



Financial Services and Markets Act 2000

2000 CHAPTER 8

[^{F1}PART 12A

POWERS EXERCISABLE IN RELATION TO PARENT UNDERTAKINGS

Textual Amendments

- F1** Pt. 12A 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. 27, 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.](#)

Introductory

192A Meaning of “qualifying authorised person”

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

Status: Point in time view as at 29/08/2017.

Changes to legislation: Financial Services and Markets Act 2000, PART 12A is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (6) An order under subsection (4) may be made without a draft having been laid and approved as mentioned in subsection (5) if the order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (7) An order under subsection (4) made in accordance with subsection (6)—
 - (a) must be laid before Parliament after being made, and
 - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without affecting anything done under the order or the power to make a new order).
- (8) The “relevant period” is a period of 28 days beginning with the day on which the order is made.
- (9) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

192B Meaning of “qualifying parent undertaking”

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

Power of direction

192C Power to direct qualifying parent undertaking

- (1) The appropriate regulator may give a direction under this section to a qualifying parent undertaking if either the general condition or the consolidated supervision condition is satisfied.
- (2) The general condition is that the appropriate regulator considers that it is desirable to give the direction in order to advance—

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- (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.

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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).

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- (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 [^{F2}the FCA] gives a notice under section 192E(1) or (8)(b) in relation to the parent undertaking of a recognised clearing house, [^{F3}it] must consult the Bank of England.

Textual Amendments

- F2** 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)
- F3** 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.

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- (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 ^{F4}, 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

- F4** 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—

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- (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.

[^{F5}Rules applying to parent undertakings of ring-fenced bodies

Textual Amendments

- F5** Ss. 192JA, 192JB and cross-headings inserted (31.12.2014 for the insertion of s. 192JB, 21.4.2016 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 133(1), 148(5)**; [S.I. 2014/3160](#), art. 2(2); [S.I. 2016/512](#), art. 2(b)

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.]

[^{F5}Rules requiring parent undertakings to facilitate resolution

192JB Rules requiring parent undertakings to facilitate resolution

- [^{F6}(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

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- (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 undertaking or the subsidiary undertaking encounters or is likely to encounter financial difficulties.]

[A “recovery plan” in relation to a group, is a document which provides for measures to
^{F7}(1A) 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.]

- (2) 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.

- (3) 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.

- [
 - ^{F8}(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.]

[^{F9}(4) 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;

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(d) in any other case, the PRA or the FCA.]

Textual Amendments

- F6** S. 192JB(1) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **120(2)**
- F7** S. 192JB(1A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **120(3)**
- F8** S. 192JB(3)(c)(d) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **120(4)**
- F9** S. 192JB(4) substituted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **120(5)**

Failure to comply with direction or breach of rules

192K Power to impose penalty or issue censure

(1) This section applies if a regulator is satisfied that a person who is or has been a qualifying parent undertaking (“P”) has contravened—

- (a) a requirement of a direction given to P by that regulator under section 192C,
^{F10} ...
- (b) a provision of rules made by that regulator under section 192J [^{F11}or 192JB],
^{F12}or]
- [a requirement imposed by a qualifying EU provision specified, or of a
^{F13}(c) description specified, for the purposes of this subsection by the Treasury by order.]

[This section also applies if a regulator is satisfied that a person (“P”) who is or has
^{F14}(1A) 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.

[The regulator may impose, for such period as it considers appropriate, restrictions
^{F15}(3A) (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-authorized 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.

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- (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—

- ^{F16}(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

- F10** 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)**
- F11** 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)
- F12** 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)**
- F13** 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)**
- F14** 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)
- F15** 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)**
- F16** 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) ^{F17}(3A) must state—

- (a) the terms of the restriction, and
- (b) the period for which the restriction is to have effect.]

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- (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^{F18}(6B) 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

F17 S. 192L(3A) inserted (1.1.2015) by [The Bank Recovery and Resolution Order 2014 \(S.I. 2014/3329\)](#), arts. 1(2), **122(2)**

F18 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

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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.]

Status:

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