



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XVIII

[^{F1}RECOGNISED INVESTMENT EXCHANGES,
CLEARING HOUSES [^{F1}, CSDS AND OTHER PARTIES]]

[^{F1}CHAPTER 2A

PERFORMANCE OF FUNCTIONS OF RECOGNISED BODIES

Textual Amendments

F1 Pt. 18 Ch. 2A inserted (29.6.2023 for specified purposes) by [Financial Services and Markets Act 2023](#) (c. 29), s. 86(1)(e), [Sch. 10 para. 1](#)

Relevant recognised bodies

309A Recognised bodies to which this Chapter applies

- (1) The Treasury may by regulations specify as a “relevant recognised body” for the purposes of this Chapter a type of recognised body mentioned in subsection (2).
- (2) The types of recognised bodies are—
 - (a) recognised investment exchanges;
 - (b) recognised central counterparties;
 - (c) recognised CSDs.
- (3) Before making regulations under subsection (1), the Treasury—
 - (a) must consult the FCA if it proposes to specify recognised investment exchanges (or recognised investment exchanges of a specified description);

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- (b) must consult the Bank of England if it proposes to specify recognised central counterparties or recognised CSDs (or recognised central counterparties or recognised CSDs of a specified description);
 - (c) in any case, must consult such persons as appear to it to be representative of interests likely to be affected by the application of this Chapter to the types, or descriptions, of bodies it proposes to specify.
- (4) In this Chapter, references to “the appropriate regulator” are to be read in accordance with section 285A (accordingly, the appropriate regulator in relation to a recognised investment exchange is the FCA, and in any other case is the Bank of England).
- (5) Nothing in this Chapter applies to overseas investment exchanges.

Prohibition

309B Part 18 prohibition orders

- (1) This section applies if it appears to the appropriate regulator that an individual is not a fit and proper person to perform functions in relation to an activity carried on by a relevant recognised body.
- (2) The appropriate regulator may make an order (a “Part 18 prohibition order”) prohibiting the individual from performing a specified function, any function falling within a specified description or any function.
- (3) A Part 18 prohibition order may relate to—
- (a) a specified activity, any activity falling within a specified description or all activities (but see subsection (5));
 - (b) all persons falling within subsection (4), or a particular paragraph of that subsection, or all persons within a specified class of person falling within a particular paragraph of that subsection.
- (4) A person falls within this subsection if the person is—
- (a) a relevant recognised body (whether or not the appropriate regulator making the order is the appropriate regulator in relation to relevant recognised bodies of that type),
 - (b) an authorised person,
 - (c) an exempt person (other than a relevant recognised body), or
 - (d) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to a regulated activity.
- (5) If a Part 18 prohibition order makes provision in relation to a person or persons falling within subsection (4)(b), (c) or (d), subsection (3)(a) applies in relation to such provision as if references to an activity or activities were to a regulated activity or regulated activities.
- (6) In this section, “specified” means specified in the Part 18 prohibition order.

309C Procedure for making Part 18 prohibition orders

- (1) If the appropriate regulator proposes to make a Part 18 prohibition order it must—
- (a) comply with such consultation requirements as may be prescribed, and
 - (b) give the individual to whom the order would apply a warning notice.

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- (2) A warning notice under subsection (1)(b) must set out the terms of the prohibition.
- (3) If the appropriate regulator decides to make a Part 18 prohibition order it must give the individual to whom the order applies a decision notice.
- (4) The decision notice must—
 - (a) name the individual to whom the Part 18 prohibition order applies, and
 - (b) set out the terms of the order.
- (5) If the appropriate regulator decides to make a Part 18 prohibition order, the individual to whom the order applies may refer the matter to the Tribunal.

309D Varying and withdrawing Part 18 prohibition orders

- (1) This section applies where the appropriate regulator has made a Part 18 prohibition order in relation to an individual.
- (2) The appropriate regulator may vary or revoke the Part 18 prohibition order on the application of the individual.
- (3) Before varying or revoking a Part 18 prohibition order, the appropriate regulator must comply with such consultation requirements as may be prescribed.
- (4) On an application for the variation or revocation of a Part 18 prohibition order—
 - (a) if the appropriate regulator decides to grant the application, it must give the applicant written notice of its decision;
 - (b) if the appropriate regulator proposes to refuse the application, it must give the applicant a warning notice;
 - (c) if the appropriate regulator decides to refuse the application, it must give the applicant a decision notice.
- (5) If the appropriate regulator gives the applicant a decision notice under subsection (4)(c), the applicant may refer the matter to the Tribunal.

309E Offence of breaching prohibition

- (1) An individual who performs a function, or agrees to perform a function, in breach of a Part 18 prohibition order is guilty of an offence.
- (2) An individual who commits an offence under this section is liable—
 - (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland, to a fine not exceeding level 5 on the standard scale;
 - (c) on summary conviction in Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- (3) In proceedings for an offence under this section, it is a defence for the individual to show that the individual took all reasonable precautions and exercised all due diligence to avoid committing the offence.

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309F Duty in relation to prohibited individuals

- (1) A person (“P”) falling within section 309B(4) must take reasonable care to ensure that no function in relation to the carrying on of P’s activities is performed by an individual who is prohibited from performing that function by a Part 18 prohibition order.
- (2) A contravention of subsection (1) is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (3) In prescribed cases, a contravention of subsection (1) which would be actionable at the suit of a private person is actionable at the suit of a person who is not a private person, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (4) In this section “private person” has such meaning as may be prescribed.

Approval

309G Requirement for approval

- (1) A relevant recognised body must take reasonable care to ensure that a person does not perform a designated senior management function in relation to the carrying on of an activity by the body, unless the person is acting in accordance with an approval given by the appropriate regulator under this section.
- (2) Subsection (1) applies only in relation to a function performed under—
 - (a) an arrangement entered into by the relevant recognised body, or
 - (b) an arrangement entered into by a contractor of the relevant recognised body.
- (3) “Designated senior management function” means a function of a description specified in rules made by the appropriate regulator.
- (4) The appropriate regulator may specify a description of function under subsection (3) only if it is satisfied that the function is a senior management function.
- (5) A function is a “senior management function” in relation to the carrying on of a relevant recognised body’s activities if—
 - (a) the function will require the person performing it to be responsible for managing one or more aspects of the body’s affairs, and
 - (b) those aspects involve, or might involve, a risk of serious consequences—
 - (i) for the body, or
 - (ii) for business or other interests in the United Kingdom.
- (6) In subsection (5)(a), the reference to managing one or more aspects of a relevant recognised body’s affairs includes a reference to taking decisions, or participating in the taking of decisions, about how one or more aspects of those affairs should be carried on.
- (7) In subsection (2), “arrangement”—
 - (a) means any kind of arrangement for the performance of a function of a relevant recognised body which is entered into by the body, or by a contractor of the body, and another person, and

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- (b) includes, in particular, an arrangement under which the other person is appointed to an office, becomes a partner or is employed (whether under a contract of service or otherwise).

309H Rules under section 309G(3): transitional provision

- (1) In relation to rules made by the Bank of England or the FCA under section 309G(3), the power conferred by section 137T(c) to make transitional provision includes, in particular, power—
 - (a) to provide for anything done under this Chapter, or under Part 5 (performance of regulated activities), in relation to a senior management function of a particular description to be treated as having been done in relation to a senior management function of a different description;
 - (b) to provide for anything done under this Chapter, or under Part 5 (including any application or order made, any requirement imposed and any approval or notice given) to cease to have effect, to continue to have effect, or to continue to have effect with modifications, or subject to time limits or conditions;
 - (c) to provide for rules made by the regulator making the rules under section 309G(3) to apply with modifications;
 - (d) to make saving provision.
- (2) The Treasury may by regulations make whatever incidental, consequential, transitional, supplemental or saving provision the Treasury consider appropriate in connection with the making of rules under section 309G(3).
- (3) Regulations under subsection (2) may—
 - (a) confer functions on the Bank of England or the FCA (including the function of making rules);
 - (b) modify legislation (including any provision of, or made under, this Act).
- (4) In subsection (3)(b)—
 - “legislation” means primary legislation, subordinate legislation (within the meaning of the Interpretation Act 1978) and [^{F2}assimilated direct] legislation, but does not include rules or other instruments made by any regulator;
 - “modify” includes amend, repeal or revoke.

Textual Amendments

- F2** Words in s. 309H(4) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023 \(S.I. 2023/1424\)](#), reg. 1(2), [Sch. para. 44\(4\)\(q\)](#)

309I Applications for approval

- (1) A relevant recognised body may apply for approval from the appropriate regulator under section 309G for a person to perform a designated senior management function in relation to the carrying on of the body’s activities.
- (2) The application must be made in such manner as the appropriate regulator may direct.
- (3) The application must contain—

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- (a) a statement setting out the aspects of the applicant’s affairs which it is intended that the person will be responsible for managing in performing the function, and
 - (b) such other information as the appropriate regulator may reasonably require.
- (4) A statement provided under subsection (3)(a) is known as a “statement of responsibilities”.
- (5) At any time after the application is received, and before it is determined, the appropriate regulator may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
- (6) The appropriate regulator may require the applicant to present information provided under this section in such form, or to verify the information in such a way, as the appropriate regulator may direct.
- (7) Different directions may be given, and different requirements may be imposed, in relation to different applications or categories of application.
- (8) In subsection (1), “relevant recognised body” includes—
- (a) if recognised investment exchanges are a type of recognised body to which this Chapter applies, a person who has applied for recognition as such under section 287;
 - (b) if recognised central counterparties are a type of recognised body to which this Chapter applies, a person who has applied for recognition as such under section 288;
 - (c) if recognised CSDs are a type of recognised body to which this Chapter applies, a person who has applied for recognition as such under section 288A.

309J Vetting by relevant recognised bodies

- (1) Before making an application under section 309I for approval for a person to perform a designated senior management function, a relevant recognised body must be satisfied that the person is a fit and proper person to perform the function.
- (2) In deciding that question, the relevant recognised body must have regard, among other things, to whether the person, or any person who may perform a function on the person’s behalf—
- (a) has obtained a specified qualification;
 - (b) has undergone, or is undergoing, specified training;
 - (c) possesses a specified level of competence;
 - (d) has specified personal characteristics.
- (3) In subsection (2), “specified” means specified in rules made by the appropriate regulator.
- (4) Before making rules for the purposes of this section, the appropriate regulator must comply with such consultation requirements as may be prescribed.

309K Determining applications: power to grant approval

- (1) The appropriate regulator may grant an application under section 309I for approval for a person to perform a designated senior management function only if—

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- (a) it is satisfied that the person is a fit and proper person to perform the function, or
 - (b) it is satisfied that the condition in paragraph (a) will be met if the application is granted subject to one or more conditions (see subsection (3)).
- (2) In determining the application, the appropriate regulator may have regard, among other things, to the matters mentioned in section 309J(2) (qualifications etc of person for whom approval sought).
- (3) The appropriate regulator may, if it appears to it that it is desirable to do so in order to advance a relevant objective—
- (a) grant the application subject to any conditions that it considers appropriate;
 - (b) grant the application so as to give approval only for a limited period.
- (4) For the purposes of subsection (3), “relevant objective” means—
- (a) if the appropriate regulator is the FCA, any of its operational objectives;
 - (b) if the appropriate regulator is the Bank of England, the Financial Stability Objective.
- (5) Before granting approval under this section (whether or not subject to conditions or for a limited period), the appropriate regulator must comply with such consultation requirements as may be prescribed.

309L Determining applications: period for approval

- (1) The appropriate regulator must, before the end of the period for consideration, determine whether—
- (a) to grant an application under section 309I for approval for a person to perform a function, without imposing conditions or limiting the period for which the approval has effect, or
 - (b) to give a warning notice under section 309M(2).
- (2) In subsection (1), “the period for consideration” means the period of 3 months beginning with the day on which the appropriate regulator receives the application.

This is subject to subsections (3) and (4).

- (3) Where the application under section 309I is made by a person in reliance on section 309I(8) (applicants for recognition to be treated as relevant recognised bodies), “the period for consideration” means whichever of the following periods ends later—
- (a) the period described in subsection (2), and
 - (b) the period within which the person’s application for recognition must be determined—
 - (i) in the case of an application under section 287, in accordance with section 290(1B);
 - (ii) in the case of an application under section 288, in accordance with Article 17(7) of the EMIR regulation;
 - (iii) in the case of an application under section 288A, in accordance with section 290(4A).
- (4) If the appropriate regulator imposes a requirement under section 309I(5), the period described in subsection (2) stops running on the day on which the requirement is imposed but starts running again—

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- (a) on the day on which the required information is received by the appropriate regulator, or
 - (b) if the information is not provided on a single day, on the last of the days on which it is received by the appropriate regulator.
- (5) An applicant may withdraw an application under section 309I, by giving written notice to the appropriate regulator, at any time before the appropriate regulator determines the application, but only with the consent of—
- (a) the person in relation to whom the application is made, and
 - (b) the person by whom that person is to be retained to perform the function to which the application relates, if not the applicant.

309M Determining applications: further procedure

- (1) If the appropriate regulator decides to grant an application under section 309I without imposing conditions or limiting the period for which approval is given, it must give written notice of its decision to each of the interested parties.
- (2) If the appropriate regulator proposes to refuse the application, or to grant the application subject to conditions or for a limited period (or both), it must give a warning notice to each of the interested parties.
- (3) If the appropriate regulator decides to refuse the application, or to grant the application subject to conditions or for a limited period (or both), it must give a decision notice to each of the interested parties.
- (4) If the appropriate regulator decides to refuse the application, or to grant the application subject to conditions or for a limited period (or both), each of the interested parties may refer the matter to the Tribunal.
- (5) In this section, “the interested parties”, in relation to an application under section 309I for approval for a person to perform a function, are—
 - (a) the applicant,
 - (b) the person in relation to whom the application is made, and
 - (c) the person by whom that person is to be retained to perform the function to which the application relates, if not the applicant.

309N Changes in responsibilities

- (1) This section applies where, on an application made by a relevant recognised body under section 309I, the appropriate regulator has given approval for a person to perform a designated senior management function (and has not withdrawn the approval).
- (2) Each time there is a notifiable change in the aspects of the relevant recognised body’s affairs which the person is responsible for managing in performing the function, the relevant recognised body must provide the appropriate regulator with a revised statement of responsibilities (see section 309I(4)).
- (3) Whether a change is “notifiable” is to be determined by the relevant recognised body in accordance with rules made by the appropriate regulator.

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- (4) The appropriate regulator may require the relevant recognised body to present information provided under this section in such form, or to verify the information in such a way, as the appropriate regulator may direct.

309O Withdrawing approval

- (1) This section applies if an approval under section 309G has been given by the appropriate regulator in relation to the performance by a person of a designated senior management function.
- (2) The appropriate regulator may withdraw the approval if it considers that the person is not a fit and proper person to perform the function.
- (3) In considering whether to withdraw an approval, the appropriate regulator may take into account any matter which may be taken into account in considering an application under section 309I.
- (4) The relevant recognised body on whose application the approval was given must, at specified intervals—
 - (a) consider whether there are grounds on which the appropriate regulator could withdraw the approval under this section, and
 - (b) if it considers that there are such grounds, notify the appropriate regulator of those grounds.
- (5) For the purposes of subsection (4), a “specified interval” is an interval specified in rules made by the appropriate regulator for the purposes of this section.

309P Procedure for withdrawing approval

- (1) If the appropriate regulator proposes to withdraw an approval given under section 309G, it must—
 - (a) comply with such consultation requirements as may be prescribed, and
 - (b) give each of the interested parties a warning notice.
- (2) If the appropriate regulator decides to withdraw the approval, it must give each of the interested parties a decision notice.
- (3) If the appropriate regulator decides to withdraw the approval, each of the interested parties may refer the matter to the Tribunal.
- (4) In this section, “the interested parties”, in relation to an approval given under section 309G, are—
 - (a) the relevant recognised body on whose application the approval was given,
 - (b) the person in relation to whom the approval was given, and
 - (c) the person by whom that person’s services are retained, if not the relevant recognised body.

309Q Varying approval at request of relevant recognised body

- (1) Where an approval under section 309G has effect subject to conditions, the relevant recognised body that applied for the approval may apply to the appropriate regulator to vary the approval by—
 - (a) varying a condition,

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- (b) removing a condition, or
 - (c) imposing a new condition.
- (2) Where an approval under section 309G has effect for a limited period, the relevant recognised body that applied for the approval may apply to the appropriate regulator to vary the approval by—
- (a) varying the period, or
 - (b) removing the limit on the period for which the approval is to have effect.
- (3) The appropriate regulator must, before the end of the consultation period, determine whether—
- (a) to grant the application, or
 - (b) to give a warning notice under section 309M(2) (as applied by subsection (8)).
- (4) The “consultation period” is—
- (a) such period as may be prescribed (and different periods may be prescribed in relation to different types of relevant recognised bodies), or
 - (b) if no such period is prescribed, the period of 3 months beginning with the day on which the appropriate regulator receives the application to vary the approval.
- (5) The appropriate regulator may refuse an application under this section, if it appears to it that it is desirable to do so in order to advance a relevant objective.
- (6) For the purposes of subsection (5), “relevant objective” means—
- (a) if the appropriate regulator is the FCA, any of its operational objectives;
 - (b) if the appropriate regulator is the Bank of England, the Financial Stability Objective.
- (7) An application may not be made under this section to vary or remove a condition or limit that was imposed under section 309Z2.
- (8) Except as provided for below, the following sections apply to an application under this section for variation of an approval as they apply to an application under section 309I—
- (a) section 309I(2) to (8),
 - (b) section 309L(4) and (5), and
 - (c) section 309M, but as if the references in subsections (1) to (4) to granting the application subject to conditions or for a limited period, or without imposing conditions or limiting the period for which approval is given, were omitted.

309R Varying approval on the appropriate regulator’s initiative

- (1) The appropriate regulator may vary an approval under section 309G if it considers it desirable to do so in order to advance a relevant objective.
- (2) For these purposes, “relevant objective” means—
- (a) if the appropriate regulator is the FCA, any of its operational objectives;
 - (b) if the appropriate regulator is the Bank of England, the Financial Stability Objective.
- (3) The appropriate regulator may vary the approval by doing the following—
- (a) imposing a condition,

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- (b) varying a condition,
 - (c) removing a condition,
 - (d) where the approval has effect for an unlimited period, limiting the period of the approval, or
 - (e) where the approval has effect for a limited period, varying that period or removing the limit on the period.
- (4) A variation under this section takes effect—
- (a) immediately, if the notice given under subsection (5) states that to be the case,
 - (b) on a date specified in the notice, or
 - (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.
- (5) If the appropriate regulator proposes to vary an approval or varies an approval with immediate effect, it must give each of the interested parties written notice—
- (a) setting out details of the variation,
 - (b) stating the reasons for the variation,
 - (c) stating that each of the interested parties may make representations to the appropriate regulator within the period specified in the notice (whether or not any of the interested parties has referred the matter to the Tribunal),
 - (d) stating when the variation takes effect, and
 - (e) setting out each interested party’s right to refer the matter to the Tribunal.
- (6) A variation may be expressed to take effect immediately or on a specified date only if the appropriate regulator, having regard to its reason for varying the approval, reasonably considers that it is necessary for the variation to take effect immediately or on that date (as appropriate).
- (7) The appropriate regulator may extend the period allowed under the notice for making representations.
- (8) The appropriate regulator must give each of the interested parties written notice if, having considered the representations made, it decides—
- (a) to vary the approval, or
 - (b) if the variation has taken effect, not to rescind it.
- (9) A notice under subsection (8) must inform the interested parties of the right of each of them to refer the matter to the Tribunal.
- (10) The appropriate regulator must give each of the interested parties written notice if, having considered the representations made, it decides—
- (a) not to vary the approval,
 - (b) to vary the approval in a different way, or
 - (c) if the variation has taken effect, to rescind it.
- (11) A notice under subsection (10)(b) must comply with the requirements set out in subsection (5)(a) to (e).
- (12) A notice under this section which informs the interested parties of the right to refer a matter to the Tribunal must give an indication of the procedure on such a reference.
- (13) In this section, “the interested parties” has the same meaning as in section 309P.

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- (14) For the purposes of subsection (4)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

309S Statement of policy on approval

- (1) The appropriate regulator must prepare and issue a statement of its policy with respect to—
 - (a) the giving of approval under section 309G subject to conditions or for a limited period only, and
 - (b) the variation under section 309Q or 309R of an approval given under section 309G.
- (2) The appropriate regulator—
 - (a) may alter or replace a statement issued under this section, and
 - (b) if it does so, must issue the altered or replacement statement.
- (3) Before the appropriate regulator issues a statement of policy under this section, it must publish a draft of the proposed statement in the way appearing to it to be best calculated to bring it to the attention of the public.
- (4) The draft statement must be accompanied by a notice stating that representations about the proposal may be made to the appropriate regulator within a period specified in the notice.
- (5) Before issuing the proposed statement, the appropriate regulator must have regard to any representations made to it in accordance with subsection (4).
- (6) If the appropriate regulator issues the proposed statement it must publish the following in the way appearing to it to be best calculated to bring them to the attention of the public—
 - (a) the statement,
 - (b) an account, in general terms, of the representations made to it in accordance with subsection (4) and its response to them, and
 - (c) if the statement issued differs from the draft published under subsection (3) in a way which the appropriate regulator considers to be significant, details of the difference.
- (7) The appropriate regulator may charge a reasonable fee for providing a person with—
 - (a) a copy of a draft statement published under subsection (3), or
 - (b) a copy of a statement published under subsection (6)(a).
- (8) The appropriate regulator must, without delay, give the Treasury a copy of each statement it publishes under subsection (6)(a).

309T Breach of statutory duty by relevant recognised bodies

- (1) A contravention of section 309G(1) is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (2) In prescribed cases, a contravention of section 309G(1) which would be actionable at the suit of a private person is actionable at the suit of a person who is not a private

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person, subject to the defences and other incidents applying to actions for breach of statutory duty.

(3) In this section “private person” has such meaning as may be prescribed.

309U Power to impose penalties

- (1) The appropriate regulator may impose a penalty on a person if it is satisfied that—
 - (a) the person has at any time performed a designated senior management function without approval, and
 - (b) at that time the person knew, or could reasonably be expected to have known, that they were performing a designated senior management function without approval.
- (2) The penalty may be of such amount as the appropriate regulator considers appropriate.
- (3) A person performs a designated senior management function without approval at a time if—
 - (a) the person performs a designated senior management function under an arrangement entered into by a relevant recognised body, or by a contractor of a relevant recognised body, in relation to the carrying on of an activity by the body, and
 - (b) when performing the function, the person is not acting in accordance with an approval given under section 309G.
- (4) The appropriate regulator may not impose a penalty on a person under this section after the end of the limitation period unless it gave the person a warning notice under section 309V before the end of that period.
- (5) For the purposes of subsection (4)—
 - (a) “the limitation period” means the period of 6 years beginning with the first day on which the appropriate regulator knew that the person concerned had performed a designated senior management function without approval, and
 - (b) the appropriate regulator is to be treated as knowing that a person has performed a designated senior management function without approval if it has information from which that can reasonably be inferred.

309V Procedure for imposing penalties

- (1) If the appropriate regulator proposes to impose a penalty on a person under section 309U, it must give the person a warning notice.
- (2) A warning notice under this section must state the amount of the penalty.
- (3) If the appropriate regulator decides to impose a penalty on a person under section 309U, it must give the person a decision notice.
- (4) A decision notice under this section must state the amount of the penalty.
- (5) If the appropriate regulator decides to impose a penalty on a person under section 309U, the person may refer the matter to the Tribunal.

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309W Statement of policy on penalties

- (1) The appropriate regulator must prepare and issue a statement of its policy with respect to—
 - (a) the imposition of penalties under section 309U, and
 - (b) the amount of penalties under that section.
- (2) The appropriate regulator’s policy in determining whether a penalty should be imposed, and what the amount of a penalty should be, must include having regard to—
 - (a) the conduct of the person on whom the penalty is to be imposed,
 - (b) the extent to which the person could reasonably be expected to have known that a designated senior management function was performed without approval,
 - (c) the length of the period during which the person performed a designated senior management function without approval, and
 - (d) whether the person on whom the penalty is to be imposed is an individual.
- (3) The appropriate regulator’s policy in determining whether a penalty should be imposed on a person must also include having regard to the appropriateness of taking action against the person instead of, or in addition to, taking action against a relevant recognised body.
- (4) A statement issued under this section must include an indication of the circumstances in which the appropriate regulator would expect to be satisfied that a person could reasonably be expected to have known that the person was performing a designated senior management function without approval.
- (5) The appropriate regulator—
 - (a) may alter or replace a statement issued under this section, and
 - (b) if it does so, must issue the altered or replacement statement.
- (6) When imposing, or deciding whether to impose, a penalty on a person under section 309U, the appropriate regulator must have regard to any statement of policy published under this section (which was in force at a time when the person performed a designated senior management function without approval).

309X Procedure for statement of policy on penalties

- (1) Before the appropriate regulator issues a statement under section 309W(1) or (5), it must publish a draft of the proposed statement in the way appearing to it to be best calculated to bring it to the attention of the public.
- (2) The draft statement must be accompanied by a notice stating that representations about the proposal may be made to the appropriate regulator within the period specified in the notice.
- (3) Before issuing the proposed statement, the appropriate regulator must have regard to any representations made to it in accordance with subsection (2).
- (4) If the appropriate regulator issues the proposed statement it must publish the following in the way appearing to it to be best calculated to bring them to the attention of the public—
 - (a) the statement,

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- (b) an account, in general terms, of the representations made to the appropriate regulator in accordance with subsection (2) and the appropriate regulator’s response to them, and
 - (c) if the statement issued differs from the draft published under subsection (1) in a way which the appropriate regulator considers to be significant, details of the difference.
- (5) The appropriate regulator may charge a reasonable fee for providing a person with—
- (a) a copy of a draft statement published under subsection (1), or
 - (b) a copy of a statement published under subsection (4)(a).
- (6) The appropriate regulator must, without delay, give the Treasury a copy of a statement which it publishes under subsection (4)(a).

Certification of employees

309Y Certification of employees by relevant recognised bodies

- (1) A relevant recognised body must take reasonable care to ensure that none of its employees performs a specified function in relation to the carrying on of an activity by the body, unless the employee has a valid certificate issued by the body under section 309Z.
- (2) Subsection (1) applies only in relation to a function performed under an arrangement entered into by the body.
- (3) In this section, “specified function” means a function of a description specified in rules made by the appropriate regulator.
- (4) The appropriate regulator may specify a description of function under subsection (3) only if, in relation to the carrying on of an activity by a relevant recognised body of a particular description—
- (a) the function is not a designated senior management function in relation to the carrying on of that activity by a relevant recognised body of that description, and
 - (b) the appropriate regulator is satisfied that the function is a significant-harm function.
- (5) A function is a “significant-harm function”, in relation to the carrying on of an activity by a relevant recognised body, if—
- (a) the function will require the person performing it to be involved in one or more aspects of the body’s affairs, so far as relating to the activity, and
 - (b) those aspects involve, or might involve, a risk of significant harm to the body or to any of its consumers.
- (6) In this section, “consumers”, in relation to a relevant recognised body, means—
- (a) persons who use, have used or may use a service provided by the body, or
 - (b) persons who have relevant rights or interests in relation to any such service.
- (7) A person (“P”) has a “relevant right or interest” in relation to a service provided by a relevant recognised body if P has a right or interest—
- (a) which is derived from, or is otherwise attributable to, the use of the service by others, or

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- (b) which may be adversely affected by the use of the service by persons acting on P’s behalf or in a fiduciary capacity in relation to P.
- (8) For these purposes—
- (a) if a person is providing a service as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or may use the service;
 - (b) a person who deals with another person (“A”) in the course of A providing a service is to be treated as using the service.

309Z Issuing certificates

- (1) A relevant recognised body may issue a certificate to a person under this section in relation to a function only if the body is satisfied that the person is a fit and proper person to perform the function.
- (2) In deciding that question the body must have regard, among other things, to whether the person—
 - (a) has obtained a specified qualification,
 - (b) has undergone, or is undergoing, specified training,
 - (c) possesses a specified level of competence, or
 - (d) has specified personal characteristics.
- (3) In subsection (2), “specified” means specified in rules made by the appropriate regulator.
- (4) A certificate issued by a relevant recognised body to a person under this section must—
 - (a) state that the body is satisfied that the person is a fit and proper person to perform the function to which the certificate relates, and
 - (b) set out the aspects of the body’s affairs in which the person will be involved in performing the function.
- (5) A certificate issued under this section is valid for a period of 12 months beginning with the day on which it is issued.
- (6) If, after having considered whether a person is a fit and proper person to perform a function, a relevant recognised body decides not to issue a certificate to the person under this section, the body must give the person a notice in writing stating—
 - (a) what steps (if any) the body proposes to take in relation to the person as a result of the decision, and
 - (b) the reasons for proposing to take those steps.
- (7) A relevant recognised body must maintain a record of every employee who has a valid certificate issued by it under this section.

Rules of conduct

309Z1 Rules of conduct

- (1) If it appears to the appropriate regulator to be necessary or expedient for the purposes of advancing a relevant objective, the appropriate regulator may make rules about the

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conduct of the following persons in relation to the performance by them of qualifying functions—

- (a) persons in relation to whom the appropriate regulator has given its approval under section 309G (“Part 18 approved persons”);
 - (b) directors of relevant recognised bodies;
 - (c) employees of relevant recognised bodies.
- (2) Rules under subsection (1) may include provision requiring a relevant recognised body to—
- (a) notify persons mentioned in subsection (1) of the rules that apply to them;
 - (b) take specified steps to secure that such persons understand how those rules apply in relation to them.
- (3) Rules under subsection (1) may include provision requiring a relevant recognised body to notify the appropriate regulator if the body takes specified disciplinary action in relation to a person mentioned in subsection (1).
- (4) In this section—
- “qualifying function” means a function relating to the carrying on of activities by the following—
- (a) in the case of a Part 18 approved person, the relevant recognised body on whose application approval was given;
 - (b) in the case of a director or employee of a relevant recognised body, who is not a Part 18 approved person, the relevant recognised body;
- “relevant objective” means—
- (a) if the appropriate regulator is the FCA, any of its operational objectives;
 - (b) if the appropriate regulator is the Bank of England, the Financial Stability Objective.
- “specified” means specified in the rules.

Disciplinary action by appropriate regulator

309Z2 Power to take disciplinary action for misconduct

- (1) Subsection (2) applies if—
- (a) it appears to the appropriate regulator that a person is guilty of misconduct (see section 309Z3), and
 - (b) the appropriate regulator is satisfied that it is appropriate in all the circumstances to take action against the person.
- (2) The appropriate regulator may do one or more of the following—
- (a) publish a statement of the person’s misconduct;
 - (b) impose a penalty on the person of such amount as the appropriate regulator considers appropriate;
 - (c) suspend an approval of the performance of a function by the person under section 309G for such period as the appropriate regulator considers appropriate;
 - (d) impose such conditions as the appropriate regulator considers appropriate in relation to such an approval for such period as the appropriate regulator considers appropriate;

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- (e) limit the period for which such an approval is to have effect.
- (3) Where the appropriate regulator takes action described in subsection (2)(c), (d) or (e)—
- (a) it may not suspend an approval for more than 2 years;
 - (b) it may not impose conditions which have effect for more than 2 years;
 - (c) it may impose a condition so as to, among other things, require a person to take, or refrain from taking, specified action;
 - (d) it may impose a suspension, condition or limitation that has effect in relation to part of a function.
- (4) The appropriate regulator that has taken action described in subsection (2)(c), (d) or (e) may (at any time)—
- (a) withdraw a suspension, condition or limitation;
 - (b) vary a suspension or condition so as to reduce the period for which it has effect or otherwise to limit its effect;
 - (c) vary a limitation so as to increase the period for which the approval is to have effect.
- (5) The appropriate regulator may not take action under this section after the end of the period of 6 years beginning with the first day on which the appropriate regulator knew of the misconduct unless, before the end of that period, it gave a warning notice to the person concerned under section 309Z4.
- (6) For the purposes of subsection (5), the appropriate regulator is to be treated as knowing of misconduct if it has information from which the misconduct can reasonably be inferred.
- (7) When a suspension is in force under subsection (2)(c) in relation to part of a function, the references in section 309G and 309U to the performance of a function include the performance of part of a function.
- (8) If at any time a condition imposed under subsection (2)(d) is contravened, the approval in relation to the person concerned is to be treated for the purposes of sections 309G and 309U as if it had been withdrawn at that time.

309Z3 Meaning of “misconduct”

- (1) For the purposes of section 309Z2, a person is guilty of misconduct if any of conditions A to C is met.
- (2) Condition A is that—
- (a) the person has at any time failed to comply with rules made under section 309Z1, and
 - (b) at that time the person was—
 - (i) a Part 18 approved person,
 - (ii) an employee of a relevant recognised body, or
 - (iii) a director of a relevant recognised body.
- (3) Condition B is that—
- (a) the person has at any time after the passing of this Act been knowingly concerned in a contravention by a relevant recognised body of a relevant requirement, and

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- (b) at that time the person was—
 - (i) a Part 18 approved person in relation to the relevant recognised body,
 - (ii) an employee of the relevant recognised body, or
 - (iii) a director of the relevant recognised body.
- (4) Condition C is that—
 - (a) the person has at any time been a Part 18 approved person in relation to a relevant recognised body,
 - (b) at that time there was, or continued to be, a contravention by the body of a relevant requirement,
 - (c) the person was at that time responsible for the management of any of the body’s activities in relation to which the contravention occurred, and
 - (d) the person did not take such steps as a person in that position could reasonably be expected to take to avoid the contravention occurring or continuing.
- (5) In this section—
 - “Part 18 approved person”—
 - (a) means a person in relation to whom an approval is given under section 309G, and
 - (b) in relation to a relevant recognised body, means a person in relation to whom such approval is given on the application of the relevant recognised body;
 - “relevant requirement” has the meaning given by section 312E(2) and (3).

309Z4 Procedure for disciplinary action

- (1) If the appropriate regulator proposes to take action against a person under section 309Z2, it must—
 - (a) give the person a warning notice, and
 - (b) in the case of proposed action under section 309Z2(2)(c), (d) or (e), give each of the other interested parties a warning notice.
- (2) A warning notice under this section about a proposal to publish a statement of a person’s misconduct must set out the terms of the statement.
- (3) A warning notice under this section about a proposal to impose a penalty must state the amount of the penalty.
- (4) A warning notice under this section about—
 - (a) a proposal to suspend an approval given under section 309G, or
 - (b) a proposal to impose a condition in relation to such an approval,
 must state the period for which the suspension or condition is to have effect.
- (5) A warning notice under this section about a proposal to limit the period for which an approval under section 309G is to have effect must state the length of that period.
- (6) If the appropriate regulator decides to take action against a person under section 309Z2, it must—
 - (a) give the person a decision notice, and
 - (b) in the case of proposed action under section 309Z2(2)(c), (d) or (e), give each of the other interested parties a copy of the decision notice.

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- (7) A decision notice under this section about the publication of a statement of a person’s misconduct must set out the terms of the statement.
- (8) A decision notice under this section about the imposition of a penalty must state the amount of the penalty.
- (9) A decision notice under this section about—
 - (a) the suspension of an approval given under section 309G, or
 - (b) the imposition of a condition in relation to such an approval,
 must state the period for which the suspension or condition is to have effect.
- (10) A decision notice under this section about limiting the period for which an approval under section 309G is to have effect must state the length of that period.
- (11) If the appropriate regulator decides to take action against a person under section 309Z2—
 - (a) the person may refer the matter to the Tribunal, and
 - (b) in the case of proposed action under section 309Z2(2)(c), (d) or (e), each of the other interested parties may also refer the matter to the Tribunal.
- (12) After a statement of a person’s misconduct is published under section 309Z2, the appropriate regulator must send a copy of it to—
 - (a) the person concerned, and
 - (b) any person to whom a copy of the decision notice was given.
- (13) In this section—
 - “Part 18 approved person”, in relation to a relevant recognised body, has the meaning given by section 309Z3(5);
 - “the other interested parties”, in relation to a Part 18 approved person in relation to a relevant recognised body, are—
 - (a) the relevant recognised body, and
 - (b) the person by whom the Part 18 approved person’s services are retained, if different from the relevant recognised body.

309Z5 Statement of policy about disciplinary action

- (1) The appropriate regulator must prepare and issue a statement of its policy with respect to—
 - (a) the imposition of penalties, suspensions, conditions or limitations under section 309Z2,
 - (b) the amount of penalties under that section,
 - (c) the period for which suspensions or conditions under that section are to have effect, and
 - (d) the period for which approvals under section 309G are to have effect as a result of a limitation under section 309Z2.
- (2) The appropriate regulator’s policy in determining what the amount of a penalty should be, or what the period for which a suspension or restriction is to have effect should be, must include having regard to—
 - (a) the seriousness of the misconduct in question,
 - (b) the extent to which that misconduct was deliberate or reckless, and

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- (c) whether the person against whom action is to be taken is an individual.
- (3) The appropriate regulator—
 - (a) may alter or replace a statement issued under this section, and
 - (b) if it does so, must issue the altered or replacement statement.
- (4) In exercising, or deciding whether to exercise, its power under section 309Z2 in the case of particular misconduct, the appropriate regulator must have regard to any statement of policy published under this section and in force at the time when the misconduct in question occurred.

309Z6 Procedure for statement of policy about disciplinary action

- (1) Before the appropriate regulator issues a statement under section 309Z5(1) or (3), it must publish a draft of the proposed statement in the way appearing to it to be best calculated to bring it to the attention of the public.
- (2) The draft statement must be accompanied by a notice stating that representations about the proposal may be made to the appropriate regulator within a period specified in the notice.
- (3) Before issuing the proposed statement, the appropriate regulator must have regard to any representations made to it in accordance with subsection (2).
- (4) If the appropriate regulator issues the proposed statement it must publish the following in the way appearing to the appropriate regulator to be best calculated to bring it to the attention of the public—
 - (a) the statement,
 - (b) an account, in general terms, of the representations made to the appropriate regulator in accordance with subsection (2) and the appropriate regulator’s response to them, and
 - (c) if the statement differs from the draft published under subsection (1) in a way which the appropriate regulator considers significant, details of the difference.
- (5) The appropriate regulator may charge a reasonable fee for providing a person with—
 - (a) a copy of a draft statement published under subsection (1), or
 - (b) a copy of a statement published under subsection (4)(a).
- (6) The appropriate regulator must, without delay, give the Treasury a copy of any statement which it publishes under subsection (4)(a).

Interpretation

309Z7 Interpretation of Chapter 2A

- (1) In this Chapter—
 - “director”, in relation to a relevant recognised body, means a member of the board of directors of the body or, if there is no such board, the equivalent body responsible for the management of the body;
 - “employee”, in relation to a relevant recognised body, includes a person who—

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- (a) personally provides, or is under an obligation personally to provide, services to the body under an arrangement made between the body and the person providing the services or another person, and
 - (b) is subject to, or to the right of, supervision, direction or control by the body as to the manner in which those services are provided;
- “relevant recognised body” has the meaning given in section 309A;
“senior management function” and “designated senior management function” have the meanings given in section 309G (see subsections (3) and (5) of that section).
- (2) In this Chapter, references to performing a designated senior management function without approval have the meaning given in section 309U(3).

Application of this Chapter to credit rating agencies

309Z8 Power to apply this Chapter to credit rating agencies

- (1) The Treasury may by regulations provide for this Chapter, or any provision of this Chapter, to apply (with or without modifications) in relation to—
 - (a) registered credit rating agencies, or
 - (b) registered credit rating agencies of descriptions specified in the regulations.
- (2) Regulations under subsection (1) must provide for the FCA to be the appropriate regulator in relation to a registered credit rating agency to which any provision of this Chapter is applied by the regulations.
- (3) Regulations under subsection (1) may modify legislation (including any provision of, or made under, this Act).
- (4) Before making regulations under subsection (1), the Treasury must consult—
 - (a) the FCA, and
 - (b) such other persons who appear to the Treasury to be representative of persons likely to be affected by the application of this Chapter to registered credit rating agencies, or registered credit rating agencies of descriptions specified in the regulations.
- (5) In this section—
 - “legislation” means primary legislation, subordinate legislation (within the meaning of the Interpretation Act 1978) and [^{F3}assimilated direct] legislation, but does not include rules or other instruments made by any regulator;
 - “modify” includes amend, repeal or revoke;
 - “registered credit rating agency” means a credit rating agency registered in accordance with Regulation (EC) No 1060/2009 of the European Parliament and the Council of 16 September 2009 on credit rating agencies.]

Textual Amendments

- F3** Words in s. 309Z8(5) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023 \(S.I. 2023/1424\), reg. 1\(2\), Sch. para. 44\(4\)\(r\)](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied (with modifications) by [S.I. 2023/1347 reg. 8](#)
- Act power to apply conferred (temp. until 15.5.2039) by [2014 c. 21 s. 79\(4\)](#)
- Act power to apply conferred (temp. until 15.5.2039) by [2014 c. 21 s. 81\(10\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 17 Ch. 3B inserted by [2023 c. 29 s. 64\(3\)](#)
- Pt. 20C inserted by [2016 c. 14 s. 30\(3\)](#)
- s. 31(1)(aa) inserted by [2021 c. 22 s. 22\(2\)](#)
- s. 32A inserted by [2021 c. 22 s. 22\(3\)](#)
- s. 32A power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- s. 36A and cross-heading inserted by [2021 c. 22 s. 22\(4\)](#)
- s. 71J and cross-heading inserted by [2021 c. 22 Sch. 8 para. 4](#)
- s. 86(9A) inserted by [S.I. 2019/707 reg. 8\(9\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8(6)-(10) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 13(c))
- s. 87A(11) inserted by [S.I. 2019/707 reg. 10\(5\)](#) (This amendment not applied to legislation.gov.uk. Reg. 10(4)(5) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 15(b))
- s. 124(10)(c)(i) word omitted by [S.I. 2019/310 reg. 5\(11\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(11)(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 51(2)(e))
- s. 129(7)(a) word inserted by [S.I. 2019/310 reg. 5\(12\)\(a\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(12)(a)(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 51(2)(f))
- s. 129(7)(c) omitted and word by [S.I. 2019/310 reg. 5\(12\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(12)(a)(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 51(2)(f))
- s. 214(5A) inserted by [2021 c. 22 Sch. 8 para. 8](#)
- s. 261E(A1) inserted by [2023 c. 29 s. 64\(2\)\(a\)](#)
- s. 367A inserted by [2021 c. 22 Sch. 8 para. 10](#)
- s. 395(13)(h)(i) inserted by [2021 c. 22 Sch. 8 para. 12\(2\)\(c\)](#)
- s. 395(13)(bc)-(be) word inserted by [2021 c. 22 Sch. 8 para. 12\(2\)\(b\)](#)
- s. 395(14) inserted by [2021 c. 22 Sch. 8 para. 12\(3\)](#)
- s. 427A(3) words substituted by [2002 c. 40 Sch. 17 para. 59](#) (This amendment not applied to legislation.gov.uk. The Financial Services and Markets Act 2000 does not contain a section 427A.)
- Sch. 1ZA para. 32(c) and word inserted by [2021 c. 22 Sch. 8 para. 18](#)
- Sch. 2A para. 19(2)(b)(iia) inserted by [2023 c. 29 Sch. 10 para. 19\(a\)](#)
- Sch. 2A2B power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- Sch. 2A power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- Sch. 2B inserted by [2021 c. 22 Sch. 7](#)
- Sch. 2B power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- Sch. 11A para. 5(3) inserted by [S.I. 2019/707 reg. 38\(5\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 38(2)-(5)(7)(8) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 20)

- Sch. 17A para. 12 words substituted by [S.I. 2019/662 reg. 13\(1\)](#) (This amendment not applied to [legislation.gov.uk](#). Reg. 13(1) substituted (25.6.2020) by S.I. 2020/646, regs. 1(2)(c), 11(3))