



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XIII

INCOMING FIRMS: INTERVENTION BY AUTHORITY

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
- (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 the Authority by section 196.

(2) In relation to an incoming firm which is an EEA firm, expressions used in this Part and in Schedule 3 have the same meaning in this Part as they have in that Schedule.

194 General grounds on which power of intervention is exercisable.

(1) The Authority 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 Authority is responsible for enforcing compliance in the United Kingdom);

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- (b) the firm has, in purported compliance with any requirement imposed by or under this Act, knowingly or recklessly given the Authority information which is false or misleading in a material particular; or
 - (c) it is desirable to exercise the power in order to protect the interests of actual or potential customers.
- (2) Subsection (3) applies to an incoming EEA firm falling within sub-paragraph (a) or (b) of paragraph 5 of Schedule 3 which is exercising an EEA right to carry on any Consumer Credit Act business in the United Kingdom.
- (3) The Authority may exercise its power of intervention in respect of the firm if [^{F1}the Office of Fair Trading] has informed the Authority that—
- (a) the firm,
 - (b) any of the firm’s employees, agents or associates (whether past or present), or
 - (c) if the firm is a body corporate, a controller of the firm or an associate of such a controller,
- has done any of the things specified in paragraphs (a) to (d) of section 25(2) of the ^{M1}Consumer Credit Act 1974.
- (4) “Associate”, “Consumer Credit Act business” and “controller” have the same meaning as in section 203.

Textual Amendments

F1 Words in s. 194(3) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(6)**; S.I. 2003/766, **art. 2, Sch.** (with art. 3)

Modifications etc. (not altering text)

C1 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

I1 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)**

Marginal Citations

M1 1974 c. 39.

VALID FROM 01/04/2007

[^{F2}]
^{F2}194A **Contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive: Authority primarily responsible for securing compliance**

- (1) This section applies if—
- (a) a relevant EEA firm has a branch in the United Kingdom; and

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- (b) the Authority ascertains that the firm has contravened, or is contravening, a requirement falling within subsection (3) (in a case to which Article 62.2 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; or
 - (b) by any directly applicable Community regulation made under that directive.
- (4) The Authority must give the firm written notice which—
 - (a) requires the firm to put an end to the contravention;
 - (b) states that the Authority'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 Authority proposes to impose on the firm in exercise of its power of intervention in the event of the power becoming exercisable.
- (5) The Authority 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 Authority 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 Authority's power of intervention is also exercisable as a result of section 194.
- (7) If the Authority 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 and the Commission of—
 - (a) the fact that the Authority has exercised that power in respect of the firm; and
 - (b) any requirements it has imposed on the firm in exercise of the power.]]

Textual Amendments

- F2** S. 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](#)

195 Exercise of power in support of overseas regulator.

- (1) The Authority 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 Authority's power of intervention is also exercisable as a result of section 194.

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- (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 the Authority under this Act;
 - (b) a function corresponding to any function exercised by the competent authority under Part VI in relation to the listing of shares;
 - (c) a function corresponding to any function exercised by the Secretary of State under the ^{M2}Companies Act 1985;
 - (d) a function in connection with —
 - (i) the investigation of conduct of the kind prohibited by Part V of the ^{M3}Criminal Justice Act 1993 (insider dealing); or
 - (ii) the enforcement of rules (whether or not having the force of law) relating to such conduct;
 - (e) 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 Authority for the exercise of its power of intervention has been made by a home state regulator in pursuance of a Community obligation, or
 - (b) a home state regulator has notified the Authority that an EEA firm’s EEA authorisation has been withdrawn,
- the Authority must, in deciding whether or not to exercise its power of intervention, consider whether exercising it is necessary in order to comply with a Community obligation.
- (6) In deciding in any case in which the Authority does not consider that the exercise of its power of intervention is necessary in order to comply with a Community 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 Authority 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 Authority considers appropriate.
- (8) Subsection (7) does not apply if the Authority decides that it is necessary for it to exercise its power of intervention in order to comply with a Community obligation.

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Modifications etc. (not altering text)

- C2** 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

- I2** 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)**

Marginal Citations

- M2** 1985 c. 6.
M3 1993 c. 36.

VALID FROM 01/04/2007

195A Contravention by relevant EEA firm of requirement under markets in financial instruments directive: home state regulator primarily responsible for securing compliance

- (1) This section applies if the Authority has clear and demonstrable grounds for believing that a relevant EEA firm has contravened, or is contravening, a requirement falling within subsection (2) (in a case to which Article 62.1 or 62.3 of the markets in financial instruments 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; or
 - (b) by any directly applicable Community regulation made under that directive.
- (3) The Authority must notify the firm's home state regulator of the situation mentioned in subsection (1).
- (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 firm puts an end to the contravention;
 - (b) state that the Authority's power of intervention is likely to become exercisable in relation to the firm if the firm continues the contravention; and
 - (c) indicate any requirements that the Authority proposes to impose on the firm in exercise of its power of intervention in the event of the power becoming exercisable.
- (5) The Authority 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 (3); and
 - (b) conditions A to C are satisfied.
- (6) Condition A is that—
 - (a) the firm's home state regulator has failed or refused to take measures for the purpose mentioned in subsection (4)(a); or

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- (b) any measures taken by the home state regulator have proved inadequate for that purpose.
- (7) Condition B is 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.
- (8) Condition C is that the Authority has informed the firm's home state regulator of its intention to exercise its power of intervention in respect of the firm.
- (9) Subsection (5) applies whether or not the Authority's power of intervention is also exercisable as a result of section 194 or 195.
- (10) If the Authority 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 Commission of—
- (a) the fact that the Authority has exercised that power in respect of the firm; and
 - (b) any requirements it has imposed on the firm in exercise of the power.
- (11) In this section—
- “home state”, in relation to a relevant EEA firm, means—
- (a) 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
 - (b) in any other case, the EEA State in which the firm has its head office;
- “relevant EEA firm” has the same meaning as in section 194A.

196 The power of intervention.

If the Authority is entitled to exercise its power of intervention in respect of an incoming firm under this Part, it may impose any requirement in relation to the firm which it could impose if—

- (a) the firm's permission was a Part IV permission; and
- (b) the Authority was entitled to exercise its power under that Part to vary that permission.

Modifications etc. (not altering text)

- C3** S. 196 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. 196 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 34-54; S.I. 2001/3538, **art. 2(1)**
- S. 196 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 4(2) (with **art. 23(2)**)

Commencement Information

- I3** S. 196 wholly in force at 1.12.2001; s. 196 not in force at Royal Assent see s. 431(2); s. 196 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2(2)**, **Sch. Pt. 2**; s. 196 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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