



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XVIII

#### RECOGNISED INVESTMENT EXCHANGES AND CLEARING HOUSES

##### Modifications etc. (not altering text)

- C1** Pt. 18 applied in part (with modifications) (12.12.2011) by [The Recognised Auction Platforms Regulations 2011 \(S.I. 2011/2699\)](#), [reg. 7, Sch. 2](#) (as amended (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), [reg. 1, Sch. para. 37](#) (with regs. 7(4), 9(1)))

### CHAPTER I

#### EXEMPTION

##### *General*

#### **285 Exemption for recognised investment exchanges and clearing houses.**

(1) In this Act—

- (a) “recognised investment exchange” means an investment exchange in relation to which a recognition order is in force; <sup>F1F1</sup>...
- (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

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- of that State as a central counterparty pursuant to Article 17 of the EMIR regulation; and
- (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.]
- (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; or
- [<sup>F2</sup>(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) [<sup>F3</sup>A recognised clearing house which is not a recognised central counterparty] is exempt from the general prohibition as respects any regulated [<sup>F4</sup>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.]
- [<sup>F5</sup>(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.]
- [<sup>F6</sup>(4) The Treasury may by order amend paragraph (b) of subsection (2) or (3).]

#### Textual Amendments

- F1** 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)
- F2** 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.
- F3** 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)
- F4** 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.
- F5** 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)

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**F6** 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.

## [<sup>F7</sup>285A Powers exercisable in relation to recognised investment exchanges and clearing houses

- (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.
- (3) In Schedule 17A—
  - (a) Part 1 makes provision for a memorandum of understanding between the appropriate regulators and the PRA with respect to the exercise of their functions in relation to recognised investment exchanges and clearing houses;
  - (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 [<sup>F8</sup>recognised clearing houses]; and
  - (d) Part 4 makes provision about fees.]

### Textual Amendments

- F7** 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.
- F8** 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)

## 286 Qualification for recognition.

- (1) The Treasury may make regulations setting out the requirements—
  - (a) which must be satisfied by an investment exchange or clearing house if it is to qualify as a body in respect of which [<sup>F9</sup>the appropriate regulator] 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 or clearing house, 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 or clearing house 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 or clearing house.
- (4) “Market contract” means—

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- (a) a contract to which Part VII of the <sup>M1</sup>Companies Act 1989 applies as a result of section 155 of that Act or a contract to which Part V of the <sup>M2</sup>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.
- [<sup>F10</sup>(4A) If regulations under subsection (1) require an investment exchange to make information available to the public in accordance with—
- (a) Article 29.1 of the markets in financial instruments directive and the Commission Regulation, or
  - (b) Article 44.1 of that directive and that Regulation,
- the regulations may authorise [<sup>F11</sup>the FCA] to waive the requirement in the circumstances specified in the relevant provisions.
- (4B) The “relevant provisions” for the purposes of subsection (4A) are—
- (a) in a case falling within paragraph (a) of that subsection, Article 29.2 of the markets in financial instruments directive and the Commission Regulation, and
  - (b) in a case falling within paragraph (b) of that subsection, Article 44.2 of that directive and that Regulation.
- (4C) If regulations under subsection (1) require an investment exchange to make information available to the public in accordance with—
- (a) Article 30.1 of the markets in financial instruments directive and the Commission Regulation, or
  - (b) Article 45.1 of that directive and that Regulation,
- the regulations may authorise [<sup>F12</sup>the FCA] to defer the requirement in the circumstances specified, and subject to the requirements contained, in the relevant provisions.
- (4D) The “relevant provisions” for the purposes of subsection (4C) are—
- (a) in a case falling within paragraph (a) of that subsection, Article 30.2 of the markets in financial instruments directive and the Commission Regulation, and
  - (b) in a case falling within paragraph (b) of that subsection, Article 45.2 of that directive and that Regulation.
- (4E) ”The Commission Regulation” means Commission Regulation 1287/2006 of 10 August 2006.]
- [<sup>F13</sup>(4F) 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”.
- [<sup>F14</sup>(6) 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 [<sup>F15</sup>the FCA] may make a recognition order declaring the exchange to be a recognised investment exchange.]

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### Textual Amendments

- F9** 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.
- F10** S. 286(4A)-(4E) inserted (6.12.2006) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(Modification of Powers\) Regulations 2006 \(S.I. 2006/2975\)](#), **reg. 8**
- F11** Words in s. 286(4A) 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.
- F12** Words in s. 286(4C) 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.
- F13** 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.
- F14** 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 \(S.I. 2007/126\)](#), regs. 1(2), 3(2), **Sch. 2 para. 2**
- F15** 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

- M1** 1989 c. 40.  
**M2** S.I. 1990/1504 (N.I. 10).

## *Applications for recognition*

### **287 Application by an investment exchange.**

- (1) Any body corporate or unincorporated association may apply to [<sup>F16</sup>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 [<sup>F17</sup>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 [<sup>F17</sup>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 [<sup>F18</sup>by another person] of clearing services in respect of transactions effected on the exchange;
  - (b) if the applicant proposes to provide [<sup>F19</sup>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 [<sup>F20</sup>;

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- (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 [<sup>F21</sup>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 [<sup>F22</sup>the FCA] may reasonably require.]

[<sup>F23</sup>(4) Subsection (3)(c) to (e) does not apply to an application by an overseas applicant.]

#### Textual Amendments

- F16** 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.](#)
- F17** 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.](#)
- F18** 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.](#)
- F19** 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.](#)
- F20** S. 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\(a\)](#)
- F21** Words in s. 287(3)(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. 3\(3\)\(c\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.](#)
- F22** Words in s. 287(3)(e) 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\(3\)\(c\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.](#)
- F23** S. 287(4) 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\(b\)](#)

#### Commencement Information

- II** S. 287 wholly in force at 3.9.2001; s. 287 not in force at Royal Assent see s. 431(2); s. 287(2) in force for specified purposes at 18.6.2001 by [S.I. 2001/1820, art. 2, Sch.](#); s. 287 in so far as not already in force at 3.9.2001 by [S.I. 2001/2632, art. 2, Sch. Pt. 2](#)

## 288 Application by a clearing house.

[<sup>F24</sup>(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.

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- (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) [<sup>F25</sup>An application under subsection (1A)] must be made in such manner as [<sup>F26</sup>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 [<sup>F27</sup>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 [<sup>F28</sup>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

- F24** 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)
- F25** 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)
- F26** 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.
- F27** 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.
- F28** 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.

#### Commencement Information

- I2** S. 288 wholly in force at 3.9.2001; s. 288 not in force at Royal Assent see s. 431(2); s. 288(2) in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), art. 2, **Sch.**; s. 288 in force in so far as not already in force at 3.9.2001 by [S.I. 2001/2632](#), **art. 2 Sch. Pt. 2**

## 289 Applications: supplementary.

- (1) At any time after receiving an application and before determining it, [<sup>F29</sup>the appropriate regulator] may require the applicant to provide such further information as it reasonably considers necessary to enable it to determine the application.

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- (2) Information which [<sup>F30</sup>the appropriate regulator] requires in connection with an application must be provided in such form, or verified in such manner, as [<sup>F30</sup>the appropriate regulator] may direct.
- (3) Different directions may be given, or requirements imposed, by [<sup>F31</sup>the appropriate regulator] with respect to different applications.
- [<sup>F32</sup>(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.]

#### Textual Amendments

- F29** 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.](#)
- F30** Words in s. 289(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. 5](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\), Sch. Pt. 3](#); [S.I. 2013/423, art. 3, Sch.](#)
- F31** Words in s. 289(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. 5](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\), Sch. Pt. 3](#); [S.I. 2013/423, art. 3, Sch.](#)
- F32** S. 289(4) 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\(6\)](#) (with [regs. 52-58](#))

## 290 Recognition orders.

- [<sup>F33</sup>(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; or
  - (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.]
- [<sup>F34</sup>(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 Community regulation made under the markets in financial instruments directive.
- (1B) In the case mentioned in subsection (1A), the application must be determined by [<sup>F35</sup>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.]



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[<sup>F36</sup>(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.]

<sup>F37</sup>(2) . . . . .

(3) In considering an application [<sup>F38</sup>made under section 287 or 288(1A)], [<sup>F39</sup>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.

(5) Section 298 has effect in relation to a decision to refuse to make a recognition order [<sup>F40</sup>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.

<sup>F41</sup>(6) . . . . .

[<sup>F42</sup>(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

- F33** 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)
- F34** 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**
- F35** 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, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F36** 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)
- F37** 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, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F38** 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)
- F39** 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, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

*Status: Point in time view as at 01/04/2014.*

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- F40** 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)
- F41** 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, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F42** S. 290(7) 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)(e)** (with regs. 52-58)

#### Commencement Information

- I3** S. 290 wholly in force at 1.12.2001; s. 290 not in force at Royal Assent see s. 431(2); s. 290 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), art. 2(2), **Sch. Pt. 2**; s. 290 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

#### [<sup>F43</sup>290ZA] 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.]

#### Textual Amendments

- F43** S. 290ZA 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(8)** (with regs. 52-58)

#### [<sup>F44</sup>290A] Refusal of recognition on ground of excessive regulatory provision

- (1) [<sup>F45</sup>The appropriate regulator must] not make a recognition order if it appears to [<sup>F46</sup>it that] an existing or proposed regulatory provision of the applicant in connection with—
  - (a) the applicant's business as an investment exchange, <sup>F47</sup>...
  - (b) the provision by the applicant of clearing services, [<sup>F48</sup>or
  - (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.

*Status: Point in time view as at 01/04/2014.*

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- (3) Expressions used in subsection (1) above that are defined for the purposes of section 300A (power of [<sup>F49</sup>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.
- [<sup>F50</sup>(6) This section does not apply to an application for recognition as an overseas investment exchange, an overseas clearing house or a recognised central counterparty.]]

#### Textual Amendments

- F44** S. 290A inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006 \(c. 55\)](#), **ss. 4, 5(2)**
- F45** 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.](#)
- F46** 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.](#)
- F47** 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.](#)
- F48** 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)(d)** (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)
- F49** 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.](#)
- F50** S. 290A(6) 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(9)** (with regs. 52-58)

## 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 <sup>M3</sup>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.

*Status: Point in time view as at 01/04/2014.*

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**Modifications etc. (not altering text)**

- C2** S. 291 modified (22.2.2008) by The Northern Rock plc [Transfer Order 2008 \(S.I. 2008/432\)](#), **art. 20**  
**C3** S. 291 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. 39**

**Marginal Citations**

- M3** 1998 c. 42.

**292 Overseas investment exchanges and overseas clearing houses.**

- (1) An application under section 287 or [<sup>F51</sup>288(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 [<sup>F52</sup>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 [<sup>F53</sup>which is not a central counterparty].
- (3) The requirements are that—
  - (a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with recognition requirements [<sup>F54</sup>, other than any such requirements which are expressed in regulations under section 286 not to apply for the purposes of this paragraph];
  - (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 [<sup>F55</sup>the appropriate regulator] by the sharing of information and in other ways;
  - (d) adequate arrangements exist for co-operation between [<sup>F56</sup>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), [<sup>F57</sup>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;

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- (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 [<sup>F58</sup>the appropriate regulator] arrangements of the kind mentioned in subsection (3) (d) no longer exist.

[<sup>F59</sup>(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

- F51** 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)
- F52** 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.
- F53** 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)
- F54** Words in s. 292(3)(a) inserted (6.12.2006) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(Modification of Powers\) Regulations 2006 \(S.I. 2006/2975\)](#), **reg. 9**
- F55** 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.
- F56** Words in s. 292(3)(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. 8** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F57** Words in s. 292(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. 8** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F58** Words in s. 292(5)(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.
- F59** S. 292(6) 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)(c)** (with regs. 52-58)

#### Commencement Information

- I4** S. 292 wholly in force at 1.12.2001; s. 292 not in force at Royal Assent see s. 431(2); s. 292(1) in force and s. 292(2)-(5) in force specified purposes at 3.9.2001 by [S.I. 2001/2632](#), art. 2(2), **Sch. Pt. 2**; s. 292 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

*[<sup>F60</sup>Publication of information by recognised investment exchange*

#### Textual Amendments

- F60** S. 292A and 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(2), **Sch. 2 para. 5**

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## 292A 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 [F61FCA] 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 [F62FCA] 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 [F63FCA] may reasonably require.
- (6) The [F64FCA] 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.]

### Textual Amendments

- F61** 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.
- F62** 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.
- F63** 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.
- F64** 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.

## *Supervision*

### 293 Notification requirements.

- (1) The [F65appropriate 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 [F65appropriate regulator], at such times or in respect of such periods as may be specified, such information relating to the body as may be specified.

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- (3) An obligation imposed by the rules extends only to a notice or information which the [<sup>F65</sup>appropriate regulator] may reasonably require for the exercise of its functions under this Act.
- (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 [<sup>F66</sup>appropriate regulator] without delay.
- (6) If a recognised investment exchange makes a change—
  - (a) in the arrangements it makes for the provision [<sup>F67</sup>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 [<sup>F68</sup>services falling within section 285(2)(b)],it must give written notice to [<sup>F69</sup>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 [<sup>F70</sup>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 [<sup>F71</sup>or services falling within section 285(3)(b)],it must give written notice to [<sup>F72</sup>the Bank of England and the FCA] without delay.
- (8) Subsections (5) to (7) do not apply to an overseas investment exchange or an overseas clearing house.
- (9) “Specified” means specified in [<sup>F73</sup>the appropriate regulator's] rules.

#### Textual Amendments

- F65** 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. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F66** 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. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F67** 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. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F68** 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. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F69** 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. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F70** 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. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

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- F71** 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. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F72** 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. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F73** Words in s. 293(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. 10\(5\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

#### Commencement Information

- I5** S. 293 wholly in force at 1.12.2001; s. 293 not in force at Royal Assent see s. 431(2); s. 293 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), art. 2, [Sch.](#); s. 293 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), art. 2(1)

#### [<sup>F74</sup>293A] Information: compliance with EU requirements

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.]

#### Textual Amendments

- F74** S. 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)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.

#### 294 Modification or waiver of rules.

- (1) The [<sup>F75</sup>appropriate 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 [<sup>F76</sup>appropriate regulator] may direct.
- (3) Subsections (4) to (6) apply to a direction given under subsection (1).
- (4) The [<sup>F77</sup>appropriate 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 [<sup>F78</sup>appropriate regulator] may—



*Status: Point in time view as at 01/04/2014.*

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- (a) revoke a direction; or
- (b) vary it on the application, or with the consent, of the recognised body to which it relates.

**Textual Amendments**

- F75** 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.](#)
- F76** 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.](#)
- F77** 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.](#)
- F78** 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.](#)

**Modifications etc. (not altering text)**

- C4** 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**

- I6** 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 [<sup>F79</sup>the appropriate regulator] with a report.
- (2) The report must contain a statement as to whether any events have occurred which are [<sup>F80</sup>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 [<sup>F81</sup>the appropriate regulator].

<sup>F82</sup>(4) .....

**Textual Amendments**

- F79** 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.](#)
- F80** 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.](#)

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- F81** 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.*
- F82** 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

- I7** 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)

## 296 [F83 Appropriate regulator's] power to give directions.

- (1) This section applies if it appears to [F84 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.

[F85 (1A) This section also applies [F86 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 any [F87 directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury].]

- (2) [F88 The regulator concerned] may direct the body 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.

[F89 (2A) In the case of [F90 a recognised body other than an overseas investment exchange or overseas clearing house], those steps may include—

- (a) the granting to [F91 the regulator concerned] of access to the premises of [F92 the body] for the purpose of inspecting—
  - (i) those premises; or
  - (ii) any documents on the premises which appear to [F91 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 [F93 the body] for the period specified in the direction.]

- (3) A direction under this section is enforceable, on the application of [F94 the regulator concerned], by an injunction or, in Scotland, by an order for specific performance under section 45 of the <sup>M4</sup>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 [F95 an appropriate regulator] does not prevent it from being subsequently altered or revoked by the recognised body.

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### Textual Amendments

- F83** 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.](#)
- F84** 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.](#)
- F85** 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)**
- F86** 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.](#)
- F87** 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.](#)
- F88** 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.](#)
- F89** 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)**
- F90** 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.](#)
- F91** 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.](#)
- F92** 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.](#)
- F93** 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.](#)
- F94** 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.](#)
- F95** 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)

- C5** 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)**

### Marginal Citations

- M4** 1988 c. 36.

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**[<sup>F96</sup>296A Additional power to direct [<sup>F97</sup>recognised central counterparties]**

- (1) The Bank of England may direct a [<sup>F98</sup>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 <sup>F99</sup>... clearing services provided by the [<sup>F100</sup>recognised central counterparty], and
  - (d) maintaining and enhancing the financial resilience of the [<sup>F100</sup>recognised central counterparty].
- (2) The direction may, in particular—
  - (a) specify the time for compliance with the direction,
  - (b) require the rules of the [<sup>F100</sup>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 [<sup>F100</sup>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 [<sup>F100</sup>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 [<sup>F100</sup>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**

- F96** 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.
- F97** 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)
- F98** 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)
- F99** Words in s. 296A(1)(c) omitted (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)(ii) (with regs. 52-58)

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**F100** Words in s. 296A(1)-(4) 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\(11\)\(c\)](#) (with [regs. 52-58](#))

## 297 Revoking recognition.

(1) A recognition order [<sup>F101</sup>in respect of a recognised investment exchange or in respect of a recognised clearing house which is not a recognised central counterparty] may be revoked by an order made by [<sup>F102</sup>the appropriate regulator] at the request, or with the consent, of the recognised body concerned.

[<sup>F103</sup>(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.]

(2) If it appears to [<sup>F104</sup>the appropriate regulator] that a recognised body [<sup>F105</sup>which is not a recognised central counterparty]—

- (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.

[<sup>F106</sup>(2A) If it appears to [<sup>F107</sup>the appropriate regulator] that a recognised body [<sup>F108</sup>which is not a recognised central counterparty]<sup>F109</sup>...—

- (a) has not carried on the business of an investment exchange [<sup>F110</sup>or (as the case may be) of a clearing house] 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 [<sup>F111</sup>or (as the case may be) of a clearing house] 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 [<sup>F112</sup>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 [<sup>F113</sup>or overseas clearing house].]

(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) [<sup>F114</sup>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 [<sup>F115</sup>the appropriate regulator] thinks necessary or expedient.

[<sup>F116</sup>(6) Where [<sup>F117</sup>the appropriate regulator] makes an order revoking the recognition order for a body that is a recognised investment exchange, it must notify ESMA.]

*Status: Point in time view as at 01/04/2014.*

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### Textual Amendments

- F101** Words in s. 297(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(12)(a)** (with regs. 52-58)
- F102** Words in s. 297(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. 15(2)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.
- F103** S. 297(1A) 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(12)(b)** (with regs. 52-58)
- F104** Words in s. 297(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. 15(2)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.
- F105** Words in s. 297(2) 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(12)(c)** (with regs. 52-58)
- F106** S. 297(2A)-(2C) 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. 8(a)**
- F107** Words in s. 297(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. 15(3)(a)(i)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.
- F108** Words in s. 297(2A) 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(12)(d)** (with regs. 52-58)
- F109** Words in s. 297(2A) 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. 15(3)(a)(ii)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.
- F110** Words in s. 297(2A)(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. 15(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.
- F111** Words in s. 297(2A)(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. 15(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.
- F112** Words in s. 297(2A)(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. 15(3)(c)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.
- F113** Words in s. 297(2C) 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. 15(4)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.
- F114** Words in s. 297(4) 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. 8(b)**
- F115** Words in s. 297(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. 15(5)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.
- F116** S. 297(6) inserted (16.4.2012) by [The Financial Services \(Omnibus 1 Directive\) Regulations 2012 \(S.I. 2012/916\)](#), regs. 1, **2(10)**
- F117** Words in s. 297(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. 15(5)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b)(c), Sch. Pts. 2, 3; S.I. 2013/423, art. 3, Sch.

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**Modifications etc. (not altering text)**

C6 S. 297 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)**

**298 Directions and revocation: procedure.**

- (1) Before giving a direction under section 296 [<sup>F118</sup>or 296A], or making a revocation order under section 297(2) [<sup>F119</sup>or (2A)], [<sup>F120</sup>the appropriate regulator] must—
  - (a) give written notice of its intention to do so to the recognised body concerned;
  - <sup>F121</sup>(b) .....
  - <sup>F122</sup>(c) .....
- (2) A notice under subsection (1) must—
  - (a) state why [<sup>F123</sup>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,
  - <sup>F124</sup>(b) .....
  - <sup>F125</sup>(c) .....may make representations to [<sup>F126</sup>the appropriate regulator].
- <sup>F127</sup>(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,[<sup>F128</sup>the appropriate regulator] must have regard to any representations made in accordance with subsection (3).
- (6) When [<sup>F129</sup>the appropriate regulator] has decided whether to give a direction under section 296 [<sup>F130</sup>or 296A] or to make the proposed revocation order, it must—
  - (a) give the recognised body written notice of its decision; <sup>F131</sup>...
  - <sup>F131</sup>(b) .....
- (7) If [<sup>F132</sup>the appropriate regulator][<sup>F133</sup>reasonably considers it necessary] to do so, it may give a direction under section 296 [<sup>F134</sup>or 296A]—
  - (a) without following the procedure set out in this section; or
  - (b) if [<sup>F132</sup>the appropriate regulator] has begun to follow that procedure, regardless of whether the period for making representations has expired.
- (8) If [<sup>F135</sup>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).

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### Textual Amendments

- F118** 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.](#)
- F119** Words in s. 298(1) 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. 9](#)
- F120** 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.](#)
- F121** S. 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.](#)
- F122** S. 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.](#)
- F123** 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.](#)
- F124** S. 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.](#)
- F125** S. 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.](#)
- F126** 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.](#)
- F127** S. 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.](#)
- F128** 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.](#)
- F129** 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.](#)
- F130** 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.](#)
- F131** S. 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.](#)
- F132** 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.](#)
- F133** 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.](#)
- F134** Words in s. 298(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. 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.](#)
- F135** Words in s. 298(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. 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.](#)



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#### **Modifications etc. (not altering text)**

- C7** S. 298 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)**
- C8** S. 298 applied (with modifications) by 1998 c. 40, s. 170B(9) (as 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), reg. 1(2), **s. 170B(9)** (with regs. 52-58))

#### **Commencement Information**

- I8** S. 298 wholly in force at 1.12.2001; s. 298 not in force at Royal Assent see s. 431(2); s. 298 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2 Sch. Pt. 2**; s. 298 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

### **299 Complaints about recognised bodies.**

- (1) The [<sup>F136</sup>appropriate regulator] must make arrangements for the investigation of any relevant complaint about a recognised body.
- (2) “Relevant complaint” means a complaint which the [<sup>F137</sup>appropriate regulator] considers is relevant to the question of whether the body concerned should remain a recognised body.

#### **Textual Amendments**

- F136** Words in s. 299(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. 17** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F137** Words in s. 299(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. 17** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

### **300 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, or
  - (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.
- (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.

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- (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 or clearing house in relation to market abuse by persons subject to the rules.
- (5) “The Convention rights” has the meaning given in section 1 of the <sup>M5</sup>Human Rights Act 1998.

#### Marginal Citations

M5 1998 c. 42.

*[<sup>F138</sup>Power to disallow excessive regulatory provision*

#### Textual Amendments

**F138** S. 300A and cross-heading inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006 \(c. 55\), ss. 1, 5\(2\)](#) (with s. 5(3))

### **300A Power of [<sup>F139</sup>appropriate regulator] to disallow excessive regulatory provision**

- (1) This section applies where a recognised body proposes to make any regulatory provision in connection [<sup>F140</sup>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 [<sup>F141</sup>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 [<sup>F141</sup>appropriate regulator] may direct that the proposed provision must not be made.
- (3) A requirement is excessive if—
  - (a) it is not required under [<sup>F142</sup>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 [<sup>F143</sup>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.

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- (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

- F139** 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.](#)
- F140** 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.](#)
- F141** 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.](#)
- F142** 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\(2\)-\(5\)](#)
- F143** 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.](#)

#### [<sup>F144</sup>300B] 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 [<sup>F145</sup>appropriate regulator] without delay.
- (2) The [<sup>F145</sup>appropriate regulator] may by rules under section 293 (notification requirements)—
- specify descriptions of regulatory provision in relation to which, or circumstances in which, the duty in subsection (1) above does not apply, or
  - provide that the duty applies only to specified descriptions of regulatory provision or in specified circumstances.
- (3) The [<sup>F145</sup>appropriate regulator] may also by rules under that section—
- make provision as to the form and contents of the notice required, and
  - require the body to provide such information relating to the proposal as may be specified in the rules or as the [<sup>F145</sup>appropriate regulator] may reasonably require.

#### Textual Amendments

- F144** 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\(3\)](#))
- F145** Words in s. 300B 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. 19](#) (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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### **300C Restriction on making provision before [<sup>F146</sup>appropriate regulator] decides whether to act**

- (1) Where notice of a proposal to make regulatory provision is required to be given to the [<sup>F147</sup>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 [<sup>F148</sup>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 [<sup>F149</sup>appropriate regulator] notifies the body that it is calling in the proposal, the provisions of section 300D (consideration by [<sup>F149</sup>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 [<sup>F150</sup>appropriate regulator] notifies the body that it is not calling in the proposal, or
  - (b) the initial period ends without the [<sup>F151</sup>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.

#### **Textual Amendments**

- F144** 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\(3\)](#))
- F146** Words in s. 300C 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. 20](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F147** Words in s. 300C(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. 20](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F148** Words in s. 300C(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. 20](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F149** Words in s. 300C(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. 20](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F150** Words in s. 300C(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. 20](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F151** Words in s. 300C(4)(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. 20](#) (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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### **300D Consideration by [<sup>F152</sup>appropriate regulator] whether to disallow proposed provision**

- (1) This section applies where the [<sup>F153</sup>appropriate regulator] notifies a recognised body that it is calling in a proposal to make regulatory provision.
- (2) The [<sup>F153</sup>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 [<sup>F153</sup>appropriate regulator] may extend the period for making representations.
- (4) The [<sup>F153</sup>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 [<sup>F154</sup>appropriate regulator] notifies it of its decision not to disallow it, or
  - (b) the 30-day period specified in subsection (4) ends without the [<sup>F155</sup>appropriate regulator] having notified any decision.
- (6) If [<sup>F156</sup>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 [<sup>F157</sup>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 [<sup>F158</sup>the regulator concerned] is to complete its reconsideration, and
  - (c) the body must not make the provision until—
    - (i) [<sup>F159</sup>the appropriate regulator] notifies it of its decision on reconsideration not to disallow the provision, or
    - (ii) the period specified by the court ends without [<sup>F160</sup>the appropriate regulator] having notified any decision.
- (7) Any provision made in contravention of subsection (5) or (6) is of no effect.

#### **Textual Amendments**

**F144** 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\(3\)](#))

**F152** 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.](#)

**F153** 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.](#)

**F154** 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.](#)

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- F155** 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.](#)
- F156** 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.](#)
- F157** 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\(3\)\(b\)\(i\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)
- F158** 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.](#)
- F159** 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.](#)
- F160** 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<sup>F161</sup>, overseas clearing house or recognised central counterparty[.]

#### **Textual Amendments**

- F144** 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))
- F161** 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](#))

*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 <sup>M6</sup>Companies Act 1989 (financial markets and insolvency), and
  - (b) Part V of the <sup>M7</sup>Companies (No. 2)(Northern Ireland) Order 1990,

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- 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 [<sup>F162</sup>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 [<sup>F163</sup>the FCA or the Bank of England], that it is appropriate for the arrangements mentioned in subsection (2) to be supervised by [<sup>F164</sup>the Bank].
  - (4) The approval of the Treasury is required for—
    - (a) the conditions set by the [<sup>F165</sup>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 [<sup>F166</sup>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.
  - (7) The [<sup>F167</sup>Bank of England] must—
    - (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 [<sup>F168</sup>Bank 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 <sup>M8</sup>Companies Act 1989 and Part V of the <sup>M9</sup>Companies (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

**F162** 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.](#)

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- F163** 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.](#)
- F164** 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.](#)
- F165** 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.](#)
- F166** 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.](#)
- F167** 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.](#)
- F168** 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

- M6** 1989 c. 40.  
**M7** S.I. 1990/1504 (N.I. 10).  
**M8** 1989 c. 40.  
**M9** S.I. 1990/1504 (N.I. 10).

## [<sup>F169</sup>CHAPTER 1A

### CONTROL OVER RECOGNISED INVESTMENT EXCHANGE

#### Textual Amendments

- F169** Pt. 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 [<sup>F170</sup>the FCA]: acquisitions of control

- (1) A person who decides to acquire or increase control over a recognised investment exchange must give [<sup>F171</sup>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 [<sup>F172</sup>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.



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- (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”.

[<sup>F173</sup>(5) Nothing in this Chapter applies to an overseas investment exchange.]

#### Textual Amendments

- F170** 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.](#)
- F171** 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.](#)
- F172** 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.](#)
- F173** 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 [<sup>F174</sup>FCA] may reasonably require.
- (2) The [<sup>F174</sup>FCA] must publish a list of its requirements as to the form, information and accompanying documents for a section 301A notice.
- (3) The [<sup>F174</sup>FCA] may impose different requirements for different cases and may vary or waive requirements in particular cases.

#### Textual Amendments

- F174** 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 [<sup>F175</sup>FCA] must acknowledge receipt of a section 301A notice in writing before the end of the second working day following receipt.
- (2) If the [<sup>F176</sup>FCA] receives an incomplete section 301A notice it must inform the section 301A notice-giver as soon as reasonably practicable.

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### **Textual Amendments**

- F175** 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.](#)
- F176** 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 4.1(8) 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.

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- (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 credit institution or investment firm ensures that 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 [F177]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—
  - [F178](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
    - [F179](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.
- [F180](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).]

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#### **Textual Amendments**

- F177** Words in s. 301E(7) substituted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), [reg. 2\(27\)](#)
- F178** S. 301E(8)(a) substituted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 17\(a\)](#)
- F179** S. 301E(8)(c)(ii) substituted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 17\(b\)](#)
- F180** S. 301E(10) inserted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 17\(c\)](#)

### *Assessment procedure*

#### **301F Assessment: general**

- (1) Where the <sup>F181</sup>FCA receives a section 301A notice, it must—
  - (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 <sup>F181</sup>FCA 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 <sup>F181</sup>FCA 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**

- F181** 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 <sup>F182</sup>FCA must act under section 301F within a period three months from the date the <sup>F182</sup>FCA receives the completed section 301A notice (“the assessment period”).
- (2) The <sup>F183</sup>FCA must inform the section 301A notice-giver in writing of—
  - (a) the duration of the assessment period; and
  - (b) its expiry date.
- (3) The <sup>F183</sup>FCA must, within two working days of acting under section 301F (and in any event no later than the expiry date of the assessment period)—

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- (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 [F183FCA] 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 [F183FCA] 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 [F184the FCA's] decision to the Tribunal.

#### Textual Amendments

**F182** 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.](#)

**F183** 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.](#)

**F184** 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.](#)

### 301H Duration of approval

- (1) Approval of an acquisition is effective for such period as [F185the FCA] may specify in writing.
- (2) Where [F186the FCA] has specified a period under subsection (1), it may extend the period.
- (3) Where [F187the 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 [F187the 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.

#### Textual Amendments

**F185** 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.](#)

**F186** 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.](#)

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**F187** 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.](#)

### *Enforcement procedures*

#### **301I Objections by the [F188FCA]**

- (1) The [F188FCA] 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 [F188FCA] reasonably believes that—
  - (a) the person acquired or increased control without giving notice under section 301A in circumstances where notice was required; and
  - (b) there are grounds for objecting to control on the basis of the approval requirement in section 301F(4).
- (3) If the [F188FCA] proposes to object to a person's control over a recognised investment exchange, it must give that person a warning notice.
- (4) If the [F188FCA] 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 [F188FCA] gives a decision notice under this section may refer the matter to the Tribunal.

#### **Textual Amendments**

**F188** Word in s. 301I(1)-(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. 29](#) (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#); [S.I. 2013/423](#), art. 3, [Sch.](#)

#### **301J Restriction notices**

- (1) The [F189FCA] 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 [F190FCA] 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 [F191FCA] 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;

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- (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 [F192FCA] gives a restriction notice may refer the matter to the Tribunal.

#### Textual Amendments

- F189** 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.](#)
- F190** 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.](#)
- F191** 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.](#)
- F192** 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 [F193the 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.

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- (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.

#### **Textual Amendments**

**F193** Words in s. 301K(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. 31](#) (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#); [S.I. 2013/423](#), art. 3, [Sch.](#)

### *Offences*

#### **301L Offences under this Chapter**

- (1) A person who fails to comply with an obligation to notify [<sup>F194</sup>the FCA] under section 301A(1) or (2) is guilty of an offence.
- (2) A person who gives notice to [<sup>F195</sup>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 [<sup>F195</sup>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 [<sup>F196</sup>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 [<sup>F197</sup>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



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knowledge of the act or circumstances by virtue of which the duty to notify [<sup>F198</sup>the FCA] arose.

#### Textual Amendments

- F194** Words in s. 301L(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. 32\(2\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F195** Words in s. 301L(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. 32\(2\)](#) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.
- F196** 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.
- F197** 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.
- F198** 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 [<sup>F199</sup>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

- F199** 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](#)

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## CHAPTER II

### COMPETITION SCRUTINY

#### <sup>F200</sup>302 Interpretation.

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##### Textual Amendments

**F200** 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 [<sup>F201</sup>Office of Fair Trading]*

##### Textual Amendments

**F201** 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**)

#### <sup>F200</sup>303 Initial report by [<sup>F202</sup>OFT].

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##### Textual Amendments

**F200** 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.](#)

**F202** 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**)

#### <sup>F200</sup>304 Further reports by [<sup>F203</sup>OFT].

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##### Textual Amendments

**F200** 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.](#)

**F203** 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**)

#### <sup>F200</sup>305 Investigations by [<sup>F204</sup>OFT].

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**Textual Amendments**

**F200** 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.](#)

**F204** 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*

**F200** **306 Consideration by Competition Commission.**

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**Textual Amendments**

**F200** 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 the Treasury*

**F200** **307 Recognition orders: role of the Treasury.**

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**Textual Amendments**

**F200** 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.](#)

**F200** **308 Directions by the Treasury.**

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**Textual Amendments**

**F200** 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.](#)

**F200** **309 Statements by the Treasury.**

.....

**Textual Amendments**

**F200** 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.](#)

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**F200 310 Procedure on exercise of certain powers by the Treasury.**

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**Textual Amendments**

**F200** 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.

### CHAPTER III

#### EXCLUSION FROM THE COMPETITION ACT 1998

**F205 311 The Chapter I prohibition.**

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**Textual Amendments**

**F205** 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.

**F205 312 The Chapter II prohibition.**

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**Textual Amendments**

**F205** 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.

### [<sup>F206</sup>CHAPTER 3A

#### PASSPORT RIGHTS

**Textual Amendments**

**F206** 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)**

**C9** Pt. 18 Ch. 3A applied (with modifications) (12.12.2011) by [The Recognised Auction Platforms Regulations 2011 \(S.I. 2011/2699\)](#), **reg. 8**, **Sch. 3** (as amended (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. 5 para. 14(1)** (with reg. 7))

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### *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 regulated market or specified multilateral trading facility 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 [<sup>F207</sup>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 market or facility 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**

**F207** 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 [<sup>F208</sup>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 regulated market or multilateral trading facility operated by the operator if—
  - (a) the [<sup>F208</sup>FCA] has clear and demonstrable grounds for believing that the operator has contravened a relevant requirement, and
  - (b) the [<sup>F208</sup>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 [<sup>F209</sup>EU] legislation made under that directive;
  - (b) by provision implementing that directive, or any [<sup>F209</sup>EU] legislation made under it, in the operator's home state; or
  - (c) by any directly applicable Community regulation made under that directive.
- (3) The [<sup>F210</sup>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

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- (b) state that the [F<sup>211</sup>FCA] proposes to exercise the power under subsection (1) if the operator continues the contravention.
- (5) The [F<sup>212</sup>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 [F<sup>213</sup>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 [F<sup>214</sup>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 [F<sup>215</sup>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 [F<sup>216</sup>FCA] may allow in a particular case.
- (9) If, having considered any representations made by the operator, the [F<sup>217</sup>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 [F<sup>217</sup>FCA] exercises the power under subsection (1) it must at the earliest opportunity notify the Commission [F<sup>218</sup> 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 [F<sup>217</sup>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 [F<sup>219</sup>FCA] is satisfied that the contravention which led to the [F<sup>219</sup>FCA] exercising the power under subsection (1) has been remedied.
- [ If the [F<sup>221</sup>FCA] is satisfied as mentioned in subsection (5), it may refer the matter
- <sup>F220</sup>(13) 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

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the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)).]

### Textual Amendments

- F208** Word in s. 312B(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. 34](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F209** Words in s. 312B(2)(a)(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\(2\)-\(5\)](#)
- F210** Word in s. 312B(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. 34](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F211** Word in s. 312B(4)(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. 34](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F212** Word in s. 312B(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. 34](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F213** Word in s. 312B(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. 34](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F214** Word in s. 312B(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. 8 para. 34](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F215** Word in s. 312B(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. 8 para. 34](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F216** Word in s. 312B(8)(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. 34](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F217** Word in s. 312B(9)-(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. 8 para. 34](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F218** Words in s. 312B(10) inserted (16.4.2012) by [The Financial Services \(Omnibus 1 Directive\) Regulations 2012 \(S.I. 2012/916\)](#), [regs. 1, 2\(11\)\(a\)](#)
- F219** Word in s. 312B(12) 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. 34](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423, art. 3](#), [Sch.](#)
- F220** S. 312B(13) inserted (16.4.2012) by [The Financial Services \(Omnibus 1 Directive\) Regulations 2012 \(S.I. 2012/916\)](#), [regs. 1, 2\(11\)\(b\)](#)
- F221** Word in s. 312B(13) 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. 34](#) (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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*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 regulated market or multilateral trading facility operated by the exchange (“the relevant arrangements”).
- (2) The exchange must give the [F222FCA] 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 [F222FCA] 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 [F222FCA] has complied with subsection (3).
- (5) Subsection (6) applies if the [F222FCA] receives a request for information—
  - (a) under the second sub-paragraph of Article 31.6 of the markets in financial instruments directive (in the case of relevant arrangements relating to a multilateral trading facility), or
  - (b) under the third sub-paragraph of Article 42.6 of that directive (in the case of relevant arrangements relating to a regulated market),
 from the host state regulator.
- (6) The [F222FCA] must, as soon as reasonably practicable, comply with the request.
- (7) “Host state regulator” means the competent authority (within the meaning of Article 4.1.22 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**

**F222** 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.*

### *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 31.5 of the markets in financial instruments directive; and
- (b) in the case of arrangements relating to a regulated market, the first sub-paragraph of Article 42.6 of that directive;



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“EEA market operator” means a person who is a market operator (within the meaning of Article 4.1.13 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 4.1.22 of the markets in financial instruments directive) of the EEA State which is the home state in relation to the EEA market operator concerned.]

## [<sup>F223</sup>CHAPTER 3B

### DISCIPLINARY MEASURES

#### Textual Amendments

**F223** Pt. 18 Ch. 3B 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. 33, 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.](#)

#### 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.
- (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,
  - (b) a requirement that is imposed under any other provision of this Act by the Bank,
  - (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 Bank has power to prosecute under this Act (see section 401, as applied by paragraph 31 of Schedule 17A).

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**Modifications etc. (not altering text)**

**C10** Ss. 312E-312I restricted (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Enforcement\) Order 2013 \(S.I. 2013/441\)](#), arts. 1(1), **13**

**312F Financial penalties**

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.

**Modifications etc. (not altering text)**

**C10** Ss. 312E-312I restricted (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Enforcement\) Order 2013 \(S.I. 2013/441\)](#), arts. 1(1), **13**

**312G Proposal to take disciplinary measures**

- (1) If the appropriate regulator proposes—
  - (a) to publish a statement in respect of a recognised body under section 312E, or
  - (b) to impose a penalty on a recognised body under section 312F,
 it must give the body 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.

**Modifications etc. (not altering text)**

**C10** Ss. 312E-312I restricted (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Enforcement\) Order 2013 \(S.I. 2013/441\)](#), arts. 1(1), **13**

**312H Decision notice**

- (1) If the appropriate regulator decides—
  - (a) to publish a statement in respect of a recognised body under section 312E (whether or not in the terms proposed), or
  - (b) to impose a penalty on a recognised body under section 312F (whether or not of the amount proposed),
 it must give the body 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.
- (4) If the appropriate regulator decides—
  - (a) to publish a statement in respect of a recognised body under section 312E, or
  - (b) to impose a penalty on a recognised body under section 312F,

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the body may refer the matter to the Tribunal.

**Modifications etc. (not altering text)**

**C10** Ss. 312E-312I restricted (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Enforcement\) Order 2013 \(S.I. 2013/441\)](#), arts. 1(1), **13**

### 312I Publication

After an appropriate regulator publishes a statement under section 312E, it must send a copy of the statement to—

- (a) the recognised body concerned, and
- (b) any person to whom a copy of the decision notice was given under section 393(4).

**Modifications etc. (not altering text)**

**C10** Ss. 312E-312I restricted (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Enforcement\) Order 2013 \(S.I. 2013/441\)](#), arts. 1(1), **13**

### 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 section 312F, and
  - (b) the amount of penalties under that section.
- (2) An appropriate 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 concerned, and
  - (b) the extent to which that contravention was deliberate or reckless.
- (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 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.

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- (8) An appropriate regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

### **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.]

## **CHAPTER IV**

### *Interpretation*

### **313 Interpretation of Part XVIII.**

- (1) In this Part—
- “application” means an application for a recognition order made under section 287 or 288;
- “applicant” means a body corporate or unincorporated association which has applied for a recognition order;
- F224  
...  
[F225“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;]
- [F225“central counterparty recognition order” means a recognition order made under section 290(1)(b);]
- [F225“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

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exposures arising from those positions; and “clearing services”, in relation to a central counterparty, is to be read accordingly;]

[<sup>F225</sup>“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;]

[<sup>F226</sup>“multilateral trading facility” has the meaning given in Article 4.1.15 of the markets in financial instruments directive;]

<sup>F227</sup>  
...

“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;

“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;

[<sup>F228</sup>“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;]

“recognised body” means a recognised investment exchange or a recognised clearing house;

[<sup>F225</sup>“recognised central counterparty” has the meaning given in section 285;]

“recognised clearing house” has the meaning given in section 285;

“recognised investment exchange” has the meaning given in section 285;

“recognition order” means an order made under section 290 or 292;

“recognition requirements” has the meaning given by section 286;

[<sup>F229</sup>“regulated market” has the meaning given in Article 4.1.14 of the markets in financial instruments directive;]

“remedial direction” has the meaning given in section 308(8);

“revocation order” has the meaning given in section 297.

<sup>F224</sup>  
...

- (2) References in this Part to rules of an investment exchange (or a clearing house) are to rules made, or conditions imposed, by the investment exchange (or the clearing house) 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.
- (3) 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).

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- (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 [<sup>F230</sup> or services falling within section 285(3)(b)].

#### Textual Amendments

- F224** 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)
- F225** 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)
- F226** S. 313(1): definition of "multilateral trading facility" 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. 16](#)
- F227** 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)
- F228** 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)
- F229** S. 313(1): definition of "regulated market" 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. 16](#)
- F230** 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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