



Financial Services and Markets Act 2000

2000 CHAPTER 8

[^{F1}PART 9C

PRUDENTIAL REGULATION OF FCA INVESTMENT FIRMS

[^{F1}Imposition of requirements on non-authorised parent undertakings

Textual Amendments

F1 Pt. 9C inserted (1.7.2021) by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), [Sch. 2 para. 1](#); [S.I. 2021/671](#), reg. 4(b)

143K Imposition of requirements on non-authorised parent undertakings

- (1) The FCA may, on the application of a non-authorised parent undertaking of an FCA investment firm—
 - (a) impose a requirement on the parent undertaking,
 - (b) vary a requirement imposed on the parent undertaking under this section, or
 - (c) cancel such a requirement.
- (2) The FCA may exercise its power under subsection (3) in relation to a non-authorised parent undertaking of an FCA investment firm if it appears to the FCA that—
 - (a) it is necessary or expedient to do so in order to manage risks specified in or under section 143D(2), and
 - (b) it is desirable to do so in order to advance one or more of its operational objectives.
- (3) The FCA's power under this subsection is a power—
 - (a) to impose a requirement,
 - (b) to vary a requirement imposed under this section, or
 - (c) to cancel such a requirement.

Status: Point in time view as at 30/01/2024.

Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Imposition of requirements on non-authorised parent undertakings is up to date with all changes known to be in force on or before 26 May 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)

- (4) The FCA may refuse an application under subsection (1) if it appears to the FCA that it is desirable to do so in order to advance one or more of the FCA's operational objectives.
- (5) A requirement may, in particular, be imposed under this section—
 - (a) so as to require the parent undertaking to take specified action, or
 - (b) so as to require the parent undertaking to refrain from taking specified action.
- (6) A requirement may be imposed by reference to the parent undertaking's relationship with—
 - (a) its group, or
 - (b) other members of its group.
- (7) 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).
- (8) A requirement 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 FCA's power to impose a new requirement.
- (9) A requirement ceases to be in force if the person on whom it is imposed ceases to be a non-authorised parent undertaking of an FCA investment firm.
- (10) For the purposes of a provision of this section which refers to the FCA's operational objectives, in relation to the exercise of a power in relation to a particular parent undertaking, it does not matter whether there is a relationship between the parent undertaking and the persons whose interests will be protected by the exercise of the power.

143L Applications under section 143K

- (1) An application under section 143K(1) for the imposition or variation of a requirement must contain a statement of the desired requirement or variation.
- (2) An application under section 143K(1)—
 - (a) must be made in such manner as the FCA may direct, and
 - (b) must contain, or be accompanied by, such other information as the FCA may reasonably require.
- (3) At any time after the application is received and before it is determined, the FCA may require the applicant to provide it with such further information as the FCA reasonably considers necessary to enable it to determine the application.
- (4) The FCA may require an applicant to provide information which the applicant is required to provide the FCA under this section in such form, or to verify it in such a way, as the FCA may direct.
- (5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

143M Determination of applications under section 143K

- (1) The FCA must determine an application under section 143K(1)—

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- (a) if the application is complete, before the end of the period of six months beginning with the day on which the FCA received the application, or
 - (b) if the application is incomplete, before the end of the period of 12 months beginning with the day on which the FCA received the application.
- (2) The applicant may withdraw the application, by giving the FCA a written notice, at any time before the FCA determines it.
- (3) If the FCA grants an application under section 143K(1), it must give the applicant a written notice.
- (4) The notice must state the date from which the requirement or variation has effect.

143N Refusal of applications under section 143K

- (1) If the FCA proposes to refuse an application under section 143K(1), it must give the applicant a warning notice.
- (2) If the FCA decides to refuse an application under section 143K(1), it must give the applicant a decision notice.

143O Exercise of own-initiative power under section 143K

- (1) The imposition or variation of a requirement by the FCA under section 143K(2) takes effect—
 - (a) immediately, if the notice given under subsection (3) states 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.
- (2) The imposition or variation of the requirement may be expressed to take effect immediately, or on a specified date, only if the FCA reasonably considers that it is necessary for it to take effect immediately or on that date, having regard to the ground on which it is exercising its power under section 143K(2).
- (3) If the FCA—
 - (a) proposes to exercise its power under section 143K(2) so as to impose a requirement on a parent undertaking or to vary a requirement imposed on a parent undertaking, or
 - (b) exercises that power so as to impose a requirement on a parent undertaking, or to vary a requirement imposed on a parent undertaking, with immediate effect, it must give the parent undertaking a written notice.
- (4) The notice must—
 - (a) give details of the requirement or its variation,
 - (b) state the FCA's reasons for imposing or varying the requirement,
 - (c) inform the parent undertaking that it may make representations to the FCA within the period specified in the notice (whether or not the parent undertaking has referred the matter to the Tribunal),
 - (d) inform the parent undertaking of when the imposition or variation of the requirement takes effect, and
 - (e) inform the parent undertaking of its right to refer the matter to the Tribunal.

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- (5) The FCA may extend the period allowed under the notice for making representations.
- (6) If, having considered any representations made by the parent undertaking, the FCA decides—
 - (a) to impose the requirement or vary the requirement in the way proposed, or
 - (b) if the requirement has been imposed or varied, not to rescind its imposition or variation,
 it must give the parent undertaking a written notice.
- (7) A notice under subsection (6) must inform the parent undertaking of its right to refer the matter to the Tribunal.
- (8) If, having considered any representations made by the parent undertaking, the FCA decides—
 - (a) not to impose the requirement or vary the requirement in the way proposed,
 - (b) to impose a different requirement or vary the requirement in a different way, or
 - (c) to rescind a requirement or variation which has effect,
 it must give the parent undertaking a written notice.
- (9) A notice under subsection (8)(b) must comply with subsection (4).
- (10) If a notice under this section informs a person of the person's right to refer a matter to the Tribunal, it must give an indication of the procedure for such a reference.
- (11) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

143P Right to refer matters to the Tribunal

- (1) An applicant who is aggrieved by the determination of an application under section 143K(1) may refer the matter to the Tribunal.
- (2) A parent undertaking aggrieved by the exercise by the FCA of its power under section 143K(2) to impose a requirement on the parent undertaking, or vary a requirement imposed on the parent undertaking, may refer the matter to the Tribunal.

143Q Assets requirements

- (1) This section makes provision about a requirement imposed on a non-authorised parent undertaking of an FCA investment firm (“N”) under section 143K—
 - (a) prohibiting the disposal of, or other dealing with, any of N's assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings, or
 - (b) requiring that some or all of N's assets, or some or all assets belonging to consumers (as defined in section 1G) but held by N or to N's order, must be transferred to and held by a trustee approved by the FCA.
- (2) If the FCA—
 - (a) imposes a requirement described in subsection (1)(a), and
 - (b) gives notice of the requirement to an institution with whom N keeps an account,
 the notice has the effects set out in subsection (3).
- (3) Those effects are that—

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- (a) the institution does not act in breach of a contract with N if, having been instructed by N (or on N's behalf) to transfer a sum or otherwise make a payment out of N'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 FCA an amount equal to the amount transferred from, or otherwise paid out of, N's account in contravention of the requirement.
- (4) If the FCA imposes a requirement described in subsection (1)(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 FCA.
- (5) If, while a requirement described in subsection (1)(b) is in force, N creates a charge over any assets of N held in accordance with the requirement, the charge is (to the extent that it confers security over the assets) void against the liquidator and N's creditors.
- (6) Assets held by a person as trustee are to be taken to be held by the trustee in accordance with a requirement mentioned in subsection (1)(b) only if—
 - (a) N has given the trustee a written notice that those assets are to be held by the trustee in accordance with the requirement, or
 - (b) they are assets into which assets to which paragraph (a) applies have been transposed by the trustee on the instruction of N.
- (7) A person who contravenes subsection (4) commits an offence and is liable—
 - (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- (8) In this section, references to imposing a requirement (however expressed) include imposing a requirement by varying an existing requirement.
- (9) In this paragraph, “charge” includes a mortgage (or, in Scotland, a security over property).
- (10) Subsections (4) and (6) 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 described in subsection (1)(b).]

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