5(1)(5)

C904 S. 362 applied (with modifications) (E.W.S.) (6.4.2014) by The Industrial and Provident Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 (S.I. 2014/229), arts. 1, 9 (with art. 10)

C905 S. 362(6) applied (with modifications) (8.2.2011 with application in accordance with reg. 27(a) of the applying S.I.) by The Investment Bank Special Administration Regulations 2011 (S.I. 2011/245), regs. 1, 27(a), Sch. 6 para. 3(4)

Administrator appointed by company or directors

(1) This section applies in relation to a company [forder partnership] of a kind described in section 362(1)(a) to (c).

(2) An administrator of the company or partnership may not be appointed under a provision specified in subsection (2A) without the consent of the appropriate regulator.

(2A) Those provisions are—

(a) paragraph 22 of Schedule B1 to the 1986 Act (including that paragraph as applied in relation to partnerships by order under section 420 of that Act);
paragraph 23 of Schedule B1 to the 1989 Order (including that paragraph as applied in relation to partnerships by order under article 364 of that Order).

(2B) “The appropriate regulator” means—

(a) where the company or partnership is a PRA-regulated person, the PRA, and

(b) in any other case, the FCA.

(3) Consent under subsection (2)—

(a) must be in writing, and

(b) must be filed with the court along with the notice of intention to appoint under paragraph 27 of Schedule B1 to the 1986 Act or paragraph 28 of Schedule B1 to the 1989 Order.

(4) In a case where no notice of intention to appoint is required—

(a) subsection (3)(b) shall not apply, but

(b) consent under subsection (2) must accompany the notice of appointment filed under paragraph 29 of Schedule B1 to the 1986 Act or paragraph 30 of Schedule B1 to the 1989 Order.

Textual Amendments

F2270 S. 362A inserted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, Sch. 17 para. 58 (with s. 249(1)-(3); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, art. 2))

F2271 Words in s. 362A(1) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 9(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2272S. 362A(2)-(2B) substituted for s. 362A(2) (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 9(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2273 Words in s. 362A(3)(b) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 61(3); S.R. 2006/21, art. 2 (subject to S.R. 2006/22, arts. 2-7)

F2274 Words in s. 362A(4) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 61(4); S.R. 2006/21, art. 2 (subject to S.R. 2006/22, arts. 2-7)

Modifications etc. (not altering text)


C907 S. 362A applied (with modifications) (E.W.S.) (6.4.2014) by The Industrial and Provident Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 (S.I. 2014/229), arts. 1, 9 (with art. 10)

Receivership

363 [F2275 Powers of FCA and PRA] to participate in proceedings.

(1) This section applies if a receiver has been appointed in relation to a company which—

(a) is, or has been, an authorised person [F2276 or recognised investment exchange];

(b) is, or has been, an appointed representative; or

(c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
(2) The [F2277]appropriate regulator[ is entitled to be heard on an application made under section 35 or 63 of the 1986 Act (or Article 45 of the 1989 Order).

(3) The [F2277]appropriate regulator[ is entitled to make an application under section 41(1) (a) or 69(1)(a) of the 1986 Act (or Article 51(1)(a) of the 1989 Order).

(4) A report under section 48(1) or 67(1) of the 1986 Act (or Article 58(1) of the 1989 Order) must be sent by the person making it to the [F2277]appropriate regulator[.

(5) A person appointed for the purpose by the [F2277]appropriate regulator[ is entitled—
   (a) to attend any meeting of creditors of the company summoned under any enactment;
   (b) to attend any meeting of a committee established under section 49 or 68 of the 1986 Act (or Article 59 of the 1989 Order); and
   (c) to make representations as to any matter for decision at such a meeting.

[F2277](6) "The appropriate regulator” means—
   (a) for the purposes of subsections (2) to (4)—
      (i) where the company is a PRA-regulated person, each of the FCA and the PRA, and
      (ii) in any other case, the FCA;
   (b) for the purposes of subsection (5)—
      (i) where the company is a PRA-regulated person, the FCA or the PRA, and
      (ii) in any other case, the FCA."

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**Textual Amendments**

[F2275]Words in s. 363 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 10(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

[F2276]Words in s. 363(1)(a) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 10(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

[F2277]Words in s. 363(2)-(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 10(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

[F2278]S. 363(6) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 10(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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

C908 S. 363 applied (with modifications) (6.4.2001) by S.I. 2001/1090, regs. 1, 6


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**364 Receiver’s duty to report to [F2279]FCA and PRA**

If—
   (a) a receiver has been appointed in relation to a company, and
   (b) it appears to the receiver that the company is carrying on, or has carried on, a regulated activity in contravention of the general prohibition [F2280]or a credit-related regulated activity in contravention of section 20],
the receiver must report the matter [F2281] without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA].

Textual Amendments
F2279 Words in s. 364 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 11(c) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2280 Words in s. 364(b) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 11(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2281 Words in s. 364 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 11(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)
C910 S. 364 applied (with modifications) (6.4.2001) by S.I. 2001/1090, regs. 1, 6

Voluntary winding up

365 [F2282] Powers of FCA and PRA] to participate in proceedings.

(1) This section applies in relation to a company which—
   (a) is being wound up voluntarily;
   (b) is an authorised person [F2283] or recognised investment exchange; and
   (c) is not an insurer effecting or carrying out contracts of long-term insurance.

(2) The [F2284] appropriate regulator] may apply to the court under section 112 of the 1986 Act (or Article 98 of the 1989 Order) in respect of the company.

(3) The [F2284] appropriate regulator] is entitled to be heard at any hearing of the court in relation to the voluntary winding up of the company.

(4) Any notice or other document required to be sent to a creditor of the company must also be sent to the [F2284] appropriate regulator].

(5) A person appointed for the purpose by the [F2284] appropriate regulator] is entitled—
   (a) to attend any meeting of creditors of the company summoned under any enactment;
   (b) to attend any meeting of a committee established under section 101 of the 1986 Act (or Article 87 of the 1989 Order); and
   (c) to make representations as to any matter for decision at such a meeting.

[F2285] (5A) The appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) a qualifying decision procedure by which a decision about any matter is sought from the creditors of the company.

(6) The voluntary winding up of the company does not bar the right of the [F2284] appropriate regulator] to have it wound up by the court.

(7) If, during the course of the winding up of the company, a compromise or arrangement is proposed between the company and its creditors, or any class of them, the
Insurers effecting or carrying out long-term contracts or insurance.

(1) An insurer effecting or carrying out contracts of long-term insurance may not be wound up voluntarily without the consent of the appropriate regulator.

(2) If notice of a general meeting of such an insurer is given, specifying the intention to propose a resolution for voluntary winding up of the insurer, a director of the insurer must notify the appropriate regulator as soon as practicable after he becomes aware of it.

(3) A person who fails to comply with subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A winding up resolution may not be passed—
   
   (a) as a written resolution (in accordance with Chapter 2 of Part 13 of the Companies Act 2006), or
   
   (b) at a meeting called in accordance with section 307(4) to (6) or 337(2) of that Act (agreement of members to calling of meeting at short notice).

(5) A copy of a winding-up resolution forwarded to the registrar of companies in accordance with section 30 of the Companies Act 2006 must be accompanied by
Winding up by the court

367 Winding-up petitions.

(1) The \([F2294] FCA\) may present a petition to the court for the winding up of a body which—
(a) is, or has been, an authorised person \([F2295] \) or recognised investment exchange;\]
(b) is, or has been, an appointed representative; or
(c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
\([F2296] \)

(1A) The PRA may present a petition to the court for the winding up of a body which is a PRA-regulated person.\]

(2) In \([F2296] \) subsections (1) and (1A) “body” includes any partnership.

(3) On such a petition, the court may wind up the body if—

a certificate issued by the \([F2292] PRA\) stating that it consents to the voluntary winding up of the insurer.

(6) If subsection (5) is complied with, the voluntary winding up is to be treated as having commenced at the time the resolution was passed.

(7) If subsection (5) is not complied with, the resolution has no effect.

(8) “Winding-up resolution” means a resolution for voluntary winding up of an insurer effecting or carrying out contracts of long-term insurance.

\([F2293] \)

(9) Before giving or refusing consent under subsection (1), the PRA must consult the FCA.

(10) In the event that the activity of effecting or carrying out long-term contracts of insurance as principal is not to any extent a PRA-regulated activity—
(a) references to the PRA in subsections (1), (2) and (5) are to be read as references to the FCA, and
(b) subsection (9) does not apply.]
(za) in the case of an insurance undertaking or reinsurance undertaking, the PRA has cancelled the body’s Part 4A permission pursuant to section 55J(7C);

(a) the body is unable to pay its debts within the meaning of section 123 or 221 of the 1986 Act (or Article 103 or 185 of the 1989 Order); or

(b) the court is of the opinion that it is just and equitable that it should be wound up.

(4) If a body is in default on an obligation to pay a sum due and payable under an agreement, it is to be treated for the purpose of subsection (3)(a) as unable to pay its debts.

(5) “Agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the body concerned.

(6) Subsection (7) applies if a petition is presented under subsection (1) or (1A) for the winding up of a partnership—

(a) on the ground mentioned in subsection (3)(b); or

(b) in Scotland, on a ground mentioned in subsection (3)(a) or (b).

(7) The court has jurisdiction, and the 1986 Act (or the 1989 Order) has effect, as if the partnership were an unregistered company as defined by section 220 of that Act (or Article 184 of that Order).

Textual Amendments

F2294 Word in s. 367(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 14(2)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2295 Words in s. 367(1)(a) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 14(2)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2296 S. 367(1A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 14(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2297 Words in s. 367(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 14(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2298 S. 367(3)(za) inserted (1.1.2016) by The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), Sch. 1 para. 13

F2299 Words in s. 367(6) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 14(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)


C916 S. 367 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, Sch. 5 para. 6 (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para 155(6)(f) (with Sch. 2 para. 156))

C917 S. 367 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(b), 62, Sch. 3 para. 7 (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 196(5)(g))
368  Winding-up petitions: EEA and Treaty firms.

[\textsuperscript{F2300}(1)] A regulator may not present a petition to the court under section 367 for the winding up of—

(a) an EEA firm which qualifies for authorisation under Schedule 3, or

(b) a Treaty firm which qualifies for authorisation under Schedule 4, unless it or the other regulator has been asked to do so by the home state regulator of the firm concerned.

[\textsuperscript{F2301}(2) If a regulator receives from the home state regulator of a body falling within subsection (1)(a) or (b) a request to present a petition to the court under section 367 for the winding up of the body, it must—

(a) notify the other regulator of the request, and

(b) provide the other regulator with such information relating to the request as it thinks fit.]

Textual Amendments

F2300 S. 368 renumbered as s. 368(1) (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 15(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2301 Words in s. 368(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 15(3)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2302 Words in s. 368(1) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 15(3)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2303 S. 368(2) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 15(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C921 S. 368 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, Sch. 5 para. 6 (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 155(6)(f) (with Sch. 2 para. 156))

C922 S. 368 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(b), 62, Sch. 3 para. 7 (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 196(5)(g))

C923 S. 368 applied (with modifications) (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(6), Sch. 6 para. 9 (with reg. 3)

369  Insurers: service of petition etc. on [F2304 FCA and PRA].

(1) If a person other than [F2305 a regulator] presents a petition for the winding up of an authorised person with permission to effect or carry out contracts of insurance, the petitioner must serve a copy of the petition [F2306 on the appropriate regulator].
(2) If a person other than a regulator applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of an authorised person with permission to effect or carry out contracts of insurance, the applicant must serve a copy of the application on the appropriate regulator.

(3) “The appropriate regulator” means—
   (a) in relation to a PRA-authorised person, the FCA and the PRA, and
   (b) in any other case, the FCA.

(4) If either regulator—
   (a) presents a petition for the winding up of a PRA-authorised person with permission to effect or carry out contracts of insurance, or
   (b) applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of a PRA-authorised person with permission to effect or carry out contracts of insurance, that regulator must serve a copy of the petition or application (as the case requires) on the other regulator.

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**Textual Amendments**

- F2304 Words in s. 369 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 16(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F2305 Words in s. 369(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 16(2)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F2306 Words in s. 369(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 16(2)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F2307 Words in s. 369(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 16(3)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F2308 Words in s. 369(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 16(3)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F2309 S. 369(3)(4) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 16(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
(5) If either regulator—

(a) presents a petition for the winding up of an authorised reclaim fund that is a PRA-authorised person, or

(b) applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of an authorised reclaim fund that is a PRA-authorised person,

that regulator must serve a copy of the petition or application (as the case requires) on the other regulator.]

Textual Amendments

F2310S. 369A inserted (12.3.2009) by Dormant Bank and Building Society Accounts Act 2008 (c. 31), ss. 15, 31(1), Sch. 2 para. 7; S.I. 2009/490, art. 2 (with art. 3)

F2311 Words in s. 369A heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 17(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2312 Words in s. 369A(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 17(2)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2313 Words in s. 369A(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 17(2)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2314 Words in s. 369A(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 17(3)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2315 Words in s. 369A(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 17(3)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2316S. 369A(4)(5) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 17(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

370 Liquidator's duty to report to FCA and PRA

(1) If—

(a) a company is being wound up voluntarily or a body is being wound up on a petition presented by any person, and

(b) it appears to the liquidator that the company or body is carrying on, or has carried on—

(i) a regulated activity in contravention of the general prohibition, or

(ii) a credit-related regulated activity in contravention of section 20,

the liquidator must report the matter without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA.

(2) Subsection (1) does not apply where—

(a) a body is being wound up on a petition presented by a regulator, and

(b) the regulator's petition depended on a contravention by the body of the general prohibition.

Textual Amendments

F2317S. 370 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 18 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

(1) This section applies if a person [F239]... presents a petition for the winding up of a body which—

(a) is, or has been, an authorised person [F232]or recognised investment exchange];
(b) is, or has been, an appointed representative; or
(c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

(2) The [F231]appropriate regulator] is entitled to be heard—

(a) at the hearing of the petition; and
(b) at any other hearing of the court in relation to the body under or by virtue of Part IV or V of the 1986 Act (or Part V or VI of the 1989 Order).

(3) Any notice or other document required to be sent to a creditor of the body must also be sent to the [F231]appropriate regulator].

(4) A person appointed for the purpose by the [F231]appropriate regulator] is entitled—

(a) to attend any meeting of creditors of the body;
(b) to attend any meeting of a committee established for the purposes of Part IV or V of the 1986 Act under section 101 of that Act or under section 141 or 142 of that Act;
(c) to attend any meeting of a committee established for the purposes of Part V or VI of the 1989 Order under Article 87 of that Order or under Article 120 of that Order; and
(d) to make representations as to any matter for decision at such a meeting.

[F232](4A) The appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) a qualifying decision procedure by which a decision about any matter is sought from the creditors of the body.

(5) If, during the course of the winding up of a company, a compromise or arrangement is proposed between the company and its creditors, or any class of them, the [F231]appropriate regulator] may apply to the court under [F232]section 896 or 899 of the Companies Act 2006].

[F232](6) “The appropriate regulator” means—

(a) where the body is a PRA-regulated person, each of the FCA and the PRA, except that the references in subsections (4) and (4A) to a person appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;
(b) in any other case, the FCA.

(7) But where the petition was presented by a regulator “the appropriate regulator” does not include the regulator which presented the petition.
Petitions.

(1) The [F2325]FCA may present a petition to the court—
   (a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual; or
   (b) under section [F2326]2 or 5 of the 2016 Act for the sequestration of the estate of an individual.

[F2327] (1A) The PRA may present a petition to the court—
   (a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual who is a PRA-regulated person;
   (b) under section [F2328]2 or 5 of the 2016 Act for the sequestration of the estate of an individual who is a PRA-regulated person.

(2) But [F2329]a petition may be presented by virtue of subsection (1) or (1A) only on the ground that—
   (a) the individual appears to be unable to pay a regulated activity debt; or
   (b) the individual appears to have no reasonable prospect of being able to pay a regulated activity debt.

(3) An individual appears to be unable to pay a regulated activity debt if he is in default on an obligation to pay a sum due and payable under an agreement.
(4) An individual appears to have no reasonable prospect of being able to pay a regulated activity debt if—
   (a) [F2330] a regulator has served on him a demand requiring him to establish to the satisfaction of [F2331] that regulator that there is a reasonable prospect that he will be able to pay a sum payable under an agreement when it falls due;
   (b) at least three weeks have elapsed since the demand was served; and
   (c) the demand has been neither complied with nor set aside in accordance with rules.

(5) A demand made under subsection (4)(a) is to be treated for the purposes of the 1986 Act (or the 1989 Order) as if it were a statutory demand under section 268 of that Act (or Article 242 of that Order).

(6) For the purposes of a petition presented in accordance with subsection (1)(b) [F2332] or (1A)(b)—
   (a) [F2333] the regulator by which the petition is presented] is to be treated as a qualified creditor; and
   (b) a ground mentioned in subsection (2) constitutes apparent insolvency.

(7) “Individual” means an individual—
   (a) who is, or has been, an authorised person; or
   (b) who is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

(8) “Agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the individual concerned.

(9) “Rules” means—
   (a) in England and Wales, rules made under section 412 of the 1986 Act;
   (b) in Scotland, rules made by order by the Treasury, after consultation with the Scottish Ministers, for the purposes of this section; and
   (c) in Northern Ireland, rules made under Article 359 of the 1989 Order.

Textual Amendments
F2325 Word in s. 372(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 20(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2326 Words in s. 372(1)(b) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, Sch. 1 para. 20(6)
F2327S. 372(1A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 20(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2328 Words in s. 372(1A)(b) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, Sch. 1 para. 20(6)
F2329 Words in s. 372(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 20(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2330 Words in s. 372(4)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 20(5)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2331 Words in s. 372(4)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 20(5)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2332 Words in s. 372(6) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 20(6)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
373 Insolvency practitioner’s duty to report [F2334 to FCA and PRA].

(1) If—

(a) a bankruptcy order or sequestration award is in force in relation to an individual ..., and

(b) it appears to the insolvency practitioner that the individual is carrying on, or has carried on—

(i) a regulated activity in contravention of the general prohibition, or

(ii) a credit-related regulated activity in contravention of section 20,[

the insolvency practitioner must report the matter [F2337] without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA].

[F2338(1A) Subsection (1) does not apply where—

(a) the bankruptcy order or sequestration award is in force by virtue of a petition presented by a regulator, and

(b) the regulator's petition depended on a contravention by the individual of the general prohibition.]

(2) “Bankruptcy order” means a bankruptcy order under Part IX of the 1986 Act (or Part IX of the 1989 Order).


(4) “Individual” includes an entity mentioned in section 374(1)(c).
Powers of FCA or PRA to participate in proceedings.

(1) This section applies if a person... presents a petition to the court—
   (a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual;
   (b) under section 2 or 5 of the 2016 Act for the sequestration of the estate of an individual; or
   (c) under section 6 of the 2016 Act for the sequestration of the estate belonging to or held for or jointly by the members of an entity mentioned in subsection (1) of that section.

(2) The appropriate regulator is entitled to be heard—
   (a) at the hearing of the petition; and
   (b) at any other hearing in relation to the individual or entity under—
       (i) Part IX of the 1986 Act;
       (ii) Part IX of the 1989 Order; or
       (iii) the 2016 Act.

(3) In the case of a petition presented under Article 238 of the 1989 Order, a copy of the report prepared under Article 248 of that Order must also be sent to the appropriate regulator.

(4) A person appointed for the purpose by the appropriate regulator is entitled—
   (a) to attend any meeting of creditors of the individual or entity;
   (b) to attend any meeting of a committee established under section 301 of the 1986 Act (or Article 274 of the 1989 Order); and
   (c) to make representations as to any matter for decision at such a meeting.

(4A) The appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) a creditors’ decision procedure by which a decision about any matter is sought from the creditors of the individual or entity.

(5) “Individual” means an individual who—
   (a) is, or has been, an authorised person; or
   (b) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

(6) “Entity” means an entity which—
   (a) is, or has been, an authorised person; or
   (b) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

(7) “The appropriate regulator” means—
   (a) where the individual or entity is a PRA-regulated person, each of the FCA and the PRA, except that the references in subsections (4) and (4A) to a person appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;
   (b) in any other case, the FCA.

(8) But where the petition was presented by a regulator “the appropriate regulator” does not include the regulator which presented the petition.
Provisions against debt avoidance

375 [F2351 Right of FCA and PRA] to apply for an order.

(1) The [F2351FCA] may apply for an order under section 423 of the 1986 Act (or Article 367 of the 1989 Order) in relation to a debtor if—

(a) at the time the transaction at an undervalue was entered into, the debtor was carrying on a regulated activity (whether or not in contravention of the general prohibition); and

(b) a victim of the transaction is or was party to an agreement entered into with the debtor, the making or performance of which constituted or was part of a regulated activity carried on by the debtor.

[1F2351(1A) The PRA may apply for an order under section 423 of the 1986 Act (or Article 367 of the 1989 Order) in relation to a debtor if—

(a) at the time the transaction at an undervalue was entered into, the debtor was carrying on a PRA-regulated activity (whether or not in contravention of the general prohibition); and

(b) a victim of the transaction is or was party to an agreement entered into with the debtor, the making or performance of which constituted or was part of a PRA-regulated activity carried on by the debtor.]
(2) An application made under this section is to be treated as made on behalf of every victim of the transaction to whom subsection (1)(b) or subsection (1A)(b) (as the case may be) applies.

(3) Expressions which are given a meaning in Part XVI of the 1986 Act (or Article 367, 368 or 369 of the 1989 Order) have the same meaning when used in this section.

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**Textual Amendments**

**F2351** Words in s. 375 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 23(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

**F2352** Word in s. 375(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 23(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

**F2353S.** 375(1A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 23(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

**F2354** Words in s. 375(2) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 23(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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

**C927** S. 375 modified (21.2.2009) by The Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 (S.I. 2009/317), art. 5(1)(7)

**C928** S. 375 applied (with modifications) (8.2.2011 with application in accordance with reg. 27(a) of the applying S.I.) by The Investment Bank Special Administration Regulations 2011 (S.I. 2011/245), regs. 1, 27(a), Sch. 6 para. 3(5) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 198(s)(ii) (with Sch. 2 para. 213))

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**Supplemental provisions concerning insurers**

**376 Continuation of contracts of long-term insurance where insurer in liquidation.**

(1) This section applies in relation to the winding up of an insurer which effects or carries out contracts of long-term insurance.

(2) Unless the court otherwise orders, the liquidator must carry on the insurer’s business so far as it consists of carrying out the insurer’s contracts of long-term insurance with a view to its being transferred as a going concern to a person who may lawfully carry out those contracts.

(3) In carrying on the business, the liquidator—

(a) may agree to the variation of any contracts of insurance in existence when the winding up order is made; but

(b) must not effect any new contracts of insurance.

(4) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the insurer attributable to contracts of long-term insurance effected by it require the appointment of a special manager, he may apply to the court.

(5) On such an application, the court may appoint a special manager to act during such time as the court may direct.
(6) The special manager is to have such powers, including any of the powers of a receiver or manager, as the court may direct.

(7) Section 177(5) of the 1986 Act (or Article 151(5) of the 1989 Order) applies to a special manager appointed under subsection (5) as it applies to a special manager appointed under section 177 of the 1986 Act (or Article 151 of the 1989 Order).

(8) If the court thinks fit, it may reduce the value of one or more of the contracts of long-term insurance effected by the insurer.

(9) Any reduction is to be on such terms and subject to such conditions (if any) as the court thinks fit.

(10) The court may, on the application of an official, appoint an independent actuary to investigate the insurer’s business so far as it consists of carrying out its contracts of long-term insurance and to report to the official—

(a) on the desirability or otherwise of that part of the insurer’s business being continued; and

(b) on any reduction in the contracts of long-term insurance effected by the insurer that may be necessary for successful continuation of that part of the insurer’s business.

(11) “Official” means—

(a) the liquidator;

(b) a special manager appointed under subsection (5); or

(c) the [F2355PRA].

[F2356(11A) The PRA must—

(a) consult the FCA before making an application under subsection (10), and

(b) provide the FCA with a copy of any actuary’s report made to the PRA under that subsection.

(11B) In the event that the activity of effecting or carrying out long-term contracts of insurance as principal is not to any extent a [F2357PRA-regulated] activity—

(a) the reference in subsection (11)(c) to the PRA is to be read as a reference to the FCA, and

(b) subsection (11A) does not apply.]

(12) The liquidator may make an application in the name of the insurer and on its behalf under Part VII without obtaining the permission that would otherwise be required by [F2358 Article 142 of, and Schedule 2 to, the 1989 Order.]

Textual Amendments

F2355 Word in s. 376(11)(c) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 24(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2356 S. 376(11A)(11B) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 14 para. 24(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2357 Words in s. 376(11B) substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 10 para. 2; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

F2358 Words in s. 376(12) substituted (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016
Reducing the value of contracts instead of winding up.

(1) This section applies in relation to an insurer which has been proved to be unable to pay its debts.

(2) If the court thinks fit, it may reduce the value of one or more of the insurer’s contracts instead of making a winding up order.

(3) Any reduction is to be on such terms and subject to such conditions (if any) as the court thinks fit.

Modifications etc. (not altering text)

- C929 S. 377 excluded (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), reg. 4(6) (with reg. 3)

Treatment of assets on winding up.

(1) The Treasury may by regulations provide for the treatment of the assets of an insurer on its winding up.

(2) The regulations may, in particular, provide for—

   (a) assets representing a particular part of the insurer’s business to be available only for meeting liabilities attributable to that part of the insurer’s business;

   (b) separate general meetings of the creditors to be held in respect of liabilities attributable to a particular part of the insurer’s business.

Winding-up rules.

(1) Winding-up rules may include provision—

   (a) for determining the amount of the liabilities of an insurer to policyholders of any class or description for the purpose of proof in a winding up; and

   (b) generally for carrying into effect the provisions of this Part with respect to the winding up of insurers.

(2) Winding-up rules may, in particular, make provision for all or any of the following matters—

   (a) the identification of assets and liabilities;

   (b) the apportionment, between assets of different classes or descriptions, of—

      (i) the costs, charges and expenses of the winding up; and

      (ii) any debts of the insurer of a specified class or description;

   (c) the determination of the amount of liabilities of a specified description;

   (d) the application of assets for meeting liabilities of a specified description;

   (e) the application of assets representing any excess of a specified description.

(3) “Specified” means specified in winding-up rules.
(4) “Winding-up rules” means rules made under section 411 of the 1986 Act (or Article 359 of the 1989 Order).

(5) Nothing in this section affects the power to make winding-up rules under the 1986 Act or the 1989 Order.

379A Power to apply settlement finality regime to payment institutions

(1) The Treasury may by regulations made by statutory instrument provide for the application to payment institutions, as participants in payment or securities settlement systems, of provision in subordinate legislation—
   (a) modifying the law of insolvency or related law in relation to such systems, or
   (b) relating to the securing of rights and obligations.

(2) “Payment institution” means—
   (a) an authorised payment institution or small payment institution within the meaning of the Payment Services Regulations 2017, or
   (b) a person whose head office, registered office or place of residence, as the case may be, is outside the United Kingdom and whose functions correspond to those of an institution within paragraph (a).

(3) “Payment or securities settlement system” means arrangements between a number of participants for or in connection with the clearing or execution of instructions by participants relating to any of the following—
   (a) the placing of money at the disposal of a recipient;
   (b) the assumption or discharge of a payment obligation;
   (c) the transfer of the title to, or an interest in, securities.

(4) “Subordinate legislation” has the same meaning as in the Interpretation Act 1978.

(5) Regulations under this section may—
   (a) make consequential, supplemental or transitional provision;
   (b) amend subordinate legislation.

(6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

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Textual Amendments

F2359S. 379A and cross-heading inserted (27.4.2017) by Digital Economy Act 2017 (c. 30), ss. 112, 118(1)

F2360Word in s. 379A(2)(a) substituted (13.8.2017) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(2)(c)(i), Sch. 8 para. 2(6) (with reg. 3)
PART XXV

INJUNCTIONS AND RESTITUTION

380 Injunctions.

(1) If, on the application of the [\textsuperscript{F2364}appropriate regulator] or the Secretary of State, the court is satisfied—
   
   (a) that there is a reasonable likelihood that any person will contravene a relevant requirement, or
   
   (b) that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

   the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.

(2) If on the application of the [\textsuperscript{F2364}appropriate regulator] or the Secretary of State the court is satisfied—

   (a) that any person has contravened a relevant requirement, and
   
   (b) that there are steps which could be taken for remedying the contravention,

   the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of the [\textsuperscript{F2364}appropriate regulator] or the Secretary of State, the court is satisfied that any person may have—

   (a) contravened a relevant requirement, or
   
   (b) been knowingly concerned in the contravention of such a requirement,
it may make an order restraining (or in Scotland an interdict prohibiting) him from disposing of, or otherwise dealing with, any assets of his which it is satisfied he is reasonably likely to dispose of or otherwise deal with.

(4) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.

(5) In subsection (2), references to remedying a contravention include references to mitigating its effect.

(6) “Relevant requirement”—

(a) in relation to an application by the appropriate regulator, means a requirement—

(i) which is imposed by or under this Act or by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order...

(ii) which is imposed by or under any other Act and whose contravention constitutes an offence mentioned in section 402(1);

(iii) which is imposed by the Alternative Investment Fund Managers Regulations 2013;

(iv) which is imposed by Part 7 of the Financial Services Act 2012 (offences relating to financial services) and whose contravention constitutes an offence under that Part;

(v) which is imposed by the Undertakings for Collective Investment in Transferable Securities Regulations 2011.

(b) in relation to an application by the Secretary of State, means a requirement which is imposed by or under this Act and whose contravention constitutes an offence which the Secretary of State has power to prosecute under this Act.

(7) In the application of subsection (6) to Scotland—

(a) .............................................

(b) in paragraph (b) omit “which the Secretary of State has power to prosecute under this Act”.

(8) The PRA is the “appropriate regulator” in the case of a contravention of—

(a) a requirement that is imposed by the PRA under any provision of this Act,

(b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA, or

(c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA.

(9) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of this section.
(10) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the “appropriate regulator” is whichever of the PRA or the FCA has power to prosecute the offence (see section 401).

(11) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.

(12) The Treasury may by order amend the definition of “appropriate regulator”.

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Textual Amendments

F2361 Words in s. 380(1)-(3) substituted (24.1.2013 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. 9 para. 19(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2362 Words in s. 380(6)(a) substituted (24.1.2013 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. 9 para. 19(3)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2363 S. 380(6)(i) substituted (24.1.2013 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. 9 para. 19(3)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2364 Word in s. 380(6)(a) omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 27(a)

F2365 Words in s. 380(6)(ii) substituted (24.1.2013 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. 9 para. 19(3)(c) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2366 Word in s. 380(6)(a)(ii) omitted (1.4.2014) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 10 para. 3(2); S.I. 2014/377, art. 2(2)(c)

F2367 S. 380(6)(a)(iii) and word inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 27(b)


F2369 S. 380(6)(a)(iv) and word inserted (1.4.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 10 para. 3(2); S.I. 2014/377, art. 2(2)(c)


F2372 S. 380(6)(a)(vi) and word inserted (18.3.2016) by The Undertakings for Collective Investment in Transferable Securities Regulations 2016 (S.I. 2016/225), regs. 1, 2(6)(d)

F2373 S. 380(7)(a) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 19(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2374 S. 380(8)-(12) inserted (24.1.2013 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. 9 para. 19(5) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

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Modifications etc. (not altering text)

381 Injunctions in cases of market abuse.

(1) If, on the application of the [F2375FCA], the court is satisfied—
   (a) that there is a reasonable likelihood that any person will contravene Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation, or
   (b) that any person is or has contravened Article 14 or 15 of the market abuse regulation and that there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.

(2) If on the application of the [F2375FCA] the court is satisfied—
   (a) that any person is or has contravened Article 14 or 15 of the market abuse regulation, and
   (b) that there are steps which could be taken for remedying the contravention,

the court may make an order requiring him to take such steps as the court may direct to remedy it.

(3) Subsection (4) applies if, on the application of the [F2378FCA], the court is satisfied that any person—
   (a) may be contravening Article 14 or 15 of the market abuse regulation; or
   (b) may have contravened Article 14 or 15 of the market abuse regulation.

(4) The court may make an order restraining (or in Scotland an interdict prohibiting) the person concerned from disposing of, or otherwise dealing with, any assets of his which it is satisfied that he is reasonably likely to dispose of, or otherwise deal with.
(5) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.

(6) In subsection (2), references to remediying any [F2385] contravention] include references to mitigating its effect.

Textual Amendments
F2375 Word in s. 381(1)-(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 20(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2376 Words in s. 381(1)(a) substituted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(14)(a)(i)
F2379 Word in s. 381(1) substituted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(14)(a)(iii)
F2380 Words in s. 381(2)(a) substituted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(14)(a)(iii)
F2381 Word in s. 381(2)(b) substituted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(14)(b)(i)
F2382 Words in s. 381(3)(a) substituted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(14)(b)(ii)
F2383 Words in s. 381(3)(b) substituted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(14)(c)(ii)
F2384 Word in s. 381(4) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 20(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2385 Word in s. 381(6) substituted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(14)(d)

Restitution orders

382 Restitution orders.

(1) The court may, on the application of the [F2386] appropriate regulator] or the Secretary of State, make an order under subsection (2) if it is satisfied that a person has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and—

(a) that profits have accrued to him as a result of the contravention; or
(b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The court may order the person concerned to pay to the [F2387] regulator concerned] such sum as appears to the court to be just having regard—

(a) in a case within paragraph (a) of subsection (1), to the profits appearing to the court to have accrued;
(b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect;
(c) in a case within both of those paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

(3) Any amount paid to the [F2388 regulator concerned] in pursuance of an order under subsection (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.

(4) On an application under subsection (1) the court may require the person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes—

(a) establishing whether any and, if so, what profits have accrued to him as mentioned in paragraph (a) of that subsection;

(b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in paragraph (b) of that subsection and, if so, the extent of that loss or adverse effect; and

(c) determining how any amounts are to be paid or distributed under subsection (3).

(5) The court may require any accounts or other information supplied under subsection (4) to be verified in such manner as it may direct.

(6) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.

(7) Nothing in this section affects the right of any person other than the [F2389 appropriate regulator] or the Secretary of State to bring proceedings in respect of the matters to which this section applies.

(8) “Qualifying person” means a person appearing to the court to be someone—

(a) to whom the profits mentioned in subsection (1)(a) are attributable; or

(b) who has suffered the loss or adverse effect mentioned in subsection (1)(b).

(9) “Relevant requirement”—

(a) in relation to an application by the [F2390 appropriate regulator], means a requirement—

(i) [F2391 which is imposed by or under this Act or by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order]; [F2392 ...]

(ii) which is imposed by or under any other Act and whose contravention constitutes an offence [F2393 mentioned in section 402(1)]; [F2394[F2395 ...]

(iii) which is imposed by the Alternative Investment Fund Managers Regulations 2013;[F2396 or

(iv) which is imposed by Part 7 of the Financial Services Act 2012 (offences relating to financial services) and whose contravention constitutes an offence under that Part;]

(b) in relation to an application by the Secretary of State, means a requirement which is imposed by or under this Act and whose contravention constitutes an offence which the Secretary of State has power to prosecute under this Act.

(10) In the application of subsection (9) to Scotland—

(a) .....................................................

(b) in paragraph (b) omit “which the Secretary of State has power to prosecute under this Act”.

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(11) The PRA is the “appropriate regulator” in the case of a contravention of—
   
   (a) a requirement that is imposed by the PRA under any provision of this Act,
   
   (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA, or
   
   (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA.

(12) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of this section.

(13) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the “appropriate regulator” is the regulator which has power to prosecute the offence (see section 401).

(14) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.

(15) The Treasury may by order amend the definition of “appropriate regulator”.

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**Textual Amendments**

F2386 Words in s. 382(1) substituted (24.1.2013 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. 9 para. 21(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2387 Words in s. 382(2) substituted (24.1.2013 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. 9 para. 21(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2388 Words in s. 382(3) substituted (24.1.2013 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. 9 para. 21(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2389 Words in s. 382(7) substituted (24.1.2013 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. 9 para. 21(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2390 Words in s. 382(9)(a) substituted (24.1.2013 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. 9 para. 21(5)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2391S. 382(9)(a)(i) substituted (24.1.2013 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. 9 para. 21(5)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2392 Word in s. 382(9)(a) omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 28(a)

F2393 Words in s. 382(9)(a)(ii) substituted (24.1.2013 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. 9 para. 21(5)(c) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2394 Word in s. 382(9)(a)(ii) omitted (1.4.2014) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 10 para. 3(3); S.I. 2014/377, art. 2(2)(c)

F2395S. 382(9)(a)(iii) and word inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 28(b)
Restitution orders in cases of market abuse.

1. The court may, on the application of the FCA, make an order under subsection (4) if it is satisfied that—
   (a) a person (“the person concerned”) has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation; and
   (b) the condition mentioned in subsection (2) is fulfilled.

2. The condition is—
   (a) that profits have accrued to the person concerned as a result; or
   (b) that one or more persons have suffered loss or been otherwise adversely affected as a result.

3. The court may order the person concerned to pay to the FCA such sum as appears to the court to be just having regard—
   (a) in a case within paragraph (a) of subsection (2), to the profits appearing to the court to have accrued;
   (b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect;
(c) in a case within both of those paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

(5) Any amount paid to the [F2402 FCA] in pursuance of an order under subsection (4) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.

(6) On an application under subsection (1) the court may require the person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes—

(a) establishing whether any and, if so, what profits have accrued to him as mentioned in subsection (2)(a);
(b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in subsection (2)(b) and, if so, the extent of that loss or adverse effect; and
(c) determining how any amounts are to be paid or distributed under subsection (5).

(7) The court may require any accounts or other information supplied under subsection (6) to be verified in such manner as it may direct.

(8) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.

(9) Nothing in this section affects the right of any person other than the [F2403 FCA] to bring proceedings in respect of the matters to which this section applies.

(10) “Qualifying person” means a person appearing to the court to be someone—

(a) to whom the profits mentioned in paragraph (a) of subsection (2) are attributable; or
(b) who has suffered the loss or adverse effect mentioned in paragraph (b) of that subsection.

Textual Amendments

F2399 S. 383(1) substituted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(15)(a)


F2401 Word in s. 383(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 22 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2402 Word in s. 383(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 22 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2403 Word in s. 383(9) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 22 (with Sch. 20); S.I. 2013/423, art. 3, Sch.
Restitution required by F2404 FCA or PRA

Textual Amendments
F2404 Words in s. 384 cross-heading substituted (24.1.2013 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. 9 para. 23(10) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

384 Power of F2405 FCA or PRA to require restitution.

(1) The appropriate regulator may exercise the power in subsection (5) if it is satisfied that an authorised person or recognised investment exchange (“the person concerned”) has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and—
(a) that profits have accrued to him as a result of the contravention; or
(b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The FCA may exercise the power in subsection (5) if it is satisfied that—
(a) a person (“the person concerned”) has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation; and
(b) the condition mentioned in subsection (3) is fulfilled.

(3) The condition is—
(a) that profits have accrued to the person concerned as a result of the contravention of Article 14 or 15 of the market abuse regulation; or
(b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention of Article 14 or 15 of the market abuse regulation.

(4) ... .........................................................

(5) The power referred to in subsections (1) and (2) is a power to require the person concerned, in accordance with such arrangements as the regulator exercising the power (“the regulator concerned”) considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the regulator concerned to be just having regard—
(a) in a case within paragraph (a) of subsection (1) or (3), to the profits appearing to the regulator concerned to have accrued;
(b) in a case within paragraph (b) of subsection (1) or (3), to the extent of the loss or other adverse effect;
(c) in a case within paragraphs (a) and (b) of subsection (1) or (3), to the profits appearing to the regulator concerned to have accrued and to the extent of the loss or other adverse effect.

(6) “Appropriate person” means a person appearing to the regulator concerned to be someone—
(a) to whom the profits mentioned in paragraph (a) of subsection (1) or (3) are attributable; or
(b) who has suffered the loss or adverse effect mentioned in paragraph (b) of subsection (1) or (3).
(7) “Relevant requirement” means—
   (a) a requirement imposed by or under this Act [\textsuperscript{F2414}] or by [\textsuperscript{F2415} a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order[\textsuperscript{F2416}]];
   (b) a requirement which is imposed by or under any other Act and whose contravention constitutes an offence [\textsuperscript{F2417} mentioned in section 402(1)] [\textsuperscript{F2418},
   (c) a requirement imposed by the Alternative Investment Fund Managers Regulations 2013[\textsuperscript{F2419}], [\textsuperscript{F2420} and
   (d) a requirement which is imposed by Part 7 of the Financial Services Act 2012 (offences relating to financial services) and whose contravention constitutes an offence under that Part.]

\[\textsuperscript{F2421}\]

(9) The PRA is the “appropriate regulator” in the case of a contravention of—
   (a) a requirement that is imposed by the PRA under any provision of this Act,
   (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA, or
   (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA.

(10) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, “the appropriate regulator” is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of this section.

(11) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the “appropriate regulator” is the regulator which has power to prosecute the offence (see section 401).

(12) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.

(13) The Treasury may by order amend the definition of “appropriate regulator”.]

F2411 Words in s. 384(5) substituted (24.1.2013 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. 9 para. 23(4)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2412 Words in s. 384(5) substituted (24.1.2013 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. 9 para. 23(4)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2413 Words in s. 384(6) substituted (24.1.2013 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. 9 para. 23(5) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2414 Words in s. 384(7)(a) 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(5), Sch. 5 para. 15

F2415 Words in s. 384(7)(a) substituted (24.1.2013 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. 9 para. 23(6)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2416 Word in s. 384(7) omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 29(a)

F2417 Words in s. 384(7)(b) substituted (24.1.2013 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. 9 para. 23(6)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2418S. 384(7)(c) and word inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 29(b)

F2419 Word in s. 384(7)(b) omitted (1.4.2014) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 10 para. 3(4); S.I. 2014/377, art. 2(2)(c)

F2420S. 384(7)(d) and word inserted (1.4.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 10 para. 3(4); S.I. 2014/377, art. 2(2)(c)

F2421S. 384(8) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 23(7) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2422S. 384(9)-(13) inserted (24.1.2013 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. 9 para. 23(8) (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)


C954 S. 384 applied (with modifications) (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013 (S.I. 2013/441), arts. 1(1), 18(3)

C955 S. 384 applied (with modifications) (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013 (S.I. 2013/441), arts. 1(1), 17(2)

C956 S. 384 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services Act 2012 (Consumer Credit) Order 2013 (S.I. 2013/1882), arts. 1(1), 3(10)


Warning notices.

(1) If a regulator proposes to exercise the power under section 384(5) in relation to a person, it must give him a warning notice.

(2) A warning notice under this section must specify the amount which the regulator proposes to require the person concerned to pay or distribute as mentioned in section 384(5).

Decision notices.

(1) If the regulator decides to exercise the power under section 384(5), it must give a decision notice to the person in relation to whom the power is exercised.

(2) The decision notice must—
   (a) state the amount that he is to pay or distribute as mentioned in section 384(5);
   (b) identify the person or persons to whom that amount is to be paid or among whom that amount is to be distributed; and
   (c) state the arrangements in accordance with which the payment or distribution is to be made.

(3) If the regulator decides to exercise the power under section 384(5), the person in relation to whom it is exercised may refer the matter to the Tribunal.
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Financial Services and Markets Act 2000 (c. 8)

C963 S. 386(1) modified (1.12.2001) by S.I. 2001/3592, arts. 1(2), 70(2) (with art. 23(2))

PART XXVI
NOTICES

Modifications etc. (not altering text)


C965 Pt. 26 applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 44

C966 Pt. 26 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)(b)(xiii)(c), 95, Sch. 5 para. 7 (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 155(6)(g)(h) (with Sch. 2 para. 156))

C967 Pt. 26 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, Sch. para. 5

C968 Pt. 26 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), reg. 30


C970 Pt. 26 applied (with modifications) (15.1.2013) by The Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (S.I. 2012/3122), reg. 1, Sch. para. 5 (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 248(6)(n)(io))

C971 Pt. 26 applied (with modifications) (E.W.) (9.7.2013) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (S.I. 2013/1635), regs. 1, 30(1)

C972 Pt. 26 applied (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), regs. 1, 70(2)

C973 Pt. 26 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services Act 2012 (Consumer Credit) Order 2013 (S.I. 2013/1882), arts. 1(1), 3(11)

Warning notices

387 Warning notices.

(1) A warning notice must—

(a) state the action which the [2427 regulator giving the notice (“the regulator concerned”)]
proposes to take;

(b) be in writing;

(c) give reasons for the proposed action;

(d) state whether section 394 applies; and
(c) if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it.

[F2428](1A) Where the PRA is the regulator concerned and the FCA proposes to refuse consent for the purposes of section 55F, 55I or 59 or to give conditional consent as mentioned in section 55F(5) [F2429], 55I(8) or 61(2D)], the warning notice given by the PRA must—

(a) state that fact, and
(b) give the reasons for the FCA’s proposal.

(2) [F2430] A warning notice must specify a reasonable period (which may not be less than [F2431] 14 days]) within which the person to whom it is given may make representations to the [F2432] regulator concerned.

(3) [F2433] The regulator concerned may extend the period specified in the notice.

[F2434](3A) Where the PRA receives any representations in response to a warning notice given by it under section 55X(1) or (2) or 62(2) in a case falling within subsection (1A) it must—

(a) if the representations are in writing, give a copy to the FCA, or
(b) if they are not in writing and have not been given directly to the FCA by the person making them, provide the FCA with a record of them.

(4) [F2435] The regulator concerned must then decide, within a reasonable period, whether to give the person concerned a decision notice.

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Textual Amendments

F2427 Words in s. 387(1)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 26(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2428 S. 387(1A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 26(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2429 Words in s. 387(1A) substituted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 12; S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F2430 Words in s. 387(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 26(4)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2431 Words in s. 387(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 26(4)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2432 Words in s. 387(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 26(4)(c) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2433 Words in s. 387(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 26(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2434 S. 387(3A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 26(6) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2435 Words in s. 387(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 26(7) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C990 S. 387 applied (1.12.2001) by S.I. 2001/1228, regs. 1(2)(c), 8(a) (with reg. 1(2)(3)); S.I. 2001/3538, art. 2(1)

C991 S. 387 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), 8(a) (with reg. 1(2))
Decision notices

388 Decision notices.

(1) A decision notice must—

(a) be in writing;
(b) give the reasons of the regulator giving the notice ("the regulator concerned") for the decision to take the action to which the notice relates;
(c) state whether section 394 applies;
(d) if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it; and
(e) give an indication of—

(i) any right to have the matter referred to the Tribunal which is given by this Act; and
(ii) the procedure on such a reference.

Where the PRA is the regulator concerned and the FCA has decided to refuse consent for the purposes of section 55F, 55I or 59 or to give conditional consent as mentioned in section 55F(5), 55I(8) or 61(2D), the decision notice given by the PRA must—

(a) state that fact, and
(b) give the reasons for the FCA's decision.

(2) If the decision notice was preceded by a warning notice, the action to which the decision notice relates must be action under the same Part as the action proposed in the warning notice.

(3) The regulator concerned may, before it takes the action to which a decision notice ("the original notice") relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.

(4) The regulator concerned may give a further decision notice as a result of subsection (3) only if the person to whom the original notice was given consents.
(5) If the person to whom a decision notice is given under subsection (3) had the right to refer the matter to which the original decision notice related to the Tribunal, he has that right as respects the decision notice under subsection (3).

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**Textual Amendments**

F2436 Words in s. 388(1)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 27(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2437 S. 388(1A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 27(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2438 Words in s. 388(1A) substituted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 13; S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

F2439 Words in s. 388(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 27(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2440 Words in s. 388(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 27(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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

C998 S. 388 applied (1.12.2001) by S.I. 2001/1228, regs. 1(2)(e), 8(b) (with reg. 1(2)(3)); S.I. 2001/3538, art. 2(1)

C999 S. 388 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), 8(b) (with reg. 1(2))

C1000S. 388 applied (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 56 (with regs. 52-58)


C1002S. 388 applied (with modifications) by 2009 c. 1, s. 83ZU(6)(7) (as inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 97


C1004S. 388 applied (with modifications) by S.I. 2014/2879, reg. 5C(10) (as inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 5(9) (with regs. 7(4), 9(1)))


C1006S. 388(1)(b)-(e) applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 52

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**Conclusion of proceedings**

**389 Notices of discontinuance.**

(1) If [F2441 a regulator] decides not to take—

(a) the action proposed in a warning notice [F2442 given by it], or

(b) the action to which a decision notice [F2443 given by it] relates,
Final notices.

(1) If a regulator has given a person a decision notice and the matter was not referred to the Tribunal within the time required by Tribunal Procedure Rules, the regulator must, on taking the action to which the decision notice relates, give the person concerned and any person to whom the decision notice was copied a final notice.

(2) If a regulator has given a person a decision notice and the matter was referred to the Tribunal, the regulator must, on taking action in accordance with any directions given by—

(a) the Tribunal, or

(b) a court on an appeal against the decision of the Tribunal,

give that person and any person to whom the decision notice was copied the notice required by subsection (2A).
The notice required by this subsection is—

(a) in a case where the regulator is acting in accordance with a direction given by the Tribunal under section 133(6)(b), or by the court on an appeal from a decision by the Tribunal under section 133(6), a further decision notice, and

(b) in any other case, a final notice.

A final notice about a statement must—

(a) set out the terms of the statement;

(b) give details of the manner in which, and the date on which, the statement will be published.

A final notice about an order must—

(a) set out the terms of the order;

(b) state the date from which the order has effect.

A final notice about a penalty must—

(a) state the amount of the penalty;

(b) state the manner in which, and the period within which, the penalty is to be paid;

(c) give details of the way in which the penalty will be recovered if it is not paid by the date stated in the notice.

A final notice about a requirement to make a payment or distribution in accordance with section 384(5) must state—

(a) the persons to whom,

(b) the manner in which, and

(c) the period within which, it must be made.

In any other case, the final notice must—

(a) give details of the action being taken;

(b) state the date on which the action is to be taken.

The period stated under subsection (5)(b) or (6)(c) may not be less than 14 days beginning with the date on which the final notice is given.

If all or any of the amount of a penalty payable under a final notice is outstanding at the end of the period stated under subsection (5)(b), the regulator giving the notice may recover the outstanding amount as a debt due to it.

If all or any of a required payment or distribution has not been made at the end of a period stated in a final notice under subsection (6)(c), the obligation to make the payment is enforceable, on the application of the regulator giving the notice, by injunction or, in Scotland, by an order under section 45 of the Act of Session 1988.

Textual Amendments

F2444 Words in s. 390(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 292(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2445 Words in s. 390(1) substituted (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(2)(e), 5(1), Sch. 2 para. 47(a)
Publication

(1) In the case of a warning notice falling within subsection (1ZB)—

(a) neither the regulator giving the notice nor a person to whom it is given or copied may publish the notice,

(b) a person to whom the notice is given or copied may not publish any details concerning the notice unless the regulator giving the notice has published those details, and
(c) after consulting the persons to whom the notice is given or copied, the
gregulator giving the notice may publish such information about the matter to
which the notice relates as it considers appropriate.

(1ZA) In the case of a warning notice not falling within subsection (1ZB), neither the
regulator giving the notice nor a person to whom it is given or copied may publish the
notice or any details concerning it.

(1ZB) A warning notice falls within this subsection if it is given under—
(a) section 63B;
(b) section 67;
(c) section 87M;
(d) section 88B;
(e) section 89K;
(f) section 89R;
(g) section 92;
(h) section 126;
(i) section 131H;
(ja) section 142N;]
(j) section 192L;
(k) section 207;
(l) section 312G;
(m) section 345B (whether as a result of section 345(2) or 345A(3) or
section 249(1) [F2456 or 261K(1)].]

(1A) A person to whom a decision notice is given or copied may not publish the notice or
any details concerning it unless the [F2458 regulator giving the notice] has published the
notice or those details.

(2) A notice of discontinuance must state that, if the person to whom the notice is given
consents, the [F2459 regulator giving the notice] may publish such information as it
considers appropriate about the matter to which the discontinued proceedings related.

(3) A copy of a notice of discontinuance must be accompanied by a statement that, if the
person to whom the notice is copied consents, the [F2460 regulator giving the notice]
may publish such information as it considers appropriate about the matter to which
the discontinued proceedings related, so far as relevant to that person.

(4) [F2461 The regulator giving a decision or final notice] must publish such information
about the matter to which [F2462 the notice] relates as it considers appropriate.

(4A) Subsection (4) is subject to [F2464 sections 391A [F2465, 391B [F2466, 391C and 391D]][].]

(5) When a supervisory notice takes effect, the [F2467 regulator giving the notice] must
publish such information about the matter to which the notice relates as it considers
appropriate.

(5A) Subsection (5) does not apply in relation to a notice given in accordance with
section 137S(5) or (8)(a) (but see section 137S(11)].]

(6) The FCA may not publish information under this section if, in its opinion, publication
of the information would be—
(a) unfair to the person with respect to whom the action was taken (or was proposed to be taken),
(b) prejudicial to the interests of consumers, or
(c) detrimental to the stability of the UK financial system.

(6A) The PRA may not publish information under this section if, in its opinion, publication of the information would be—
(a) unfair to the person with respect to whom the action was taken (or was proposed to be taken),
(b) prejudicial to the safety and soundness of PRA-authorised persons, or
(c) in a case where section 2C applies, prejudicial to securing the appropriate degree of protection for policyholders.

(7) Information is to be published under this section in such manner as the [F2470 regulator] considers appropriate.

[F2471 (7A) Where [F2472 a regulator] publishes information under subsection (4) or (5) in respect of a final notice or a supervisory notice which relates to a contravention of a requirement falling within subsection (7B) at the same time as it publishes the information it must notify ESMA that it has done so.

(7B) A requirement falls within this subsection if it is imposed—

(a) ..............................................
(b) ..............................................
(c) by or under any provision made by or under this Act which implements the markets in financial instruments directive,
(d) by [F2473 any directly applicable EU regulation made under the markets in financial instruments directive [F2476]; or
(e) by or under the markets in financial instruments regulation and any directly applicable EU regulation made under it.]

(8) For the purposes of determining when a supervisory notice takes effect, a matter to which the notice relates is open to review if—
(a) the period during which any person may refer the matter to the Tribunal is still running;
(b) the matter has been referred to the Tribunal but has not been dealt with;
(c) the matter has been referred to the Tribunal and dealt with but the period during which an appeal may be brought against the Tribunal's decision is still running; or
(d) such an appeal has been brought but has not been determined.

[F2477 (8A) Where a decision notice or final notice relates to any decision or action under a provision of this Act in relation to the contravention of a requirement imposed by the CSD regulation or any directly applicable regulation made under the CSD regulation, this section has effect subject to Article 62 of the CSD regulation (publication of decisions).]

[F2478 (8B) Where a decision notice or final notice relates to any decision or action under a provision of this Act in relation to the contravention of a requirement imposed by the market abuse regulation or a directly applicable EU regulation made under the market abuse regulation, this section has effect subject to Article 34 of the market abuse regulation (publication of decisions).]
Where a decision notice, final notice or supervisory notice relates to any decision or action under a provision of this Act in relation to the contravention of a requirement imposed by or under Article 4 or 15 of the SFT regulation, this section has effect subject to Article 26 of the SFT regulation (publication of decisions).

Where a decision notice, final notice or supervisory notice relates to any decision or action under a provision of this Act in relation to the contravention of a requirement imposed by—

(a) Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (the “PRIIPs regulation”), or

(b) any directly applicable regulation made under the PRIIPs regulation, this section has effect subject to Article 29 of the PRIIPs regulation (publication of decisions).

Where a decision notice or final notice relates to any decision or action under a provision of this Act in relation to the contravention of a requirement imposed by the EU Benchmarks Regulation 2016 or any directly applicable regulation made under the EU Benchmarks Regulation 2016, this section has effect subject to Article 45 of the EU Benchmarks Regulation 2016 (publication of decisions).

Where a decision notice, final notice or supervisory notice relates to any decision or action under a provision of this Act in relation to the contravention of a requirement imposed by—


(b) any directly applicable regulation made under the EU Securitisation Regulation 2017, this section has effect subject to Article 37 of the EU Securitisation Regulation 2017 (publication of administrative sanctions).

“Notice of discontinuance” means a notice given under section 389.

“Supervisory notice” has the same meaning as in section 395.

Section 425A (meaning of “consumers”) applies for the purposes of this section.
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F2459 Words in s. 391(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 30(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2460 Words in s. 391(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 30(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2461 Words in s. 391(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 30(4)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2462 Words in s. 391(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 30(4)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2463 S. 391(4A) inserted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 22

F2464 Words in s. 391(4A) substituted (26.11.2015) by The Transparency Regulations 2015 (S.I. 2015/1755), reg. 1(3), Sch. 2 para. 45

F2465 Words in s. 391(4A) substituted (18.3.2016) by The Undertakings for Collective Investment in Transferable Securities Regulations 2016 (S.I. 2016/225), regs. 1, 2(7)


F2467 Words in s. 391(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 30(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2468 S. 391(5A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 24(2), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2469 S. 391(6)(6A) substituted for s. 391(6) (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 30(6) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2470 Word in s. 391(7) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 30(7) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2471 S. 391(7A)(7B) inserted (16.4.2012) by The Financial Services (Omnibus 1 Directive) Regulations 2012 (S.I. 2012/916), regs. 1, 2(13)

F2472 Words in s. 391(7A) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 30(8) (with Sch. 20); S.I. 2013/423, art. 3, Sch.


F2477 S. 391(8A) inserted (21.11.2014) by The Central Securities Depositories Regulations 2014 (S.I. 2014/2879), regs. 1(1), 6(2)

F2478 S. 391(8B) inserted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(17)(b)


F2480 S. 391(8D) inserted (1.1.2018) by The Packaged Retail and Insurance-based Investment Products Regulations 2017 (S.I. 2017/1127), reg. 1, Sch. 2 para. 1
Where a regulator publishes information under section 391(4) about a matter to which this section applies where a decision notice or final notice relates to the imposition of a penalty to which Article 68(1) of the capital requirements directive applies.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Publication: special provisions relating to the capital requirements directive

(1) This section applies where a decision notice or final notice relates to the imposition of a penalty to which Article 68(1) of the capital requirements directive applies.

(2) Where a regulator publishes information under section 391(4) about a matter to which a decision notice relates and the person to whom the notice is given refers the matter.
to the Tribunal, the regulator must, without undue delay, publish on its official website information about the status of the appeal and its outcome.

(3) Subject to subsection (4), where a regulator gives a final notice, the regulator must publish information on the type and nature of the breach and the identity of the person on whom the penalty is imposed.

(4) Information about a matter to which a final notice relates must be published anonymously where—
   (a) the penalty is imposed on an individual and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;
   (b) publication would jeopardise the stability of financial markets or an ongoing criminal investigation; or
   (c) publication would cause, insofar as it can be determined, disproportionate damage to the persons involved.

(5) Where subsection (4) applies, the regulator may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the penalty is imposed.

(6) Where a regulator publishes information in accordance with subsections (2) to (5), the regulator must—
   (a) publish the information on its official website;
   (b) ensure the information remains on its official website for at least five years, unless the information is personal data and the data protection legislation requires the information to be retained for a different period; and
   (c) disclose to EBA any penalty imposed, any appeal against such a penalty and the outcome of the appeal, unless such a disclosure is not permitted by section 348.]

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**Textual Amendments**

F2484S. 391A inserted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 23

F2485S. 391A heading substituted (26.11.2015) by The Transparency Regulations 2015 (S.I. 2015/1755), regs. 1(3), 4(6)

F2486Words in s. 391A(6)(b) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), Sch. 19 para. 50 (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

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[^391Publication: special provisions relating to the transparency obligations directive:](#) (1) This section applies where a decision notice, final notice or notice under section 89M relates to the imposition of a sanction or measure to which Article 29(1) of the transparency obligations directive applies.

(2) Where the FCA publishes information under section 391(4) or subsection (3) about a matter to which a decision notice or a notice under section 89M relates and the person to whom the notice is given refers the matter to the Tribunal—
   (a) the FCA must include information to that effect in the publication at the time of the publication, or,
   (b) if the matter is referred to the Tribunal after the publication, the FCA must update the publication or publish that information separately.
(3) Subject to subsection (4), where the FCA gives a final notice or a notice under section 89M, it must publish information on the type and nature of the breach and the identity of the person on whom the sanction or measure is imposed.

(4) Information about a matter to which a final notice or a notice under section 89M relates may be published anonymously where—
   (a) the sanction is imposed on an individual and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;
   (b) failing to publish anonymously would seriously jeopardise the stability of the financial system or an ongoing official investigation; or
   (c) failing to publish anonymously would cause, insofar as it can be determined, disproportionate and serious damage to the persons involved.

(5) Where subsection (4) applies, the FCA may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction or measure is imposed.

(6) In this section, the “transparency obligations directive” has the same meaning as in section 103(1).

Textual Amendments


391CPublication: special provisions relating to the UCITS directive

(1) This section applies where a supervisory notice, decision notice or final notice relates to the imposition of a sanction or measure to which Article 99 of the UCITS directive applies.

(2) Where the FCA publishes information under section 391(4) or (5) about a matter to which a decision notice or supervisory notice relates and the person to whom the notice is given refers the matter to the Tribunal, the FCA must, without undue delay, publish on its official website information about the status of the appeal and its outcome.

(3) Subject to subsection (4), where the FCA gives a final notice, it must, without undue delay, publish on its official website information on the type and nature of the breach and the identity of the person on whom the sanction or measure is imposed.

(4) Subject to subsection (6), information about a matter to which a final notice relates must be published anonymously where—
   (a) the sanction or measure is imposed on an individual and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;
   (b) failing to publish anonymously would jeopardise the stability of financial markets or an ongoing investigation; or
   (c) failing to publish anonymously would cause, insofar as it can be determined, disproportionate damage to the persons involved.

F2488
(5) Where subsection (4) applies, the FCA may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction or measure is imposed.

(6) Information about a matter to which a final notice relates must not be published where anonymous publication under subsection (4) is considered by the FCA to be insufficient to ensure—

(a) that the stability of the financial markets would not be put in jeopardy; or
(b) that the publication would be proportionate with regard to sanctions or measures which are considered by the FCA to be of a minor nature.

(7) Where the FCA publishes information in accordance with subsections (2) to (5), the FCA must—

(a) ensure the information remains on its official website for at least five years, unless the information is personal data and \[F2489\] the data protection legislation requires the information to be retained for a different period; and
(b) promptly report the information to ESMA.

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Textual Amendments

F2488 S. 391C inserted (18.3.2016) by The Undertakings for Collective Investment in Transferable Securities Regulations 2016 (S.I. 2016/225), regs. 1, 2(8)

F2489 Words in s. 391C(7)(a) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), Sch. 19 para. 51 (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

391D Publication: special provisions relating to the markets in financial instruments directive

(1) This section applies where a supervisory notice, decision notice or final notice relates to the imposition of a sanction or measure to which Article 71 of the markets in financial instruments directive applies.

(2) Where a regulator publishes information under section 391(4) or (5) about a matter to which a supervisory notice or decision notice relates and the person to whom the notice is given refers the matter to the Tribunal, the regulator must, without undue delay, publish on its official website information about the status of the appeal and its outcome.

(3) Subject to subsections (4), (5), and (8) where a regulator gives a final notice, it must, without undue delay, publish on its official website information on the type and nature of the breach and the identity of the person on whom the sanction or measure is imposed.

(4) Subject to subsection (7) and (8), information about a matter to which a final notice relates must be published in accordance with subsection (5) where—

(a) a regulator considers it to be disproportionate to publish the identity of a legal person on whom the sanction or measure is imposed following an assessment by the regulator of the proportionality of publishing the person’s identity;
(b) a regulator considers it to be disproportionate to publish the personal data of an individual on whom the sanction or measure is imposed following an assessment by the regulator of the proportionality of publishing the personal data; or
(c) the publication of information under subsection (3) would jeopardise the stability of the financial markets or an ongoing investigation.

(5) Where subsection (4) applies, a regulator must—

(a) defer the publication of the information about a matter to which a final notice relates until such time as subsection (4) ceases to apply; or

(b) publish the information on an anonymous basis if publication on that basis would ensure the effective protection of any anonymised personal data in the information.

(6) Where subsection (5)(b) applies, the regulator may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction or measure is imposed.

(7) The regulator may make arrangements for the postponed publication of any personal data that is anonymised in information it publishes under subsection (5)(b) if—

(a) publication of the data is postponed for a reasonable period of time; and

(b) the regulator considers that subsection (5)(b) will no longer apply in respect of that data at the time of the postponed publication.

(8) Information about a matter to which a final notice relates must not be published if publication in accordance with subsection (5) is considered by the regulator insufficient to ensure—

(a) that the stability of the financial markets would not be put in jeopardy; or

(b) that the publication of the information would be proportionate with regard to sanctions or measures which are considered by the regulator to be of a minor nature.

(9) Where a regulator publishes information in accordance with subsections (2) to (7), the regulator must—

(a) ensure the information remains on its official website for at least five years, unless the information is personal data and the data protection legislation requires the information to be retained for a different period; and

(b) promptly report the information to ESMA.

Textual Amendments


F2491. Words in s. 391D(9)(a) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), Sch. 19 para. 52 (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

[F2492.391 Publication: special provisions relating to the insurance distribution directive

(1) This section applies where a supervisory notice, decision notice or final notice relates to the imposition of a sanction or measure to which Article 32 of the insurance distribution directive applies.

(2) Where a regulator publishes information under section 391(4) or (5) about a matter to which a decision notice or supervisory notice relates and the person to whom the
notice is given refers the matter to the Tribunal, the regulator must, without undue delay, publish on its official website information about the status of the appeal and its outcome.

(3) Subject to subsection (4), where the regulator gives a final notice, it must, without undue delay, publish on its official website information on the type and nature of the breach and the identity of the person on whom the sanction or measure is imposed.

(4) The regulator may publish the information anonymously, defer publication of the information or withhold some, or all, of the information where—

(a) following an obligatory prior assessment, the regulator considers that publication of the identity of the person, or any personal data, would be disproportionate; or

(b) the regulator considers that publication would jeopardise the stability of financial markets or an ongoing investigation.

(5) The regulator must—

(a) inform EIOPA of all sanctions or measures imposed to which Article 32 of the insurance distribution directive applies (whether or not information about such matters is published) and all appeals against such a sanction or measure and the outcome of any appeals, without delay; and

(b) provide EIOPA annually with aggregate information about all such sanctions or measures imposed.

(6) In this section “supervisory notice” has the same meaning as in section 395.

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**Textual Amendments**


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**Third party rights and access to evidence**

392 Application of sections 393 and 394.

Sections 393 and 394 apply to—

(a) a warning notice given in accordance with section [F2493] 55(Z(1), 57(1), 63(3), [F2504] 63B(1), [F2495] 67(1), 88(4)(b), [F2496] section 88B(1), 92(1), 126(1), [F2497] 131H(1), [F2498] 142T(1), [F2499] 192L(1), 207(1), 255(1), [F2500] 261V(1), 280(1), [F2501] section 312G(1), 331(1), [F2502] 345B(1) (whether as a result of section 345(2), 345A(3) or section 249(1) [F2503] or 261K(1)) [F2504], 385(1) or 412B(4) or (8)];

Textual Amendments

F2493 Word in s. 392(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 31(2)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2494 Word in s. 392(a) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(e), Sch. 2 para. 29(2)(a)

F2495 Words in s. 392 substituted (19.3.2013) for specified purposes, 1.4.2013 in so far as not already in force by Financial Services Act 2012 (c. 21), ss. 18(5)(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.; S.I. 2013/651, art. 2(a)

F2496 Word in s. 392(a) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(e), Sch. 2 para. 29(2)(b)

F2497 Word in s. 392(a) inserted (1.1.2019) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 4(4)(a), 148(5); S.I. 2018/1306, art. 2(d)

F2498 Word in s. 392(a) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 31(2)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2499 Word in s. 392(a) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, 3(19)(a)(i) (with reg. 24)

F2500 Words in s. 392(a) inserted (24.1.2013 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. 8 para. 37(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2501 Words in s. 392(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 13 para. 8(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2502 Words in s. 392(a) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, 3(19)(a)(ii) (with reg. 24)

F2503 Words in s. 392(a) substituted (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(5), Sch. 5 para. 16(a)

F2504 Word in s. 392(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 31(3)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2505 Word in s. 392(b) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(e), Sch. 2 para. 29(3)(a)

F2506 Words in s. 392 substituted (19.3.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 18(5)(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.; S.I. 2013/651, art. 2(a)

F2507 Word in s. 392(b) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(e), Sch. 2 para. 29(3)(b)

F2508 Word in s. 392(b) inserted (1.1.2019) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 4(4)(b), 148(5); S.I. 2018/1306, art. 2(d)

F2509 Word in s. 392(b) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 31(3)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2510 Word in s. 392(b) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, 3(19)(b)(i) (with reg. 24)

F2511 Words in s. 392(b) inserted (24.1.2013 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. 8 para. 37(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2512 Words in s. 392(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 13 para. 8(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2513 Words in s. 392(b) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, 3(19)(b)(ii) (with reg. 24)

F2514 Words in s. 392(b) substituted (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(5), Sch. 5 para. 16(b)
393 Third party rights.

(1) If any of the reasons contained in a warning notice to which this section applies relates to a matter which—

(a) identifies a person (“the third party”) other than the person to whom the notice is given, and

(b) in the opinion of the [F2515 regulator giving the notice], is prejudicial to the third party,

a copy of the notice must be given to the third party.

(2) Subsection (1) does not require a copy to be given to the third party if the [F2516 regulator giving the notice]—

(a) has given him a separate warning notice in relation to the same matter; or

(b) gives him such a notice at the same time as it gives the warning notice which identifies him.

(3) The notice copied to a third party under subsection (1) must specify a reasonable period (which may not be less than [F2517 14 days]) within which he may make representations to [F2518 the regulator giving the notice].

(4) If any of the reasons contained in a decision notice to which this section applies relates to a matter which—

(a) identifies a person (“the third party”) other than the person to whom the decision notice is given, and

(b) in the opinion of [F2519 the regulator giving the notice], is prejudicial to the third party,

a copy of the notice must be given to the third party.

(5) If the decision notice was preceded by a warning notice, a copy of the decision notice must (unless it has been given under subsection (4)) be given to each person to whom the warning notice was copied.

(6) Subsection (4) does not require a copy to be given to the third party if [F2520 the regulator giving the notice]—

(a) has given him a separate decision notice in relation to the same matter; or

(b) gives him such a notice at the same time as it gives the decision notice which identifies him.

(7) Neither subsection (1) nor subsection (4) requires a copy of a notice to be given to a third party if [F2521 the regulator giving the notice] considers it impracticable to do so.

(8) Subsections (9) to (11) apply if the person to whom a decision notice is given has a right to refer the matter to the Tribunal.
(9) A person to whom a copy of the notice is given under this section may refer to the Tribunal—
   (a) the decision in question, so far as it is based on a reason of the kind mentioned in subsection (4); or
   (b) any opinion expressed by [F2522 the regulator giving the notice] in relation to him.

(10) The copy must be accompanied by an indication of the third party’s right to make a reference under subsection (9) and of the procedure on such a reference.

(11) A person who alleges that a copy of the notice should have been given to him, but was not, may refer to the Tribunal the alleged failure and—
   (a) the decision in question, so far as it is based on a reason of the kind mentioned in subsection (4); or
   (b) any opinion expressed by [F2523 the regulator giving the notice] in relation to him.

(12) Section 394 applies to a third party as it applies to the person to whom the notice to which this section applies was given, in so far as the material [F2524 to which access must be given] under that section relates to the matter which identifies the third party.

(13) A copy of a notice given to a third party under this section must be accompanied by a description of the effect of section 394 as it applies to him.

(14) Any person to whom a warning notice or decision notice was copied under this section must be given a copy of a notice of discontinuance applicable to the proceedings to which the warning notice or decision notice related.

Textual Amendments

F2515 Words in s. 393(1)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 32(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2516 Words in s. 393(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 32(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2517 Words in s. 393(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 32(3)(a) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2518 Words in s. 393(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 32(3)(b) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2519 Words in s. 393(4)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 32(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2520 Words in s. 393(6) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 32(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2521 Words in s. 393(7) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 32(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2522 Words in s. 393(9)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 32(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2523 Words in s. 393(11)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 32(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2524 Words in s. 393(12) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 32(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
Access to FCA or PRA material.

(1) If a regulator gives a person (“A”) a notice to which this section applies, it must—
   (a) allow him access to the material on which it relied in taking the decision which gave rise to the obligation to give the notice;  
   (b) allow him access to any secondary material which, in the regulator’s opinion, might undermine that decision.

(2) But the regulator giving the notice does not have to allow A access to material under subsection (1) if the material is excluded material or it—
   (a) relates to a case involving a person other than A; and  
   (b) was taken into account by the regulator giving the notice in A’s case only for purposes of comparison with other cases.

(3) The regulator giving the notice may refuse access A to particular material which it would otherwise have to allow him access to if, in its opinion, allowing him access to the material—
   (a) would not be in the public interest; or  
   (b) would not be fair, having regard to—
      (i) the likely significance of the material to A in relation to the matter in respect of which he has been given a notice to which this section applies; and
(ii) the potential prejudice to the commercial interests of a person other than A which would be caused by the material’s disclosure.

(4) If the regulator giving the notice does not allow A access to material because it is excluded material consisting of a protected item, it must give A written notice of—
   (a) the existence of the protected item; and
   (b) the regulator’s decision not to allow him access to it.

(5) If the regulator giving the notice refuses under subsection (3) to allow A access to material, it must give him written notice of—
   (a) the refusal; and
   (b) the reasons for it.

(6) “Secondary material” means material, other than material falling within paragraph (a) of subsection (1) which—
   (a) was considered by the regulator giving the notice in reaching the decision mentioned in that paragraph; or
   (b) was obtained by the regulator giving the notice in connection with the matter to which that notice relates but which was not considered by it in reaching that decision.

(7) “Excluded material” means material which—
   (a) is material the disclosure of which for the purposes of or in connection with any legal proceedings is prohibited by section 56 of the Investigatory Powers Act 2016; or
   (c) is a protected item (as defined in section 413).
The FCA’s and PRA’s procedures

Textual Amendments

F2537 Words in s. 395 cross-heading substituted (24.1.2013 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. 9 para. 34(15) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2538 The FCA’s and PRA’s procedures.

(1) Each regulator must determine the procedure that it proposes to follow in relation to the following—

(a) a decision which gives rise to an obligation to give a supervisory notice,

(b) in the case of the FCA, a decision which—

(i) gives rise to an obligation for it to give a warning notice or decision notice, or

(ii) gives rise to an obligation for the PRA to include a statement under section 387(1A) in a warning notice or a statement under section 388(1A) in a decision notice,

(c) in the case of the PRA, a decision which gives rise to an obligation for it to give a warning notice or decision notice, other than a decision which depends entirely on a decision of the FCA of the kind mentioned in paragraph (b)(ii), and

F2539 Words in s. 394(7)(a) substituted (27.6.2018) by Investigatory Powers Act 2016 (c. 25), Sch. 10 para. 43 (with Sch. 9 paras. 7, 8, 10); S.I. 2018/652, reg. 12(g)(iii)

F2540 Words in s. 395 cross-heading substituted (24.1.2013 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. 9 para. 34(15) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2541 Words in s. 394 cross-heading substituted (1.4.2013) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 97

F2542 Words in s. 394 cross-heading substituted (26.6.2017) by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), regs. 1(2), 82 (with regs. 8, 15)

F2543 Words in s. 394 cross-heading substituted (1.12.2001) by S.I. 2001/1228, regs. 1(2)(c), 36(3), 38(2), 46(2), 47(2), 48(2), 52(4), 55(2) (with art. 23(2))

F2544 Words in s. 394 cross-heading substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 56 (with regs. 52-58)

F2545 Words in s. 394 cross-heading substituted (21.11.2014) by The Central Securities Depositories Regulations 2014 (S.I. 2014/2879), regs. 1(1), 5(10)

F2546 Words in s. 394 cross-heading substituted (with modifications) by S.I. 2014/2879, reg. 5C(10) (as inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 5(9) (with regs. 7(4), 9(1)))
(d) a decision under section 391(1)(c) to publish information about the matter to which a warning notice relates.

(2) That procedure must be designed to secure, among other things that—

(a) a decision falling within any of paragraphs (a) to (c) of subsection (1) is taken—

(i) by a person not directly involved in establishing the evidence on which the decision is based, or

(ii) by 2 or more persons who include a person not directly involved in establishing that evidence,

(b) a decision falling within paragraph (d) of subsection (1) is taken—

(i) by a person other than the person by whom the decision was first proposed, or

(ii) by 2 or more persons not including the person by whom the decision was first proposed, and

(c) a decision falling within paragraph (d) of subsection (1) is taken in accordance with a procedure which is, as far as possible, the same as that applicable to a decision which gives rise to an obligation to give a warning notice and which falls within paragraph (b) or (c) of subsection (1).

(3) But the procedure may permit a decision which gives rise to an obligation to give a supervisory notice to be taken otherwise than as mentioned in subsection (2) if the person taking the decision is of a level of seniority laid down by the procedure and—

(a) in the case of procedure proposed by the FCA, the FCA considers that, in the particular case, it is necessary in order to advance one or more of its operational objectives, or

(b) in the case of procedure proposed by the PRA, the PRA considers that, in the particular case, it is necessary in order to advance any of its objectives.

(4) A level of seniority laid down by the procedure for the purposes of subsection (3)(b) must be appropriate to the importance of the decision.

(5) Each regulator must issue a statement of its procedure.

(6) The statement must be published in the way appearing to the regulator issuing it to be best calculated to bring the statement to the attention of the public.

(7) The regulator issuing the statement may charge a reasonable fee for providing a person with a copy of the statement.

(8) The regulator issuing a statement under this section must, without delay, give the Treasury a copy of the statement.

(9) When a regulator gives a supervisory notice, or a warning notice or decision notice, other than a warning notice or decision notice relating to a decision of the PRA that is required by a decision of the FCA of the kind mentioned in subsection (1) (b)(ii), the regulator must follow its stated procedure.

(9A) When the FCA takes a decision falling within subsection (1)(b)(ii), it must follow its stated procedure.

(10) If a regulator changes its procedure in a material way, it must publish a revised statement.
(11) [F2555] A regulator's failure in a particular case to follow its procedure as set out in the latest published statement does not affect the validity of a notice given in that case.

(12) But subsection (11) does not prevent the Tribunal from taking into account any such failure in considering a matter referred to it.

(13) “Supervisory notice” means a notice [F2556] or notification [F2557] given in accordance with section—

[F2558](za) 55XA(1) or (5) (where subsection (6) applies);
[F2558](a) 55Y(4), (7) or (8)(b);
[F2558](aa) 63ZC(4), (8) or (9)(b);
[F2558](ab) 71H(2), (3), (4), (9) or (11)(a);
[F2560](b) 78(2) or (5);
[F2561](bza) 78A(2) or (8)(b);
[F2562](bzb) section 88F(2), (5) or (6)(b);
[F2563](bzc) section 89V(2), (5) or (6)(b);
[F2564] .............................................
[F2565](bb) 87O(2) or (5);
[F2566](bbza) 122I;
[F2567](bbzb) section 122IA;
[F2568](bba) section 137S(5) or (8)(a);
[F2569](bc) 191B(1);
[F2570](c) 197(3), (6) or (7)(b);
[F2570](d) 259(3), (8) or (9)(b);
[F2570](da) 261Z1(3), (8) or (9)(b);
[F2570](e) 268(3), (7)(a) or (9)(a) (as a result of subsection (8)(b));
[F2570](f) 282(3), (6) or (7)(b);
[F2571](fa) 301J(1);
[F2571](g) 321(2) or (5).

Textual Amendments

F2538 Words in s. 395 heading substituted (24.1.2013 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. 9 para. 34(14) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2539 S. 395(1) substituted (24.1.2013 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. 9 para. 34(2) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2540 Words in s. 395(2) substituted (24.1.2013 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. 9 para. 34(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2541 Words in s. 395(3) substituted (24.1.2013 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. 9 para. 34(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2542 Words in s. 395(5) substituted (24.1.2013 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. 9 para. 34(5)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
F2543 Words in s. 395(5) substituted (24.1.2013 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. 9 para. 34(5)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2544 Words in s. 395(6) substituted (24.1.2013 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. 9 para. 34(6)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2545 Words in s. 395(6) substituted (24.1.2013 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. 9 para. 34(6)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2546 Words in s. 395(7) substituted (24.1.2013 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. 9 para. 34(7) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2547 Words in s. 395(8) substituted (24.1.2013 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. 9 para. 34(8)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2548 Words in s. 395(8) substituted (24.1.2013 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. 9 para. 34(8)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2549 Words in s. 395(9) substituted (24.1.2013 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. 9 para. 34(9)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2550 Words in s. 395(9) inserted (24.1.2013 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. 9 para. 34(9)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2551 Words in s. 395(9) substituted (24.1.2013 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. 9 para. 34(9)(c) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2552 S. 395(9A) inserted (24.1.2013 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. 9 para. 34(10) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2553 Words in s. 395(10) substituted (24.1.2013 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. 9 para. 34(11)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2554 Words in s. 395(10) substituted (24.1.2013 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. 9 para. 34(11)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2555 Words in s. 395(11) substituted (24.1.2013 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. 9 para. 34(12) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2556 Words in s. 395(13) inserted (19.3.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), ss. 17(3), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.; S.I. 2013/651, art. 2(a)


F2558 S. 395(13)(a) substituted (24.1.2013 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. 9 para. 34(13) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2559 S. 395(13)(aa) inserted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 14; S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))

Statements under section 395: consultation.

(1) Before issuing a statement of its procedure under section 395, the regulator must publish a draft of the proposed statement in the way appearing to it 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 \( F2575 \) regulator publishing the draft within a specified time.

(3) \( F2576 \) Before a regulator issues the proposed statement of its procedure, it must have regard to any representations made to it in accordance with subsection (2).

(4) If the \( F2577 \) regulator issues the proposed statement of its procedure, 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 \( F2578 \) statement of the regulator's procedure differs from the draft published by it under subsection (1) in a way which is \( F2580 \) in its opinion, significant, \( F2581 \) it must in addition to complying with subsection (4)) publish details of the difference.

(6) \( F2582 \) The regulator publishing a draft under subsection (1) may charge a reasonable fee for providing a person with a copy of \( F2583 \) the draft.

(7) This section also applies to a proposal to revise a statement of policy.

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Textual Amendments

F2572 Word in s. 396(1) inserted (24.1.2013 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. 9 para. 35(2)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2573 Words in s. 396(1) substituted (24.1.2013 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. 9 para. 35(2)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2574 Word in s. 396(1) substituted (24.1.2013 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. 9 para. 35(2)(c) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2575 Words in s. 396(1) substituted (24.1.2013 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. 9 para. 35(2)(d) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2576 Words in s. 396(2) substituted (24.1.2013 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. 9 para. 35(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2577 Words in s. 396(3) substituted (24.1.2013 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. 9 para. 35(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2578 Words in s. 396(4) substituted (24.1.2013 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. 9 para. 35(5) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2579 Words in s. 396(5) substituted (24.1.2013 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. 9 para. 35(6)(a) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2580 Words in s. 396(5) substituted (24.1.2013 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. 9 para. 35(6)(b) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F2581 Words in s. 396(5) substituted (24.1.2013 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. 9 para. 35(6)(c) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
PART XXVII
OFFENCES

Miscellaneous offences

397 Misleading statements and practices.

Textual Amendments
F2584S. 397 repealed (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 95, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

398 Misleading [F2585 FCA or PRA]: residual cases.

(1) A person who, in purported compliance with any requirement [F2586] falling within subsection (1A) knowingly or recklessly gives [F2586] a regulator information which is false or misleading in a material particular is guilty of an offence.

[F2586] (1A) A requirement falls within this subsection if it is imposed by or under—
(a) this Act;
(b) the Alternative Investment Fund Managers Regulations 2013;
(b) the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701);]
(c) the short selling regulation;  
(d) Regulation (EU) No 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds;  

F2589
[any directly applicable EU regulation made under the markets in financial instruments directive;  
F2590
(c) the markets in financial instruments regulation and any directly applicable EU regulation made under it; or]  

F2591
(F2592)
[F2593]
[g) the market abuse regulation.  
F2594
(h) the EU Benchmarks Regulation 2016.  
F2595
(i) the MMF Regulation.]

(2) Subsection (1) applies only to a requirement in relation to which no other provision of this Act creates an offence in connection with the giving of information.

(3) A person guilty of an offence under this section is liable—  
(a) on summary conviction, to a fine not exceeding the statutory maximum;  
(b) on conviction on indictment, to a fine.

Textual Amendments

F2585 Words in s. 398 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 36(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2586 Words in s. 398(1) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 30(a)
F2587 Words in s. 398(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 36(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2588 S. 398(1A) inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 30(b)
F2590 Word in s. 398(1A)(d) omitted (3.12.2015) by virtue of The European Long-term Investment Funds Regulations 2015 (S.I. 2015/1882), regs. 1, 3(4)(a)
F2591 Word in s. 398(1A)(e) inserted (3.12.2015) by The European Long-term Investment Funds Regulations 2015 (S.I. 2015/1882), regs. 1, 3(4)(b)
F2592 Word in s. 398(1A) omitted (3.7.2016) by virtue of The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(19)(a)
and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701), reg. 1(2)(3)(4)(6), Sch. 2 \textit{para.} 48(c) (with reg. 7)

\textbf{F2594S.} 398(1A)(f) inserted (3.12.2015) by The European Long-term Investment Funds Regulations 2015 (S.I. 2015/1882), regs. 1, \textit{3(4)(c)}


\textbf{F2596S.} 398(1A)(g) and word inserted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, \textit{10(19)(b)}


\textbf{F2598F.} Word in s. 398(1A)(g) omitted (28.6.2018 for specified purposes, 21.7.2018 in so far as not already in force) by virtue of The Money Market Funds Regulations 2018 (S.I. 2018/698), regs. 1(2), \textit{2(16)(a)}


\begin{quote}
\textbf{Modifications etc. (not altering text)}


\textbf{C1072S.} 398 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), \textit{reg. 25}

\textbf{C1073S.} 398 applied (1.11.2012) by The Financial Services and Markets Act 2000 (Short Selling) Regulations 2012 (S.I. 2012/2554), regs. 1(1), \textit{5(5)}

\textbf{C1074S.} 398 applied (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), regs. 1(2), \textit{45}


\textbf{C1077S.} 398 applied (18.9.2016) by The Payment Accounts Regulations 2015 (S.I. 2015/2038), reg. 1(2)(b), \textit{Sch. 7 \textit{para. 5}}

\textbf{C1078S.} 398 applied (with modifications) (1.1.2018) by The Packaged Retail and Insurance-based Investment Products Regulations 2017 (S.I. 2017/1127), reg. 1, \textit{Sch. 1 \textit{para.} 7(1)}


\textbf{C1082S.} 398 applied (1.1.2019) by The Securitisation Regulations 2018 (S.I. 2018/1288), reg. 1, \textit{Sch. 1 \textit{para.} 8(1)} (with reg. 11, Sch. 1 paras. 13, 14)


399 Misleading [F2602 the CMA].

Section 44 of the M39 Competition Act 1998 (offences connected with the provision of false or misleading information) applies in relation to any function of [F2603 the Competition and Markets Authority] under this Act as if it were a function under Part I of that Act.

Bodies corporate and partnerships

400 Offences by bodies corporate etc.

(1) If an offence under this Act committed by a body corporate is shown—
   (a) to have been committed with the consent or connivance of an officer, or
   (b) to be attributable to any neglect on his part,
the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(3) If an offence under this Act committed by a partnership is shown—
   (a) to have been committed with the consent or connivance of a partner, or
   (b) to be attributable to any neglect on his part,
the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) In subsection (3) “partner” includes a person purporting to act as a partner.

(5) “Officer”, in relation to a body corporate, means—
(a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity; and
(b) an individual who is a controller of the body.

(6) If an offence under this Act committed by an unincorporated association (other than a partnership) is shown—

(a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
(b) to be attributable to any neglect on the part of such an officer or member, that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

[F2604 (6A) References in this section to an offence under this Act include a reference to an offence under Part 7 of the Financial Services Act 2012 (offences relating to financial services).]  

(7) Regulations may provide for the application of any provision of this section, with such modifications as the Treasury consider appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside the United Kingdom.

Textual Amendments

F2604S. 400(6A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 37 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C1088S. 400 applied (3.9.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/1228, regs. 1(2)(b) (e), 81 (with reg. 1(2)(3)); S.I. 2001/2632, art. 2(2), Sch. Pt. 2; S.I. 2001/3538, art. 2(1)
S. 400 applied (1.12.2001) by S.I. 1995/1537, reg. 23(6) (as amended (1.12.2001) by S.I. 2001/3649, arts. 1, 509(g))
S. 400 amended (1.12.2001) by S.I. 2001/2657, arts. 1(1), 10(8), 11(8) (which was revoked (8.10.2001) by S.I. 2001/3083, arts. 1(2), 23); S.I. 2001/3538, art. 2(1)
S. 400 amended (1.12.2001) by S.I. 2001/3083, arts. 1(2), 10(8), 11(8); S.I. 2001/3538, art. 2(1)
S. 400 modified (1.12.2001) by S.I. 2001/3646, arts. 1(1), 12(2), 13(3)
C1089S. 400 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), 80 (with reg. 1(2))
C1090S. 400 applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 38(2)
C1091S. 400 applied by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), s. 15A(7) (as substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), Sch. 1 para. 232(2) (with arts. 6, 11, 12))
C1092S. 400 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), reg. 26
C1093S. 400 applied (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 57 (with regs. 52-58)
C1095S. 400 applied (with modifications) (1.1.2018) by The Packaged Retail and Insurance-based Investment Products Regulations 2017 (S.I. 2017/1127), reg. 1, Sch. 1 para. 7(2)
Institution of proceedings

401 Proceedings for offences.

(1) In this section “offence” means—
   (a) an offence under this Act,
   (b) an offence under subordinate legislation made under this Act, or
   (c) an offence under Part 7 of the Financial Services Act 2012 (offences relating to financial services).

(2) Proceedings for an offence may be instituted in England and Wales only—
   (a) by the [F2606 appropriate regulator] or the Secretary of State; or
   (b) by or with the consent of the Director of Public Prosecutions.

(3) Proceedings for an offence may be instituted in Northern Ireland only—
   (a) by the [F2607 appropriate regulator] or the Secretary of State; or
   (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.

For the purposes of subsections (2)(a) and (3)(a), the PRA is the “appropriate regulator” in respect of each of the following offences—
   (a) an offence under section 55P(10) where the contravention is of a requirement imposed by the PRA;
   (b) an offence under section 56(4) where the prohibition order is made by the PRA;
   (c) an offence under section 177(3) where the investigation is being, or is likely to be, conducted on behalf of the PRA;
   (d) an offence under section 177(4) where the requirement is imposed by the PRA;
   (e) an offence under section 177(6) where the warrant is issued as a result of information on oath given by the PRA or a person appointed by the PRA to conduct an investigation on its behalf;
   (f) an offence under section 191F(1) where the notice should have been given to the PRA;
   (g) an offence under any of section 191F(2) to [F2609(4) and (5) to] (7) where the notice, approval or information was given to or by the PRA;
   (h) an offence under section 366(3), unless the activity of effecting or carrying out long-term contracts of insurance is not to any extent a PRA-regulated activity;
   (i) an offence under section 398(1) where the information was given to the PRA.

For the purposes of subsections (2)(a) and (3)(a), the Bank of England is the “appropriate regulator” in respect of an offence under section 191F(4A).
For the purposes of subsections (2)(a) and (3)(a), the FCA is the “appropriate regulator” in respect of any other offence.

(5) In exercising its power to institute proceedings for an offence, the [F2612] appropriate regulator must comply with any conditions or restrictions imposed in writing by the Treasury.

(6) Conditions or restrictions may be imposed under subsection (5) in relation to—
(a) proceedings generally; or
(b) such proceedings, or categories of proceedings, as the Treasury may direct.

Textual Amendments
F2605S. 401(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 38(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2606Words in s. 401(2)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 38(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2607Words in s. 401(3)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 38(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2608S. 401(3A)(3B) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 38(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2611S. 401(4) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 10(14)
F2612Words in s. 401(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 38(5) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)
C1099S. 401 applied (1.12.2001) by S.I. 1995/1537, reg. 23(6) (as amended (1.12.2001) by S.I. 2001/3649, arts. 1, 509(g))
C1100S. 401 amended (1.12.2001) by S.I. 2001/2657, arts. 1(1), 10(8), 11(8), 13(1)(3) (which was revoked (8.10.2001) by S.I. 2001/3083, arts. 1(2), 23); S.I. 2001/3538, art. 2(1)
S. 401 amended (1.12.2001) by S.I. 2001/3083, arts. 1(2), 10(8), 11(8), 13(1); S.I. 2001/3538, art. 2(1)
S. 401 modified (1.12.2001) by S.I. 2001/3646, arts. 1(1), 12(2), 13(3)
C1101S. 401 applied by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), s. 15A(7) (as substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), Sch. 1 para. 232(2) (with arts. 6, 11, 12))
C1102S. 401 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), reg. 27
C1103S. 401 applied (with modifications) (1.4.2013) by The Financial Services Act 2012 ( Transitional Provisions) (Enforcement) Order 2013 (S.I. 2013/441), arts. 1(1), 34(2)
C1104S. 401 applied (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 57 (with regs. 52-58)
402 Power of [F2613FCA] to institute proceedings for certain other offences.

(1) Except in Scotland, the [F2614FCA] may institute proceedings for an offence under—
   (a) Part V of the M40Criminal Justice Act 1993 (insider dealing); [F2615 . . .
   (b) prescribed regulations relating to money laundering. [F2616 or
   (c) Schedule 7 to the Counter-Terrorism Act 2008 (terrorist financing or money
   laundering).]

(2) In exercising its power to institute proceedings for any such offence, the [F2617FCA]
    must comply with any conditions or restrictions imposed in writing by the Treasury.

(3) Conditions or restrictions may be imposed under subsection (2) in relation to—
    (a) proceedings generally; or
    (b) such proceedings, or categories of proceedings, as the Treasury may direct.

Textual Amendments

F2613 Word in s. 402 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 39(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2614 Word in s. 402(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 39(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F2615 Word in s. 402(1) omitted (27.11.2008) by virtue of Counter-Terrorism Act 2008 (c. 28), ss. 62, 100(2), Sch. 7 para. 33(4) (with s. 101(2), Sch. 7 para. 43)
F2616S. 402(1)(c) and preceding word inserted (27.11.2008) by Counter-Terrorism Act 2008 (c. 28), ss. 62, 100(2), Sch. 7 para. 33(4) (with s. 101(2), Sch. 7 para. 43)
F2617 Word in s. 402(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 9 para. 39(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C1110S. 402 excluded (1.1.2019) by The Securitisation Regulations 2018 (S.I. 2018/1288), reg. 1, Sch. 1 para. 8(5) (with Sch. 1 paras. 13, 14)
C1111S. 402(1) applied (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 49

Commencement Information

I87 S. 402 wholly in force at 1.12.2001; s. 402 not in force at Royal Assent see s. 431(2); s. 402(1)(b) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pt. 2; s. 402 in force for specified purposes at 19.10.2001 by S.I. 2001/3436, art. 2; s. 402 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)
Marginal Citations
M40 1993 c. 36.

403  Jurisdiction and procedure in respect of offences.

(1) A fine imposed on an unincorporated association on its conviction of an offence is to be paid out of the funds of the association.

(2) Proceedings for an offence alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in that of any of its members).

(3) Rules of court relating to the service of documents are to have effect as if the association were a body corporate.

(4) In proceedings for an offence brought against an unincorporated association—
   (a) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates’ Courts Act 1980 (procedure) apply as they do in relation to a body corporate;
   (b) section 70 of the Criminal Procedure (Scotland) Act 1995 (procedure) applies as if the association were a body corporate;
   (c) section 18 of the Criminal Justice (Northern Ireland) Act 1945 and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981 (procedure) apply as they do in relation to a body corporate.

(5) Summary proceedings for an offence may be taken—
   (a) against a body corporate or unincorporated association at any place at which it has a place of business;
   (b) against an individual at any place where he is for the time being.

(6) Subsection (5) does not affect any jurisdiction exercisable apart from this section.

(7) “Offence” means an offence under this Act or an offence under Part 7 of the Financial Services Act 2012 (offences relating to financial services)].
PART XXVIII

MISCELLANEOUS

[\textit{\textsuperscript{F2619}Consumer redress schemes}]

Textual Amendments

\textit{F2619}\textsuperscript{Ss. 404–404G} and preceding cross-heading substituted (12.10.2010) for \textit{s. 404} and preceding cross-heading by \textit{Financial Services Act 2010 (c. 28), ss. 14, 26(3); S.I. 2010/2480, art. 2}

\textit{\textsuperscript{F2620}404Consumer redress schemes}

(1) This section applies if—

\begin{enumerate}
  \item [(a)] it appears to the [\textit{\textsuperscript{F2621}FCA}] that there may have been a widespread or regular failure by relevant firms to comply with requirements applicable to the carrying on by them of any activity;
  \item [(b)] it appears to it that, as a result, consumers have suffered (or may suffer) loss or damage in respect of which, if they brought legal proceedings, a remedy or relief would be available in the proceedings; and
  \item [(c)] it considers that it is desirable to make rules for the purpose of securing that redress is made to the consumers in respect of the failure (having regard to other ways in which consumers may obtain redress).
\end{enumerate}

(2) “Relevant firms” means—

\begin{enumerate}
  \item [(a)] authorised persons;
  \item [(b)] payment service providers;\textit{\textsuperscript{F2622}}
  \item [(c)] electronic money issuers.\textit{\textsuperscript{F2623}}
\end{enumerate}
(3) The [F2621FCA] may make rules requiring each relevant firm (or each relevant firm of a specified description) which has carried on the activity on or after the specified date to establish and operate a consumer redress scheme.

(4) A “consumer redress scheme” is a scheme under which the firm is required to take one or more of the following steps in relation to the activity.

(5) The firm must first investigate whether, on or after the specified date, it has failed to comply with the requirements mentioned in subsection (1)(a) that are applicable to the carrying on by it of the activity.

(6) The next step is for the firm to determine whether the failure has caused (or may cause) loss or damage to consumers.

(7) If the firm determines that the failure has caused (or may cause) loss or damage to consumers, it must then—
(a) determine what the redress should be in respect of the failure; and
(b) make the redress to the consumers.

(8) A relevant firm is required to take the above steps in relation to any particular consumer even if, after the rules are made, a defence of limitation becomes available to the firm in respect of the loss or damage in question.

(9) Before making rules under this section, the [F2621FCA] must consult the scheme operator of the ombudsman scheme.

(10) For the meaning of consumers, see section 404E.]

Textual Amendments

[F2620Ss. 404-404G and preceding cross-heading substituted (12.10.2010) for s. 404 and preceding cross-heading by Financial Services Act 2010 (c. 28), ss. 14, 26(3); S.I. 2010/2480, art. 2

[F2621Word in s. 404 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 18 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

[F2622Word in s. 404(2) omitted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by virtue of The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(a)(xv)(b), 79, Sch. 4 para. 2(4)(a) (with reg. 3)

[F2623S. 404(2)(c) and preceding word inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(a)(xv)(b), 79, Sch. 4 para. 2(4)(a) (with reg. 3)]

[F404404. Rules under s.404: supplementary

(1) Rules under section 404 may make provision—
(a) specifying the activities and requirements in relation to which relevant firms are to carry out investigations under consumer redress schemes;
(b) setting out, in relation to any specified description of case, examples of things done, or omitted to be done, that are to be regarded as constituting a failure to comply with a requirement;
(c) setting out, in relation to any specified description of case, matters to be taken into account, or steps to be taken, by relevant firms for the purpose of—
(i) assessing evidence as to a failure to comply with a requirement; or
(ii) determining whether such a failure has caused (or may cause) loss or
damage to consumers;
(d) as to the kinds of redress that are, or are not, to be made to consumers in
specified descriptions of case and the way in which redress is to be determined
in specified descriptions of case;
(e) as to the things that relevant firms are, or are not, to do in establishing and
operating consumer redress schemes;
(f) securing that relevant firms are not required to investigate anything occurring
after a specified date;
(g) specifying the times by which anything required to be done under any
consumer redress scheme is to be done;
(h) requiring relevant firms to provide information to the FCA;
(i) authorising one or more competent persons to do anything for the purposes of,
or in connection with, the establishment or operation of any consumer redress
scheme;
(j) for the nomination or approval by the FCA of persons authorised under
paragraph (i);
(k) as to the circumstances in which, instead of a relevant firm, the FCA (or
one or more competent persons acting on the FCA's behalf) may carry
out the investigation and take the other relevant steps under any consumer
redress scheme;
(l) as to the powers to be available to those carrying out an investigation by virtue
of paragraph (k);
(m) as to the enforcement of any redress (for example, in the case of a money
award, as a debt owed by a relevant firm).

(2) The only examples that may be set out in the rules as a result of subsection (1)(b) are
examples of things done, or omitted to be done, that have been, or would be, held by
a court or tribunal to constitute a failure to comply with a requirement.

(3) Matters may not be set out in the rules as a result of subsection (1)(c) if they have
not been, or would not be, taken into account by a court or tribunal for the purpose
mentioned there.

(4) The FCA must exercise the power conferred as a result of subsection (1)(d) so
as to secure that, in relation to any description of case, the only kinds of redress to be
made are those which it considers to be just in relation to that description of case.

(5) In acting under subsection (4), the FCA must have regard (among other things)
to the nature and extent of the losses or damage in question.

(6) The provision that may be made under subsection (1)(h) includes provision applying
(with or without modifications)—
(a) any provision of section 165; or
(b) any provision of Part 11 relating to that section.

(7) The reference in subsection (1)(k) to the other relevant steps under any consumer
redress scheme is a reference to the FCA making the determinations mentioned
in section 404(6) and (7) (with the firm still required to make the redress).

(8) If the rules include provision under subsection (1)(k), they must also include provision
for—
(a) giving warning and decision notices, and
(b) conferring rights on relevant firms to refer matters to the Tribunal,
in relation to any determination mentioned in section 404(6) and (7) made by the F2624FCA.

(9) Nothing in this section is to be taken as limiting the power conferred by section 404.

404B Complaints to the ombudsman scheme

(1) If—

(a) a consumer makes a complaint under the ombudsman scheme in respect of an act or omission of a relevant firm, and

(b) at the time the complaint is made, the subject-matter of the complaint falls to be dealt with (or has been dealt with) under a consumer redress scheme, the way in which the complaint is to be determined by the ombudsman is to be as mentioned in subsection (4).

[Subsection (1) does not apply if the consumer and the relevant firm agree that it should not apply.]

(2) If a consumer—

(a) is not satisfied with a determination made by a relevant firm under a consumer redress scheme, or

(b) considers that a relevant firm has failed to make a determination in accordance with a consumer redress scheme, the consumer may, in respect of that determination or failure, make a complaint under the ombudsman scheme.

[The way in which a complaint mentioned in subsection (2) is to be determined by the ombudsman is to be as mentioned in subsection (4).

(2A) Subsection (2A) does not apply if the consumer and the relevant firm agree that it should not apply.]

[F2627 In the following provisions of this section “relevant complaint” means—

(a) a complaint mentioned in subsection (1) other than one in relation to which subsection (1A) applies, or

(b) a complaint mentioned in subsection (2) other than one in relation to which subsection (2B) applies.]

(4) A relevant complaint is to be determined by reference to what, in the opinion of the ombudsman, the determination under the consumer redress scheme should be or should have been (subject to subsection (5)).

(5) If, in determining a relevant complaint, the ombudsman determines that the firm should make (or should have made) a payment of an amount to the consumer, the amount awarded by the ombudsman (a “money award”) must not exceed the monetary limit (within the meaning of section 229).
(6) But the ombudsman may recommend that the firm pay a larger amount.

(7) A money award—
   (a) may specify the date by which the amount awarded is to be paid;
   (b) may provide for interest to be payable, at a rate specified in the award, on any
       amount which is not paid by that date; and
   (c) is enforceable by the consumer in accordance with Part 3 or 3A of Schedule 17
       (as the case may be).

(8) If, in determining a relevant complaint, the ombudsman determines that the firm
    should take (or should have taken) particular action in relation to the consumer, the
    ombudsman may direct the firm to take that action.

(9) Compliance with a direction under subsection (8) is enforceable, on the application of
    the consumer, by an injunction or, in Scotland, by an order for specific performance
    under section 45 of the Court of Session Act 1988.

(10) In consequence of the provision made by this section, sections 228(2) and 229 do not
     apply in relation to relevant complaints; but all other provision made by or under Part
     16 applies in relation to those complaints.

(11) The compulsory jurisdiction of the ombudsman scheme is to include the jurisdiction
     resulting from this section.

(12) Nothing in subsection (1) is to be taken as requiring the ombudsman to determine a
     complaint in any case where (apart from that subsection) the complaint would not fall
     to be determined (whether as a result of rules made under Schedule 17 or otherwise).

(13) Nothing in subsection (2) is to be taken as conferring an entitlement on a person who,
     for the purposes of the ombudsman scheme, is not an eligible complainant in relation
     to the subject-matter of the determination mentioned there.

**Textual Amendments**

F2625. 404B(1A) inserted (7.4.2015) by The Alternative Dispute Resolution for Consumer Disputes
(Competent Authorities and Information) Regulations 2015 (S.I. 2015/542), reg. 1(2), Sch. 7 para. 1(2)(a) (with reg. 7)

F2626. 404B(2A)(2B) inserted (7.4.2015) by The Alternative Dispute Resolution for Consumer Disputes
(Competent Authorities and Information) Regulations 2015 (S.I. 2015/542), reg. 1(2), Sch. 7 para. 1(2)(b) (with reg. 7)

F2627. 404B(3) substituted (7.4.2015) by The Alternative Dispute Resolution for Consumer Disputes
(Competent Authorities and Information) Regulations 2015 (S.I. 2015/542), reg. 1(2), Sch. 7 para. 1(2)(c) (with reg. 7)

**404C Enforcement**

The following provisions—
   (a) Part 14 (disciplinary measures), and
   (b) so much of this Act as relates to any provision of that Part,
   (which apply only in relation to authorised persons) are also to apply in relation to
   relevant firms which are not (or are no longer) authorised persons.
404D Applications to Tribunal to quash rules or provision of rules

(1) Any person may apply to the Tribunal for a review of any rules made under section 404.

(2) The Tribunal may—
(a) dismiss the application; or
(b) make an order (a “quashing order”) quashing any rules made under section 404 or any provision of those rules.

(3) An application may be made only if permission to make it has first been obtained from the Tribunal.

(4) The Tribunal may grant permission to make an application only if it considers that the applicant has a sufficient interest in the matter to which the application relates.

(5) The general rule is that, in determining an application, the Tribunal is to apply the principles applicable on an application for judicial review.

(6) If (or so far as) an application relates to an example set out in the rules as a result of section 404A(1)(b), the Tribunal may determine whether the example constitutes a failure to comply with the requirement in question.

(7) If (or so far as) an application relates to a matter set out in the rules as a result of section 404A(1)(c), the Tribunal may determine whether the matter should be taken into account as mentioned in that provision.

(8) In the case of an application within subsection (6) or (7), the Tribunal's jurisdiction under that subsection is in addition to its jurisdiction under subsection (5).

(9) A quashing order may be enforced as if it were an order made, on an application for judicial review, by the High Court or, in Scotland, the Court of Session.

(10) The Tribunal may award damages to the applicant if—
(a) the application includes a claim for damages arising from any matter to which the application relates; and
(b) the Tribunal is satisfied that an award would have been made by the High Court or, in Scotland, the Court of Session if the claim had been made in an action begun in that court by the applicant when making the application.

(11) An award of damages under subsection (10) may be enforced as if it were an award made by the High Court or, in Scotland, the Court of Session.

(12) In the case of any proceedings under this section, the judge presiding at the proceedings must be—
(a) a judge of the High Court or the Court of Appeal or a judge of the Court of Session; or
(b) such other person as may be agreed from time to time by—
(i) the Lord Chief Justice, the Lord President or the Lord Chief Justice of Northern Ireland (as the case may be); and
(ii) the Senior President of Tribunals.

(13) Section 133 does not apply in the case of an application under this section, but—
(a) Tribunal Procedure Rules may make provision for the suspension of rules made under section 404 or of any provision of those rules, pending determination of the application; and
(b) in the case of an application within subsection (6) or (7), the Tribunal may consider any evidence relating to the application's subject-matter, whether or not it was available at the time the rules were made.

(14) If—

(a) the Tribunal refuses to grant permission to make an application under this section, and

(b) on an appeal by the applicant, the Court of Appeal grants the permission, the Court of Appeal may go on to decide the application under this section.

### 404E Meaning of “consumers”

(1) For the purposes of sections 404 to 404B “consumers” means persons [F2628 who]—

(a) [F2629 who] have used, or may have contemplated using, any of the services within subsection (2); [F2630 or]

(b) [F2629 who] have relevant rights or interests in relation to any of the services within that subsection [F2631; or

(c) in respect of whom a person carries on an activity which is specified in article 89G of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (seeking out etc claims) whether that activity, as carried on by that person, is a regulated activity or is, by reason of an exclusion provided for under the 2001 Order or the 2000 Act, not a regulated activity.]

(2) The services within this subsection are services provided by—

(a) authorised persons in carrying on regulated activities;

(b) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(c) authorised persons in communicating, or approving the communication by others of, invitations or inducements [to engage in investment activity [F2634; or

F2635(i)]

(ii) to engage in claims management activity;]

(d) authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services;

(e) persons acting as appointed representatives;

(f) payment service providers in providing payment services,[F2636 or

(g) electronic money issuers in issuing electronic money.]

(3) A person (“P”) has a “relevant right or interest” in relation to any services within subsection (2) if P has a right or interest—

(a) which is derived from, or is otherwise attributable to, the use of the services by others; or

(b) which may be adversely affected by the use of the services by persons acting on P’s behalf or in a fiduciary capacity in relation to P.

(4) If a person is providing a service within subsection (2) as a trustee, the persons who have been, or may have been, beneficiaries of the trust are to be treated as persons who have used, or may have contemplated using, the service.

(5) A person who deals with another person (“B”) in the course of B providing a service within subsection (2) is to be treated as using the service.

(6) In this section—
“credit institution” has the meaning given by section 138(1B);

“engage in claims management activity” has the meaning given by section 21;

“engage in investment activity” has the meaning given by section 21;

“electronic money” has the same meaning as in the Electronic Money Regulations 2011 and any reference to issuing electronic money must be read accordingly;

“payment services” has the same meaning as in the Payment Services Regulations 2017;

“payment service provider” means a person who is a payment service provider for the purposes of those regulations as a result of falling within any of paragraphs (a) to (g) of the definition in regulation 2(1);

“relevant ancillary services” has the meaning given by section 138(1C).

Textual Amendments


F2632S. 404E(2)(b) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 10(15)(a) (with art. 11(2))


F2636S. 404E(2)(g) and preceding word inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(a)(xv)(b), 79, Sch. 4 para. 2(4)(b)(i) (with reg. 3)

F2637 Words in s. 404E(6) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 (S.I. 2013/1881), arts. 1(2)(6), 10(15)(b) (with art. 11(2))

404F Other definitions etc

(1) For the purposes of sections 404 to 404B—

“redress” includes—

(a) interest; and

(b) a remedy or relief which could not be awarded in legal proceedings;

“specified” means specified in rules made under section 404.

(2) In determining for the purposes of those sections whether an authorised person has failed to comply with a requirement, anything which an appointed representative has done or omitted as respects business for which the authorised person has accepted responsibility is to be treated as having been done or omitted by the authorised person.

(3) References in those sections to the failure by a relevant firm to comply with a requirement applicable to the carrying on by it of any activity include anything done, or omitted to be done, by it in carrying on the activity—

(a) which is in breach of a duty or other obligation, prohibition or restriction; or

(b) which otherwise gives rise to the availability of a remedy or relief in legal proceedings.

(4) It does not matter whether—

(a) the duty or other obligation, prohibition or restriction, or

(b) the remedy or relief,

arises as a result of any provision made by or under this or any other Act, a rule of law or otherwise.

(5) References in sections 404 to 404B to a relevant firm include—

(a) a person who was at any time a relevant firm but has subsequently ceased to be one; and

(b) a person who has assumed a liability (including a contingent one) incurred by a relevant firm in respect of a failure by the firm to comply with a requirement applicable to the carrying on by it of any activity.
(6) References in those sections to the carrying on of an activity by a relevant firm are, accordingly, to be read in that case with the appropriate modifications.

[(6A) References in sections 404 and 404E to an “electronic money issuer” are references to a person mentioned in paragraph (a), (b), (c), (d), (h) or (i) of the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011.]

(7) If the [F2642FCA] varies a permission or authorisation of a person so as to impose requirements on the person to establish and operate a scheme which corresponds to, or is similar to, a consumer redress scheme, the provision that may be included in the permission or authorisation as varied includes—

(a) provision imposing requirements on the person corresponding to those that could be included in rules made under section 404; and

(b) provision corresponding to section 404B.

(8) In subsection (7) the reference to the variation of a permission or authorisation by the [F2642FCA] is a reference to—

[(a) the variation under section 55H or 55J of a Part 4A permission,

(aa) the imposition or variation of a requirement under section 55L, or]

(b) the variation under regulation 8 or [F264512] of the Payment Services Regulations [F26462017] of an authorisation under those regulations.[F2647 or

(c) the variation under regulation 8 or 11 of the Electronic Money Regulations 2011 of an authorisation under those regulations.]

### Textual Amendments

F2642S. 404F(6A) inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(a)(xv)(b), 79, Sch. 4 para. 2(5)(i) (with reg. 3)

F2643Word in s. 404F substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 20(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2644S. 404F(8)(a)(aa) substituted for s. 404F(8)(a) (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 20(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2645Word in s. 404F(8)(b) substituted (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(6), Sch. 8 para. 2(8)(a) (with reg. 3)

F2646Word in s. 404F(8)(b) substituted (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(6), Sch. 8 para. 2(8)(b) (with reg. 3)

F2647S. 404F(8)(c) and preceding word inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(a)(xv)(b), 79, Sch. 4 para. 2(5)(ii) (with reg. 3)

### 404G Power to widen the scope of consumer redress schemes

(1) The Treasury may by order amend the definition of “relevant firms” in section 404 or the definition of “consumers” in section 404E (or both).

(2) An order under this section may make consequential amendments of any provision of sections 404 to 404F.]
Third countries

405 Directions.

406 Interpretation of section 405.

407 Consequences of a direction under section 405.

408 EFTA firms.

409 Gibraltar.

(1) The Treasury may by order—
(a) modify Schedule 3 so as to provide for Gibraltar firms of a specified description to qualify for authorisation under that Schedule in specified circumstances;
(b) modify Schedule 3 so as to make provision in relation to the exercise by UK firms of rights under the law of Gibraltar which correspond to EEA rights;
(c) modify Schedule 4 so as to provide for Gibraltar firms of a specified description to qualify for authorisation under that Schedule in specified circumstances;
(d) modify section 264 so as to make provision in relation to collective investment schemes constituted under the law of Gibraltar;
(e) provide for this Act to apply to a Gibraltar recognised scheme as if the scheme were a scheme recognised under section 264.

(2) The fact that a firm may qualify for authorisation under Schedule 3 as a result of an order under subsection (1) does not prevent it from applying for a [Part 4A permission].

(3) “Gibraltar firm” means a firm which has its head office in Gibraltar or is otherwise connected with Gibraltar.

(4) “Gibraltar recognised scheme” means a collective investment scheme—
   (a) constituted in an EEA State other than the United Kingdom, and
   (b) recognised in Gibraltar under provisions which appear to the Treasury to give effect to the provisions of a relevant [EU instrument].

(5) “Specified” means specified in the order.

(6) “UK firm” and “EEA right” have the same meaning as in Schedule 3.

International obligations

(1) If it appears to the Treasury that any action proposed to be taken by a relevant person would be incompatible with [EU obligations] or any other international obligations of the United Kingdom, they may direct that person not to take that action.

(2) If it appears to the Treasury that any action which a relevant person has power to take is required for the purpose of implementing any such obligations, they may direct that person to take that action.
(3) A direction under this section—
   (a) may include such supplemental or incidental requirements as the Treasury consider necessary or expedient; and
   (b) is enforceable, on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the M46 Court of Session Act 1988.

(4) “Relevant person” means—

[F2653 (a) the FCA;
(aa) the PRA;
(ab) the Bank of England when exercising functions conferred on it by Part 18;]

[F2654 (b) any recognised investment exchange (other than one which is an overseas investment exchange);
(c) any recognised clearing house (other than one which is an overseas clearing house);
(da) any recognised CSD;]

(e) a person included in the list maintained under section 301; or
(f) the scheme operator of the ombudsman scheme.
410A Fees to meet certain expenses of the Treasury

(1) The Treasury may by regulations—
   (a) enable the Treasury from time to time by direction to require the FCA, the PRA or the Bank of England (each a “regulator”) to require the payment of fees by relevant persons, or such class of relevant person as may be specified in, or determined by the regulator in accordance with, the direction, for the purpose of meeting relevant expenses incurred by the Treasury;
   (b) make provision about how the regulator to which a direction is given is to comply with the direction;
   (c) require the regulator to pay to the Treasury, by such time or times as may be specified in the direction, the amount of any fees received by the regulator.

(2) “Relevant expenses” are expenses (including any expenses of a capital nature) which are attributable to United Kingdom membership of, or Treasury participation in, a prescribed international organisation so far as those expenses—
   (a) represent a contribution (by way of subscription or otherwise) to the resources of the international organisation, and
   (b) are in the opinion of the Treasury attributable to functions of the organisation which relate to financial stability or financial services.

(3) The regulations must provide for the charging of fees in pursuance of a direction given under the regulations to the FCA or the PRA to be by rules made by that regulator.

(4) The provisions of Chapter 2 of Part 9A apply to rules of the FCA or the PRA providing for the charging of fees in pursuance of a direction given under the regulations—
   (a) in the case of the FCA, as they apply to rules relating to the payment of fees under paragraph 23 of Schedule 1ZA;
   (b) in the case of the PRA, as they apply to rules relating to the payment of fees under paragraph 31 of Schedule 1ZB.

(5) Paragraph 36(1) of Schedule 17A applies to the charging of fees by the Bank of England in pursuance of a direction given to the Bank under the regulations.

(6) The regulations may in particular—
   (a) make provision about what is, or is not, to be regarded as an expense;
   (b) specify requirements that the Treasury must comply with before giving a direction;
   (c) enable a direction to be varied or revoked by a subsequent direction;
   (d) confer functions on a regulator.

(7) An amount payable to a regulator as a result of—
   (a) any provision of rules made by the FCA or the PRA as a result of the regulations, or
   (b) the imposition of fees by the Bank of England as a result of a direction given under the regulations to the Bank,
   may be recovered as a debt due to the regulator.

(8) “Relevant persons” means—
   (a) in the case of a direction given to the PRA, PRA-authorised persons;
   (b) in the case of a direction given to the FCA, authorised persons and recognised investment exchanges who (in either case) are not PRA-authorised persons;
(c) in the case of a direction given to the Bank of England, recognised clearing houses [and recognised CSDs], other than those falling within paragraph (a) or (b).

(9) This section is subject to section 410B.

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Textual Amendments

F2657 Words in s. 410A(8)(c) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(37) (with regs. 7(4), 9(1))

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410B Directions in pursuance of section 410A

(1) In this section “a fees direction” means a direction given by the Treasury as a result of regulations under section 410A.

(2) Before giving a fees direction to the FCA, the PRA or the Bank of England (each a “regulator”), the Treasury must consult the regulator concerned.

(3) A fees direction must—
   (a) be in writing;
   (b) except in the case of a direction that revokes a previous direction or a direction that varies a previous direction without affecting the total amount intended to be raised by the fees, specify the total amount intended to be raised by the fees to be charged by the regulator and explain how that amount is calculated;
   (c) contain such other information as may be prescribed.

(4) As soon as practicable after giving a fees direction, the Treasury must lay before Parliament a copy of the direction.

Tax treatment of levies and repayments

411 Tax treatment of levies and repayments.

F2658 (1) .........................................................

(2) F2659 .........................................................

Textual Amendments

F2659S. 411(2) repealed (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), ss. 1326, 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

Gaming contracts

412 Gaming contracts.

(1) No contract to which this section applies is void or unenforceable because of—
(a) Art. 170 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985; or

(b) .................................................................

(2) This section applies to a contract if—

(a) it is entered into by either or each party by way of business;

(b) the entering into or performance of it by either party constitutes an activity of a specified kind or one which falls within a specified class of activity; and

(c) it relates to an investment of a specified kind or one which falls within a specified class of investment.

(3) Part II of Schedule 2 applies for the purposes of subsection (2)(c), with the references to section 22 being read as references to that subsection.

(4) Nothing in Part II of Schedule 2, as applied by subsection (3), limits the power conferred by subsection (2)(c).

(5) “Investment” includes any asset, right or interest.

(6) “Specified” means specified in an order made by the Treasury.

**Textual Amendments**

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<th>Reference</th>
<th>Details</th>
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<td>F2660</td>
<td>Words in s. 412(1)(a) repealed (1.9.2007) by Gambling Act 2005 (c. 19), ss. 334(1)(e)(i), 356(4)(5), 358(1), Sch. 17 (with ss. 334(2), 352, 354); S.I. 2006/3272, art. 2(4), Sch. 3B (with Sch. 4) (as amended by S.I. 2007/1157, arts. 3(5), 7-12; S.I. 2007/1527, art. 2(2); S.I. 2007/2169, arts. 3, 6-11, Sch.)</td>
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<td>F2661</td>
<td>S. 412(1)(b) repealed (1.9.2007) by Gambling Act 2005 (c. 19), ss. 334(1)(e)(ii), 356(4)(5), 358(1), Sch. 17 (with ss. 334(2), 352, 354); (as amended by S.I. 2007/1157, arts. 3(5), 7-12; S.I. 2007/1527, art. 2(2); S.I. 2007/2169, arts. 3, 6-11, Sch.)</td>
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**Commencement Information**

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<tr>
<td>I88</td>
<td>S. 412 wholly in force at 1.12.2001; s. 412 not in force at Royal Assent see s. 431(2); s. 412 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pt. 2; s. 412 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)</td>
</tr>
</tbody>
</table>

**Trade-matching and reporting systems**

**Textual Amendments**

<table>
<thead>
<tr>
<th>Reference</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>F2662</td>
<td>Ss. 412A, 412B and preceding cross-heading 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(5), Sch. 5 para. 18</td>
</tr>
</tbody>
</table>
412 Procedure for approval and suspension or withdrawal of approval

413 Protected items.

(1) A person may not be required under this Act to produce, disclose or permit the inspection of protected items.

(2) “Protected items” means—
   (a) communications between a professional legal adviser and his client or any person representing his client which fall within subsection (3);
   (b) communications between a professional legal adviser, his client or any person representing his client and any other person which fall within subsection (3) (as a result of paragraph (b) of that subsection);
   (c) items which—
      (i) are enclosed with, or referred to in, such communications;
      (ii) fall within subsection (3); and
      (iii) are in the possession of a person entitled to possession of them.

(3) A communication or item falls within this subsection if it is made—
   (a) in connection with the giving of legal advice to the client; or
   (b) in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.

(4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.
Service of notices

414 Service of notices.

(1) The Treasury may by regulations make provision with respect to the procedure to be followed, or rules to be applied, when a provision of or made under this Act requires a notice, direction or document of any kind to be given or authorises the imposition of a requirement.

(2) The regulations may, in particular, make provision—

(a) as to the manner in which a document must be given;

(b) as to the address to which a document must be sent;

(c) requiring, or allowing, a document to be sent electronically;

(d) for treating a document as having been given, or as having been received, on a date or at a time determined in accordance with the regulations;

(e) as to what must, or may, be done if the person to whom a document is required to be given is not an individual;

(f) as to what must, or may, be done if the intended recipient of a document is outside the United Kingdom.

(3) Subsection (1) applies however the obligation to give a document is expressed (and so, in particular, includes a provision which requires a document to be served or sent).
(4) Section 7 of the Interpretation Act 1978 (service of notice by post) has effect in relation to provisions made by or under this Act subject to any provision made by regulations under this section.

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**Jurisdiction**

415 **Jurisdiction in civil proceedings.**

(1) Proceedings arising out of any act or omission (or proposed act or omission) of—

[F2664](a) the FCA,

(aa) the PRA,

(ab) the Bank of England,

(b) the scheme manager, or

(c) the scheme operator,

in the discharge or purported discharge of any of its functions under this Act may be brought before the High Court or the Court of Session.

(2) The jurisdiction conferred by subsection (1) is in addition to any other jurisdiction exercisable by those courts.

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**Textual Amendments**

[F2664S] 415(1)(a)-(ab) substituted for s. 415(1)(a) (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 24 (with Sch. 20); S.I. 2013/423, art. 3, Sch.

[F2665S] 415(1)(b) omitted (24.1.2013 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)(j), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
415A Powers 

Any power which the [F2668FCA, the PRA or the Bank of England] has under any provision of this Act is not limited in any way by any other power which it has under any other provision of this Act.

Textual Amendments

F2668 Words in s. 415A heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 25(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

415B Consultation in relation to taking certain enforcement action

(1) The FCA must consult the PRA before taking a qualifying step in relation to a person who—
   (a) is a PRA-authorised person, or
   (b) has a qualifying relationship with a PRA-authorised person.

(2) The PRA must consult the FCA before taking a qualifying step.

(3) In this section any reference to the taking of a qualifying step is a reference to—
(a) the giving of a warning notice or decision notice under section 63B (performance of controlled functions without approval),
(b) the giving of a warning notice or decision notice under section 67 (disciplinary powers in relation to approved person),
(c) ........................................
(d) the giving of a warning notice or decision notice under section 131H (short selling),
(e) the giving of a warning notice under section 207 or a decision notice under section 208 (breaches of requirements imposed by or under Act etc.),
(f) the giving of a warning notice under section 312G or a decision notice under section 312H (recognised bodies),
(g) the making of an application to the court under section 380, 381, 382 or 383 (injunctions or restitution), or
(h) the giving of a warning notice under section 385 or a decision notice under section 386 (power of FCA or PRA to require restitution).

(4) A person has a qualifying relationship with a PRA-authorised person (“A”) for the purposes of this section if—
(a) the person is a member of A’s immediate group, or
(b) in the case of a qualifying step within subsection (3)(a) or (b), the person performs a \[\text{relevant senior management function}\] under an arrangement entered into by A, or by a contractor of A, in relation to the carrying on by A of a regulated activity.

(5) In subsection (4)—
“arrangement” has the same meaning as in section 59;
“relevant senior management function” means a function which the FCA is satisfied is a senior management function as defined in section 59ZA (whether or not it \[\text{is a designated senior management function as defined by section 59ZB}.\])

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Textual Amendments

<table>
<thead>
<tr>
<th>Amendment Reference</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>S. 415B(3)(c) omitted (3.7.2016) by virtue of The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(20)</td>
<td></td>
</tr>
<tr>
<td>Words in s. 415B(4)(b) substituted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 15(2)(a); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))</td>
<td></td>
</tr>
<tr>
<td>Words in s. 415B(4) omitted (7.3.2016) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 15(2)(b); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))</td>
<td></td>
</tr>
<tr>
<td>S. 415B(5) inserted (7.3.2016) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 3 para. 15(3); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))</td>
<td></td>
</tr>
<tr>
<td>Words in s. 415B(5) substituted (13.9.2018 for specified purposes, 10.12.2018 for specified purposes) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 4 para. 20; S.I. 2018/990, reg. 2(1)(2)(3) (with regs. 3-6)</td>
<td></td>
</tr>
</tbody>
</table>
416 Provisions relating to industrial assurance and certain other enactments.

(1) The following enactments are to cease to have effect—
   (a) the Industrial Assurance Act 1923;  
   (b) the Industrial Assurance and Friendly Societies Act 1948;  
   (c) the Insurance Brokers (Registration) Act 1977.

(2) The Industrial Assurance (Northern Ireland) Order 1979 is revoked.

(3) The following bodies are to cease to exist—
   (a) the Insurance Brokers Registration Council;  
   (b) the Policyholders Protection Board;  
   (c) the Deposit Protection Board;  
   (d) the Board of Banking Supervision.

(4) If the Treasury consider that, as a consequence of any provision of this section, it is appropriate to do so, they may by order make any provision of a kind that they could make under this Act (and in particular any provision of a kind mentioned in section 339) with respect to anything done by or under any provision of Part XXI.

(5) Subsection (4) is not to be read as affecting in any way any other power conferred on the Treasury by this Act.

Commencement Information

190 S. 416 wholly in force at 1.12.2001; s. 416 not in force at Royal Assent see s. 431(2); s. 416(4)(5) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), Sch. Pt. 1; s. 416(1)(c)(3)(a) in force at 30.4.2001 by S.I. 2001/1282, art. 2(a); s. 416 in force at 1.12.2001 so far as not already in force (except sub-section (3) (b)(c) which are in force at 2.3.2002) by S.I. 2001/3538, art. 2(1)(4)

Marginal Citations

M48 1923 c. 8.  
M49 1948 c. 39.  
M50 1977 c. 46.  
M51 S.I. 1979/1574 (N.I. 13).

PART XXIX

INTERPRETATION

417 Definitions.

(1) In this Act—
"AIF" has the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013;

“appointed representative” has the meaning given in section 39(2);

“auditors and actuaries rules” means rules made under section 340;

“authorisation offence” has the meaning given in section 23(2);

“authorised open-ended investment company” has the meaning given in section 237(3);

“authorised person” has the meaning given in section 31(2);

“Bank of England” is to be read in accordance with section 2A(4) to (6);

“body corporate” includes a body corporate constituted under the law of a country or territory outside the United Kingdom;


“capital requirements regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, as it has effect at the updating point (see subsection (1A));

“central securities depository” has the meaning given by point (1) of Article 2(1) of the CSD regulation;

“chief executive”—

(a) in relation to a body corporate whose principal place of business is within the United Kingdom, means an employee of that body who, alone or jointly with one or more others, is responsible under the immediate authority of the directors, for the conduct of the whole of the business of that body; and

(b) in relation to a body corporate whose principal place of business is outside the United Kingdom, means the person who, alone or jointly with one or more others, is responsible for the conduct of its business within the United Kingdom;

“claim”, in relation to the Financial Services Compensation Scheme under Part XV, is to be construed in accordance with section 214(1B);

“collective investment scheme” has the meaning given in section 235;

“the Commission” means the European Commission;

“control of information rules” has the meaning given in section 137P;

“core activities” has the meaning given in section 142B;

“core services” has the meaning given in section 142C;

“credit-related regulated activity” has the meaning given in section 23(1B);

“the CSD regulation” means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories, as it has effect at the updating point (see subsection (1A)).
director”, in relation to a body corporate, includes—
(a) a person occupying in relation to it the position of a director (by whatever name called); and
(b) a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act;

documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form or in a form from which it can readily be produced in visible and legible form;

“EBA” means the European Banking Authority established by 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);

“EIOPA” means the European Insurance and Occupational Pensions Authority established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority);


“ESMA” means the European Securities and Markets Authority established by 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);


“excluded activities” has the meaning given in section 142D;

“exempt person”, in relation to a regulated activity, means a person who is exempt from the general prohibition in relation to that activity as a result of an exemption order made under section 38(1) or as a result of section 39(1) or

“financial promotion rules” means rules made under section 137R;

“friendly society” means an incorporated or registered friendly society;

“full-scope UKAIFM” has the meaning given in regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013;

“general prohibition” has the meaning given in section 19(2);

(a) in relation to the FCA, has the meaning given in section 137A(2), and

(b) in relation to the PRA, has the meaning given in section 137G(2);]
“incorporated friendly society” means a society incorporated under the Friendly Societies Act 1992;

“information society service” means an information society service within the meaning of Article 2(a) of the electronic commerce directive;

“insurance undertaking” has the meaning given in Article 13(1) of the Solvency 2 Directive;

“investment services and activities” has the meaning given by Article 4.1.2 (definitions) of the markets in financial instruments directive, read with Articles 5 to 8 of the Commission Delegated Regulation (EU) 2017/565 on Directive 2014/65/EU of the European Parliament and of the Council as regarding organisational requirements and operational conditions for investment firms and defined terms for the purposes of that Directive;


“minimum capital requirement” means—
(a) in relation to an insurance undertaking or reinsurance undertaking, requirements imposed by or under this Act in pursuance of Section 5 of Chapter 6 of Title 1 of the Solvency 2 Directive;
(b) in relation to a third-country insurance undertaking, requirements imposed by or under this Act in pursuance of those provisions and Article 166 of the Solvency 2 Directive.

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;


“mortgage creditor” means a creditor as defined in Article 4(2) of the mortgages directive;

“mortgage intermediary” means a credit intermediary as defined in Article 4(5) of the mortgages directive or a person providing advisory services as defined in Article 4(21) of the mortgages directive;

“partnership” includes a partnership constituted under the law of a country or territory outside the United Kingdom;

“the ombudsman scheme” has the meaning given in section 225(3);

“open-ended investment company” has the meaning given in section 236;

“Part 4A permission” has the meaning given in section 55A(5);

“partnership” includes a partnership constituted under the law of a country or territory outside the United Kingdom;

“the PRA” means the Prudential Regulation Authority;

“PRA-authorised person” has the meaning given in section 2B(5);
“PRA-regulated activity” has the meaning given in section 22A;
“prescribed” (where not otherwise defined) means prescribed in
regulations made by the Treasury;
“price stabilising rules” means rules made under [F2716] section 137Q;
[F2717] “principal” in relation to an appointed representative, is to be read in
accordance with section 39;
“private company” has [F2718] the same meaning as in the Companies Acts
(see section 4 of the Companies Act 2006);
“prohibition order” has the meaning given in section 56(2);
[F2719] “recognised CSD”, “recognised clearing house” and “recognised
investment exchange” have the meaning given in section 285;
“registered friendly society” means a society which is—
(a) a friendly society within the meaning of section 7(1)(a) of the
Friendly Societies Act 1974; and
(b) registered within the meaning of that Act;
[F2720] “registered society” (except where otherwise indicated) means—
(a) a registered society within the meaning of the Co-operative and
Community Benefit Societies Act 2014, or
(b) a society registered or deemed to be registered under the Industrial and
Provident Societies Act (Northern Ireland) 1969;
“regulated activity” has the meaning given in section 22;
[F2721] “regulated claims management activity” means activity of a kind
specified in an order under section 22(1B) (regulated activities: claims
management services);
“regulating provisions” has the meaning given in [F2722] section 140A;
[F2723] “regulator” has the meaning given in section 3A(2);
[F2724] “reinsurance undertaking” has the meaning given in Article 13(4) of
the Solvency 2 Directive;
[F2725] “ring-fencing rules” has the meaning given in section 142H;
[F2726] “ring-fenced body” has the meaning given in section 142A;
[F2727] “rule” means a rule made by the FCA or the PRA under this Act;
“rule-making instrument” has the meaning given in [F2728] section 138G;
“the scheme manager” has the meaning given in section 212(1);
“the scheme operator” has the meaning given in section 225(2);
“scheme particulars rules” has the meaning given in section 248(1);
“Seventh Company Law Directive” means the European Council Seventh
Company Law Directive of 13 June 1983 on consolidated accounts
(No. 83/349/EEC);
Parliament and of the Council of 25 November 2015 on transparency of
securities financing transactions and of reuse and amending Regulation (EU)
No 648/2012;
[F2730] “short selling regulation” means Regulation (EU) No 236/2012 of the
European Parliament and of the Council of 14 March 2012 on short selling
and certain aspects of credit default swaps [F2730], as it has effect at the updating
point (see subsection (1A)):
A reference in subsection (1) to an instrument as it has effect at the updating point is a reference to the instrument as it has effect at the beginning of the day on which the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 are made (but see regulation 2 of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) Regulations 2019 (S.I. 2019/628), which may further update the reference).]

(2) In the application of this Act to Scotland, references to a matter being actionable at the suit of a person are to be read as references to the matter being actionable at the instance of that person.

(3) For the purposes of any provision of this Act other than a provision of Part 6] authorising or requiring a person to do anything within a specified number of days no account is to be taken of any day which is a public holiday in any part of the United Kingdom.

(4) For the purposes of this Act—

(a) an information society service is provided from an EEA State if it is provided from an establishment in that State;

(b) an establishment, in connection with an information society service, is the place at which the provider of the service (being a national of an EEA State or a company or firm as mentioned in Article 54 of the Treaty) effectively pursues an economic activity for an indefinite period;
(c) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute that place as an establishment of the kind mentioned in paragraph (b);

(d) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment where the provider has the centre of his activities relating to the service.]

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### Textual Amendments

- **F2676** Words in s. 417(1) inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, Sch. 1 para. 31

- **F2677** Words in s. 417(1) inserted (1.3.2017) by Bank of England and Financial Services Act 2016 (c. 14), s. 41(3), Sch. 2 para. 49 (with Sch. 3); S.I. 2017/43, reg. 2(g)

- **F2678** Words in s. 417(1) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 48(1)(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

- **F2679** Words in s. 417(1) inserted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 24

- **F2680** Words in s. 417(1) inserted (23.3.2019) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(2)(b), 85(3)

- **F2681** Words in s. 417(1) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(38)(a) (with regs. 7(4), 9(1))

- **F2682** S. 417(1): definition of "claim" inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), ss. 174(2), 263(1) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 4

- **F2683** Words in s. 417 omitted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 131 (with art. 3)

- **F2684** Words in s. 417(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 48(1)(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

- **F2685** Words in s. 417(1) inserted (1.3.2014 for specified purposes, 1.1.2019 in so far as not already in force) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 4(5)(a), 148(5); S.I. 2014/377, art. 2(1)(b), Sch. Pt. 2; S.I. 2018/1306, art. 2(d)

- **F2686** Words in s. 417(1) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 48(1)(c), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

- **F2687** Words in s. 417(1) inserted (21.11.2014) by The Central Securities Depositories Regulations 2014 (S.I. 2014/2879), regs. 1(1), 6(3)

- **F2688** Words in s. 417(1) inserted (23.3.2019) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(2)(b), 85(6)

- **F2689** Words in s. 417(1) inserted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), Sch. 19 para. 53 (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

- **F2690** S. 417(1): words in definition of "documents" inserted (1.4.2003) by 2001 c. 16, ss. 70, 138(2), Sch. 2 Pt. 2 para. 16(2)(f); S.I. 2003/708, art. 2(1)(k)

- **F2691** Words in s. 417(1) inserted (16.4.2012) by The Financial Services (Omnibus 1 Directive) Regulations 2012 (S.I. 2012/916), regs. 1, 2(14)(a)

- **F2692** Words in s. 417(1) inserted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), 18(2)


- **F2694** Words in s. 417(1) inserted (16.4.2012) by The Financial Services (Omnibus 1 Directive) Regulations 2012 (S.I. 2012/916), regs. 1, 2(14)(b)

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**Status:** This version of this Act contains provisions that are prospective.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes
Chapter IV – Part XXIX – Interpretation

Financial Services and Markets Act 2000 (c. 8)

F2695 Words in s. 417(1) inserted (27.2.2018) by The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135), regs. 1(2), 49(1)

F2696 Words in s. 417(1) inserted (1.3.2014 for specified purposes, 1.1.2019 in so far as not already in force) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 4(5)(b), 148(5); S.I. 2014/377, art. 2(1) (b), Sch. Pt. 2; S.I. 2018/1306, art. 2(d)

F2697 Words in s. 417(1) omitted (28.11.2017) by virtue of The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 2(38)(b) (with regs. 7(4), 9(1))

F2698 Words in s. 417(1) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 3(15) (with regs. 52-58)

F2699 S. 417(1): definition of “the FCA” inserted (24.1.2013) by Financial Services Act 2012 (c. 21), ss. 48(1)(d), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2700 Words in s. 417(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 48(1)(e), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2701 Words in s. 417(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 48(1)(f), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2702 Words in s. 417(1) omitted (1.8.2014) by virtue of Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 154, Sch. 4 para. 71(1) (with Sch. 5)


F2704 Words in s. 417(1) inserted (31.3.2015) by The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(3), Sch. 1 para. 15 (with reg. 1(4))


F2706 Words in s. 417(1) omitted (3.7.2016) by virtue of The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(21)(a)

F2707 Words in s. 417(1) inserted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, 10(21)(b)


F2710 Words in s. 417(1) inserted (28.6.2018 for specified purposes, 21.7.2018 in so far as not already in force) by The Money Market Funds Regulations 2018 (S.I. 2018/698), regs. 1(2), 2(17)

F2711 Words in s. 417(1) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), Sch. 1 para. 1(8) (with Pt. 4)

F2712 Words in s. 417(1) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 48(1)(g), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2713 Words in s. 417(1) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), ss. 48(1)(h), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2714 Words in s. 417(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 48(1)(i), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F2715 S. 417(1): definitions of “the PRA”, ”PRA-authorised person” and ”PRA-regulated activity” inserted (24.1.2013) by Financial Services Act 2012 (c. 21), ss. 48(1)(j), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

F2716 Words in s. 417(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 48(1)(k), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
Changes to legislation:

S. 417(4) inserted (18.7.2002 for certain purposes and 21.8.2002 otherwise) by
Words in s. 417(3) inserted (1.7.2005) by
Exit) Regulations 2019 (S.I. 2019/632)
(c. 28)
S. 417(1): definition of "the UK financial system" inserted (8.4.2010) by
Words in s. 417(1) substituted (1.4.2013) by
S. 417: definition of "the Tribunal" inserted (6.4.2010) by
Words in s. 417(1) substituted (1.8.2012) by
S. 417(1): definition of "regulator" inserted (24.1.2013) by
2007/1093
S. 417(1): definition inserted (6.4.2007) by
(Transparency of Securities Financing Transactions and of Reuse) Regulations 2016 (S.I. 2016/715)
Words in s. 417(1) omitted (1.4.2013) by virtue of
S. 417(1) omitted (1.4.2013) by
S. 417(1) inserted (1.3.2014 for specified purposes, 21.4.2016 for specified purposes,
S. 417: words in definition of "private company" substituted (1.10.2009) by
S. 417(1): definition of "the Tribunal" inserted (6.4.2010) by
Words in s. 417(1) substituted (1.8.2012) by
Carrying on regulated activities in the United Kingdom.

(1) In the seven cases described in this section, a person who—
   (a) is carrying on a regulated activity, but
   (b) would not otherwise be regarded as carrying it on in the United Kingdom,
   is, for the purposes of this Act, to be regarded as carrying it on in the United Kingdom.

(2) The first case is where—
   (a) his registered office (or if he does not have a registered office his head office)
       is in the United Kingdom;
   (b) he is entitled to exercise rights under a single market directive as a UK firm; and
   (c) he is carrying on in another EEA State a regulated activity to which that directive applies.

(3) The second case is where—
   (a) his registered office (or if he does not have a registered office his head office)
       is in the United Kingdom;
   (b) he is the manager of a scheme which is entitled to enjoy the rights conferred
       by an instrument which is a relevant EU instrument for the purposes of
       section 264; and
   (c) persons in another EEA State are invited to become participants in the scheme.

(4) The third case is where—
   (a) his registered office (or if he does not have a registered office his head office)
       is in the United Kingdom;
   (b) the day-to-day management of the carrying on of the regulated activity is the
       responsibility of—
       (i) his registered office (or head office); or
       (ii) another establishment maintained by him in the United Kingdom.

(5) The fourth case is where—
   (a) his head office is not in the United Kingdom; but
   (b) the activity is carried on from an establishment maintained by him in the United Kingdom.
The fifth case is any other case where the activity—

(a) consists of the provision of an information society service to a person or persons in one or more EEA States; and

(b) is carried on from an establishment in the United Kingdom.

The sixth case is where—

(a) the regulated activity being carried on by the person is the regulated activity of managing an AIF;

(b) the AIF being managed—

(i) has its registered office in an EEA State; or

(ii) is marketed in an EEA State;

(c) the person’s registered office is in the United Kingdom or, if the person does not have a registered office, the person’s head office is in the United Kingdom; and

(d) the activity is carried on from an establishment maintained in a country or territory outside the EEA.

The seventh case is where—

(a) the regulated activity being carried on by the person is the regulated activity of managing an AIF,

(b) the AIF being managed—

(i) has its registered office in an EEA State, or

(ii) is marketed in an EEA State,

(c) if the AIF being managed is marketed in an EEA State, it is marketed otherwise than in accordance with provisions made under Article 42 of the alternative investment fund managers directive,

(d) the person does not have a registered office in an EEA State, and

(e) the person’s Member State of reference (as defined in Article 4.1(z) of the alternative investment fund managers directive), or the state that would be the person’s Member State of reference if the person were required to be authorised in accordance with Article 37 of the alternative investment fund managers directive, is the United Kingdom.

(6) For the purposes of subsections (2) to (5B) it is irrelevant where the person with whom the activity is carried on is situated.

(7) For the purposes of subsection (2)(b) and (c), the emission allowance auctioning regulation is a single market directive.

(8) In this section “marketing”, in relation to an AIF, is to be read in accordance with the definition of “marketing” in Article 4.1(x) of the alternative investment fund managers directive.
Carrying on regulated activities by way of business.

(1) The Treasury may by order make provision—
   (a) as to the circumstances in which a person who would otherwise not be regarded as carrying on a regulated activity by way of business is to be regarded as doing so;
   (b) as to the circumstances in which a person who would otherwise be regarded as carrying on a regulated activity by way of business is to be regarded as not doing so.

(2) An order under subsection (1) may be made so as to apply—
   (a) generally in relation to all regulated activities;
   (b) in relation to a specified category of regulated activity; or
   (c) in relation to a particular regulated activity.

(3) An order under subsection (1) may be made so as to apply—
   (a) for the purposes of all provisions;
   (b) for a specified group of provisions; or
   (c) for a specified provision.

(4) “Provision” means a provision of, or made under, this Act.

(5) Nothing in this section is to be read as affecting the provisions of section 428(3).
(2) In subsection (1) “other services” includes—
   (a) financial services or assistance,
   (b) legal representation,
   (c) referring or introducing one person to another, and
   (d) making inquiries,
   but giving, or preparing to give, evidence (whether or not expert evidence) is not, by itself, a claims management service.

(3) In this section “claim” means a claim for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage or in respect of an obligation, whether the claim is made or could be made—
   (a) by way of legal proceedings,
   (b) in accordance with a scheme of regulation (whether voluntary or compulsory), or
   (c) in pursuance of a voluntary undertaking.

(4) The Treasury may by order provide that a claim for a specified benefit is to be treated as a claim for the purposes of this section.

(5) The Treasury may specify a benefit under subsection (4) only if it appears to the Treasury to be a social security benefit, payable under the law of any part of the United Kingdom, designed to provide compensation for industrial injury.

419B Carrying on claims management activity in Great Britain

   (1) The Treasury may by order make provision as to the circumstances in which a person is, or is not, to be treated as carrying on—
      (a) a regulated claims management activity, or
      (b) an activity of a kind specified in an order under section 21(10B),
      in Great Britain.

   (2) Subsections (2) to (5) of section 419 apply in relation to an order under subsection (1) as they apply in relation to an order under subsection (1) of that section, but as if the references to regulated activities in subsection (2) of that section were references to regulated claims management activities or, as the case may be, to activities of a kind specified in an order under section 21(10B).]
420 Parent and subsidiary undertaking.

(1) In this Act, except in relation to an incorporated friendly society, “parent undertaking” and “subsidiary undertaking” have the same meaning as in \[F2754\]the Companies Acts (see section 1162 of, and Schedule 7 to, the Companies Act 2006)\].

(2) But—

(a) “parent undertaking” also includes an individual who would be a parent undertaking for the purposes of those provisions if he were taken to be an undertaking (and “subsidiary undertaking” is to be read accordingly);

(b) “subsidiary undertaking” also includes, in relation to a body incorporated in or formed under the law of an EEA State other than the United Kingdom, an undertaking which is a subsidiary undertaking within the meaning of any rule of law in force in that State for purposes connected with implementation of the \[F2755\]Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives \[78/660/EEC\] and \[83/349/EEC\] (and “parent undertaking” is to be read accordingly).

(3) In this Act “subsidiary undertaking”, in relation to an incorporated friendly society, means a body corporate of which the society has control within the meaning of section 13(9)(a) or (aa) of the \[M54\]Friendly Societies Act 1992 (and “parent undertaking” is to be read accordingly).

Textual Amendments

F2754 Words in s. 420(1) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), Sch. 1 para. 212(1) (with arts. 6, 11, 12)

F2755 Words in s. 420(2)(b) substituted (23.3.2019) by The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/632), regs. 1(2)(c), 87(b)

Marginal Citations

M54 1992 c. 40.

421 Group.

(1) In this Act “group”, in relation to a person (“A”), means A and any person who is—

(a) a parent undertaking of A;

(b) a subsidiary undertaking of A;

(c) a subsidiary undertaking of a parent undertaking of A;

(d) a parent undertaking of a subsidiary undertaking of A;

(e) an undertaking in which A or an undertaking mentioned in paragraph (a), (b), (c) or (d) has a participating interest;

(f) if A or an undertaking mentioned in paragraph (a) or (d) is a building society, an associated undertaking of the society; or

(g) if A or an undertaking mentioned in paragraph (a) or (d) is an incorporated friendly society, a body corporate of which the society has joint control (within the meaning of section 13(9)(c) or (cc) of the \[M54\]Friendly Societies Act 1992).
(2) “Participating interest” has the meaning given in section 421A; but also includes an interest held by an individual which would be a participating interest for the purposes of those provisions if he were taken to be an undertaking.

(3) “Associated undertaking” has the meaning given in section 119(1) of the Building Societies Act 1986.

Textual Amendments
F2756 Words in s. 421(2) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), Sch. 1 para. 212(2) (with arts. 6, 11, 12)

Marginal Citations
M56 1986 c. 53.

Immediate group

In this Act “immediate group”, in relation to a person (“A”), means—

(a) A;
(b) a parent undertaking of A;
(c) a subsidiary undertaking of A;
(d) a subsidiary undertaking of a parent undertaking of A;
(e) a parent undertaking of a subsidiary undertaking of A.

Textual Amendments
F2757S. 421ZA inserted (24.1.2013) by Financial Services Act 2012 (c. 21), ss. 48(2), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1

Meaning of “participating interest”

(1) In section 421 a “participating interest” means an interest held by an undertaking in the shares of another undertaking which it holds on a long-term basis for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest.

(2) A holding of 20% or more of the shares of an undertaking is presumed to be a participating interest unless the contrary is shown.

(3) The reference in subsection (1) to an interest in shares includes—

(a) an interest which is convertible into an interest in shares, and
(b) an option to acquire shares or any such interest;

and an interest or option falls within paragraph (a) or (b) notwithstanding that the shares to which it relates are, until the conversion or the exercise of the option, unissued.

(4) For the purposes of this section an interest held on behalf of an undertaking shall be treated as held by it.
(5) In this section “undertaking” has the same meaning as in the Companies Acts (see section 1161(1) of the Companies Act 2006).

Controller.

(1) In this Act “controller”, in relation to an undertaking (“B”), means a person (“A”) who falls within any of the cases in subsection (2).

(2) The cases are where A holds—

(a) 10% or more of the shares in B or in a parent undertaking of B (“P”);
(b) 10% or more of the voting power in B or P; or
(c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

(3) For the purposes of calculations relating to this section, the holding of shares or voting power by a person (“A1”) includes any shares or voting power held by another (“A2”) if A1 and A2 are acting in concert.

(4) In this section “shares”—

(a) in relation to an undertaking with a share capital, means allotted shares;
(b) in relation to an undertaking with capital but no share capital, means rights to share in the capital of the undertaking;
(c) in relation to an undertaking without capital, means interests—

(i) conferring any right to share in the profits, or liability to contribute to the losses, of the undertaking; or
(ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.

(5) In this section “voting power”—

(a) includes, in relation to a person (“H”)—

(i) voting power held by a third party with whom H has concluded an agreement, which obliges H and the third party to adopt, by concerted exercise of the voting power they hold, a lasting common policy towards the management of the undertaking in question;
(ii) voting power held by a third party under an agreement concluded with H providing for the temporary transfer for consideration of the voting power in question;
(iii) voting power attaching to shares which are lodged as collateral with H, provided that H controls the voting power and declares an intention to exercise it;
(iv) voting power attaching to shares in which H has a life interest;
(v) voting power which is held, or may be exercised within the meaning of subparagraphs (i) to (iv), by a controlled undertaking of H;

Textual Amendments

F2758S. 421A inserted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), Sch. 1 para. 212(3) (with arts. 6, 11, 12)
(vi) voting power attaching to shares deposited with H which H has discretion to exercise in the absence of specific instructions from the shareholders;

(vii) voting power held in the name of a third party on behalf of H;

(viii) voting power which H may exercise as a proxy where H has discretion about the exercise of the voting power in the absence of specific instructions from the shareholders; and

(b) in relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, means the right under the constitution of the undertaking to direct the overall policy of the undertaking or alter the terms of its constitution.

F2761(6) For the purposes of this section, an undertaking “B” is a controlled undertaking of H if any of the conditions in section 89J(4)(a) to (d) (read with section 89J(5)) is met (reading references in those provisions to A as references to H).

Textual Amendments

F2759 Ss. 422, 422A substituted (21.3.2009) for s. 422 by virtue of The Financial Services and Markets Act 2000 (Controllers) Regulations 2009 (S.I. 2009/534), reg. 7, Sch. 3 (with reg. 8)

F2760 Words in s. 422(5)(a)(v) substituted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 25(a)

F2761 S. 422(6) inserted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 25(b)

422. Disregarded holdings

(1) For the purposes of section 422, shares and voting power that a person holds in an undertaking (“B”) or in a parent undertaking of B (“P”) are disregarded in the following circumstances.

(2) Shares held only for the purposes of clearing and settling within a short settlement cycle are disregarded.

(3) Shares held by a custodian or its nominee in a custodian capacity are disregarded, provided that the custodian or nominee is only able to exercise voting power attached to the shares in accordance with instructions given in writing.

(4) Shares representing no more than 5% of the total voting power in B or P held by an investment firm are disregarded, provided that it—

(a) holds the shares in the capacity of a market maker (as defined in article [F2763 4.1.7] of the markets in financial instruments directive);

(b) is authorised by its home state regulator under the markets in financial instruments directive; and

(c) neither intervenes in the management of B or P nor exerts any influence on B or P to buy the shares or back the share price.

(5) Shares held by a credit institution or investment firm in its trading book are disregarded, provided that—

(a) the shares represent no more than 5% of the total voting power in B or P; and

(b) the voting power is not used to intervene in the management of B or P.
(6) Shares held by a credit institution or an investment firm are disregarded, provided that—
   (a) the shares are held as a result of performing the investment services and activities of—
      (i) underwriting shares; or
      (ii) placing shares on a firm commitment basis in accordance with Annex I, section A.6 of the markets in financial instruments directive; and
   (b) the credit institution or investment firm—
      (i) does not exercise voting power represented by the shares or otherwise intervene in the management of the issuer; and
      (ii) retains the holding for a period of less than one year.

(7) Where a management company (as defined in Article 2.1(b) of the UCITS directive) and its parent undertaking both hold shares or voting power, each may disregard holdings of the other, provided that each exercises its voting power independently of the other.

(8) But subsection (7) does not apply if the management company—
   (a) manages holdings for its parent undertaking or a controlled undertaking of its parent undertaking;
   (b) has no discretion to exercise the voting power attached to such holdings; and
   (c) may only exercise the voting power in relation to such holdings under direct or indirect instruction from—
      (i) its parent undertaking; or
      (ii) a controlled undertaking of the parent undertaking.

(9) Where an investment firm and its parent undertaking both hold shares or voting power, the parent undertaking may disregard holdings managed by the investment firm on a client by client basis and the investment firm may disregard holdings of the parent undertaking, provided that the investment firm—
   (a) has permission to provide portfolio management;
   (b) exercises its voting power independently from the parent undertaking; and
   (c) may only exercise the voting power under instructions given in writing, or has appropriate mechanisms in place for ensuring that individual portfolio management services are conducted independently of any other services.

Shares acquired for stabilisation purposes in accordance with the market abuse regulation and Commission Delegated Regulation (EU) No. 1052/2016 of 8 March 2016 supplementing Regulation (EU) No. 596/2014 of the European Parliament and the Council with regard to the regulatory technical standards for conditions applicable to buy-back programmes and stabilisation measures are disregarded, provided that the voting power attached to those shares is not exercised or otherwise used to intervene in the management of B or P.

(10) In this section “credit institution” means—
   (a) a credit institution authorised under the capital requirements directive; or
   (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA State.
For the purposes of this section, an undertaking is a controlled undertaking of the parent undertaking if it is controlled by the parent undertaking; and for this purpose the question of whether one undertaking controls another is to be determined in accordance with section 89J(4) and (5).]
immediate authority of a director or chief executive of the body corporate, exercises managerial functions or is responsible for maintaining accounts or other records of the body corporate.

424 Insurance.

(1) In this Act, references to—
   (a) contracts of insurance,
   (b) reinsurance,
   (c) contracts of long-term insurance,
   (d) contracts of general insurance,
are to be read with section 22 and Schedule 2.

(2) In this Act “policy” and “policyholder”, in relation to a contract of insurance, have such meaning as the Treasury may by order specify.

(3) The law applicable to a contract of insurance, the effecting of which constitutes the carrying on of a regulated activity, is to be determined, if it is of a prescribed description, in accordance with regulations made by the Treasury.

Commencement Information

191 S. 424 wholly in force at 1.12.2001; s. 424 not in force at Royal Assent see s. 431(2); s. 424(1)(2) in force and s. 424(3) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(a)(b), Sch. Pts. 1, 2; s. 424 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

424A Investment firm

(1) In this Act, “investment firm” has the meaning given in Article 4.1.1 of the markets in financial instruments directive.

(2) Subsection (1) is subject to subsections (3) to (5).

(3) References in this Act to an “investment firm” include references to a person who would be an investment firm (within the meaning of Article 4.1.1 of the markets in financial instruments directive) if—
   (a) in the case of a body corporate, his registered office or, if he has no registered office, his head office, and
   (b) in the case of a person other than a body corporate, his head office, were in an EEA State.

(4) But subsection (3) does not apply if the person in question is one to whom the markets in financial instruments directive would not apply by virtue of Article 2 of that directive.

(5) References in this Act to an “investment firm” do not include references to—
   (a) a person to whom the markets in financial instruments directive does not apply by virtue of Article 2 of the directive; or
   (b) a person whose home Member State (within the meaning of Article 4.1.55 of the markets in financial instruments directive) is an EEA State and to whom, by reason of the fact that the State has given effect to Article 3 of that directive, that directive does not apply by virtue of that Article.
425 Expressions relating to authorisation elsewhere in the single market.

(1) In this Act—

(a) [F2778]“alternative investment fund managers directive”, [F2779]“capital requirements directive”, [F2780]“EEA authorisation”, “EEA firm”, “EEA right”, “EEA State”, [F2781]“emission allowance auctioning regulation”, [F2782]“insurance distribution directive”, [F2783]“markets in financial instruments directive”, [F2784]“Solvency 2 Directive”, “tied agent” and “UCITS directive” have the meaning given in Schedule 3; and

(b) “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

(2) In this Act—

(a) “home state authorisation” has the meaning given in Schedule 4;

(b) “Treaty firm” has the meaning given in Schedule 4; and

(c) “home state regulator”, in relation to a Treaty firm, has the meaning given in Schedule 4.
F2782 Words in s. 425(1)(a) substituted (1.10.2018) by The Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (S.I. 2018/546), arts. 1(2), 18(3)

F2783 Words in s. 425(1)(a) omitted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by virtue of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(5), Sch. 5 para. 22(a)


F2785 Words in s. 425(1)(a) inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), art. 1(5), Sch. 1 para. 1(9) (with Pt. 4)

F2786 Words in s. 425(1)(a) inserted (1.1.2016) by The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), Sch. 1 para. 16(b)

F2787 Words in s. 425(1)(a) 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(5), Sch. 5 para. 22(b)


425 Consumers: regulated activities etc carried on by authorised persons

(1) This section has effect for the purposes of the provisions of this Act which apply this section.

(2) “Consumers” means persons who—

(a) have used, have used or may use any of the services within subsection (3);

(b) have relevant rights or interests in relation to any of those services; or

(c) whose rights, interests or obligations are affected by the level of a regulated benchmark;

(d) in respect of whom a person carries on an activity which is specified in article 89G of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (seeking out etc claims) whether that activity, as carried on by that person, is a regulated activity or is, by reason of an exclusion provided for under the 2001 Order or the 2000 Act, not a regulated activity.

(3) The services within this subsection are services provided by—

(a) authorised persons in carrying on regulated activities;

(b) authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services; or

(c) persons acting as appointed representatives.

(4) A person (“P”) has a “relevant right or interest” in relation to any services within subsection (3) if P has a right or interest—

(a) which is derived from, or is otherwise attributable to, the use of the services by others;

(b) which may be adversely affected by the use of the services by persons acting on P’s behalf or in a fiduciary capacity in relation to P.
(5) If a person is providing a service within subsection (3) as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or may use the service.

(6) A person who deals with another person ("A") in the course of A providing a service within subsection (3) is to be treated as using the service.

(7) In this section—

“credit institution” means—

(a) a credit institution authorised under the \[F2797\] capital requirements directive; or

(b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if does not have one, its head office) in an EEA State;

\[F2798\] regulated benchmark means a benchmark, as defined in section 22(6) \[F2799\] or (6A), in relation to which any provision made under section 22(1A)(b) \[F2800\] has effect.

“relevant ancillary service” means any service of a kind mentioned in Section B of Annex I to the markets in financial instruments directive the provision of which does not involve the carrying on of a regulated activity.

Textual Amendments

\[F2790\] Ss. 425A, 425B inserted (8.4.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(1)(l), Sch. 2 para. 32


\[F2793\] Word in s. 425A(2)(a) omitted (2.4.2013) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (S.I. 2013/655), arts. 1, 3(4)(a)

\[F2794\] S. 425A(2)(c) and word inserted (2.4.2013) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (S.I. 2013/655), arts. 1, 3(4)(b)


\[F2797\] Words in s. 425A(7) substituted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), Sch. 2 para. 28

\[F2798\] Words in s. 425A(7) inserted (2.4.2013) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 (S.I. 2013/655), arts. 1, 3(4)(c)


425B Consumers: regulated activities carried on by others

(1) This section has effect for the purposes of the provisions of this Act which apply this section.

(2) “Consumers” means persons who, in relation to regulated activities carried on otherwise than by authorised persons, would be consumers as defined by section 425A if the activities were carried on by authorised persons.

425C Qualifying EU provision

(1) In this Act “qualifying EU provision” means a provision of—
   (a) a directly applicable EU regulation, or
   (b) an EU decision for whose enforcement the United Kingdom is required by an EU obligation to make provision.

(2) In subsection (1)(b) “EU decision” means a decision under an EU directive or EU regulation.

Textual Amendments

425B inserted (8.4.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(1)(l), Sch. 2 para. 32

425C inserted (24.1.2013) by Financial Services Act 2012 (c. 21), ss. 48(3), 122(3) (with Sch. 20); S.I. 2013/113, art. 2(1)(a), Sch. Pt. 1
PART XXX
SUPPLEMENTAL

426 Consequential and supplementary provision.

(1) A Minister of the Crown may by order make such incidental, consequential, transitional or supplementary provision as he considers necessary or expedient for the general purposes, or any particular purpose, of this Act or in consequence of any provision made by or under this Act or for giving full effect to this Act or any such provision.

(2) An order under subsection (1) may, in particular, make provision—

(a) for enabling any person by whom any powers will become exercisable, on a date set by or under this Act, by virtue of any provision made by or under this Act to take before that date any steps which are necessary as a preliminary to the exercise of those powers;

(b) for applying (with or without modifications) or amending, repealing or revoking any provision of or made under an Act passed before this Act or in the same Session;

(c) dissolving any body corporate established by any Act passed, or instrument made, before the passing of this Act;

(d) for making savings, or additional savings, from the effect of any repeal or revocation made by or under this Act.

(3) Amendments made under this section are additional, and without prejudice, to those made by or under any other provision of this Act.

(4) No other provision of this Act restricts the powers conferred by this section.

427 Transitional provisions.

(1) Subsections (2) and (3) apply to an order under section 426 which makes transitional provisions or savings.

(2) The order may, in particular—

(a) if it makes provision about the authorisation and permission of persons who before commencement were entitled to carry on any activities, also include provision for such persons not to be treated as having any authorisation or permission (whether on an application to the Authority or otherwise);

(b) make provision enabling the Authority to require persons of such descriptions as it may direct to re-apply for permissions having effect by virtue of the order;

(c) make provision for the continuation as rules of such provisions (including primary and subordinate legislation) as may be designated in accordance with the order by the Authority, including provision for the modification by the Authority of provisions designated;

(d) make provision about the effect of requirements imposed, liabilities incurred and any other things done before commencement, including provision for and
(3) The order may—
(a) confer functions on the Treasury, the Secretary of State, the Authority, the scheme manager, the scheme operator, members of the panel established under paragraph 4 of Schedule 17 or the Competition and Markets Authority;
(b) confer jurisdiction on the Tribunal;
(c) provide for fees to be charged in connection with the carrying out of functions conferred under the order;
(d) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act).

(4) In subsection (2) “commencement” means the commencement of such provisions of this Act as may be specified by the order.

Textual Amendments
F2802 Words in s. 427(3)(a) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 132 (with art. 3)

428 Regulations and orders.

(1) Any power to make an order which is conferred on a Minister of the Crown by this Act and any power to make regulations which is conferred by this Act is exercisable by statutory instrument.

(2) The Lord Chancellor’s power to make rules under section 132 is exercisable by statutory instrument.

(3) Any statutory instrument made under this Act may—
(a) contain such incidental, supplemental, consequential and transitional provision as the person making it considers appropriate; and
(b) make different provision for different cases.

429 Parliamentary control of statutory instruments.

(1) No order is to be made under—
unless a draft of the order has been laid before Parliament and approved by a resolution of each House.


[F2821](2A) Regulations to which subsection (2B) applies are not to be made unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.

(2B) This subsection applies to regulations which [F2822]contain—

(a) provision made under section 59AB(2) which modifies, excludes or applies with modifications any provision of primary legislation;]

[F2823](b) provision made under section 137FBA(3);]

[F2824](c) provision made under section 410A, other than provision made only by virtue of subsection (2) of that section.]

(3) An order to which, if it is made, subsection (4) or (5) will apply is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(4) This subsection applies to an order under section 21 if—

(a) it is the first order to be made, or to contain provisions made, under section 21(4);  
(b) it varies an order made under section 21(4) so as to make section 21(1) apply in circumstances in which it did not previously apply; 
(c) it is the first order to be made, or to contain provision made, under section 21(5); 
(d) it varies a previous order made under section 21(5) so as to make section 21(1) apply in circumstances in which it did not, as a result of that previous order, apply; 
(e) it is the first order to be made, or to contain provisions made, under section 21(9) [F2825], (10) or (10B)]; 
(f) it adds one or more activities to those that are controlled activities for the purposes of section 21; [F2826 or]  
(g) it adds one or more investments to those which are controlled investments for the purposes of section 21; or 
(h) it adds one or more activities to those that are controlled claims management activities for the purposes of section 21.]  

(5) This subsection applies to an order under section 38 if—

(a) it is the first order to be made, or to contain provisions made, under that section; or  
(b) it contains provisions restricting or removing an exemption provided by an earlier order made under that section.

(6) An order containing a provision to which, if the order is made, subsection (7) will apply is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
(7) This subsection applies to a provision contained in an order if—
   
   (a) it is the first to be made in the exercise of the power conferred by subsection (1) of section 326 or it removes a body from those for the time being designated under that subsection; or
   
   (b) it is the first to be made in the exercise of the power conferred by subsection (6) of section 327 or it adds a description of regulated activity or investment to those for the time being specified for the purposes of that subsection.

(7A) An order to which, if it is made, subsection (7B) will apply is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(7B) This subsection applies to an order under section 419A(4) if—
   
   (a) it is the first order to be made, or to contain provisions made, under that subsection; or
   
   (b) it adds one or more benefits to those that are specified benefits for the purposes of section 419A.

(8) Any other statutory instrument made under this Act, apart from one made under section F2832, subsection; or

   (a) it is the first to be made in the exercise of the power conferred by subsection (6) of section 326 or it removes a body from those for the time being designated under that subsection; or
   
   (b) it is the first to be made in the exercise of the power conferred by subsection (1) of section 326 or it adds a body to those for the time being specified for the purposes of that subsection.

   (c) it adds a description of regulated activity or investment to those for the time being specified for the purposes of that subsection.

   (d) it adds one or more benefits to those that are specified benefits for the purposes of section 419A.
Extent.

(1) This Act, except Chapter IV of Part XVII, extends to Northern Ireland.

(2) Except where Her Majesty by Order in Council provides otherwise, the extent of any amendment or repeal made by or under this Act is the same as the extent of the provision amended or repealed.

(3) Her Majesty may by Order in Council provide for any provision of or made under this Act relating to a matter which is the subject of other legislation which extends to any of the Channel Islands or the Isle of Man to extend there with such modifications (if any) as may be specified in the Order.
431 Commencement.

(1) The following provisions come into force on the passing of this Act—
   (a) this section;
   (b) sections 428, 430 and 433;
   (c) paragraphs 1 and 2 of Schedule 21.

(2) The other provisions of this Act come into force on such day as the Treasury may by order appoint; and different days may be appointed for different purposes.

Subordinate Legislation Made

P1 S. 431(2) power partly exercised: 25.2.2001 appointed for specified provisions by S.I. 2001/516, art. 2 Sch.
    S. 431(2) power partly exercised: 30.4.2001 appointed for specified provisions by S.I. 2001/1282, art. 2
    S. 431(2) power partly exercised: 18.6.2001 appointed for specified provisions by S.I. 2001/1820, art. 2 Sch.
    S. 431(2) power partly exercised: 19.10.2001 appointed for specified provisions by S.I. 2001/3436, art. 2
    S. 431(2) power partly exercised: different dates appointed for specified provisions by S.I. 2001/3538, art. 2

432 Minor and consequential amendments, transitional provisions and repeals.

(1) Schedule 20 makes minor and consequential amendments.

(2) Schedule 21 makes transitional provisions.

(3) The enactments set out in Schedule 22 are repealed.

Commencement Information

192 S. 432 wholly in force at 1.12.2001; s. 432 not in force at Royal Assent see s. 431(2); s. 432(3) in force for specified purposes at 30.4.2001 by S.I. 2001/1282, art. 2; s. 432(1) in force for specified purposes at 2.7.2001 by S.I. 2001/2364, art. 2(1)(b); s. 432(1) in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 432 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

433 Short title.

This Act may be cited as the Financial Services and Markets Act 2000.
This version of this Act contains provisions that are prospective.

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Financial Services and Markets Act 2000. Any changes that have already been made by the team appear in the content and are referenced with annotations.

View outstanding changes

Changes and effects yet to be applied to:
- Pt. 25 applied (with modifications) by S.I. 2019/926 reg. 2025
- Pt. 13 amendment to earlier affecting provision S.I. 2017/752, Sch. 6 para. 8 by S.I. 2019/681 reg. 9(3)(a)
- Pt. 26 applied by S.I. 2019/1361 reg. 16(4) (This S.I. is amended by S.I. 2019/1390, reg. 6)
- Pt. 26 applied (with modifications) by S.I. 2019/266 reg. 19(1)
- Pt. 27 applied (with modifications) by S.I. 2019/335 reg. 77
- Pt. 27 applied (with modifications) by S.I. 2019/542 reg. 38
- Pt. 26 applied (with modifications) by S.I. 2019/926 reg. 2026
- Pt. 27 applied (with modifications) by S.I. 2019/926 reg. 2027
- Pt. 26 applied in part (with modifications) by S.I. 2019/335 reg. 76
- Pt. 26 applied in part (with modifications) by S.I. 2019/542 reg. 37
- Pt. 18 Ch. 3A omitted by S.I. 2019/662 reg. 7
- Pt. 13 omitted (except s. 195(3)(4)) by S.I. 2018/1149 Sch. para. 12
- Pt. 13 revocation of earlier affecting provision S.I. 2017/752 Sch. 6 para. 6 by S.I. 2018/1201 Sch. 2 para. 72(4)
- s. 391C heading word substituted by S.I. 2019/632 reg. 77(2)
- s. 391A heading words substituted by S.I. 2019/632 reg. 75(2)
- s. 391B heading words substituted by S.I. 2019/632 reg. 76(2)
- s. 391D heading words substituted by S.I. 2019/632 reg. 78(2)
- s. 391E heading words substituted by S.I. 2019/632 reg. 79(2)
- s. 293A heading word substituted by S.I. 2019/662 reg. 5(10)(a)
- s. 293A heading words substituted by S.I. 2019/662 reg. 5(12)(a)
- Pt. 9 applied by S.I. 2019/1361 reg. 17(2) (This S.I. is amended by S.I. 2019/1390, reg. 6)
- Pt. 9 applied (with modifications) by S.I. 2019/335 reg. 73
- Pt. 9 applied (with modifications) by S.I. 2019/542 reg. 34
- Pt. 9 modified by S.I. 2019/707 reg. 73
- s. 86 heading words inserted by S.I. 2019/1043 reg. 7(2)
- s. 87O heading substituted by S.I. 2019/1043 reg. 22(2)
- s. 87K heading word inserted by S.I. 2019/1043 reg. 18(2)
- s. 87L heading word inserted by S.I. 2019/1043 reg. 19(2)
- s. 87D heading words substituted by S.I. 2019/1043 reg. 12(2)
- Pt. 11 amendment to earlier affecting provision S.I. 2011/99 Sch. 3 para. 3 by S.I. 2018/1201 Sch. 2 para. 21(3)(a)-(c)
- Pt. 11 amendment to earlier affecting provision S.I. 2017/752 Sch. 6 para. 4 by S.I. 2018/1201 Sch. 2 para. 72(3)
- Pt. 11 applied (with modifications) by S.I. 2019/266 reg. 18(1)
- Pt. 11 applied (with modifications) by S.I. 2019/926 reg. 2022
- Pt. 11 applied in part (with modifications) by S.I. 2019/335 reg. 75
- Pt. 11 applied in part (with modifications) by S.I. 2019/542 reg. 36
- s. 55D heading words substituted by S.I. 2019/632 reg. 15(2)
- s. 131FA heading word substituted by S.I. 2018/1321 reg. 2(4)(e)
- Pt. 9A applied by S.I. 2019/407 reg. 4Sch. 3
- Pt. 9A Ch. 2 applied by S.I. 2019/632 reg. 208(7)
- Pt. 9A Ch. 2 applied by S.I. 2019/632 reg. 209(6)
Pt. 9A applied (with modifications) by S.I. 2019/335 reg. 74
Pt. 9A applied (with modifications) by S.I. 2019/542 reg. 35
s. 137SA heading words substituted by S.I. 2019/383 Sch. para. 7(c)
s. 192JA 192JB and cross-headings inserted by 2013 c. 33 s. 133(1)
Pt. 13A omitted by S.I. 2018/1149 Sch. para. 13
s. 1A(6)(d) words substituted by S.I. 2019/632 reg. 3
s. 1C(2)(g) omitted by 2018 c. 10 Sch. 3 para. 8
s. 1H(2)(d) words substituted by S.I. 2019/632 reg. 4(2)
s. 1H(7A) words omitted by S.I. 2018/135 reg. 37(c)
s. 1H(7A) words omitted by S.I. 2018/135 reg. 37(d)
s. 1H(8) words omitted by S.I. 2019/632 reg. 4(3)(a)
s. 1H(8) words substituted by S.I. 2019/632 reg. 4(3)(b)
s. 1L(2)(3) excluded by S.I. 2019/1361 reg. 24 (This S.I. is amended by S.I. 2019/1390, reg. 6)
s. 1L(2)(b) words substituted by S.I. 2019/632 reg. 5
s. 2AB(3)(d) words substituted by S.I. 2019/632 reg. 6
s. 3E(2)(f) omitted by S.I. 2018/1149 Sch. para. 2
s. 3E(2)(k) omitted by S.I. 2018/1149 Sch. para. 2
s. 3E(3)(a) omitted by S.I. 2019/632 reg. 7
s. 3I(8) words omitted by S.I. 2019/632 reg. 8
s. 3I(8) words omitted by S.I. 2019/632 reg. 9
s. 3M(1) words substituted by S.I. 2019/632 reg. 10(2)
s. 3M(10) words omitted by S.I. 2019/632 reg. 10(4)
s. 3R(4)(a) words substituted by S.I. 2019/383 Sch. para. 7(a)
s. 3S omitted by 2018 c. 10 Sch. 3 para. 12
s. 21 amendment to earlier affecting provision S.I. 2018/1149, reg. 58 by S.I. 2019/1010 reg. 4
s. 21 modified by S.I. 2019/1361 reg. 18 (This S.I. is amended by S.I. 2019/1390, reg. 6)
s. 22 applied by S.I. 2019/792 reg. 23(2)55(8)70(4)
s. 22 applied by S.I. 2019/855 reg. 58(8)71(4)
s. 22(1A)(a) word inserted by S.I. 2018/135 reg. 39(a)
s. 22(1A)(b) omitted by S.I. 2018/135 reg. 39(b)
s. 22(6) omitted by S.I. 2018/135 reg. 39(c)
s. 31(1)(b) omitted by S.I. 2018/1149 reg. 2(2)
s. 31(1)(c) omitted by S.I. 2018/1149 reg. 2(3)
s. 34 omitted by S.I. 2018/1149 Sch. para. 3
s. 35 omitted by S.I. 2018/1149 Sch. para. 4
s. 36 substituted by S.I. 2019/325 reg. 4
s. 37 omitted by S.I. 2018/1149 reg. 2(4)
s. 39(1A)(a) words substituted by S.I. 2019/632 reg. 12(2)(a)
s. 39(1A)(a) words substituted by S.I. 2019/632 reg. 12(2)(b)
s. 39(1B) words substituted by S.I. 2019/632 reg. 12(4)
s. 39(1AA)(a) words substituted by S.I. 2019/632 reg. 12(3)(a)
s. 39(1AA)(b) words omitted by S.I. 2019/632 reg. 12(3)(b)
s. 39(1BA)(b) word inserted by S.I. 2019/632 reg. 12(5)(a)
s. 39(1BA)(b)(i) word inserted by S.I. 2019/632 reg. 12(5)(b)
s. 39(1BA)(b)(ii) substituted by S.I. 2019/632 reg. 12(5)(c)
s. 39(4) words substituted by S.I. 2019/632 reg. 12(6)
s. 39(7) substituted by S.I. 2019/632 reg. 12(7)
s. 39(8) substituted by S.I. 2019/632 reg. 12(8)
s. 39A(1)(a) words substituted by S.I. 2019/632 reg. 13(2)
s. 39A(4) words substituted by S.I. 2019/632 reg. 13(3)
s. 39A(6)(c)(ii) omitted by S.I. 2019/632 reg. 13(4)
s. 39A(6)(d) words omitted by S.I. 2019/632 reg. 13(5)
s. 39A(8) substituted by S.I. 2019/632 reg. 13(6)
s. 39A(9) words omitted by S.I. 2019/632 reg. 13(7)
s. 45(1) amendment to earlier affecting provision SI 2011/2832 art. 5(4) by S.I. 2013/472 Sch. 2 para. 220(a)(iv)

s. 49(2A) inserted by S.I. 2003/1476 art. 20(3) (This amendment not applied to legislation.gov.uk. This amending provision is revoked (15.7.2004) by S.I. 2004/1610, art. 2.)

s. 49(2A) inserted by S.I. 2003/1476 art. 20(3)

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<table>
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<tr>
<th>Section</th>
<th>Amendment Details</th>
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<tr>
<td>s. 84(2)(i)</td>
<td>Words omitted by S.I. 2019/707 reg. 6(2) (This amendment not applied to legislation.gov.uk. Reg. 6 omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 12)</td>
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<td>s. 84(4)</td>
<td>Substituted by S.I. 2019/707 reg. 6(3) (This amendment not applied to legislation.gov.uk. Reg. 6 omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 12)</td>
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<td>s. 84(4)</td>
<td>Word substituted by S.I. 2019/1043 reg. 5(5)</td>
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<td>s. 85(5)(a)(b)</td>
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<td>s. 85(6)</td>
<td>Words substituted by S.I. 2019/1043 reg. 6(3)</td>
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<td>s. 85(7)</td>
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<td>s. 86(1)(b)</td>
<td>Words substituted by S.I. 2019/707 reg. 8(2)(a) (This amendment not applied to legislation.gov.uk. Reg. 8(2)(a) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 13(a))</td>
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<td>s. 86(1)(e)</td>
<td>Words substituted by S.I. 2019/707 reg. 8(2)(b)</td>
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<td>s. 86(1)(f)</td>
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- s. 298(6)(aa) words omitted by S.I. 2019/662 reg. 5(15)(a)
- s. 298(6A)(ab) omitted by S.I. 2019/662 reg. 5(15)(b)
- s. 298(7A) words omitted by S.I. 2019/662 reg. 5(15)(c)
- s. 298(7B) omitted by S.I. 2019/662 reg. 5(15)(d)
- s. 298(9) omitted by S.I. 2019/662 reg. 5(15)(e)
- s. 300A(3)(a) words omitted by S.I. 2019/662 reg. 5(16)
- s. 301E(4)(a) words substituted by S.I. 2019/662 reg. 6(2)(a)(i)
- s. 301E(4)(b) substituted by S.I. 2019/662 reg. 6(2)(a)(ii)
- s. 301E(5) words substituted by S.I. 2019/662 reg. 6(2)(b)
- s. 301E(6) words substituted by S.I. 2019/662 reg. 6(2)(c)(i)
- s. 301E(6)(a)(ii) words omitted by S.I. 2019/662 reg. 6(2)(c)(ii)
- s. 301E(6)(b) words substituted by S.I. 2019/662 reg. 6(2)(c)(i)
- s. 301E(7) words substituted by S.I. 2019/662 reg. 6(2)(d)
s. 351 amendment to earlier affecting provision SI 2011/99 Sch. 3 para. 6 by S.I. 2013/472 Sch. 2 para. 196(5)(f)

s. 352 applied (with modifications) by S.I. 2019/926 reg. 204

s. 352(5) words substituted by 2003 c. 44 Sch. 26 para. 54(3)

s. 353A(6)(d) omitted by S.I. 2019/681 reg. 2(4)

s. 354A(3)(b) omitted by S.I. 2019/681 reg. 2(5)(i)

s. 354A(3)(c) word omitted by S.I. 2019/681 reg. 2(5)(ii)

s. 354D-354H omitted by S.I. 2019/681 reg. 2(6)

s. 368 omitted by S.I. 2018/1149 Sch. 2 para. 19

s. 380(9) words substituted by S.I. 2019/632 reg. 70(3)

s. 380(9)(a)(i) words substituted by S.I. 2019/632 reg. 71(2)

s. 380(12) words substituted by S.I. 2019/632 reg. 71(3)

s. 384(7)(a) words substituted by S.I. 2019/632 reg. 72(2)

s. 384(10) words substituted by S.I. 2019/632 reg. 72(3)

s. 391(4A) words substituted by S.I. 2019/1043 reg. 33(1)(a)

s. 391(7A)(7B) omitted by S.I. 2019/632 reg. 74(2)

s. 391(8A) words substituted by S.I. 2019/632 reg. 74(3)

s. 391(8B) words substituted by S.I. 2019/632 reg. 74(5)

s. 391(8D)(a) word omitted by S.I. 2019/632 reg. 74(7)(a)

s. 391(8D)(b) words inserted by S.I. 2019/632 reg. 74(7)(b)(i)

s. 391(8D)(b) words substituted by S.I. 2019/632 reg. 74(7)(b)(i)

s. 391(8F) omitted by S.I. 2019/632 reg. 74(9)

s. 391A(1) words substituted by S.I. 2019/632 reg. 75(3)

s. 391A(6)(a) word inserted by S.I. 2019/632 reg. 75(4)(a)

s. 391A(6)(c) and word omitted by S.I. 2019/632 reg. 75(4)(b)

s. 391B(1) words substituted by S.I. 2019/632 reg. 76(3)

s. 391C(1) words substituted by S.I. 2019/632 reg. 77(3)

s. 391C(7)(b) and word omitted by S.I. 2019/632 reg. 77(4)

s. 391D(1) words substituted by S.I. 2019/632 reg. 78(3)

s. 391D(9)(b) and word omitted by S.I. 2019/632 reg. 78(4)

s. 391E(1) words substituted by S.I. 2019/632 reg. 79(3)

s. 391E(5) omitted by S.I. 2019/632 reg. 79(4)

s. 393 applied by S.I. 2019/1361 reg. 22(6) (This S.I. is amended by S.I. 2019/1390, reg. 6)

s. 393(4) applied by S.I. 2018/1201, Sch. 3 para. 12HA(5) (as substituted) by S.I. 2019/1212 reg. 7(8)

s. 393(4) applied by S.I. 2018/1201, Sch. 3 para. 32A(5) (as substituted) by S.I. 2019/1212 reg. 7(15)

s. 395(13)(e) omitted by S.I. 2019/325 reg. 29

s. 398(1) applied by S.I. 2019/266 reg. 21

s. 398(1A)(e) word omitted by S.I. 2017/701 Sch. 2 para. 48(b)

s. 398(1A)(h) word omitted by S.I. 2019/1043 reg. 34(2)(a)

s. 398(1A)(i) word inserted by S.I. 2019/1043 reg. 34(2)(b)

s. 398(1A)(ea) substituted by S.I. 2019/632 reg. 80(2)(a)

s. 398(1A)(eb) substituted by S.I. 2019/632 reg. 80(2)(b)

s. 400 applied by S.I. 2019/266 reg. 22

s. 401 applied by S.I. 2019/266 reg. 23

s. 404(6) words omitted by S.I. 2019/632 reg. 82

s. 409(1)(b) words substituted by S.I. 2019/589 reg. 2(2)(a)

s. 409(1)(c) omitted by S.I. 2019/589 reg. 2(2)(b)

s. 409(1)(f) omitted by S.I. 2019/589 reg. 2(2)(c)

s. 409(4) omitted by S.I. 2019/589 reg. 2(3)

s. 409(6) words substituted by S.I. 2019/589 reg. 2(4)
s. 410(1) word substituted by S.I. 2019/632 reg. 83
s. 417(1) words inserted by S.I. 2019/632 reg. 85(2)
s. 417(1) words inserted by S.I. 2019/632 reg. 85(5)
s. 417(1) words inserted by S.I. 2019/632 reg. 85(9)
s. 417(1) words omitted by S.I. 2019/1361 reg. 3(a) (This S.I. is amended by S.I. 2019/1390, reg. 6)
s. 417(1) words omitted by S.I. 2019/632 reg. 85(13)
s. 417(1) words substituted by S.I. 2019/325 reg. 30
s. 417(1) words substituted by S.I. 2019/632 reg. 85(4)
s. 417(1) words substituted by S.I. 2019/632 reg. 85(7)
s. 417(1) words substituted by S.I. 2019/632 reg. 85(10)
s. 417(1) words substituted by S.I. 2019/632 reg. 85(12)
s. 417(4) omitted by S.I. 2019/1361 reg. 3(b) (This S.I. is amended by S.I. 2019/1390, reg. 6)
s. 418(1) amendment to earlier affecting provision S.I. 2013/1797 Sch. 1 para. 1(4) (a) by S.I. 2019/328 reg. 20(2)(b) (This S.I. is amended by S.I. 2019/325, reg. 58)
s. 418(1) word substituted by S.I. 2013/1797, Sch. 1 para. 1(4)(a) (as substituted) by S.I. 2014/1292 art. 5(a) (This S.I. is amended by S.I. 2014/1313)
s. 418(1) words substituted by S.I. 2019/632 reg. 86(2)
s. 418(2) omitted by S.I. 2019/632 reg. 86(3)
s. 418(3) omitted by S.I. 2019/632 reg. 86(3)
s. 418(5A) omitted by S.I. 2019/1361 reg. 4 (This S.I. is amended by S.I. 2019/1390, reg. 6)
s. 418(5B) amendment to earlier affecting provision S.I. 2013/1797 Sch. 1 para. 1(4) (b) by S.I. 2019/328 reg. 20(2)(c) (This S.I. is amended by S.I. 2019/325, reg. 58)
s. 418(5B) amendment to earlier affecting provision S.I. 2013/1797, Sch. 1 para. 1(4) (b) by S.I. 2014/1292 art. 5(b) (This S.I. is amended by S.I. 2014/1313)
s. 418(5AA)(b)(i) words substituted by S.I. 2019/632 reg. 86(4)(a)
s. 418(5AA)(b)(ii) words substituted by S.I. 2019/632 reg. 86(4)(b)
s. 418(6) word substituted by S.I. 2013/1797, Sch. 1 para. 1(4)(c) (as substituted) by S.I. 2014/1292 art. 5(c) (This S.I. is amended by S.I. 2014/1313)
s. 418(6) words substituted by S.I. 2019/632 reg. 86(5)
s. 418(7) omitted by S.I. 2019/632 reg. 86(6)
s. 418(8) substituted by S.I. 2019/632 reg. 86(7)
s. 420(2)(b) words omitted by S.I. 2019/632 reg. 87(a)
s. 422A(4)(a) words substituted by S.I. 2019/632 reg. 88(a)(i)
s. 422A(4)(b) substituted by S.I. 2019/632 reg. 88(a)(ii)
s. 422A(5) words substituted by S.I. 2019/632 reg. 88(b)
s. 422A(6) words substituted by S.I. 2019/632 reg. 88(c)(i)
s. 422A(6)(a)(ii) words omitted by S.I. 2019/632 reg. 88(c)(ii)
s. 422A(6)(b) words substituted by S.I. 2019/632 reg. 88(c)(i)
s. 422A(7) words substituted by S.I. 2019/632 reg. 88(d)
s. 422A(10) omitted by S.I. 2019/632 reg. 88(f) (This amendment not applied to legislation.gov.uk. Reg. 88(f) substituted immediately before exit day by S.I. 2019/680, regs. 1(3), 9(5))
s. 422A(10) substituted by S.I. 2019/632, reg. 88(f) (as substituted) by S.I. 2019/680 reg. 9(5)
s. 424A(1) words substituted by S.I. 2019/632 reg. 90(2)
s. 424A(2) words substituted by S.I. 2019/632 reg. 90(3)
s. 424A(3)(4) omitted by S.I. 2019/632 reg. 90(4)
s. 424A(5)(a)(b) substituted by S.I. 2019/632 reg. 90(5)
s. 425 heading word omitted by S.I. 2018/1149 Sch. para. 20(3)
s. 425(1)(a) words omitted by S.I. 2019/710 reg. 3(2)
s. 425(1)(aa) omitted by S.I. 2019/325 reg. 31
s. 425(2) omitted by S.I. 2018/1149 Sch. para. 20(2)
s. 425A applied (with modifications) by S.I. 2019/266 reg. 20
- s. 425A(3)(b) words substituted by S.I. 2019/632 reg. 91(2)
- s. 425A(7) words omitted by S.I. 2018/135 reg. 49(2)(c)
- s. 425A(7) words omitted by S.I. 2018/135 reg. 49(2)(d)
- s. 425A(7) words omitted by S.I. 2019/632 reg. 91(3)(a)
- s. 425A(7) words substituted by S.I. 2019/632 reg. 91(3)(b)
- s. 425C substituted by S.I. 2019/632 reg. 92
- Sch. 1A omitted by 2018 c. 10 Sch. 3 para. 22
- Sch. 1ZA para. 19-21 applied (with modifications) by S.I. 2019/335 reg. 78
- Sch. 1ZA para. 19-21 applied (with modifications) by S.I. 2019/335 reg. 50
- Sch. 1ZA para. 19-22 applied (with modifications) by S.I. 2019/632 reg. 95
- Sch. 1ZA para. 20 modified by S.I. 2019/266 reg. 14(2)
- Sch. 1ZA para. 21 modified by S.I. 2019/266 reg. 14(3)
- Sch. 1ZA para. 24(a) and word omitted by S.I. 2018/1149 Sch. para. 21
- Sch. 1ZA para. 8(3A) words substituted by S.I. 2019/383 Sch. para. 7(d)
- Sch. 1ZA para. 23(2)(b) words substituted by S.I. 2019/632 reg. 93
- Sch. 1ZA para. 32(a) and word omitted by S.I. 2018/1149 Sch. para. 22
- Sch. 1ZA para. 16(3)(c)(i) word inserted by 2013 c. 33 s. 4(7)
- Sch. 1ZA para. 31(2)(b) words substituted by S.I. 2019/632 reg. 94
- Sch. 2 applied by S.I. 2019/792 reg. 23(2)55(8)70(4)
- Sch. 2 applied by S.I. 2019/855 reg. 58(8)71(4)
- Sch. 2 Pt. 2B omitted by S.I. 2018/135 reg. 50
- Sch. 2 para. 13(2)(c) words omitted by S.I. 2019/632 reg. 95
- Sch. 3 amendment to earlier affecting provision S.I. 2001/3084, arts. 2-4 by S.I. 2019/589 reg. 5-9
- Sch. 3 para. 7A(aa) amendment to earlier affecting provision S.I. 2013/1797 Sch. 1 para. 15(b) by S.I. 2019/328 reg. 20(2)(d) (This S.I. is amended by S.I. 2019/325, reg. 58)
- Sch. 3 Pt. 2 omitted by S.I. 2018/1149 reg. 2(5)(a)
- Sch. 3 Pt. 3 omitted by S.I. 2018/1149 reg. 2(5)(b)
- Sch. 3 para. 6 omitted by S.I. 2019/710 reg. 3(3)
- Sch. 3 para. 11D omitted by S.I. 2019/710 reg. 3(3)
- Sch. 4 omitted by S.I. 2018/1149 reg. 2(6)
- Sch. 5 para. 1(1)(2) omitted by S.I. 2019/325 reg. 32(2)(a)
- Sch. 5 para. 2(1) omitted by S.I. 2019/325 reg. 32(3)
- Sch. 5 para. 1(4)(b) substituted by S.I. 2019/325 reg. 32(2)(b)
- Sch. 6 para. 2B(7) amendment to earlier affecting provision S.I. 2013/1797 Sch. 1 para. 1(6) by S.I. 2019/328 reg. 20(2)(e) (This S.I. is amended by S.I. 2019/325, reg. 58)
- Sch. 6 Pt. 1F omitted by S.I. 2018/1149 Sch. para. 23(2)
- Sch. 6 Pt. 1G omitted by S.I. 2018/1149 Sch. para. 23(3)
- Sch. 6 para. 4A(6)(a) substituted by S.I. 2019/632 reg. 100(a)
- Sch. 6 para. 4A(6)(b) substituted by S.I. 2019/632 reg. 100(b)
- Sch. 6 para. 1A(1) words inserted by S.I. 2019/632 reg. 97(2)
- Sch. 6 para. 1A(1) words inserted by S.I. 2019/632 reg. 97(3)
- Sch. 6 para. 2C(1)(e) words substituted by S.I. 2019/632 reg. 98(a)
- Sch. 6 para. 2C(1)(f)(iii) words substituted by S.I. 2019/632 reg. 98(b)
- Sch. 6 para. 3B(1)(e) words substituted by S.I. 2019/632 reg. 99(a)
- Sch. 6 para. 3B(1)(f)(iii) words substituted by S.I. 2019/632 reg. 99(b)
- Sch. 6 para. 4F(2)(c) words substituted by S.I. 2019/632 reg. 101(a)
- Sch. 6 para. 4F(2)(f)(iii) words substituted by S.I. 2019/632 reg. 101(b)
- Sch. 6 para. 5F(2)(c) words substituted by S.I. 2019/632 reg. 102(a)
- Sch. 6 para. 5F(2)(f)(iii) words substituted by S.I. 2019/632 reg. 102(b)
- Sch. 6 para. 8(2)(a) words substituted by S.I. 2019/632 reg. 103
- Sch. 10A para. 8(6)(b) omitted by S.I. 2019/707 reg. 37(4)(b)
- Sch. 10A para. 1(3) substituted by S.I. 2019/707 reg. 37(2)
– Sch. 12 para. 9C(2)(b) omitted by S.I. 2019/632 reg. 112(b)
– Sch. 12 para. 9D omitted by S.I. 2019/632 reg. 113
– Sch. 12 para. 10(2) omitted by S.I. 2019/632 reg. 114(b)
– Sch. 12 para. 10(3) omitted by S.I. 2019/632 reg. 114(b)
– Sch. 12 para. 1 substituted by S.I. 2019/632 reg. 105
– Sch. 12 para. 2(1)(b) and word substituted by S.I. 2019/632 reg. 106(2)(a)
(This amendment not applied to legislation.gov.uk. Reg. 106(2) omitted immediately before exit day by virtue of S.I. 2019/680, regs. 1(3), 9(6))
– Sch. 12 para. 7 substituted by S.I. 2019/632 reg. 108
– Sch. 12 para. 9B substituted by S.I. 2019/632 reg. 111
– Sch. 12 para. 2(6)(c) words omitted by S.I. 2019/632 reg. 106(3)(b)
– Sch. 12 para. 2(6)(c)(i) words omitted by S.I. 2019/632 reg. 106(3)(c)
– Sch. 12 para. 2(6)(c)(ii) words omitted by S.I. 2019/632 reg. 106(3)(c)
– Sch. 12 para. 8(2)(a) words omitted by S.I. 2019/632 reg. 109(a)
– Sch. 12 para. 8(2)(aa) words omitted by S.I. 2019/632 reg. 109(a)
– Sch. 12 para. 9C(2)(a) words omitted by S.I. 2019/632 reg. 112(a)
– Sch. 12 para. 9C(2)(c) words omitted by S.I. 2019/632 reg. 112(c)
– Sch. 12 para. 8(2)(c) words substituted by S.I. 2019/632 reg. 109(c)
– Sch. 12 para. 10(1) words substituted by S.I. 2019/632 reg. 114(a)
– Sch. 12 para. 10(4) words substituted by S.I. 2019/632 reg. 114(c)
– Sch. 13 amendment to earlier affecting provision SI 2008/3249 Sch. para. 14-18 by S.I. 2013/472 Sch. 2 para. 152
– Sch. 13 amendment to earlier affecting provision SI 2008/718 Sch. para. 15-19 by S.I. 2013/472 Sch. 2 para. 139
– Sch. 17 para. 1 words omitted by S.I. 2018/1285 reg. 3(2)(a)
– Sch. 17 para. 16D(a) words substituted by 2013 c. 22 Sch. 9 para. 52
– Sch. 17 para. 1 words substituted by S.I. 2018/1285 reg. 3(2)(b)
– Sch. 17 para. 2(2) words substituted by S.I. 2018/1285 reg. 3(3)
– Sch. 17 para. 14(3A) words substituted by S.I. 2018/1285 reg. 3(4)
– Sch. 19 Pt. 1 entry substituted by 2003 c. 20 Sch. 2 para. 24 (This amendment not applied to legislation.gov.uk. Sch. 19 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 247(k), 278(2), 279, Sch. 26 (with s. 237); S.I. 2003/1397, art. 2(1), Sch.)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
– Act power to apply conferred (temp. until 15.5.2039) by 2014 c. 21 s. 79(4)
– Act power to apply conferred (temp. until 15.5.2039) by 2014 c. 21 s. 81(10)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):
– Pt. 20C inserted by 2016 c. 14 s. 30(3)
– s. 3M(2A) inserted by S.I. 2019/632 reg. 10(3)
– s. 55J(6AA) inserted by S.I. 2019/632 reg. 16(3)
– s. 55J(13) inserted by S.I. 2019/632 reg. 16(8)
– s. 84(1A) inserted by S.I. 2019/1043 reg. 5(3)
– s. 85(6A) inserted by S.I. 2019/1043 reg. 6(4)
– s. 85(8) inserted by S.I. 2019/1043 reg. 6(5)
– s. 85(8) omitted by S.I. 2019/1234 reg. 4
– s. 86(1)(aa) substituted for s. 86(1)(a)-(d) by S.I. 2019/1043 reg. 7(3)(a)
– s. 86(4A) inserted by S.I. 2019/1043 reg. 7(8)
– s. 86(9A) inserted by S.I. 2019/707 reg. 8(9) (This amendment not applied to legislation.gov.uk. Reg. 8(6)-(10) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 13(c))
– s. 87K(6)-(8) inserted by S.I. 2019/1043 reg. 18(4)
– s. 87L(6)-(11) inserted by S.I. 2019/1043 reg. 19(4)
s. 87A(5) words substituted by S.I. 2019/1234 reg. 6
- s. 89A(4A) inserted by S.I. 2019/707 reg. 19(4)
- s. 89C(5)-(8) inserted by S.I. 2019/707 reg. 21(4)
- s. 89F(1A)(1B) inserted by S.I. 2019/707 reg. 23
- s. 89K(5A) inserted by S.I. 2019/707 reg. 24(3)
- s. 89W(1A)(1B) inserted by S.I. 2019/707 reg. 28(3)
- s. 90(11A) inserted by S.I. 2019/1043 reg. 25(3)
- s. 97(1)(a)(iii) inserted by S.I. 2019/1043 reg. 27(2)(c)
- s. 97(1)(b)(iii) inserted by S.I. 2019/1043 reg. 27(3)(c)
- s. 97A inserted by S.I. 2019/1043 reg. 28
- s. 97A(1)(b)(iii) words omitted by S.I. 2019/1234 reg. 7(2)
- s. 97A(2)(a) word omitted by S.I. 2019/1234 reg. 7(3)(a)
- s. 97A(2)(b)(c) substituted for s. 97A(2)(b) by S.I. 2019/1234 reg. 7(3)(b)
- s. 100A(1A) inserted by S.I. 2019/1043 reg. 29(3)
- s. 122B(6)(6A) substituted for s. 122B(6)(7) by S.I. 2019/310 reg. 5(2)(b)
- s. 122D(10A) inserted by S.I. 2019/310 reg. 5(3)(b)
- s. 123A(b)(ii) words substituted by S.I. 2019/310 reg. 5(9)(a)
- s. 124(10)(c)(i) word omitted by S.I. 2019/310 reg. 5(11)(b)
- s. 124(10)(c)(ii) words substituted by S.I. 2019/310 reg. 5(11)(a)
- s. 129(7)(a) word inserted by S.I. 2019/310 reg. 5(12)(a)(i)
- s. 129(7)(c) omitted and word by S.I. 2019/310 reg. 5(12)(a)(ii)
- s. 131F(6A) inserted by S.I. 2018/1321 reg. 2(3)
- s. 131AB(1) s. 131AB renumbered as s. 131AB(1) by S.I. 2019/310 reg. 5(14)(a)
- s. 131AB(1) words omitted by S.I. 2019/310 reg. 5(14)(b)(i)
- s. 131AB(1) words omitted by S.I. 2019/310 reg. 5(14)(b)(ii)
- s. 131AB(1) words omitted by S.I. 2019/310 reg. 5(14)(b)(iii)
- s. 131AB(1) words substituted by S.I. 2019/310 reg. 5(14)(b)(iv)
- s. 131AB(1) words substituted by S.I. 2019/310 reg. 5(14)(b)(ii)
- s. 131AB(2) inserted by S.I. 2019/310 reg. 5(14)(c)
- s. 137R(5A) inserted by S.I. 2019/632 reg. 38(4)
- s. 137FB(1A)-(1D) inserted by 2018 c. 10 s. 18(2)
- s. 137FB(2A) inserted by 2018 c. 10 s. 18(4)
- s. 137FB(3A) inserted by 2018 c. 10 s. 18(6)
- s. 141A(5) inserted by S.I. 2019/632 reg. 41
- s. 175(5A)(5B) inserted by 2016 c. 25 Sch. 2 para. 9
- s. 236A inserted by S.I. 2019/325 reg. 6
- s. 283A(3A) inserted by S.I. 2019/325 reg. 27(4)
- s. 293A(1) words substituted by S.I. 2019/662 reg. 5(10)(b)
- s. 313CA(4)(5) substituted for s. 313CA(4) by S.I. 2019/662 reg. 10(2)
- s. 391(8D)(c) and word inserted by S.I. 2019/632 reg. 74(7)(c)
- s. 391(8E) words substituted by S.I. 2019/632 reg. 74(8)
- s. 391(8G) inserted by S.I. 2019/1043 reg. 33(1)(b)
- s. 391(8G) words substituted by S.I. 2019/1234 reg. 8
- s. 391(8AA) inserted by S.I. 2019/632 reg. 74(4)
- s. 391(8BA) inserted by S.I. 2019/632 reg. 74(6)
- s. 391F inserted by S.I. 2019/1043 reg. 33(2)
- s. 391F(1) words substituted by S.I. 2019/1234 reg. 9
- s. 398(1A)(j) inserted by S.I. 2019/1043 reg. 34(2)(c)
- s. 409(7)-(12) inserted by S.I. 2019/589 reg. 2(5)
- s. 423A inserted by S.I. 2019/632 reg. 89
- s. 427A(3) words substituted by 2002 c. 40 Sch. 17 para. 59 (This amendment not applied to legislation.gov.uk. The Financial Services and Markets Act 2000 does not contain a section 427A.)
- Sch. 6 para. 4A(7) inserted by S.I. 2019/632, reg. 100(c) (as inserted) by S.I. 2019/1233 reg. 5(d)
– Sch 17A para. 23A and cross-heading inserted by S.I. 2019/662 reg. 14
– Sch 17A para. 13(1A) omitted by S.I. 2019/662 reg. 13(2)
– Sch 17A para. 11(1)(ab) substituted by S.I. 2019/632 reg. 116(a)(i)
– Sch 17A para. 11(2)(d) substituted by S.I. 2019/632 reg. 116(b)
– Sch 17A para. 22 words inserted by S.I. 2018/1184 reg. 5(a)
– Sch 17A para. 32 words inserted by S.I. 2018/1184 reg. 5(b)
– Sch 17A para. 33(a) words inserted by S.I. 2018/1184 reg. 5(c)
– Sch 17A para. 22 words inserted by S.I. 2019/632 reg. 117(1)
– Sch 17A para. 36(1) words omitted by S.I. 2018/1184 reg. 5(d)
– Sch 17A para. 36(1) words omitted by S.I. 2019/632 reg. 119(a)
– Sch 17A para. 10(2) words omitted by S.I. 2019/662 reg. 12
– Sch 17A para. 11(1)(b) words substituted by S.I. 2019/632 reg. 116(a)(ii)
– Sch 17A para. 23(1) words substituted by S.I. 2019/632 reg. 117(2)
– Sch 17A para. 30(a) words substituted by S.I. 2019/632 reg. 118(a)
– Sch 17A para. 30(c) words substituted by S.I. 2019/632 reg. 118(b)
– Sch 17A para. 36(2)(b) words substituted by S.I. 2019/632 reg. 119(b)
– Sch 17A para. 12 words substituted by S.I. 2019/662 reg. 13(1)
– Sch 17A para. 14(2)(d) words substituted by S.I. 2019/662 reg. 13(3)(a)
– Sch 17A para. 26(2)(a) words substituted by S.I. 2019/662 reg. 15(1)(a)
– Sch 17A para. 26(2)(c) words substituted by S.I. 2019/662 reg. 15(1)(b)
– Sch 17A para. 28(2) words substituted by S.I. 2019/662 reg. 15(2)(a)(i)
– Sch 17A para. 28(2)(d) words substituted by S.I. 2019/662 reg. 15(2)(a)(ii)
– Sch 17A para. 28(4)(a) words substituted by S.I. 2019/662 reg. 15(2)(b)
– Sch 17A para. 32 words substituted by S.I. 2019/662 reg. 16
– Sch 17A para. 33 words substituted by S.I. 2019/662 reg. 17