



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

An Act to make provision about the regulation of financial services and markets; to provide for the transfer of certain statutory functions relating to building societies, friendly societies, industrial and provident societies and certain other mutual societies; and for connected purposes. [14th June 2000]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Annotations:

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

- C1** Act restricted (11.8.2001) by [S.I. 2001/2659, art. 2\(4\)\(c\)](#)  
Act excluded (1.12.2001) by [S.I. 2001/2617, arts. 2\(b\), 10\(9\)](#); [S.I. 2001/3538, art. 2\(1\)](#)  
Act: specified provisions excluded (1.12.2001) by [S.I. 2001/2957, arts. 1, 13\(8\)\(b\)](#); [S.I. 2001/3538, art. 2\(1\)](#)  
Act restricted (1.12.2001) by [S.I. 2001/3646, arts. 2\(7\)\(b\), 4\(6\)\(b\), 6\(4\)\(b\), 7\(4\)\(c\), 8\(4\)\(b\), 9\(4\)\(b\)](#)  
Act applied (with modifications) by [S.I. 1994/188, reg. 4](#) (as amended (1.12.2001) by [S.I. 2001/3649, arts. 1, 454](#))
- C2** Act modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\), regs. 1, 17](#)
- C3** Act extended (E.W.S.) (1.1.2003) by [2000 c. 39, s. 15\(2\)](#); [S.I. 2002/2711, art. 2](#) (subject to [arts. 3-5](#))
- C4** Act: power to modify, exclude or apply conferred (N.I.) (10.8.2004) by [Open-Ended Investment Companies Act \(Northern Ireland\) 2002 \(c. 13 \(N.I.\)\), ss. 1\(2\)\(l\)\(3\)\(b\)\(f\)\(4\), 4](#); [S.R. 2004/333, art. 2](#)
- C5** Act extended (18.2.2004) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2004 \(S.I. 2004/353\), regs. 2\(5\), 3](#)
- C6** Act extended (5.5.2004) by [The Credit Institutions \(Reorganisation and Winding up\) Regulations 2004 \(S.I. 2004/1045\), reg. 2\(5\)](#)
- C7** Act extended by [The European Communities \(Lawyer's Practice\) Regulations 2000 \(S.I. 2000/1119\), reg. 14, Sch. 3 Pt. 1](#) (as amended (16.9.2004) by [The European Communities \(Lawyer's Practice\) \(Amendment\) Regulations 2004 \(S.I. 2004/1628\), reg. 6](#))

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- C8** Act modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 5**
- C9** Act modified (31.12.2004) by The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004 (S.I. 2004/3219), **reg. 16(4)**
- C10** Act modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2)(b), 5, **Sch. para. 5**
- C11** Act restricted (E.W.) (1.3.2007) by National Health Service Act 2006 (c. 41), **ss. 71(8)**, 277
- C12** Act modified (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(3), 7, **Sch. para. 5**
- C13** Act modified (30.6.2008 for certain purposes and 1.1.2009 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **8(1)(2)**, 9
- C14** Act modified (1.7.2009 for certain purposes and 30.6.2010 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), arts. 1(2), 34, **Sch. paras. 4, 5**

## [PART 1A

### THE REGULATORS

#### CHAPTER 1

#### THE FINANCIAL CONDUCT AUTHORITY

##### *The Financial Conduct Authority*

### **1A** The Financial Conduct Authority

- (1) The body corporate previously known as the Financial Services Authority is to be known instead as the Financial Conduct Authority (in this Act referred to as “the FCA”).
- (2) The FCA must comply with the requirements as to its constitution set out in Schedule 1ZA.
- (3) Schedule 1ZA also makes provision about the status of the FCA and the exercise of certain of its functions.

##### *The FCA's general duties*

### **1B** The FCA's general duties

- (1) In discharging its general functions, the FCA must, so far as is reasonably possible, act in a way which—
  - (a) is compatible with its strategic objective, and
  - (b) advances one or more of its operational objectives.
- (2) The FCA's strategic objective is: protecting and enhancing confidence in the UK financial system.

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- (3) The FCA’s operational objectives are—
- (a) the consumer protection objective (see section 1C);
  - (b) the integrity objective (see section 1D);
  - (c) the efficiency and choice objective (see section 1E).
- (4) The FCA must, so far as is compatible with its strategic and operational objectives, discharge its general functions in a way which promotes competition.
- (5) In discharging its general functions the FCA must have regard to—
- (a) the regulatory principles in section 3B, and
  - (b) the importance of taking action intended to minimise the extent to which it is possible for a business carried on—
    - (i) by an authorised person or a recognised investment exchange, or
    - (ii) in contravention of the general prohibition,to be used for a purpose connected with financial crime.
- (6) “Financial crime” includes any offence involving—
- (a) fraud or dishonesty,
  - (b) misconduct in, or misuse of information relating to, a financial market, or
  - (c) handling the proceeds of crime.
- (7) “Offence” includes an act or omission which would be an offence if it had taken place in the United Kingdom.
- (8) The FCA’s general functions are—
- (a) its function of making rules under this Act (considered as a whole),
  - (b) its function of preparing and issuing codes under this Act (considered as a whole),
  - (c) its functions in relation to the giving of general guidance under this Act (considered as a whole), and
  - (d) its function of determining the general policy and principles by reference to which it performs particular functions.
- (9) “General guidance” has the meaning given in section 139B(5).

## **1C The consumer protection objective**

- (1) The consumer protection objective is: securing an appropriate degree of protection for consumers.
- (2) In considering what degree of protection for consumers may be appropriate, the FCA must have regard to—
- (a) the differing degrees of risk involved in different kinds of investment or other transaction;
  - (b) the differing degrees of experience and expertise that different consumers may have;
  - (c) any information which the consumer financial education body has provided to the FCA in the exercise of the consumer financial education function;
  - (d) any information which the scheme operator of the ombudsman scheme has provided to the FCA pursuant to section 232A;
  - (e) the needs that consumers may have for advice and accurate information;

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- (f) the general principle that consumers should take responsibility for their decisions.
- (3) “Consumers” means persons who—
- (a) use, have used or may use services within subsection (4) or (5),
  - (b) have relevant rights or interests in relation to any of those services,
  - (c) have invested, or may invest, in financial instruments, or
  - (d) have relevant rights or interests in relation to financial instruments.
- (4) The services within this subsection are services provided—
- (a) by authorised persons in carrying on regulated activities;
  - (b) by authorised persons in carrying on a consumer credit business in connection with the accepting of deposits;
  - (c) by authorised persons in communicating, or approving the communication by others of, invitations to engage in investment activity;
  - (d) by authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services;
  - (e) by persons acting as appointed representatives;
  - (f) by payment service providers in providing payment services;
  - (g) by electronic money issuers in issuing electronic money;
  - (h) by sponsors to issuers of securities;
  - (i) by primary information providers to persons who issue financial instruments.
- (5) The services within this subsection are services that are provided by persons other than authorised persons but are provided in carrying on regulated activities.
- (6) A person (“P”) has a “relevant right or interest” in relation to any services within subsection (4) or (5) if P has a right or interest—
- (a) which is derived from, or is otherwise attributable to, the use of the services by others, or
  - (b) which may be adversely affected by the use of the services by persons acting on P’s behalf or in a fiduciary capacity in relation to P.
- (7) If a person is providing a service within subsection (4) or (5) as 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.
- (8) A person who deals with another person (“B”) in the course of B providing a service within subsection (4) or (5) is to be treated as using the service.
- (9) A person (“P”) has a “relevant right or interest” in relation to any financial instruments if P has—
- (a) a right or interest which is derived from, or is otherwise attributable to, investment in the instruments by others, or
  - (b) a right or interest which may be adversely affected by the investment in the instruments by persons acting on P’s behalf or in a fiduciary capacity in relation to P.
- (10) In this section—
- “accepting”, in relation to deposits, includes agreeing to accept;
- “consumer credit business” has the same meaning as in the Consumer Credit Act 1974;

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“credit institution” means—

- (a) a credit institution authorised under the banking consolidation 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;

“electronic money” has the same meaning as in the Electronic Money  
Regulations 2011;

“electronic money issuer” means a person who is an electronic money  
issuer for the purposes of the Electronic Money Regulations 2011 as a result  
of falling within paragraphs (a) to (d) of the definition in regulation 2(1) of  
those Regulations;

“engage in investment activity” has the meaning given in section 21;

“financial instrument” has the meaning given in section 102A(4);

“issuer”, except in the expression “electronic money issuer”, has the  
meaning given in section 102A(6);

“payment services” has the same meaning as in the Payment Services  
Regulations 2009;

“payment service provider” means a person who is a payment service  
provider for the purposes of those regulations as a result of falling within any  
of paragraphs (a) to (e) of the definition in regulation 2(1);

“primary information provider” has the meaning given in section 89P(2);

“relevant ancillary service” means any service of a kind mentioned in  
Section B of Annex I to the markets in financial instruments directive the  
provision of which does not involve the carrying on of a regulated activity;

“securities” has the meaning given in section 102A(2);

“sponsor” has the meaning given in section 88(2).

## **1D The integrity objective**

- (1) The integrity objective is: protecting and enhancing the integrity of the UK financial  
system.
- (2) The “integrity” of the UK financial system includes—
  - (a) its soundness, stability and resilience,
  - (b) its not being used for purposes of financial crime, as defined in section 1B(6),
  - (c) its not being affected by behaviour that amounts to market abuse,
  - (d) the orderly operation of the financial markets, and
  - (e) the transparency of the price formation process in those markets.

## **1E The efficiency and choice objective**

The efficiency and choice objective is: promoting efficiency and choice in the market  
for—

- (a) the services within section 1C(4), or
- (b) services provided by a recognised investment exchange in carrying on  
regulated activities in respect of which it is by virtue of section 285(2) exempt  
from the general prohibition.

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## **1F Power to amend objectives**

The Treasury may by order—

- (a) amend any of subsections (3) to (10) of section 1C;
- (b) amend section 1E so as to vary the services referred to in that section.

## **1G Guidance about objectives**

- (1) The general guidance given by the FCA under section 139A must include guidance about—
  - (a) how it intends to advance its objectives in discharging its general functions in relation to different categories of authorised person or regulated activity, and
  - (b) which matters it regards, in relation to PRA-authorised persons, as being primarily its responsibility rather than that of the PRA.
- (2) Before giving or altering any guidance complying with subsection (1), the FCA must consult the PRA.

*Arrangements for consulting practitioners and consumers*

## **1H The FCA’s general duty to consult**

The FCA must make and maintain effective arrangements for consulting practitioners and consumers on the extent to which its general policies and practices are consistent with its general duties under section 1B.

## **1I The Practitioner Panel**

- (1) Arrangements under section 1H must include the establishment and maintenance of a panel of persons (to be known as “the Practitioner Panel”) to represent the interests of practitioners.
- (2) The FCA must appoint one of the members of the Practitioner Panel to be its chair.
- (3) The Treasury’s approval is required for the appointment or dismissal of the chair.
- (4) The FCA must appoint to the Practitioner Panel such—
  - (a) persons representing authorised persons, and
  - (b) persons representing recognised investment exchanges,as it considers appropriate.
- (5) The FCA may appoint to the Practitioner Panel such other persons as it considers appropriate.

## **1J The Smaller Business Practitioner Panel**

- (1) Arrangements under section 1H must include the establishment and maintenance of a panel of persons (to be known as “the Smaller Business Practitioner Panel”) to represent the interests of eligible practitioners.
- (2) “Eligible practitioners” means authorised persons of a description specified in a statement maintained by the FCA.

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- (3) The FCA must appoint one of the members of the Smaller Business Practitioner Panel to be its chair.
- (4) The Treasury’s approval is required for the appointment or dismissal of the chair.
- (5) The FCA must appoint to the Smaller Business Practitioner Panel such—
  - (a) individuals who are eligible practitioners, and
  - (b) persons representing eligible practitioners,as it considers appropriate.
- (6) The FCA may appoint to the Smaller Business Practitioner Panel such other persons as it considers appropriate.
- (7) In making the appointments, the FCA must have regard to the desirability of ensuring the representation of eligible practitioners carrying on a range of regulated activities.
- (8) The FCA may revise the statement maintained under subsection (2).
- (9) The FCA must—
  - (a) send a copy of the statement or revised statement to the Treasury without delay, and
  - (b) publish the statement as for the time being in force in such manner as it thinks fit.

## **1K The Markets Practitioner Panel**

- (1) Arrangements under section 1H must include the establishment and maintenance of a panel of persons (to be known as “the Markets Practitioner Panel”) to represent the interests of practitioners who are likely to be affected by the exercise by the FCA of its functions relating to markets, including its functions under Parts 6, 8A and 18.
- (2) The FCA must appoint one of the members of the Markets Practitioner Panel to be its chair.
- (3) The Treasury’s approval is required for the appointment or dismissal of the chair.
- (4) The FCA must appoint to the Markets Practitioner Panel such persons to represent the interests of persons within subsection (5) as it considers appropriate.
- (5) The persons within this subsection are—
  - (a) authorised persons,
  - (b) persons who issue financial instruments,
  - (c) sponsors as defined in section 88(2),
  - (d) recognised investment exchanges, and
  - (e) primary information providers, as defined in section 89P(2).
- (6) The FCA may appoint to the Markets Practitioner Panel such other persons as it considers appropriate.

## **1L The Consumer Panel**

- (1) Arrangements under section 1H must include the establishment and maintenance of a panel of persons (to be known as “the Consumer Panel”) to represent the interests of consumers.

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- (2) The FCA must appoint one of the members of the Consumer Panel to be its chair.
- (3) The Treasury’s approval is required for the appointment or dismissal of the chair.
- (4) The FCA may appoint to the Consumer Panel such consumers, or persons representing the interests of consumers, as it considers appropriate.
- (5) The FCA must secure that membership of the Consumer Panel is such as to give a fair degree of representation to those who are using, or are or may be contemplating using, services otherwise than in connection with businesses carried on by them.
- (6) Sections 425A and 425B (meaning of “consumers”) apply for the purposes of this section, but the references to consumers in this section do not include consumers who are authorised persons.

### **1M Duty to consider representations made by the Panels**

- (1) The FCA must consider representations that are made to it in accordance with arrangements made under section 1H.
- (2) The FCA must from time to time publish in such manner as it thinks fit responses to the representations.

### Reviews

### **1N Reviews**

- (1) The Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the FCA has used its resources in discharging its functions.
- (2) A review may be limited by the Treasury to such functions of the FCA (however described) as the Treasury may specify in appointing the person to conduct it.
- (3) A review is not to be concerned with the merits of the FCA’s general policy or principles in pursuing its strategic objective and its operational objectives.
- (4) On completion of a review, the person conducting it must make a written report to the Treasury—
  - (a) setting out the result of the review, and
  - (b) making such recommendations (if any) as the person considers appropriate.
- (5) A copy of the report must be—
  - (a) laid before Parliament, and
  - (b) published in such manner as the Treasury consider appropriate.
- (6) Any expenses reasonably incurred in the conduct of the review are to be met by the Treasury out of money provided by Parliament.
- (7) “Independent” means appearing to the Treasury to be independent of the FCA.

### **1O Right to obtain documents and information**

- (1) A person conducting a review under section 1N—

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- (a) has a right of access at any reasonable time to all such documents as the person may reasonably require for the purposes of the review, and
  - (b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.
- (2) Subsection (1) applies only to documents in the custody of or under the control of the FCA.
- (3) An obligation imposed on a person as a result of the exercise of the powers conferred by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

## **CHAPTER 2**

### THE PRUDENTIAL REGULATION AUTHORITY

#### *The Prudential Regulation Authority*

#### **2A The Prudential Regulation Authority**

- (1) The body corporate known as the Prudential Regulation Authority (in this Act referred to as “the PRA”) is to have the functions conferred on it by or under this Act.
- (2) The PRA must comply with the requirements as to its constitution set out in Schedule 1ZB.
- (3) Schedule 1ZB also confers on the Bank of England functions in relation to the PRA and makes provision about the status of the PRA and the exercise of certain of its functions.

#### *The PRA’s general duties*

#### **2B The PRA’s general objective**

- (1) In discharging its general functions the PRA must, so far as is reasonably possible, act in a way which advances its general objective.
- (2) The PRA’s general objective is: promoting the safety and soundness of PRA-  
authorised persons.
- (3) That objective is to be met primarily by—
- (a) seeking to ensure that the business of PRA-  
authorised persons is carried on in a way which avoids any adverse effect on the stability of the UK financial system, and
  - (b) seeking to minimise the adverse effect that the failure of a PRA-  
authorised person could be expected to have on the stability of the UK financial system.
- (4) The adverse effects mentioned in subsection (3) may, in particular, result from the disruption of the continuity of financial services.

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- (5) In this Act “PRA-*authorised person*” means an authorised person who has permission  
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 (a) given under Part 4A, or  
 (b) resulting from any other provision of this Act,  
to carry on regulated activities that consist of or include one or more PRA-regulated  
activities.
- (6) In this Act “the UK financial system” means the financial system operating in the  
United Kingdom and includes—  
 (a) financial markets and exchanges,  
 (b) regulated activities, and  
 (c) other activities connected with financial markets and exchanges.
- (7) Subsection (1) is subject to sections 2C and 2D.

## **2C Insurance objective**

- (1) In discharging its general functions so far as relating to a PRA-regulated activity  
relating to the effecting or carrying out of contracts of insurance or PRA-*authorised*  
persons carrying on that activity, the PRA must, so far as is reasonably possible, act  
in a way—  
 (a) which is compatible with its general objective and its insurance objective, and  
 (b) which the PRA considers most appropriate for the purpose of advancing those  
objectives.
- (2) The PRA’s insurance objective is: contributing to the securing of an appropriate degree  
of protection for those who are or may become policyholders.
- (3) This section applies only if the effecting or carrying out of contracts of insurance as  
principal is to any extent a PRA-regulated activity.

## **2D Power to provide for additional objectives**

- (1) An order under section 22A which, at any time after the coming into force of the  
first order under that section, extends the regulated activities that are PRA-regulated  
activities may specify an additional objective (“the specified objective”) in relation to  
specified activities that become PRA-regulated activities by virtue of the order (“the  
additional activities”).
- (2) In discharging its general functions so far as relating to PRA-*authorised* persons  
carrying on the additional activities, the PRA must, so far as is reasonably possible,  
act in a way—  
 (a) which is compatible with its general objective and the specified objective, and  
 (b) which the PRA considers most appropriate for the purpose of meeting those  
objectives.

## **2E Interpretation of references to objectives**

In this Act, a reference, in relation to any function of the PRA, to the objectives of the  
PRA, is a reference to its general objective but—

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- (a) so far as the function is exercisable in relation to the activity of effecting or carrying out contracts of insurance or PRA-authorised persons carrying on that activity, is a reference to its general objective and its insurance objective;
- (b) so far as the function is exercisable in relation to an activity specified for the purposes of section 2D(1) by an order under section 22A, or a PRA-authorised persons carrying on that activity, is reference to its general objective and the objective specified by the order.

## **2F** Limit on effect of section 2B to 2D

Nothing in section 2B to 2D is to be regarded as requiring the PRA to ensure that no PRA-authorised person fails.

## **2G** Duty to have regard to regulatory principles

In discharging its general functions, the PRA must also have regard to the regulatory principles in section 3B.

## **2H** Guidance about objectives

- (1) The PRA must give, and from time to time review, guidance about
  - (a) how it intends to advance its objectives in discharging its general functions in relation to different categories of PRA-authorised person or PRA-regulated activity, and
  - (b) which matters it regards as being primarily its responsibility rather than that of the FCA.
- (2) Before giving or altering any guidance complying with subsection (1), the PRA must consult the FCA.
- (3) The PRA must publish the guidance as for the time being in force.

## **2I** Interpretation of Chapter 2

- (1) For the purposes of this Chapter, the PRA’s general functions are—
  - (a) its function of making rules under this Act (considered as a whole),
  - (b) its function of preparing and issuing codes under this Act (considered as a whole), and
  - (c) its function of determining the general policy and principles by reference to which it performs particular functions.
- (2) For the purposes of this Chapter, the cases in which a PRA-authorised person (“P”) is to be regarded as failing include those where—

  - (a) P enters insolvency,
  - (b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to P, or
  - (c) P falls to be taken for the purposes of the compensation scheme to be unable, or likely to be unable, to satisfy claims against P.

- (3) In subsection (2)(a) “insolvency” includes—
  - (a) bankruptcy,

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- (b) liquidation,
  - (c) bank insolvency,
  - (d) administration,
  - (e) bank administration,
  - (f) receivership,
  - (g) a composition between P and P’s creditors, and
  - (h) a scheme of arrangement of P’s affairs.
- (4) For the purposes of this Part, a PRA-authorised person may be, but is not necessarily to be, regarded as failing, in a case not falling within subsection (2), if the person receives financial assistance from the Treasury or the Secretary of State.
- (5) In subsection (4) “financial assistance” includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent).
- (6) The Treasury may by order provide that a specified activity or transaction, or class of activity or transaction, is to be or not to be treated as financial assistance for the purposes of subsection (4); and subsection (5) is subject to this subsection.

*Arrangements for consulting practitioners*

**2J**     **The PRA’s general duty to consult**

- (1) The PRA must make and maintain effective arrangements for consulting PRA-authorised persons or, where appropriate, persons appearing to the PRA to represent the interests of such persons on the extent to which its general policies and practices are consistent with its general duties under sections 2B to 2G.
- (2) Those arrangements may include the establishment of such panels as the PRA thinks fit.
- (3) The PRA must publish details of any arrangements made under this section.

**2K**     **Duty to consider representations**

- (1) The PRA must consider representations that are made to it in accordance with arrangements made under section 2J.
- (2) The PRA must from time to time publish in such manner as it thinks fit responses to the representations.

*Reviews*

**2L**     **Reviews**

- (1) The Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the PRA has used its resources in discharging its functions.
- (2) A review may be limited by the Treasury to such functions of the PRA (however described) as the Treasury may specify in appointing the person to conduct it.

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- (3) A review is not to be concerned with the merits of the PRA’s general policy or principles in pursuing the PRA’s objectives.
- (4) On completion of a review, the person conducting it must make a written report to the Treasury—
  - (a) setting out the result of the review, and
  - (b) making such recommendations (if any) as the person considers appropriate.
- (5) A copy of the report must be—
  - (a) laid before Parliament, and
  - (b) published in such manner as the Treasury consider appropriate.
- (6) Any expenses reasonably incurred in the conduct of the review are to be met by the Treasury out of money provided by Parliament.
- (7) “Independent” means appearing to the Treasury to be independent of the PRA.

## **2M** Right to obtain documents and information

- (1) A person conducting a review under section 2L—
  - (a) has a right of access at any reasonable time to all such documents as the person may reasonably require for the purposes of the review, and
  - (b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably necessary for that purpose.
- (2) Subsection (1) applies only to documents in the custody of or under the control of the PRA.
- (3) An obligation imposed on a person as a result of the exercise of the powers conferred by subsection (1) is enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

## **CHAPTER 3**

### FURTHER PROVISIONS RELATING TO FCA AND PRA

#### *Introductory*

- 3A**
- (1) This section has effect for the interpretation of this Act.
  - (2) The FCA and the PRA are the “regulators”, and references to a regulator are to be read accordingly.
  - (3) Subsection (2) does not affect—
    - (a) the meaning of the following expressions—
      - “home state regulator”;
      - “host state regulator”;
      - “overseas regulator”, or
    - (b) the meaning of “the appropriate regulator” in Part 18 (recognised investment exchanges and clearing houses).

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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### *Regulatory principles*

#### **3B Regulatory principles to be applied by both regulators**

- (1) In relation to the regulators, the regulatory principles referred to in section [1B\(5\)\(a\)](#) and [2G](#) are as follows—
- (a) the need to use the resources of each regulator in the most efficient and economic way;
  - (b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
  - (c) the general principle that consumers should take responsibility for their decisions;
  - (d) the responsibilities, in relation to compliance with requirements imposed by or under this Act, of the senior management of persons subject to those requirements;
  - (e) the desirability in appropriate cases of each regulator publishing information relating to persons on whom requirements are imposed by or under this Act, or requiring such persons to publish information, as a means of contributing to the advancement by each regulator of its objectives;
  - (f) the principle that the regulators should exercise their functions as transparently as possible.
- (2) “Consumer” has the same meaning as in section [1C](#).
- (3) The Treasury may by order amend subsection [\(2\)](#).

### *Corporate governance*

#### **3C Duty to follow principles of good governance**

In managing their affairs, each regulator must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

### *Relationship between PRA and FCA*

#### **3D Duty of FCA and PRA to ensure co-ordinated exercise of functions**

- (1) The regulators must co-ordinate the exercise of their respective qualifying functions with a view to ensuring—
- (a) that each regulator consults the other regulator (where not otherwise required to do so) in connection with any proposed exercise of a qualifying function in a way that may have a material adverse effect on the advancing by the other regulator of any of its objectives;
  - (b) that where appropriate each regulator obtains information and advice from the other regulator in connection with matters in relation to which the other regulator exercises qualifying functions and may be expected to have particular expertise;

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- (c) that where either regulator exercises qualifying functions in relation to matters of common regulatory interest, both regulators comply with their respective duties under section 1B(5)(a) or 2G, so far as relating to the regulatory principles in section 3B(1)(a) and (b).
- (2) The duty in subsection (1) applies only to the extent that compliance with the duty—
  - (a) is compatible with the advancing by each regulator of its objectives, and
  - (b) does not impose a burden on the regulators that is disproportionate to the benefits of compliance.
- (3) The “qualifying functions” of the FCA are—
  - (a) its functions relating to the regulation of authorised persons, and
  - (b) its other functions that relate to matters in respect of which the PRA exercises similar or related functions.
- (4) All the public functions of the PRA are “qualifying functions”.
- (5) A qualifying function of either regulator relates to matters of common regulatory interest if—
  - (a) the other regulator exercises similar or related functions in relation to the same persons,
  - (b) the other regulator exercises functions which relate to different persons but relate to similar subject-matter, or
  - (c) its exercise could affect the pursuit by the other regulator of its objectives.
- (6) In this section references to the FCA’s objectives are to its operational objectives.

### **3E Memorandum of understanding**

- (1) The regulators must prepare and maintain a memorandum which describes in general terms—
  - (a) the role of each regulator in relation to the exercise of qualifying functions which—
    - (i) relate to the regulation of authorised persons, or
    - (ii) relate to matters of common regulatory interest, and
  - (b) how the regulators intend to comply with section 3D in relation to the exercise of such functions.
- (2) The memorandum may in particular contain provisions about how the regulators intend to comply with section 3D in relation to—
  - (a) applications for Part 4A permission;
  - (b) the variation of permission;
  - (c) the imposition of requirements;
  - (d) the obtaining and disclosure of information;
  - (e) cases where a PRA-authorised person is a member of a group whose other members include one or more other authorised persons (whether or not PRA-authorised persons);
  - (f) functions under Schedule 3 (EEA passport rights) and Schedule 4 (Treaty rights);
  - (g) powers to appoint competent persons under Part 11 (information gathering and investigations) to conduct investigations on their behalf;

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- (h) functions under Part 12 (control over authorised persons);
  - (i) functions under Part 13 (incoming firms: intervention by regulator);
  - (j) functions under Part 19 (Lloyd’s);
  - (k) functions under section 347 (record of authorised persons etc.);
  - (l) fees payable to either regulator.
- (3) The memorandum must contain provision about the co-ordination by the regulators of—
- (a) their relations with regulatory bodies outside the United Kingdom,
  - (b) their relations with the European Supervisory Authorities (namely, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority), and
  - (c) the exercise of their functions in relation to the compensation scheme.
- (4) The regulators must review the memorandum at least once in each calendar year.
- (5) The regulators must send to the Treasury a copy of the memorandum and any revised memorandum.
- (6) The Treasury must lay before Parliament a copy of any document received by them under this section.
- (7) The regulators must ensure that the memorandum as currently in force is published in the way appearing to them to be best calculated to bring it to the attention of the public.
- (8) The memorandum need not relate to any aspect of compliance with section 3D if the regulators consider—
- (a) that publication of information about that aspect would be against the public interest, or
  - (b) that that aspect is a technical or operational matter not affecting the public.
- (9) “Qualifying function” has the same meaning as in section 3D.
- (10) The reference in subsection (1)(a) to matters of common regulatory interest is to be read in accordance with section 3D(5).

### **3F With-profits insurance policies**

- (1) In relation to PRA-authorised persons carrying on the activity of effecting or carrying out contracts of insurance, responsibility for contributing to the securing of an appropriate degree of protection for the reasonable expectations of policyholders as to the distribution of surplus under with-profits policies is that of the PRA rather than the FCA.
- (2) A “with-profits policy” is a contract of insurance under which the policyholder is eligible to participate in surplus.
- (3) This section applies only if the effecting or carrying out of with-profits policies is a PRA-regulated activity.

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### **3G Power to establish boundary between FCA and PRA responsibilities**

- (1) The Treasury may by order specify matters that, in relation to the exercise by either regulator of its functions relating to PRA-~~authorised~~ persons, are to be, or are to be primarily, the responsibility of one regulator rather than the other.
- (2) The order may—
  - (a) provide that one regulator is or is not to have regard to specified matters when exercising specified functions;
  - (b) require one regulator to consult the other.
- (3) Subsection (1) is subject to section 3F.
- (4) An order under this section—
  - (a) must be laid before Parliament after being made, and
  - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).
- (5) “Relevant period” means a period of 28 days beginning with the day on which the order is made.
- (6) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

#### *Power of PRA to restrain proposed action by FCA*

### **3H Power of PRA to require FCA to refrain from specified action**

- (1) Where the first, second and third conditions are met, the PRA may give a direction under this section to the FCA.
- (2) The first condition is that, in relation to PRA-~~authorised~~ persons generally, a class of PRA-~~authorised~~ persons or a particular PRA-~~authorised~~ person, the FCA is proposing to exercise any of its powers under this Act which relate to the regulation of authorised persons, other than its power in relation to consent for the purposes of section 55F or 55I.
- (3) The second condition is that the PRA is of the opinion that the exercise of the power in the manner proposed may—
  - (a) threaten the stability of the UK financial system, or
  - (b) result in the failure of a PRA-~~authorised~~ person in a way that would adversely affect the UK financial system.
- (4) The third condition is that the PRA is of the opinion that the giving of the direction is necessary in order to avoid the possible consequence falling within subsection (3).
- (5) A direction under this section is a direction requiring the FCA not to exercise the power or not to exercise it in a specified manner.
- (6) The direction may be expressed to have effect during a specified period or until revoked.

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- (7) The FCA is not required to comply with a direction under this section if or to the extent that in the opinion of the FCA compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.
- (8) The reference in subsection (3)(b) to the “failure” of a PRA-authorised person is to be read in accordance with section 2I(2) to (6).

### **3I      Revocation of directions under section 3H**

- (1) The PRA may at any time by notice to the FCA revoke a direction under section 3H.
- (2) The revocation of a direction under section 3H does not affect the validity of anything previously done in accordance with it.

### **3J      Further provisions about directions under section 3H**

- (1) Before giving a direction under section 3H, the PRA must consult the FCA.
- (2) A direction under section 3H must be given or confirmed in writing, and must be accompanied by a statement of the reasons for giving it.
- (3) A notice revoking a direction under section 3H must be given or confirmed in writing.
- (4) The PRA must give the Treasury a copy of—
  - (a) a direction under section 3H;
  - (b) a statement relating to such a direction;
  - (c) a notice revoking such a direction.
- (5) The Treasury must lay before Parliament any document received by them under subsection (4).
- (6) The PRA must also—
  - (a) publish the direction and statement, or the notice, in such manner as it thinks fit, and
  - (b) where the direction or notice relates to a particular authorised person, give a copy of the direction and statement, or the notice, to that person.
- (7) But subsections (5) and (6) do not apply in a case where the PRA considers that compliance with those subsections would be against the public interest.

### *Directions relating to consolidated supervision*

### **3K      Directions relating to consolidated supervision of groups**

- (1) This section applies where one of the regulators (“the supervising regulator”), but not the other, is the competent authority for the purpose of consolidated supervision that is required in relation to some or all of the members of a group (“the relevant group”) in pursuance of any of the relevant directives.
- (2) “Consolidated supervision” includes supplementary supervision.
- (3) The “relevant directives” are—
  - (a) the banking consolidation directive;

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- (b) Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate;
  - (c) Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions;
  - (d) Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).
- (4) The supervising regulator may, if it considers it necessary to do so for the effective consolidated supervision of the relevant group, give the other regulator a direction under this section.
- (5) A direction under this section is a direction requiring the other regulator to exercise, or not to exercise, a relevant function in a specified manner in relation to authorised persons who are members of the relevant group.
- (6) The direction may relate to members of the relevant group other than the members in respect of which consolidated supervision is required.
- (7) A “relevant function”, in relation to either regulator, is a function under this Act which relates to the regulation of authorised persons, but does not include—
- (a) the regulator’s function of making rules under this Act;
  - (b) its function of preparing and issuing codes under this Act;
  - (c) its function of determining the general policy and principles by reference to which it performs particular functions;
  - (d) the FCA’s functions in relation to the giving of general guidance;
  - (e) the PRA’s functions in relation to the giving of guidance under section 2H;
  - (f) the FCA’s functions in relation to consent for the purposes of section 55F or 55I.
- (8) The direction may not require the regulator to which it is given (“the directed regulator”) to do anything that it has no power to do, but the direction is relevant to the exercise of any discretion conferred on the directed regulator.
- (9) The directed regulator must comply with the direction as soon as practicable, but this is subject to subsections (10) and (11).
- (10) The directed regulator is not required to comply with a direction under this section if or to the extent that in its opinion compliance would be incompatible with any EU obligation or any other international obligation of the United Kingdom.
- (11) Directions given by the FCA under this section are subject to any directions given to the FCA under section 3H.

### **3L Revocation of directions under section 3K**

- (1) The supervising regulator may at any time by notice to the other regulator revoke a direction under section 3K.
- (2) The revocation of the direction does not affect the validity of anything previously done in accordance with it.

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- (3) Expressions defined for the purposes of section 3K have the same meaning in this section.

**3M Further provisions about directions under section 3K**

- (1) Before giving a direction under section 3K, the supervising regulator must consult the other regulator.
- (2) A direction under section 3K must be given or confirmed in writing, and must be accompanied by a statement of the reasons for giving it.
- (3) A notice revoking a direction under section 3K must be given or confirmed in writing.
- (4) The regulator to which a direction under section 3K is given must give a copy of the direction and statement to each of the authorised persons to whom the direction relates.
- (5) The supervising regulator must publish the direction and statement, or the notice, in such manner as it thinks fit.
- (6) But subsections (4) and (5) do not apply in a case where the regulator on which the duty is imposed considers that compliance with the subsection would be against the public interest.
- (7) Expressions defined for the purposes of section 3K have the same meaning in this section.

**3N Consultation by regulator complying with direction**

- (1) If the directed regulator is required by this Act to consult any person other than the supervising regulator before exercising the relevant function to which the direction relates, the complying regulator must give the supervising regulator copies of any written representations received from the persons consulted.
- (2) Expressions defined for the purposes of section 3K have the same meaning in this section.

*Co-operation with Bank of England*

**3O Co-operation by FCA and PRA with Bank of England**

- (1) Each regulator must take such steps as it considers appropriate to co-operate with the Bank of England in the pursuit by the Bank of its Financial Stability Objective.
- (2) Co-operation under subsection (1) may include the sharing of information that the regulator is not prevented from disclosing.

## PART II

### REGULATED AND PROHIBITED ACTIVITIES

#### *The general prohibition*

#### **19 The general prohibition.**

- (1) No person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is—
  - (a) an authorised person; or
  - (b) an exempt person.
- (2) The prohibition is referred to in this Act as the general prohibition.

#### *Requirement for permission*

#### **20 Authorised persons acting without permission.**

- (1) If an authorised person [other than a PRA-~~authorised person~~] carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission—
  - [(a) given to that person under Part 4A, or]
  - (b) resulting from any other provision of this Act,he is to be taken to have contravened a requirement imposed on him by [the FCA] under this Act.  
[(1A) If a PRA-~~authorised person~~ carries on a regulated activity in the United Kingdom, or purports to do so, otherwise than in accordance with permission given to the person under Part 4A or resulting from any other provision of this Act, the person is to be taken to have contravened—
  - (a) a requirement imposed by the FCA, and
  - (b) a requirement imposed by the PRA.]
- (2) [A contravention within subsection (1) or (1A)] does not—
  - (a) make a person guilty of an offence;
  - (b) make any transaction void or unenforceable; or
  - (c) (subject to subsection (3)) give rise to any right of action for breach of statutory duty.
- (3) In prescribed cases [a contravention within subsection (1) or (1A)] is actionable at the suit of a 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.

#### **Annotations:**

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

- C22** S. 20 excluded (1.12.2001) by S.I. 2001/2636, arts. 1(2)(b), 62(1)-(4); S.I. 2001/3538, art. 2(1)  
S. 20 applied (1.12.2001) by S.I. 2001/2636, arts. 1(2)(b), 62(5); S.I. 2001/3538, art. 2(1)  
S. 20 modified (31.10.2001) by S.I. 2001/3374, art. 1, Sch. para. 2

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- C23** S. 20 modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 2**
- C24** S. 20 modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2)(b), 5, **Sch. para. 2**
- C25** S. 20 modified (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(3), 7, **Sch. para. 2**
- C26** S. 20 modified (30.6.2008 for certain purposes, otherwise 1.1.2009) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **7(1)(2)**
- C27** S. 20 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2)**, 34, {Sch. paras. 1, 2}

#### **Commencement Information**

- II** S. 20 wholly in force at 1.12.2001; s. 20 not in force at Royal Assent see s. 431(2); s. 20(3) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 20 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

### *Financial promotion*

#### **21 Restrictions on financial promotion.**

- (1) A person (“A”) must not, in the course of business, communicate an invitation or inducement to engage in investment activity.
- (2) But subsection (1) does not apply if—
  - (a) A is an authorised person; or
  - (b) the content of the communication is approved for the purposes of this section by an authorised person.
- (3) In the case of a communication originating outside the United Kingdom, subsection (1) applies only if the communication is capable of having an effect in the United Kingdom.
- (4) The Treasury may by order specify circumstances in which a person is to be regarded for the purposes of subsection (1) as—
  - (a) acting in the course of business;
  - (b) not acting in the course of business.
- (5) The Treasury may by order specify circumstances (which may include compliance with financial promotion rules) in which subsection (1) does not apply.
- (6) An order under subsection (5) may, in particular, provide that subsection (1) does not apply in relation to communications—
  - (a) of a specified description;
  - (b) originating in a specified country or territory outside the United Kingdom;
  - (c) originating in a country or territory which falls within a specified description of country or territory outside the United Kingdom; or
  - (d) originating outside the United Kingdom.
- (7) The Treasury may by order repeal subsection (3).
- (8) “Engaging in investment activity” means—

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- (a) entering or offering to enter into an agreement the making or performance of which by either party constitutes a controlled activity; or
  - (b) exercising any rights conferred by a controlled investment to acquire, dispose of, underwrite or convert a controlled investment.
- (9) An activity is a controlled activity if—
- (a) it is an activity of a specified kind or one which falls within a specified class of activity; and
  - (b) it relates to an investment of a specified kind, or to one which falls within a specified class of investment.
- (10) An investment is a controlled investment if it is an investment of a specified kind or one which falls within a specified class of investment.
- (11) Schedule 2 (except paragraph 26) applies for the purposes of subsections (9) and (10) with references to section 22 being read as references to each of those subsections.
- (12) Nothing in Schedule 2, as applied by subsection (11), limits the powers conferred by subsection (9) or (10).
- (13) “Communicate” includes causing a communication to be made.
- (14) “Investment” includes any asset, right or interest.
- (15) “Specified” means specified in an order made by the Treasury.

**Annotations:**

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

- C28** S. 21(1) modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 6**
- C29** S. 21(1) modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 6**
- C30** S. 21(1) modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2)(b), 5, **Sch. para. 6**
- C31** S. 21(1) modified (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(3), 7, **Sch. para. 6**
- C32** S. 21(2) modified (30.6.2008 for certain purposes, otherwise 1.1.2009) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **8(1)(3)**
- C33** S. 21(2) modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2), 34**, {Sch. paras. 1, 3}

**Commencement Information**

- I2** S. 21 wholly in force at 1.12.2001; s. 21 not in force at Royal Assent see s. 431(2); s. 21 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 21 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

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### *Regulated activities*

## **22 The classes of activity and categories of investment.**

- (1) An activity is a regulated activity for the purposes of this Act if it is an activity of a specified kind which is carried on by way of business and—
  - (a) relates to an investment of a specified kind; or
  - (b) in the case of an activity of a kind which is also specified for the purposes of this paragraph, is carried on in relation to property of any kind.
- (2) Schedule 2 makes provision supplementing this section.
- (3) Nothing in Schedule 2 limits the powers conferred by subsection (1).
- (4) “Investment” includes any asset, right or interest.
- (5) “Specified” means specified in an order made by the Treasury.

#### **Annotations:**

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

**C34** [S. 22](#) applied (1.9.2002) by [1974 c. 39, s. 16\(6E\)\(a\)](#) (as inserted (1.9.2002) by 2001/544, arts. 2(2)(b), 90(2))

## **[22A Designation of activities requiring prudential regulation by PRA**

- (1) The Treasury may by order specify the regulated activities that are “PRA-regulated activities” for the purposes of this Act.
- (2) An order under subsection (1) may—
  - (a) provide for exceptions;
  - (b) confer powers on the Treasury, the FCA or the PRA;
  - (c) authorise the making of rules or other instruments by the PRA or the FCA for purposes of, or connected with, any relevant provision;
  - (d) make provision in respect of any information or document which in the opinion of the Treasury, the FCA or the PRA, is relevant for purposes of, or connected with, any relevant provision;
  - (e) make such consequential, transitional, or supplemental provision as the Treasury considers appropriate for purposes of, or connected with, any relevant provision.
- (3) Provision made as a result of subsection (2)(e) may amend any primary or subordinate legislation, including any provision of, or made under, this Act.
- (4) “Relevant provision” means this section or any provision made under this section.
- (5) Subsection (7) applies to the first order made under subsection (1).
- (6) Subsection (7) also applies to any subsequent order made under subsection (1) which
  - (a) contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order would be—
    - (i) that an activity would become a PRA-regulated activity, or

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- (ii) that a PRA-regulated activity would become a regulated activity that is not a PRA-regulated activity, or
    - (b) amends primary legislation.
- (7) An order to which this subsection applies—
  - (a) must be laid before Parliament after being made, and
  - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).
- (8) “Relevant period” means a period of 28 days beginning with the day on which the order is made.
- (9) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.]

### *Offences*

#### **23 Contravention of the general prohibition.**

- (1) A person who contravenes the general prohibition is guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (2) In this Act “an authorisation offence” means an offence under this section.
- (3) In proceedings for an authorisation offence it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

#### **24 False claims to be authorised or exempt.**

- (1) A person who is neither an authorised person nor, in relation to the regulated activity in question, an exempt person is guilty of an offence if he—
  - (a) describes himself (in whatever terms) as an authorised person;
  - (b) describes himself (in whatever terms) as an exempt person in relation to the regulated activity; or
  - (c) behaves, or otherwise holds himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is—
    - (i) an authorised person; or
    - (ii) an exempt person in relation to the regulated activity.
- (2) In proceedings for an offence under this section it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

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- (3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.
- (4) But where the conduct constituting the offence involved or included the public display of any material, the maximum fine for the offence is level 5 on the standard scale multiplied by the number of days for which the display continued.

## 25 Contravention of section 21.

- (1) A person who contravenes section 21(1) is guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (2) In proceedings for an offence under this section it is a defence for the accused to show—
  - (a) that he believed on reasonable grounds that the content of the communication was prepared, or approved for the purposes of section 21, by an authorised person; or
  - (b) that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

### Annotations:

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

- C35** S. 25(2)(a) modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 6**
- C36** S. 25(2)(a) modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 6**
- C37** S. 25(2)(a) modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2)(b), 5, **Sch. para. 6**

### *Enforceability of agreements*

## 26 Agreements made by unauthorised persons.

- (1) An agreement made by a person in the course of carrying on a regulated activity in contravention of the general prohibition is unenforceable against the other party.
- (2) The other party is entitled to recover—
  - (a) any money or other property paid or transferred by him under the agreement; and
  - (b) compensation for any loss sustained by him as a result of having parted with it.
- (3) “Agreement” means an agreement—
  - (a) made after this section comes into force; and
  - (b) the making or performance of which constitutes, or is part of, the regulated activity in question.

(4) This section does not apply if the regulated activity is accepting deposits.

**Annotations:**

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

- C38** S. 26(1)(2) applied (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 5(1)(4)** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**  
S. 26(1)(2) applied (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 5(1)**; S.I. 2001/3538, **art. 2(1)**

**27 Agreements made through unauthorised persons.**

- (1) An agreement made by an authorised person (“the provider”)—
- (a) in the course of carrying on a regulated activity (not in contravention of the general prohibition), but
  - (b) in consequence of something said or done by another person (“the third party”) in the course of a regulated activity carried on by the third party in contravention of the general prohibition,
- is unenforceable against the other party.
- (2) The other party is entitled to recover—
- (a) any money or other property paid or transferred by him under the agreement; and
  - (b) compensation for any loss sustained by him as a result of having parted with it.
- (3) “Agreement” means an agreement—
- (a) made after this section comes into force; and
  - (b) the making or performance of which constitutes, or is part of, the regulated activity in question carried on by the provider.
- (4) This section does not apply if the regulated activity is accepting deposits.

**Annotations:**

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

- C39** S. 27(1)(2) applied (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 5(2)(5)** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**  
S. 27(1)(2) applied (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 5(2)**; S.I. 2001/3538, **art. 2(1)**

**28 Agreements made unenforceable by section 26 or 27.**

- (1) This section applies to an agreement which is unenforceable because of section 26 or 27.
- (2) The amount of compensation recoverable as a result of that section is—
- (a) the amount agreed by the parties; or
  - (b) on the application of either party, the amount determined by the court.
- (3) If the court is satisfied that it is just and equitable in the circumstances of the case, it may allow—
- (a) the agreement to be enforced; or

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**Proposed Legislation:** *This version shows proposed changes to this legislation item. It has no official standing.*

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- (b) money and property paid or transferred under the agreement to be retained.
- (4) In considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the court must—
  - (a) if the case arises as a result of section 26, have regard to the issue mentioned in subsection (5); or
  - (b) if the case arises as a result of section 27, have regard to the issue mentioned in subsection (6).
- (5) The issue is whether the person carrying on the regulated activity concerned reasonably believed that he was not contravening the general prohibition by making the agreement.
- (6) The issue is whether the provider knew that the third party was (in carrying on the regulated activity) contravening the general prohibition.
- (7) If the person against whom the agreement is unenforceable—
  - (a) elects not to perform the agreement, or
  - (b) as a result of this section, recovers money paid or other property transferred by him under the agreement,
 he must repay any money and return any other property received by him under the agreement.
- (8) If property transferred under the agreement has passed to a third party, a reference in section 26 or 27 or this section to that property is to be read as a reference to its value at the time of its transfer under the agreement.
- (9) The commission of an authorisation offence does not make the agreement concerned illegal or invalid to any greater extent than is provided by section 26 or 27.

**Annotations:**

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

- C40** S. 28 applied (with modifications) (1.12.2001) by S.I. 2001/2657, arts. 1(1), 5(6) (which was revoked (8.10.2001) by S.I. 2001/3083, arts. 1(2), 23); S.I. 2001/3538, art. 2(1)  
 S. 28 applied (with modifications) (1.12.2001) by S.I. 2001/3083, arts. 1(2), 5(6); S.I. 2001/3538, art. 2(1)

**29 Accepting deposits in breach of general prohibition.**

- (1) This section applies to an agreement between a person (“the depositor”) and another person (“the deposit-taker”) made in the course of the carrying on by the deposit-taker of accepting deposits in contravention of the general prohibition.
- (2) If the depositor is not entitled under the agreement to recover without delay any money deposited by him, he may apply to the court for an order directing the deposit-taker to return the money to him.
- (3) The court need not make such an order if it is satisfied that it would not be just and equitable for the money deposited to be returned, having regard to the issue mentioned in subsection (4).

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**Proposed Legislation:** *This version shows proposed changes to this legislation item. It has no official standing.*

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- (4) The issue is whether the deposit-taker reasonably believed that he was not contravening the general prohibition by making the agreement.
- (5) “Agreement” means an agreement—
  - (a) made after this section comes into force; and
  - (b) the making or performance of which constitutes, or is part of, accepting deposits.

### **30 Enforceability of agreements resulting from unlawful communications.**

- (1) In this section—
  - “unlawful communication” means a communication in relation to which there has been a contravention of section 21(1);
  - “controlled agreement” means an agreement the making or performance of which by either party constitutes a controlled activity for the purposes of that section; and
  - “controlled investment” has the same meaning as in section 21.
- (2) If in consequence of an unlawful communication a person enters as a customer into a controlled agreement, it is unenforceable against him and he is entitled to recover—
  - (a) any money or other property paid or transferred by him under the agreement; and
  - (b) compensation for any loss sustained by him as a result of having parted with it.
- (3) If in consequence of an unlawful communication a person exercises any rights conferred by a controlled investment, no obligation to which he is subject as a result of exercising them is enforceable against him and he is entitled to recover—
  - (a) any money or other property paid or transferred by him under the obligation; and
  - (b) compensation for any loss sustained by him as a result of having parted with it.
- (4) But the court may allow—
  - (a) the agreement or obligation to be enforced, or
  - (b) money or property paid or transferred under the agreement or obligation to be retained,if it is satisfied that it is just and equitable in the circumstances of the case.
- (5) In considering whether to allow the agreement or obligation to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the court must have regard to the issues mentioned in subsections (6) and (7).
- (6) If the applicant made the unlawful communication, the issue is whether he reasonably believed that he was not making such a communication.
- (7) If the applicant did not make the unlawful communication, the issue is whether he knew that the agreement was entered into in consequence of such a communication.
- (8) “Applicant” means the person seeking to enforce the agreement or obligation or retain the money or property paid or transferred.
- (9) Any reference to making a communication includes causing a communication to be made.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (10) The amount of compensation recoverable as a result of subsection (2) or (3) is—
- (a) the amount agreed between the parties; or
  - (b) on the application of either party, the amount determined by the court.
- (11) If a person elects not to perform an agreement or an obligation which (by virtue of subsection (2) or (3)) is unenforceable against him, he must repay any money and return any other property received by him under the agreement.
- (12) If (by virtue of subsection (2) or (3)) a person recovers money paid or property transferred by him under an agreement or obligation, he must repay any money and return any other property received by him as a result of exercising the rights in question.
- (13) If any property required to be returned under this section has passed to a third party, references to that property are to be read as references to its value at the time of its receipt by the person required to return it.

### PART III

#### AUTHORISATION AND EXEMPTION

##### *Authorisation*

### 31 Authorised persons.

- (1) The following persons are authorised for the purposes of this Act—
- (a) a person who has a [Part 4A permission] to carry on one or more regulated activities;
  - (b) an EEA firm qualifying for authorisation under Schedule 3;
  - (c) a Treaty firm qualifying for authorisation under Schedule 4;
  - (d) a person who is otherwise authorised by a provision of, or made under, this Act.
- (2) In this Act “authorised person” means a person who is authorised for the purposes of this Act.

#### **Annotations:**

#### **Commencement Information**

- I3** S. 31 wholly in force at 1.12.2001; s. 31 not in force at Royal Assent see s. 431(2); s. 31(1)(b) in force for specified purposes at 25.2.2001 by S.I. 2001/516, art. 2(c), **Sch. Pt. 3**; s. 31(1)(b) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 31(1)(c) in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 31 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

### 32 Partnerships and unincorporated associations.

- (1) If a firm is authorised—
- (a) it is authorised to carry on the regulated activities concerned in the name of the firm; and

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (b) its authorisation is not affected by any change in its membership.
- (2) If an authorised firm is dissolved, its authorisation continues to have effect in relation to any [<sup>F20</sup>individual or] firm which succeeds to the business of the dissolved firm.
- [<sup>F21</sup>(3) For the purposes of this section, an individual or firm is to be regarded as succeeding to the business of a dissolved firm only if succession is to the whole or substantially the whole of the business of the former firm.]
- (4) “Firm” means—
  - (a) a partnership; or
  - (b) an unincorporated association of persons.
- (5) “Partnership” does not include a partnership which is constituted under the law of any place outside the United Kingdom and is a body corporate.

**Annotations:**

**Amendments (Textual)**

- F20** Words in s. 32(2) inserted (12.7.2007) by [The Regulatory Reform \(Financial Services and Markets Act 2000\) Order 2007 \(S.I. 2007/1973\)](#), [art. 3\(a\)](#)
- F21** S. 32(3) substituted (12.7.2007) by [The Regulatory Reform \(Financial Services and Markets Act 2000\) Order 2007 \(S.I. 2007/1973\)](#), [art. 3\(b\)](#)

*Ending of authorisation*

**33 Withdrawal of authorisation by the Authority.**

- (1) This section applies if—
  - (a) an authorised person’s Part IV permission is cancelled; and
  - (b) as a result, there is no regulated activity for which he has permission.
- (2) The Authority must give a direction withdrawing that person’s status as an authorised person.

**34 EEA firms.**

- (1) An EEA firm ceases to qualify for authorisation under Part II of Schedule 3 if it ceases to be an EEA firm as a result of—
    - (a) having its EEA authorisation withdrawn; or
    - (b) ceasing to have an EEA right in circumstances in which EEA authorisation is not required.
  - (2) At the request of an EEA firm, [the appropriate regulator] may give a direction cancelling its authorisation under Part II of Schedule 3.
- [(2A) In subsection (2) “the appropriate regulator” means—
- (a) in the case of a PRA-authorised person, the PRA, and
  - (b) in any other case, the FCA.]
- (3) If an EEA firm has a [Part 4A permission], it does not cease to be an authorised person merely because it ceases to qualify for authorisation under Part II of Schedule 3.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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**Annotations:**

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

**C41** S. 34(2) modified (1.12.2001) by S.I. 2001/2511, regs. 1(1), 8; S.I. 2001/3538, art. 2(1)

**35 Treaty firms.**

- (1) A Treaty firm ceases to qualify for authorisation under Schedule 4 if its home State authorisation is withdrawn.
- (2) At the request of a Treaty firm, the [appropriate regulator] may give a direction cancelling its Schedule 4 authorisation.

[(2A) In subsection (2) “the appropriate regulator” means—

- (a) in the case of a PRA-authorised person, the PRA, and
- (b) in any other case, the FCA.]

- (3) If a Treaty firm has a [Part 4A permission], it does not cease to be an authorised person merely because it ceases to qualify for authorisation under Schedule 4.

**36 Persons authorised as a result of paragraph 1(1) of Schedule 5.**

- (1) At the request of a person authorised as a result of paragraph 1(1) of Schedule 5, the Authority may give a direction cancelling his authorisation as such a person.
- (2) If a person authorised as a result of paragraph 1(1) of Schedule 5 has a Part IV permission, he does not cease to be an authorised person merely because he ceases to be a person so authorised.

*Exercise of EEA rights by UK firms*

**37 Exercise of EEA rights by UK firms.**

Part III of Schedule 3 makes provision in relation to the exercise outside the United Kingdom of EEA rights by UK firms.

**Annotations:**

**Commencement Information**

**I4** S. 37 wholly in force at 1.12.2001; s. 37 not in force at Royal Assent see s. 431(2); s. 37 in force for specified purposes at 25.2.2001 by S.I. 2001/516, art. 2(c), Sch. Pt. 3; s. 37 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 37 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2, Sch. Pt. 2; s. 37 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

*Exemption*

**38 Exemption orders.**

- (1) The Treasury may by order (“an exemption order”) provide for—

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (a) specified persons, or
  - (b) persons falling within a specified class,
- to be exempt from the general prohibition.
- (2) But a person cannot be an exempt person as a result of an exemption order if he has a Part IV permission.
- (3) An exemption order may provide for an exemption to have effect—
- (a) in respect of all regulated activities;
  - (b) in respect of one or more specified regulated activities;
  - (c) only in specified circumstances;
  - (d) only in relation to specified functions;
  - (e) subject to conditions.
- (4) “Specified” means specified by the exemption order.

**Annotations:**

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

- C42** S. 38(2) modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 3**
- C43** S. 38(2) modified (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2)(b), 5, **Sch. para. 3**
- C44** S. 38(2) modified (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2)(b), 5, **Sch. para. 3**
- C45** S. 38(2) modified (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(3), 7, **Sch. para. 3(a)**
- C46** S. 38(2) modified (30.6.2008 for certain purposes, otherwise 1.1.2009) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007 (S.I. 2007/3510), arts. 1(2), **7(1)(3)**
- C47** S. 38(2) modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2), 34**, {Sch. paras. 1, 3}

**39 Exemption of appointed representatives.**

- (1) If a person (other than an authorised person)—
- (a) is a party to a contract with an authorised person (“his principal”) which—
    - (i) permits or requires him to carry on business of a prescribed description, and
    - (ii) complies with such requirements as may be prescribed, and
  - (b) is someone for whose activities in carrying on the whole or part of that business his principal has accepted responsibility in writing,
- he is exempt from the general prohibition in relation to any regulated activity comprised in the carrying on of that business for which his principal has accepted responsibility.

[<sup>F22</sup>(1A) But a person is not exempt as a result of subsection (1)—

- (a) if his principal is an investment firm or a credit institution, and

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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(b) so far as the business for which his principal has accepted responsibility is investment services business,  
 unless he is entered on the applicable register.

(1B) The “applicable register” is—

- (a) in the case of a person established in an EEA State (other than the United Kingdom) which permits investment firms authorised by the competent authority of that State to appoint tied agents, the register of tied agents maintained in that State pursuant to Article 23 of the markets in financial instruments directive;
- (b) in the case of a person established in an EEA State which does not permit investment firms authorised as mentioned in paragraph (a) to appoint tied agents—
  - (i) if his principal has his relevant office in the United Kingdom, the record maintained by the Authority by virtue of section 347(1)(ha), and
  - (ii) if his principal is established in an EEA State (other than the United Kingdom) which permits investment firms authorised by the competent authority of the State to appoint tied agents, the register of tied agents maintained by that State pursuant to Article 23 of the markets in financial instruments directive; and
- (c) in any other case, the record maintained by the Authority by virtue of section 347(1)(ha).]

(2) A person who is exempt as a result of subsection (1) is referred to in this Act as an appointed representative.

(3) The principal of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility.

(4) In determining whether an authorised person has complied with a provision contained in or made under this Act, [<sup>F23</sup>or with a provision contained in any directly applicable Community regulation made under the markets in financial instruments directive,] anything which a relevant person has done or omitted as respects business for which the authorised person has accepted responsibility is to be treated as having been done or omitted by the authorised person.

(5) “Relevant person” means a person who at the material time is or was an appointed representative by virtue of being a party to a contract with the authorised person.

(6) Nothing in subsection (4) is to cause the knowledge or intentions of an appointed representative to be attributed to his principal for the purpose of determining whether the principal has committed an offence, unless in all the circumstances it is reasonable for them to be attributed to him.

[<sup>F24</sup>(7) A person carries on “investment services business” if—

- (a) the business includes providing services or carrying on activities of the kind mentioned in Article 4.1.25 of the markets in financial instruments directive, and
- (b) as a result of providing such services or carrying on such activities he is a tied agent or would be if he were established in an EEA State.

(8) In this section—

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

“competent authority” has the meaning given in Article 4.1.22 of the markets in financial instruments directive;

“credit institution” means—

- (a) a credit institution authorised under the banking consolidation directive, or
- (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its relevant office in an EEA State;

“relevant office” means—

- (a) in relation to a body corporate, its registered office or, if it has no registered office, its head office, and
- (b) in relation to a person other than a body corporate, the person's head office.]

#### Annotations:

##### Amendments (Textual)

- F22** S. 39(1A)(1B) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), [Sch. 5 para. 2\(a\)](#)
- F23** Words in s. 39(4) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), [Sch. 5 para. 2\(b\)](#)
- F24** S. 39(7)(8) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), [Sch. 5 para. 2\(c\)](#)

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

- C48** S. 39(2) modified (31.10.2001) by [S.I. 2001/3374](#), art. 1, [Sch. para. 7](#)
- C49** S. 39(2) modified (31.10.2004) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Mortgages\) Order 2004 \(S.I. 2004/2615\)](#), arts. 1(2)(b), 5, [Sch. para. 7](#)
- C50** S. 39(2) modified (14.1.2005) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(General Insurance Intermediaries\) Order 2004 \(S.I. 2004/3351\)](#), arts. 1(2)(b), 5, [Sch. para. 7](#)
- C51** S. 39(2) modified (6.4.2007) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2006 \(S.I. 2006/1969\)](#), arts. 1(3), 7, [Sch. para. 7](#)
- C52** S. 39(2) modified (30.6.2008 for certain purposes, otherwise 1.1.2009) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2007 \(S.I. 2007/3510\)](#), arts. 1(2), [8\(1\)\(4\)](#)

##### Commencement Information

- I5** S. 39 wholly in force at 1.12.2001; s. 39 not in force at Royal Assent see s. 431(2); s. 39(1) in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), art. 2(b), [Sch. Pt. 2](#); s. 39 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

#### [<sup>F25</sup>39A Certain tied agents operating outside United Kingdom

- (1) This section applies to an authorised person whose relevant office is in the United Kingdom if—

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (a) he is a party to a contract with a person (other than an authorised person) who is established—
    - (i) in the United Kingdom, or
    - (ii) in an EEA State which does not permit investment firms authorised by the competent authority of the State to appoint tied agents; and
  - (b) the contract is a relevant contract.
- (2) A contract is a “relevant contract” if it satisfies conditions A to C.
- (3) Condition A is that the contract permits or requires the person mentioned in subsection (1)(a) (the “agent”) to carry on investment services business.
- (4) Condition B is that either—
- (a) it is a condition of the contract that such business may only be carried on by the agent in an EEA State other than the United Kingdom; or
  - (b) in a case not falling within paragraph (a), the Authority is satisfied that no such business is, or is likely to be, carried on by the agent in the United Kingdom.
- (5) Condition C is that the business is of a description that, if carried on in the United Kingdom, would be prescribed for the purposes of section 39(1)(a)(i).
- (6) An authorised person to whom this section applies who—
- (a) enters into or continues to perform a relevant contract with an agent which does not comply with the applicable requirements,
  - (b) enters into or continues to perform a relevant contract without accepting or having accepted responsibility in writing for the agent's activities in carrying on investment services business,
  - (c) enters into a relevant contract with an agent who is not entered on the record maintained by the Authority by virtue of section 347(1)(ha), or
  - (d) continues to perform a relevant contract with an agent when he knows or ought to know that the agent is not entered on that record,
- is to be taken for the purposes of this Act to have contravened a requirement imposed on him by or under this Act.
- (7) The “applicable requirements” are the requirements prescribed for the purposes of subsection (1)(a)(ii) of section 39 which have effect in the case of a person to whom subsection (1A) of that section applies.
- (8) A person carries on “investment services business” if—
- (a) his business includes providing services or carrying on activities of the kind mentioned in Article 4.1.25 of the markets in financial instruments directive, and
  - (b) as a result of providing such services or carrying on such activities he is a tied agent.
- (9) In this section—
- “competent authority” has the meaning given in Article 4.1.22 of the markets in financial instruments directive;
  - “relevant office” means—
    - (a) in relation to a body corporate, its registered office or, if it has no registered office, its head office, and
    - (b) in relation to a person other than a body corporate, the person's head office.]

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

**Annotations:**

**Amendments (Textual)**

- F25** S. 39A inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), [Sch. 5 para. 3](#)

**PART IV**

PERMISSION TO CARRY ON REGULATED ACTIVITIES

**Annotations:**

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

- C53** Pt. IV (ss. 40-55) extended (1.12.2001) by [S.I. 2001/2636](#), [arts. 1\(2\)\(b\)](#), 3-24; [S.I. 2001/3538](#), [art. 2\(1\)](#)  
Pt. IV (ss. 40-55) extended (with modifications) (1.12.2001) by [S.I. 2001/2636](#), [arts. 1\(2\)\(b\)](#), 35(5)(a); [S.I. 2001/3538](#), [art. 2\(1\)](#)  
Pt. IV (ss. 40-50) excluded (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 107(2) (with [art. 23\(2\)](#))  
Pt. IV (ss. 40-55) modified (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 114(3)(a), 121(3), 128(3)(a) (with [art. 23\(2\)](#))  
**C54** Pt. 4 applied (with modifications) (6.4.2005) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2004 \(S.I. 2004/2737\)](#), [art. 4](#)

**[PART 4A**

PERMISSION TO CARRY ON REGULATED ACTIVITIES

*Application for permission*

**55A** Application for permission

- (1) An application for permission to carry on one or more regulated activities may be made to the appropriate regulator by—
- (a) an individual,
  - (b) a body corporate,
  - (c) a partnership, or
  - (d) an unincorporated association.
- (2) “The appropriate regulator”, in relation to an application under this section, means—
- (a) the PRA, in a case where—
    - (i) the regulated activities to which the application relates consist of or include a PRA-regulated activity, or
    - (ii) the applicant is a PRA-authorised person otherwise than by virtue of a Part 4A permission;
  - (b) the FCA, in any other case.

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- (3) An authorised person who has a permission under this Part which is in force may not apply for permission under this section.
- (4) An EEA firm may not apply for permission under this section to carry on a regulated activity which it is, or would be, entitled to carry on in exercise of an EEA right, whether through a United Kingdom branch or by providing services in the United Kingdom.
- (5) A permission given by the appropriate regulator under this Part or having effect as if so given is referred to in this Act as “a Part 4A permission”.

### **55B The threshold conditions**

- (1) “The threshold conditions”, in relation to a regulated activity, means the conditions set out in Schedule 6.
- (2) In giving or varying permission, imposing or varying a requirement or giving consent under, any provision of this Part, the regulator concerned must ensure that the person concerned will satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which the person has or will have permission.
- (3) But the duty imposed by subsection (2) does not prevent a regulator, having due regard to that duty, from taking such steps as it considers are necessary, in relation to a particular authorised person, in order to advance—
  - (a) in the case of the FCA, any of its operational objectives;
  - (b) in the case of the PRA, any of its objectives.
- (4) This section is subject to sections 55C and 55D.

### **55C Arrangements relating to threshold conditions**

- (1) The regulators may arrange, in relation to any of the threshold conditions, for only one of them—
  - (a) to be responsible for complying with section 55B(2) in relation to that condition in cases falling within subsection (2);
  - (b) to be capable of exercising its own-initiative variation power (see section 55J) or its own-initiative requirement power (see sections 55L and 55M) on the ground that a PRA-authorised person is failing, or is likely to fail, to satisfy that condition.
- (2) The cases falling within this subsection are those in which (apart from this section and section 55D)—
  - (a) one regulator would have to comply with section 55B(2) in relation to a decision about the giving or variation of permission in relation to a person who is (or if the permission were given or varied would be) a PRA-authorised person, and
  - (b) the other regulator would have to comply with section 55B(2) in deciding whether to give consent to that decision.
- (3) The arrangements may make different provision for different purposes; and may provide for one regulator to consult the other or obtain the consent of the other before making a determination.

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- (4) Before making or varying arrangements under this section, the regulators must consult the Treasury about a draft of the arrangements or of the arrangements as varied.
- (5) The arrangements must be in writing, and must specify—
  - (a) the threshold conditions to which they relate, and
  - (b) the date on which they come into force.
- (6) Where arrangements are in force under this section, the regulators must exercise functions in accordance with the arrangements.
- (7) The regulators must publish any arrangements under this section in such manner as they think fit.
- (8) This section is subject to section [55D](#).

#### **55D Orders making provision that could be made under section [55C](#)**

- (1) The Treasury may by order make any provision that could be made by the regulators under section [55C](#).
- (2) The power under this section is exercisable whether or not arrangements under section [55C](#) are in force.
- (3) If arrangements under section [55C](#) are in force on the coming into force of an order under this section, they are revoked by virtue of the coming into force of the order to the extent that they are incompatible with the provisions of the order.
- (4) While an order under this section is in force, no arrangements under section [55C](#) may be made that are incompatible with the provisions of the order.

#### **55E Giving permission: the FCA**

- (1) This section applies where the FCA is the appropriate regulator in relation to an application for permission under section [55A](#).
- (2) The FCA may give permission for the applicant to carry on the regulated activity or activities to which the application relates or such of them as may be specified in the permission.
- (3) If the applicant is a member of a group which includes a PRA-authorised person, the FCA must consult the PRA before determining the application.
- (4) If it gives permission, the FCA must specify the permitted regulated activity or activities, described in such manner as the FCA considers appropriate.
- (5) The FCA may—
  - (a) incorporate in the description of a regulated activity such limitations (for example as to circumstances in which the activity may, or may not, be carried on) as it considers appropriate;
  - (b) specify a narrower or wider description of regulated activity than that to which the application relates;
  - (c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates and is not a PRA-regulated activity.

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### **55F Giving permission: the PRA**

- (1) This section applies where the PRA is the appropriate regulator in relation to an application for permission under section 55A.
- (2) The PRA may, with the consent of the FCA, give permission for the applicant to carry on the regulated activity or activities to which the application relates or such of them as may be specified in the permission.
- (3) If it gives permission, the PRA must specify the permitted regulated activity or activities, described in such manner as the PRA considers appropriate.
- (4) The PRA may—
  - (a) incorporate in the description of a regulated activity such limitations (for example as to circumstances in which the activity may, or may not, be carried on) as it considers appropriate;
  - (b) specify a narrower or wider description of regulated activity than that to which the application relates;
  - (c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates.
- (5) Consent given by the FCA for the purposes of this section may be conditional on the manner in which the PRA exercises its powers under subsections (3) and (4).
- (6) Subsections (3) and (4)(b) and (c) do not enable the PRA to give permission that relates only to activities that are not PRA-regulated activities, except where the applicant is a PRA-authorized person otherwise than by virtue of a Part 4A permission.

### **55G Giving permission: special cases**

- (1) “The applicant” means an applicant for permission under section 55A.
- (2) If the applicant—
  - (a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 39(1) or an order made under section 38(1), but
  - (b) has applied for permission in relation to another regulated activity, the application is to be treated as relating to all the regulated activities which, if permission is given, the applicant will carry on.
- (3) If the applicant—
  - (a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 285(2) or (3), but
  - (b) has applied for permission in relation to another regulated activity, the application is to be treated as relating only to that other regulated activity.
- (4) If the applicant—
  - (a) is a person to whom, in relation to a particular regulated activity, the general prohibition does not apply as a result of Part 19, but
  - (b) has applied for permission in relation to another regulated activity, the application is to be treated as relating only to that other regulated activity.
- (5) Subsection (6) applies where either regulator (“the responsible regulator”) receives an application for permission under section 55A which is in the regulator’s opinion

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similar to an application which was previously made to the other regulator and was either—

- (a) treated by the other regulator as not being a valid application to that regulator because of the regulated activities to which it related, or
  - (b) refused by the other regulator after being considered.
- (6) The responsible regulator must have regard to the desirability of minimising—
- (a) the additional work for the applicant in dealing with the new application, and
  - (b) the time taken to deal with the new application.

#### *Variation and cancellation of Part 4A permission*

### **55H Variation by FCA at request of authorised person**

- (1) This section applies in relation to an authorised person who has a Part 4A permission but is not a PRA-authorised person.
- (2) The FCA may, on the application of the authorised person, vary the permission by—
  - (a) adding a regulated activity, other than a PRA-regulated activity, to those for which it gives permission;
  - (b) removing a regulated activity from those for which it gives permission;
  - (c) varying the description of a regulated activity for which it gives permission.
- (3) The FCA may, on the application of the authorised person, cancel the permission.
- (4) The FCA may refuse an application under this section if it considers that it is desirable to do so in order to advance any of its operational objectives.
- (5) If the applicant is a member of a group which includes a PRA-authorised person, the FCA must consult the PRA before determining the application.
- (6) If as a result of a variation of a Part 4A permission under this section there are no longer any regulated activities for which the authorised person concerned has permission, the FCA must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.
- (7) The FCA's power to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given by it in response to an application under section [55A](#).

### **55I Variation by PRA at request of authorised person**

- (1) On the application of a PRA-authorised person with a Part 4A permission, the PRA may with the consent of the FCA vary the permission by—
  - (a) adding a regulated activity to those for which it gives permission;
  - (b) removing a regulated activity from those for which it gives permission;
  - (c) varying the description of a regulated activity for which it gives permission.
- (2) On the application of a PRA-authorised person with a Part 4A permission, the PRA may cancel the permission.
- (3) On the application of an authorised person other than a PRA-authorised person, the PRA may with the consent of the FCA vary the permission by adding to the regulated

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activities to which the permission relates one or more regulated activities which include a PRA-regulated activity.

- (4) The PRA may refuse an application under this section if it appears to it that it is desirable to do so in order to advance any of its objectives.
- (5) The FCA may withhold its consent to a proposed variation under this section if it appears to it that it is desirable to do so in order to advance any of its operational objectives.
- (6) If as a result of a variation of a Part 4A permission under this section there are no longer any regulated activities for which the authorised person concerned has permission, the PRA must, once it is satisfied after consulting the FCA that it is no longer necessary to keep the permission in force, cancel it.
- (7) The PRA’s power to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given in response to an application under section 55A.
- (8) Consent given by the FCA for the purposes of subsection (1) may be conditional on the manner in which the PRA exercises its powers under section 55F(3) and (4) (as a result of subsection (7)).

**55J Authorised persons: variation etc. on initiative of regulator**

- (1) Either regulator may exercise its power under this section in relation to an authorised person with a Part 4A permission (“A”) if it appears to the regulator that—
  - (a) A is failing, or is likely to fail, to satisfy the threshold conditions,
  - (b) A has failed, during a period of at least 12 months, to carry on a regulated activity to which the Part 4A permission relates, or
  - (c) it is desirable to exercise the power in order to advance—
    - (i) in the case of the FCA, its operational objectives,
    - (ii) in the case of the PRA, its objectives.
- (2) The FCA’s power under this section is the power—
  - (a) to vary the Part 4A permission by—
    - (i) adding a regulated activity other than a PRA-regulated activity to those for which it gives permission,
    - (ii) removing a regulated activity from those for which it gives permission, or
    - (iii) varying the description of a regulated activity for which it gives permission in a way which, if it is a PRA-regulated activity, does not, in the opinion of the FCA, widen that the description, or
  - (b) to cancel the Part 4A permission.
- (3) The PRA’s power under this section is the power, in the case of a PRA-authorised person, to vary the Part 4A permission in any of the ways mentioned in section 55I(1) or to cancel it.
- (4) The FCA—
  - (a) must consult the PRA before exercising its power under this section in relation to—
    - (i) a PRA-authorised person, or

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- (ii) a member of a group which includes a PRA-authorised person, and
  - (b) in the case of a PRA-authorised person, may exercise the power so as to add a new activity to those to which the permission relates or to widen the description of a regulated activity to which the permission relates, only with the consent of the PRA.
- (5) The PRA—
  - (a) must consult the FCA before exercising its power under this section, and
  - (b) may exercise the power so as to add a new activity to those to which the permission relates or to widen the description of a regulated activity to which the permission relates, only with the consent of the FCA.
- (6) Subsection (1)(a) is subject to sections 55C and 55D.
- (7) Without prejudice to the generality of subsections (1) to (3), a regulator may, in relation to an authorised person who is an investment firm, exercise its power under this section to cancel the Part 4A permission if it appears to it that any of the conditions in section 55K is met.
- (8) If, as a result of a variation of a Part 4A permission under this section, there are no longer any regulated activities for which the authorised person concerned has permission, the regulator responsible for the variation must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.
- (9) Either regulator must consult the other before cancelling under subsection (8) a Part 4A permission which relates to a person who (before the variation) was a PRA-authorised person.
- (10) The power of either regulator to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given in response to an application under section 55A.
- (11) Consent given by one regulator for the purpose of subsection (4)(b) or (5)(b) may be conditional on the manner in which the other regulator exercises its powers under section 55E(4) and (5) or 55F(3) and (4) (as a result of subsection (10)).
- (12) The power of the FCA or the PRA under this section is referred to in this Part as its own-initiative variation power.

### **55K Investment firms: particular conditions that enable cancellation**

- (1) The conditions referred to in section 55J(7) are as follows—
  - (a) that the firm has failed, during a period of at least 6 months, to carry on a regulated activity which is an investment service or activity for which it has a Part 4A permission;
  - (b) that the firm obtained the Part 4A permission by making a false statement or by other irregular means;
  - (c) that the firm no longer satisfies the requirements for authorisation pursuant to Chapter I of Title II of the markets in financial instruments directive, or pursuant to or contained in any EU legislation made under that Chapter, in relation to a regulated activity which is an investment service or activity for which it has a Part 4A permission;
  - (d) that the firm has seriously and systematically infringed the operating conditions pursuant to Chapter II of Title II of the markets in financial

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instruments directive, or pursuant to or contained in any EU legislation made under that Chapter, in relation to a regulated activity which is an investment service or activity for which it has a Part 4A permission.

- (2) For the purposes of this section a regulated activity is an investment service or activity if it falls within the definition of “investment services and activities” in section 417(1).

*Imposition and variation of requirements*

**55L Imposition of requirements by FCA**

- (1) Where a person has applied (whether to the FCA or the PRA) for a Part 4A permission or the variation of a Part 4A permission, the FCA may impose on that person such requirements, taking effect on or after the grant or variation of the permission, as the FCA considers appropriate.
- (2) The FCA may exercise its power under subsection (3) in relation to an authorised person with a Part 4A permission (whether given by it or by the PRA) (“A”) if it appears to the FCA that—
- (a) A is failing, or is likely to fail, to satisfy the threshold conditions,
  - (b) A has failed, during a period of at least 12 months, to carry on a regulated activity to which the Part 4A permission relates, or
  - (c) it is desirable to exercise the power in order to advance any of the FCA’s operational objectives.
- (3) The FCA’s power under this subsection is a power—
- (a) to impose a new requirement,
  - (b) to vary a requirement imposed by the FCA under this section, or
  - (c) to cancel such a requirement.
- (4) The FCA must consult the PRA before imposing or varying a requirement which relates to—
- (a) a person who is, or will on the granting of an application for Part 4A permission be, a PRA-authorised person, or
  - (b) a person who is a member of a group which includes a PRA-authorised person.
- (5) Subsection (2)(a) is subject to sections 55C and 55D.
- (6) The FCA’s power under subsection (3) is referred to in this Part as its own-initiative requirement power.
- (7) The FCA may, on the application of an authorised person with a Part 4A permission—
- (a) cancel a requirement imposed by the FCA under this section, or
  - (b) vary such a requirement.

**55M Imposition of requirements by PRA**

- (1) Where—
- (a) a person has applied for a Part 4A permission in relation to activities which consist of or include a PRA-regulated activity,
  - (b) a PRA-authorised person has applied for a Part 4A permission or the variation of a Part 4A permission, or

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- (c) an authorised person other than a PRA-authorised person has applied for a Part 4A permission to be varied by adding to the regulated activities to which it relates one or more regulated activities which include a PRA-regulated activity,  
the PRA may impose on that person such requirements, taking effect on or after the grant or variation of the permission, as the PRA considers appropriate.
- (2) The PRA may exercise its power under subsection (3) in relation to a PRA-authorised person with a Part 4A permission (“P”) if it appears to the PRA that—
- (a) P is failing, or is likely to fail, to satisfy the threshold conditions,
  - (b) P has failed, during a period of at least 12 months, to carry on a regulated activity to which the Part 4A permission relates, or
  - (c) it is desirable to exercise the power in order to advance any of the PRA’s objectives.
- (3) The PRA’s power under this subsection is a power—
- (a) to impose a new requirement,
  - (b) to vary a requirement imposed by the PRA under this section, or
  - (c) to cancel such a requirement.
- (4) The PRA must consult the FCA before imposing or varying a requirement.
- (5) Subsection (2)(a) is subject to sections 55C and 55D.
- (6) The PRA’s power under subsection (3) is referred to in this Part as its own-initiative requirement power.
- (7) The PRA may, on the application of a PRA-authorised person with a Part 4A permission—
- (a) cancel a requirement imposed by the PRA under this section, or
  - (b) vary such a requirement.

**55N Requirements under section 55L or 55M: further provisions**

- (1) A requirement may, in particular, be imposed—
- (a) so as to require the person concerned to take specified action, or
  - (b) so as to require the person concerned to refrain from taking specified action.
- (2) A requirement may extend to activities which are not regulated activities.
- (3) A requirement may be imposed by reference to the person’s relationship with—
- (a) the person’s group, or
  - (b) other members of the person’s group.
- (4) A requirement expires at the end of such period as the regulator imposing it may specify, but this does not affect the regulator’s power to impose a new requirement.
- (5) A requirement may refer to the past conduct of the person concerned (for example, by requiring the person concerned to review or take remedial action in respect of past conduct).
- (6) In this section “requirement” means a requirement imposed under section 55L or 55M.

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### **55O Imposition of requirements on acquisition of control**

- (1) This section applies if it appears to the appropriate regulator that—
  - (a) a person has acquired control over a UK authorised person who has a Part 4A permission, but
  - (b) there are no grounds for exercising its own-initiative requirement power.
- (2) If it appears to the appropriate regulator that the likely effect of the acquisition of control on the UK authorised person, or on any of its activities, is uncertain, the appropriate regulator may—
  - (a) impose on the UK authorised person a requirement that could be imposed by that regulator under section 55L or 55M (as the case may be) on the giving of permission, or
  - (b) vary a requirement imposed by that regulator under that section on the UK authorised person.
- (3) “The appropriate regulator” means—
  - (a) in a case where the UK authorised person is a PRA-authorised person, the FCA or the PRA;
  - (b) in any other case, the FCA.
- (4) This section does not affect any duty of the appropriate regulator to consult or obtain the consent of the other regulator in connection with the imposition of the requirement.
- (5) Any reference to a person having acquired control is to be read in accordance with Part 12.

### **55P Prohibitions and restrictions**

- (1) This section applies if—
  - (a) on a person being given a Part 4A permission, either regulator imposes an assets requirement on that person,
  - (b) an assets requirement is imposed on an authorised person, or
  - (c) an assets requirement previously imposed on such a person is varied.
- (2) A person on whom an assets requirement is imposed is referred to in this section as “A”.
- (3) The “appropriate regulator” is the regulator which imposed the requirement.
- (4) “Assets requirement” means a requirement under section 55L or 55M—
  - (a) prohibiting the disposal of, or other dealing with, any of A’s assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings, or
  - (b) that all or any of A’s assets, or all or any assets belonging to consumers but held by A or to A’s order, must be transferred to and held by a trustee approved by the appropriate regulator.
- (5) If the appropriate regulator—
  - (a) imposes a requirement of the kind mentioned in subsection (4)(a), and
  - (b) gives notice of the requirement to any institution with whom A keeps an account,

the notice has the effects mentioned in subsection (6).
- (6) Those effects are that—

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- (a) the institution does not act in breach of any contract with A if, having been instructed by A (or on A's behalf) to transfer any sum or otherwise make any payment out of A's account, it refuses to do so in the reasonably held belief that complying with the instruction would be incompatible with the requirement, and
  - (b) if the institution complies with such an instruction, it is liable to pay to the appropriate regulator an amount equal to the amount transferred from, or otherwise paid out of, A's account in contravention of the requirement.
- (7) If the appropriate regulator imposes a requirement of the kind mentioned in subsection (4)(b), no assets held by a person as trustee in accordance with the requirement may, while the requirement is in force, be released or dealt with except with the consent of the appropriate regulator.
- (8) If, while a requirement of the kind mentioned in subsection (4)(b) is in force, A creates a charge over any assets of A held in accordance with the requirement, the charge is (to the extent that it confers security over the assets) void against the liquidator and any of A's creditors.
- (9) Assets held by a person as trustee ("T") are to be taken to be held by T in accordance with any requirement mentioned in subsection (4)(b) only if—
  - (a) A has given T written notice that those assets are to be held by T in accordance with the requirement, or
  - (b) they are assets into which assets to which paragraph (a) applies have been transposed by T on the instructions of A.
- (10) A person who contravenes subsection (7) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (11) "Charge" includes a mortgage (or in Scotland a security over property).
- (12) Subsections (7) and (9) do not affect any equitable interest or remedy in favour of a person who is a beneficiary of a trust as a result of a requirement of the kind mentioned in subsection (4)(b).

*Exercise of power in support of overseas regulator*

**55Q Exercise of power in support of overseas regulator**

- (1) Either UK regulator's own-initiative power may be exercised in respect of an authorised person at the request of, or for the purpose of assisting, an overseas regulator of a prescribed kind.
- (2) Subsection (1) applies whether or not the UK regulator has powers which are exercisable in relation to the authorised person by virtue of any provision of Part 13.
- (3) Subsection (1) does not affect any duty of one UK regulator to consult or obtain the consent of the other UK regulator in relation to the exercise of its own-initiative power.
- (4) If a request to a UK regulator for the exercise of its own-initiative power has been made by an overseas regulator who is—
  - (a) of a prescribed kind, and
  - (b) acting in pursuance of provisions of a prescribed kind,

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the UK regulator must, in deciding whether or not to exercise those powers in response to the request, consider whether it is necessary to do so in order to comply with an EU obligation.

- (5) In deciding in any case in which the UK regulator does not consider that the exercise of its own-initiative powers is necessary in order to comply with an EU obligation, it may take into account in particular—
- (a) whether in the country or territory of the overseas regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;
  - (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
  - (c) the seriousness of the case and its importance to persons in the United Kingdom;
  - (d) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (6) The UK regulator may decide not to exercise its own-initiative power, in response to a request, unless the overseas regulator concerned undertakes to make such contribution towards the cost of its exercise as the UK regulator considers appropriate.
- (7) Subsection (6) does not apply if the UK regulator decides that it is necessary for it to exercise its own-initiative power in order to comply with an EU obligation.
- (8) In subsection (6) “request” means a request of a kind mentioned in subsection (1).
- (9) In this section—
- (a) “UK regulator” means the FCA or the PRA;
  - (b) “overseas regulator” means a regulator outside the United Kingdom;
  - (c) “own-initiative power”, in relation to the FCA or the PRA, means its own-initiative variation power and its own-initiative requirement power.

#### Connected persons

### **55R** Persons connected with an applicant

- (1) In considering—
- (a) an application for a Part 4A permission,
  - (b) whether to vary or cancel a Part 4A permission,
  - (c) whether to impose or vary a requirement under this Part, or
  - (d) whether to give any consent required by any provision of this Part,
- the regulator concerned may have regard to any person appearing to it to be, or likely to be, in a relationship with the applicant or a person given permission which is relevant.
- (2) Before—
- (a) giving permission in response to an application under section 55A made by a person who is connected with an EEA firm (other than an EEA firm falling within paragraph 5(e) of Schedule 3 (insurance and reinsurance intermediaries)),
  - (b) cancelling or varying a Part 4A permission given to such a person,

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**Proposed Legislation:** *This version shows proposed changes to this legislation item. It has no official standing.*

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the regulator concerned must in prescribed circumstances consult the firm’s home state regulator.

- (3) A person (“A”) is connected with an EEA firm if—
- (a) A is a subsidiary undertaking of the firm, or
  - (b) A is a subsidiary undertaking of a parent undertaking of the firm.

#### *Additional permissions*

### **55S Duty of FCA or PRA to consider other permissions**

- (1) “Additional Part 4A permission” —
- (a) in relation to either regulator, means a Part 4A permission which is in force in relation to an EEA firm or a Treaty firm, and
  - (b) in relation to the FCA, also includes Part 4A permission which is in force in relation to a person authorised as a result of paragraph 1(1) of Schedule 5.
- (2) If either regulator is considering whether, and if so how, to exercise its own-initiative variation power or its own-initiative requirement power in relation to an additional Part 4A permission, it must take into account—
- (a) the home state authorisation of the authorised person concerned,
  - (b) any relevant directive, and
  - (c) relevant provisions of the Treaty.

#### *Persons whose interests are protected*

### **55T Persons whose interests are protected**

For the purpose of any provision of this Part which refers to the FCA’s operational objectives or the PRA’s objectives in relation to the exercise of a power in relation to a particular person, it does not matter whether there is a relationship between that person and the persons whose interests will be protected by the exercise of the power.

#### *Procedure*

### **55U Applications under this Part**

- (1) An application for a Part 4A permission must—
- (a) contain a statement of the regulated activity or regulated activities which the applicant proposes to carry on and for which the applicant wishes to have permission, and
  - (b) give the address of a place in the United Kingdom for service on the applicant of any notice or other document which is required or authorised to be served on the applicant under this Act.
- (2) An application for the variation of a Part 4A permission must contain a statement—
- (a) of the desired variation, and
  - (b) of the regulated activity or regulated activities which the applicant proposes to carry on if the permission is varied.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (3) An application for the variation of a requirement imposed under section 55L or 55M must contain a statement of the desired variation.
- (4) An application under this Part must—
  - (a) be made in such manner as the regulator to which it is to be made may direct, and
  - (b) contain, or be accompanied by, such other information as that regulator may reasonably require.
- (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) In subsection (5), the “appropriate regulator” means—
  - (a) in a case where the application is made to the FCA, the FCA;
  - (b) in a case where the application is made to the PRA, the FCA or the PRA.
- (7) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.
- (8) Each regulator may require an applicant to provide information which the applicant is required to provide to it under this section in such form, or to verify it in such a way, as the regulator may direct.
- (9) The PRA must consult the FCA before—
  - (a) giving a direction under this section in relation to a class of applications, or
  - (b) imposing a requirement under this section in relation to a class of applications.

#### **55V Determination of applications**

- (1) An application under this Part must be determined by the regulator to which it is required to be made (“the appropriate regulator”) before the period of 6 months beginning with the date on which it received the completed application.
- (2) The appropriate regulator may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within 12 months beginning with the date on which it received the application.
- (3) Where the application cannot be determined by the appropriate regulator without the consent of the other regulator, the other regulator’s decision must also be made within the period required by subsection (1) or (2).
- (4) The applicant may withdraw the application, by giving the appropriate regulator written notice, at any time before the appropriate regulator determines it.
- (5) If the appropriate regulator grants an application—
  - (a) for Part 4A permission,
  - (b) for the variation of a Part 4A permission, or
  - (c) for the variation of a requirement imposed under section 55L or 55M,it must give the applicant written notice.
- (6) The notice must state the date from which the permission or variation has effect.

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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## **55W Applications under this Part: communications between regulators**

The PRA must as soon as practicable notify the FCA of the receipt or withdrawal of—

- (a) an application for permission under section [55A](#),
- (b) an application under section [55I](#), or
- (c) an application under section [55M\(7\)](#).

## **55X Determination of applications: warning notices and decision notices**

(1) If a regulator proposes—

- (a) to give a Part 4A permission but to exercise its power under section [55E\(5\)](#) (a) or (b) or [55F\(4\)\(a\)](#) or (b),
- (b) to give a Part 4A permission but to exercise its power under section [55L\(1\)](#) or [55M\(1\)](#) in connection with the application for permission,
- (c) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section [55E\(5\)\(a\)](#) or (b) or [55F\(4\)\(a\)](#) or (b),
- (d) to vary a Part 4A permission but to exercise its power under section [55L\(1\)](#) or [55M\(1\)](#) in connection with the application for variation,

it must give the applicant a warning notice.

(2) If a regulator proposes to refuse an application made under this Part, it must (unless subsection (3) applies) give the applicant a warning notice.

(3) This subsection applies if it appears to the regulator that—

- (a) the applicant is an EEA firm, and
- (b) the application is made with a view to carrying on a regulated activity in a manner in which the applicant is, or would be, entitled to carry on that activity in the exercise of an EEA right whether through a United Kingdom branch or by providing services in the United Kingdom.

(4) If the FCA proposes to exercise its power under section [55L\(1\)](#) in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission, it must give the applicant a warning notice.

(5) If a regulator decides—

- (a) to give a Part 4A permission but to exercise its power under section [55E\(5\)](#) (a) or (b) or [55F\(4\)\(a\)](#) or (b),
- (b) to give a Part 4A permission but to exercise its power under section [55L\(1\)](#) or [55M\(1\)](#) in connection with the giving of the permission,
- (c) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section [55E\(5\)\(a\)](#) or (b) or [55F\(4\)\(a\)](#) or (b),
- (d) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section [55L\(1\)](#) or [55M\(1\)](#) in connection with the variation,
- (e) in the case of the FCA, to exercise its power under section [55L\(1\)](#) in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission, or
- (f) to refuse an application under this Part,

it must give the applicant a decision notice.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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### **55Y Exercise of own-initiative power: procedure**

- (1) This section applies to an exercise of either regulator’s own-initiative variation power or own-initiative requirement power in relation to an authorised person (“A”).
- (2) A variation of a permission or the imposition or variation of a requirement takes effect—
  - (a) immediately, if the notice given under subsection (4) states that that is the case,
  - (b) on such date as may be specified in the notice, or
  - (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.
- (3) A variation of a permission, or the imposition or variation of a requirement may be expressed to take effect immediately (or on a specified date) only if the regulator concerned, having regard to the ground on which it is exercising its own-initiative variation power or own-initiative requirement power, reasonably considers that it is necessary for the variation, or the imposition or variation of the requirement, to take effect immediately (or on that date).
- (4) If either regulator proposes to vary a Part 4A permission or to impose or vary a requirement, or varies a Part 4A permission or imposes or varies a requirement, with immediate effect, it must give A written notice.
- (5) The notice must—
  - (a) give details of the variation of the permission or the requirement or its variation,
  - (b) state the regulator’s reasons for the variation of the permission or the imposition or variation of the requirement,
  - (c) inform A that A may make representations to the regulator within such period as may be specified in the notice (whether or not A has referred the matter to the Tribunal),
  - (d) inform A of when the variation of the permission or the imposition or variation of the requirement takes effect, and
  - (e) inform A of A’s right to refer the matter to the Tribunal.
- (6) The regulator may extend the the period allowed under the notice for making representations.
- (7) If, having considered any representations made by A, the regulator decides—
  - (a) to vary the permission, or impose or vary the requirement, in the way proposed, or
  - (b) if the permission has been varied or the requirement imposed or varied, not to rescind the variation of the permission or the imposition or variation of the requirement,
 it must give A written notice.
- (8) If, having considered any representations made by A, the regulator decides—
  - (a) not to vary the permission, or impose or vary the requirement, in the way proposed,
  - (b) to vary the permission or requirement in a different way, or impose a different requirement, or
  - (c) to rescind a variation or requirement which has effect,

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it must give A written notice.

- (9) A notice under subsection (7) must inform A of A's right to refer the matter to the Tribunal.
- (10) A notice under subsection (8)(b) must comply with subsection (5).
- (11) If a notice informs A of A's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (12) For the purposes of subsection (2)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

### **55Z Cancellation of Part 4A permission: procedure**

- (1) If a regulator proposes to cancel an authorised person's Part 4A permission otherwise than at the person's request, it must give the person a warning notice.
- (2) If a regulator decides to cancel an authorised person's Part 4A permission otherwise than at the person's request, it must give the person a decision notice.

#### *References to the Tribunal*

### **55Z1 Right to refer matters to the Tribunal**

- (1) An applicant who is aggrieved by the determination of an application made under this Part may refer the matter to the Tribunal.
- (2) An authorised person who is aggrieved by the exercise by either regulator of its own-initiative variation power or its own-initiative requirement power may refer the matter to the Tribunal.]

## **PART V**

### **PERFORMANCE OF REGULATED ACTIVITIES**

#### **Annotations:**

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

C141 Pt. V (ss. 56-71) modified (1.12.2001) by S.I. 2001/3592, arts. 1(2), 114(3)(a), 128(3)(a) (with art. 23(2))

#### *Prohibition orders*

### **56 Prohibition orders.**

- [(1) The FCA may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by—
  - (a) an authorised person;
  - (b) a person who is an exempt person in relation to that activity; or

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to that activity.
- (1A) The PRA may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by—
- (a) a PRA-authorised person; or
  - (b) a person who is an exempt person in relation to a PRA-regulated activity carried on by the person.]
- (2) [A “prohibition order” is an order] prohibiting the individual from performing a specified function, any function falling within a specified description or any function.
- (3) A prohibition order may relate to—
- (a) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities;
  - [(b) all persons falling within subsection (3A) or a particular paragraph of that subsection or all persons within a specified class of person falling within a particular paragraph of that subsection.]
- [(3A) A person falls within this subsection if the person is—
- (a) an authorised person;
  - (b) an exempt person; or
  - (c) a person to whom, as a result of Part 20, the general prohibition does not apply in relation to a regulated activity.]
- (4) An individual who performs or agrees to perform a function in breach of a prohibition order is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) In proceedings for an offence under subsection (4) it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- (6) [A person falling within subsection (3A)] must take reasonable care to ensure that no function of his, in relation to the carrying on of a regulated activity, is performed by a person who is prohibited from performing that function by a prohibition order.
- (7) [The body that has made a prohibition order] may, on the application of the individual named in [the order], vary or revoke it.
- [(7A) If—
- (a) the FCA proposes to vary or revoke a prohibition order, and
  - (b) as a result of the proposed variation or revocation, an individual—
    - (i) will no longer be prohibited from performing a function of interest to the PRA, or
    - (ii) will be prohibited from performing such a function,
- the FCA must consult the PRA before varying or revoking the order.]
- [(7B) A function is of interest to the PRA if it is performed in relation to a regulated activity carried on by—
- (a) a PRA-authorised person; or
  - (b) a person who is an exempt person in relation to a PRA-regulated activity carried on by the person.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

(7C) The PRA must consult the FCA before varying or revoking a prohibition order.

(8) [~~This section applies to the performance of functions in relation to a regulated activity carried on by—~~

.....

~~[as it applies to the performance of functions in relation to a regulated activity carried on by an authorised person.]~~

(9) “Specified” means specified in the prohibition order.

**Annotations:**

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

**C142** S. 56 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(3); S.I. 2001/3538, **art. 2(1)**

S. 56 modified (*temp.* from 31.10.2001) by S.I. 2001/3374, **arts. 1**, 11

S. 56 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 79(1); S.I. 2001/3538, **art. 2(1)**

**C143** Ss. 56, 60 modified (*temp.*) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**

**C144** S. 56(7) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 55(5) (with art. 23(2))

**C145** S. 56(8) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(4); S.I. 2001/3538, **art. 2(1)**

**Commencement Information**

**I16** S. 56 wholly in force at 1.12.2001; s. 56 not in force at Royal Assent see s. 431(2); s. 56 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2(2)**, **Sch. Pt. 2**; s. 56 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

**57 Prohibition orders: procedure and right to refer to Tribunal.**

(1) If the [~~FCA or the PRA~~] proposes to make a prohibition order it must give the individual concerned a warning notice.

(2) The warning notice must set out the terms of the prohibition.

(3) If the [~~FCA or the PRA~~] decides to make a prohibition order it must give the individual concerned a decision notice.

(4) The decision notice must—

- (a) name the individual to whom the prohibition order applies;
- (b) set out the terms of the order; and
- (c) be given to the individual named in the order.

(5) A person against whom a decision to make a prohibition order is made may refer the matter to the Tribunal.

[(6) ~~If—~~

- (a) ~~the FCA proposes to make a prohibition order, and~~
- (b) ~~as a result of the proposed order, an individual will be prohibited from performing a function of interest to the PRA,~~

the FCA must consult the PRA before giving a warning notice under this section.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- (7) A function is of interest to the PRA if it is performed in relation to a regulated activity carried on by—
- (a) a PRA-*authorised* person; or
  - (b) a person who is an exempt person in relation to a PRA-regulated activity carried on by the person.
- (8) The PRA must consult the FCA before giving a warning notice under this section.]

**Annotations:**

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

**C146** S. 57 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 110(3) (with art. 23(2))

**C147** S. 57(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 55(1) (with art. 23(2))

**Commencement Information**

**I17** S. 57 wholly in force at 1.12.2001; s. 57 not in force at Royal Assent see s. 431(2); s. 57 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 57 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

**58 Applications relating to prohibitions: procedure and right to refer to Tribunal.**

- (1) This section applies to an application for the variation or revocation of a prohibition order.
- (2) If the [appropriate regulator] decides to grant the application, it must give the applicant written notice of its decision.
- (3) If the [appropriate regulator] proposes to refuse the application, it must give the applicant a warning notice.
- (4) 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, he may refer the matter to the Tribunal.
- [(6) “The appropriate regulator” means the body to whom the application is made.]

**Annotations:**

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

**C148** S. 58 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 110(3) (with art. 23(2))

**Commencement Information**

**I18** S. 58 wholly in force at 1.12.2001; s. 58 not in force at Royal Assent see s. 431(2); s. 58 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 58 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

## Approval

### 59 Approval for particular arrangements.

- (1) An authorised person (“A”) must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by A in relation to the carrying on by A of a regulated activity, unless [the appropriate regulator] approves the performance by that person of the controlled function to which the arrangement relates.
- (2) An authorised person (“A”) must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by a contractor of A in relation to the carrying on by A of a regulated activity, unless [the appropriate regulator] approves the performance by that person of the controlled function to which the arrangement relates.
- (3) “Controlled function”—
  - (a) in relation to the carrying on of a regulated activity by a PRA-authorised person, means a function of a description specified in rules made by the FCA or the PRA; and
  - (b) in relation to the carrying on of a regulated activity by any other authorised person, means a function of a description specified in rules made by the FCA.
- (4) “Appropriate regulator”—
  - (a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA; and
  - (b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA.
- (5) The FCA may specify a description of function under subsection (3)(a) or (b) only if, in relation to the carrying on of a regulated activity by an authorised person, it is satisfied that the function is—
  - (a) a customer-dealing function; or
  - (b) a significant-influence function.
- (6) The PRA may specify a description of function under subsection (3)(a) only if, in relation to the carrying on of a regulated activity by a PRA-authorised person, it is satisfied that the function is a significant-influence function.
- (7) In determining whether a function is a significant-influence function, the FCA or the PRA may take into account the likely consequences of a failure to discharge the function properly.
- (7A) “Customer-dealing function”, in relation to the carrying on of a regulated activity by an authorised person (“A”), means a function that will involve the person performing it in dealing with—
  - (a) customers of A, or
  - (b) property of customers of A,in a manner substantially connected with the carrying on of the activity.
- (7B) “Significant-influence function”, in relation to the carrying on of a regulated activity by an authorised person, means a function that is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the authorised person’s affairs, so far as relating to the activity.]

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- (8) Neither subsection (1) nor subsection (2) applies to an arrangement which allows a person to perform a function if the question of whether he is a fit and proper person to perform the function is reserved under any of the single market directives to an authority in a country or territory outside the United Kingdom.
- (9) ~~[In determining whether the first condition is met, the Authority may take into account the likely consequences of a failure to discharge that function properly.]~~
- (10) “Arrangement”—
- (a) means any kind of arrangement for the performance of a function of A which is entered into by A or any contractor of his with another person; and
  - (b) includes, in particular, that other person’s appointment to an office, his becoming a partner or his employment (whether under a contract of service or otherwise).
- (11) “Customer”, in relation to an authorised person, means a person who is using, or who is or may be contemplating using, any of the services provided by the authorised person.

**Annotations:**

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

- C149** S. 59 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 74(2), 76(2); S.I. 2001/3538, **art. 2(1)**  
 S. 59 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 49(1) (with art. 23(2))
- C150** S. 59 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. 15(1)**
- C151** S. 59 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2)**, 34, {Sch. paras. 1, 3}
- C152** S. 59 modified (1.1.2010) by The Northern Rock plc Transfer Order 2009 (S.I. 2009/3226), **arts. 1(2)(b)**, **10**
- C153** S. 59(1) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 75(2); S.I. 2001/3538, **art. 2(1)**

**Commencement Information**

- I19** S. 59 wholly in force at 1.12.2001; s. 59 not in force at Royal Assent see s. 431(2); s. 59 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, **art. 2**, **Sch.**; s. 59 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2(2)**, **Sch. Pt. 2**; s. 59 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

**[59A Specifying functions as controlled functions: supplementary**

- (1) The FCA must—
- (a) keep under review the exercise of its power under section 59(3)(a) to specify any significant-influence function as a controlled function; and
  - (b) exercise that power in a way that it considers will minimise the likelihood that approvals fall to be given by both the FCA and the PRA in respect of the performance by a person of significant-influence functions in relation to the carrying on of a regulated activity by the same PRA-authorised person.
- (2) The FCA and the PRA must each consult the other before exercising any power under section 59(3)(a).

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (3) Any reference in this section to the exercise of a power includes its exercise by way of amendment or revocation of provision previously made in the exercise of the power.
- (4) “Approval” means an an approval under section 59.
- (5) Any expression which is used both in this section and section 59 has the same meaning in this section as in that section.]

## 60 Applications for approval.

- (1) An application for the [appropriate regulator’s] approval under section 59 may be made by the authorised person concerned.
- (2) The application must—
  - (a) be made in such manner as the [appropriate regulator] may direct; and
  - (b) contain, or be accompanied by, such information as the [appropriate regulator] may reasonably require.
- (3) At any time after receiving the application and before determining it, 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.
- (4) The [appropriate regulator] may require an applicant to present information which he is required to give under this section in such form, or to verify it in such a way, as the [appropriate regulator] may direct.
- (5) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.
- (6) “The authorised person concerned” includes a person who has applied for permission under [Part 4A] and will be the authorised person concerned if permission is given.
- (7) “Appropriate regulator” has the same meaning as in section 59.]

### Annotations:

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

- C154** S. 60 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2), 3(3)**; S.I. 2001/3538, **art. 2(1)**  
S. 60 modified (*temp.* from 31.10.2001) by S.I. 2001/3374, **arts. 1, 11**  
S. 60: “the authorised person concerned” extended (1.12.2001) by S.I. 2001/2511, **regs. 1(1), 10**; S.I. 2001/3538, **art. 2(1)**  
S. 60 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 50(1), 51(1), 53(1)** (with art. 23(2))
- C155** Ss. 56, 60 modified (*temp.*) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 7**
- C156** S. 60 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (S.I. 2009/1342), **arts. 1(2), 34**, {Sch. paras. 1, 3}
- C157** S. 60(3) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 50(5)** (with art. 23(2))

#### Commencement Information

- I20** S. 60 wholly in force at 1.12.2001; s. 60 not in force at Royal Assent see s. 431(2); s. 60(2)(4) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, **art. 2, Sch.**; s. 60 in force for specified purposes

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 60 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

## 61 Determination of applications.

- (1) [The body to whom an application is made under section 60 may grant the application] only if it is satisfied that the person in respect of whom the application is made (“the candidate”) is a fit and proper person to perform the function to which the application relates.
  - (2) In deciding that question, [the body] may have regard (among other things) to whether the candidate, or any person who may perform a function on his behalf—
    - (a) has obtained a qualification,
    - (b) has undergone, or is undergoing, training, or
    - (c) possesses a level of competence,
 required by general rules [made by the body] in relation to persons performing functions of the kind to which the application relates.
  - (3) [The body to whom an application is made under section 60 must, before the end of the period for consideration, determine] whether—
    - (a) to grant the application; or
    - (b) to give a warning notice under section 62(2).
- [(3A) “The period for consideration”—
- (a) in any case where an application under section 60 is made by a person applying for permission under Part 4A (see section 60(6)), means the end of whichever is the later of—
    - (i) the period before which an application for that permission must be determined under section 55V(1) or (2); and
    - (ii) the period of 3 months beginning with the date on which the body receives an application under section 60; and
  - (b) in any other case, means the period of 3 months beginning with the date on which the body receives an application under section 60.]
- (4) If the [body] imposes a requirement under section 60(3), the period for consideration stops running on the day on which the requirement is imposed but starts running again —
    - (a) on the day on which the required information is received by [the body]; 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 body].
  - (5) A person who makes an application under section 60 may withdraw his application by giving written notice to the [body to whom the application was made] at any time before the [body] determines it, but only with the consent of—
    - (a) the candidate; and
    - (b) the person by whom the candidate is to be retained to perform the function concerned, if not the applicant.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

#### Annotations:

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

- C158** S. 61 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), **arts. 1(2)**, 34, {Sch. paras. 1, 3}
- C159** S. 61(3) modified (1.12.2001) by [S.I. 2001/3592](#), **arts. 1(2)**, 49(3), 53(2) (with art. 23(2))
- C160** S. 61(3) excluded (1.1.2004) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 1\) Order 2003 \(S.I. 2003/1475\)](#), arts. 1(2), **28(2)**
- C161** S. 61(3) excluded (1.1.2004) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1476\)](#), arts. 1(2), **24(2)**, **26(2)**

##### Commencement Information

- I21** S. 61 wholly in force at 1.12.2001; s. 61 not in force at Royal Assent see s. 431(2); s. 61 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), art. 2(2), **Sch. Pt. 2**; s. 61 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

## 62 Applications for approval: procedure and right to refer to Tribunal.

- (1) [If the body to whom an application is made under section 60 (“an application”) decides to grant the application, it] must give written notice of its decision to each of the interested parties.
- (2) If the [body to whom an application is made] proposes to refuse [the application], it must give a warning notice to each of the interested parties.
- (3) If the [body to whom an application is made] decides to refuse [the application], it must give a decision notice to each of the interested parties.
- (4) If the [body to whom an application is made] decides to refuse [the application], each of the interested parties may refer the matter to the Tribunal.
- (5) “The interested parties”, in relation to an application, are—
  - (a) the applicant;
  - (b) the person in respect of whom the application is made (“A”); and
  - (c) the person by whom A’s services are to be retained, if not the applicant.

#### Annotations:

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

- C162** S. 62 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), **arts. 1(2)**, 34, {Sch. paras. 1, 3}

##### Commencement Information

- I22** S. 62 wholly in force at 1.12.2001; s. 62 not in force at Royal Assent see s. 431(2); s. 62 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), art. 2(2), **Sch. Pt. 2**; s. 62 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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### 63 **Withdrawal of approval.**

(1) The FCA may withdraw an approval under section 59 given by the FCA or the PRA in relation to the performance by a person of a function if the FCA considers that the person is not a fit and proper person to perform the function.

(1A) The PRA may withdraw an approval under section 59 in relation to the performance by a person (“A”) of a function if—

- (a) the PRA gave the approval, or the FCA gave the approval and the function is a significant-influence function performed in relation to the carrying on by a PRA-authorised person of a regulated activity; and
- (b) the PRA considers that A is not a fit and proper person to perform the function.

(1B) “Significant-influence function” has the same meaning as in section 59.

(1C) The FCA and the PRA must each consult the other before withdrawing an approval given by the other.]

(2) When considering whether to withdraw [an approval, the FCA or the PRA may take into account any matter which could be taken into account in] considering an application made under section 60 in respect of the performance of the function to which the approval relates[(on the assumption, if it is not the case, that the application was one falling to be considered by it)].

(3) If the [FCA or the PRA] proposes to withdraw [an approval], it must give each of the interested parties a warning notice.

(4) If the [FCA or the PRA] decides to withdraw [an approval], it must give each of the interested parties a decision notice.

(5) If the [FCA or the PRA] decides to withdraw [an approval], each of the interested parties may refer the matter to the Tribunal.

(6) “The interested parties”, in relation to an approval, are—

- (a) the person on whose application it was given (“A”);
- (b) the person in respect of whom it was given (“B”); and
- (c) the person by whom B’s services are retained, if not A.

#### **Annotations:**

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

**C163** S. 63 modified (1.7.2009 for certain purposes, otherwise 30.6.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2009 \(S.I. 2009/1342\)](#), **arts. 1(2)**, 34, {Sch. paras. 1, 3}

**C164** S. 63(1)(3)-(6) excluded (1.12.2001) by [S.I. 2001/3592](#), **arts. 1(2)**, 61(2) (with art. 23(2))

**C165** S. 63(3) extended (1.12.2001) by [S.I. 2001/3592](#), **arts. 1(2)**, 52(2) (with art. 23(2))

**C166** S. 63(4) modified (1.12.2001) by [S.I. 2001/3592](#), **arts. 1(2)**, 75(2) (with art. 23(2))

##### **Commencement Information**

**I23** S. 63 wholly in force at 1.12.2001; s. 63 not in force at Royal Assent see [s. 431\(2\)](#); s. 63 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), **art. 2(2)**, **Sch. Pt. 2**; s. 63 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

## [<sup>F38</sup>Performance of controlled functions without approval

### Annotations:

#### Amendments (Textual)

- F38** Ss. 63A-63D and preceding cross-heading inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 11, 26(2)(b)

### 63A Power to impose penalties

- (1) If the [\[appropriate regulator\]](#) is satisfied that—
  - (a) a person (“P”) has at any time performed a controlled function without approval, and
  - (b) at that time P knew, or could reasonably be expected to have known, that P was performing a controlled function without approval,it may impose a penalty on P of such amount as it considers appropriate.
- (2) For the purposes of this section P performs a controlled function without approval at any time if at that time—
  - (a) P performs a controlled function under an arrangement entered into by an authorised person (“A”), or by a contractor of A, in relation to the carrying on by A of a regulated activity; and
  - (b) the performance by P of the function was not approved under section 59.
- (3) The [\[appropriate regulator\]](#) may not impose a penalty under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person concerned under section 63B(1).
- (4) “The limitation period” means the period of three years beginning with the first day on which the [\[appropriate regulator\]](#) knew that the person concerned had performed a controlled function without approval.
- (5) For this purpose the [\[appropriate regulator\]](#) is to be treated as knowing that a person has performed a controlled function without approval if it has information from which that can reasonably be inferred.
- (6) Any expression which is used both in this section and section 59 has the same meaning in this section as in that section.

### 63B Procedure and right to refer to Tribunal

- (1) If the [\[FCA or the PRA\]](#) proposes to impose a penalty on a person under section 63A, it must give the person a warning notice.
- (2) A warning notice must state the amount of the penalty.
- (3) If the [\[FCA or the PRA\]](#) decides to impose a penalty on a person under section 63A, it must give the person a decision notice.
- (4) A decision notice must state the amount of the penalty.
- (5) If the [\[FCA or the PRA\]](#) decides to impose a penalty on a person under section 63A, the person may refer the matter to the Tribunal.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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### **63C Statement of policy**

- (1) The [FCA and the PRA must each] prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties under section 63A; and
  - (b) the amount of penalties under that section.
- (2) The [FCA's or the PRA'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 controlled function was performed without approval;
  - (c) the length of the period during which the person performed a controlled function without approval; and
  - (d) whether the person on whom the penalty is to be imposed is an individual.
- (3) The [FCA's or the PRA'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 an authorised person.
- (4) A statement issued under this section must include an indication of the circumstances in which the [body that has issued the statement] would expect to be satisfied that a person could reasonably be expected to have known that the person was performing a controlled function without approval.
- (5) [A body that has issued a statement under this section] may at any time alter or replace [the statement].
- (6) If a statement issued under this section is altered or [replaced by a body, the body] must issue the altered or replaced statement.
- (7) [A body that publishes a statement under this section] must, without delay, give the Treasury a copy of [the statement].
- (8) A statement issued under this section [by a body] must be published by the [body] in the way appearing to the [body] to be best calculated to bring it to the attention of the public.
- (9) [A body that has issued a statement under this section] may charge a reasonable fee for providing a person with a copy of the statement.
- (10) In exercising, or deciding whether to exercise, its power under section 63A in the case of any particular person, the [FCA or (as the case may be) the PRA] must have regard to any statement of policy published [by it] under this section and in force at a time when the person concerned performed a controlled function without approval.

### **63D Statement of policy: procedure**

- (1) Before [a body issues] a statement under section 63C, the [body] must publish a draft of the proposed statement in the way appearing to the [body] 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 [body] within a specified time.

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- (3) Before issuing the proposed statement, the [body] must have regard to any representations made to it in accordance with subsection (2).
- (4) If the [body] 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 [body], significant, the [body] must (in addition to complying with subsection (4)) publish details of the difference.
- (6) [A body that has published a draft under subsection (1)] may charge a reasonable fee for providing a person with a copy of [the draft].
- (7) This section also applies to a proposal to alter or replace a statement.]

*Conduct [F<sup>39</sup>of approved persons]*

**Annotations:**

**Amendments (Textual)**

- F39** Words in cross-heading before s. 64 inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 7](#)

**64 Conduct: statements and codes.**

- [(1) The FCA may issue statements of principle with respect to the conduct expected of persons in relation to whom the FCA or the PRA has given its approval under section 59.
- [(1A) The PRA may issue statements of principle with respect to—
- (a) the conduct expected of persons in relation to whom it has given its approval under section 59; and
  - (b) the conduct expected of persons in relation to whom the FCA has given its approval under section 59 in respect of the performance by them of significant-influence functions in relation to the carrying on by PRA-  
authorised persons of regulated activities.
- [(1B) A statement of principle issued by the FCA or the PRA may relate to conduct expected of persons in relation to—
- (a) the performance by them of controlled functions; or
  - (b) the performance by them of any other functions in relation to the carrying on by authorised persons of regulated activities.]

(2) If the [FCA or the PRA] issues a statement of principle under subsection (1)[or (1A)], it must also issue a code of practice for the purpose of helping to determine whether or not a person’s conduct complies with the statement of principle.

(3) A code issued under subsection (2) may specify—

    - (a) descriptions of conduct which, in the opinion of the [body issuing the code], comply with a statement of principle;

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- (b) descriptions of conduct which, in the opinion of the [body issuing the code], do not comply with a statement of principle;
  - (c) factors which, in the opinion of the [body issuing the code], are to be taken into account in determining whether or not a person's conduct complies with a statement of principle.
- (4) [A body that has issued a statement or code under this section] may at any time alter or replace [the statement or code].
- (5) If a statement or code is altered or replaced [by a body], the altered or replacement statement or code must be issued by the [body].
- (6) A statement or code issued under this section must be published by the [body that issued it] in the way appearing to [that body] to be best calculated to bring it to the attention of the public.
- (7) A code published under this section and in force at the time when any particular conduct takes place may be relied on so far as it tends to establish whether or not that conduct complies with a statement of principle.
- (8) Failure to comply with a statement of principle under this section does not of itself give rise to any right of action by persons affected or affect the validity of any transaction.
- (9) A person is not to be taken to have failed to comply with a statement of principle if he shows that, at the time of the alleged failure, it or its associated code of practice had not been published.
- (10) [A body that publishes a statement or code under this section] must, without delay, give the Treasury a copy of [the statement or code].
- (11) The power under this section to issue statements of principle and codes of practice—
- (a) includes power to make different provision in relation to persons, cases or circumstances of different descriptions; and
  - (b) [is to be treated for the purposes of section 1B(8)(a) as part of the FCA's rule-making functions (where the power is exercisable by the FCA) and is to be treated for the purposes of section 2I(1)(a) as part of the PRA's rule-making functions (where the power is exercisable by the PRA).]
- (12) [A body that has published a statement or code under this section] may charge a reasonable fee for providing a person with a copy of [the statement or code].
- (13) [Any expression which is used both in this section and section 59 has the same meaning in this section as in that section.]

## 65 Statements and codes: procedure.

- [(1) Before the FCA or the PRA issues a statement or code under section 64, it must—
- (a) consult the other regulator; and
  - (b) after doing so, publish a draft of the statement or code in the way appearing to it to be best calculated to bring the statement or code to the attention of the public.
- [(1A) The duty of the FCA to consult the PRA under subsection (1)(a) applies only in so far as the statement or code applies to persons in relation to whom approval is given under section 59 in respect of the performance by them of significant-influence functions

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- (within the meaning of that section) in relation to the carrying on by PRA-  
authorised persons of regulated activities.]
- (2) The draft must be accompanied by —
- (a) a cost benefit analysis; and
  - (b) notice that representations about the proposal may be made to the [body publishing the draft] within a specified time.
- (3) Before [the FCA or the PRA issues] the proposed statement or code, [it] must have regard to any representations made to it in accordance with subsection (2)(b).
- (4) If the [FCA or the PRA] issues the proposed statement or code it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with subsection (2)(b); and
  - (b) its response to them.
- (5) If the statement or code differs from the draft published under subsection (1) in a way which is, in the opinion of the [body issuing the statement or code], significant—
- (a) the [body] must (in addition to complying with subsection (4)) publish details of the difference; and
  - (b) those details must be accompanied by a cost benefit analysis.
- (6) Neither subsection (2)(a) nor subsection (5)(b) applies if the [body concerned] considers—
- (a) that, making the appropriate comparison, there will be no increase in costs; or
  - (b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.
- [(7) Subsections (1)(b) and (2) to (6) do not apply in relation to—
- (a) a statement or code issued by the FCA if it considers that the delay involved in complying with them would be prejudicial to the interests of consumers, as defined in section 425A; or
  - (b) a statement or code issued by the PRA if it considers that the delay involved in complying with them would—
    - (i) be prejudicial to the safety and soundness of PRA-  
authorised persons,  
or
    - (ii) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policyholders.]
- (8) A statement or code must state that it is issued under section 64.
- (9) [A body that publishes a draft under subsection (1)] may charge a reasonable fee for providing a copy of [the draft].
- (10) This section also applies to a proposal to alter or replace a statement or code.
- [(11) “Cost benefit analysis” means—
- (a) an analysis of the costs together with an analysis of the benefits that will arise  
=
    - (i) if the proposed statement or code is issued, or
    - (ii) if subsection (5)(b) applies, from the statement or code that has been issued, and
  - (b) subject to subsection (11A), an estimate of those costs and of those benefits.

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(11A) If, in the opinion of the body concerned—

- (a) the costs or benefits referred to in subsection (11) cannot reasonably be estimated, or
- (b) it is not reasonably practicable to produce an estimate,

the cost benefit analysis need not estimate them, but must include a statement of the opinion of the body concerned and an explanation of it.]

(12) “The appropriate comparison” means—

- (a) in relation to subsection (2)(a), a comparison between the overall position if the statement or code is issued and the overall position if it is not issued;
- (b) in relation to subsection (5)(b), a comparison between the overall position after the issuing of the statement or code and the overall position before it was issued.

**Annotations:**

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

**C167** S. 65 excluded (29.10.2004) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Mortgages\) Order 2004 \(S.I. 2004/2615\)](#), arts. 1(2)(a), **4(2)**

**C168** S. 65 excluded (30.6.2008 for certain purposes, otherwise 1.1.2009) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2007 \(S.I. 2007/3510\)](#), arts. 1(2), **6(2)**

**66 Disciplinary powers.**

(1) The [FCA or the PRA] may take action against a person under this section[(whether or not it has given its approval in relation to the person)] if—

- (a) it appears to the [FCA or (as the case may be) the PRA] that he is guilty of misconduct; and
- (b) the [FCA or (as the case may be) the PRA] is satisfied that it is appropriate in all the circumstances to take action against him.

[(2) For the purposes of action by the FCA, a person is guilty of misconduct if, while an approved person—

- (a) the person has failed to comply with a statement of principle issued by the FCA under section 64; or
- (b) the person has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under this Act or by any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury.

(2A) For the purposes of action by the PRA, a person is guilty of misconduct if, while an approved person in respect of the performance of a significant-influence function in relation to the carrying on by a PRA-authorised person of a regulated activity—

- (a) the person has failed to comply with a statement of principle issued by the PRA under section 64; or
- (b) the person has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under this Act or by any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury.]

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- (3) If the [FCA or the PRA] is entitled to take action under this section against a person, [<sup>F41</sup>it may do one or more of the following—]
- (a) impose a penalty on him of such amount as it considers appropriate;
  - [<sup>F42</sup>(aa) suspend, for such period as it considers appropriate, any approval of the performance by him of any function to which the approval relates;
  - (ab) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance by him of any function to which any approval relates as it considers appropriate;] or
  - (b) publish a statement of his misconduct.
- [<sup>F43</sup>(3A) The period for which a suspension or restriction is to have effect may not exceed two years.
- (3B) A suspension or restriction may have effect in relation to part of a function.
- (3C) A restriction may, in particular, be imposed so as to require any person to take, or refrain from taking, specified action.
- (3D) The [body taking action under this section] may—
- (a) withdraw a suspension or restriction; or
  - (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.]
- (4) [A body] may not take action under this section after the end of the period of [<sup>F44</sup>three years] beginning with the first day on which the [body] knew of the misconduct, unless proceedings in respect of it against the person concerned were begun before the end of that period.
- (5) For the purposes of subsection (4)—
- (a) [a body] is to be treated as knowing of misconduct if it has information from which the misconduct can reasonably be inferred; and
  - (b) proceedings against a person in respect of misconduct are to be treated as begun when a warning notice is given to him under section 67(1).
- [<sup>F45</sup>(5A) Approval” means an approval given under section 59.]
- [(6) “Approved person” means a person in relation to whom an approval is given under that section.]
- (7) “Relevant authorised person”, in relation to an approved person, means the person on whose application approval <sup>F46</sup>... was given.
- [<sup>F47</sup>(8) In relation to any time while a suspension is in force under subsection (3)(aa) in relation to part of a function, any reference in section 59 or 63A to the performance of a function includes the performance of part of a function.
- (9) If at any time a restriction imposed under subsection (3)(ab) is contravened, the approval in relation to the person concerned is to be treated for the purposes of sections 59 and 63A as if it had been withdrawn at that time.]

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

### Annotations:

#### Amendments (Textual)

- F40** Words in s. 66(2)(b) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), [Sch. 5 para. 5](#)
- F41** Words in s. 66(3) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 12\(2\)\(a\)](#), 26(2)(b)
- F42** [S. 66\(3\)\(aa\)\(ab\)](#) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 12\(2\)\(b\)](#), 26(2)(b)
- F43** [S. 66\(3A\)-\(3D\)](#) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 12\(3\)](#), 26(2)(b)
- F44** Words in s. 66(4) substituted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 12\(4\)](#), 26(2)(b)
- F45** [S. 66\(5A\)](#) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 8\(2\)](#)
- F46** Words in s. 66(7) omitted (8.6.2010) by virtue of by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 8\(3\)](#)
- F47** [S. 66\(8\)\(9\)](#) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 8\(4\)](#)

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

- C169** [S. 66](#) modified (1.12.2001) by [S.I. 2001/2657](#), [arts. 1\(1\)](#), 9 (which was revoked (8.10.2001) by [S.I. 2001/3083](#), [arts. 1\(2\)](#), 23); [S.I. 2001/3538](#), [art. 2\(1\)](#)  
[S. 66](#) modified (1.12.2001) by [S.I. 2001/3083](#), [arts. 1\(2\)](#), 9; [S.I. 2001/3538](#), [art. 2\(1\)](#)
- C170** [Ss. 66-70](#) applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, [Sch. 5 para. 1](#) (with reg. 3)
- C171** [Ss. 66-70](#) applied (with modifications) (11.2.2010) by [The Cross-Border Payments in Euro Regulations 2010 \(S.I. 2010/89\)](#), reg. 19, [Sch. para. 1](#)
- C172** [Ss. 66-70](#) applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(b), 62, [Sch. 3 para. 1](#) (with art. 3)
- C173** [S. 66\(3\)\(a\)](#) restricted (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 60(2) (with art. 23(2))

## 67 Disciplinary measures: procedure and right to refer to Tribunal.

(1) If the [FCA or the PRA] proposes to take action against a person under section 66, it must give him a warning notice<sup>F48</sup>; and if it proposes to take action under subsection (3)(aa) or (ab) of that section, it must also give each of the other interested parties a warning notice.]

(2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

[<sup>F49</sup>(2A) A warning notice about a proposal—

(a) to suspend an approval, or

(b) to impose a restriction in relation to the performance of a function,

must state the period for which the suspension or restriction is to have effect.]

(3) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(4) If the [FCA or the PRA] decides to take action against a person under section 66, it must give him a decision notice<sup>F50</sup>; and if it decides to take action under subsection (3) (aa) or (ab) of that section, it must also give each of the other interested parties a decision notice.]

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

(5) A decision notice about the imposition of a penalty must state the amount of the penalty.

[<sup>F51</sup>(5A) A decision notice about—

- (a) the suspension of an approval, or
  - (b) the imposition of a restriction in relation to the performance of a function,
- must state the period for which the suspension or restriction is to have effect.]

(6) A decision notice about the publication of a statement must set out the terms of the statement.

(7) If the [FCA or the PRA] decides to take action against a person under section 66, he may refer the matter to the Tribunal<sup>F52</sup>; and if [it] decides to take action under section 66(3)(aa) or (ab), each of the other interested parties may also refer the matter to the Tribunal.]

[<sup>F53</sup>(8) Approval” means an approval given under section 59.

(9) “Other interested parties”, in relation to [a person (“A”) in relation to whom approval has been given,] are—

- (a) the person on whose application the approval was given (“B”); and
- (b) the person by whom A's services are retained, if not B.

[The reference in this subsection to an approved person has the same meaning as in section 64.]

#### Annotations:

##### Amendments (Textual)

- F48** Words in s. 67(1) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 9\(2\)](#)
- F49** S. 67(2A) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 9\(3\)](#)
- F50** Words in s. 67(4) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 9\(4\)](#)
- F51** S. 67(5A) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 9\(5\)](#)
- F52** Words in s. 67(7) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 9\(6\)](#)
- F53** S. 67(8)(9) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 9\(7\)](#)

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

- C174** S. 67 excluded (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 61(3), 85(5) (with art. 23(2))
- C175** Ss. 66-70 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, [Sch. 5 para. 1](#) (with reg. 3)
- C176** Ss. 66-70 applied (with modifications) (11.2.2010) by [The Cross-Border Payments in Euro Regulations 2010 \(S.I. 2010/89\)](#), reg. 19, [Sch. para. 1](#)
- C177** Ss. 66-70 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(b), 62, [Sch. 3 para. 1](#) (with art. 3)
- C178** S. 67(4) modified (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 73(2), 74(2) (with art. 23(2))

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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## 68 Publication.

After a statement under section 66 is published, the [body publishing it] must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given.

### Annotations:

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

- C179** Ss. 66-70 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, **Sch. 5 para. 1** (with reg. 3)
- C180** Ss. 66-70 applied (with modifications) (11.2.2010) by [The Cross-Border Payments in Euro Regulations 2010 \(S.I. 2010/89\)](#), reg. 19, **Sch. para. 1**
- C181** Ss. 66-70 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(b), 62, **Sch. 3 para. 1** (with art. 3)

## 69 Statement of policy.

- (1) The [FCA and the PRA must each] must prepare and issue a statement of its policy with respect to—
  - [<sup>F54</sup>(a) the imposition of penalties, suspensions or restrictions under section 66;
  - (b) the amount of penalties under that section; and
  - (c) the period for which suspensions or restrictions under that section are to have effect.]
- (2) The [FCA's or the PRA's] policy in determining what the amount of a penalty should be [<sup>F55</sup>, 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 in relation to the nature of the principle or requirement concerned;
  - (b) the extent to which that misconduct was deliberate or reckless; and
  - (c) whether [<sup>F56</sup>the person against whom action is to be taken] is an individual.
- (3) [A body that has issued a statement under this section] may at any time alter or replace [the statement].
- (4) If a statement issued under this section is altered or [replaced by a body, the body] must issue the altered or replacement statement.
- (5) [A body that publishes a statement under this section] must, without delay, give the Treasury a copy of [the statement].
- (6) A statement issued under this section[by a body] must be published by the [body] in the way appearing to the [body]to be best calculated to bring it to the attention of the public.
- (7) [A body that has issued a statement under this section] may charge a reasonable fee for providing a person with a copy of the statement.
- (8) In exercising, or deciding whether to exercise, its power under section 66 in the case of any particular misconduct, the [FCA or (as the case may be) the PRA] must have regard to any statement of policy published[by it] under this section and in force at the time when the misconduct in question occurred.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

#### Annotations:

##### Amendments (Textual)

- F54** S. 69(1)(a)-(c) substituted (8.6.2010) for s. 69(1)(a)(b) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 10\(2\)](#)
- F55** Words in s. 69(2) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 10\(3\)\(a\)](#)
- F56** Words in s. 69(2)(c) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 10\(3\)\(b\)](#)

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

- C182** Ss. 66-70 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, [Sch. 5 para. 1](#) (with reg. 3)
- C183** Ss. 66-70 applied (with modifications) (11.2.2010) by [The Cross-Border Payments in Euro Regulations 2010 \(S.I. 2010/89\)](#), reg. 19, [Sch. para. 1](#)
- C184** S. 69 applied (with modifications) (7.6.2010) by [The Credit Rating Agencies Regulations 2010 \(S.I. 2010/906\)](#), [reg. 22\(1\)](#)
- C185** Ss. 66-70 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(b), 62, [Sch. 3 para. 1](#) (with art. 3)

## 70 Statements of policy: procedure.

- (1) Before [\[a body issues\]](#) a statement under section 69, the [\[body\]](#) must publish a draft of the proposed statement in the way appearing to the [\[body\]](#) 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 [\[body\]](#) within a specified time.
- (3) Before issuing the proposed statement, the [\[body\]](#) must have regard to any representations made to it in accordance with subsection (2).
- (4) If the [\[body\]](#) 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 [\[body\]](#), significant, the [\[body\]](#) must (in addition to complying with subsection (4)) publish details of the difference.
- (6) [\[A body that has published a draft under subsection \(1\)\]](#) may charge a reasonable fee for providing a person with a copy of [\[the draft\]](#).
- (7) This section also applies to a proposal to alter or replace a statement.

#### Annotations:

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

- C186** Ss. 66-70 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, [Sch. 5 para. 1](#) (with reg. 3)
- C187** Ss. 66-70 applied (with modifications) (11.2.2010) by [The Cross-Border Payments in Euro Regulations 2010 \(S.I. 2010/89\)](#), reg. 19, [Sch. para. 1](#)

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**C188** S. 70 applied (with modifications) (7.6.2010) by [The Credit Rating Agencies Regulations 2010 \(S.I. 2010/906\)](#), [reg. 22\(1\)](#)

**C189** Ss. 66-70 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(b), 62, [Sch. 3 para. 1](#) (with art. 3)

### *Breach of statutory duty*

#### **71 Actions for damages.**

- (1) A contravention of section 56(6) or 59(1) or (2) 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 that kind 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.
- (3) “Private person” has such meaning as may be prescribed.

#### **Annotations:**

##### **Commencement Information**

**I24** S. 71 wholly in force at 1.12.2001; s. 71 not in force at Royal Assent see s. 431(2); s. 71(2)(3) in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)](#), [Sch. Pt. 2](#); s. 71 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

## **PART VI**

### OFFICIAL LISTING

#### **Annotations:**

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

**C190** Pt. VI (ss. 72-103) applied (with modifications) (1.12.2001) by [S.I. 1995/1537](#), [Sch. 4](#) (as amended (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 511](#))

### *The competent authority*

#### **72 The competent authority**

.....

#### **73 General duty of the competent authority.**

.....

**Annotations:**

**Amendments (Textual)**

- F57** S. 73(1)(c) substituted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 4, **Sch. 1 para. 1(2)**
- F58** S. 73(1)(f) substituted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 4, **Sch. 1 para. 1(3)**
- F59** S. 73(1A) inserted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1272, 1300(1)(a), **Sch. 15 para. 2**

[<sup>F60</sup>**73A Part 6 Rules**

- (1) The [FCA] may make rules (“Part 6 rules”) for the purposes of this Part.
- (2) Provisions of Part 6 rules expressed to relate to the official list are referred to in this Part as “listing rules”.
- (3) Provisions of Part 6 rules expressed to relate to disclosure of information in respect of financial instruments which have been admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made, are referred to in this Part as “disclosure rules”.
- [<sup>F61</sup>(4) Provisions of Part 6 rules expressed to relate to transferable securities are referred to in this Part as “prospectus rules”.
- (5) In relation to prospectus rules, the purposes of this Part include the purposes of the prospectus directive.]
- [<sup>F62</sup>(6) Transparency rules and corporate governance rules are not listing rules, disclosure rules or prospectus rules, but are Part 6 rules.]]

**Annotations:**

**Amendments (Textual)**

- F60** S. 73A inserted (17.3.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(3)(b), 4, **Sch. 1 para. 2**
- F61** S. 73A(4)(5) added (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 1**
- F62** S. 73A(6) inserted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1272, 1300(1)(a), **Sch. 15 para. 3**

*The official list*

**74 The official list.**

- (1) The [FCA] must maintain the official list.
- (2) The [FCA] may admit to the official list such securities and other things as it considers appropriate.
- (3) But—
  - (a) nothing may be admitted to the official list except in accordance with this Part; and

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- (b) the Treasury may by order provide that anything which falls within a description or category specified in the order may not be admitted to the official list.
- (4) <sup>F63</sup> .....
- (5) In the following provisions of this Part—  
<sup>F64</sup> .....  
 “listing” means being included in the official list in accordance with this Part.

**Annotations:**

**Amendments (Textual)**

- F63** S. 74(4) repealed (17.3.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(3)(b), 4, [Sch. 1 para. 3](#)
- F64** S. 74(5): definition of "security" omitted (1.7.2005) by virtue of [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 2](#)

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

- C191** S. 74(5) applied (1.12.2001) by [S.I. 2001/2957](#), arts. 1, 8(4); [S.I. 2001/3538](#), [art. 2\(1\)](#)

**Commencement Information**

- I25** S. 74 wholly in force at 1.12.2001; s. 74 not in force at Royal Assent see [s. 431\(2\)](#); [s. 74\(4\)\(5\)](#) in force at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); s. 74 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

*Listing*

**75 Applications for listing.**

- (1) Admission to the official list may be granted only on an application made to the [\[FCA\]](#) in such manner as may be required by listing rules.
- (2) No application for listing may be entertained by the [\[FCA\]](#) unless it is made by, or with the consent of, the issuer of the securities concerned.
- (3) No application for listing may be entertained by the [\[FCA\]](#) in respect of securities which are to be issued by a body of a prescribed kind.
- (4) The [\[FCA\]](#) may not grant an application for listing unless it is satisfied that—
  - (a) the requirements of listing rules (so far as they apply to the application), and
  - (b) any other requirements imposed by the [\[FCA\]](#) in relation to the application, are complied with.
- (5) An application for listing may be refused if, for a reason relating to the issuer, the [\[FCA\]](#) considers that granting it would be detrimental to the interests of investors.
- (6) An application for listing securities which are already officially listed in another EEA State may be refused if the issuer has failed to comply with any obligations to which he is subject as a result of that listing.

**Annotations:**

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

C192 S. 75(1) extended (1.12.2001) by S.I. 2001/2957, arts. 1, 4(2); S.I. 2001/3538, art. 2(1)

**Commencement Information**

I26 S. 75 wholly in force at 1.12.2001; s. 75 not in force at Royal Assent see s. 431(2); s. 75(3) in force for specified purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pt. 2; s. 75(1) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 75 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**76 Decision on application.**

- (1) The [FCA] must notify the applicant of its decision on an application for listing—
  - (a) before the end of the period of six months beginning with the date on which the application is received; or
  - (b) if within that period the [FCA] has required the applicant to provide further information in connection with the application, before the end of the period of six months beginning with the date on which that information is provided.
- (2) If the [FCA] fails to comply with subsection (1), it is to be taken to have decided to refuse the application.
- (3) If the [FCA] decides to grant an application for listing, it must give the applicant written notice.
- (4) If the [FCA] proposes to refuse an application for listing, it must give the applicant a warning notice.
- (5) If the [FCA] decides to refuse an application for listing, it must give the applicant a decision notice.
- (6) If the [FCA] decides to refuse an application for listing, the applicant may refer the matter to the Tribunal.
- (7) If securities are admitted to the official list, their admission may not be called in question on the ground that any requirement or condition for their admission has not been complied with.

**Annotations:**

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

C193 S. 76(1) modified (1.12.2001) by S.I. 2001/2957, arts. 1, 4(3); S.I. 2001/3538, art. 2(1)

**77 Discontinuance and suspension of listing.**

- (1) The [FCA] may, in accordance with listing rules, discontinue the listing of any securities if satisfied that there are special circumstances which preclude normal regular dealings in them.
- (2) The [FCA] may, in accordance with listing rules, suspend the listing of any securities.

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- [<sup>F65</sup>(2A) The [FCA] may discontinue under subsection (1) or suspend under subsection (2) the listing of any securities on its own initiative or on the application of the issuer of those securities.]
- (3) If securities are suspended under subsection (2) they are to be treated, for the purposes of [section 96 and paragraph 23(4) of Schedule 1ZA], as still being listed.
- (4) This section applies to securities whenever they were admitted to the official list.
- (5) If the [FCA] discontinues or suspends the listing of any securities, [<sup>F66</sup>on its own initiative,] the issuer may refer the matter to the Tribunal.

**Annotations:**

**Amendments (Textual)**

**F65** S. 77(2A) inserted (12.7.2007) by [The Regulatory Reform \(Financial Services and Markets Act 2000\) Order 2007 \(S.I. 2007/1973\)](#), [art. 5\(a\)](#)

**F66** Words in s. 77(5) inserted (12.7.2007) by [The Regulatory Reform \(Financial Services and Markets Act 2000\) Order 2007 \(S.I. 2007/1973\)](#), [art. 5\(b\)](#)

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

**C194** S. 77(2) extended (1.12.2001) by [S.I. 2001/2957](#), [arts. 1, 8\(3\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

**Commencement Information**

**I27** S. 77 wholly in force at 1.12.2001; s. 77 not in force at Royal Assent see s. 431(2); s. 77(1)(2)(4) in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); s. 77 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

**78 Discontinuance or suspension: procedure.**

- (1) A discontinuance or suspension [<sup>F67</sup>by the [FCA] on its own initiative] takes effect—
- (a) immediately, if the notice under subsection (2) states that that is the case;
  - (b) in any other case, on such date as may be specified in that notice.
- (2) If [<sup>F68</sup>on its own initiative] the [FCA]—
- (a) proposes to discontinue or suspend the listing of securities, or
  - (b) discontinues or suspends the listing of securities with immediate effect,
- it must give the issuer of the securities written notice.
- (3) The notice must—
- (a) give details of the discontinuance or suspension;
  - (b) state the [FCA]'s reasons for the discontinuance or suspension and for choosing the date on which it took effect or takes effect;
  - (c) inform the issuer of the securities that he may make representations to the [FCA] within such period as may be specified in the notice (whether or not he has referred the matter to the Tribunal);
  - (d) inform him of the date on which the discontinuance or suspension took effect or will take effect; and
  - (e) inform him of his right to refer the matter to the Tribunal.
- (4) The [FCA] may extend the period within which representations may be made to it.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (5) If, having considered any representations made by the issuer of the securities, the [FCA] decides—
  - (a) to discontinue or suspend the listing of the securities, or
  - (b) if the discontinuance or suspension has taken effect, not to cancel it,the [FCA] must give the issuer of the securities written notice.
- (6) A notice given under subsection (5) must inform the issuer of the securities of his right to refer the matter to the Tribunal.
- (7) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (8) If the [FCA] decides—
  - (a) not to discontinue or suspend the listing of the securities, or
  - (b) if the discontinuance or suspension has taken effect, to cancel it,the [FCA] must give the issuer of the securities written notice.
- (9) The effect of cancelling a discontinuance is that the securities concerned are to be readmitted, without more, to the official list.
- (10) If the [FCA] has suspended the listing of securities [F69 on its own initiative] and proposes to refuse an application by the issuer of the securities for the cancellation of the suspension, it must give him a warning notice.
- (11) The [FCA] must, having considered any representations made in response to the warning notice—
  - (a) if it decides to refuse the application, give the issuer of the securities a decision notice;
  - (b) if it grants the application, give him written notice of its decision.
- (12) If the [FCA] decides to refuse an application for the cancellation of the suspension of listed securities, the applicant may refer the matter to the Tribunal.
- (13) “Discontinuance” means a discontinuance of listing under section 77(1).
- (14) “Suspension” means a suspension of listing under section 77(2).

**Annotations:**

**Amendments (Textual)**

**F67** Words in s. 78(1) inserted (12.7.2007) by [The Regulatory Reform \(Financial Services and Markets Act 2000\) Order 2007 \(S.I. 2007/1973\)](#), [art. 6\(a\)](#)

**F68** Words in s. 78(2) inserted (12.7.2007) by [The Regulatory Reform \(Financial Services and Markets Act 2000\) Order 2007 \(S.I. 2007/1973\)](#), [art. 6\(b\)](#)

**F69** Words in s. 78(10) inserted (12.7.2007) by [The Regulatory Reform \(Financial Services and Markets Act 2000\) Order 2007 \(S.I. 2007/1973\)](#), [art. 6\(c\)](#)

**[F70] 78A Discontinuance or suspension at the request of the issuer: procedure**

- (1) A discontinuance or suspension by the [FCA] on the application of the issuer of the securities takes effect—
  - (a) immediately, if the notification under subsection (2) so provides;

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- [(b) in any other case, on such date as may be provided for in that notification.]
- (2) If the [FCA] discontinues or suspends the listing of securities on the application of the issuer of the securities it must [notify the issuer (whether in writing or otherwise)].
- [(3) The notification must—
- (a) notify the issuer of the date on which the discontinuance or suspension took effect or will take effect; and
- (b) notify the issuer of such other matters (if any) as are specified in listing rules.]
- (4) If the [FCA] proposes to refuse an application by the issuer of the securities for the discontinuance or suspension of the listing of the securities, it must give him a warning notice.
- (5) The [FCA] must, having considered any representations made in response to the warning notice, if it decides to refuse the application, give the issuer of the securities a decision notice.
- (6) If the [FCA] decides to refuse an application by the issuer of the securities for the discontinuance or suspension of the listing of the securities, the issuer may refer the matter to the Tribunal.
- (7) If the [FCA] has suspended the listing of securities on the application of the issuer of the securities and proposes to refuse an application by the issuer for the cancellation of the suspension, it must give him a warning notice.
- (8) The [FCA] must, having considered any representations made in response to the warning notice—
- (a) if it decides to refuse the application for the cancellation of the suspension, give the issuer of the securities a decision notice;
- (b) if it grants the application, give him written notice of its decision.
- (9) If the [FCA] decides to refuse an application for the cancellation of the suspension of listed securities, the applicant may refer the matter to the Tribunal.
- (10) “Discontinuance” means a discontinuance of listing under section 77(1).
- (11) “Suspension” means a suspension of listing under section 77(2).]

**Annotations:**

**Amendments (Textual)**

**F70** S. 78A inserted (12.7.2007) by [The Regulatory Reform \(Financial Services and Markets Act 2000\) Order 2007 \(S.I. 2007/1973\)](#), [art. 7](#)

*Listing particulars*

**79 Listing particulars and other documents.**

- (1) Listing rules may provide that securities <sup>F71</sup>... of a kind specified in the rules may not be admitted to the official list unless—
- (a) listing particulars have been submitted to, and approved by, the competent authority and published; or

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (b) in such cases as may be specified by listing rules, such document (other than listing particulars or a prospectus of a kind required by listing rules) as may be so specified has been published.
- (2) “Listing particulars” means a document in such form and containing such information as may be specified in listing rules.
- (3) For the purposes of this Part, the persons responsible for listing particulars are to be determined in accordance with regulations made by the Treasury.
- [<sup>F72</sup>(3A) Listing rules made under subsection (1) may not specify securities of a kind for which an approved prospectus is required as a result of section 85.]
- (4) Nothing in this section affects the [FCA]’s general power to make listing rules.

**Annotations:**

**Amendments (Textual)**

**F71** Words in s. 79(1) repealed (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 3\(2\)](#)

**F72** S. 79(3A) inserted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 3\(3\)](#)

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

**C195** S. 79 extended (1.12.2001) by [S.I. 2001/2957](#), [arts. 1, 6\(1\)\(3\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

**Commencement Information**

**I28** S. 79 wholly in force at 18.6.2001; s. 79 not in force at Royal Assent see [s. 431\(2\)](#); [s. 79\(3\)](#) in force at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(a\)](#), [Sch. Pt. 1](#); s. 79 in force so far as not already in force at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#)

**80 General duty of disclosure in listing particulars.**

- (1) Listing particulars submitted to the [FCA] under section 79 must contain all such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of—
  - (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and
  - (b) the rights attaching to the securities.
- (2) That information is required in addition to any information required by—
  - (a) listing rules, or
  - (b) the [FCA],as a condition of the admission of the securities to the official list.
- (3) Subsection (1) applies only to information—
  - (a) within the knowledge of any person responsible for the listing particulars; or
  - (b) which it would be reasonable for him to obtain by making enquiries.
- (4) In determining what information subsection (1) requires to be included in listing particulars, regard must be had (in particular) to—

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (a) the nature of the securities and their issuer;
- (b) the nature of the persons likely to consider acquiring them;
- (c) the fact that certain matters may reasonably be expected to be within the knowledge of professional advisers of a kind which persons likely to acquire the securities may reasonably be expected to consult; and
- (d) any information available to investors or their professional advisers as a result of requirements imposed on the issuer of the securities by a recognised investment exchange, by listing rules or by or under any other enactment.

## 81 Supplementary listing particulars.

- (1) If at any time after the preparation of listing particulars which have been submitted to the [FCA] under section 79 and before the commencement of dealings in the securities concerned following their admission to the official list—
- (a) there is a significant change affecting any matter contained in those particulars the inclusion of which was required by—
    - (i) section 80,
    - (ii) listing rules, or
    - (iii) the [FCA], or
  - (b) a significant new matter arises, the inclusion of information in respect of which would have been so required if it had arisen when the particulars were prepared,
- the issuer must, in accordance with listing rules, submit supplementary listing particulars of the change or new matter to the [FCA], for its approval and, if they are approved, publish them.
- (2) “Significant” means significant for the purpose of making an informed assessment of the kind mentioned in section 80(1).
- (3) If the issuer of the securities is not aware of the change or new matter in question, he is not under a duty to comply with subsection (1) unless he is notified of the change or new matter by a person responsible for the listing particulars.
- (4) But it is the duty of any person responsible for those particulars who is aware of such a change or new matter to give notice of it to the issuer.
- (5) Subsection (1) applies also as respects matters contained in any supplementary listing particulars previously published under this section in respect of the securities in question.

### Annotations:

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

**C196** S. 81 modified (1.12.2001) by S.I. 2001/2957, arts. 1, 6(1)(3)(4); S.I. 2001/3538, art. 2(1)

**C197** S. 81(1) extended (1.12.2001) by S.I. 2001/2957, arts. 1, 6(1)(3)(4); S.I. 2001/3538, art. 2(1)

#### Commencement Information

**I29** S. 81 wholly in force at 1.12.2001; s. 81 not in force at Royal Assent see s. 431(2); s. 81(1)(5) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 81 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

## 82 Exemptions from disclosure.

- (1) The [FCA] may authorise the omission from listing particulars of any information, the inclusion of which would otherwise be required by section 80 or 81, on the ground—
  - (a) that its disclosure would be contrary to the public interest;
  - (b) that its disclosure would be seriously detrimental to the issuer; or
  - (c) in the case of securities of a kind specified in listing rules, that its disclosure is unnecessary for persons of the kind who may be expected normally to buy or deal in securities of that kind.
- (2) But—
  - (a) no authority may be granted under subsection (1)(b) in respect of essential information; and
  - (b) no authority granted under subsection (1)(b) extends to any such information.
- (3) The Secretary of State or the Treasury may issue a certificate to the effect that the disclosure of any information (including information that would otherwise have to be included in listing particulars for which they are themselves responsible) would be contrary to the public interest.
- (4) The [FCA] is entitled to act on any such certificate in exercising its powers under subsection (1)(a).
- (5) This section does not affect any powers of the [FCA] under listing rules made as a result of section 101(2).
- (6) “Essential information” means information which a person considering acquiring securities of the kind in question would be likely to need in order not to be misled about any facts which it is essential for him to know in order to make an informed assessment.
- (7) “Listing particulars” includes supplementary listing particulars.

### Annotations:

#### Commencement Information

**I30** S. 82 wholly in force at 1.12.2001; s. 82 not in force at Royal Assent see s. 431(2); s. 82(1)(5)(7) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 82 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

## 83 Registration of listing particulars.

F73 .....

### Annotations:

#### Amendments (Textual)

**F73** S. 83 repealed (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), Sch. 1 para. 4

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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*[<sup>F74</sup>Transferable securities: public offers and admission to trading]*

**Annotations:**

**Amendments (Textual)**

**F74** Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 5](#)

**[<sup>F75</sup>84 Matters which may be dealt with by prospectus rules**

- (1) Prospectus rules may make provision as to—
  - (a) the required form and content of a prospectus (including a summary);
  - (b) the cases in which a summary need not be included in a prospectus;
  - (c) the languages which may be used in a prospectus (including a summary);
  - (d) the determination of the persons responsible for a prospectus;
  - (e) the manner in which applications to the [FCA] for the approval of a prospectus are to be made.
- (2) Prospectus rules may also make provision as to—
  - (a) the period of validity of a prospectus;
  - (b) the disclosure of the maximum price or of the criteria or conditions according to which the final offer price is to be determined, if that information is not contained in a prospectus;
  - (c) the disclosure of the amount of the transferable securities which are to be offered to the public or of the criteria or conditions according to which that amount is to be determined, if that information is not contained in a prospectus;
  - (d) the required form and content of other summary documents (including the languages which may be used in such a document);
  - (e) the ways in which a prospectus that has been approved by the [FCA] may be made available to the public;
  - (f) the disclosure, publication or other communication of such information as the [FCA] may reasonably stipulate;
  - (g) the principles to be observed in relation to advertisements in connection with an offer of transferable securities to the public or admission of transferable securities to trading on a regulated market and the enforcement of those principles;
  - (h) the suspension of trading in transferable securities where continued trading would be detrimental to the interests of investors;
  - (i) elections under section 87 or under Article 2.1(m)(iii) of the prospectus directive as applied for the purposes of this Part by section 102C.
- (3) Prospectus rules may also make provision as to—
  - (a) access to the register of investors maintained under section 87R; and
  - (b) the supply of information from that register.
- (4) Prospectus rules may make provision for the purpose of dealing with matters arising out of or related to any provision of the prospectus directive.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (5) In relation to cases where the home State in relation to an issuer of transferable securities is an EEA State other than the United Kingdom, prospectus rules may make provision for the recognition of elections made in relation to such securities under the law of that State in accordance with Article 1.3 or 2.1(m)(iii) of the prospectus directive.
- (6) In relation to a document relating to transferable securities issued by an issuer incorporated in a non-EEA State and drawn up in accordance with the law of that State, prospectus rules may make provision as to the approval of that document as a prospectus.
- (7) Nothing in this section affects the [FCA]'s general power to make prospectus rules.]

**Annotations:**

**Amendments (Textual)**

**F75** Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 5](#)

**[<sup>F76</sup>85 Prohibition of dealing etc. in transferable securities without approved prospectus**

- (1) It is unlawful for transferable securities to which this subsection applies to be offered to the public in the United Kingdom unless an approved prospectus has been made available to the public before the offer is made.
- (2) It is unlawful to request the admission of transferable securities to which this subsection applies to trading on a regulated market situated or operating in the United Kingdom unless an approved prospectus has been made available to the public before the request is made.
- (3) A person who contravenes subsection (1) or (2) is guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 3 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.
- (4) A contravention of subsection (1) or (2) is actionable, at the suit of a 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.
- (5) Subsection (1) applies to all transferable securities other than—
  - (a) those listed in Schedule 11A;
  - (b) such other transferable securities as may be specified in prospectus rules.
- (6) Subsection (2) applies to all transferable securities other than—
  - (a) those listed in Part 1 of Schedule 11A;
  - (b) such other transferable securities as may be specified in prospectus rules.
- (7) “Approved prospectus” means, in relation to transferable securities to which this section applies, a prospectus approved by the competent authority of the home State in relation to the issuer of the securities.]

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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**Annotations:**

**Amendments (Textual)**

**F76** Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 5](#)

**[<sup>F77</sup>86 Exempt offers to the public**

- (1) A person does not contravene section 85(1) if—
- (a) the offer is made to or directed at qualified investors only;
  - (b) the offer is made to or directed at fewer than 100 persons, other than qualified investors, per EEA State;
  - (c) the minimum consideration which may be paid by any person for transferable securities acquired by him pursuant to the offer is at least 50,000 euros (or an equivalent amount);
  - (d) the transferable securities being offered are denominated in amounts of at least 50,000 euros (or equivalent amounts); or
  - (e) the total consideration for the transferable securities being offered cannot exceed 100,000 euros (or an equivalent amount).
- (2) Where—
- (a) a person who is not a qualified investor (“the client”) has engaged a qualified investor falling within Article 2.1(e)(i) of the prospectus directive to act as his agent, and
  - (b) the terms on which the qualified investor is engaged enable him to make decisions concerning the acceptance of offers of transferable securities on the client's behalf without reference to the client,
- an offer made to or directed at the qualified investor is not to be regarded for the purposes of subsection (1) as also having been made to or directed at the client.
- (3) For the purposes of subsection (1)(b), the making of an offer of transferable securities to—
- (a) trustees of a trust,
  - (b) members of a partnership in their capacity as such, or
  - (c) two or more persons jointly,
- is to be treated as the making of an offer to a single person.
- (4) In determining whether subsection (1)(e) is satisfied in relation to an offer (“offer A”), offer A is to be taken together with any other offer of transferable securities of the same class made by the same person which—
- (a) was open at any time within the period of 12 months ending with the date on which offer A is first made; and
  - (b) had previously satisfied subsection (1)(e).
- (5) For the purposes of this section, an amount (in relation to an amount denominated in euros) is an “equivalent amount” if it is an amount of equal value denominated wholly or partly in another currency or unit of account.
- (6) The equivalent is to be calculated at the latest practicable date before (but in any event not more than 3 working days before) the date on which the offer is first made.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (7) “Qualified investor” means—
- (a) an entity falling within Article 2.1(e)(i), (ii) or (iii) of the prospectus directive;
  - (b) an investor registered on the register maintained by the competent authority under section 87R;
  - (c) an investor authorised by an EEA State other than the United Kingdom to be considered as a qualified investor for the purposes of the prospectus directive.]

**Annotations:**

**Amendments (Textual)**

**F77** Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 5](#)

**[<sup>F78</sup>87 Election to have prospectus**

- (1) A person who proposes—
- (a) to issue transferable securities to which this section applies,
  - (b) to offer to the public transferable securities to which this section applies, or
  - (c) to request the admission to a regulated market of transferable securities to which this section applies,
- may elect, in accordance with prospectus rules, to have a prospectus in relation to the securities.
- (2) If a person makes such an election, the provisions of this Part and of prospectus rules apply in relation to those transferable securities as if, in relation to an offer of the securities to the public or the admission of the securities to trading on a regulated market, they were transferable securities for which an approved prospectus would be required as a result of section 85.
- (3) Listing rules made under section 79 do not apply to securities which are the subject of an election.
- (4) The transferable securities to which this section applies are those which fall within any of the following paragraphs of Schedule 11A—
- (a) paragraph 2,
  - (b) paragraph 4,
  - (c) paragraph 8, or
  - (d) paragraph 9,
- where the United Kingdom is the home State in relation to the issuer of the securities.]

**Annotations:**

**Amendments (Textual)**

**F78** Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 5](#)

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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

**C198** S. 87 extended (1.12.2001) by S.I. 2001/2957, arts. 1, 6(4); S.I. 2001/3538, art. 2(1)

[<sup>F79</sup>Approval of prospectus

**Annotations:**

**Amendments (Textual)**

**F79** Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by [The Prospectus Regulations 2005](#) (S.I. 2005/1433), reg. 2(1), [Sch. 1 para. 5](#)

**87A**     **Criteria for approval of prospectus by [FCA]**

- (1) The [FCA] may not approve a prospectus unless it is satisfied that—
  - (a) the United Kingdom is the home State in relation to the issuer of the transferable securities to which it relates,
  - (b) the prospectus contains the necessary information, and
  - (c) all of the other requirements imposed by or in accordance with this Part or the prospectus directive have been complied with (so far as those requirements apply to a prospectus for the transferable securities in question).
- (2) The necessary information is the information necessary to enable investors to make an informed assessment of—
  - (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the transferable securities and of any guarantor; and
  - (b) the rights attaching to the transferable securities.
- (3) The necessary information must be presented in a form which is comprehensible and easy to analyse.
- (4) The necessary information must be prepared having regard to the particular nature of the transferable securities and their issuer.
- (5) The prospectus must include a summary (unless the transferable securities in question are ones in relation to which prospectus rules provide that a summary is not required).
- (6) The summary must, briefly and in non-technical language, convey the essential characteristics of, and risks associated with, the issuer, any guarantor and the transferable securities to which the prospectus relates.
- (7) Where the prospectus for which approval is sought does not include the final offer price or the amount of transferable securities to be offered to the public, the applicant must inform the [FCA] in writing of that information as soon as that element is finalised.
- (8) “Prospectus” (except in subsection (5)) includes a supplementary prospectus.

**87B**     **Exemptions from disclosure**

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (1) The [FCA] may authorise the omission from a prospectus of any information, the inclusion of which would otherwise be required, on the ground—
  - (a) that its disclosure would be contrary to the public interest;
  - (b) that its disclosure would be seriously detrimental to the issuer, provided that the omission would be unlikely to mislead the public with regard to any facts or circumstances which are essential for an informed assessment of the kind mentioned in section 87A(2); or
  - (c) that the information is only of minor importance for a specific offer to the public or admission to trading on a regulated market and unlikely to influence an informed assessment of the kind mentioned in section 87A(2).
- (2) The Secretary of State or the Treasury may issue a certificate to the effect that the disclosure of any information would be contrary to the public interest.
- (3) The [FCA] is entitled to act on any such certificate in exercising its powers under subsection (1)(a).
- (4) This section does not affect any powers of the [FCA] under prospectus rules.
- (5) “Prospectus” includes a supplementary prospectus.

## **87C Consideration of application for approval**

- (1) The [FCA] must notify the applicant of its decision on an application for approval of a prospectus before the end of the period for consideration.
- (2) The period for consideration—
  - (a) begins with the first working day after the date on which the application is received; but
  - (b) if the [FCA] gives a notice under subsection (4), is to be treated as beginning with the first working day after the date on which the notice is complied with.
- (3) The period for consideration is—
  - (a) except in the case of a new issuer, 10 working days; or
  - (b) in that case, 20 working days.
- (4) The [FCA] may by notice in writing require a person who has applied for approval of a prospectus to provide—
  - (a) specified documents or documents of a specified description, or
  - (b) specified information or information of a specified description.
- (5) No notice under subsection (4) may be given after the end of the period, beginning with the first working day after the date on which the application is received, of—
  - (a) except in the case of a new issuer, 10 working days; or
  - (b) in that case, 20 working days.
- (6) Subsection (4) applies only to information and documents reasonably required in connection with the exercise by the [FCA] of its functions in relation to the application.
- (7) The [FCA] may require any information provided under this section to be provided in such form as it may reasonably require.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (8) The [FCA] may require—
  - (a) any information provided, whether in a document or otherwise, to be verified in such manner, or
  - (b) any document produced to be authenticated in such manner, as it may reasonably require.
- (9) The [FCA] must notify the applicant of its decision on an application for approval of a supplementary prospectus before the end of the period of 7 working days beginning with the date on which the application is received; and subsections (4) and (6) to (8) apply to such an application as they apply to an application for approval of a prospectus.
- (10) The [FCA]'s failure to comply with subsection (1) or (9) does not constitute approval of the application in question.
- (11) “New issuer” means an issuer of transferable securities which—
  - (a) does not have transferable securities admitted to trading on any regulated market; and
  - (b) has not previously offered transferable securities to the public.

#### **87D Procedure for decision on application for approval**

- (1) If the [FCA] approves a prospectus, it must give the applicant written notice.
- (2) If the [FCA] proposes to refuse to approve a prospectus, it must give the applicant written notice.
- (3) The notice must state the [FCA]'s reasons for the proposed refusal.
- (4) If the [FCA] decides to refuse to approve a prospectus, it must give the applicant written notice.
- (5) The notice must—
  - (a) give the [FCA]'s reasons for refusing the application; and
  - (b) inform the applicant of his right to refer the matter to the Tribunal.
- (6) If the [FCA] refuses to approve a prospectus, the applicant may refer the matter to the Tribunal.
- (7) In this section “prospectus” includes a supplementary prospectus.

Transfer of application for approval of a prospectus

#### **87E Transfer by [FCA] of application for approval**

- (1) The [FCA] may transfer an application for the approval of a prospectus or a supplementary prospectus to the [FCA] of another EEA State (“the transferee authority”).
- (2) Before doing so, the [FCA] must obtain the agreement of the transferee authority.

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (3) The [FCA] must inform the applicant of the transfer within 3 working days beginning with the first working day after the date of the transfer.
- (4) On making a transfer under subsection (1), the [FCA] ceases to have functions under this Part in relation to the application transferred.

#### **87F Transfer to [FCA] of application for approval**

- (1) Where the [FCA] agrees to the transfer to it of an application for the approval of a prospectus made to the [FCA] of another EEA State—
  - (a) the United Kingdom is to be treated for the purposes of this Part as the home State in relation to the issuer of the transferable securities to which the prospectus relates, and
  - (b) this Part applies to the application as if it had been made to the [FCA] but with the modification in subsection (2).
- (2) Section 87C applies as if the date of the transfer were the date on which the application was received by the [FCA].

Supplementary prospectus

#### **87G Supplementary prospectus**

- (1) Subsection (2) applies if, during the relevant period, there arises or is noted a significant new factor, material mistake or inaccuracy relating to the information included in a prospectus approved by the [FCA].
- (2) The person on whose application the prospectus was approved must, in accordance with prospectus rules, submit a supplementary prospectus containing details of the new factor, mistake or inaccuracy to the [FCA] for its approval.
- (3) The relevant period begins when the prospectus is approved and ends—
  - (a) with the closure of the offer of the transferable securities to which the prospectus relates; or
  - (b) when trading in those securities on a regulated market begins.
- (4) “Significant” means significant for the purposes of making an informed assessment of the kind mentioned in section 87A(2).
- (5) Any person responsible for the prospectus who is aware of any new factor, mistake or inaccuracy which may require the submission of a supplementary prospectus in accordance with subsection (2) must give notice of it to—
  - (a) the issuer of the transferable securities to which the prospectus relates, and
  - (b) the person on whose application the prospectus was approved.
- (6) A supplementary prospectus must provide sufficient information to correct any mistake or inaccuracy which gave rise to the need for it.
- (7) Subsection (1) applies also to information contained in any supplementary prospectus published under this section.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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## Passporting

### 87H Prospectus approved in another EEA State

- (1) A prospectus approved by the competent authority of an EEA State other than the United Kingdom is not an approved prospectus for the purposes of section 85 unless that authority has provided the [FCA] with—
  - (a) a certificate of approval;
  - (b) a copy of the prospectus as approved; and
  - (c) if requested by the [FCA], a translation of the summary of the prospectus.
- (2) A document is not a certificate of approval unless it states that the prospectus—
  - (a) has been drawn up in accordance with the prospectus directive; and
  - (b) has been approved, in accordance with that directive, by the competent authority providing the certificate.
- (3) A document is not a certificate of approval unless it states whether (and, if so, why) the competent authority providing it authorised, in accordance with the prospectus directive, the omission from the prospectus of information which would otherwise have been required to be included.
- (4) “Prospectus” includes a supplementary prospectus.

### 87I Provision of information to host Member State

- (1) The [FCA] must, if requested to do so, supply the competent authority of a specified EEA State with—
  - (a) a certificate of approval;
  - (b) a copy of the specified prospectus (as approved by the competent authority); and
  - (c) a translation of the summary of the specified prospectus (if the request states that one has been requested by the other competent authority).
- (2) Only the following may make a request under this section—
  - (a) the issuer of the transferable securities to which the specified prospectus relates;
  - (b) a person who wishes to offer the transferable securities to which the specified prospectus relates to the public in an EEA State other than (or as well as) the United Kingdom;
  - (c) a person requesting the admission of the transferable securities to which the specified prospectus relates to a regulated market situated or operating in an EEA State other than (or as well as) the United Kingdom.
- (3) A certificate of approval must state that the prospectus—
  - (a) has been drawn up in accordance with this Part and the prospectus directive; and
  - (b) has been approved, in accordance with those provisions, by the competent authority.

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- (4) A certificate of approval must state whether (and, if so, why) the [FCA] authorised, in accordance with section 87B, the omission from the prospectus of information which would otherwise have been required to be included.
- (5) The [FCA] must comply with a request under this section—
  - (a) if the prospectus has been approved before the request is made, within 3 working days beginning with the date of the request; or
  - (b) if the request is submitted with an application for the approval of the prospectus, on the first working day after the date on which it approves the prospectus.
- (6) “Prospectus” includes a supplementary prospectus.
- (7) “Specified” means specified in a request made for the purposes of this section.

Transferable securities: powers of competent authority

#### **87J Requirements imposed as condition of approval**

- (1) As a condition of approving a prospectus, the [FCA] may by notice in writing—
  - (a) require the inclusion in the prospectus of such supplementary information necessary for investor protection as the competent authority may specify;
  - (b) require a person controlling, or controlled by, the applicant to provide specified information or documents;
  - (c) require an auditor or manager of the applicant to provide specified information or documents;
  - (d) require a financial intermediary commissioned to assist either in carrying out the offer to the public of the transferable securities to which the prospectus relates or in requesting their admission to trading on a regulated market, to provide specified information or documents.
- (2) “Specified” means specified in the notice.
- (3) “Prospectus” includes a supplementary prospectus.

#### **87K Power to suspend or prohibit offer to the public**

- (1) This section applies where a person (“the offeror”) has made an offer of transferable securities to the public in the United Kingdom (“the offer”).
- (2) If the [FCA] has reasonable grounds for suspecting that an applicable provision has been infringed, it may—
  - (a) require the offeror to suspend the offer for a period not exceeding 10 working days;
  - (b) require a person not to advertise the offer, or to take such steps as the authority may specify to suspend any existing advertisement of the offer, for a period not exceeding 10 working days.

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- (3) If the [FCA] has reasonable grounds for suspecting that it is likely that an applicable provision will be infringed, it may require the offeror to withdraw the offer.
- (4) If the [FCA] finds that an applicable provision has been infringed, it may require the offeror to withdraw the offer.
- (5) “An applicable provision” means—
  - (a) a provision of this Part,
  - (b) a provision contained in prospectus rules,
  - (c) any other provision made in accordance with the prospectus directive, applicable in relation to the offer.

### **87L Power to suspend or prohibit admission to trading on a regulated market**

- (1) This section applies where a person has requested the admission of transferable securities to trading on a regulated market situated or operating in the United Kingdom.
- (2) If the [FCA] has reasonable grounds for suspecting that an applicable provision has been infringed and the securities have not yet been admitted to trading on the regulated market in question, it may—
  - (a) require the person requesting admission to suspend the request for a period not exceeding 10 working days;
  - (b) require a person not to advertise the securities to which it relates, or to take such steps as the authority may specify to suspend any existing advertisement in connection with those securities, for a period not exceeding 10 working days.
- (3) If the [FCA] has reasonable grounds for suspecting that an applicable provision has been infringed and the securities have been admitted to trading on the regulated market in question, it may—
  - (a) require the market operator to suspend trading in the securities for a period not exceeding 10 working days;
  - (b) require a person not to advertise the securities, or to take such steps as the authority may specify to suspend any existing advertisement in connection with those securities, for a period not exceeding 10 working days.
- (4) If the [FCA] finds that an applicable provision has been infringed, it may require the market operator to prohibit trading in the securities on the regulated market in question.
- (5) “An applicable provision” means—
  - (a) a provision of this Part,
  - (b) a provision contained in prospectus rules,
  - (c) any other provision made in accordance with the prospectus directive, applicable in relation to the admission of the transferable securities to trading on the regulated market in question.

### **87M Public censure of issuer**

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- (1) If the [FCA] finds that—
  - (a) an issuer of transferable securities,
  - (b) a person offering transferable securities to the public, or
  - (c) a person requesting the admission of transferable securities to trading on a regulated market,is failing or has failed to comply with his obligations under an applicable provision, it may publish a statement to that effect.
- (2) If the [FCA] proposes to publish a statement, it must give the person a warning notice setting out the terms of the proposed statement.
- (3) If, after considering any representations made in response to the warning notice, the [FCA] decides to make the proposed statement, it must give the person a decision notice setting out the terms of the statement.
- (4) “An applicable provision” means—
  - (a) a provision of this Part,
  - (b) a provision contained in prospectus rules,
  - (c) any other provision made in accordance with the prospectus directive, applicable to a prospectus in relation to the transferable securities in question.
- (5) “Prospectus” includes a supplementary prospectus.

#### **87N Right to refer matters to the Tribunal**

- (1) A person to whom a decision notice is given under section 87M may refer the matter to the Tribunal.>
- (2) A person to whom a notice is given under section 87O may refer the matter to the Tribunal.

#### **87O Procedure under sections 87K and 87L**

- (1) A requirement under section 87K or 87L takes effect—
  - (a) immediately, if the notice under subsection (2) states that that is the case;
  - (b) in any other case, on such date as may be specified in that notice.
- (2) If the [FCA]—
  - (a) proposes to exercise the powers in section 87K or 87L in relation to a person, or
  - (b) exercises any of those powers in relation to a person with immediate effect,it must give that person written notice.
- (3) The notice must—
  - (a) give details of the competent authority's action or proposed action;
  - (b) state the [FCA's] reasons for taking the action in question and choosing the date on which it took effect or takes effect;

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- (c) inform the recipient that he may make representations to the competent authority within such period as may be specified by the notice (whether or not he has referred the matter to the Tribunal);
  - (d) inform him of the date on which the action took effect or takes effect; and
  - (e) inform him of his right to refer the matter to the Tribunal.
- (4) The [FCA] may extend the period within which representations may be made to it.
- (5) If, having considered any representations made to it, the [FCA] decides to maintain, vary or revoke its earlier decision, it must give written notice to that effect to the person mentioned in subsection (2).
- (6) A notice given under subsection (5) must inform that person, where relevant, of his right to refer the matter to the Tribunal.
- (7) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (8) If a notice under this section relates to the exercise of the power conferred by section 87L(3), the notice must also be given to the person at whose request the transferable securities were admitted to trading on the regulated market.

#### **87P Exercise of powers at request of competent authority of another EEA State**

- (1) This section applies if—
- (a) the competent authority of an EEA State other than the United Kingdom has approved a prospectus,
  - (b) the transferable securities to which the prospectus relates have been offered to the public in the United Kingdom or their admission to trading on a regulated market has been requested, and
  - (c) that [FCA] makes a request that the competent authority assist it in the performance of its functions under the law of that State in connection with the prospectus directive.
- (2) For the purpose of complying with the request mentioned in subsection (1)(c), the powers conferred by sections 87K and 87L may be exercised as if the prospectus were one which had been approved by the [FCA].
- (3) Section 87N does not apply to an exercise of those powers as a result of this section.
- (4) Section 87O does apply to such an exercise of those powers but with the omission of subsections (3)(e), (6) and (7).

#### Rights of investors

#### **87Q Right of investor to withdraw**

- (1) Where a person agrees to buy or subscribe for transferable securities in circumstances where the final offer price or the amount of transferable securities to be offered to the

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public is not included in the prospectus, he may withdraw his acceptance before the end of the withdrawal period.

- (2) The withdrawal period—
  - (a) begins with the investor's acceptance; and
  - (b) ends at the end of the second working day after the date on which the competent authority is informed of the information in accordance with section 87A(7).
- (3) Subsection (1) does not apply if the prospectus contains—
  - (a) in the case of the amount of transferable securities to be offered to the public, the criteria or conditions (or both) according to which that element will be determined, or
  - (b) in the case of price, the criteria or conditions (or both) according to which that element will be determined or the maximum price.
- (4) Where a supplementary prospectus has been published and, prior to the publication, a person agreed to buy or subscribe for transferable securities to which it relates, he may withdraw his acceptance before the end of the period of 2 working days beginning with the first working day after the date on which the supplementary prospectus was published.

#### Registered investors

### **87R Register of investors**

- (1) The [FCA] must establish and maintain, in accordance with this section and prospectus rules, a register of investors for the purposes of section 86.
- (2) An individual may not be entered in the register unless—
  - (a) he is resident in the United Kingdom; and
  - (b) he meets at least two of the criteria mentioned in Article 2.2 of the prospectus directive.
- (3) A company may not be entered in the register unless—
  - (a) it falls within the meaning of “small and medium-sized enterprises” in Article 2.1 of the prospectus directive; and
  - (b) its registered office is in the United Kingdom.
- (4) A person who does not fall within subsection (2) or (3) may not be entered in the register.]

#### *Sponsors*

### **88 Sponsors.**

- (1) Listing rules may require a person to make arrangements with a sponsor for the performance by the sponsor of such services in relation to him as may be specified in the rules.
- (2) “Sponsor” means a person approved by the [FCA] for the purposes of the rules.

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- (3) Listing rules made by virtue of subsection (1) may—
- (a) provide for the [FCA] to maintain a list of sponsors;
  - (b) specify services which must be performed by a sponsor;
  - (c) impose requirements on a sponsor in relation to the provision of services or specified services;
  - (d) specify the circumstances in which a person is qualified for being approved as a sponsor;
  - [(e) provide for limitations or other restrictions to be imposed on the services to which an approval relates (whether or not the approval has already been granted);]
  - [(f) provide for the approval of a sponsor to be suspended on the application of the sponsor.]
- (4) If the [FCA] proposes—
- (a) to refuse a person’s application [under sponsor rules];
  - [(aa) to impose limitations or other restrictions on the services to which a person’s approval relates; or]
  - (b) to cancel a person’s approval as a sponsor [<sup>F80</sup>otherwise than at his request], it must give him a warning notice.
- (5) If, after considering any representations made in response to the warning notice, the [FCA] decides—
- (a) to grant the application [under sponsor rules],
  - [(aa) not to impose limitations or other restrictions on the services to which a person’s approval relates, or]
  - (b) not to cancel the approval,
- it must give the person concerned, and any person to whom a copy of the warning notice was given, written notice of its decision.
- (6) If, after considering any representations made in response to the warning notice, the [FCA] decides—
- (a) to refuse to grant the application [under sponsor rules],
  - [(aa) to impose limitations or other restrictions on the services to which a person’s approval relates, or]
  - (b) to cancel the approval,
- it must give the person concerned a decision notice.
- (7) A person to whom a decision notice is given under this section may refer the matter to the Tribunal.
- [(8) In this section any reference to an application under sponsor rules means—
- (a) an application for approval as a sponsor;
  - (b) an application for the suspension of an approval as a sponsor;
  - (c) an application for the withdrawal of the suspension of an approval as a sponsor; or
  - (d) an application for the withdrawal or variation of a limitation or other restriction on the services to which a sponsor’s approval relates.]

**Annotations:**

**Amendments (Textual)**

**F80** Words in s. 88(4)(b) inserted (12.7.2007) by [The Regulatory Reform \(Financial Services and Markets Act 2000\) Order 2007 \(S.I. 2007/1973\)](#), **art. 9**

**Commencement Information**

**I31** [S. 88](#) wholly in force at 1.12.2001; [s. 88](#) not in force at Royal Assent see [s. 431\(2\)](#); [s. 88\(1\)-\(3\)](#) in force at 18.6.2001 by [S.I. 2001/1820](#), **art. 2**, **Sch.**; [s. 88](#) in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

**[88A Disciplinary powers: contravention of s.88(3)(c) or (e)]**

- (1) The FCA may take action against a sponsor under this section if it considers that the sponsor has contravened a requirement or restriction imposed on the sponsor by rules made as a result of section 88(3)(c) or (e).
- (2) If the FCA is entitled to take action under this section against a sponsor, it may do one or more of the following—
  - (a) impose a penalty on the sponsor of such amount as it considers appropriate;
  - (b) suspend, for such period as it considers appropriate, the sponsor’s approval;
  - (c) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance of services to which the sponsor’s approval relates as it considers appropriate;
  - (d) publish a statement to the effect that the sponsor has contravened a requirement or restriction imposed on the sponsor by rules made as a result of section 88(3)(c) or (e).
- (3) The period for which a suspension or restriction is to have effect may not exceed 12 months.
- (4) A suspension may relate only to the performance in specified circumstances of a service to which the approval relates.
- (5) A restriction may, in particular, be imposed so as to require the sponsor to take, or refrain from taking, specified action.
- (6) The FCA may—
  - (a) withdraw a suspension or restriction; or
  - (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (7) The FCA may not take action against a sponsor under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the sponsor under section 88B(1).
- (8) “The limitation period” means the period of three years beginning with the first day on which the FCA knew that the sponsor had contravened the requirement or restriction.
- (9) For this purpose the FCA is to be treated as knowing that a sponsor has contravened a requirement or restriction if it has information from which that can reasonably be inferred.

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### **88B**     **Action under s.88A: procedure and right to refer to Tribunal**

- (1) If the FCA proposes to take action against a sponsor under section 88A, it must give the sponsor a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal—
  - (a) to suspend an approval, or
  - (b) to impose a restriction in relation to the performance of a service,must state the period for which the suspension or restriction is to have effect.
- (4) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (5) If the FCA decides to take action against a sponsor under section 88A, it must give the sponsor a decision notice.
- (6) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (7) A decision notice about—
  - (a) the suspension of an approval, or
  - (b) the imposition of a restriction in relation to the performance of a service,must state the period for which the suspension or restriction is to have effect.
- (8) A decision notice about the publication of a statement must set out the terms of the statement.
- (9) If the FCA decides to take action against a sponsor under section 88A, the sponsor may refer the matter to the Tribunal.

### **88C**     **Action under s.88A: statement of policy**

- (1) The FCA must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties, suspensions or restrictions under section 88A;
  - (b) the amount of penalties under that section; and
  - (c) the period for which suspensions or restrictions under that section are to have effect.
- (2) The FCA'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 contravention in question in relation to the nature of the requirement concerned;
  - (b) the extent to which that contravention was deliberate or reckless; and
  - (c) whether the sponsor concerned is an individual.
- (3) The FCA may at any time alter or replace a statement issued under this section.
- (4) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replaced statement.

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- (5) In exercising, or deciding whether to exercise, its power under section 88A in the case of any particular contravention, the FCA must have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.
- (6) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (7) The FCA may charge a reasonable fee for providing a person with a copy of the statement.
- (8) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

#### **88D** Statement of policy under s.88C: procedure

- (1) Before issuing a statement under section 88C, the FCA must publish a draft of the proposed statement in the way appearing to the FCA 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 FCA within a specified time.
- (3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).
- (4) If the FCA 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 FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The FCA 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.

#### **88E** Powers exercisable to advance operational objectives

- (1) The FCA may take action against a sponsor under this section if it considers that it is desirable to do so in order to advance one or more of its operational objectives.
- (2) If the FCA is entitled to take action under this section against a sponsor, it may—
  - (a) suspend, for such period as it considers appropriate, the sponsor's approval; or
  - (b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance of services to which the sponsor's approval relates as it considers appropriate.
- (3) A suspension may relate only to the performance in specified circumstances of a service to which the approval relates.

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- (4) A restriction may, in particular, be imposed so as to require the sponsor to take, or refrain from taking, specified action.
- (5) The FCA may—
  - (a) withdraw a suspension or restriction; or
  - (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (6) A person against whom the FCA takes action under this section may refer the matter to the Tribunal.

### **88F**     **Action under s.88E: procedure**

- (1) Action against a sponsor under section 88E takes effect—
  - (a) immediately, if the notice given under subsection (3) so provides; or
  - (b) on such later date as may be specified in the notice.
- (2) If the FCA—
  - (a) proposes to take action against a sponsor under that section, or
  - (b) takes action against a sponsor under that section with immediate effect,  
it must given the sponsor written notice.
- (3) The notice must—
  - (a) give details of the action;
  - (b) state the FCA’s reasons for taking the action and for its determination as to when the action takes effect;
  - (c) inform the sponsor that the sponsor may make representations to the FCA within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal);
  - (d) inform the sponsor of when the action takes effect;
  - (e) inform the sponsor of the right to refer the matter to the Tribunal; and
  - (f) give an indication of the procedure on such a reference.
- (4) The FCA may extend the period allowed under the notice for making representations.
- (5) If the FCA decides—
  - (a) to take the action in the way proposed, or
  - (b) if the action has taken effect, not to rescind it,  
the FCA must give the sponsor written notice.
- (6) If the FCA decides—
  - (a) not to take the action in the way proposed,
  - (b) to take action under section 88E that differs from the action originally proposed, or
  - (c) to rescind action which has taken effect,  
the FCA must give the sponsor written notice.
- (7) A notice under subsection (5) must—
  - (a) inform the sponsor of the right to refer the matter to the Tribunal; and
  - (b) give an indication of the procedure on such a reference.

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(8) A notice under subsection (6)(b) must comply with subsection (3).]

### [<sup>F81</sup>Transparency obligations

#### Annotations:

#### Amendments (Textual)

**F81** Ss. 89A-89G and cross-heading inserted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1266(1), 1300(1)(a) (with s. 1266(2))

## 89A Transparency rules

- (1) The [FCA] may make rules for the purposes of the transparency obligations directive.
- (2) The rules may include provision for dealing with any matters arising out of or related to any provision of the transparency obligations directive.
- (3) The [FCA] may also make rules—
  - (a) for the purpose of ensuring that voteholder information in respect of voting shares traded on a UK market other than a regulated market is made public or notified to the [FCA];
  - (b) providing for persons who hold comparable instruments (see section 89F(1)(c)) in respect of voting shares to be treated, in the circumstances specified in the rules, as holding some or all of the voting rights in respect of those shares.
- (4) Rules under this section may, in particular, make provision—
  - (a) specifying how the proportion of—
    - (i) the total voting rights in respect of shares in an issuer, or
    - (ii) the total voting rights in respect of a particular class of shares in an issuer,  
held by a person is to be determined;
  - (b) specifying the circumstances in which, for the purposes of any determination of the voting rights held by a person (“P”) in respect of voting shares in an issuer, any voting rights held, or treated by virtue of subsection (3)(b) as held, by another person in respect of voting shares in the issuer are to be regarded as held by P;
  - (c) specifying the nature of the information which must be included in any notification;
  - (d) about the form of any notification;
  - (e) requiring any notification to be given within a specified period;
  - (f) specifying the manner in which any information is to be made public and the period within which it must be made public;
  - (g) specifying circumstances in which any of the requirements imposed by rules under this section does not apply.
- (5) Rules under this section are referred to in this Part as “transparency rules”.
- (6) Nothing in sections 89B to 89G affects the generality of the power to make rules under this section.

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## **89B Provision of voteholder information**

- (1) Transparency rules may make provision for voteholder information in respect of voting shares to be notified, in circumstances specified in the rules—
  - (a) to the issuer, or
  - (b) to the public,or to both.
- (2) Transparency rules may make provision for voteholder information notified to the issuer to be notified at the same time to the [FCA].
- (3) In this Part “voteholder information” in respect of voting shares means information relating to the proportion of voting rights held by a person in respect of the shares.
- (4) Transparency rules may require notification of voteholder information relating to a person—
  - (a) initially, not later than such date as may be specified in the rules for the purposes of the first indent of Article 30.2 of the transparency obligations directive, and
  - (b) subsequently, in accordance with the following provisions.
- (5) Transparency rules under subsection (4)(b) may require notification of voteholder information relating to a person only where there is a notifiable change in the proportion of—
  - (a) the total voting rights in respect of shares in the issuer, or
  - (b) the total voting rights in respect of a particular class of share in the issuer, held by the person.
- (6) For this purpose there is a “notifiable change” in the proportion of voting rights held by a person when the proportion changes—
  - (a) from being a proportion less than a designated proportion to a proportion equal to or greater than that designated proportion,
  - (b) from being a proportion equal to a designated proportion to a proportion greater or less than that designated proportion, or
  - (c) from being a proportion greater than a designated proportion to a proportion equal to or less than that designated proportion.
- (7) In subsection (6) “designated” means designated by the rules.

## **89C Provision of information by issuers of transferable securities**

- (1) Transparency rules may make provision requiring the issuer of transferable securities, in circumstances specified in the rules—
  - (a) to make public information to which this section applies, or
  - (b) to notify to the competent authority information to which this section applies, or to do both.
- (2) In the case of every issuer, this section applies to—
  - (a) information required by Article 4 of the transparency obligations directive;
  - (b) information relating to the rights attached to the transferable securities, including information about the terms and conditions of those securities which could indirectly affect those rights; and

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- (c) information about new loan issues and about any guarantee or security in connection with any such issue.
- (3) In the case of an issuer of debt securities, this section also applies to information required by Article 5 of the transparency obligations directive.
- (4) In the case of an issuer of shares, this section also applies to—
  - (a) information required by Article 5 of the transparency obligations directive;
  - (b) information required by Article 6 of that directive;
  - (c) voteholder information—
    - (i) notified to the issuer, or
    - (ii) relating to the proportion of voting rights held by the issuer in respect of shares in the issuer;
  - (d) information relating to the issuer's capital; and
  - (e) information relating to the total number of voting rights in respect of shares or shares of a particular class.

#### **89D Notification of voting rights held by issuer**

- (1) Transparency rules may require notification of voteholder information relating to the proportion of voting rights held by an issuer in respect of voting shares in the issuer—
  - (a) initially, not later than such date as may be specified in the rules for the purposes of the second indent of Article 30.2 of the transparency obligations directive, and
  - (b) subsequently, in accordance with the following provisions.
- (2) Transparency rules under subsection (1)(b) may require notification of voteholder information relating to the proportion of voting rights held by an issuer in respect of voting shares in the issuer only where there is a notifiable change in the proportion of—
  - (a) the total voting rights in respect of shares in the issuer, or
  - (b) the total voting rights in respect of a particular class of share in the issuer, held by the issuer.
- (3) For this purpose there is a “notifiable change” in the proportion of voting rights held by a person when the proportion changes—
  - (a) from being a proportion less than a designated proportion to a proportion equal to or greater than that designated proportion,
  - (b) from being a proportion equal to a designated proportion to a proportion greater or less than that designated proportion, or
  - (c) from being a proportion greater than a designated proportion to a proportion equal to or less than that designated proportion.
- (4) In subsection (3) “designated” means designated by the rules.

#### **89E Notification of proposed amendment of issuer's constitution**

Transparency rules may make provision requiring an issuer of transferable securities that are admitted to trading on a regulated market to notify a proposed amendment to its constitution—

- (a) to the [FCA], and

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(b) to the market on which the issuer's securities are admitted, at times and in circumstances specified in the rules.

### **89F Transparency rules: interpretation etc**

- (1) For the purposes of sections 89A to 89G—
- (a) the voting rights in respect of any voting shares are the voting rights attached to those shares,
  - (b) a person is to be regarded as holding the voting rights in respect of the shares—
    - (i) if, by virtue of those shares, he is a shareholder within the meaning of Article 2.1(e) of the transparency obligations directive;
    - (ii) if, and to the extent that, he is entitled to acquire, dispose of or exercise those voting rights in one or more of the cases mentioned in Article 10(a) to (h) of the transparency obligations directive;
    - (iii) if he holds, directly or indirectly, a financial instrument which results in an entitlement to acquire the shares and is an Article 13 instrument, and
  - (c) a person holds a “comparable instrument” in respect of voting shares if he holds, directly or indirectly, a financial instrument in relation to the shares which has similar economic effects to an Article 13 instrument (whether or not the financial instrument results in an entitlement to acquire the shares).
- (2) Transparency rules under section 89A(3)(b) may make different provision for different descriptions of comparable instrument.
- (3) For the purposes of sections 89A to 89G two or more persons may, at the same time, each be regarded as holding the same voting rights.
- (4) In those sections—
- “Article 13 instrument” means a financial instrument of a type determined by the European Commission under Article 13.2 of the transparency obligations directive;
- [<sup>F82</sup>“financial instrument” has the meaning given in Article 4.1(17) of Directive 2004/39/EC on markets in financial instruments;]
- “UK market” means a market that is situated or operating in the United Kingdom;
- “voting shares” means shares of an issuer to which voting rights are attached.

#### **Annotations:**

#### **Amendments (Textual)**

**F82** S. 89F(4): definition of “financial instrument” inserted (31.1.2009) by [The Definition of Financial Instrument Order 2008 \(S.I. 2008/3053\)](#), [art. 2\(2\)](#)

### **89G Transparency rules: other supplementary provisions**

- (1) Transparency rules may impose the same obligations on a person who has applied for the admission of transferable securities to trading on a regulated market without the issuer's consent as they impose on an issuer of transferable securities.

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- (2) Transparency rules that require a person to make information public may include provision authorising the [FCA] to make the information public in the event that the person fails to do so.
- (3) The [FCA] may make public any information notified to the authority in accordance with transparency rules.
- (4) Transparency rules may make provision by reference to any provision of any rules made by the Panel on Takeovers and Mergers under Part 28 of the Companies Act 2006.
- (5) Sections 89A to 89F and this section are without prejudice to any other power conferred by this Part to make Part 6 rules.]

#### [<sup>F83</sup>Power of competent authority to call for information

##### Annotations:

##### Amendments (Textual)

- F83** Ss. 89H-89J and cross-heading inserted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1267, 1300(1)(a)

### 89H Competent authority's power to call for information

- (1) The [FCA] may by notice in writing given to a person to whom this section applies require him—
  - (a) to provide specified information or information of a specified description, or
  - (b) to produce specified documents or documents of a specified description.
- (2) This section applies to—
  - (a) an issuer in respect of whom transparency rules have effect;
  - (b) a voteholder;
  - (c) an auditor of—
    - (i) an issuer to whom this section applies, or
    - (ii) a voteholder;
  - (d) a person who controls a voteholder;
  - (e) a person controlled by a voteholder;
  - (f) a director or other similar officer of an issuer to whom this section applies;
  - (g) a director or other similar officer of a voteholder or, where the affairs of a voteholder are managed by its members, a member of the voteholder.
- (3) This section applies only to information and documents reasonably required in connection with the exercise by the [FCA] of functions conferred on it by or under sections 89A to 89G (transparency rules).
- (4) Information or documents required under this section must be provided or produced—
  - (a) before the end of such reasonable period as may be specified, and
  - (b) at such place as may be specified.
- (5) If a person claims a lien on a document, its production under this section does not affect the lien.

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## **89I Requirements in connection with call for information**

- (1) The [FCA] may require any information provided under section 89H to be provided in such form as it may reasonably require.
- (2) The [FCA] may require—
  - (a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require;
  - (b) any document produced to be authenticated in such manner as it may reasonably require.
- (3) If a document is produced in response to a requirement imposed under section 89H, the [FCA] may—
  - (a) take copies of or extracts from the document; or
  - (b) require the person producing the document, or any relevant person, to provide an explanation of the document.
- (4) In subsection (3)(b) “relevant person”, in relation to a person who is required to produce a document, means a person who—
  - (a) has been or is a director or controller of that person;
  - (b) has been or is an auditor of that person;
  - (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or
  - (d) has been or is an employee of that person.
- (5) If a person who is required under section 89H to produce a document fails to do so, the [FCA] may require him to state, to the best of his knowledge and belief, where the document is.

## **89J Power to call for information: supplementary provisions**

- (1) The [FCA] may require an issuer to make public any information provided to the authority under section 89H.
- (2) If the issuer fails to comply with a requirement under subsection (1), the [FCA] may, after seeking representations from the issuer, make the information public.
- (3) In sections 89H and 89I (power of competent authority to call for information)—
 

“control” and “controlled” have the meaning given by subsection (4) below;

“specified” means specified in the notice;

“voteholder” means a person who—

  - (a) holds voting rights in respect of any voting shares for the purposes of sections 89A to 89G (transparency rules), or
  - (b) is treated as holding such rights by virtue of rules under section 89A(3) (b).
- (4) For the purposes of those sections a person (“A”) controls another person (“B”) if—
  - (a) A holds a majority of the voting rights in B,
  - (b) A is a member of B and has the right to appoint or remove a majority of the members of the board of directors (or, if there is no such board, the equivalent management body) of B,
  - (c) A is a member of B and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in B, or

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- (d) A has the right to exercise, or actually exercises, dominant influence or control over B.
- (5) For the purposes of subsection (4)(b)—
  - (a) any rights of a person controlled by A, and
  - (b) any rights of a person acting on behalf of A or a person controlled by A, are treated as held by A.]

[<sup>F84</sup>Powers exercisable in case of infringement of transparency obligation

**Annotations:**

**Amendments (Textual)**

**F84** Ss. 89K-89N and cross-heading inserted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1268, 1300(1)  
(a)

**89K Public censure of issuer**

- (1) If the [FCA] finds that an issuer of securities admitted to trading on a regulated market is failing or has failed to comply with an applicable transparency obligation, it may publish a statement to that effect.
- (2) If the [FCA] proposes to publish a statement, it must give the issuer a warning notice setting out the terms of the proposed statement.
- (3) If, after considering any representations made in response to the warning notice, the [FCA] decides to make the proposed statement, it must give the issuer a decision notice setting out the terms of the statement.
- (4) A notice under this section must inform the issuer of his right to refer the matter to the Tribunal (see section 89N) and give an indication of the procedure on such a reference.
- (5) In this section “transparency obligation” means an obligation under—
  - (a) a provision of transparency rules, or
  - (b) any other provision made in accordance with the transparency obligations directive.
- (6) In relation to an issuer whose home State is a member State other than the United Kingdom, any reference to an applicable transparency obligation must be read subject to section 100A(2).

**89L Power to suspend or prohibit trading of securities**

- (1) This section applies to securities admitted to trading on a regulated market.
- (2) If the [FCA] has reasonable grounds for suspecting that an applicable transparency obligation has been infringed by an issuer, it may—
  - (a) suspend trading in the securities for a period not exceeding 10 days,
  - (b) prohibit trading in the securities, or
  - (c) make a request to the operator of the market on which the issuer's securities are traded—

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- (i) to suspend trading in the securities for a period not exceeding 10 days,  
or
  - (ii) to prohibit trading in the securities.
- (3) If the [FCA] has reasonable grounds for suspecting that a provision required by the transparency obligations directive has been infringed by a voteholder of an issuer, it may—
- (a) prohibit trading in the securities, or
  - (b) make a request to the operator of the market on which the issuer's securities are traded to prohibit trading in the securities.
- (4) If the [FCA] finds that an applicable transparency obligation has been infringed, it may require the market operator to prohibit trading in the securities.
- (5) In this section “transparency obligation” means an obligation under—
- (a) a provision contained in transparency rules, or
  - (b) any other provision made in accordance with the transparency obligations directive.
- (6) In relation to an issuer whose home State is a member State other than the United Kingdom, any reference to an applicable transparency obligation must be read subject to section 100A(2).

#### **89M Procedure under section 89L**

- (1) A requirement under section 89L takes effect—
- (a) immediately, if the notice under subsection (2) states that that is the case;
  - (b) in any other case, on such date as may be specified in the notice.
- (2) If the [FCA]—
- (a) proposes to exercise the powers in section 89L in relation to a person, or
  - (b) exercises any of those powers in relation to a person with immediate effect,
- it must give that person written notice.
- (3) The notice must—
- (a) give details of the [FCA's] action or proposed action;
  - (b) state the [FCA's] reasons for taking the action in question and choosing the date on which it took effect or takes effect;
  - (c) inform the recipient that he may make representations to the [FCA] within such period as may be specified by the notice (whether or not he had referred the matter to the Tribunal);
  - (d) inform him of the date on which the action took effect or takes effect;
  - (e) inform him of his right to refer the matter to the Tribunal (see section 89N) and give an indication of the procedure on such a reference.
- (4) The [FCA] may extend the period within which representations may be made to it.
- (5) If, having considered any representations made to it, the [FCA] decides to maintain, vary or revoke its earlier decision, it must give written notice to that effect to the person mentioned in subsection (2).

## 89N Right to refer matters to the Tribunal

A person—

- (a) to whom a decision notice is given under section 89K (public censure), or
- (b) to whom a notice is given under section 89M (procedure in connection with suspension or prohibition of trading),

may refer the matter to the Tribunal.]

[<sup>F85</sup>Corporate governance

### Annotations:

#### Amendments (Textual)

**F85** S. 89O and cross-heading inserted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1269, 1300(1)(a)

## 89O Corporate governance rules

- (1) The [FCA] may make rules (“corporate governance rules”)—
  - (a) for the purpose of implementing, enabling the implementation of or dealing with matters arising out of or related to, any [<sup>F86</sup>EU] obligation relating to the corporate governance of issuers who have requested or approved admission of their securities to trading on a regulated market;
  - (b) about corporate governance in relation to such issuers for the purpose of implementing, or dealing with matters arising out of or related to, any [<sup>F86</sup>EU] obligation.
- (2) “Corporate governance”, in relation to an issuer, includes—
  - (a) the nature, constitution or functions of the organs of the issuer;
  - (b) the manner in which organs of the issuer conduct themselves;
  - (c) the requirements imposed on organs of the issuer;
  - (d) the relationship between the different organs of the issuer;
  - (e) the relationship between the organs of the issuer and the members of the issuer or holders of the issuer's securities.
- (3) The burdens and restrictions imposed by rules under this section on foreign-traded issuers must not be greater than the burdens and restrictions imposed on UK-traded issuers by—
  - (a) rules under this section, and
  - (b) listing rules.
- (4) For this purpose—

“foreign-traded issuer” means an issuer who has requested or approved admission of the issuer's securities to trading on a regulated market situated or operating outside the United Kingdom;

“UK-traded issuer” means an issuer who has requested or approved admission of the issuer's securities to trading on a regulated market situated or operating in the United Kingdom.
- (5) This section is without prejudice to any other power conferred by this Part to make Part 6 rules.]

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**Annotations:**

**Amendments (Textual)**

- F86** Words in s. 89O(1)(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\(1\)\(3\)\(4\)](#)

*[Primary information providers*

**89P Primary information providers**

- (1) Part 6 rules may require issuers of financial instruments to use primary information providers for the purpose of giving information of a specified description to a market of a specified description.
- (2) “Primary information provider” means a person approved by the FCA for the purposes of this section.
- (3) “Specified” means specified in the Part 6 rules.
- (4) Part 6 rules made by virtue of subsection (1) may—
  - (a) provide for the FCA to maintain a list of providers;
  - (b) impose requirements on a provider in relation to the giving of information or of information of a specified description;
  - (c) specify the circumstances in which a person is qualified for being approved as a provider;
  - (d) provide for limitations or other restrictions to be imposed on the giving of information to which an approval relates (whether or not the approval has already been granted);
  - (e) provide for the approval of a provider to be suspended on the application of the provider.
- (5) If the FCA proposes—
  - (a) to refuse a person’s application under information provider rules,
  - (b) to impose limitations or other restrictions on the giving of information to which a person’s approval relates, or
  - (c) to cancel a person’s approval as a provider otherwise than at the person’s request,it must give the person a warning notice.
- (6) If the FCA decides—
  - (a) to grant the application under information provider rules,
  - (b) not to impose limitations or other restrictions on the giving of information to which a person’s approval relates, or
  - (c) not to cancel the approval,it must give the person concerned written notice of its decision.
- (7) If the FCA decides—
  - (a) to refuse to grant the application under information provider rules,

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- (b) to impose limitations or other restrictions on the giving of information to which a person’s approval relates, or
  - (c) to cancel the approval,
- it must give the person concerned a decision notice.
- (8) A person to whom a decision notice is given under this section may refer the matter to the Tribunal.
- (9) In this section any reference to an application under information provider rules means  
—
- (a) an application for approval as a provider;
  - (b) an application for the suspension of an approval as a provider;
  - (c) an application for the withdrawal of the suspension of an approval as a provider; or
  - (d) an application for the withdrawal or variation of a limitation or other restriction on the giving of information to which a provider’s approval relates.

**89Q Disciplinary powers: contravention of s.89P(4)(b) or (d)**

- (1) The FCA may take action against a provider under this section if it considers that the provider has contravened a requirement or restriction imposed on the provider by rules made as a result of section 89P(4)(b) or (d).
- (2) If the FCA is entitled to take action under this section against a provider, it may do one or more of the following—
- (a) impose a penalty on the provider of such amount as it considers appropriate;
  - (b) suspend, for such period as it considers appropriate, the provider’s approval;
  - (c) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the giving by the provider of information as it considers appropriate;
  - (d) publish a statement to the effect that the provider has contravened a requirement or restriction imposed on the provider by rules made as a result of section 89P(4)(b) or (d).
- (3) The period for which a suspension or restriction is to have effect may not exceed 12 months.
- (4) A suspension may relate only to the giving of information in specified circumstances.
- (5) A restriction may, in particular, be imposed so as to require the provider to take, or refrain from taking, specified action.
- (6) The FCA may—
- (a) withdraw a suspension or restriction; or
  - (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (7) The FCA may not take action against a provider under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the provider under section 89R(1).
- (8) “The limitation period” means the period of three years beginning with the first day on which the FCA knew that the provider had contravened the requirement or restriction.

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- (9) For this purpose the FCA is to be treated as knowing that a provider has contravened a requirement or restriction if it has information from which that can reasonably be inferred.

**89R Action under s.89Q: procedure and right to refer to Tribunal**

- (1) If the FCA proposes to take action against a provider under section 89Q, it must give the provider a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal—  
 (a) to suspend an approval, or  
 (b) to impose a restriction in relation to the giving of information,  
must state the period for which the suspension or restriction is to have effect.
- (4) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (5) If the FCA decides to take action against a provider under section 89Q, it must give the provider a decision notice.
- (6) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (7) A decision notice about—  
 (a) the suspension of an approval, or  
 (b) the imposition of a restriction in relation to the giving of information,  
must state the period for which the suspension or restriction is to have effect.
- (8) A decision notice about the publication of a statement must set out the terms of the statement.
- (9) If the FCA decides to take action against a provider under section 89Q, the provider may refer the matter to the Tribunal.

**89S Action under s.89Q: statement of policy**

- (1) The FCA must prepare and issue a statement of its policy with respect to—  
 (a) the imposition of penalties, suspensions or restrictions under section 89Q;  
 (b) the amount of penalties under that section;  
 (c) the period for which suspensions or restrictions under that section are to have effect; and  
 (d) the matters in relation to which suspensions or restrictions under that section are to have effect.
- (2) The FCA'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 contravention in question in relation to the nature of the requirement concerned;  
 (b) the extent to which that contravention was deliberate or reckless; and

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- (c) whether the provider concerned is an individual.
- (3) The FCA may at any time alter or replace a statement issued under this section.
- (4) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replaced statement.
- (5) In exercising, or deciding whether to exercise, its power under section 89Q in the case of any particular contravention, the FCA must have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.
- (6) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (7) The FCA may charge a reasonable fee for providing a person with a copy of the statement.
- (8) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

**89T** **Statement of policy under s.89S: procedure**

- (1) Before issuing a statement under section 89S, the FCA must publish a draft of the proposed statement in the way appearing to the FCA 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 FCA within a specified time.
- (3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).
- (4) If the FCA 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 FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The FCA 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.

**89U** **Powers exercisable to advance operational objectives**

- (1) The FCA may take action against a provider under this section if it considers that it is desirable to do so in order to advance one or more of its operational objectives.
- (2) If the FCA is entitled to take action under this section against a provider, it may—
  - (a) suspend, for such period as it considers appropriate, the provider’s approval;

or

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- (b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the giving by the provider of information as it considers appropriate.
- (3) A suspension may relate only to the giving of information in specified circumstances.
- (4) A restriction may, in particular, be imposed so as to require the provider to take, or refrain from taking, specified action.
- (5) The FCA may—
  - (a) withdraw a suspension or restriction; or
  - (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (6) A person against whom the FCA takes action under this section may refer the matter to the Tribunal.

#### **89V**    **Action under s.89U: procedure**

- (1) Action against a provider under section 89U takes effect—
  - (a) immediately, if the notice given under subsection (3) so provides; or
  - (b) on such later date as may be specified in the notice.
- (2) If the FCA—
  - (a) proposes to take action against a provider under that section, or
  - (b) takes action against a provider under that section with immediate effect,  
it must give the provider written notice.
- (3) The notice must—
  - (a) give details of the action;
  - (b) state the FCA’s reasons for taking the action and for its determination as to when the action takes effect;
  - (c) inform the provider that the provider may make representations to the FCA within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal);
  - (d) inform the provider of when the action takes effect;
  - (e) inform the provider of the right to refer the matter to the Tribunal; and
  - (f) give an indication of the procedure on such a reference.
- (4) The FCA may extend the period allowed under the notice for making representations.
- (5) If the FCA decides—
  - (a) to take the action in the way proposed, or
  - (b) if the action has taken effect, not to rescind it,  
the FCA must give the provider written notice.
- (6) If the FCA decides—
  - (a) not to take the action in the way proposed,
  - (b) to take action under section 89U that differs from the action originally proposed, or
  - (c) to rescind action which has taken effect,  
the FCA must give the provider written notice.

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- (7) A notice under subsection (5) must—
- (a) inform the provider of the right to refer the matter to the Tribunal; and
  - (b) give an indication of the procedure on such a reference.
- (8) A notice under subsection (6)(b) must comply with subsection (3).]

[<sup>F87</sup>Compensation for false or misleading statements etc]

**Annotations:**

**Amendments (Textual)**

**F87** S. 90 cross-heading substituted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1272, 1300(1)(a), Sch. 15 para. 4

**90** [<sup>F88</sup>Compensation for statements in listing particulars or prospectus]

- (1) Any person responsible for listing particulars is liable to pay compensation to a person who has—
- (a) acquired securities to which the particulars apply; and
  - (b) suffered loss in respect of them as a result of—
    - (i) any untrue or misleading statement in the particulars; or
    - (ii) the omission from the particulars of any matter required to be included by section 80 or 81.
- (2) Subsection (1) is subject to exemptions provided by Schedule 10.
- (3) If listing particulars are required to include information about the absence of a particular matter, the omission from the particulars of that information is to be treated as a statement in the listing particulars that there is no such matter.
- (4) Any person who fails to comply with section 81 is liable to pay compensation to any person who has—
- (a) acquired securities of the kind in question; and
  - (b) suffered loss in respect of them as a result of the failure.
- (5) Subsection (4) is subject to exemptions provided by Schedule 10.
- (6) This section does not affect any liability which may be incurred apart from this section.
- (7) References in this section to the acquisition by a person of securities include references to his contracting to acquire them or any interest in them.
- (8) No person shall, by reason of being a promoter of a company or otherwise, incur any liability for failing to disclose information which he would not be required to disclose in listing particulars in respect of a company's securities—
- (a) if he were responsible for those particulars; or
  - (b) if he is responsible for them, which he is entitled to omit by virtue of section 82.
- (9) The reference in subsection (8) to a person incurring liability includes a reference to any other person being entitled as against that person to be granted any civil remedy or to rescind or repudiate an agreement.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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(10) “Listing particulars”, in subsection (1) and Schedule 10, includes supplementary listing particulars.

[<sup>F89</sup>(11) This section applies in relation to a prospectus as it applies to listing particulars, with the following modifications—

- (a) references in this section or in Schedule 10 to listing particulars, supplementary listing particulars or sections 80, 81 or 82 are to be read, respectively, as references to a prospectus, supplementary prospectus and sections 87A, 87G and 87B;
- (b) references in Schedule 10 to admission to the official list are to be read as references to admission to trading on a regulated market;
- (c) in relation to a prospectus, “securities” means “transferable securities”.

(12) A person is not to be subject to civil liability solely on the basis of a summary in a prospectus unless the summary is misleading, inaccurate or inconsistent when read with the rest of the prospectus; and, in this subsection, a summary includes any translation of it.]

**Annotations:**

**Amendments (Textual)**

**F88** S. 90 words in heading substituted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), [Sch. 15 para. 5](#)

**F89** S. 90(11)(12) inserted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 6\(2\)](#)

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

**C200** S. 90 restricted (1.12.2001) by [S.I. 2001/2957](#), arts. 1, 7(3); [S.I. 2001/3538](#), art. 2(1)

[<sup>F90</sup>**90A Amendments to the Financial Services and Markets Act 2000**

Schedule 10A makes provision about the liability of issuers of securities to pay compensation to persons who have suffered loss as a result of—

- (a) a misleading statement or dishonest omission in certain published information relating to the securities, or
- (b) a dishonest delay in publishing such information.]

**Annotations:**

**Amendments (Textual)**

**F90** S. 90A, 90B inserted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1270, 1300(1)(a)

**F91** S. 90A substituted (1.10.2010 with effect in accordance with reg. 3(1) of the amending S.I.) by [The Financial Services and Markets Act 2000 \(Liability of Issuers\) Regulations 2010 \(S.I. 2010/1192\)](#), reg. 2(2) (with reg. 3(2))

**90B Power to make further provision about liability for published information**

(1) The Treasury may by regulations make provision about the liability of issuers of securities traded on a regulated market, and other persons, in respect of information published to holders of securities, to the market or to the public generally.

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (2) Regulations under this section may amend any primary or subordinate legislation, including any provision of, or made under, this Act.]

### *Penalties*

#### **91 [F92]Penalties for breach of Part 6 rules]**

[F93][F94](1) If the [FCA] considers that—

- (a) an issuer of listed securities, or
- (b) an applicant for listing,

has contravened any provision of listing rules, it may impose on him a penalty of such amount as it considers appropriate.

(1ZA) If the [FCA] considers that—

- (a) an issuer who has requested or approved the admission of a financial instrument to trading on a regulated market,
- (b) a person discharging managerial responsibilities within such an issuer, or
- (c) a person connected with such a person discharging managerial responsibilities,

has contravened any provision of disclosure rules, it may impose on him a penalty of such amount as it considers appropriate.]

[F95](1A) If the [FCA] considers that—

- (a) an issuer of transferable securities,
- (b) a person offering transferable securities to the public or requesting their admission to trading on a regulated market,
- (c) an applicant for the approval of a prospectus in relation to transferable securities,
- (d) a person on whom a requirement has been imposed under section 87K or 87L, or
- (e) any other person to whom a provision of the prospectus directive applies,

has contravened a provision of this Part or of prospectus rules, or a provision otherwise made in accordance with the prospectus directive or a requirement imposed on him under such a provision, it may impose on him a penalty of such amount as it considers appropriate.]

[F96](1B) If the [FCA] considers—

- (a) that a person has contravened—
  - (i) a provision of transparency rules or a provision otherwise made in accordance with the transparency obligations directive, or
  - (ii) a provision of corporate governance rules, or
- (b) that a person on whom a requirement has been imposed under section 89L (power to suspend or prohibit trading of securities in case of infringement of applicable transparency obligation), has contravened that requirement,

it may impose on the person a penalty of such amount as it considers appropriate.]

- (2) If, in the case of a contravention [F97]by a person] referred to in subsection [F98](1), (1ZA) (a), (1A) or (1B)] [F99] (“P”), the [FCA] considers that [F100]another person] who was at

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the material time a director of [F101P] was knowingly concerned in the contravention, it may impose upon him a penalty of such amount as it considers appropriate.]

- (3) If the [FCA] is entitled to impose a penalty on a person under this section in respect of a particular matter it may, instead of imposing a penalty on him in respect of that matter, publish a statement censuring him.
- (4) Nothing in this section prevents the [FCA] from taking any other steps which it has power to take under this Part.
- (5) A penalty under this section is payable to the [FCA].
- (6) The [FCA] may not take action against a person under this section after the end of the period of [three years] beginning with the first day on which it knew of the contravention unless proceedings against that person, in respect of the contravention, were begun before the end of that period.
- (7) For the purposes of subsection (6)—
  - (a) the [FCA] is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred; and
  - (b) proceedings against a person in respect of a contravention are to be treated as begun when a warning notice is given to him under section 92.

#### Annotations:

##### Amendments (Textual)

- F92** Words in s. 91(2) title substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 7(4)**
- F93** S. 91(1)(2) substituted (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 4, **Sch. 1 para. 4**
- F94** S. 91(1)(1ZA) substituted for s. 91(1) (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), **Sch. 15 para. 6(2)**
- F95** S. 91(1A) inserted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 7(2)**
- F96** S. 91(1B) inserted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), **Sch. 15 para. 6(3)**
- F97** Words in s. 91(2) substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 7(3)(a)**
- F98** Words in s. 91(2) substituted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), **Sch. 15 para. 6(4)**
- F99** Words in s. 91(2) substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 7(3)(b)**
- F100** Words in s. 91(2) substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 7(3)(c)**
- F101** Word in s. 91(2) substituted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 7(3)(d)**

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

- C201** S. 91(6)(7) applied (with modifications) (1.12.2001) by [S.I. 2001/2957](#), **arts. 1, 11(4)-(6)**; [S.I. 2001/3538](#), **art. 2(1)**

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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## 92 Procedure.

- (1) If the [FCA] proposes to take action against a person under section 91, it must give him a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the proposed penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.
- (4) If the [FCA] decides to take action against a person under section 91, it must give him a decision notice.
- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If the [FCA] decides to take action against a person under section 91, he may refer the matter to the Tribunal.

### Annotations:

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

C202 S. 92(1)(3)(4)(6)(7) applied (with modifications) (1.12.2001) by S.I. 2001/2957, arts. 1, 11(3), 12, 13; S.I. 2001/3538, art. 2(1)

## 93 Statement of policy.

- (1) The [FCA] must prepare and issue a statement (“its policy statement”) of its policy with respect to—
  - (a) the imposition of penalties under section 91; and
  - (b) the amount of penalties under that section.
- (2) The [FCA’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 contravened;
  - (b) the extent to which that contravention was deliberate or reckless; and
  - (c) whether the person on whom the penalty is to be imposed is an individual.
- (3) The [FCA] may at any time alter or replace its policy statement.
- (4) If its policy statement is altered or replaced, the [FCA] must issue the altered or replacement statement.
- (5) In exercising, or deciding whether to exercise, its power under section 91 in the case of any particular contravention, the [FCA] must have regard to any policy statement published under this section and in force at the time when the contravention in question occurred.
- (6) The [FCA] must publish a statement issued under this section in the way appearing to the competent authority to be best calculated to bring it to the attention of the public.

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- (7) The [FCA] may charge a reasonable fee for providing a person with a copy of the statement.
- (8) The [FCA] must, without delay, give the Treasury a copy of any policy statement which it publishes under this section.

**94 Statements of policy: procedure.**

- (1) Before issuing a statement under section 93, the [FCA] must publish a draft of the proposed statement in the way appearing to the [FCA] 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 [FCA] within a specified time.
- (3) Before issuing the proposed statement, the [FCA] must have regard to any representations made to it in accordance with subsection (2).
- (4) If the [FCA] 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 [FCA], significant, the [FCA] must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The [FCA] 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.

*Competition*

**95 Competition scrutiny.**

**Annotations:**

**Amendments (Textual)**

**F102** Words in s. 95(9)(a) substituted (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 4, **Sch. 1 para. 5**

*Miscellaneous*

**96 Obligations of issuers of listed securities.**

- (1) Listing rules may—
  - (a) specify requirements to be complied with by issuers of listed securities; and
  - (b) make provision with respect to the action that may be taken by the [FCA] in the event of non-compliance.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (2) If the rules require an issuer to publish information, they may include provision authorising the [FCA] to publish it in the event of his failure to do so.
- (3) This section applies whenever the listed securities were admitted to the official list.

### [<sup>F103</sup>96A Disclosure of information requirements

- (1) Disclosure rules must include provision specifying the disclosure of information requirements to be complied with by—
  - (a) issuers who have requested or approved admission of their financial instruments to trading on a regulated market in the United Kingdom;
  - (b) persons acting on behalf of or for the account of such issuers;
  - (c) persons discharging managerial responsibilities within an issuer—
    - (i) who is registered in the United Kingdom and who has requested or approved admission of its shares to trading on a regulated market; or
    - (ii) who is not registered in the United Kingdom or any other EEA State but who has requested or approved admission of its shares to trading on a regulated market and who is required to file annual information in relation to the shares in the United Kingdom in accordance with Article 10 of the prospectus directive;
  - (d) persons connected to such persons discharging managerial responsibilities.
- (2) The rules must in particular—
  - (a) require an issuer to publish specified inside information;
  - (b) require an issuer to publish any significant change concerning information it has already published in accordance with paragraph (a);
  - (c) allow an issuer to delay the publication of inside information in specified circumstances;
  - (d) require an issuer (or a person acting on his behalf or for his account) who discloses inside information to a third party to publish that information without delay in specified circumstances;
  - (e) require an issuer (or person acting on his behalf or for his account) to draw up a list of those persons working for him who have access to inside information relating directly or indirectly to that issuer; and
  - (f) require persons discharging managerial responsibilities within an issuer falling within subsection (1)(c)(i) or (ii), and persons connected to such persons discharging managerial responsibilities, to disclose transactions conducted on their own account in shares of the issuer, or derivatives or any other financial instrument relating to those shares.
- (3) Disclosure rules may make provision with respect to the action that may be taken by the [FCA] in respect of non-compliance.

#### Annotations:

#### Amendments (Textual)

**F103** Ss. 96A-96C inserted (17.3.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(3)(b), 4, [Sch. 1 para. 6](#)

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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

- C203** S. 96A modified (22.2.2008) by The Northern Rock plc Transfer Order 2008 (S.I. 2008/432), art. 17(1), **Sch. para. 4(a)**
- C204** S. 96A 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. 13(1)(3), **Sch. 1 para. 4(a)**
- C205** S. 96A modified (7.10.2008 at 9.30 a.m.) by The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2644), art. 26, **Sch. 2 para. 4(a)**
- C206** S. 96A modified (30.3.2009 at 8.00 a.m.) by The Amendments to Law (Resolution of Dunfermline Building Society) Order 2009 (S.I. 2009/814), art. 7, **Sch. para. 4(a)**

**96B** [<sup>F104</sup>**Disclosure rules: persons responsible for compliance**]

- (1) [<sup>F105</sup>For the purposes of the provisions of this Part relating to disclosure rules], a “person discharging managerial responsibilities within an issuer” means—
- (a) a director of an issuer falling within section 96A(1)(c)(i) or (ii); or
  - (b) a senior executive of such an issuer who—
    - (i) has regular access to inside information relating, directly or indirectly, to the issuer, and
    - (ii) has power to make managerial decisions affecting the future development and business prospects of the issuer.

[<sup>F106</sup>(2) Schedule 11B (connected persons) has effect for the purposes of the provisions of this Part relating to disclosure rules.]

**Annotations:**

**Amendments (Textual)**

- F104** Words in s. 96B heading substituted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1272, 1300(1)(a), **Sch. 15 para. 7(a)**
- F105** Words in s. 96B(1) substituted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1272, 1300(1)(a), **Sch. 15 para. 7(b)**
- F106** S. 96B(2) substituted (1.10.2009) by The Financial Services and Markets Act 2000 (Amendment) Regulations 2009 (S.I. 2009/2461), **reg. 2(1)(3)** (this amendment supersedes the amendment in para. 181(2) of Sch. 1 to the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941))

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

- C207** S. 96B modified (22.2.2008) by The Northern Rock plc Transfer Order 2008 (S.I. 2008/432), art. 17(1), **Sch. para. 4(b)**
- C208** S. 96B 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. 13(1)(3), **Sch. 1 para. 4(b)**
- C209** S. 96B modified (7.10.2008 at 9.30 a.m.) by The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2644), art. 26, **Sch. 2 para. 4(b)**
- C210** S. 96B modified (30.3.2009 at 8.00 a.m.) by The Amendments to Law (Resolution of Dunfermline Building Society) Order 2009 (S.I. 2009/814), art. 7, **Sch. para. 4(b)**

**96C** **Suspension of trading**

- (1) The [FCA] may, in accordance with disclosure rules, suspend trading in a financial instrument.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (2) If the [FCA] does so, the issuer of that financial instrument may refer the matter to the Tribunal.
- (3) The provisions relating to suspension of listing of securities in section 78 apply to the suspension of trading in a financial instrument and the references to listing and securities are to be read as references to trading and financial instruments respectively for the purposes of this section.]

## 97 Appointment by competent authority of persons to carry out investigations.

- (1) Subsection (2) applies if it appears to the [FCA] that there are circumstances suggesting that—
  - [<sup>F107</sup>(a) there may have been a contravention of—
    - (i) a provision of this Part or of Part 6 rules, or
    - (ii) a provision otherwise made in accordance with the prospectus directive or the transparency obligations directive;
  - (b) a person who was at the material time a director of a person mentioned in section 91(1), (1ZA)(a), (1A) or (1B) has been knowingly concerned in a contravention by that person of—
    - (i) a provision of this Part or of Part 6 rules, or
    - (ii) a provision otherwise made in accordance with the prospectus directive or the transparency obligations directive;]
    - (c) <sup>F108</sup> .....
    - (d) there may have been a contravention of section [85 or 87G][<sup>F109</sup>, [87G] or 98.]
- (2) The [FCA] may appoint one or more competent persons to conduct an investigation on its behalf.
- (3) Part XI applies to an investigation under subsection (2) as if—
  - (a) the investigator were appointed under section 167(1);
  - (b) references to the investigating authority in relation to him were to the competent authority;
  - (c) references to the offences mentioned in section 168 were to those mentioned in subsection (1)(d);
  - (d) references to an authorised person were references to the person under investigation.

### Annotations:

#### Amendments (Textual)

**F107** S. 97(1)(a)(b) substituted (8.11.2006) by Companies Act 2006 (c. 46), ss. 1272, 1300(1)(a), **Sch. 15 para. 8**

**F108** S. 97(1)(c) repealed (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 4, **Sch. 1 para. 7(c)**

**F109** Words in s. 97(1)(d) inserted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), reg. 2(1), **Sch. 1 para. 8(c)**

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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### **[97A] Reports by skilled persons**

- (1) The FCA may, by notice in writing given to a person to whom this section applies, require the person to provide the FCA with a report on any matter.
- (2) The power conferred by subsection (1) is exercisable only if the report on the matter is reasonably required in connection with the exercise by the FCA of functions conferred on it—
  - (a) by or under this Part; or
  - (b) by or under provision otherwise made in accordance with the prospectus directive or the transparency obligations directive.
- (3) This section applies to—
  - (a) any of the following persons on whom a requirement is, or was at the relevant time, imposed by or under this Part—
    - (i) an issuer;
    - (ii) a sponsor (within the meaning of section 88);
    - (iii) a primary information provider (within the meaning of section 89P);
  - (b) a person who is, or was at the relevant time, a director of a person within paragraph (a).
- (4) The FCA may require the report to be in such form as may be specified in the notice.
- (5) The person appointed to make a report required by this section (a “skilled person”) must be someone—
  - (a) nominated or approved by the FCA; and
  - (b) appearing to the FCA to have the skills necessary to make a report on the matter concerned.
- (6) It is the duty of any person who is providing (or who at any time has provided) services to a person to whom this section applies to give a skilled person all such assistance as the skilled person may reasonably require for the purposes of a report required by this section.
- (7) Section 177(1) and (2) (failure to comply with a Part 11 requirement: contempt of court) are to have effect as if a requirement imposed under subsection (1) of this section were imposed under Part 11 (information gathering etc).
- (8) The obligation imposed by subsection (6) is enforceable, on the application of the FCA, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.]

### **98 Advertisements etc. in connection with listing applications.**

F110 .....

#### **Annotations:**

#### **Amendments (Textual)**

**F110** S. 98 repealed (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 9](#)

## 99 Fees.

### Annotations:

#### Amendments (Textual)

- F111** S. 99(1A) inserted (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 4, **Sch. 1 para. 8**
- F112** S. 99(1B) inserted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 10**
- F113** S. 99(1C) inserted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), **Sch. 15 para. 9**

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

- C211** S. 99(2) modified (1.12.2001) by [S.I. 2001/3650](#), **arts. 1(a)**, 25(3)

## 100 Penalties.

### Annotations:

#### Amendments (Textual)

- F114** Words in s. 100(2) inserted (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 4, **Sch. 1 para. 9**

### [<sup>F115</sup>100A] Exercise of powers where UK is host member state

- (1) This section applies to the exercise by the [FCA] of any power under this Part exercisable in case of infringement of—
- a provision of prospectus rules or any other provision made in accordance with the prospectus directive, or
  - a provision of transparency rules or any other provision made in accordance with the transparency obligations directive,
- in relation to an issuer whose home State is a member State other than the United Kingdom.
- (2) The [FCA] may act in such a case only in respect of the infringement of a provision required by the relevant directive.
- Any reference to an applicable provision or applicable transparency obligation shall be read accordingly.
- (3) If the authority finds that there has been such an infringement, it must give a notice to that effect to the competent authority of the person's home State requesting it—
- to take all appropriate measures for the purpose of ensuring that the person remedies the situation that has given rise to the notice, and
  - to inform the authority of the measures it proposes to take or has taken or the reasons for not taking such measures.
- (4) The authority may not act further unless satisfied—
- that the competent authority of the person's home State has failed or refused to take measures for the purpose mentioned in subsection (3)(a), or

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(b) that the measures taken by that authority have proved inadequate for that purpose.

This does not affect exercise of the powers under section 87K(2), 87L(2) or (3) or 89L(2) or (3) (powers to protect market).

- (5) If the authority is so satisfied, it must, after informing the competent authority of the person's home State, take all appropriate measures to protect investors.
- (6) In such a case the authority must inform the Commission of the measures at the earliest opportunity.]

**Annotations:**

**Amendments (Textual)**

**F115** S. 100A inserted (8.11.2006) by *Companies Act 2006 (c. 46)*, ss. 1271, 1300(1)(a)

**101 Listing rules: general provisions.**

- (1) [<sup>F116</sup>Part 6 rules] may make different provision for different cases.]
- (2) [<sup>F116</sup>Part 6 rules] may authorise the competent authority to dispense with or modify the application of the rules in particular cases and by reference to any circumstances.
- (3) [<sup>F116</sup>Part 6 rules] must be made by an instrument in writing.]
- (4) [Immediately after an instrument containing [<sup>F116</sup>Part 6 rules] is made, it must be printed and made available to the public with or without payment.]
- (5) [A person is not to be taken to have contravened [<sup>F117</sup>any Part 6 rule] if he shows that at the time of the alleged contravention the instrument containing the rule had not been made available as required by subsection (4).]
- (6) [The production of a printed copy of an instrument purporting to be made by the competent authority on which is endorsed a certificate signed by an officer of the authority authorised by it for that purpose and stating—  
 .....  
 is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.]
- (7) [A certificate purporting to be signed as mentioned in subsection (6) is to be treated as having been properly signed unless the contrary is shown.]
- (8) [A person who wishes in any legal proceedings to rely on a rule-making instrument may require the Authority to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (6).]

**Annotations:**

**Amendments (Textual)**

**F116** Words in s. 101(1)-(4) substituted (1.7.2005) by *The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381)*, regs. 1(2), 4, **Sch. 1 para. 10(a)**

**F117** Words in s. 101(5) substituted (1.7.2005) by *The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381)*, regs. 1(2), 4, **Sch. 1 para. 10(b)**

## 102 Exemption from liability in damages.

### Annotations:

### Marginal Citations

M2 1998 c. 42.

## 103 .....

### [<sup>F126</sup>Interpretative provisions

### Annotations:

### Amendments (Textual)

**F126** Ss. 102A-103 substituted for s. 103 (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 11](#)

## 102A Meaning of “securities” etc.

- (1) This section applies for the purposes of this Part.
- (2) “Securities” means (except in section 74(2) and the expression “transferable securities”) anything which has been, or may be, admitted to the official list.
- (3) “Transferable securities” means anything which is a transferable security for the purposes of [<sup>F127</sup>Directive [2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments], other than money-market instruments for the purposes of that directive which have a maturity of less than 12 months.
- [<sup>F128</sup>(3A) “Debt securities” has the meaning given in Article 2.1(b) of the transparency obligations directive.]
- (4) “Financial instrument” has [<sup>F129</sup>(except in section 89F) ]the meaning given in Article 1.3 of Directive [2003/6/EC](#) of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation [<sup>F130</sup>(as modified by Article 69 of Directive [2004/39/EC](#) on markets in financial instruments)].
- (5) “Non-equity transferable securities” means all transferable securities that are not equity securities; and for this purpose “equity securities” has the meaning given in Article 2.1(b) of the prospectus directive.
- (6) “Issuer”—
  - (a) in relation to an offer of transferable securities to the public or admission of transferable securities to trading on a regulated market for which an approved prospectus is required as a result of section 85, means a legal person who issues or proposes to issue the transferable securities in question,
  - [<sup>F131</sup>(aa) in relation to transparency rules, means a legal person whose securities are admitted to trading on a regulated market or whose voting shares are admitted to trading on a UK market other than a regulated market, and in the case

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- of depository receipts representing securities, the issuer is the issuer of the securities represented;]
- (b) in relation to anything else which is or may be admitted to the official list, has such meaning as may be prescribed by the Treasury, and
  - (c) in any other case, means a person who issues financial instruments.

**Annotations:**

**Amendments (Textual)**

- F127** Words in s. 102A(3) substituted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), [Sch. 15 para. 10\(3\)](#)
- F128** S. 102A(3A) inserted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), [Sch. 15 para. 10\(2\)](#)
- F129** Words in s. 102A(4) inserted (31.1.2009) by [The Definition of Financial Instrument Order 2008 \(S.I. 2008/3053\)](#), [art. 3\(2\)\(a\)](#)
- F130** Words in s. 102A(4) inserted (31.1.2009) by [The Definition of Financial Instrument Order 2008 \(S.I. 2008/3053\)](#), [art. 3\(2\)\(b\)](#)
- F131** S. 102A(6)(aa) inserted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), [Sch. 15 para. 10\(4\)](#)

**102B Meaning of “offer of transferable securities to the public” etc.**

- (1) For the purposes of this Part there is an offer of transferable securities to the public if there is a communication to any person which presents sufficient information on—
  - (a) the transferable securities to be offered, and
  - (b) the terms on which they are offered,
 to enable an investor to decide to buy or subscribe for the securities in question.
- (2) For the purposes of this Part, to the extent that an offer of transferable securities is made to a person in the United Kingdom it is an offer of transferable securities to the public in the United Kingdom.
- (3) The communication may be made—
  - (a) in any form;
  - (b) by any means.
- (4) Subsection (1) includes the placing of securities through a financial intermediary.
- (5) Subsection (1) does not include a communication in connection with trading on—
  - (a) a regulated market;
  - (b) a multilateral trading facility; or
  - (c) a market prescribed by an order under section 130A(3).
- (6) “Multilateral trading facility” means a multilateral system, operated by an investment firm<sup>F132</sup>... or a market operator, which brings together multiple third-party buying and selling interests in financial instruments in accordance with non-discretionary rules so as to result in a contract.

**Annotations:**

**Amendments (Textual)**

**F132** Words in s. 102B(6) omitted (1.4.2007 for certain purposes, 1.11.2007 otherwise) by virtue of [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), [Sch. 5 para. 6](#)

**102C Meaning of “home State” in relation to transferable securities**

In this Part, in relation to an issuer of transferable securities, the “home-State” is the EEA State which is the “home Member State” for the purposes of the prospectus directive (which is to be determined in accordance with Article 2.1(m) of that directive).

**<sup>x2</sup>103 Interpretation of this Part**

(1) In this Part, save where the context otherwise requires—

“disclosure rules” has the meaning given in section 73A;

“inside information” has the meaning given in section 118C;

“listed securities” means anything which has been admitted to the official list;

“listing” has the meaning given in section 74(5);

“listing particulars” has the meaning given in section 79(2);

“listing rules” has the meaning given in section 73A;

“market operator” means a person who manages or operates the business of a regulated market;

“offer of transferable securities to the public” has the meaning given in section 102B;

“the official list” means the list maintained by the competent authority as that list has effect for the time being;

“Part 6 rules” has the meaning given in section 73A;

“the prospectus directive” means Directive [2003/71/EC](#) of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading;

“prospectus rules” has the meaning given in section 73A;

“regulated market” has the meaning given in [<sup>F133</sup>Article 4.1(14) of Directive [2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments];

“supplementary prospectus” has the meaning given in section 87G;

[<sup>F134</sup>“the transparency obligations directive” means Directive [2004/109/EC](#) of the European Parliament and of the Council relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market;

[<sup>F135</sup>“transparency rules” has the meaning given by section 89A(5);

“votesholder information” has the meaning given by section 89B(3);]

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“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in any part of the United Kingdom.

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**Annotations:**

**Editorial Information**

- X2** The insertion of the new heading "Interpretative provisions" in Pt. VI on 1.7.2005 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

**Amendments (Textual)**

- F133** S. 103(1): words in entry substituted (1.10.2008) by *Companies Act 2006 (c. 46)*, ss. 1272(1), 1300(2), **Sch. 15 para. 11(2)**; S.I. 2008/1886, **art. 2(g)** (with arts. 6, 7)
- F134** S. 103(1): entry inserted (8.11.2006) by *Companies Act 2006 (c. 46)*, **ss. 1265**, 1300(1)(a)
- F135** S. 103(1): entries inserted (8.11.2006) by *Companies Act 2006 (c. 46)*, ss. 1272, 1300(1)(a), **Sch. 15 para. 11(3)**

## PART VII

### CONTROL OF BUSINESS TRANSFERS

#### 104 Control of business transfers.

No insurance business transfer scheme or banking business transfer scheme is to have effect unless an order has been made in relation to it under section 111(1).

**Annotations:**

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

- C212** S. 104 applied (1.12.2001) by S.I. 2001/3626, **arts. 1, 3(a)**  
 S. 104 modified (1.12.2001) by S.I. 2001/3639, **arts. 1(1), 7** (with **art. 2**)

**Commencement Information**

- I33** S. 104 partly in force; s. 104 not in force at Royal Assent see s. 431(2); s. 104 in force for specified purposes at 1.12.2001 by S.I. 2001/3538, **art. 2(1)(2)**

#### 105 Insurance business transfer schemes.

- (1) A scheme is an insurance business transfer scheme if it—
- (a) satisfies one of the conditions set out in subsection (2);
  - (b) results in the business transferred being carried on from an establishment of the transferee in an EEA State; and
  - (c) is not an excluded scheme.
- (2) The conditions are that—
- (a) the whole or part of the business carried on in one or more member States by a UK authorised person who has permission to effect or carry out contracts of

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insurance (“the authorised person concerned”) is to be transferred to another body (“the transferee”);

- (b) the whole or part of the business, so far as it consists of reinsurance, carried on in the United Kingdom through an establishment there by an EEA firm [<sup>F136</sup>falling within paragraph 5(d) of Schedule 3 and qualifying for authorisation under that Schedule](“the authorised person concerned”) is to be transferred to another body (“the transferee”);
- (c) the whole or part of the business carried on in the United Kingdom by an authorised person who is neither a UK authorised person nor an EEA firm but who has permission to effect or carry out contracts of insurance (“the authorised person concerned”) is to be transferred to another body (“the transferee”).

(3) A scheme is an excluded scheme for the purposes of this section if it falls within any of the following cases:

(Case 1)

Where the authorised person concerned is a friendly society.

(Case 2)

Where—

- (a) the authorised person concerned is a UK authorised person;
- [<sup>F137</sup>(aa) the authorised person concerned is not a reinsurance undertaking (within the meaning of Article 2.1(c) of the reinsurance directive);]
- (b) the business to be transferred under the scheme is business which consists of the effecting or carrying out of contracts of reinsurance in one or more EEA States other than the United Kingdom; and
- (c) the scheme has been approved by a court in an EEA State other than the United Kingdom or by the host state regulator.

(Case 3)

Where—

- (a) the authorised person concerned is a UK authorised person;
- (b) the business to be transferred under the scheme is carried on in one or more countries or territories (none of which is an EEA State) and does not include policies of insurance <sup>F138</sup>... against risks arising in an EEA State; and
- (c) the scheme has been approved by a court in a country or territory other than an EEA State or by the authority responsible for the supervision of that business in a country or territory in which it is carried on.

(Case 4)

Where [<sup>F139</sup>—

- (a) the business to be transferred under the scheme is the whole of the business of the authorised person concerned;]
- (b) all the policyholders are controllers of the firm or of firms within the same group as the firm which is the transferee, and,
- [<sup>F140</sup>(c)] all of the policyholders who will be affected by the transfer have consented to it.

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[<sup>F141</sup>(CASE

5) Where—

- (a) the business of the authorised person concerned consists solely of the effecting or carrying out of contracts of reinsurance;
- (b) the business to be transferred is the whole or part of that business;
- (c) the scheme does not fall within Case 4;
- (d) all of the policyholders who will be affected by the transfer have consented to it; and
- (e) a certificate has been obtained under paragraph 2 of Schedule 12 in relation to the proposed transfer.]

(4) The parties to a scheme which falls within Case 2, [<sup>F142</sup>3, 4 or 5] may apply to the court for an order sanctioning the scheme as if it were an insurance business transfer scheme.

[<sup>F143</sup>(5) If the scheme involves a compromise or arrangement falling within Part 27 of the Companies Act 2006 (mergers and divisions of public companies), the provisions of that Part (and Part 26 of that Act) apply accordingly but this does not affect the operation of this Part in relation to the scheme.]

(8) “UK authorised person” means a body which is an authorised person and which—

- (a) is incorporated in the United Kingdom; or
- (b) is an unincorporated association formed under the law of any part of the United Kingdom.

(9) “Establishment” means, in relation to a person, his head office or a branch of his.

**Annotations:**

**Amendments (Textual)**

- F136** Words in s. 105(2)(b) substituted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(1\)\(a\)](#)
- F137** S. 105(3) Case 2(aa) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(1\)\(b\)](#)
- F138** Words in s. 105(3) Case 3(b) omitted (10.12.2007) by virtue of [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(1\)\(c\)](#)
- F139** Words in s. 105(3) Case 4 substituted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(1\)\(d\)\(i\)](#)
- F140** Words in s. 105(3) Case 4 substituted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(1\)\(d\)\(ii\)](#)
- F141** S. 105(3) Case 5 inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(1\)\(e\)](#)
- F142** Words in s. 105(4) substituted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(1\)\(f\)](#)
- F143** S. 105(5) substituted (6.4.2008) for s. 105(5)-(7) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), [Sch. 1 para. 211\(1\)](#) (with arts. 6, 11, 12)

**106 Banking business transfer schemes.**

- (1) A scheme is a banking business transfer scheme if it—
- (a) satisfies one of the conditions set out in subsection (2);

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- (b) is one under which the whole or part of the business to be transferred includes the accepting of deposits; and
  - (c) is not an excluded scheme.
- (2) The conditions are that—
- (a) the whole or part of the business carried on by a UK authorised person who has permission to accept deposits (“the authorised person concerned”) is to be transferred to another body (“the transferee”);
  - (b) the whole or part of the business carried on in the United Kingdom by an authorised person who is not a UK authorised person but who has permission to accept deposits (“the authorised person concerned”) is to be transferred to another body which will carry it on in the United Kingdom (“the transferee”).
- (3) A scheme is an excluded scheme for the purposes of this section if—
- (a) the authorised person concerned is a building society or a credit union; or
  - [<sup>F144</sup>(b) the scheme is a compromise or arrangement to which Part 27 of the Companies Act 2006 (mergers and divisions of public companies) applies.]
- (4) For the purposes of subsection (2)(a) it is immaterial whether or not the business to be transferred is carried on in the United Kingdom.
- (5) “UK authorised person” has the same meaning as in section 105.
- (6) “Building society” has the meaning given in the <sup>M3</sup>Building Societies Act 1986.
- (7) “Credit union” means a credit union within the meaning of—
- (a) the <sup>M4</sup>Credit Unions Act 1979;
  - (b) the <sup>M5</sup>Credit Unions (Northern Ireland) Order 1985.

**Annotations:**

**Amendments (Textual)**

**F144** S. 106(3)(b) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(1), 3(1), **Sch. 1 para. 211(2)** (with arts. 6, 11, 12)

**Marginal Citations**

**M3** 1986 c. 53.

**M4** 1979 c. 34.

**M5** S.I. 1985/1205 (N.I. 12).

[<sup>F145</sup>**106A Reclaim fund business transfer scheme**

- (1) A scheme is a reclaim fund business transfer scheme if, under the scheme, the whole or part of the business carried on by a reclaim fund is to be transferred to one or more other reclaim funds.
- (2) “Reclaim fund” has the meaning given by section 5(1) of the Dormant Bank and Building Society Accounts Act 2008.]

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**Annotations:**

**Amendments (Textual)**

**F145** S. 106A inserted (12.3.2009) by [Dormant Bank and Building Society Accounts Act 2008 \(c. 31\)](#), ss. 15, 31(1)(2), [Sch. 2 para. 2](#); S.I. 2009/490, [art. 2](#) (with [art. 3](#))

**107 Application for order sanctioning transfer scheme.**

- (1) An application may be made to the court for an order sanctioning an insurance business transfer scheme [<sup>F146</sup>, a banking business transfer scheme or a reclaim fund business transfer scheme].
- (2) An application may be made by—
  - (a) the authorised person concerned;
  - (b) the transferee; or
  - (c) both.
- (3) The application must be made—
  - (a) if the authorised person concerned and the transferee are registered or have their head offices in the same jurisdiction, to the court in that jurisdiction;
  - (b) if the authorised person concerned and the transferee are registered or have their head offices in different jurisdictions, to the court in either jurisdiction;
  - (c) if the transferee is not registered in the United Kingdom and does not have his head office there, to the court which has jurisdiction in relation to the authorised person concerned.
- (4) “Court” means—
  - (a) the High Court; or
  - (b) in Scotland, the Court of Session.

**Annotations:**

**Amendments (Textual)**

**F146** Words in s. 107(1) substituted (12.3.2009) by [Dormant Bank and Building Society Accounts Act 2008 \(c. 31\)](#), ss. 15, 31(1)(2), [Sch. 2 para. 3](#); S.I. 2009/490, [art. 2](#) (with [art. 3](#))

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

**C213** S. 107 applied (1.12.2001) by S.I. 2001/3626, [arts. 1, 3\(a\)](#)

**108 Requirements on applicants.**

- (1) The Treasury may by regulations impose requirements on applicants under section 107.
- (2) The court may not determine an application under that section if the applicant has failed to comply with a prescribed requirement.
- (3) The regulations may, in particular, include provision—
  - (a) as to the persons to whom, and periods within which, notice of an application must be given;

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- (b) enabling the court to waive a requirement of the regulations in prescribed circumstances.

**Annotations:**

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

C214 S. 108 applied (1.12.2001) by S.I. 2001/3626, arts. 1, 3(a)(b)

**Commencement Information**

I34 S. 108 wholly in force at 1.12.2001; s. 108 not in force at Royal Assent see s. 431(2); s. 108 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2 Sch. Pt. 2; s. 108 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**109 Scheme reports.**

- (1) An application under section 107 in respect of an insurance business transfer scheme must be accompanied by a report on the terms of the scheme (“a scheme report”).
- (2) A scheme report may be made only by a person—
- (a) appearing to the Authority to have the skills necessary to enable him to make a proper report; and
  - (b) nominated or approved for the purpose by the Authority.
- (3) A scheme report must be made in a form approved by the Authority.

**Annotations:**

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

C215 S. 109 applied (1.12.2001) by S.I. 2001/3626, arts. 1, 3(a)

**110 Right to participate in proceedings.**

On an application under section 107, the following are also entitled to be heard—

- (a) the Authority, and
- (b) any person (including an employee of the authorised person concerned or of the transferee) who alleges that he would be adversely affected by the carrying out of the scheme.

**Annotations:**

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

C216 S. 110 applied (1.12.2001) by S.I. 2001/3626, arts. 1, 3(a)

**111 Sanction of the court for business transfer schemes.**

- (1) This section sets out the conditions which must be satisfied before the court may make an order under this section sanctioning an insurance business transfer scheme [F147 a banking business transfer scheme or a reclaim fund business transfer scheme].
- (2) The court must be satisfied that—

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- (a) [<sup>F148</sup>in the case of an insurance business transfer scheme or a banking business transfer scheme,] the appropriate certificates have been obtained (as to which see Parts I and II of Schedule 12);
  - [<sup>F149</sup>(aa) in the case of a reclaim fund business transfer scheme, the appropriate certificate has been obtained (as to which see Part 2A of that Schedule);]
  - (b) the transferee has the authorisation required (if any) to enable the business, or part, which is to be transferred to be carried on in the place to which it is to be transferred (or will have it before the scheme takes effect).
- (3) The court must consider that, in all the circumstances of the case, it is appropriate to sanction the scheme.

#### Annotations:

##### Amendments (Textual)

- F147** Words in s. 111(1) substituted (12.3.2009) by [Dormant Bank and Building Society Accounts Act 2008 \(c. 31\)](#), ss. 15, 31(1)(2), [Sch. 2 para. 4\(2\)](#); S.I. 2009/490, [art. 2](#) (with art. 3)
- F148** Words in s. 111(2)(a) inserted (12.3.2009) by [Dormant Bank and Building Society Accounts Act 2008 \(c. 31\)](#), ss. 15, 31(1)(2), [Sch. 2 para. 4\(3\)\(a\)](#); S.I. 2009/490, [art. 2](#) (with art. 3)
- F149** S. 111(2)(aa) inserted (12.3.2009) by [Dormant Bank and Building Society Accounts Act 2008 \(c. 31\)](#), ss. 15, 31(1)(2), [Sch. 2 para. 4\(3\)\(b\)](#); S.I. 2009/490, [art. 2](#) (with art. 3)

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

- C217** S. 111 applied (1.12.2001) by S.I. 2001/3626, [arts. 1, 3\(a\)](#)

##### Commencement Information

- I35** S. 111 wholly in force at 1.12.2001; s. 111 not in force at Royal Assent see s. 431(2); s. 111(2) in force for specified purposes at 25.2.2001 by S.I. 2001/516, [art. 2\(c\)](#), [Sch. Pt. 3](#); s. 111 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, [art. 2\(1\)](#)

## 112 Effect of order sanctioning business transfer scheme.

- (1) If the court makes an order under section 111(1), it may by that or any subsequent order make such provision (if any) as it thinks fit—
- (a) for the transfer to the transferee of the whole or any part of the undertaking concerned and of any property or liabilities of the authorised person concerned;
  - (b) for the allotment or appropriation by the transferee of any shares, debentures, policies or other similar interests in the transferee which under the scheme are to be allotted or appropriated to or for any other person;
  - (c) for the continuation by (or against) the transferee of any pending legal proceedings by (or against) the authorised person concerned;
  - (d) with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the scheme is fully and effectively carried out.
- (2) An order under subsection (1)(a) may—
- (a) transfer property or liabilities whether or not the authorised person concerned otherwise has the capacity to effect the transfer in question;
  - (b) make provision in relation to property which was held by the authorised person concerned as trustee;

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- (c) make provision as to future or contingent rights or liabilities of the authorised person concerned, including provision as to the construction of instruments (including wills) under which such rights or liabilities may arise;
- (d) make provision as to the consequences of the transfer in relation to any [<sup>F150</sup>occupational pension scheme (within the meaning of section 150(5) of the Finance Act 2004)] operated by or on behalf of the authorised person concerned.

[<sup>F151</sup>(2A) Subsection (2)(a) is to be taken to include power to make provision in an order—

- (a) for the transfer of property or liabilities which would not otherwise be capable of being transferred or assigned;
- (b) for a transfer of property or liabilities to take effect as if there were—
  - (i) no such requirement to obtain a person's consent or concurrence, and
  - (ii) no such contravention, liability or interference with any interest or right,

as there would otherwise be (in the case of a transfer apart from this section) by reason of any provision falling within subsection (2B).

(2B) A provision falls within this subsection to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the authorised person concerned is entitled to the property or subject to the liabilities in question.

(2C) Nothing in subsection (2A) or (2B) is to be read as limiting the scope of subsection (1).]

(3) If an order under subsection (1) makes provision for the transfer of property or liabilities—

- (a) the property is transferred to and vests in, and
- (b) the liabilities are transferred to and become liabilities of,

the transferee as a result of the order.

(4) But if any property or liability included in the order is governed by the law of any country or territory outside the United Kingdom, the order may require the authorised person concerned, if the transferee so requires, to take all necessary steps for securing that the transfer to the transferee of the property or liability is fully effective under the law of that country or territory.

(5) Property transferred as the result of an order under subsection (1) may, if the court so directs, vest in the transferee free from any charge which is (as a result of the scheme) to cease to have effect.

(6) An order under subsection (1) which makes provision for the transfer of property is to be treated as an instrument of transfer for the purposes of [<sup>F152</sup>section 770(1) of the Companies Act 2006] and any other enactment requiring the delivery of an instrument of transfer for the registration of property.

(7) [<sup>F153</sup>.....]

(8) If the court makes an order under section 111(1) in relation to an insurance business transfer scheme, it may by that or any subsequent order make such provision (if any) as it thinks fit—

- (a) for dealing with the interests of any person who, within such time and in such manner as the court may direct, objects to the scheme;
- (b) for the dissolution, without winding up, of the authorised person concerned;

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- (c) for the reduction, on such terms and subject to such conditions (if any) as it thinks fit, of the benefits payable under—
- (i) any description of policy, or
  - (ii) policies generally,
- entered into by the authorised person concerned and transferred as a result of the scheme.
- (9) If, in the case of an insurance business transfer scheme, the authorised person concerned is not an EEA firm, it is immaterial for the purposes of subsection (1)(a), (c) or (d) or subsection (2), [<sup>F154</sup>(2A),] (3) or (4) that the law applicable to any of the contracts of insurance included in the transfer is the law of an EEA State other than the United Kingdom.
- (10) The transferee must, if an insurance or banking business transfer scheme is sanctioned by the court, deposit two office copies of the order made under subsection (1) with the Authority within 10 days of the making of the order.
- (11) But the Authority may extend that period.
- (12) “Property” includes property, rights and powers of any description.
- (13) “Liabilities” includes duties.
- (14) “Shares” and “debentures” have the same meaning as in [<sup>F155</sup> the Companies Acts (see sections 540 and 738 of the Companies Act 2006).]
- (15) “Charge” includes a mortgage (or, in Scotland, a security over property).

#### Annotations:

##### Amendments (Textual)

- F150** Words in s. 112(2)(d) substituted (6.4.2006) by [The Taxation of Pension Schemes \(Consequential Amendments\) Order 2006 \(S.I. 2006/745\)](#), **art. 17**
- F151** S. 112(2A)-(2C) inserted (30.6.2008) by [The Financial Services and Markets Act 2000 \(Amendments to Part 7\) Regulations 2008 \(S.I. 2008/1468\)](#), **reg. 2(1)**
- F152** Words in s. 112(6) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 1(2), 3(1), **Sch. 1 para. 211(3)(a)** (with arts. 6, 11, 12)
- F153** S. 112(7) repealed (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 1(2), 3, **Sch. 1 para. 211(3)(b)**, **Sch. 2** (with arts. 6, 11, 12)
- F154** Word in s. 112(9) inserted (30.6.2008) by [The Financial Services and Markets Act 2000 \(Amendments to Part 7\) Regulations 2008 \(S.I. 2008/1468\)](#), **reg. 2(2)**
- F155** S. 112(14): words substituted (6.4.2008) for paras. (a)(b) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 1(2), 3(1), **Sch. 1 para. 211(3)(c)** (with arts. 6, 11, 12)

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

- C218** S. 112 applied (1.12.2001) by [S.I. 2001/3626](#), **arts. 1, 3(a)**
- C219** S. 112(1) modified (1.12.2001) by [S.I. 2001/3639](#), **arts. 1(1), 4** (with art. 2)

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

[<sup>F156</sup> **112A Rights to terminate etc.**

- (1) Subsection (2) applies where (apart from that subsection) a person would be entitled, in consequence of anything done or likely to be done by or under this Part in connection with an insurance business transfer scheme or a banking business transfer scheme—
  - (a) to terminate, modify, acquire or claim an interest or right; or
  - (b) to treat an interest or right as terminated or modified.
- (2) The entitlement—
  - (a) is not enforceable in relation to that interest or right until after an order has been made under section 112(1) in relation to the scheme; and
  - (b) is then enforceable in relation to that interest or right only insofar as the order contains provision to that effect.
- (3) Nothing in subsection (1) or (2) is to be read as limiting the scope of section 112(1).]

**Annotations:**

**Amendments (Textual)**

**F156** S. 112A inserted (30.6.2008) by [The Financial Services and Markets Act 2000 \(Amendments to Part 7\) Regulations 2008 \(S.I. 2008/1468\)](#), [reg. 2\(3\)](#)

**113 Appointment of actuary in relation to reduction of benefits.**

- (1) This section applies if an order has been made under section 111(1).
- (2) The court making the order may, on the application of the Authority, appoint an independent actuary—
  - (a) to investigate the business transferred under the scheme; and
  - (b) to report to the Authority on any reduction in the benefits payable under policies entered into by the authorised person concerned that, in the opinion of the actuary, ought to be made.

**Annotations:**

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

**C220** S. 113 applied (1.12.2001) by [S.I. 2001/3626](#), [arts. 1, 3\(a\)](#)

**114 Rights of certain policyholders.**

- (1) This section applies in relation to an insurance business transfer scheme if—
  - (a) the authorised person concerned is an authorised person other than an EEA firm qualifying for authorisation under Schedule 3;
  - (b) the court has made an order under section 111 in relation to the scheme; and
  - (c) an EEA State other than the United Kingdom is, as regards any policy included in the transfer which evidences a contract of insurance [<sup>F157</sup>(other than a contract of reinsurance)], the State of the commitment or the EEA State in which the risk is situated (“the EEA State concerned”).

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (2) The court must direct that notice of the making of the order, or the execution of any instrument, giving effect to the transfer must be published by the transferee in the EEA State concerned.
- (3) A notice under subsection (2) must specify such period as the court may direct as the period during which the policyholder may exercise any right which he has to cancel the policy.
- (4) The order or instrument mentioned in subsection (2) does not bind the policyholder if—
  - (a) the notice required under that subsection is not published; or
  - (b) the policyholder cancels the policy during the period specified in the notice given under that subsection.
- (5) The law of the EEA State concerned governs—
  - (a) whether the policyholder has a right to cancel the policy; and
  - (b) the conditions, if any, subject to which any such right may be exercised.
- (6) Paragraph 6 of Schedule 12 applies for the purposes of this section as it applies for the purposes of that Schedule.

**Annotations:**

**Amendments (Textual)**

**F157** Words in s. 114(1)(c) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(2\)](#)

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

**C221** S. 114 applied (1.12.2001) by [S.I. 2001/3626](#), [arts. 1, 3\(a\)](#)

**[<sup>F158</sup>114A Notice of transfer of reinsurance contracts**

- (1) This section applies in relation to an insurance business transfer scheme if—
  - (a) the authorised person concerned is an authorised person other than an EEA firm qualifying for authorisation under Schedule 3;
  - (b) the court has made an order under section 111 in relation to the scheme; and
  - (c) an EEA State other than the United Kingdom is, as regards any policy included in the transfer which evidences a contract of reinsurance, the State in which the establishment of the policyholder to which the policy relates is situated at the date when the contract was entered into (“the EEA State concerned”).
- (2) The court may direct that notice of the making of the order, or the execution of any instrument, giving effect to the transfer must be published by the transferee in the EEA State concerned.]

**Annotations:**

**Amendments (Textual)**

**F158** S. 114A inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(3\)](#)

### *Business transfers outside the United Kingdom*

#### **115 Certificates for purposes of insurance business transfers overseas.**

Part III of Schedule 12 makes provision about certificates which the Authority may issue in relation to insurance business transfers taking place outside the United Kingdom.

#### **116 Effect of insurance business transfers authorised in other EEA States.**

(1) This section applies if, as a result of an authorised transfer, an EEA firm falling within paragraph 5(d) [<sup>F159</sup>or (da)] of Schedule 3 transfers to another body all its rights and obligations under any UK policies.

[<sup>F160</sup>(2) This section also applies if, as a result of an authorised transfer, any of the following transfers to another body all its rights and obligations under any UK policies—

- (a) an undertaking authorised in an EEA State other than the United Kingdom under Article 51 of the life assurance consolidation directive;
- (b) an undertaking authorised in an EEA State other than the United Kingdom under Article 23 of the first non-life insurance directive;
- (c) an undertaking, whose head office is not within the EEA, authorised under the law of an EEA State other than the United Kingdom to carry out reinsurance activities in its territory (as mentioned in Article 49 of the reinsurance directive).]

(3) If appropriate notice of the execution of an instrument giving effect to the transfer is published, the instrument has the effect in law—

- (a) of transferring to the transferee all the transferor's rights and obligations under the UK policies to which the instrument applies, and
- (b) if the instrument so provides, of securing the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights and obligations.

(4) No agreement or consent is required before subsection (3) has the effects mentioned.

(5) “Authorised transfer” means—

- (a) in subsection (1), a transfer authorised in the home State of the EEA firm in accordance with—

[<sup>F161</sup>(i) Article 14 of the life assurance consolidation directive; <sup>F162</sup>...]

(ii) Article 12 of the third non-life directive; [<sup>F163</sup>or]

[<sup>F164</sup>(iii) Article 18 of the reinsurance directive; and]

- (b) in subsection (2), a transfer authorised in an EEA State other than the United Kingdom in accordance with—

[<sup>F165</sup>(i) Article 53 of the life assurance consolidation directive; <sup>F166</sup>...]

(ii) Article 28a of the first non-life directive [<sup>F167</sup>or

(iii) the provisions in the law of that EEA State which provide for the authorisation of transfers of all or part of a portfolio of contracts of an undertaking authorised to carry out reinsurance activities in its territory (as mentioned in Article 49 of the reinsurance directive).]

[<sup>F168</sup>(6) “UK policy” means—

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (a) in the case of an authorised transfer within the meaning of paragraph (a)(i) or (ii) or (b)(i) or (ii) of subsection (5), a policy evidencing a contract of insurance (other than a contract of reinsurance) to which the applicable law is the law of a part of the United Kingdom;
  - (b) in the case of an authorised transfer within the meaning of paragraph (a)(iii) or (b)(iii) of that subsection, a policy evidencing a contract of reinsurance to which the applicable law is the law of a part of the United Kingdom.]
- (7) “Appropriate notice” means—
- (a) if the UK policy evidences a contract of insurance in relation to which an EEA State other than the United Kingdom is the State of the commitment, notice given in accordance with the law of that State;
  - (b) if the UK policy evidences a contract of insurance where the risk is situated in an EEA State other than the United Kingdom, notice given in accordance with the law of that EEA State;
  - (c) in any other case, notice given in accordance with the applicable law.
- (8) Paragraph 6 of Schedule 12 applies for the purposes of this section as it applies for the purposes of that Schedule.

**Annotations:**

**Amendments (Textual)**

- F159** Words in s. 116(1) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), **Sch. 1 para. 2(4)(a)**
- F160** S. 116(2) substituted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), **Sch. 1 para. 2(4)(b)**
- F161** S. 116(5)(a)(i) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), **reg. 6(2)(b)**
- F162** Word in s. 116(5)(a)(i) omitted (10.12.2007) by virtue of [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), **Sch. 1 para. 2(4)(c)(i)**
- F163** Word in s. 116(5)(a)(ii) substituted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), **Sch. 1 para. 2(4)(c)(ii)**
- F164** S. 116(5)(a)(iii) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), **Sch. 1 para. 2(4)(c)(iii)**
- F165** S. 116(5)(b)(i) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), **reg. 6(2)(c)**
- F166** Word in s. 116(5)(b)(i) omitted (10.12.2007) by virtue of [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), **Sch. 1 para. 2(4)(c)(iv)**
- F167** S. 116(5)(b)(iii) and word inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), **Sch. 1 para. 2(4)(c)(v)**
- F168** S. 116(6) substituted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), **Sch. 1 para. 2(4)(d)**

*Modifications*

**117 Power to modify this Part.**

The Treasury may by regulations—

- (a) provide for prescribed provisions of this Part to have effect in relation to prescribed cases with such modifications as may be prescribed;

- (b) make such amendments to any provision of this Part as they consider appropriate for the more effective operation of that or any other provision of this Part.

## PART VIII

### PENALTIES FOR MARKET ABUSE

#### *Market abuse*

#### **[<sup>F169</sup>118 Market abuse.**

- (1) For the purposes of this Act, market abuse is behaviour (whether by one person alone or by two or more persons jointly or in concert) which—
  - (a) occurs in relation to—
    - (i) qualifying investments admitted to trading on a prescribed market,
    - (ii) qualifying investments in respect of which a request for admission to trading on such a market has been made, or
    - (iii) in the case of subsection (2) or (3) behaviour, investments which are related investments in relation to such qualifying investments, and
  - (b) falls within any one or more of the types of behaviour set out in subsections (2) to (8).
- (2) The first type of behaviour is where an insider deals, or attempts to deal, in a qualifying investment or related investment on the basis of inside information relating to the investment in question.
- (3) The second is where an insider discloses inside information to another person otherwise than in the proper course of the exercise of his employment, profession or duties.
- (4) The third is where the behaviour (not falling within subsection (2) or (3))—
  - (a) is based on information which is not generally available to those using the market but which, if available to a regular user of the market, would be, or would be likely to be, regarded by him as relevant when deciding the terms on which transactions in qualifying investments should be effected, and
  - (b) is likely to be regarded by a regular user of the market as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.
- (5) The fourth is where the behaviour consists of effecting transactions or orders to trade (otherwise than for legitimate reasons and in conformity with accepted market practices on the relevant market) which—
  - (a) give, or are likely to give, a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more qualifying investments, or
  - (b) secure the price of one or more such investments at an abnormal or artificial level.
- (6) The fifth is where the behaviour consists of effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance.

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**Proposed Legislation:** *This version shows proposed changes to this legislation item. It has no official standing.*

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- (7) The sixth is where the behaviour consists of the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a qualifying investment by a person who knew or could reasonably be expected to have known that the information was false or misleading.
- (8) The seventh is where the behaviour (not falling within subsection (5), (6) or (7))—
- (a) is likely to give a regular user of the market a false or misleading impression as to the supply of, demand for or price or value of, qualifying investments, or
  - (b) would be, or would be likely to be, regarded by a regular user of the market as behaviour that would distort, or would be likely to distort, the market in such an investment,
- and the behaviour is likely to be regarded by a regular user of the market as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.
- (9) Subsections (4) and (8) and the definition of “regular user” in section 130A(3) cease to have effect on <sup>F170</sup>31 December 2011] and subsection (1)(b) is then to be read as no longer referring to those subsections.]

**Annotations:**

**Amendments (Textual)**

**F169** Ss. 118-118C substituted (1.7.2005) for s. 118 by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 5, **Sch. 2 para. 1**

**F170** Words in s. 118(9) substituted (31.12.2009) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2009 \(S.I. 2009/3128\)](#), **reg. 2(2)**

**[<sup>F171</sup>118A Supplementary provision about certain behaviour**

- (1) Behaviour is to be taken into account for the purposes of this Part only if it occurs—
- (a) in the United Kingdom, or
  - (b) in relation to —
    - (i) qualifying investments which are admitted to trading on a prescribed market situated in, or operating in, the United Kingdom,
    - (ii) qualifying investments for which a request for admission to trading on such a prescribed market has been made, or
    - (iii) in the case of section 118(2) and (3), investments which are related investments in relation to such qualifying investments.
- (2) For the purposes of subsection (1), as it applies in relation to section 118(4) and (8), a prescribed market accessible electronically in the United Kingdom is to be treated as operating in the United Kingdom.
- (3) For the purposes of section 118(4) and (8), the behaviour that is to be regarded as occurring in relation to qualifying investments includes behaviour which—
- (a) occurs in relation to anything that is the subject matter, or whose price or value is expressed by reference to the price or value of the qualifying investments, or
  - (b) occurs in relation to investments (whether or not they are qualifying investments) whose subject matter is the qualifying investments.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (4) For the purposes of section 118(7), the dissemination of information by a person acting in the capacity of a journalist is to be assessed taking into account the codes governing his profession unless he derives, directly or indirectly, any advantage or profits from the dissemination of the information.
- (5) Behaviour does not amount to market abuse for the purposes of this Act if—
- (a) it conforms with a rule which includes a provision to the effect that behaviour conforming with the rule does not amount to market abuse,
  - (b) it conforms with the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments, or
  - (c) it is done by a person acting on behalf of a public [FCA] in pursuit of monetary policies or policies with respect to exchange rates or the management of public debt or foreign exchange reserves.
- (6) Subsections (2) and (3) cease to have effect on [F17231 December 2011].

**Annotations:**

**Amendments (Textual)**

**F171** Ss. 118-118C substituted (1.7.2005) for s. 118 by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 5, **Sch. 2 para. 1**

**F172** Words in s. 118A(6) substituted (31.12.2009) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2009 (S.I. 2009/3128), **reg. 2(3)**

**118B Insiders**

For the purposes of this Part an insider is any person who has inside information—

- (a) as a result of his membership of an administrative, management or supervisory body of an issuer of qualifying investments,
- (b) as a result of his holding in the capital of an issuer of qualifying investments,
- (c) as a result of having access to the information through the exercise of his employment, profession or duties,
- (d) as a result of his criminal activities, or
- (e) which he has obtained by other means and which he knows, or could reasonably be expected to know, is inside information.

**118C Inside information**

- (1) This section defines “inside information” for the purposes of this Part.
- (2) In relation to qualifying investments, or related investments, which are not commodity derivatives, inside information is information of a precise nature which—
- (a) is not generally available,
  - (b) relates, directly or indirectly, to one or more issuers of the qualifying investments or to one or more of the qualifying investments, and
  - (c) would, if generally available, be likely to have a significant effect on the price of the qualifying investments or on the price of related investments.

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**Proposed Legislation:** *This version shows proposed changes to this legislation item. It has no official standing.*

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- (3) In relation to qualifying investments or related investments which are commodity derivatives, inside information is information of a precise nature which—
- (a) is not generally available,
  - (b) relates, directly or indirectly, to one or more such derivatives, and
  - (c) users of markets on which the derivatives are traded would expect to receive in accordance with any accepted market practices on those markets.
- (4) In relation to a person charged with the execution of orders concerning any qualifying investments or related investments, inside information includes information conveyed by a client and related to the client's pending orders which—
- (a) is of a precise nature,
  - (b) is not generally available,
  - (c) relates, directly or indirectly, to one or more issuers of qualifying investments or to one or more qualifying investments, and
  - (d) would, if generally available, be likely to have a significant effect on the price of those qualifying investments or the price of related investments.
- (5) Information is precise if it—
- (a) indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur, and
  - (b) is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of qualifying investments or related investments.
- (6) Information would be likely to have a significant effect on price if and only if it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions.
- (7) For the purposes of subsection (3)(c), users of markets on which investments in commodity derivatives are traded are to be treated as expecting to receive information relating directly or indirectly to one or more such derivatives in accordance with any accepted market practices, which is —
- (a) routinely made available to the users of those markets, or
  - (b) required to be disclosed in accordance with any statutory provision, market rules, or contracts or customs on the relevant underlying commodity market or commodity derivatives market.
- (8) Information which can be obtained by research or analysis conducted by, or on behalf of, users of a market is to be regarded, for the purposes of this Part, as being generally available to them.]

*The code*

**119 The code.**

- (1) The [FCA] must prepare and issue a code containing such provisions as the [FCA] considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse.
- (2) The code may among other things specify—

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (a) descriptions of behaviour that, in the opinion of the [FCA], amount to market abuse;
  - (b) descriptions of behaviour that, in the opinion of the [FCA], do not amount to market abuse;
  - (c) factors that, in the opinion of the [FCA], are to be taken into account in determining whether or not behaviour amounts to market abuse.
  - [<sup>F173</sup>(d) descriptions of behaviour that are accepted market practices in relation to one or more specified markets;
  - (e) descriptions of behaviour that are not accepted market practices in relation to one or more specified markets.]
- [<sup>F174</sup>(2A) In determining, for the purposes of subsections (2)(d) and (2)(e) or otherwise, what are and what are not accepted market practices, the [FCA] must have regard to the factors and procedures laid down in Articles 2 and 3 respectively of Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council.]
- (3) The code may make different provision in relation to persons, cases or circumstances of different descriptions.
  - (4) The [FCA] may at any time alter or replace the code.
  - (5) If the code is altered or replaced, the altered or replacement code must be issued by the [FCA].
  - (6) A code issued under this section must be published by the [FCA] in the way appearing to the [FCA] to be best calculated to bring it to the attention of the public.
  - (7) The [FCA] must, without delay, give the Treasury a copy of any code published under this section.
  - (8) The [FCA] may charge a reasonable fee for providing a person with a copy of the code.

**Annotations:**

**Amendments (Textual)**

**F173** S. 119(2)(d)(e) inserted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 5, **Sch. 2 para. 2(2)**

**F174** S. 119(2A) inserted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 5, **Sch. 2 para. 2(3)**

**120 Provisions included in the [FCA]’s code by reference to the City Code.**

- (1) The [FCA] may include in a code issued by it under section 119 (“the [FCA]’s code”) provision to the effect that in its opinion behaviour conforming with the City Code—
  - (a) does not amount to market abuse;
  - (b) does not amount to market abuse in specified circumstances; or
  - (c) does not amount to market abuse if engaged in by a specified description of person.
- (2) But the Treasury’s approval is required before any such provision may be included in the [FCA]’s code.

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**Proposed Legislation:** *This version shows proposed changes to this legislation item. It has no official standing.*

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- (3) If the [FCA]’s code includes provision of a kind authorised by subsection (1), the [FCA] must keep itself informed of the way in which the Panel on Takeovers and Mergers interprets and administers the relevant provisions of the City Code.
- (4) “City Code” means the City Code on Takeovers and Mergers issued by the Panel as it has effect at the time when the behaviour occurs.
- (5) “Specified” means specified in the [FCA]’s code.

## 121 Codes: procedure.

- (1) Before issuing a code under section 119, the [FCA] must publish a draft of the proposed code in the way appearing to the [FCA] to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by—
  - (a) a cost benefit analysis; and
  - (b) notice that representations about the proposal may be made to the [FCA] within a specified time.
- (3) Before issuing the proposed code, the [FCA] must have regard to any representations made to it in accordance with subsection (2)(b).
- (4) If the [FCA] issues the proposed code it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2)(b); and
  - (b) its response to them.
- (5) If the code differs from the draft published under subsection (1) in a way which is, in the opinion of the [FCA], significant—
  - (a) the [FCA] must (in addition to complying with subsection (4)) publish details of the difference; and
  - (b) those details must be accompanied by a cost benefit analysis.
- (6) Subsections (1) to (5) do not apply if the [FCA] considers that there is an urgent need to publish the code.
- (7) Neither subsection (2)(a) nor subsection (5)(b) applies if the [FCA] considers—
  - (a) that, making the appropriate comparison, there will be no increase in costs; or
  - (b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.
- (8) The [FCA] may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (9) This section also applies to a proposal to alter or replace a code.
- (10) “Cost benefit analysis” means—
  - (a) an analysis of the costs together with an analysis of the benefits that will arise  

$$=$$
    - (i) if the proposed code is issued, or
    - (ii) if subsection (5)(b) applies, from the code that has been issued, and
  - (b) subject to subsection (10A), an estimate of those costs and of those benefits.

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (10A) If, in the opinion of the FCA—
- (a) the costs or benefits referred to in subsection (10) cannot reasonably be estimated, or
  - (b) it is not reasonably practicable to produce an estimate,
- the cost benefit analysis need not estimate them, but must include a statement of the FCA's opinion and an explanation of it.]
- (11) “The appropriate comparison” means—
- (a) in relation to subsection (2)(a), a comparison between the overall position if the code is issued and the overall position if it is not issued;
  - (b) in relation to subsection (5)(b), a comparison between the overall position after the issuing of the code and the overall position before it was issued.

## **122 Effect of the code.**

- (1) If a person behaves in a way which is described (in the code in force under section 119 at the time of the behaviour) as behaviour that, in the [FCA]’s opinion, does not amount to market abuse that behaviour of his is to be taken, for the purposes of this Act, as not amounting to market abuse.
- (2) Otherwise, the code in force under section 119 at the time when particular behaviour occurs may be relied on so far as it indicates whether or not that behaviour should be taken to amount to market abuse.

### *Power to impose penalties*

## **123 Power to impose penalties in cases of market abuse.**

- (1) If the [FCA] is satisfied that a person (“A”)—
  - (a) is or has engaged in market abuse, or
  - (b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by A, would amount to market abuse,it may impose on him a penalty of such amount as it considers appropriate.
- (2) But the [FCA] may not impose a penalty on a person if, having considered any representations made to it in response to a warning notice, there are reasonable grounds for it to be satisfied that—
  - (a) he believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of subsection (1), or
  - (b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of that subsection.
- (3) If the [FCA] is entitled to impose a penalty on a person under this section it may, instead of imposing a penalty on him, publish a statement to the effect that he has engaged in market abuse.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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### *Statement of policy*

#### **124 Statement of policy.**

- (1) The [FCA] must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties under section 123; and
  - (b) the amount of penalties under that section.
- (2) The [FCA]’s policy in determining what the amount of a penalty should be must include having regard to—
  - (a) whether the behaviour in respect of which the penalty is to be imposed had an adverse effect on the market in question and, if it did, how serious that effect was;
  - (b) the extent to which that behaviour was deliberate or reckless; and
  - (c) whether the person on whom the penalty is to be imposed is an individual.
- (3) A statement issued under this section must include an indication of the circumstances in which the [FCA] is to be expected to regard a person as—
  - (a) having a reasonable belief that his behaviour did not amount to market abuse; or
  - (b) having taken reasonable precautions and exercised due diligence to avoid engaging in market abuse.
- (4) The [FCA] may at any time alter or replace a statement issued under this section.
- (5) If a statement issued under this section is altered or replaced, the [FCA] must issue the altered or replacement statement.
- (6) In exercising, or deciding whether to exercise, its power under section 123 in the case of any particular behaviour, the [FCA] must have regard to any statement published under this section and in force at the time when the behaviour concerned occurred.
- (7) A statement issued under this section must be published by the [FCA] in the way appearing to the [FCA] to be best calculated to bring it to the attention of the public.
- (8) The [FCA] may charge a reasonable fee for providing a person with a copy of a statement published under this section.
- (9) The [FCA] must, without delay, give the Treasury a copy of any statement which it publishes under this section.

#### **125 Statement of policy: procedure.**

- (1) Before issuing a statement of policy under section 124, the [FCA] must publish a draft of the proposed statement in the way appearing to the [FCA] 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 [FCA] within a specified time.
- (3) Before issuing the proposed statement, the [FCA] must have regard to any representations made to it in accordance with subsection (2).
- (4) If the [FCA] issues the proposed statement it must publish an account, in general terms, of—

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- (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 [FCA], significant, the [FCA] must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The [FCA] 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.

#### *Procedure*

### **126 Warning notices.**

- (1) If the [FCA] proposes to take action against a person under section 123, it must give him a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the proposed penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.

### **127 Decision notices and right to refer to Tribunal.**

- (1) If the [FCA] decides to take action against a person under section 123, it must give him a decision notice.
- (2) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (3) A decision notice about the publication of a statement must set out the terms of the statement.
- (4) If the [FCA] decides to take action against a person under section 123, that person may refer the matter to the Tribunal.

#### *Miscellaneous*

### **128 Suspension of investigations.**

- (1) If the [FCA] considers it desirable or expedient because of the exercise or possible exercise of a power relating to market abuse, it may direct a recognised investment exchange or recognised clearing house—
  - (a) to terminate, suspend or limit the scope of any inquiry which the exchange or clearing house is conducting under its rules; or
  - (b) not to conduct an inquiry which the exchange or clearing house proposes to conduct under its rules.
- (2) A direction under this section—

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- (a) must be given to the exchange or clearing house concerned by notice in writing; and
  - (b) is enforceable, on the application of the [FCA], by injunction or, in Scotland, by an order under section 45 of the <sup>M6</sup>Court of Session Act 1988.
- (3) The [FCA]’s powers relating to market abuse are its powers—
- (a) to impose penalties under section 123; or
  - (b) to appoint a person to conduct an investigation under section 168 in a case falling within subsection (2)(d) of that section.

**Annotations:**

**Marginal Citations**

**M6** 1988 c. 36.

**129 Power of court to impose penalty in cases of market abuse.**

- (1) The [FCA] may on an application to the court under section 381 or 383 request the court to consider whether the circumstances are such that a penalty should be imposed on the person to whom the application relates.
- (2) The court may, if it considers it appropriate, make an order requiring the person concerned to pay to the [FCA] a penalty of such amount as it considers appropriate.

**130 Guidance.**

- (1) The Treasury may from time to time issue written guidance for the purpose of helping relevant authorities to determine the action to be taken in cases where behaviour occurs which is behaviour—
  - (a) with respect to which the power in section 123 appears to be exercisable; and
  - (b) which appears to involve the commission of an offence under section 397 of this Act or Part V of the <sup>M7</sup>Criminal Justice Act 1993 (insider dealing).
- (2) The Treasury must obtain the consent of the Attorney General and the Secretary of State before issuing any guidance under this section.
- (3) In this section “relevant authorities”—
  - (a) in relation to England and Wales, means the Secretary of State, the [FCA], the Director of the Serious Fraud Office and the Director of Public Prosecutions;
  - (b) in relation to Northern Ireland, means the Secretary of State, the [FCA], the Director of the Serious Fraud Office and the Director of Public Prosecutions for Northern Ireland.
- (4) Subsections (1) to (3) do not apply to Scotland.
- (5) In relation to Scotland, the Lord Advocate may from time to time, after consultation with the Treasury, issue written guidance for the purpose of helping the [FCA] to determine the action to be taken in cases where behaviour mentioned in subsection (1) occurs.

**Annotations:**

**Marginal Citations**

M7 1993 c. 36.

[<sup>F175</sup>**130A Interpretation and supplementary provision**

- (1) The Treasury may by order specify (whether by name or description)—
- (a) the markets which are prescribed markets for the purposes of specified provisions of this Part, and
  - (b) the investments that are qualifying investments in relation to the prescribed markets.
- (2) An order may prescribe different investments or descriptions of investment in relation to different markets or descriptions of market.
- (3) In this Part—
- “accepted market practices” means practices that are reasonably expected in the financial market or markets in question and are accepted by the [FCA] or, in the case of a market situated in another EEA State, the competent authority of that EEA State within the meaning of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse),
- “behaviour” includes action or inaction,
- “dealing”, in relation to an investment, means acquiring or disposing of the investment whether as principal or agent or directly or indirectly, and includes agreeing to acquire or dispose of the investment, and entering into and bringing to an end a contract creating it,
- “investment” is to be read with section 22 and Schedule 2,
- “regular user”, in relation to a particular market, means a reasonable person who regularly deals on that market in investments of the kind in question,
- “related investment”, in relation to a qualifying investment, means an investment whose price or value depends on the price or value of the qualifying investment.
- (4) Any reference in this Act to a person engaged in market abuse is to a person engaged in market abuse either alone or with one or more other persons.]

**Annotations:**

**Amendments (Textual)**

**F175** S. 130A inserted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), regs. 1(2), 5, **Sch. 2 para. 3**

**131 Effect on transactions.**

The imposition of a penalty under this Part does not make any transaction void or unenforceable.

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### <sup>F176</sup>131A Protected Disclosures

- (1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (2) The first condition is that the information or other matter—
  - (a) causes the person making the disclosure ( the discloser) to know or suspect, or
  - (b) gives him reasonable grounds for knowing or suspecting, that another person has engaged in market abuse.
- (3) The second condition is that the information or other matter disclosed came to the discloser in the course of his trade, profession, business or employment.
- (4) The third condition is that the disclosure is made to the [FCA] or to a nominated officer as soon as is practicable after the information or other matter comes to the discloser.
- (5) A disclosure to a nominated officer is a disclosure which is made to a person nominated by the discloser's employer to receive disclosures under this section, and is made in the course of the discloser's employment and in accordance with the procedure established by the employer for the purpose.
- (6) For the purposes of this section, references to a person's employer include any body, association or organisation (including a voluntary organisation) in connection with whose activities the person exercises a function (whether or not for gain or reward) and references to employment must be construed accordingly.]

#### Annotations:

#### Amendments (Textual)

**F176** S. 131A inserted (1.7.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), regs. 1(2), 5, **Sch. 2 para. 4**

## <sup>F177</sup>PART 8A

### SHORT SELLING

#### Annotations:

#### Amendments (Textual)

**F177** Pt. 8A inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 8, 26(2)(b)**

### Short selling rules

#### 131B Short selling rules

- (1) The [FCA] may make rules prohibiting in specified cases persons from engaging in short selling in relation to relevant financial instruments (or relevant financial instruments of a specified description).
- (2) The [FCA] may make rules requiring—

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- (a) a person who has engaged in short selling in relation to relevant financial instruments (or relevant financial instruments of a specified description), or
  - (b) an authorised person of a specified description who has acted on behalf of such a person,
- to disclose in specified cases specified information, or information of a specified description, about the short selling.
- (3) Rules under subsection (2) may specify the time by which, and the way in which, the disclosure must be made (and may in particular provide for the information to be disclosed to the [FCA] or published in a specified way).
  - (4) Rules under subsection (2) may apply in relation to short selling engaged in before the rules are made where the resulting short position is still open when the rules are made.
  - (5) The reference to a short position being open is to be read in accordance with provision made by the rules.
  - (6) Rules under this section may apply to short selling wholly outside the United Kingdom by persons outside the United Kingdom, but only in so far as the rules relate to UK financial instruments.
  - (7) The description of relevant financial instruments that may be specified by the rules includes relevant financial instruments issued by a specified person.
  - (8) Rules under this section are referred to in this Part as “short selling rules”.
  - (9) The [FCA] must, when making short selling rules, have regard to any international agreement as to measures to be taken in respect of short selling.

### **131C Short selling rules: definitions etc**

- (1) This section supplements section 131B.
- (2) The cases in which a person (“S”) engages in short selling in relation to a financial instrument (a “shorted instrument”) include any case where—
  - (a) S enters into a transaction which creates, or relates to, another financial instrument; and
  - (b) the effect (or one of the effects) of the transaction is to confer a financial advantage on S in the event of a decrease in the price or value of the shorted instrument.
- (3) “Financial instrument” has the meaning given by Article 4.1(17) of the markets in financial instruments directive.
- (4) “Relevant financial instrument” means a financial instrument that—
  - (a) is admitted to trading on a regulated market or on any other prescribed market in an EEA State; or
  - (b) has such other connection with a market in an EEA State as may be specified.
- (5) “Specified” means specified by short selling rules.
- (6) “UK financial instrument” means a financial instrument that is admitted to trading on a market in the United Kingdom.
- (7) In the case of a financial instrument that is admitted to trading on—
  - (a) a market in the United Kingdom or another EEA State, and

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- (b) one or more markets in a country or territory, or countries or territories, anywhere else in the world,
- short selling rules may apply in relation to trading on both or all markets.
- (8) In any case where—
- (a) a financial instrument (“instrument A”) is admitted to trading on a market in the United Kingdom or another EEA State,
  - (b) another financial instrument (“instrument B”) is admitted to trading on one or more markets in a country or territory, or countries or territories, anywhere else in the world, and
  - (c) the price or value of instrument A depends on the price or value of instrument B (or vice versa),
- short selling rules may apply in relation to trading on both or all markets.
- (9) In subsection (4)(a) “regulated market” has the meaning given by Article 4.1(14) of the markets in financial instruments directive.
- (10) References in this section to a market in a country or territory are to a market situated or operating in the country or territory.

### **131D Short selling rules: procedure in urgent cases**

- (1) The [FCA] may make short selling rules (and may subsequently amend those rules) without complying with [subsections (1)(b) and (2) to (5) of section 138J (public consultation in relation to proposed rules)] if it considers that it is necessary to do so, in order to [advance one or more of its operational objectives.]
- (2) Any rules made by virtue of subsection (1) (“emergency rules”) cease to have effect at the end of the period of three months beginning with the day on which the rules are made (“the relevant day”); but this is subject as follows.
- (3) The [FCA] may direct that emergency rules are to cease to have effect at the end of a period (not exceeding six months beginning with the relevant day) specified in the direction.
- (4) A direction under subsection (3) may be made only if, immediately before the end of the period mentioned in subsection (2), the [FCA] considers that it is necessary to do so, in order to [advance one or more of its operational objectives.]
- (5) Such a direction must be published by the [FCA] in the way appearing to the [FCA] to be best calculated to bring it to the attention of the public.
- (6) Nothing in subsection (2) or (3) prevents the [FCA] from revoking emergency rules before the end of the periods referred to there.

#### Power to require information

### **131E Power to require information**

- (1) The [FCA] may, by notice in writing, require a person (“P”)—
  - (a) to provide specified information or information of a specified description; or
  - (b) to produce specified documents or documents of a specified description.

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- (2) This section applies only to information and documents that the [FCA] reasonably requires for the purpose of determining whether P, or a person connected with P, has contravened any provision of short selling rules.
- (3) Information or documents required under this section must be provided or produced—
  - (a) before the end of such reasonable period as may be specified; and
  - (b) at such place as may be specified.
- (4) The [FCA] may require any information provided under this section to be provided in such form as it may reasonably require.
- (5) The [FCA] may require—
  - (a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require; or
  - (b) any document produced to be authenticated in such manner as it may reasonably require.
- (6) In this section “specified” means specified in the notice.
- (7) For the purposes of this section a person is connected with another person (“P”) if the person is or has at any relevant time been—
  - (a) a member of P's group;
  - (b) a controller of P;
  - (c) any other member of a partnership of which P is a member; or
  - (d) in relation to P, a person mentioned in Part 1 of Schedule 15 (reading references in that Part to the authorised person as references to P).

### **131F Power to require information: supplementary**

- (1) If the [FCA] has power under section 131E to require a person to produce a document but it appears that the document is in the possession of a third person, that power may be exercised in relation to the third person.
- (2) If a document is produced in response to a requirement imposed under section 131E, the [FCA] may—
  - (a) take copies of or extracts from the document; or
  - (b) require the person producing the document, or any relevant person, to provide an explanation of the document.
- (3) In subsection (2)(b) “relevant person”, in relation to a person who is required to produce a document, means a person who—
  - (a) has been or is or is proposed to be a director or controller of that person;
  - (b) has been or is an auditor of that person;
  - (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or
  - (d) has been or is an employee of that person.
- (4) If a person who is required under section 131E to produce a document fails to do so, the [FCA] may require the person to state, to the best of the person's knowledge and belief, where the document is.
- (5) A lawyer may be required under section 131E to provide the name and address of the lawyer's client.

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- (6) A person (“P”) may not be required under section 131E to disclose information or produce a document in respect of which P owes an obligation of confidence by virtue of carrying on the business of banking unless—
- (a) P is the person under investigation or a member of that person's group;
  - (b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person's group; or
  - (c) the person to whom the obligation of confidence is owed consents to the disclosure or production.
- (7) If a person claims a lien on a document, its production under section 131E does not affect the lien.

#### Breach of short selling rules etc

### **131G Power to impose penalty or issue censure**

- (1) This section applies if the [FCA] is satisfied that a person has contravened—
  - (a) any provision of short selling rules; or
  - (b) any requirement imposed on the person under section 131E or 131F.
- (2) The [FCA] may impose a penalty of such amount as it considers appropriate on—
  - (a) the person who contravened the provision or requirement; or
  - (b) any person who was knowingly concerned in the contravention.
- (3) It may, instead of imposing a penalty on a person, publish a statement censuring the person.
- (4) The [FCA] may not take action against a person under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person under section 131H.
- (5) “The limitation period” means the period of three years beginning with the first day on which the [FCA] knew of the contravention.
- (6) For this purpose the [FCA] is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.

### **131H Procedure and right to refer to Tribunal**

- (1) If the [FCA] proposes to take action against a person under section 131G, it must give the person a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (4) If the [FCA] decides to take action against a person under section 131G, it must give the person a decision notice.
- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.

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- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If the [FCA] decides to take action against a person under section 131G, the person may refer the matter to the Tribunal.

### **131I Duty on publication of statement**

After a statement under section 131G(3) is published, the [FCA] must send a copy of the statement to—

- (a) the person in respect of whom it is made; and
- (b) any person to whom a copy of the decision notice was given under section 393(4).

### **131J Imposition of penalties under section 131G: statement of policy**

- (1) The [FCA] must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties under section 131G; and
  - (b) the amount of penalties under that section.
- (2) The [FCA]'s policy in determining what the amount of a penalty should be must include having regard to—
  - (a) the seriousness of the contravention;
  - (b) the extent to which the contravention was deliberate or reckless; and
  - (c) whether the person on whom the penalty is to be imposed is an individual.
- (3) The [FCA] may at any time alter or replace a statement issued under this section.
- (4) If a statement issued under this section is altered or replaced, the [FCA] must issue the altered or replaced statement.
- (5) The [FCA] must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (6) A statement issued under this section must be published by the [FCA] in the way appearing to the [FCA] to be best calculated to bring it to the attention of the public.
- (7) The [FCA] may charge a reasonable fee for providing a person with a copy of the statement.
- (8) In exercising, or deciding whether to exercise, a power under section 131G in the case of any particular contravention, the [FCA] must have regard to any statement of policy published under this section and in force at a time when the contravention occurred.

### **131K Statement of policy: procedure**

- (1) Before issuing a statement under section 131J, the [FCA] must publish a draft of the proposed statement in the way appearing to the [FCA] 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 [FCA] within a specified time.

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- (3) Before issuing the proposed statement, the [FCA] must have regard to any representations made to it in accordance with subsection (2).
- (4) If the [FCA] 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 [FCA], significant, the [FCA] must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The [FCA] 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.]

## PART IX

### HEARINGS AND APPEALS

#### Annotations:

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

- C222** Pt. IX (ss. 132-137) applied (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, s. 46A(7) (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 148 (with art. 13(1) Sch. 5)); S.I. 2001/3538, art. 2(1)
- Pt. IX (ss. 132-137) applied (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, s. 58A(7) (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. I para. 75 (with art. 13(3), Sch. 5)); S.I. 2001/3538, art. 2(1)
- Pt. IX (ss. 132-137) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, s. 85(4C)(4D) (as inserted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. I para. 95 (with art. 13(3), Sch. 5)); S.I. 2001/3538, art. 2(1)
- Pt. IX (ss. 132-137) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, s. 93(6B)(6C) (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 177(d) (with art. 13(3), Sch. 5)); S.I. 2001/3538, art. 2(1)
- C223** Pt. 9 applied (with modifications) (15.12.2007) by The Money Laundering Regulations 2007 (S.I. 2007/2157), reg. 44(4)(8), Sch. 5 para. 2 (with reg. 44(7))
- C224** Pt. 9 applied (with modifications) (15.12.2007) by The Transfer of Funds (Information on the Payer) Regulations 2007 (S.I. 2007/3298), reg. 13(4), Sch. 2 para. 1
- C225** Pt. 9 applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 40
- C226** Pt. 9 applied (with modifications) (13.3.2008) by The Northern Rock plc Compensation Scheme Order 2008 (S.I. 2008/718), arts. 1(2), 2, Sch. paras. 15-19 (as amended (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(2), 5(2), Sch. 3 para. 158(e)-(i))
- C227** Pt. 9 applied (with modifications) (19.12.2008) by The Bradford & Bingley plc Compensation Scheme Order 2008 (S.I. 2008/3249), arts. 1(2), 2, Sch. para. 14-18 (as amended (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(2), 5(2), Sch. 3 para. 176(e)-(i))
- C228** Pt. 9 applied (with modifications) (1.5.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), reg. 1(2)(b)(xiii), 95, Sch. 5 para. 2 (with reg. 3) (as amended (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(2), 5(2), Sch. 3 para. 189)

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- C229** Pt. 9 applied (with modifications) (30.7.2009) by [The Dunfermline Building Society Independent Valuer Order 2009 \(S.I. 2009/1810\)](#), **arts. 14-18** (as amended (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(2), 5(2), **Sch. 3 paras. 195-199**)
- C230** Pt. 9 applied (with modifications) (31.12.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 202(3)**, 263(1) (with ss. 206, 247); [S.I. 2009/3000](#), **art. 4**, Sch. para. 2 (with art. 2)
- C231** Pt. 9 applied (with modifications) (11.2.2010) by [The Cross-Border Payments in Euro Regulations 2010 \(S.I. 2010/89\)](#), reg. 19, **Sch. paras. 7, 8**
- C232** Pt. 9 applied (with modifications) (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xiv)(b), 62, **Sch. 3 para. 2** (with reg. 3)

## 132 The Financial Services and Markets Tribunal.

F178

### Annotations:

#### Amendments (Textual)

- F178** S. 132 omitted (6.4.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(2)(e), 5(1), **Sch. 2 para. 44**

## [<sup>F179</sup>133 Proceedings before Tribunal: general provision

- (1) This section applies in the case of a reference or appeal to the Tribunal (whether made under this or any other Act) in respect of—
- a decision of [\[the FCA or the PRA\]](#);
  - a decision of the Bank of England; or
  - a decision of a person relating to the assessment of any compensation or consideration under the <sup>M8</sup>Banking (Special Provisions) Act 2008 or the <sup>M9</sup>Banking Act 2009.

- (2) In this section—

“relevant decision” means a decision mentioned in subsection (1)(a), (b) or (c); and

“the decision-maker”, in relation to a relevant decision, means the person who made the relevant decision.

- (3) Tribunal Procedure Rules may make provision for the suspension of a relevant decision which has taken effect, pending determination of the reference or appeal.

- (4) The Tribunal may consider any evidence relating to the subject-matter of the reference or appeal, whether or not it was available to the decision-maker at the material time.

[(5) In the case of a disciplinary reference or a reference under section 393(11), the Tribunal

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- must determine what (if any) is the appropriate action for the decision-maker to take in relation to the matter; and
- on determining the reference, must remit the matter to the decision-maker with such directions (if any) as the Tribunal considers appropriate for giving effect to its determination.

- (6) In any other case, the Tribunal must determine the reference or appeal by either—

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- (a) dismissing it; or
  - (b) remitting the matter to the decision-maker with a direction to reconsider and reach a decision in accordance with the findings of the Tribunal.
- (6A) The findings mentioned in subsection (6)(b) are limited to findings as to—
- (a) issues of fact or law;
  - (b) the matters to be, or not to be, taken into account in making the decision; and
  - (c) the procedural or other steps to be taken in connection with the making of the decision.]
- (7) The decision-maker must act in accordance with the determination of, and any direction given by, the Tribunal.
- [(7A) A reference is a “disciplinary reference” for the purposes of this section if it is in respect of any of the following decisions—
- (a) a decision to impose a penalty under section 63A;
  - (b) a decision to take action under section 66;
  - (c) a decision to take action under section 87M;
  - (d) a decision to take action under section 88A;
  - (e) a decision to take action under section 89K;
  - (f) a decision to take action under section 89Q;
  - (g) a decision to take action under section 91;
  - (h) a decision to take action under section 123;
  - (i) a decision to take action under section 131G;
  - (j) a decision to publish a statement under section 205, impose a penalty under section 206 or suspend a permission or impose a restriction under section 206A;
  - (k) a decision to publish a statement under section 312E or impose a penalty under section 312F;
  - (l) a decision to disqualify a person under section 345.]
- (8) An order of the Tribunal may be enforced—
- (a) as if it were an order of a county court; or
  - (b) in Scotland, as if it were an order of the Court of Session.]

**Annotations:**

**Amendments (Textual)**

**F179** Ss. 133-133B substituted (6.4.2010) for s. 133 by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(2)(e), 5(1), [Sch. 2 para. 45](#)

**Marginal Citations**

**M8** 2008 c. 2.

**M9** 2009 c. 1.

**[<sup>F180</sup>133A Proceedings before Tribunal: decision and supervisory notices, etc.**

- (1) In determining [in accordance with section 133(5)] a reference made (whether under this or any other Act) as a result of a decision notice [given by a body, the Tribunal

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may not direct the body to take action which it would]not, as a result of section 388(2), have had power to take when giving the notice.

- .....
- (4) [The action specified in a decision notice must not be taken—]
- (a) during the period within which the matter to which the notice relates may be referred to the Tribunal (whether under this or any other Act); and
  - (b) if the matter is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of.
- (5) The Tribunal may, on determining a reference (whether made under this or any other Act) in respect of a decision of [the FCA or the PRA], make recommendations as to [its] regulating provisions or its procedures.

**Annotations:**

**Amendments (Textual)**

**F180** Ss. 133-133B substituted (6.4.2010) for s. 133 by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(2)(e), 5(1), [Sch. 2 para. 45](#)

**133B Offences**

- (1) This section applies in the case of proceedings before the Tribunal in respect of—
- (a) a decision of [the FCA or the PRA];
  - (b) a decision of the Bank of England; or
  - (c) a decision of a person relating to the assessment of any compensation or consideration under the <sup>M10</sup>Banking (Special Provisions) Act 2008 or the <sup>M11</sup>Banking Act 2009.
- (2) A person is guilty of an offence if that person, without reasonable excuse—
- (a) refuses or fails—
    - (i) to attend following the issue of a summons by the Tribunal; or
    - (ii) to give evidence; or
  - (b) alters, suppresses, conceals or destroys, or refuses to produce a document which he may be required to produce for the purposes of proceedings before the Tribunal.
- (3) A person guilty of an offence under subsection (2)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) A person guilty of an offence under subsection (2)(b) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.]

**Annotations:**

**Marginal Citations**

**M10** 2008 c. 2.  
**M11** 2009 c. 1.

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### *Legal assistance before the Tribunal*

#### **134 Legal assistance scheme.**

- (1) The Lord Chancellor may by regulations establish a scheme governing the provision of legal assistance in connection with proceedings before the Tribunal.
- (2) If the Lord Chancellor establishes a scheme under subsection (1), it must provide that a person is eligible for assistance only if—
  - (a) he falls within subsection (3); and
  - (b) he fulfils such other criteria (if any) as may be prescribed as a result of section 135(1)(d).
- (3) A person falls within this subsection if he is an individual who has referred a matter to the Tribunal under section 127(4).
- (4) In this Part of this Act “the legal assistance scheme” means any scheme in force under subsection (1).

#### **135 Provisions of the legal assistance scheme.**

- (1) The legal assistance scheme may, in particular, make provision as to—
  - (a) the kinds of legal assistance that may be provided;
  - (b) the persons by whom legal assistance may be provided;
  - (c) the manner in which applications for legal assistance are to be made;
  - (d) the criteria on which eligibility for legal assistance is to be determined;
  - (e) the persons or bodies by whom applications are to be determined;
  - (f) appeals against refusals of applications;
  - (g) the revocation or variation of decisions;
  - (h) its administration and the enforcement of its provisions.
- (2) Legal assistance under the legal assistance scheme may be provided subject to conditions or restrictions, including conditions as to the making of contributions by the person to whom it is provided.

#### **136 Funding of the legal assistance scheme.**

- (1) The [FCA] must pay to the Lord Chancellor such sums at such times as he may, from time to time, determine in respect of the anticipated or actual cost of legal assistance provided in connection with proceedings before the Tribunal under the legal assistance scheme.
- (2) In order to enable it to pay any sum which it is obliged to pay under subsection (1), the [FCA] must make rules requiring the payment to it by authorised persons or any class of authorised person of specified amounts or amounts calculated in a specified way.
- (3) Sums received by the Lord Chancellor under subsection (1) must be paid into the Consolidated Fund.
- (4) The Lord Chancellor must, out of money provided by Parliament fund the cost of legal assistance provided in connection with proceedings before the Tribunal under the legal assistance scheme.

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- (5) Subsection (6) applies if, as respects a period determined by the Lord Chancellor, the amount paid to him under subsection (1) as respects that period exceeds the amount he has expended in that period under subsection (4).
- (6) The Lord Chancellor must—
- (a) repay, out of money provided by Parliament, the excess to the [FCA]; or
  - (b) take the excess into account on the next occasion on which he makes a determination under subsection (1).
- (7) The [FCA] must make provision for any sum repaid to it under subsection (6)(a)—
- (a) to be distributed among—
    - (i) the authorised persons on whom a levy was imposed in the period in question as a result of rules made under subsection (2); or
    - (ii) such of those persons as it may determine;
  - (b) to be applied in order to reduce any amounts which those persons, or such of them as it may determine, are or will be liable to pay to the [FCA], whether under rules made under subsection (2) or otherwise; or
  - (c) to be partly so distributed and partly so applied.
- (8) If the [FCA] considers that it is not practicable to deal with any part of a sum repaid to it under subsection (6)(a) in accordance with provision made by it as a result of subsection (7), it may, with the consent the Lord Chancellor, apply or dispose of that part of that sum in such manner as it considers appropriate.
- (9) “Specified” means specified in the rules.

**Annotations:**

**Commencement Information**

**I36** S. 136 wholly in force at 3.9.2001; s. 136 not in force at Royal Assent see s. 431(2); s. 136 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 136 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2

F181

**Annotations:**

**Amendments (Textual)**

**F181** S. 137 and preceding cross-heading omitted (6.4.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), 5(1), Sch. 2 para. 46

**137 Appeal on a point of law.**

F182

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**Annotations:**

**Amendments (Textual)**

**F182** S. 137 and preceding cross-heading omitted (6.4.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), art. 1(2)(e), 5(1), [Sch. 2 para. 46](#)

**PART 9A**

RULES AND GUIDANCE

**CHAPTER 1**

RULE-MAKING POWERS

*General rule-making powers of the FCA and the PRA*

**137A The FCA’s general rules**

- (1) The FCA may make such rules applying to authorised persons—
  - (a) with respect to the carrying on by them of regulated activities, or
  - (b) with respect to the carrying on by them of activities which are not regulated activities,
 as appear to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives.
- (2) Rules made under this section are referred to in this Act as the FCA’s general rules.
- (3) The FCA’s general rules may make provision applying to authorised persons even though there is no relationship between the authorised persons to whom the rules will apply and the persons whose interests will be protected by the rules.
- (4) The FCA’s general rules may contain requirements which take into account, in the case of an authorised person who is a member of a group, any activity of another member of the group.
- (5) The FCA’s general rules may not—
  - (a) make provision prohibiting an EEA firm from carrying on, or holding itself out as carrying on, any activity which it has permission conferred by Part 2 of Schedule 3 to carry on in the United Kingdom;
  - (b) make provision, as respects an EEA firm, about any matter for which responsibility is, under any of the single market directives, reserved to the firm’s home state regulator.

**137B FCA general rules: clients’ money, right to rescind etc.**

- (1) Rules relating to the handling of money held by an authorised person in specified circumstances (“clients’ money”) may—
  - (a) make provision which respects in that clients’ money being held on trust in accordance with the rules,

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- (b) treat 2 or more accounts as a single account for specified purposes (which may include the distribution of money held in the accounts),
  - (c) authorise the retention by the authorised person of interest accruing on the clients' money, and
  - (d) make provision as to the distribution of such interest which is not to be retained by the authorised person.
- (2) An institution with which an account is kept in pursuance of rules relating to the handling of clients' money does not incur any liability as constructive trustee if the money is wrongfully paid from the account, unless the institution permits the payment—
  - (a) with knowledge that it is wrongful, or
  - (b) having deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.
- (3) Rules may—
  - (a) confer rights on persons to rescind agreements with, or withdraw offers to, authorised persons within a specified period, and
  - (b) make provision, in respect of authorised persons and persons exercising those rights, for the restitution of property and the making or recovery of payments where those rights are exercised.
- (4) “Rules” means general rules of the FCA.
- (5) “Specified” means specified in the rules.

### **137C FCA general rules: product intervention**

- (1) The power of the FCA to make general rules includes power to make such rules (“product intervention rules”) prohibiting authorised persons from doing anything mentioned in subsection (2) as appear to it to be necessary or expedient for the purpose of advancing—
  - (a) the consumer protection objective or the efficiency and choice objective, or
  - (b) if the Treasury by order provide for this paragraph to apply, the integrity objective.
- (2) Those prohibited things are—
  - (a) entering into specified agreements with any person or specified person;
  - (b) entering into specified agreements with any person or specified person unless requirements specified in the rules have been satisfied;
  - (c) doing anything that would or might result in the entering into of specified agreements by persons or specified persons, or the holding by them of a beneficial or other kind of economic interest in specified agreements;
  - (d) doing anything within paragraph (c) unless requirements specified in the rules have been satisfied.
- (3) “Specified agreements” means agreements of a description specified in general rules made by the FCA.
- (4) “Specified persons” means persons of a description specified in general rules made by the FCA.
- (5) It is of no relevance—

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- (a) whether the entering into of a specified agreement itself constitutes the carrying on of a regulated activity; or
  - (b) whether, in a case within subsection (2)(c) or (d), the specified agreements are with the authorised persons concerned or anyone else.
- (6) The requirements that may be specified under subsection (2)(b) or (d) include in particular—
- (a) requirements as to the terms and conditions that are to be, or are not to be, included in specified or other agreements; and
  - (b) requirements limiting invitations or inducements to enter into specified or other agreements to those made to specified persons.
- (7) In relation to contraventions of product intervention rules, the rules may—
- (a) provide for a relevant agreement or obligation to be unenforceable against any person or specified person;
  - (b) provide for the recovery of any money or other property paid or transferred under a relevant agreement or obligation by any person or specified person;
  - (c) provide for the payment of compensation for any loss sustained by any person or specified person as a result of paying or transferring any money or other property under a relevant agreement or obligation.
- (8) “A relevant agreement or obligation” means—
- (a) a specified agreement;
  - (b) an agreement entered into in contravention of any rule made as a result of subsection (2)(c) or (d);
  - (c) an obligation to which a person is subject as a result of exercising a right conferred by an agreement within paragraph (a) or (b) of this subsection.
- (9) The provision that may be made as a result of subsection (7) includes provision corresponding to that made by section 30 (enforceability of agreements resulting from unlawful communications).
- (10) In this section—
- (a) any reference to entering into an agreement includes inviting or inducing persons to enter into an agreement; and
  - (b) any reference to an agreement includes an arrangement.

### **137D Orders under s.137C(1)(b)**

- (1) An order under section 137C(1)(b)—
- (a) must be laid before Parliament after being made; and
  - (b) ceases to have effect at the end of the relevant period unless before the end of that period it is approved by a resolution of each House of Parliament.
- (2) If an order ceases to have effect as a result of subsection (1)(b) that does not affect—
- (a) anything done under it; or
  - (b) the power to make a new one.
- (3) “Relevant period” means a period of 28 days beginning with the day on which the order is made.

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- (4) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

### **137E The PRA’s general rules**

- (1) The PRA may make such rules applying to PRA-authorised persons—
- (a) with respect to the carrying on by them of regulated activities, or
  - (b) with respect to the carrying on by them of activities which are not regulated activities,
- as appear to the PRA to be necessary or expedient for the purpose of advancing one or more of its objectives.
- (2) Rules made under this section are referred to in this Act as the PRA’s general rules.
- (3) The PRA’s general rules may contain requirements which take into account, in the case of a PRA-authorised person who is a member of a group, any activity of another member of the group.
- (4) The PRA’s general rules may not—
- (a) make provision prohibiting an EEA firm from carrying on, or holding itself out as carrying on, any activity which it has permission conferred by Part 2 of Schedule 3 to carry on in the United Kingdom;
  - (b) make provision, as respects an EEA firm, about any matter for which responsibility is, under any of the single market directives, reserved to the firm’s home state regulator.

### **137F General rules about remuneration**

- (1) This section applies where either regulator exercises its power to make general rules so as to make rules prohibiting persons, or persons of a specified description, from being remunerated in a specified way.
- (2) The rules may—
- (a) provide that any provision of an agreement that contravenes such a prohibition is void, and
  - (b) provide for the recovery of any payment made, or other property transferred, in pursuance of a provision that is void by virtue of paragraph (a).
- (3) A provision that, at the time the rules are made, is contained in an agreement made before that time may not be rendered void under subsection (2)(a) unless it is subsequently amended so as to contravene a prohibition referred to in that subsection.

### **137G Remuneration policies: Treasury direction to consider compliance**

- (1) This section applies where either regulator exercises its power to make general rules so as to make rules requiring authorised persons, or authorised persons of a description specified in the rules, to act in accordance with a remuneration policy.
- (2) A “remuneration policy” is a policy about the remuneration by an authorised person of—
- (a) officers,

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (b) employees, or
  - (c) other persons,
- of a description specified in the rules.
- (3) The Treasury may direct the regulator to consider whether the remuneration policies of authorised persons specified in the direction (or of authorised persons of a description so specified) comply with requirements imposed by rules made by that regulator as to the contents of the policies.
  - (4) Before giving a direction under subsection (3), the Treasury must consult the regulator concerned.
  - (5) If the regulator considers that a remuneration policy of an authorised person fails to make provision which complies with the requirements mentioned in subsection (3), the regulator must take such steps as it considers appropriate to deal with the failure.
  - (6) The steps that the regulator may take include requiring the remuneration policy to be revised.
  - (7) “Authorised person”, in relation to the PRA, means PRA-authorised person.

#### **137H Rules about recovery plans: duty to consult**

- (1) Before either regulator prepares a draft of any general rules that require each relevant person (or each relevant person of a specified description) to prepare a recovery plan, the regulator must consult—
  - (a) the Treasury, and
  - (b) the Bank of England.
- (2) A “relevant person” is an authorised person in relation to whom any power under Part 1 of the Banking Act 2009 (special resolution regime) is exercisable.
- (3) A “recovery plan” is a document containing information within subsection (4) or (5).
- (4) Information is within this subsection if it relates to action to be taken to secure that, in the event of specified circumstances affecting the carrying on of the business (or any part of the business) of an authorised person—
  - (a) the business of the authorised person, or
  - (b) a specified part of that business,
 is capable of being carried on (whether or not by the authorised person and whether or not in the same way as previously).
- (5) Information is within this subsection if it would facilitate the carrying on of the business (or any part of the business) of an authorised person by any other person.
- (6) In this section—
  - “authorised person”, in relation to the PRA, means PRA-authorised person;
  - “specified” means specified in the rules.

#### **137I PRA rules about resolution plans: duty to consult**

- (1) Before the PRA prepares a draft of any general rules that require each relevant person (or each relevant person of a specified description) to prepare a resolution plan, the PRA must consult—

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- (a) the Treasury, and
  - (b) the Bank of England.
- (2) A “relevant person” is a PRA-authorized person in relation to whom any power under Part 1 of the Banking Act 2009 (special resolution regime) is exercisable.
- (3) A “resolution plan” is a document containing information within subsection (4) or (5).
- (4) Information is within this subsection if it relates to action to be taken in the event of—
- (a) circumstances arising in which it is likely that the business (or any part of the business) of an authorised person will fail, or
  - (b) the failure of the business (or any part of the business) of an authorised person.
- (5) Information is within this subsection if it would facilitate anything falling to be done by any person in consequence of that failure.
- (6) An example of information within subsection (5) is information that, in the event of that failure, would facilitate—
- (a) planning by the Treasury in relation to the possible exercise of any of its powers under Part 1 of the Banking Act 2009, or
  - (b) planning by the Bank of England in relation to the possible exercise of any of its powers under Part 1, 2 or 3 of that Act.

### **137J Interpretation of sections 137H and 137I**

- (1) This section has effect for the interpretation of sections 137H and 137I.
- (2) References to the taking of action include the taking of action by—
- (a) the authorised person,
  - (b) any other person in the same group as the authorised person, or
  - (c) a partnership of which the authorised person is a member.
- (3) In subsection (2)(b) the definition of “group” in section 421 applies with the omission of subsection (1)(e) and (f) of that section.
- (4) References to the business of an authorised person include the business of—
- (a) any person in the same group as the authorised person, and
  - (b) a partnership of which the authorised person is a member.
- (5) For the purposes of section 137I the cases in which the business (or any part of the business) of the authorised person is to be regarded as having failed include—
- (a) the insolvency or bankruptcy of the authorised person,
  - (b) the authorised person entering into administration, and
  - (c) a power under Part 1 of the Banking Act 2009 being exercised in relation to the authorised person.
- (6) In subsection (5)—
- (a) “administration” includes administration under Part 3 of the Banking Act 2009, and
  - (b) “insolvency” includes insolvency under Part 2 of that Act.

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### **137K Special provision relating to adequacy of resolution plans**

- (1) This section applies where the PRA has exercised its power to make general rules so as to make rules requiring PRA-authorised persons, or PRA-authorised persons of a specified description, to prepare a resolution plan.
- (2) The PRA must consult the Treasury and the Bank of England (“the Bank”) about the adequacy of resolution plans required to be prepared by those rules, so far as relating to any matter which may be relevant to the exercise by the Treasury or the Bank of any power under Part 1, 2 or 3 of the Banking Act 2009.
- (3) After being consulted under subsection (2)—
  - (a) the Treasury or the Bank may notify the PRA that, in the opinion of the Treasury or the Bank, a resolution plan fails to make satisfactory provision in relation to any such matter, and
  - (b) if the Treasury or the Bank give a notification under paragraph (a), the Treasury or the Bank must give reasons for being of that opinion to the PRA.
- (4) The PRA must have regard to any notification given under subsection (3)(a) before considering whether any resolution plan makes satisfactory provision in relation to any such matter.
- (5) If—
  - (a) a notification is given under subsection (3)(a), but
  - (b) the PRA is nonetheless of the opinion that the resolution plan makes satisfactory provision in relation to any such matter,the PRA must give reasons for being of that opinion to the person who gave the notification.
- (6) In this section—
  - “resolution plan” has the same meaning as in section 137I;
  - “specified” means specified in the rules.

### **137L Recovery plans and resolution plans: restriction on duty of confidence**

- (1) A contractual or other requirement imposed on a person (“P”) to keep information in confidence does not apply if—
  - (a) the information is or may be relevant to anything required to be done as a result of a requirement imposed by general rules made by either regulator to prepare a recovery plan or a resolution plan,
  - (b) an authorised person or a skilled person requests or requires P to provide the information for the purpose of securing that those things are done, and
  - (c) the regulator in question has approved the making of the request or the imposition of the requirement before it is made or imposed.
- (2) An authorised person may provide information (whether received under subsection (1) or otherwise) that would otherwise be subject to a contractual or other requirement to keep in confidence if it is provided for the purposes of anything required to be done as a result of a requirement imposed by general rules to prepare a recovery plan or a resolution plan.
- (3) In this section, references to preparing a recovery plan or a resolution plan include—
  - (a) keeping that plan up to date, and

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- (b) collecting specified information for the purposes of that plan.
- (4) In this section, references to a skilled person are to a person appointed, in accordance with a requirement imposed by either regulator, by an authorised person whom the regulator considers to have contravened a relevant requirement of rules made by that regulator.
- (5) A person appointed under subsection (4) must be a person—
  - (a) nominated or approved by the regulator that made the rules imposing the relevant requirement, and
  - (b) appearing to that regulator to have the skills necessary to collect or update the information in question.
- (6) In this section—
  - “authorised person”, in relation to rules of the PRA, means a PRA-  
authorised person;
  - “relevant requirement” means a requirement to collect, and keep up to date,  
information of a specified description for the purposes of a recovery plan or  
a resolution plan;
  - “specified” means specified in the rules.

#### *Specific rule-making powers*

### **137M Control of information rules**

- (1) Either regulator may make rules (“control of information rules”) about the disclosure and use of information held by an authorised person (“A”).
- (2) Control of information rules may—
  - (a) require the withholding of information which A would otherwise be required to disclose to a person (“B”) for or with whom A does business in the course of carrying on any regulated or other activity;
  - (b) specify circumstances in which A may withhold information which A would otherwise be required to disclose to B;
  - (c) require A not to use for the benefit of B information—
    - (i) which is held by A, and
    - (ii) which A would otherwise be required to use for the benefit of B;
  - (d) specify circumstances in which A may decide not to use for the benefit of B information within paragraph (c).

### **137N Price stabilising rules**

- (1) The FCA may make rules (“price stabilising rules”) as to—
  - (a) the circumstances and manner in which,
  - (b) the conditions subject to which, and
  - (c) the time when or the period during which,action may be taken for the purpose of stabilising the price of investments of specified kinds.
- (2) Price stabilising rules—
  - (a) are to be made so as to apply only to authorised persons;

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- (b) may make different provision in relation to different kinds of investment.
- (3) The FCA may make rules which, for the purposes of section 397(5)(b), treat a person who acts or engages in conduct—
  - (a) for the purpose of stabilising the price of investments, and
  - (b) in conformity with such provisions corresponding to price stabilising rules and made by a body or authority outside the United Kingdom as may be specified in rules made by the FCA,
 as acting, or engaging in that conduct, for that purpose and in conformity with price stabilising rules.

### **1370 Financial promotion rules**

- (1) The FCA may make rules applying to authorised persons about the communication by them, or their approval of the communication by others, of invitations or inducements—
  - (a) to engage in investment activity, or
  - (b) to participate in a collective investment scheme.
- (2) Rules under this section may, in particular, make provision about the form and content of communications.
- (3) Subsection (1) applies only to communications which—
  - (a) if made by a person other than an authorised person, without the approval of an authorised person, would contravene section 21(1);
  - (b) may be made by an authorised person without contravening section 238(1).
- (4) But subsection (3) does not prevent the FCA from making rules under subsection (1) in relation to a communication that would not contravene section 21(1) if made by a person other than an authorised person, without the approval of an authorised person, if the conditions set out in subsection (5) are satisfied.
- (5) Those conditions are—
  - (a) that the communication would not contravene subsection (1) of section 21 because it is a communication to which that subsection does not apply as a result of an order under subsection (5) of that section;
  - (b) that the FCA considers that any of the requirements of—
    - (i) paragraphs 1 to 8 of Article 19 of the markets in financial instruments directive; or
    - (ii) any implementing measure made under paragraph 10 of that Article, apply to the communication; and
  - (c) that the FCA considers that the rules are necessary to secure that the communication satisfies such of the requirements mentioned in paragraph (b) as the FCA considers apply to the communication.
- (6) “Engage in investment activity” has the same meaning as in section 21.
- (7) The Treasury may by order impose limitations on the power to make rules under this section.

### **137P Financial promotion rules: directions given by FCA**

- (1) The FCA may give a direction under this section if—
  - (a) an authorised person has made, or proposes to make, a communication or has approved, or proposes to approve, another person’s communication; and
  - (b) the FCA considers that there has been, or is likely to be, a contravention of financial promotion rules in respect of the communication or approval.
- (2) A direction under this section may require the authorised person—
  - (a) to withdraw the communication or approval;
  - (b) to refrain from making the communication or giving the approval (whether or not it has previously been made or given);
  - (c) to publish details of the direction;
  - (d) to do anything else specified in the direction in relation to the communication or approval.
- (3) A requirement in a direction under this section to refrain from making or approving a communication includes a requirement to refrain from making or approving another communication where—
  - (a) the other communication is in all material respects the same as, or substantially the same as, the communication to which the direction relates; and
  - (b) in all the circumstances a reasonable person would think that another direction would be given under this section in relation to the other communication.
- (4) The requirements contained in a direction under this section have effect as follows—
  - (a) a requirement to publish details of the direction has effect at such time (if any) as the FCA gives a notice under subsection (8)(a);
  - (b) any other requirement takes effect immediately.
- (5) If the FCA gives a direction under this section to an authorised person—
  - (a) it must give written notice to the authorised person; and
  - (b) if the direction relates to the approval by the authorised person of another person’s communication, it must also give written notice to that other person.
- (6) The notice must—
  - (a) give details of the direction;
  - (b) inform the person to whom the notice is given that the direction takes effect immediately;
  - (c) state the FCA’s reasons for giving the direction; and
  - (d) inform the person to whom the notice is given that the person may make representations to the FCA within such period as may be specified in the notice (which may be extended by the FCA).
- (7) The FCA may amend the direction if, having considered any representations made by a person to whom notice is given under subsection (5), it considers it appropriate to do so.
- (8) If, having considered any such representations, the FCA decides not to revoke the direction—
  - (a) the FCA must give separate written notice to the persons mentioned in subsection (5)(a) or (b); and
  - (b) any such person may refer the matter to the Tribunal.

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- (9) A notice under subsection (8)(a) must—
- (a) give details of the direction and of any amendment of it;
  - (b) state the FCA’s reasons for deciding not to revoke the direction and, if relevant, for amending it;
  - (c) inform the person to whom the notice is given of the person’s right to refer the matter to the Tribunal; and
  - (d) give an indication of the procedure on such a reference.
- (10) If, having considered any representations made by a person to whom notice is given under subsection (5), the FCA decides to revoke the direction, it must give separate written notice to those persons.
- (11) After the period for making representations in relation to a direction given under this section has ended, the FCA must publish such information about the direction as it considers appropriate (even if the direction is revoked).
- (12) Nothing in this section requires a notice to be given to a person mentioned in subsection (5)(b) if the FCA considers it impracticable to do so.

### *Supplementary powers*

#### **137Q General supplementary powers**

Rules made by either regulator—

- (a) may make different provisions for different cases and may, in particular, make different provision in respect of different descriptions of authorised persons, activity or investment, and
- (b) may contain such incidental, supplemental, consequential and transitional provision as the regulator making the rule considers appropriate.

## **CHAPTER 2**

### RULES: MODIFICATION, WAIVER, CONTRAVENTION AND PROCEDURAL PROVISIONS

#### *Modification or waiver of rules*

#### **138A Modification or waiver of rules**

- (1) Either regulator may, on the application or with the consent of a person who is subject to rules made by that regulator, direct that all or any of those rules—
  - (a) are not to apply to that person, or
  - (b) are to apply to that person with such modifications as may be specified in the direction.
- (2) Subsection (1) does not apply to rules made by the FCA under section 247 (trust scheme rules) or section 248 (scheme particulars rules).
- (3) An application must be made in such manner as the regulator may direct.
- (4) A regulator may not give a direction unless it is satisfied that—

- (a) compliance by the person 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 regulator may—
- (a) revoke a direction, or
  - (b) vary it on the application, or with the consent, of the person to whom it relates.
- (7) “Direction” means a direction under this section.

### **138B Consultation in relation to directions under section 138A**

- (1) The PRA must consult the FCA before giving a direction under section 138A.
- (2) After consulting the FCA under subsection (1), the PRA must notify the FCA whether it has given the direction and of the reasons for its decision to give or not to give the direction.
- (3) The FCA must consult the PRA before giving a direction under section 138A in a case where—
- (a) the direction relates to a PRA-authorised person, or
  - (b) the direction relates to a person who is a member of the same group as a PRA-authorised person.
- (4) Where the FCA has consulted the PRA under subsection (3), the FCA must notify the PRA in writing whether it has given the direction and of the reasons for its decision to give or not to give the direction.
- (5) A notification under subsection (2) or (4) must be made as soon as reasonably practicable after the decision to which it relates is made.

### **138C Publication of directions under section 138A**

- (1) Subject to subsection (2), a direction must be published by the regulator concerned in the way appearing to the regulator to be best calculated for bringing it to the attention of—
- (a) persons likely to be affected by it, and
  - (b) persons who are, in the opinion of the regulator, likely to make an application for a similar direction.
- (2) Subsection (1) does not apply if the regulator is satisfied that it is inappropriate or unnecessary to publish the direction.
- (3) In deciding whether it is satisfied as mentioned in subsection (2), the regulator must—
- (a) consider whether the publication of the direction would be detrimental to the stability of the UK financial system,
  - (b) take into account whether the direction relates to a rule contravention of which is actionable in accordance with section 138E,

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- (c) consider whether publication of the direction would prejudice, to an unreasonable degree, the commercial interests of the person concerned or any other member of the person’s immediate group, and
  - (d) consider whether its publication would be contrary to an international obligation of the United Kingdom.
- (4) The FCA must consult the PRA before publishing or deciding not to publish a direction which relates to—
- (a) a PRA-authorised person, or
  - (b) an authorised person who has as a member of its immediate group a PRA-authorised person.
- (5) For the purposes of paragraphs (c) and (d) of subsection (3), the regulator must consider whether it would be possible to publish the direction without either of the consequences mentioned in those paragraphs by publishing it without disclosing the identity of the person concerned.
- (6) “Direction” means a direction under section 138A.

#### *Contravention of rules*

#### **138D Evidential provisions**

- (1) If a particular rule made by either regulator so provides, contravention of the rule does not give rise to any of the consequences provided for by other provisions of this Act.
- (2) A rule made by a regulator which so provides must also provide—
  - (a) that contravention may be relied on as tending to establish contravention of such other rule made by that regulator as may be specified, or
  - (b) that compliance may be relied on as tending to establish compliance with such other rule made by that regulator as may be specified.
- (3) A rule may include the provision mentioned in subsection (1) only if the regulator making the rule considers that it is appropriate for it also to include the provision required by subsection (2).

#### **138E Actions for damages**

- (1) A rule made by the PRA may provide that contravention of the rule 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) A contravention by an authorised person of a rule made by the FCA 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) If rules made by the FCA so provide, subsection (2) does not apply to a contravention of a specified provision of the rules.
- (4) In prescribed cases, a contravention of a rule which by virtue of subsection (1) or (2) 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.

- (5) In subsections (1), (2) and (3) “rule” does not include—
- (a) Part 6 rules;
  - (b) rules under section 131B (short selling rules);
  - (c) a rule requiring an authorised person to have or maintain financial resources.
- (6) “Private person” has such meaning as may be prescribed.

### **138F Limits on effect of contravening rules**

- (1) A person is not guilty of an offence by reason of a contravention of a rule made by either regulator.
- (2) No such contravention makes any transaction void or unenforceable.
- (3) Subsection (2) does not apply in relation to product intervention rules made by the FCA under section 137C.

#### *Procedural provisions*

### **138G Notification of rules**

If either regulator makes, alters or revokes any rules, that regulator must without delay give written notice to the Treasury.

### **138H Rule-making instruments**

- (1) Any power conferred on either regulator to make rules is exercisable in writing.
- (2) An instrument by which rules are made by either regulator (“a rule-making instrument”) must specify the provision under which the rules are made.
- (3) To the extent that a rule-making instrument does not comply with subsection (2), it is void.
- (4) A rule-making instrument must be published by the regulator making the rule in the way appearing to that regulator to be best calculated to bring it to the attention of the public.
- (5) The regulator making the rule may charge a reasonable fee for providing a person with a copy of a rule-making instrument.
- (6) A person is not to be taken to have contravened any rule made by a regulator if the person shows that at the time of the alleged contravention the rule-making instrument concerned had not been made available in accordance with this section.

### **138I Verification of rules**

- (1) The production of a printed copy of a rule-making instrument purporting to be made by a regulator—
  - (a) on which is endorsed a certificate signed by a member of staff of that regulator who is authorised by the regulator for that purpose, and
  - (b) which contains the required statements,is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.

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- (2) The required statements are—
  - (a) that the instrument was made by the FCA or the PRA (as the case may be),
  - (b) that the copy is a true copy of the instrument, and
  - (c) that on a specified date the instrument was made available to the public in accordance with section 138H(4).
- (3) A certificate purporting to be signed as mentioned in subsection (1) is to be taken to be have been properly signed (unless the contrary is shown).
- (4) A person who wishes in any legal proceedings to rely on a rule-making instrument may require the regulator that made the rule to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (1).

### 138J Consultation by the FCA

- (1) Before making any rules, the FCA must—
  - (a) consult the PRA, and
  - (b) after doing so, publish a draft of the proposed rules in the way appearing to the FCA to be best calculated to bring them to the attention of the public.
- (2) The draft must be accompanied by—
  - (a) a cost benefit analysis,
  - (b) an explanation of the purpose of the proposed rules,
  - (c) any statement prepared under section 138L(2),
  - (d) an explanation of the FCA’s reasons for believing that making the proposed rules is compatible with section 2B(1), and
  - (e) notice that representations about the proposals may be made to the FCA within a specified time.
- (3) Before making the proposed rules, the FCA must have regard to any representations made to it in accordance with subsection (2)(e).
- (4) If the FCA makes the proposed rules, it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2)(e), and
  - (b) its response to them.
- (5) If the rules differ from the draft published under subsection (1)(b) in a way which is, in the opinion of the FCA, significant the FCA must publish—
  - (a) details of the difference (in addition to complying with subsection (4)) together with a cost benefit analysis, and
  - (b) any statement prepared under section 138L(4).
- (6) The requirements to carry out a cost benefit analysis under this section do not apply in relation to rules made under—
  - (a) section 136(2);
  - (b) subsection (1) of section 213 as a result of subsection (4) of that section;
  - (c) section 234;
  - (d) paragraph 23 of Schedule 1ZA;
  - (e) paragraph 12 of Schedule 1A.
- (7) “Cost benefit analysis” means—

- (a) an analysis of the costs together with an analysis of the benefits that will arise
    - (i) if the proposed rules are made, or
    - (ii) if subsection (5) applies, from the rules that have been made, and
  - (b) subject to subsection (8), an estimate of those costs and of those benefits.
- (8) If, in the opinion of the FCA—
- (a) the costs or benefits referred to in subsection (7) cannot reasonably be estimated, or
  - (b) it is not reasonably practicable to produce an estimate,
- the cost benefit analysis need not estimate them, but must include a statement of the FCA's opinion and an explanation of it.
- (9) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).
- (10) Subsection (1)(a) does not apply to rules made by the FCA in relation to recognised investment exchanges under Part 18.
- (11) This section is subject to section 138M.

**138K Consultation by the PRA**

- (1) Before making any rules, the PRA must—
  - (a) consult the FCA, and
  - (b) after doing so, publish a draft of the proposed rules in the way appearing to the PRA to be best calculated to bring them to the attention of the public.
- (2) The draft must be accompanied by—
  - (a) a cost benefit analysis,
  - (b) an explanation of the purpose of the proposed rules,
  - (c) any statement prepared under section 138L(2),
  - (d) an explanation of the PRA's reasons for believing that making the proposed rules is compatible with section 1B(1), and
  - (e) a notice that representations about the proposals may be made to the PRA within a specified time.
- (3) Before making the proposed rules, the PRA must have regard to any representations made to it in accordance with subsection (2)(e).
- (4) If the PRA makes the proposed rules, it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2)(e), and
  - (b) its response to them.
- (5) If the rules differ from the draft published under subsection (1)(b) in a way which is, in the opinion of the PRA, significant the PRA must publish—
  - (a) details of the difference (in addition to complying with subsection (4)) together with a cost benefit analysis, and
  - (b) any statement prepared under section 138L(4).
- (6) The requirements to carry out a cost benefit analysis under this section do not apply in relation to rules made under—

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- (a) section 136(2);
  - (b) subsection (1) of section 213 as a result of subsection (4) of that section;
  - (c) section 234;
  - (d) paragraph 31 of Schedule 1ZB;
  - (e) paragraph 12 of Schedule 1A.
- (7) “Cost benefit analysis” means—
- (a) an analysis of the costs together with an analysis of the benefits that will arise—
    - (i) if the proposed rules are made, or
    - (ii) if subsection (5) applies, from the rules that have been made, and
  - (b) subject to subsection (8), an estimate of those costs and of those benefits.
- (8) If, in the opinion of the PRA—
- (a) the costs or benefits referred to in subsection (7) cannot reasonably be estimated, or
  - (b) it is not reasonably practicable to produce an estimate,
- the cost benefit analysis need not estimate them, but must include a statement of the PRA’s opinion and an explanation of it.
- (9) The PRA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).
- (10) This section is subject to section 138M

### 138L Consultation: mutual societies

- (1) Subsection (2) applies where a regulator proposes to make a rule (“the proposed rule”) which would apply both to—
- (a) authorised persons which are mutual societies, and
  - (b) other authorised persons.
- (2) The regulator must prepare a statement setting out—
- (a) its opinion whether or not the impact of the proposed rule on persons within subsection (1)(a) will be significantly different from its impact on persons within subsection (1)(b), and
  - (b) if so, details of the difference.
- (3) Subsection (4) applies where a regulator makes a rule which—
- (a) applies both to—
    - (i) authorised persons which are mutual societies, and
    - (ii) other authorised persons, and
  - (b) differs from the draft of the proposed rule published under section 138J(1)(b) or section 138K(1)(b) (as the case may be).
- (4) The regulator must prepare a statement setting out—
- (a) its opinion whether or not the impact of the rule is significantly different from the impact of the proposed rule on—
    - (i) the persons within subsection (3)(a)(i), and
    - (ii) those persons as compared with persons within subsection (3)(a)(ii), and

- (b) if so, details of the difference.
- (5) A mutual society is—
  - (a) a building society within the meaning of the Building Societies Act 1986;
  - (b) a friendly society within the meaning of the Friendly Societies Act 1992;
  - (c) a registered society within the meaning of the Co-operative and Community Benefit Societies and Credit Unions Act 1965;
  - (d) an EEA mutual society.
- (6) An EEA mutual society is—
  - (a) a body which is a European Cooperative Society for the purposes of Council Regulation (EC) No 1435/2003 (statute for a European Cooperative Society);
  - (b) a body which is established as a cooperative under the law of an EEA state as mentioned in that Regulation;
  - (c) a body which is a cooperative or mutual undertaking of such description as the Treasury specify by order and which is established or operates in accordance with the laws of an EEA state.

### 138M Consultation: general exemptions

- (1) Sections 138J(1)(b) and (2) to (5) and 138L do not apply in relation to rules made by the FCA if the FCA considers that the delay involved in complying with them would be prejudicial to the interests of consumers, as defined in section 425A.
- (2) Sections 138K(1)(b) and (2) to (5) and 138L do not apply in relation to rules made by the PRA if the PRA considers that the delay involved in complying with them would—
  - (a) be prejudicial to the safety and soundness of PRA-authorized persons, or
  - (b) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policy holders.
- (3) The exception in subsection (1) does not apply in relation to rules made by the FCA under section 131B (short selling rules).
- (4) The provisions listed in subsection (5) do not apply if the regulator concerned considers that, making the appropriate comparison—
  - (a) there will be no increase in costs, or
  - (b) there will be an increase in costs but that increase will be of minimal significance.
- (5) Those provisions are—
  - (a) subsections (2)(a) and (5)(a) of section 138J;
  - (b) subsections (2)(a) and (5)(a) of section 138K.
- (6) The “appropriate comparison” means—
  - (a) in relation to section 138J(2)(a) or 138K(2)(a), a comparison between the overall position if the rules are made and the overall position if the rules are not made;
  - (b) in relation to section 138J(5)(a) or 138K(5)(a), a comparison between the overall position after the making of the rules and the overall position before they were made.

**138N Consultation: exemptions for temporary product intervention rules**

- (1) Sections 138J(1)(b) and (2) to (5) and 138L do not apply in relation to product intervention rules made by the FCA if it considers that it is necessary or expedient not to comply with them for the purpose of advancing—
  - (a) the consumer protection objective or the efficiency and choice objective, or
  - (b) if an order under section 137C(1)(b) is in force, the integrity objective.
- (2) Any rules made as a result of subsection (1) (“temporary product intervention rules”) are to cease to have effect at the end of the period specified in the rules.
- (3) The longest period that may be specified is the period of 12 months beginning with the day on which the rules come into force.
- (4) Nothing in subsection (2) prevents the FCA from revoking temporary product intervention rules before the end of the period mentioned there.
- (5) If the FCA has made temporary product intervention rules (“the initial rules”), it may not make further temporary product intervention rules containing the same, or substantially the same, provision as that contained in the initial rules until the prohibited period has ended.
- (6) “The prohibited period” means the period of one year beginning with the day on which the period mentioned in subsection (2) ends (whether or not the initial rules have been revoked before the end of the period mentioned there).

**138O Temporary product intervention rules: statement of policy**

- (1) The FCA must prepare and issue a statement of its policy with respect to the making of temporary product intervention rules.
- (2) The FCA may at any time alter or replace a statement issued under this section.
- (3) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replaced statement.
- (4) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (5) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (6) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

**138P Statement of policy under section 138O: procedure**

- (1) Before issuing a statement under section 138O, the FCA must publish a draft of the proposed statement in the way appearing to the FCA 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 FCA within a specified time.
- (3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).

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- (4) If the FCA 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 FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The FCA 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 3

### GUIDANCE

#### 139A Power of the FCA to give guidance

- (1) The FCA may give guidance consisting of such information and advice as it considers appropriate—
  - (a) with respect to the operation of specified parts of this Act and of any rules made by the FCA;
  - (b) with respect to any other matter relating to functions of the FCA;
  - (c) with respect to any other matters about which it appears to the FCA to be desirable to give information or advice.
- (2) The FCA may give financial or other assistance to persons giving information or advice of a kind which the FCA could give under this section.
- (3) Subsection (5) applies where the FCA proposes to give guidance to FCA-regulated persons generally, or to a class of FCA-regulated persons, in relation to rules to which those persons are subject.
- (4) Subsection (5) also applies in relation to guidance which the FCA proposes to give to persons generally, or to a class of person, in relation to rules under section 131B (short selling rules) to which those persons are subject.
- (5) Where this subsection applies, subsections (1), (2)(e) and (4) of section 138J (consultation) apply to the proposed guidance as they apply to proposed rules, unless the FCA considers that the delay in complying with those provisions would be prejudicial to the interests of consumers.
- (6) The FCA may—
  - (a) publish its guidance,
  - (b) offer copies of its published guidance for sale at a reasonable price, and
  - (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.
- (7) In this Chapter, references to guidance made by the FCA include references to any recommendations made by the FCA to FCA-regulated persons generally, or to any class of FCA-regulated person.

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- (8) “Consumers” has the same meaning as in section 1C.
- (9) “FCA-regulated person” means—
  - (a) an authorised person, or
  - (b) any person who is otherwise subject to rules made by the FCA.

### **139B Notification of FCA guidance to the Treasury**

- (1) On giving any general guidance, the FCA must give written notice to the Treasury without delay.
- (2) If the FCA alters any of its guidance, it must give written notice to the Treasury without delay.
- (3) The notice under subsection (2) must include details of the alteration.
- (4) If the FCA revokes any of its general guidance, it must give written notice to the Treasury without delay.
- (5) “General guidance” means guidance given by the FCA under section 139A which is—
  - (a) given to persons generally, to FCA-regulated persons generally or to a class of FCA regulated person,
  - (b) intended to have continuing effect, and
  - (c) given in writing or other legible form.
- (6) “FCA-regulated person” has the same meaning as in section 139A.

## **CHAPTER 4**

### COMPETITION SCRUTINY

#### **140A Interpretation**

- (1) In this Chapter—
  - “market in the United Kingdom” includes—
    - (a) so far as it operates in the United Kingdom or a part of the United Kingdom, any market which operates there and in another country or territory or in a part of another country or territory, and
    - (b) any market which operates only in a part of the United Kingdom;
  - “the OFT” means the Office of Fair Trading;
  - “practices”, in relation to each regulator, means practices adopted by that regulator in the exercise of functions under this Act;
  - “regulating provisions” means—
    - (a) in relation to the FCA, any—
      - (i) rules of the FCA;
      - (ii) general guidance (as defined by section 139B(5));
      - (iii) statement issued by the FCA under section 64;
      - (iv) code issued by the FCA under section 64 or 119;
    - (b) in relation to the PRA, any—
      - (i) rules of the PRA;

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- (ii) statement issued by the PRA under section 64;
  - (iii) code issued by the PRA under section 64.
- (2) In this Chapter each of the Competition Commission and the OFT is “a competition authority”.
- (3) For the purposes of this Chapter, any reference to a feature of a market in the United Kingdom for goods or services is to be construed as a reference to—
- (a) the structure of the market concerned or any aspect of that structure,
  - (b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned, or
  - (c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.
- (4) In subsection (3) “conduct” includes any failure to act (whether or not intentional) and any other unintentional conduct.

#### **140B Advice about effect of regulating provision or practice**

- (1) In this Chapter, any reference to the giving of “section 140B advice” to a regulator is to be read in accordance with this section.
- (2) The OFT gives “section 140B advice” to a regulator if—
- (a) it gives advice to the regulator under section 7 of the Enterprise Act 2002 (provision of competition advice to Ministers etc.), and
  - (b) the advice states that in the opinion of the OFT one or more of the things mentioned in subsection (4) may cause, or contribute to, the effect mentioned in subsection (5), or might be expected to do so in the future.
- (3) The Competition Commission gives “section 140B advice” to a regulator if a report published by it under section 136 of the Enterprise Act 2002 (investigations and reports on market investigation reference) contains—
- (a) a decision that one or more of the things mentioned in subsection (4) may cause, or contribute to, the effect mentioned in subsection (5), and
  - (b) a recommendation that any action should be taken by that regulator.
- (4) Those things are—
- (a) a regulating provision or practice of the regulator,
  - (b) two or more regulating provisions or practices (of that regulator or of both regulators) taken together,
  - (c) a particular combination of regulating provision or practices (of that regulator or of both regulators), or
  - (d) a feature, or combination of features, of a market in the United Kingdom that could be dealt with by regulating provision or practices (of that regulator or of both regulators).
- (5) That effect is the prevention, restriction or distortion of competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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#### **140C Consultation with regulator**

Before giving section 140B advice, a competition authority must consult the regulator to which the advice is to be given.

#### **140D Investigation powers of OFT**

Where the OFT is deciding whether to exercise its power under section 7 of the Enterprise Act 2002 to give advice which, if given, would be section 140B advice, section 174 of that Act has effect as if—

- (a) in subsection (1), for the words from “make a reference” to the end there were substituted “give advice which would for the purposes of Chapter 4 of Part 9A of the Financial Services and Markets Act 2000 be section 140B advice”, and
- (b) in subsection (2), for “make such a reference” there were substituted “give such advice”.

#### **140E Publication by OFT of section 140B advice**

The OFT must publish in such manner as it thinks fit any section 140B advice given by it to either regulator.

#### **140F Duty of Competition Commission to send report to regulator**

- (1) Where the publication of a report of the Competition Commission under section 142 of the Enterprise Act 2002 constitutes the giving of section 140B advice to either regulator, the Commission must give a copy of the report to that regulator.
- (2) The day on which the copy is given is the day on which the regulator is to be taken to receive the section 140B advice.

#### **140G Duty of regulator to publish response**

- (1) A regulator must, within 90 days after the day on which it receives section 140B advice, publish a response stating how it proposes to deal with the advice and in particular—
  - (a) whether it has decided to take any action, or to take no action, in response to the advice,
  - (b) if it has decided to take action, what action it proposes to take, and,
  - (c) its reasons for its proposals.
- (2) Publication is to be in such manner as the regulator thinks fit.

#### **140H Role of the Treasury**

- (1) This section applies where—
  - (a) a competition authority has given section 140B advice and the regulator has published a response under section 140G, and
  - (b) the competition authority remains of the opinion that one or more of the things mentioned in section 140B(4) may cause or contribute to, the effect mentioned in section 140B(5).

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- (2) The competition authority may refer the section 140B advice to the Treasury by sending the Treasury—
  - (a) a copy of the section 140B advice and of the response, and
  - (b) a request to consider the advice and the response.
- (3) In referring the section 140B advice, the competition authority may give advice to the Treasury as to what action, if any, ought to be taken by the regulator.
- (4) If section 140B advice is referred to them, the Treasury may give a direction to the regulator to which the advice was given requiring the regulator to take such action as may be specified in the direction.
- (5) In considering whether to give a direction and, if so, what action to specify, the Treasury must have regard to—
  - (a) any advice the competition authority has given under subsection (3),
  - (b) any action which the section 140B advice suggests that the regulator should take, and
  - (c) the response of the regulator to the section 140B advice.
- (6) The direction may not require the regulator to do anything that it has no power to do, but the existence of the direction is relevant to the exercise of any discretion conferred on the regulator.
- (7) Before giving a direction under this section, the Treasury must consult the regulator to which it is to be given.
- (8) If the Treasury give a direction under this section they must—
  - (a) publish in such manner as they think fit a statement giving details of the direction and of their reasons for giving it, and
  - (b) lay a copy of the statement before Parliament.

## PART XI

### INFORMATION GATHERING AND INVESTIGATIONS

#### Annotations:

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

**C310** Pt. XI (ss. 165-177) modified (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 18(2)** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**

Pt. XI (165-177) modified (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 18(2)(4)**; S.I. 2001/3538, **art. 2(1)**

Pt. XI (ss. 165-177) extended (with modifications) (1.12.2001) by S.I. 2001/3646, **arts. 1(1), 6-9**

**C311** Pt. 11 applied (with modifications) (1.5.2009 for certain purposes and 1.11.2009 otherwise) by *The Payment Services Regulations 2009* (S.I. 2009/209), **regs. 1(2), 95, Sch. 5 para. 3** (with **reg. 3**)

**C312** Pt. 11 applied (with modifications) (11.2.2010) by *The Cross-Border Payments in Euro Regulations 2010* (S.I. 2010/89), **reg. 19, Sch. para. 2**

**C313** Pt. 11 applied (with modifications) (30.4.2011) by *The Electronic Money Regulations 2011* (S.I. 2011/99), **reg. 62, Sch. 3 para. 3** (with **reg. 3**)

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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*Powers to gather information*

**165 [Regulator’s] power to require information [F219: authorised persons etc].**

- (1) [Either regulator] may, by notice in writing given to an authorised person, require him—
  - (a) to provide specified information or information of a specified description; or
  - (b) to produce specified documents or documents of a specified description.
- (2) The information or documents must be provided or produced—
  - (a) before the end of such reasonable period as may be specified; and
  - (b) at such place as may be specified.
- (3) An officer who has written authorisation from the [regulator] to do so may require an authorised person without delay—
  - (a) to provide the officer with specified information or information of a specified description; or
  - (b) to produce to him specified documents or documents of a specified description.
- (4) This section applies only to information and documents reasonably required in connection with the exercise by [either regulator] of functions conferred on it by or under this Act.
- (5) [The regulator in question] may require any information provided under this section to be provided in such form as it may reasonably require.
- (6) [The regulator in question] may require—
  - (a) any information provided, whether in a document or otherwise, to be verified in such manner, or
  - (b) any document produced to be authenticated in such manner,
 as it may reasonably require.
- (7) The powers conferred by subsections (1) and (3) may also be exercised [~~to impose requirements on~~]  
  - (a) by either regulator, to impose requirements on a person who is connected with an authorised person;
  - (b) by the FCA, to impose requirements on an operator, trustee or depositary of a scheme recognised under section 270 or 272 who is not an authorised person;
  - (c) by the FCA, to impose requirements on a recognised investment exchange;
  - (d) by the FCA, to impose requirements on a person who is connected with a recognised investment exchange.]
- (8) “Authorised person” includes a person who was at any time an authorised person but who has ceased to be an authorised person.
- (9) “Officer” means an officer of [the regulator exercising the power] and includes a member of [that regulator’s] staff or an agent of [that regulator].
- (10) “Specified” means—
  - (a) in subsections (1) and (2), specified in the notice; and
  - (b) in subsection (3), specified in the authorisation.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (11) For the purposes of this section, a person is connected with [another person] (“A”) if he is or has at any relevant time been—
- (a) a member of A’s group;
  - (b) a controller of A;
  - (c) any other member of a partnership of which A is a member; or
  - (d) in relation to A, a person mentioned in Part I of Schedule 15[(reading references in that Part to the authorised person as references to A)].

**Annotations:**

**Amendments (Textual)**

**F219** S. 165: words in heading inserted (8.6.2010) by Financial Services Act (c. 28), ss. 24(1), 26(2)(d)(e), {Sch. 2 para. 15}

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

**C314** S. 165 amended (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 15(1)** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**

S. 165 amended (*temp.* from 11.8.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2), 2**; S.I. 2001/3538, **art. 2(1)**

S. 165 amended (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 15(1)**; S.I. 2001/3538, **art. 2(1)**

**C315** S. 165 modified (*temp.*) (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 8(1)(3)**

**C316** S. 165 amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(3)**

**C317** S. 165 applied (with modifications) (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 3**

**C318** S. 165(1)(2) extended (1.12.2001) by S.I. 2001/3646, **arts. 1(1), 2(1)(3)(a)**

**C319** S. 165(2) applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(6) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), 4)

**C320** S. 165(5)(6) extended (1.12.2001) by S.I. 2001/3646, **arts. 1(1), 2(3)(b)(c)**

**C321** S. 165(5) applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(6) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), 4)

**C322** S. 165(6) applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(6) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), 4)

**[<sup>F220</sup>165A]PRA’s power to require information: financial stability**

- (1) The [PRA] may, by notice in writing given to a person to whom this section applies, require the person—
- (a) to provide specified information or information of a specified description; or
  - (b) to produce specified documents or documents of a specified description.
- (2) This section applies to—

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- (a) a person who has a legal or beneficial interest in any of the assets of a relevant investment fund;
  - (b) a person who is responsible for the management of a relevant investment fund;
  - (c) a person (a “service provider”) who provides any service to an authorised person;
  - (d) a person prescribed by an order made by the Treasury or any person of a description prescribed by such an order (and see also section 165C);
  - (e) a person who is connected with a person to whom this section applies as a result of any of the above paragraphs.
- (3) This section applies only to information and documents that the [PRA] considers are, or might be, relevant to the stability of one or more aspects of the UK financial system.
- (4) A notice may be given to a service provider, or to a person who is connected with a service provider, only if the [PRA] considers that—
- (a) the service or the way in which it (or any part of it) is provided, or
  - (b) any failure to provide the service (or any part of it),
- poses, or would be likely to pose, a serious threat to the stability of the UK financial system.
- (5) Information or documents required under this section must be provided or produced—
- (a) before the end of such reasonable period as may be specified; and
  - (b) at such place as may be specified.
- (6) The [PRA] may require any information provided under this section to be provided in such form as it may reasonably require.
- (7) The [PRA] may require—
- (a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require; or
  - (b) any document produced to be authenticated in such manner as it may reasonably require.
- (8) In this section—
- “management” includes any of the activities listed in Annex II to the UCITS directive;
  - “relevant investment fund” means an investment fund whose assets consist of or include financial instruments which—
    - (a) are traded in the United Kingdom; or
    - (b) were issued by a body incorporated in the United Kingdom;
  - “service” includes facility;
  - “specified” means specified in the notice.
- (9) For the purposes of the definition of “relevant investment fund”—
- (a) arrangements may constitute an investment fund even if there is only one person participating in the arrangements; and
  - (b) the reference to financial instruments has the meaning given by Article 4.1(17) of the markets in financial instruments directive.
- (10) For the purposes of this section a person is connected with another person (“A”) if the person is or has at any relevant time been—
- (a) a member of A's group;

- (b) a controller of A;
- (c) any other member of a partnership of which A is a member; or
- (d) in relation to A, a person mentioned in Part 1 of Schedule 15 (reading references in that Part to the authorised person as references to A).

**Annotations:**

**Amendments (Textual)**

**F220** S. 165A-165C inserted (8.6.2010) by Financial Services Act (c. 28), {ss. 18(2)}, 26(2)

**165B Safeguards etc in relation to exercise of power under section 165A**

- (1) If the [PRA] proposes to impose a requirement on a person under section 165A, it must give the person a notice in writing warning the person that the Authority is proposing to impose the requirement.
- (2) The notice under subsection (1) must—
  - (a) give the [PRA's] reasons for proposing to impose the requirement; and
  - (b) specify a reasonable period within which the person may make representations to the [PRA]
- (3) The [PRA] must then decide, within a reasonable period, whether to impose the requirement.
- (4) Subsections (1) to (3) do not apply in any case where the [PRA] is satisfied that it is necessary for the information or documents to be provided or produced without delay.
- (5) If the [PRA] imposes a requirement on a person under section 165A, the notice under that section must give the [PRA's] reasons for imposing the requirement.
- (6) The [PRA] must prepare a statement of its policy with respect to the exercise of the power conferred by section 165A.
- (7) The statement requires the approval of the Treasury.
- (8) If the Treasury approve the statement, the [PRA] must publish it.
- (9) The power conferred by section 165A may not be exercised before the statement has been published.

**165C Orders under section 165A(2)(d)**

- (1) The Treasury may make an order under section 165A(2)(d) only if they consider that—
  - (a) the activities carried on by the prescribed person or persons of the prescribed description, or the way in which those activities (or any part of them) are carried on, or
  - (b) any failure to carry on those activities (or any part of them),pose, or would be likely to pose, a serious threat to the stability of the UK financial system.
- (2) Subject as follows, an order under section 165A(2)(d) may not be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

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- (3) Subsection (2) does not apply in any case where the Treasury are satisfied that it is necessary to make an order under section 165A(2)(d) without laying a draft for approval.
- (4) In that case, the order—
  - (a) must be laid before Parliament after being made; and
  - (b) ceases to have effect at the end of the relevant period unless before the end of that period it is approved by a resolution of each House of Parliament.
- (5) If an order ceases to have effect as a result of subsection (4)(b) that does not affect—
  - (a) anything done under it; or
  - (b) the power to make a new one.
- (6) “Relevant period” means a period of 28 days beginning with the day on which the order is made.
- (7) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (8) If a statutory instrument containing an order under section 165A(2)(d) would, apart from this subsection, be treated as a hybrid instrument for the purposes of the Standing Orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.]

## **166 Reports by skilled persons.**

- (1) [Either regulator] may, by notice in writing given to a person to whom subsection (2) applies, require him to provide [the regulator giving the notice] with a report on any matter about which [that regulator] has required or could require the provision of information or production of documents under section 165.
- (2) This subsection applies to—
  - (a) an authorised person (“A”),
  - (b) any other member of A’s group,
  - (c) a partnership of which A is a member, or
  - (d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c),
 who is, or was at the relevant time, carrying on a business.
- (3) The [regulator] may require the report to be in such form as may be specified in the notice.
- (4) The person appointed to make a report required by subsection (1) must be a person—
  - (a) nominated or approved by [the regulator which gives the notice under subsection (1)]; and
  - (b) appearing to [that regulator] to have the skills necessary to make a report on the matter concerned.
- (5) It is the duty of any person who is providing (or who at any time has provided) services to a person to whom subsection (2) applies in relation to a matter on which a report is required under subsection (1) to give a person appointed to provide such a report all such assistance as the appointed person may reasonably require.

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- (6) The obligation imposed by subsection (5) is enforceable, on the application of [the regulator which gave the notice under subsection (1)], by an injunction or, in Scotland, by an order for specific performance under section 45 of the <sup>M13</sup>Court of Session Act 1988.
- [(7) The power conferred by subsection (1) may also be exercised by the FCA to require a person to whom subsection (8) applies to provide the FCA with a report in accordance with this section (and, accordingly, the reference in subsection (5) to a person to whom subsection (2) applies includes a person to whom subsection (8) applies).
- (8) The subsection applies to—
- (a) a recognised investment exchange (“A”),
  - (b) any other member of A’s group,
  - (c) a partnership of which A is a member,
  - (d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c),
- who is, or was at the relevant time, carrying on a business.]

**Annotations:**

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

**C323** S. 166 modified (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 16** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**

S. 166 modified (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 16**; S.I. 2001/3538, **art. 2(1)**

**C324** S. 166 amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by **The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002** (S.I. 2002/1775), **regs. 1, 12(3)**

**C325** S. 166 applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by **The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001** (S.I. 2001/544), **art. 9G(7)** (as inserted by **The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002** (S.I. 2002/682), **arts. 1(2), 4**)

**C326** S. 166 applied (with modifications) (6.3.2008) by **The Regulated Covered Bonds Regulations 2008** (S.I. 2008/346), **reg. 46, Sch. para. 4**

**C327** S. 166(1)(3)(4) extended (1.12.2001) by S.I. 2001/3646, **arts. 1(1), 4(1)(3)(4)**

**Marginal Citations**

**M13** 1988 c. 36.

**[166A Appointment of skilled person to collect and update information**

- (1) This section applies if either regulator considers that an authorised person has contravened a requirement in rules made by that regulator to collect, and keep up to date, information of a description specified in the rules.
- (2) The regulator may require the authorised person to appoint a skilled person to collect or update the information in question.
- (3) References in this section to a skilled person are to a person—
- (a) nominated or approved by the regulator imposing the requirement, and
  - (b) appearing to that regulator to have the skills necessary to collect or update the information in question.

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- (4) The skilled person may require any person to provide all such assistance as the skilled person may reasonably require to collect or update the information in question.
- (5) A requirement imposed under subsection (4) is enforceable, on the application of the regulator in question, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (6) A contractual or other requirement imposed on a person (“P”) to keep any information in confidence does not apply if—
- (a) the information is or may be relevant to anything required to be done as a result of this section,
  - (b) an authorised person or a skilled person requests or requires P to provide the information for the purpose of securing that those things are done, and
  - (c) the regulator in question has approved the making of the request or the imposition of the requirement before it is made or imposed.
- (7) An authorised person may provide information (whether received under subsection (6) or otherwise) that would otherwise be subject to a contractual or other requirement to keep it in confidence if it is provided for the purposes of anything required to be done as a result of this section.
- (8) In this section “authorised person”, in relation to the PRA, means PRA-authorised person.

*Appointment of investigators*

**167 Appointment of persons to carry out general investigations.**

- (1) If it appears to [an investigating authority] that there is good reason for doing so, the investigating authority may appoint one or more competent persons to conduct an investigation on its behalf into—
- (a) the nature, conduct or state of the business of <sup>F221</sup>[a recognised investment exchange or] an authorised person or of an appointed representative;
  - (b) a particular aspect of that business; or
  - (c) the ownership or control of <sup>F222</sup>[a recognised investment exchange or] an authorised person.
- (2) If a person appointed under subsection (1) thinks it necessary for the purposes of his investigation, he may also investigate the business of a person who is or has at any relevant time been—
- (a) a member of the group of which the person under investigation (“A”) is part; or
  - (b) a partnership of which A is a member.
- (3) If a person appointed under subsection (1) decides to investigate the business of any person under subsection (2) he must give that person written notice of his decision.
- (4) The power conferred by this section may be exercised in relation to a former authorised person (or appointed representative) but only in relation to—
- (a) business carried on at any time when he was an authorised person (or appointed representative); or

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- (b) the ownership or control of a former authorised person at any time when he was an authorised person.
- (5) “Business” includes any part of a business even if it does not consist of carrying on regulated activities.

**[(5A) “Investigating authority” means—**

- (a) in relation to a recognised investment exchange, the Secretary of State or the FCA;
- (b) in relation to an authorised person or former authorised person, the FCA or the PRA;
- (c) in relation to an appointed representative or former appointed representative, the FCA or the PRA.]

[<sup>F223</sup>(6) References in subsection (1) to a recognised investment exchange do not include references to an overseas investment exchange (as defined by section 313(1)).]

**Annotations:**

**Amendments (Textual)**

- F221** Words in s. 167(1)(a) 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(5), [Sch. 5 para. 7\(a\)\(i\)](#)
- F222** Words in s. 167(1)(c) 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(5), [Sch. 5 para. 7\(a\)\(ii\)](#)
- F223** S. 167(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(5), [Sch. 5 para. 7\(b\)](#)

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

- C328** S. 167 modified (1.12.2001) by [S.I. 2001/2657](#), [arts. 1\(1\), 17](#) (which was revoked (8.10.2001) by [S.I. 2001/3083](#), [arts. 1\(2\), 23](#)); [S.I. 2001/3538](#), [art. 2\(1\)](#)  
S. 167 modified (1.12.2001) by [S.I. 2001/3083](#), [arts. 1\(2\), 17](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)
- C329** S. 167 amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, [12\(3\)](#)

**168 Appointment of persons to carry out investigations in particular cases.**

- (1) Subsection (3) applies if it appears to an investigating authority that there are circumstances suggesting that—
  - (a) a person may have contravened any regulation made under section 142; or
  - (b) a person may be guilty of an offence under section 177, [\[191F\]](#), 346 or 398(1) or under Schedule 4.
- (2) Subsection (3) also applies if it appears to an investigating authority that there are circumstances suggesting that—
  - (a) an offence under section 24(1) or 397 or under Part V of the <sup>M14</sup>Criminal Justice Act 1993 may have been committed;
  - (b) there may have been a breach of the general prohibition;
  - (c) there may have been a contravention of section 21 or 238; or

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (d) market abuse may have taken place.
- (3) The investigating authority may appoint one or more competent persons to conduct an investigation on its behalf.
- (4) Subsection (5) applies if it appears to [an investigating authority] that there are circumstances suggesting that—
- (a) a person may have contravened section 20;
  - (b) a person may be guilty of an offence under prescribed regulations relating to money laundering;
  - <sup>F224</sup>(ba) a person may be guilty of an offence under Schedule 7 to the Counter-Terrorism Act 2008 (terrorist financing or money laundering);
  - (c) <sup>F225</sup>[a person] may have contravened a rule made by [the investigating authority];
  - ~~[(ca) a recognised investment exchange may have contravened the recognition requirements (within the meaning of Part 18);]~~
  - (d) an individual may not be a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised or exempt person;
  - (e) an individual may have performed or agreed to perform a function in breach of a prohibition order;
  - (f) [a person] may have failed to comply with section 56(6);
  - (g) an authorised person may have failed to comply with section 59(1) or (2);
  - (h) a person in relation to whom the[investigating authority] has given its approval under section 59 may not be a fit and proper person to perform the function to which that approval relates; <sup>F226</sup>...
  - <sup>F227</sup>(ha) a person may have performed a controlled function without approval for the purposes of section 63A;]
  - (i) a person may be guilty of misconduct for the purposes of section 66 <sup>F228</sup>; or
  - (j) a person may have contravened any provision made by or under this Act for the purpose of implementing the markets in financial instruments directive or by any directly applicable Community regulation made under that directive.]
- (5) The[investigating authority] may appoint one or more competent persons to conduct an investigation on its behalf.
- [(6) “Investigating authority” means—
- (a) in subsections (1) to (3), the FCA, the PRA or the Secretary of State;
  - (b) in subsections (4) and (5), the FCA or the PRA.]

#### Annotations:

##### Amendments (Textual)

**F224** S. 168(4)(ba) inserted (27.11.2008) by Counter-Terrorism Act 2008 (c. 28), ss. 62, 100(2), **Sch. 7 para. 33(3)** (with s. 101(2), **Sch. 7 para. 43**)

**F225** Words in s. 168(4)(c) substituted (8.4.2010) by **Financial Services Act 2010 (c. 28)**, ss. 24(1), 26(1), **Sch. 2 para. 16(2)**

**F226** Word in s. 168(4) omitted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by virtue of **The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126)**, regs. 1(2), 3(5), **Sch. 5 para. 8(a)**

**F227** S. 168(4)(ha) inserted (8.6.2010) by **Financial Services Act 2010 (c. 28)**, ss. 24(1), 26(2)(d)(e), **Sch. 2 para. 16(3)**

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

**F228** S. 168(4)(j) and preceding word 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(5), **Sch. 5 para. 8(b)**

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

**C330** S. 168 amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(3)**

**C331** S. 168(3)(5) applied (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 18(1)(3)** (which was revoked 8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**; S.I. 2001/3538, **art. 2(1)**

S. 168(3)(5) applied (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 18(1)(3)**; S.I. 2001/3538, **art. 2(1)**

**C332** S. 168(4) applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(8) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), 4)

**C333** S. 168(4)(c) amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(5)**

**Commencement Information**

**I42** S. 168 wholly in force at 3.9.2001; s. 168 not in force at Royal Assent see s. 431(2); s. 168(4)(b) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 168 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**

**Marginal Citations**

**M14** 1993 c. 36.

*Assistance to overseas regulators*

**169 Investigations etc. in support of overseas regulator.**

- (1) At the request of an overseas regulator, [a regulator] may—
  - (a) exercise the power conferred by section 165; or
  - (b) appoint one or more competent persons to investigate any matter.
- (2) An investigator has the same powers as an investigator appointed under section 168(3) (as a result of subsection (1) of that section).
- (3) If the request has been made by a competent authority in pursuance of any [F229]EU obligation the [regulator] must, in deciding whether or not to exercise its investigative power, consider whether its exercise is necessary to comply with any such obligation.
- (4) In deciding whether or not to exercise its investigative power, the [regulator] may take into account in particular—
  - (a) whether in the country or territory of the overseas regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;
  - (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
  - (c) the seriousness of the case and its importance to persons in the United Kingdom;

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- (d) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (5) The [regulator] may decide that it will not exercise its investigative power unless the overseas regulator undertakes to make such contribution towards the cost of its exercise as the [regulator] considers appropriate.
- (6) Subsections (4) and (5) do not apply if the [regulator] considers that the exercise of its investigative power is necessary to comply with [<sup>F229</sup>an EU] obligation.
- (7) If [a regulator] has appointed an investigator in response to a request from an overseas regulator, it may direct the investigator to permit a representative of that regulator to attend, and take part in, any interview conducted for the purposes of the investigation.
- (8) A direction under subsection (7) is not to be given unless the [regulator] is satisfied that any information obtained by an overseas regulator as a result of the interview will be subject to safeguards equivalent to those contained in Part XXIII.
- (9) [Each regulator] must prepare a statement of its policy with respect to the conduct of interviews in relation to which a direction under subsection (7) has been given.
- (10) The statement requires the approval of the Treasury.
- (11) If the Treasury approve the statement, the [regulator] must publish it.
- (12) No direction may be given under subsection (7) before the statement has been published.
- (13) “Overseas regulator” has the same meaning as in section 195.
- (14) “Investigative power” means one of the powers mentioned in subsection (1).
- (15) “Investigator” means a person appointed under subsection (1)(b).

**Annotations:**

**Amendments (Textual)**

**F229** Words in s. 169(3)(6) 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(1)(3)(4)**

**Commencement Information**

**I43** S. 169 wholly in force at 3.9.2001; s. 169 not in force at Royal Assent see s. 431(2); s. 169 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), **art. 2, Sch.**; s. 169 in force in so far as not already in force at 3.9.2001 by [S.I. 2001/2632](#), **art. 2(2), Sch. Pt. 2**

**[<sup>F230</sup>169A] Support of overseas regulator with respect to financial stability**

- (1) At the request of an overseas regulator, the [PRA] may exercise a corresponding section 165A power.
- (2) An “overseas regulator” means an authority in a country or territory outside the United Kingdom which exercises functions with respect to the stability of the financial system operating in that country or territory.

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- (3) A “corresponding section 165A power” means a power corresponding to the one conferred by section 165A, but reading references in that section to the stability of the UK financial system as references to the stability of the financial system operating in the country or territory of the overseas regulator.
- (4) The following provisions apply in relation to the exercise of the corresponding section 165A power—
  - (a) section 165B(1) to (5); and
  - (b) section 169(3), (4)(a) and (d), (5) and (6).
- (5) In this section “the financial system” includes—
  - (a) financial markets and exchanges;
  - (b) activities that would be regulated activities if carried on in the United Kingdom; and
  - (c) other activities connected with financial markets and exchanges.]

**Annotations:**

**Amendments (Textual)**

**F230 S. 169A** inserted (8.6.2010) by Financial Services Act (c. 28), {ss. 18(3)}, 26(2)

*Conduct of investigations*

**170 Investigations: general.**

- (1) This section applies if an investigating authority appoints one or more competent persons (“investigators”) under section 167 or 168(3) or (5) to conduct an investigation on its behalf.
- (2) The investigating authority must give written notice of the appointment of an investigator to the person who is the subject of the investigation (“the person under investigation”).
- (3) Subsections (2) and (9) do not apply if—
  - (a) the investigator is appointed as a result of section 168(1) or (4) and the investigating authority believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated; or
  - (b) the investigator is appointed as a result of subsection (2) of section 168.
- (4) A notice under subsection (2) must—
  - (a) specify the provisions under which, and as a result of which, the investigator was appointed; and
  - (b) state the reason for his appointment.
- (5) Nothing prevents the investigating authority from appointing a person who is a member of its staff as an investigator.
- (6) An investigator must make a report of his investigation to the investigating authority.
- (7) The investigating authority may, by a direction to an investigator, control—
  - (a) the scope of the investigation;

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- (b) the period during which the investigation is to be conducted;
  - (c) the conduct of the investigation; and
  - (d) the reporting of the investigation.
- (8) A direction may, in particular—
- (a) confine the investigation to particular matters;
  - (b) extend the investigation to additional matters;
  - (c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction;
  - (d) require the investigator to make such interim reports as are so specified.
- (9) If there is a change in the scope or conduct of the investigation and, in the opinion of the investigating authority, the person subject to investigation is likely to be significantly prejudiced by not being made aware of it, that person must be given written notice of the change.
- (10) “Investigating authority”, in relation to an investigator, means—
- [(a) the FCA, if the FCA appointed the investigator;
  - (aa) the PRA, if the PRA appointed the investigator;
  - (b) the Secretary of State, if the Secretary of State appointed the investigator.]

**Annotations:**

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

**C334** S. 170(5)-(9) applied (1.12.2001 for E.W.S. and 1.11.2004 for N.I.) by S.I. 2001/1228, regs. 1(2)(c), 30(4) (with 1(2)(3)); S.I. 2001/3538, art. 2(1); S.R. 2004/335, regs. 1(1)(b), 30(4) (with reg. 1(2))

**171 Powers of persons appointed under section 167.**

- (1) An investigator may require the person who is the subject of the investigation (“the person under investigation”) or any person connected with the person under investigation—
- (a) to attend before the investigator at a specified time and place and answer questions; or
  - (b) otherwise to provide such information as the investigator may require.
- (2) An investigator may also require any person to produce at a specified time and place any specified documents or documents of a specified description.
- (3) A requirement under subsection (1) or (2) may be imposed only so far as the investigator concerned reasonably considers the question, provision of information or production of the document to be relevant to the purposes of the investigation.
- [<sup>F231</sup>(3A) Where the investigation relates to a recognised investment exchange, an investigator has the additional powers conferred by sections 172 and 173 (and for this purpose references in those sections to an investigator are to be read accordingly).]
- (4) For the purposes of this section and section 172, a person is connected with the person under investigation (“A”) if he is or has at any relevant time been—
- (a) a member of A’s group;
  - (b) a controller of A;
  - (c) a partnership of which A is a member; or

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- (d) in relation to A, a person mentioned in Part I or II of Schedule 15.
- (5) “Investigator” means a person conducting an investigation under section 167.
- (6) “Specified” means specified in a notice in writing.
- [<sup>F232</sup>(7) The reference in subsection (3A) to a recognised investment exchange does not include a reference to an overseas investment exchange (as defined by section 313(1)).]

**Annotations:**

**Amendments (Textual)**

- F231** S. 171(3A) 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(5), [Sch. 5 para. 9\(a\)](#)
- F232** S. 171(7) 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(5), [Sch. 5 para. 9\(b\)](#)

**172 Additional power of persons appointed as a result of section 168(1) or (4).**

- (1) An investigator has the powers conferred by section 171.
- (2) An investigator may also require a person who is neither the subject of the investigation (“the person under investigation”) nor a person connected with the person under investigation—
  - (a) to attend before the investigator at a specified time and place and answer questions; or
  - (b) otherwise to provide such information as the investigator may require for the purposes of the investigation.
- (3) A requirement may only be imposed under subsection (2) if the investigator is satisfied that the requirement is necessary or expedient for the purposes of the investigation.
- (4) “Investigator” means a person appointed as a result of subsection (1) or (4) of section 168.
- (5) “Specified” means specified in a notice in writing.

**173 Powers of persons appointed as a result of section 168(2).**

- (1) Subsections (2) to (4) apply if an investigator considers that any person (“A”) is or may be able to give information which is or may be relevant to the investigation.
- (2) The investigator may require A—
  - (a) to attend before him at a specified time and place and answer questions; or
  - (b) otherwise to provide such information as he may require for the purposes of the investigation.
- (3) The investigator may also require A to produce at a specified time and place any specified documents or documents of a specified description which appear to the investigator to relate to any matter relevant to the investigation.

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- (4) The investigator may also otherwise require A to give him all assistance in connection with the investigation which A is reasonably able to give.
- (5) “Investigator” means a person appointed under subsection (3) of section 168 (as a result of subsection (2) of that section).

#### **174 Admissibility of statements made to investigators.**

- (1) A statement made to an investigator by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.
- (2) But in criminal proceedings in which that person is charged with an offence to which this subsection applies or in proceedings in relation to action to be taken against that person under section 123—
- (a) no evidence relating to the statement may be adduced, and
  - (b) no question relating to it may be asked,
- by or on behalf of the prosecution or (as the case may be) [a regulator], unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.
- (3) Subsection (2) applies to any offence other than one—
- (a) under section 177(4) or 398;
  - (b) under section 5 of the <sup>M15</sup>Perjury Act 1911 (false statements made otherwise than on oath);
  - (c) under section 44(2) of the <sup>M16</sup>Criminal Law (Consolidation)(Scotland) Act 1995 (false statements made otherwise than on oath); or
  - (d) under Article 10 of the <sup>M17</sup>Perjury (Northern Ireland) Order 1979.
- (4) “Investigator” means a person appointed under section 167 or 168(3) or (5).
- (5) “Information requirement” means a requirement imposed by an investigator under section 171, 172, 173 or 175.

#### **Annotations:**

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

**C335** S. 174 applied (1.12.2001 for E.W.S. and 1.11.2004 for N.I) by S.I. 2001/1228, regs. 1(2)(c), 30(5) (with reg. 1(2)(3)); S.I. 2001/3538, art. 2(1); S.R. 2004/335, regs. 1(1)(b), **30(5)** (with reg. 1(2))  
 S. 174 applied (with modifications) (1.12.2001) by S.I. 2001/3646, arts. **1(1)**, 2(4), 4(5)

**C336** S. 174 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 16(4)**

##### **Marginal Citations**

**M15** 1911 c. 6.

**M16** 1995 c. 39.

**M17** S.I. 1979/1714 (N.I. 19).

## 175 Information and documents: supplemental provisions.

- (1) If [either regulator] or an investigator has power under this Part to require a person to produce a document but it appears that the document is in the possession of a third person, that power may be exercised in relation to the third person.
- (2) If a document is produced in response to a requirement imposed under this Part, the person to whom it is produced may—
  - (a) take copies or extracts from the document; or
  - (b) require the person producing the document, or any relevant person, to provide an explanation of the document.

[(2A) A document so produced may be retained for so long as the person to whom it is produced considers that it is necessary to retain it (rather than copies of it) for the purposes for which the document was requested.]

(2B) If the person to whom a document is so produced has reasonable grounds for believing

—

- (a) that the document may have to be produced for the purposes of any legal proceedings, and
- (b) that it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.]

- (3) If a person who is required under this Part to produce a document fails to do so, the [regulator] or an investigator may require him to state, to the best of his knowledge and belief, where the document is.
- (4) A lawyer may be required under this Part to furnish the name and address of his client.
- (5) No person may be required under this Part to disclose information or produce a document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—
  - (a) he is the person under investigation or a member of that person's group;
  - (b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person's group;
  - (c) the person to whom the obligation of confidence is owed consents to the disclosure or production; or
  - (d) the imposing on him of a requirement with respect to such information or document has been specifically authorised by the investigating authority.
- (6) If a person claims a lien on a document, its production under this Part does not affect the lien.
- (7) "Relevant person", in relation to a person who is required to produce a document, means a person who—
  - (a) has been or is or is proposed to be a director or controller of that person;
  - (b) has been or is an auditor of that person;
  - (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or
  - (d) has been or is an employee of that person.
- (8) "Investigator" means a person appointed under section 167 or 168(3) or (5).

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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#### Annotations:

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

- C337** S. 175 applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) Order 2001 \(S.I. 2001/544\)](#), art. 9G(9) (as inserted by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2002 \(S.I. 2002/682\)](#), arts. 1(2), 4)
- C338** S. 175 applied (with modifications) (7.6.2010) by [The Credit Rating Agencies Regulations 2010 \(S.I. 2010/906\)](#), **reg. 17**
- C339** S. 175(2)-(4)(6) amended (1.12.2001 for E.W.S. and 1.11.2004 for N.I) by [S.I. 2001/1228](#), regs. 1(2)(c), 30(6) (with [reg. 1\(2\)\(3\)](#)); [S.I. 2001/3538](#), art. 2(1); [S.R. 2004/335](#), regs. 1(1)(b), **30(6)** (with [reg. 1\(2\)](#))

## 176 Entry of premises under warrant.

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, [\[either regulator\]](#) or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.
- (2) The first set of conditions is—
  - (a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it; and
  - (b) that on the premises specified in the warrant—
    - (i) there are documents which have been required; or
    - (ii) there is information which has been required.
- (3) The second set of conditions is—
  - (a) that the premises specified in the warrant are premises of an authorised person or an appointed representative;
  - (b) that there are on the premises documents or information in relation to which an information requirement could be imposed; and
  - (c) that if such a requirement were to be imposed—
    - (i) it would not be complied with; or
    - (ii) the documents or information to which it related would be removed, tampered with or destroyed.
- (4) The third set of conditions is—
  - (a) that an offence mentioned in section 168 for which the maximum sentence on conviction on indictment is two years or more has been (or is being) committed by any person;
  - (b) that there are on the premises specified in the warrant documents or information relevant to whether that offence has been (or is being) committed;
  - (c) that an information requirement could be imposed in relation to those documents or information; and
  - (d) that if such a requirement were to be imposed—
    - (i) it would not be complied with; or
    - (ii) the documents or information to which it related would be removed, tampered with or destroyed.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (5) A warrant under this section shall authorise a constable—
- (a) to enter the premises specified in the warrant;
  - (b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this section was issued (“the relevant kind”) or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them;
  - (c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;
  - (d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and
  - (e) to use such force as may be reasonably necessary.

[(5A) A warrant under this section may be executed by any constable.

[(5B) The warrant may authorise persons to accompany any constable who is executing it.

[(5C) The powers in subsection (5) may be exercised by a person authorised by the warrant to accompany a constable; but that person may exercise those powers only in the company of, and under the supervision of, a constable.]

(6) In England and Wales, sections 15(5) to (8) and section [16(3) to (12)] of the <sup>M18</sup>Police and Criminal Evidence Act 1984 (execution of search warrants and safeguards) apply to warrants issued under this section.

(7) In Northern Ireland, Articles 17(5) to (8) and [18(3) to (12)] of the <sup>M19</sup>Police and Criminal Evidence (Northern Ireland) Order 1989 apply to warrants issued under this section.

~~(8) [Any document of which possession is taken under this section may be retained—  
.....]~~

(9) In the application of this section to Scotland—

- (a) for the references to a justice of the peace substitute references to a justice of the peace or a sheriff; and
- (b) for the references to information on oath substitute references to evidence on oath.

(10) “Investigator” means a person appointed under section 167 or 168(3) or (5).

(11) “Information requirement” means a requirement imposed—

- (a) by [a regulator] under section [<sup>F233</sup>87C, 87J,] 165 [<sup>F234</sup>, 165A, 169A] or 175; or
- (b) by an investigator under section 171, 172, 173 or 175.

**Annotations:**

**Amendments (Textual)**

**F233** Words in s. 176(11)(a) inserted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 12](#)

**F234** Words in s. 176(11)(a) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d) (e), [Sch. 2 para. 17](#)

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**Proposed Legislation:** *This version shows proposed changes to this legislation item. It has no official standing.*

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

- C340** S. 176 extended (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, **s. 62A** (as inserted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. I para. 77 (with art. 13(3), **Sch. 5**); S.I. 2001/3538, **art. 2(1)**)
- S. 176 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, **s. 52B** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. I para. 151 (with art. 13(3), **Sch. 5**); S.I. 2001/3538, **art. 2(1)**)
- S. 176 modified (1.12.2001) by S.I. 1995/1537, **reg. 23(4)** (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1, 509(e)**)
- C341** S. 176 amended (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(3)**
- S. 176 applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), art. 9G(9) (as inserted by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2), 4)
- C342** S. 176(1)-(9) applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 30(7)** (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**
- C343** S. 176(1)-(8) applied (with modifications) (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **30(7)** (with reg. 1(2))
- C344** S. 176(2) extended (1.12.2001) by S.I. 2001/3646, **arts. 1(1), 13(2)**
- C345** S. 176(5): powers of seizure extended (1.4.2003) by 2001 c. 16, ss. 50, 52-54, 68, 138(2), Sch. 1 Pt. I para. 69; S.I. 2003/708, **art. 2(a)(c)(j)**
- C346** S. 176(11) restricted (temp. from 11.8.2001 until 1.12.2001) by S.I. 2001/2659, **arts. 1(3), 2(3)**; S.I. 2001/3538, **art. 2(1)**
- C347** S. 176(8) applied (with modifications) (1.4.2003) by 2001 c. 16, ss. 57(1)(o)(4), 138(2); S.I. 2003/708, **art. 2(a)**
- C348** S. 176(11) restricted (temp. from 8.4.2002 until 2.7.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 8(3)**

#### **Marginal Citations**

- M18** 1984 c. 60.  
**M19** S.I. 1989/1341 (N.I. 12).

### **[176A Retention of documents taken under section 176**

- (1) Any document of which possession is taken under section 176 (“a seized document”) may be retained so long as it is necessary to retain it (rather than copies of it) in the circumstances.
- (2) A person claiming to be the owner of a seized document may apply to a magistrates’ court or (in Scotland) the sheriff for an order for the delivery of the document to the person appearing to the court or sheriff to be the owner.
- (3) If on an application under subsection (2) the court or (in Scotland) the sheriff cannot ascertain who is the owner of the seized document the court or sheriff (as the case may be) may make such order as the court or sheriff thinks fit.
- (4) An order under subsection (2) or (3) does not affect the right of any person to take legal proceedings against any person in possession of a seized document for the recovery of the document.

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- (5) Any right to bring proceedings (as described in subsection (4)) may only be exercised within 6 months of the date of the order made under subsection (2) or (3).]

### Offences

#### 177 Offences.

- (1) If a person other than the investigator (“the defaulter”) fails to comply with a requirement imposed on him under this Part the person imposing the requirement may certify that fact in writing to the court.
- (2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and in the case of a body corporate, any director or officer) as if he were in contempt [<sup>F235</sup>; and “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.].
- (3) A person who knows or suspects that an investigation is being or is likely to be conducted under this Part is guilty of an offence if—
  - (a) he falsifies, conceals, destroys or otherwise disposes of a document which he knows or suspects is or would be relevant to such an investigation, or
  - (b) he causes or permits the falsification, concealment, destruction or disposal of such a document,unless he shows that he had no intention of concealing facts disclosed by the documents from the investigator.
- (4) A person who, in purported compliance with a requirement imposed on him under this Part—
  - (a) provides information which he knows to be false or misleading in a material particular, or
  - (b) recklessly provides information which is false or misleading in a material particular,is guilty of an offence.
- (5) A person guilty of an offence under subsection (3) or (4) is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (6) Any person who intentionally obstructs the exercise of any rights conferred by a warrant under section 176 is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.
- (7) “Court” means—
  - (a) the High Court;
  - (b) in Scotland, the Court of Session.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

**Annotations:**

**Amendments (Textual)**

**F235** Words in s. 177(2) inserted (6.4.2001 for E.W.S. and 13.9.2004 for N.I.) by S.I. 2001/1090, regs. 1, 9, Sch. 5 para. 21; S.R. 2004/307, reg. 9, **Sch. 4 para. 17**

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

**C349** S. 177 applied (1.12.2001 for E.W.S. and 1.11.2004 for N.I.) by S.I. 2001/1228, regs. 1(2)(c), 30(6) (with reg. 1(2)(3)); S.I. 2001/3538, art. 2(1); S.R. 2004/335, regs. 1(1)(b), **30(6)** (with reg. 1(2))

S. 177 excluded (1.12.2001) by S.I. 2001/3646, **arts. 1(1), 2(5)**

S. 177 restricted (1.12.2001) by S.I. 2001/3646, **arts. 1(1), 2(7)(a), 4(6)(a), 6(4)(a), 7(4)(a), 8(4)(a), 9(4)(a)**

**C350** S. 177 applied (with modifications) (11.4.2002 for certain purposes and 27.4.2002 otherwise) by **The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001** (S.I. 2001/544), art. 9G(9) (as inserted by **The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002** (S.I. 2002/682), arts. 1(2), 4)

**C351** S. 177 applied (with modifications) (7.6.2010) by **The Credit Rating Agencies Regulations 2010** (S.I. 2010/906), **reg. 24**

## PART XII

### CONTROL OVER AUTHORISED PERSONS

**Annotations:**

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

**C352** Pt. XII (ss. 178-192) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 114(3)(a)** (with art. 23(2))

**C353** Pt. 12 applied (with modifications) (30.4.2011) by **The Electronic Money Regulations 2011** (S.I. 2011/99), reg. 62, **Sch. 3 para. 4** (with reg. 3)

[<sup>F236</sup>Notices of acquisitions of control over UK authorised persons

**Annotations:**

**Amendments (Textual)**

**F236** Ss. 178-191G and cross-headings substituted (21.3.2009) for ss. 178-191 and cross-headings by **The Financial Services and Markets Act 2000 (Controllers) Regulations 2009** (S.I. 2009/534), reg. 3, **Sch. 1** (with reg. 8)

<sup>x3</sup>**178** **Obligation to notify [appropriate regulator]: acquisitions of control**

- (1) A person who decides to acquire or increase control over a UK authorised person must give the [appropriate regulator] notice in writing before making the acquisition.
- (2) 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.

[(2A) In this Part, the “appropriate regulator” means—

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (a) where the UK authorised person is a PRA-authorised person, the PRA;
- (b) in any other case, the FCA.]

(3) In this Part, a notice given under this section is a “section 178 notice” and a person giving notice is a “section 178 notice-giver”.

**Annotations:**

**Editorial Information**

- X3** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

**<sup>x4</sup>179 Requirements for section 178 notices**

- (1) A section 178 notice must be in such form, include such information and be accompanied by such documents as the [appropriate regulator] may reasonably require.
- (2) [Each regulator] must publish a list of its requirements as to the form, information and accompanying documents for a section 178 notice.
- (3) The [appropriate regulator] may impose different requirements for different cases and may vary or waive requirements in particular cases.

**Annotations:**

**Editorial Information**

- X4** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

**<sup>x5</sup>180 Acknowledgment of receipt**

- (1) The [appropriate regulator] must acknowledge receipt of a completed section 178 notice in writing before the end of the second working day following receipt.
- (2) If the [appropriate regulator] receives an incomplete section 178 notice it must inform the section 178 notice-giver as soon as reasonably practicable.

**Annotations:**

**Editorial Information**

- X5** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

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## Acquiring control and other changes of holding

### <sup>x6</sup>181 **Acquiring control**

- (1) For the purposes of this Part, a person (“A”) acquires control over a UK authorised person (“B”) if any of the cases in subsection (2) begin to apply.
- (2) The cases are where A holds—
  - (a) 10% or more of the shares in B or in a parent undertaking of B (“P”);
  - (b) 10% 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.

#### **Annotations:**

#### **Editorial Information**

**X6** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

### <sup>x7</sup>182 **Increasing control**

- (1) For the purposes of this Part, a person (“A”) increases control over a UK authorised person (“B”) whenever—
  - (a) the percentage of shares which A holds in B or in a parent undertaking of B (“P”) increases by any of the steps mentioned in subsection (2);
  - (b) the percentage of voting power A holds in B or P increases by any of the steps mentioned in subsection (2); or
  - (c) A becomes a parent undertaking of B.
- (2) The steps are—
  - (a) from less than 20% to 20% or more;
  - (b) from less than 30% to 30% or more;
  - (c) from less than 50% to 50% or more.

#### **Annotations:**

#### **Editorial Information**

**X7** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

### <sup>x8</sup>183 **Reducing or ceasing to have control**

- (1) For the purposes of this Part, a person (“A”) reduces control over a UK authorised person (“B”) whenever—
  - (a) the percentage of shares which A holds in B or in a parent undertaking of B (“P”) decreases by any of the steps mentioned in subsection (2);

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- (b) the percentage of voting power which A holds in B or P decreases by any of the steps mentioned in subsection (2); or
  - (c) A ceases to be a parent undertaking of B.
- (2) The steps are—
- (a) from 50% or more to less than 50%;
  - (b) from 30% or more to less than 30%;
  - (c) from 20% or more to less than 20%.
- (3) For the purposes of this Part, a person (“A”) ceases to have control over a UK authorised person (“B”) if A ceases to be in the position of holding—
- (a) 10% or more of the shares in B or in a parent undertaking of B (“P”);
  - (b) 10% 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.

**Annotations:**

**Editorial Information**

- X8** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

**<sup>x9</sup>184 Disregarded holdings**

- (1) For the purposes of sections 181 to 183, shares and voting power that a person holds in a UK authorised person (“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.
- (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 used to intervene in the management of B or P.

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- (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 Article 1a.2 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—
- (a) manages holdings for its parent undertaking or an undertaking in respect of which the parent undertaking is a controller;
  - (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
    - (ii) an undertaking in respect of which of the parent undertaking is a controller.
- (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.

**Annotations:**

**Editorial Information**

- X9** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

## Assessment procedure

### <sup>x10</sup>185 **Assessment: general**

- (1) Where the [appropriate regulator] receives a section 178 notice, it must—
  - (a) determine whether to approve the acquisition to which it relates unconditionally; or
  - (b) propose to—
    - (i) approve the acquisition subject to conditions (see section 187); or
    - (ii) object to the acquisition.
- (2) The [appropriate regulator] must—
  - (a) consider the suitability of the section 178 notice-giver and the financial soundness of the acquisition in order to ensure the sound and prudent management of the UK authorised person;
  - (b) have regard to the likely influence that the section 178 notice-giver will have on the UK authorised person; and
  - (c) disregard the economic needs of the market.
- (3) The [appropriate regulator] may only object to an acquisition—
  - (a) if there are reasonable grounds for doing so on the basis of the matters set out in section 186; or
  - (b) if the information provided by the section 178 notice-giver is incomplete.

#### **Annotations:**

##### **Editorial Information**

**X10** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

### <sup>x11</sup>186 **Assessment criteria**

The matters specified in section 185(3)(a) are—

- (a) the reputation of the section 178 notice-giver;
- (b) the reputation and experience of any person who will direct the business of the UK authorised person as a result of the proposed acquisition;
- (c) the financial soundness of the section 178 notice-giver, in particular in relation to the type of business that the UK authorised person pursues or envisages pursuing;
- (d) whether the UK authorised person will be able to comply with its prudential requirements (including the threshold conditions in relation to all of the regulated activities for which it has or will have permission);
- (e) if the UK authorised person is to become part of a group as a result of the acquisition, whether that group has a structure which makes it possible to—
  - (i) exercise effective supervision;
  - (ii) exchange information among regulators; and
  - (iii) determine the allocation of responsibility among regulators; and

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- (f) whether there are reasonable grounds to suspect that in connection with the proposed acquisition—
- (i) money laundering or terrorist financing (within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing) is being or has been committed or attempted; or
  - (ii) the risk of such activity could increase.

**Annotations:**

**Editorial Information**

**X11** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

<sup>x12</sup>**187 Approval with conditions**

- (1) The [appropriate regulator] may impose conditions on its approval of an acquisition.
- [(2) The appropriate regulator may only impose conditions where—
  - (a) if it did not impose those conditions, it would propose to object to the acquisition, or
  - (b) it is required to do so by a direction under section 187A(3)(b) or section 187B(3).]
- (3) The [appropriate regulator] may not impose conditions requiring a particular level of holding to be acquired.
- (4) The [appropriate regulator] may vary or cancel the conditions.

**Annotations:**

**Editorial Information**

**X12** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

**187A Assessment: consultation by PRA with FCA**

- (1) The PRA must consult the FCA before acting under section 185.
- (2) The FCA may make representations to the PRA in relation to any of the matters set out in sections 185(2) and 186.
- (3) If the FCA considers that on the basis of the matters set out in section 186(f) there are reasonable grounds to object to the acquisition, the FCA may—
  - (a) direct the PRA to object to the acquisition, or

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- (b) direct the PRA not to approve the acquisition unless it does so subject to conditions specified in the direction (with or without other conditions).
- (4) Before giving a direction under subsection (3), the FCA must notify the PRA of its proposal to do so.
- (5) In order to comply with the obligation under subsection (1), the PRA must provide the FCA with—
  - (a) copies of—
    - (i) the section 178 notice, and
    - (ii) any document included with that notice,
  - (b) any further information provided pursuant to section 190, and
  - (c) any other information in the possession of the PRA which—
    - (i) in the opinion of the PRA, is relevant to the application, or
    - (ii) is reasonably requested by the FCA.
- (6) If the PRA acts under section 185(1)(b), it must indicate to the section 178 notice-giver any representations or directions received from the FCA.
- (7) Directions given by the FCA under this section are subject to any directions given to the FCA under section 3H.

#### **187B Assessment: consultation by FCA with PRA**

- (1) The FCA must consult the PRA before acting under section 185 if—
  - (a) the UK authorised person to which the section 178 notice relates has as a member of its immediate group a PRA-authorised person, or
  - (b) the section 178 notice-giver is a PRA-authorised person.
- (2) The PRA may make representations to the FCA in relation to any of the matters set out in sections 185(2) and 186.
- (3) If the PRA considers that on the basis of relevant matters that there are reasonable grounds to object to the acquisition, the PRA may direct the FCA not to approve the acquisition unless it does so subject to conditions specified in the direction (with or without other conditions).
- (4) In subsection (3) “relevant matters” are—
  - (a) the matters in paragraphs (d) or (e)(i) of section 186, and
  - (b) in a case falling within subsection (1)(b) of this section, also includes the matter in paragraph (c) of section 186.
- (5) In order to comply with the obligation under subsection (1), the FCA must provide the PRA with—
  - (a) copies of—
    - (i) the section 178 notice, and
    - (ii) any document included with that notice,
  - (b) any further information provided pursuant to section 190, and
  - (c) any other information in the possession of the FCA which—
    - (i) in the opinion of the FCA, is relevant to the application, or
    - (ii) is reasonably requested by the PRA.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- (6) If the FCA acts under section 185(1)(b), it must indicate to the section 178 notice-giver any representations or directions received from the PRA.

### **187C Variation etc of conditions**

- (1) Where the PRA has imposed conditions required by a direction given by the FCA under section 187A(3)—
- (a) the FCA may direct the PRA to exercise its power under section 187(4) to vary or cancel any of those conditions;
  - (b) the PRA must consult the FCA before it exercises that power in relation to those conditions otherwise than in accordance with a direction under paragraph (a).
- (2) Where the FCA has imposed conditions required by a direction given by the PRA under section 187B(3)—
- (a) the PRA may direct the FCA to exercise its power under section 187(4) to vary or cancel any of those conditions;
  - (b) the FCA must consult the PRA before it exercises that power in relation to those conditions otherwise than in accordance with a direction under paragraph (a).]

### <sup>x13</sup>**188 Assessment: consultation with EC competent authorities**

- (1) The [appropriate regulator] must consult any appropriate home state regulator before making a determination under section 185 and, in doing so, must comply with such requirements as to consultation as may be prescribed.
- (2) Where the [appropriate regulator] makes a determination under section 185, it must indicate any views or reservations received from any home state regulator it consults in accordance with subsection (1).
- (3) The [appropriate regulator] must cooperate with any equivalent consultation by a host state regulator in relation to a UK authorised person.
- (4) In order to comply with an obligation under subsection (1) or (3), the [appropriate regulator] must provide the regulator with—
  - (a) any relevant information that it requests; and
  - (b) any information that the [appropriate regulator] considers that it needs.

#### **Annotations:**

#### **Editorial Information**

- X13** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

<sup>x14</sup>**189 Assessment: Procedure**

- (1) The [appropriate regulator] must act under section 185 within a period of 60 working days beginning with the day on which the [appropriate regulator] acknowledges receipt of the section 178 notice (“the assessment period”).
- (2) The assessment period may be interrupted, no more than once, in accordance with section 190.
- (3) The [appropriate regulator] must inform the section 178 notice-giver in writing of—
  - (a) the duration of the assessment period;
  - (b) its expiry date; and
  - (c) any change to the expiry date by virtue of section 190.
- (4) The [appropriate regulator] must, within two working days of acting under section 185 (and in any event no later than the expiry date of the assessment period)—
  - (a) notify the section 178 notice-giver that it has determined to approve the acquisition unconditionally; or
  - (b) give a warning notice stating that it proposes to—
    - (i) approve the acquisition subject to conditions; or
    - (ii) object to the acquisition.
- (5) Where the [appropriate regulator] gives a warning notice stating that it proposes to approve the acquisition subject to conditions—
  - (a) it must, in the warning notice, specify those conditions; and
  - (b) the conditions take effect as interim conditions.
- (6) The [appropriate regulator] is treated as having approved the acquisition if, at the expiry of the assessment period, it has neither—
  - (a) given notice under subsection (4); nor
  - (b) informed the section 178 notice-giver that the section 178 notice is incomplete.
- (7) If the [appropriate regulator] decides to approve an acquisition subject to conditions or to object to an acquisition it must give the section 178 notice-giver a decision notice.
- (8) Following receipt of a decision notice under this section, the section 178 notice-giver may refer the [appropriate regulator]'s decision to the Tribunal.

**Annotations:**

**Editorial Information**

- X14** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

<sup>x15</sup>**190 Requests for further information**

- (1) The [appropriate regulator] may, no later than the 50th working day of the assessment period, in writing ask the section 178 notice-giver to provide any further information necessary to complete its assessment.

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**Proposed Legislation:** *This version shows proposed changes to this legislation item. It has no official standing.*

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- (2) On the first occasion that the [appropriate regulator] asks for further information, the assessment period is interrupted from the date of the request until the date the [appropriate regulator] receives the requested information (“the interruption period”).
- (3) But the interruption period may not exceed 20 working days, unless subsection (4) applies.
- (4) The interruption period may not exceed 30 working days if the notice-giver—
  - (a) is situated or regulated outside the [<sup>F237</sup>European Union]; or
  - (b) is not subject to supervision under—
    - (i) the UCITS directive;
    - (ii) the insurance directives;
    - (iii) the markets in financial instruments directive;
    - (iv) the reinsurance directive; or
    - (v) the banking consolidation directive.
- (5) The [appropriate regulator] may make further requests for information (but a further request does not result in a further interruption of the assessment period).
- (6) The [appropriate regulator] must acknowledge in writing receipt of further information before the end of the second working day following receipt.

**Annotations:**

**Editorial Information**

**X15** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

**Amendments (Textual)**

**F237** Words in s. 190(4)(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. 4**

<sup>X16</sup>**191 Duration of approval**

- (1) Approval of an acquisition (whether granted unconditionally or subject to conditions) is effective for such period as the [appropriate regulator] may specify in writing.
- (2) Where the [appropriate regulator] has specified a period under subsection (1), it may extend the period.
- (3) Where the [appropriate regulator] has not specified a period, the approval is effective for one year beginning with the date—
  - (a) of the notice given under section 189(4)(a) or (b)(i);
  - (b) on which the [appropriate regulator] is treated as having given approval under section 189(6); or
  - (c) of a decision on a reference to the Tribunal which results in the person receiving approval.

**Annotations:**

**Editorial Information**

- X16** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Enforcement procedures

**191A Objection by the [appropriate regulator]**

- (1) The [appropriate regulator] may object to a person's control over a UK authorised person in any of the circumstances specified in subsection (2).
  - (2) The circumstances are that the [appropriate regulator] reasonably believes that—
    - (a) the person acquired or increased control without giving notice under section 178(1) in circumstances where notice was required;
    - (b) the person is in breach of a condition imposed under section 187; or
    - (c) there are grounds for objecting to control on the basis of the matters in section 186.
  - (3) The [appropriate regulator]—
    - (a) must take into account whether influence exercised by the person is likely to operate to the detriment of the sound and prudent management of the UK authorised person; and
    - (b) may take into account whether the person has co-operated with any information requests made or requirements imposed by the [appropriate regulator]
  - (4) If the [appropriate regulator] proposes to object to a person's control over a UK authorised person, it must give that person a warning notice.
- [(4A) Where the appropriate regulator is the PRA, it must consult the FCA before giving a warning notice under this section.]
- (4B) Where the appropriate regulator is the FCA, it must consult the PRA before giving a warning notice under this section if—
- (a) the UK authorised person has as a member of its immediate group a PRA-authorised person, or
  - (b) the person to whom the warning notice is given is a PRA-authorised person.]
- (5) The [appropriate regulator] must consult any appropriate home state regulator before giving a warning notice under this section and, in doing so, must comply with such requirements as to consultation as may be prescribed.
  - (6) If the [appropriate regulator] decides to object to a person's control over a UK authorised person, it must give that person a decision notice.
  - (7) A person to whom the [appropriate regulator] gives a decision notice under this section may refer the matter to the Tribunal.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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### **191B Restriction notices**

- (1) The [appropriate regulator] 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 UK authorised person by virtue of holding shares or voting power; and
  - (b) in relation to the shares or voting power, the [appropriate regulator] has given the person a warning notice or a decision notice under section 189 or 191A or a final notice which confirms a decision notice given under section 189 or 191A.

[(2A) Where the appropriate regulator is the PRA, it must consult the FCA before giving a restriction notice under this section.]

(2B) Where the appropriate regulator is the FCA, it must consult the PRA before giving a restriction notice under this section if—

- (a) the UK authorised person has as a member of its immediate group a PRA-authorised person, or
  - (b) the person to whom the restriction notice is given is a PRA-authorised person.]
- (3) In a restriction notice, the [appropriate regulator] 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;
    - (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 UK authorised person in question; and
    - (b) in the case of shares or voting power held in a parent undertaking of a UK authorised person, the parent undertaking.
  - (7) A person to whom the [appropriate regulator] gives a restriction notice may refer the matter to the Tribunal.

### **191C Orders for sale of shares**

- (1) The court may, on the application of the [appropriate regulator], order the sale of shares or the disposition of voting power in the following circumstances.

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (2) The circumstances are that—
- (a) a person has control over a UK authorised person 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 189 or section 191A.
- [(2A) Where the appropriate regulator is the PRA, it must consult the FCA before making an application to court under this section.]
- (2B) Where the appropriate regulator is the FCA, it must consult the PRA before making an application to court under this section if—
- (a) the UK authorised person has as a member of its immediate group a PRA-  
authorised person, or
  - (b) the person holding the shares or voting power is a PRA-  
authorised person.]
- (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.
- (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.

Notice of reductions of control of UK authorised persons

#### **191D Obligation to notify the [appropriate regulator]: dispositions of control**

- (1) A person who decides to reduce or cease to have control over a UK authorised person must give the [appropriate regulator] notice in writing before making the disposition.
- [(1A) The PRA must provide the FCA with a copy of any notice it receives under this section.]
- (1B) The FCA must provide the PRA with a copy of any notice it receives under this section which—
- (a) relates to a UK authorised person who has as a member of its immediate group a PRA-  
authorised person, or
  - (b) is given by a PRA-  
authorised person.]
- (2) 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.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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### **191E Requirements for notices under section 191D**

- (1) A notice under section 191D must be in such form, include such information and be accompanied by such documents as the [appropriate regulator] may reasonably require.
- (2) [Each regulator] must publish a list of its requirements as to the form, information and accompanying documents for a notice under section 191D.
- (3) The [appropriate regulator] may impose different requirements for different cases and may vary or waive requirements in particular cases.

### Offences

### **191F Offences under this Part**

- (1) A person who fails to comply with an obligation to notify the [appropriate regulator] under section 178(1) or 191D(1) is guilty of an offence.
- (2) A person who gives notice to the [appropriate regulator] under section 178(1) and makes the acquisition to which the notice relates before the expiry date of the assessment period is guilty of an offence unless the [appropriate regulator] has approved the acquisition or given a warning notice under section 189(4)(b)(i).
- (3) A person who contravenes an interim condition in a warning notice given under section 189(4)(b)(i) or a condition in a decision notice given under section 189(7) or a final notice which confirms a decision notice under that section is guilty of an offence.
- (4) A person who makes an acquisition in contravention of a warning notice given under section 189(4)(b)(ii) or a decision notice given under section 189(7) or a final notice which confirms a decision notice under that section is guilty of an offence.
- (5) A person who makes an acquisition after the [appropriate regulator] approval for the acquisition has ceased to be effective by virtue of section 191 is guilty of an offence.
- (6) A person who provides information to the [appropriate regulator] which is false in a material particular is guilty of an offence.
- (7) A person who breaches a direction contained in a restriction notice given under section 191B is guilty of an offence.
- (8) A person guilty of an offence under subsection (1) to (3) or (5) to (7) is liable—
  - (a) on summary conviction to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.
- (9) A person guilty of an offence under subsection (4) 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.

## Interpretation

### 191G Interpretation

(1) In this Part—

“acquisition” means the acquisition of control or of an increase in control over a UK authorised person;

“credit institution” means—

(a) a credit institution authorised under the banking consolidation 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;

“shares” has the same meaning as in section 422;

“UK authorised person” means an authorised person who—

(a) is a body incorporated in, or an unincorporated association formed under the law of, any part of the United Kingdom; and

(b) is not a person authorised as a result of paragraph 1 of Schedule 5; and

“voting power” has the same meaning as in section 422.

(2) For the purposes of this Part, 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 <sup>M20</sup>Banking and Financial Dealings Act 1971.]

**Annotations:**

**Marginal Citations**

M20 1971 c.80.

*Notice of control*

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*Acquiring, increasing and reducing control*

.....

*Acquiring or increasing control: procedure*

.....

*Improperly acquired shares*

.....

*Reducing control: procedure*

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*Offences*

.....

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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### *Miscellaneous*

#### **192 Power to change definitions of control etc.**

The Treasury may by order—

- (a) provide for exemptions from the obligations to notify imposed by sections 178 and [F238 191D];
- (b) amend section [F239 181] by varying, or removing, any of the cases in which a person is treated as [F240 acquiring] control over a UK authorised person or by adding a case;
- (c) amend section [F241 182] by varying, or removing, any of the cases in which a person is treated as increasing control over a UK authorised person or by adding a case;
- (d) amend section [F242 183] by varying, or removing, any of the cases in which a person is treated as [F243 reducing or ceasing to have] his control over a UK authorised person or by adding a case;
- (e) amend section 422 by varying, or removing, any of the cases in which a person is treated as being a controller of a person or by adding a case.

#### **Annotations:**

##### **Amendments (Textual)**

- F238** Words in s. 192(a) substituted (21.3.2009) by [The Financial Services and Markets Act 2000 \(Controllers\) Regulations 2009 \(S.I. 2009/534\)](#), [reg. 4\(a\)](#)
- F239** Words in s. 192(b) substituted (21.3.2009) by [The Financial Services and Markets Act 2000 \(Controllers\) Regulations 2009 \(S.I. 2009/534\)](#), [reg. 4\(b\)\(i\)](#)
- F240** Word in s. 192(b) substituted (21.3.2009) by [The Financial Services and Markets Act 2000 \(Controllers\) Regulations 2009 \(S.I. 2009/534\)](#), [reg. 4\(b\)\(ii\)](#)
- F241** Words in s. 192(c) substituted (21.3.2009) by [The Financial Services and Markets Act 2000 \(Controllers\) Regulations 2009 \(S.I. 2009/534\)](#), [reg. 4\(c\)](#)
- F242** Words in s. 192(d) substituted (21.3.2009) by [The Financial Services and Markets Act 2000 \(Controllers\) Regulations 2009 \(S.I. 2009/534\)](#), [reg. 4\(d\)\(i\)](#)
- F243** Words in s. 192(d) substituted (21.3.2009) by [The Financial Services and Markets Act 2000 \(Controllers\) Regulations 2009 \(S.I. 2009/534\)](#), [reg. 4\(d\)\(ii\)](#)

##### **Commencement Information**

- I47** [S. 192](#) wholly in force at 1.12.2001; [s. 192](#) not in force at Royal Assent see [s. 431\(2\)](#); [s. 192\(a\)](#) in force at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(a\)](#), [Sch. Pt. 1](#); [s. 192](#) in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

## **[PART 12A**

### **POWER OF DIRECTION IN RELATION TO PARENT UNDERTAKINGS**

#### **192A Meaning of “qualifying authorised person”**

- (1) In this Part “qualifying authorised person” means an authorised person satisfying the following conditions.

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (2) Condition A is that the authorised person is a body corporate incorporated in any part of the United Kingdom.
- (3) Condition B is that the authorised person is—
  - (a) a PRA-authorised person, or
  - (b) an investment firm.
- (4) The Treasury may by order—
  - (a) amend subsection (3) so as to add to or restrict the descriptions of authorised person who can be qualifying authorised persons, or
  - (b) provide that while the order is in force subsection (3) is not to have effect.
- (5) Except as provided by subsection (6), an order under subsection (4) is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (6) An order under subsection (4) may be made without a draft having been laid and approved as mentioned in subsection (5) if the order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved.
- (7) An order under subsection (4) made in accordance with subsection (6)—
  - (a) must be laid before Parliament after being made, and
  - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without affecting anything done under the order or the power to make a new order).
- (8) The “relevant period” is a period of 28 days beginning with the day on which the order is made.
- (9) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

## **192B Power to direct parent undertaking of qualifying authorised person**

- (1) The appropriate regulator may give a direction under this section to a parent undertaking of a qualifying authorised person if the following conditions are satisfied.
- (2) Condition A is that the parent undertaking is a body corporate incorporated in any part of the United Kingdom.
- (3) Condition B is that the parent undertaking is not itself an authorised person.
- (4) Condition C is that the parent undertaking is a financial institution of a kind prescribed by the Treasury by order.
- (5) Condition D is that the appropriate regulator considers that the acts or omissions of the parent undertaking are having or may have a material adverse effect on the regulation by the regulator of one or more qualifying authorised persons in pursuance of the regulator’s objectives.
- (6) In deciding whether to give a direction under this section, a regulator must have regard  
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**Proposed Legislation:** *This version shows proposed changes to this legislation item. It has no official standing.*

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- (a) to the desirability where practicable of exercising its powers in relation to authorised persons rather than its powers under this section, and
  - (b) to the principle that a burden or restriction which is imposed on a person should be proportionate to the benefits, considered in general terms, which are expected to result from its imposition.
- (7) “The appropriate regulator” means—
- (a) where the qualifying authorised person mentioned in subsection (1) is a PRA-  
authorised person, the FCA or the PRA;
  - (b) in any other case, the FCA.
- (8) The Treasury may by order—
- (a) amend subsection (4) by omitting the words “a financial institution”, and
  - (b) make any amendment of subsection (2) that they consider desirable in  
connection with an amendment made under paragraph (a).

### **192C Requirements that may be imposed**

- (1) A direction under section 192B may require the parent undertaking—
  - (a) to take specified action, or
  - (b) to refrain from taking specified action.
- (2) A requirement may be imposed by reference to the parent undertaking’s relationship  
with—
  - (a) its group, or
  - (b) other members of its group.
- (3) A requirement may refer to the past conduct of the parent undertaking (for example,  
by requiring the parent undertaking to review or take remedial action in respect of  
past conduct).
- (4) The direction must specify the period during which each requirement remains in force.

### **192D Direction: procedure**

- (1) If a regulator proposes to give a direction under section 192B, or gives such a direction  
with immediate effect, it must give written notice to—
  - (a) the parent undertaking to which the direction is given (or to be given) (“P”),  
and
  - (b) any authorised person who will, in the opinion of the regulator, be significantly  
affected by the direction.
- (2) In the following provisions of this section “notified person” means a person to whom  
notice under subsection (1) is given.
- (3) A direction under section 192B takes effect—
  - (a) immediately, if the notice under subsection (1) states that that is the case,
  - (b) on such other date as may be specified in the notice, or
  - (c) if no date is specified in the notice, when the matter to which the notice relates  
is no longer open to review.

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- (4) A direction may be expressed to take effect immediately (or on a specified date) only if the regulator reasonably considers that it is necessary for the direction to take effect immediately (or on that date).
- (5) The notice under subsection (1) must—
- (a) give details of the direction,
  - (b) state the regulator’s reasons for the direction and for its determination as to when the direction takes effect,
  - (c) inform the notified person that the person may make representations to the regulator within such period as may be specified in the notice (whether or not the notified person has referred the matter to the Tribunal), and
  - (d) inform the notified person of the person’s right to refer the matter to the Tribunal.
- (6) The regulator may extend the period allowed under the notice for making representations.
- (7) If, having considered any representations made by any notified person, the regulator decides—
- (a) to give the direction proposed, or
  - (b) if the direction has been given, not to revoke the direction,
- it must give each of the notified persons written notice.
- (8) If, having considered any representations made by any notified person, the regulator decides—
- (a) not to give the direction proposed,
  - (b) to give a different direction, or
  - (c) to revoke a direction which has effect,
- it must give each of the notified persons written notice.
- (9) A notice given under subsection (7) must inform the notified person of the person’s right to refer the matter to the Tribunal.
- (10) A notice under subsection (8)(b) must comply with subsection (5).
- (11) If a notice informs the notified person of the person’s right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (12) For the purposes of subsection (3)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

#### **192E Consultation between regulators**

- (1) Before the PRA gives a notice under section 192D(1) or (8)(b), it must consult the FCA.
- (2) Before the FCA gives a notice under section 192D(1) or (8)(b) in relation to the parent undertaking of a PRA-authorized person, the FCA must consult the PRA.

#### **192F References to Tribunal**

- (1) A notified person who is aggrieved by the exercise by either regulator of its powers in relation to directions under section 192B may refer the matter to the Tribunal.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (2) “Notified person” is to be read in accordance with subsection (2) of section 192D, except that it includes a person to whom a notice under subsection (1) of that section ought to have been given.

### **192G Enforcement**

- (1) The court may, on the application of the regulator which gave a direction under section 192B, order the person to whom the direction was given to comply with the direction.
- (2) “The court” means—
- (a) the High Court, or
  - (b) in Scotland, the Court of Session.

### **192H Statement of policy**

- (1) Each regulator must prepare and issue a statement of policy with respect to the giving of directions under section 192B.
- (2) A regulator may at any time alter or replace a statement issued under this section.
- (3) If a statement issued under this section is altered or replaced, the regulator must issue the altered or replacement statement.
- (4) In exercising or deciding whether to exercise its power under section 192B in any particular case, a regulator must have regard to any statement published under this section and for the time being in force.
- (5) A statement under this section must be published by the regulator concerned in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (6) A regulator may charge a reasonable fee for providing a person with a copy of a statement published under this section.
- (7) A regulator must, without delay, give the Treasury a copy of any statement which the regulator publishes under this section.

### **192I Statement of policy: procedure**

- (1) Before issuing a statement of policy under section 192H, a regulator (“the issuing regulator”) must—
- (a) consult the other regulator, and
  - (b) publish a draft of the proposed statement in the way appearing to the issuing regulator to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the issuing regulator within a specified time.
- (3) Before issuing the proposed statement, the issuing regulator must have regard to any representations made to it in accordance with subsection (2).
- (4) If the issuing regulator issues the proposed statement it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with subsection (2), and
  - (b) its response to them.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (5) If the statement differs from the draft published under subsection (2) in a way which is, in the opinion of the issuing regulator, significant, the issuing regulator—
- (a) must before issuing it consult the other regulator again, and
  - (b) must (in addition to complying with subsection (4)), publish details of the difference.
- (6) The issuing regulator may charge a reasonable fee for providing a person with a draft published under subsection (1)(b).
- (7) This section also applies to a proposal to alter or replace a statement.]

### PART XIII

#### INCOMING FIRMS: INTERVENTION BY [FCA OR PRA]

##### Annotations:

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

- C377 Pt. XIII (ss. 193-204) modified (1.12.2001) by S.I. 2001/3592, arts. 1(2), 114(3)(a) (with art. 23(2))  
Pt. XIII (ss. 193-204) extended (1.12.2001) by S.I. 2001/2636, arts. 1(2)(b), 32; S.I. 2001/3538, art. 2(1)  
Pt. XIII (ss. 193-204) extended (5.10.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/3084, art. 2(7); S.I. 2001/3538, art. 2(1)  
Pt XIII (ss. 193-204) excluded (1.12.2001) by S.I. 2001/3592, art. 107(2) (with art. 23(2))

##### *Interpretation*

#### 193 Interpretation of this Part.

- (1) In this Part—
- “additional procedure” means the procedure described in section 199;
  - “incoming firm” means—
    - (a) an EEA firm which is exercising, or has exercised, its right to carry on a regulated activity in the United Kingdom in accordance with Schedule 3; or
    - (b) a Treaty firm which is exercising, or has exercised, its right to carry on a regulated activity in the United Kingdom in accordance with Schedule 4; and
  - “power of intervention” means the power conferred on [the FCA or the PRA] by section 196.
- (2) In relation to an incoming firm which is an EEA firm, expressions used in this Part and in Schedule 3 have the same meaning in this Part as they have in that Schedule.

#### 194 General grounds on which power of intervention is exercisable.

- (1) The [appropriate regulator] may exercise its power of intervention in respect of an incoming firm if it appears to it that—

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (a) the firm has contravened, or is likely to contravene, a requirement which is imposed on it by or under this Act (in a case where the [appropriate regulator] is responsible for enforcing compliance in the United Kingdom);
- (b) the firm has, in purported compliance with any requirement imposed by or under this Act, knowingly or recklessly given the [appropriate regulator] information which is false or misleading in a material particular; or
- <sup>F244</sup>(c) it is desirable to exercise the power in order to ~~[meet any of its regulatory objectives].~~  
[advance—
  - (i) in the case of the FCA, any of its operational objectives, and
  - (ii) in the case of the PRA, any of its objectives.]

<sup>F245</sup>(1A) For the purposes of subsection (1)(c) it does not matter whether there is a relationship between the incoming firm and the persons whose interests will be protected by the exercise of the power of intervention.]

[(1B) The "appropriate regulator" means—

- (a) where the incoming firm is a PRA-authorized person, the FCA or the PRA;
- (b) in any other case, the FCA.]

- (2) Subsection (3) applies to an incoming EEA firm falling within sub-paragraph (a) or (b) of paragraph 5 of Schedule 3 which is exercising an EEA right to carry on any Consumer Credit Act business in the United Kingdom.
- (3) The [FCA] may exercise its power of intervention in respect of the firm if <sup>F246</sup>the Office of Fair Trading] has informed the [FCA] that—
  - (a) the firm,
  - (b) any of the firm's employees, agents or associates (whether past or present), or
  - (c) if the firm is a body corporate, a controller of the firm or an associate of such a controller,
 has done any of the things specified in paragraphs <sup>F247</sup>(a) to (e) of section 25(2A)] of the <sup>M21</sup>Consumer Credit Act 1974.
- (4) "Associate", "Consumer Credit Act business" and "controller" have the same meaning as in section 203.

**Annotations:**

**Amendments (Textual)**

- F244** S. 194(1)(c) substituted (8.6.2010) by [Financial Services Act 2010 \(c. 28\), ss. 3\(5\)\(a\)](#), 26(2)
- F245** S. 194(1A) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\), ss. 3\(5\)\(b\)](#), 26(2)
- F246** Words in s. 194(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 40\(6\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with art. 3)
- F247** Words in s. 194(3) substituted (6.4.2008) by [Consumer Credit Act 2006 \(c. 14\), ss. 33\(7\)](#), 71(2); [S.I. 2007/3300, art. 3\(2\)](#), Sch. 2

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

- C378** S. 194 applied (1.12.2001) by [S.I. 2001/3592, arts. 1\(2\)](#), 12(3)(b), 18(4)(b), 21(3) (with art. 23(2))
- S. 194 amended (*temp.* from 3.9.2001 to 1.12.2001) by [S.I. 2001/2659, arts. 1\(2\)](#), 3(5); [S.I. 2001/3538, art. 2\(1\)](#)

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

#### Commencement Information

**I48** S. 194 wholly in force at 1.12.2001; s. 194 not in force at Royal Assent see s. 431(2); s. 194 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632, art. 2\(2\)](#), [Sch. Pt. 2](#); s. 194 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538, art. 2\(1\)](#)

#### Marginal Citations

**M21** 1974 c. 39.

### [<sup>F248</sup>194A] **Contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive: [appropriate regulator] primarily responsible for securing compliance**

- (1) This section applies if—
  - (a) a relevant EEA firm has a branch in the United Kingdom; and
  - (b) the [appropriate regulator] ascertains that the firm has contravened, or is contravening, a requirement falling within subsection (3) (in a case to which Article 62.2 of the markets in financial instruments directive applies).
- (2) “Relevant EEA firm” means an EEA firm falling within paragraph 5(a) or (b) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the markets in financial instruments directive.
- (3) A requirement falls within this subsection if it is imposed on the firm—
  - (a) by any provision of or made under this Act which implements the markets in financial instruments directive; or
  - (b) by any directly applicable Community regulation made under that directive.
- (4) The [appropriate regulator] must give the firm written notice which—
  - (a) requires the firm to put an end to the contravention;
  - (b) states that the [appropriate regulator's] power of intervention will become exercisable in relation to the firm if the firm continues the contravention; and
  - (c) indicates any requirements that the [appropriate regulator] proposes to impose on the firm in exercise of its power of intervention in the event of the power becoming exercisable.
- (5) The [appropriate regulator] may exercise its power of intervention in respect of the firm if—
  - (a) a reasonable time has expired since the giving of the notice under subsection (4);
  - (b) the firm has failed to put an end to the contravention within that time; and
  - (c) the [appropriate regulator] has informed the firm's home state regulator of its intention to exercise its power of intervention in respect of the firm.
- (6) Subsection (5) applies whether or not the [appropriate regulator's] power of intervention is also exercisable as a result of section 194.
- (7) If the [appropriate regulator] exercises its power of intervention in respect of a relevant EEA firm by virtue of subsection (5), it must at the earliest opportunity inform the firm's home state regulator and the Commission of—
  - (a) the fact that the [appropriate regulator] has exercised that power in respect of the firm; and

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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(b) any requirements it has imposed on the firm in exercise of the power.]

[(8) The "appropriate regulator" means—

- (a) where the relevant EEA firm is a PRA-~~authorised person, the FCA or the PRA;~~
- (b) in any other case, the FCA.]

**Annotations:**

**Amendments (Textual)**

**F248** S. 194A inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(1), [Sch. 1 para. 2](#)

**195 Exercise of power in support of overseas regulator.**

- (1) The [appropriate regulator] may exercise its power of intervention in respect of an incoming firm at the request of, or for the purpose of assisting, an overseas regulator.
- (2) Subsection (1) applies whether or not the [appropriate regulator's] power of intervention is also exercisable as a result of section 194.

[(2A) The "appropriate regulator" means—

- (a) where the incoming firm is a PRA-~~authorised person, the FCA or the PRA;~~
- (b) in any other case, the FCA.]

(3) "An overseas regulator" means an authority in a country or territory outside the United Kingdom—

- (a) which is a home state regulator; or
- (b) which exercises any function of a kind mentioned in subsection (4).

(4) The functions are—

- (a) a function corresponding to any function of [either regulator] under this Act;
- (b) [~~a function corresponding to any function exercised by the competent authority under Part VI<sup>F249</sup> ...;~~]
- (c) a function corresponding to any function exercised by the Secretary of State under [<sup>F250</sup>the Companies Acts (as defined in section 2 of the Companies Act 2006)];
- (d) a function in connection with —
  - (i) the investigation of conduct of the kind prohibited by Part V of the <sup>M22</sup>Criminal Justice Act 1993 (insider dealing); or
  - (ii) the enforcement of rules (whether or not having the force of law) relating to such conduct;
- (e) a function prescribed by regulations made for the purposes of this subsection which, in the opinion of the Treasury, relates to companies or financial services.

(5) If—

- (a) a request to the [appropriate regulator] for the exercise of its power of intervention has been made by a home state regulator in pursuance of [<sup>F251</sup>an EU] obligation, or

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (b) a home state regulator has notified the [appropriate regulator] that an EEA firm's EEA authorisation has been withdrawn, the [appropriate regulator] must, in deciding whether or not to exercise its power of intervention, consider whether exercising it is necessary in order to comply with [<sup>F251</sup>an EU] obligation.
- (6) In deciding in any case in which the [appropriate regulator] does not consider that the exercise of its power of intervention is necessary in order to comply with [<sup>F251</sup>an EU] obligation, it may take into account in particular—
- (a) whether in the country or territory of the overseas regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;
  - (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
  - (c) the seriousness of the case and its importance to persons in the United Kingdom;
  - (d) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (7) The [appropriate regulator] may decide not to exercise its power of intervention, in response to a request, unless the regulator concerned undertakes to make such contribution to the cost of its exercise as the [appropriate regulator] considers appropriate.
- (8) Subsection (7) does not apply if the [appropriate regulator] decides that it is necessary for it to exercise its power of intervention in order to comply with [<sup>F251</sup>an EU] obligation.

#### Annotations:

##### Amendments (Textual)

**F249** Words in s. 195(4)(b) omitted (1.7.2005) by virtue of [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 13](#)

**F250** Words in s. 195(4)(c) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), [Sch. 4 para. 92](#)

**F251** Words in s. 195(5)(6)(8) 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\(1\)\(3\)\(4\)](#)

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

**C379** S. 195 amended (*temp.* from 3.9.2001 to 1.12.2001) by [S.I. 2001/2659](#), [arts. 1\(2\)](#), 3(5); [S.I. 2001/3538](#), [art. 2\(1\)](#)

##### Commencement Information

**I49** S. 195 wholly in force at 1.12.2001; s. 195 not in force at Royal Assent see s. 431(2); s. 195 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), [art. 2\(2\)](#), [Sch. Pt. 2](#); s. 195 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

##### Marginal Citations

**M22** 1993 c. 36.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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**[<sup>F252</sup>195A] Contravention by relevant EEA firm of requirement under markets in financial instruments directive: home state regulator primarily responsible for securing compliance**

- (1) This section applies if the [appropriate regulator] has clear and demonstrable grounds for believing that a relevant EEA firm has contravened, or is contravening, a requirement falling within subsection (2) (in a case to which Article 62.1 or 62.3 of the markets in financial instruments directive applies).
- (2) A requirement falls within this subsection if it is imposed on the firm—
  - (a) by or under any provision adopted in the firm's home state for the purpose of implementing the markets in financial instruments directive; or
  - (b) by any directly applicable Community regulation made under that directive.
- (3) The [appropriate regulator] must notify the firm's home state regulator of the situation mentioned in subsection (1).
- (4) The notice under subsection (3) must—
  - (a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the firm puts an end to the contravention;
  - (b) state that the [appropriate regulator]'s power of intervention is likely to become exercisable in relation to the firm if the firm continues the contravention; and
  - (c) indicate any requirements that the [appropriate regulator] proposes to impose on the firm in exercise of its power of intervention in the event of the power becoming exercisable.
- (5) The [appropriate regulator] may exercise its power of intervention in respect of the firm if—
  - (a) a reasonable time has expired since the giving of the notice under subsection (3); and
  - (b) conditions A to C are satisfied.
- (6) Condition A is that—
  - (a) the firm's home state regulator has failed or refused to take measures for the purpose mentioned in subsection (4)(a); or
  - (b) any measures taken by the home state regulator have proved inadequate for that purpose.
- (7) Condition B is that the firm is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom or the orderly functioning of the markets.
- (8) Condition C is that the [appropriate regulator] has informed the firm's home state regulator of its intention to exercise its power of intervention in respect of the firm.
- (9) Subsection (5) applies whether or not the [appropriate regulator]'s power of intervention is also exercisable as a result of section 194 or 195.
- (10) If the [appropriate regulator] exercises its power of intervention in respect of a relevant EEA firm by virtue of subsection (5), it must at the earliest opportunity inform the Commission of—
  - (a) the fact that the [appropriate regulator] has exercised that power in respect of the firm; and
  - (b) any requirements it has imposed on the firm in exercise of the power.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

(11) In this section—

[“the appropriate regulator” means—

(a) where the relevant EEA firm is a PRA-~~authorised person, the FCA or the PRA;~~

(b) in any other case, the FCA;]

“home state”, in relation to a relevant EEA firm, means—

(a) in the case of a firm which is a body corporate, the EEA State in which the firm has its registered office or, if it has no registered office, its head office; and

(b) in any other case, the EEA State in which the firm has its head office; “relevant EEA firm” has the same meaning as in section 194A.]

**Annotations:**

**Amendments (Textual)**

**F252** S. 195A inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(1), [Sch. 1 para. 3](#)

**[196 The power of intervention.**

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

(a) the firm’s permission was a Part 4A permission; and

(b) the regulator was entitled to exercise its power under section 55L(3) or 55M(3).

(2) The FCA must consult the PRA before exercising its powers by virtue of this section in relation to—

(a) a PRA-~~authorised person, or~~

(b) a member of a group which includes a PRA-~~authorised person.~~

(3) The PRA must consult the FCA before exercising its powers by virtue of this section.]

*Exercise of power of intervention*

**197 Procedure on exercise of power of intervention.**

(1) A requirement takes effect—

(a) immediately, if the notice given under subsection (3) states that that is the case;

(b) on such date as may be specified in the notice; or

(c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

(2) A requirement may be expressed to take effect immediately (or on a specified date) only if the [regulator], having regard to the ground on which it is exercising its power of intervention, considers that it is necessary for the requirement to take effect immediately (or on that date).

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (3) If [a regulator] proposes to impose a requirement under section 196 on an incoming firm, or imposes such a requirement with immediate effect, it must give the firm written notice.
- (4) The notice must—
- (a) give details of the requirement;
  - (b) inform the firm of when the requirement takes effect;
  - (c) state the [regulator's] reasons for imposing the requirement and for its determination as to when the requirement takes effect;
  - (d) inform the firm that it may make representations to the [regulator] within such period as may be specified in the notice (whether or not it has referred the matter to the Tribunal); and
  - (e) inform it of its right to refer the matter to the Tribunal.
- (5) The [regulator] may extend the period allowed under the notice for making representations.
- (6) If, having considered any representations made by the firm, the [regulator] decides—
- (a) to impose the requirement proposed, or
  - (b) if it has been imposed, not to rescind the requirement,
- it must give it written notice.
- (7) If, having considered any representations made by the firm, the [regulator] decides—
- (a) not to impose the requirement proposed,
  - (b) to impose a different requirement from that proposed, or
  - (c) to rescind a requirement which has effect,
- it must give it written notice.
- (8) A notice given under subsection (6) must inform the firm of its right to refer the matter to the Tribunal.
- (9) A notice under subsection (7)(b) must comply with subsection (4).
- (10) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

#### Annotations:

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

- C381** S. 197 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2), 3(5)**; S.I. 2001/3538, **art. 2(1)**  
 S. 197 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 61(4), 110(5), 115(4)** (with art. 23(2))
- C382** S. 197(1)(c) excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 18(5), 21(4)** (with art. 23(2))
- C383** S. 197(3) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 12(1), 18(1)(a), 20(1)** (with art. 23(2))  
 S. 197(3) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 72(2)** (with art. 23(2))
- C384** S. 197(7) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 23(1)** (with art. 23(2))

##### Commencement Information

- I51** S. 197 wholly in force at 1.12.2001; s. 197 not in force at Royal Assent see s. 431(2); s. 197 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2(2), Sch. Pt. 2**; s. 197 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

## 198 Power to apply to court for injunction in respect of certain overseas insurance companies.

- (1) This section applies if the [PRA] has received a request made in respect of an incoming EEA firm in accordance with—
  - (a) Article 20.5 of the first non-life insurance directive; <sup>F253</sup> ...
  - <sup>F254</sup>(b) Article 37.5 of the life assurance consolidation directive] <sup>F255</sup>; or
  - (c) Article 42.4 of the reinsurance directive]
- (2) The court may, on an application made to it by the [PRA] with respect to the firm, grant an injunction restraining (or in Scotland an interdict prohibiting) the firm disposing of or otherwise dealing with any of its assets.
- (3) If the court grants an injunction, it may by subsequent orders make provision for such incidental, consequential and supplementary matters as it considers necessary to enable the [PRA] to perform any of its functions under this Act.
- (4) “The court” means—
  - (a) the High Court; or
  - (b) in Scotland, the Court of Session.

### Annotations:

#### Amendments (Textual)

- F253** Word in s. 198(1)(a) omitted (10.12.2007) by virtue of [The Reinsurance Directive Regulations 2007](#) (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 3(a)**
- F254** S. 198(1)(b) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004](#) (S.I. 2004/3379), **reg. 6(3)**
- F255** S. 198(1)(c) and preceding word inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007](#) (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 3(b)**

## 199 Additional procedure for EEA firms in certain cases.

- (1) This section applies if it appears to [the] [either regulator] that its power of intervention is exercisable in relation to an EEA firm exercising EEA rights in the United Kingdom (“an incoming EEA firm”) in respect of the contravention of a relevant requirement.
- (2) A requirement is relevant if—
  - (a) it is imposed by [the] [either regulator] under this Act; and
  - <sup>F256</sup>(b) as respects its contravention, the single market directive in question provides that a procedure of the kind set out in the following provisions of this section (so far as they are relevant in the firm's case) is to apply.]
- (3) The [regulator] must, in writing, require the firm to remedy the situation.
- <sup>F257</sup>(3A) If the firm falls within paragraph 5(da) of Schedule 3, the [regulator] must at the same time as it gives notice to the firm under subsection (3) refer its findings to the firm's home state regulator.
- (3B) Subsections (4) to (8) apply to an incoming EEA firm other than a firm falling within paragraph 5(da) of Schedule 3.]

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**Proposed Legislation:** *This version shows proposed changes to this legislation item. It has no official standing.*

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- (4) If the firm fails to comply with the requirement under subsection (3) within a reasonable time, the [regulator] must give a notice to that effect to the firm's home state regulator requesting it—
- (a) to take all appropriate measures for the purpose of ensuring that the firm remedies the situation which has given rise to the notice; and
  - (b) to inform the [regulator] of the measures it proposes to take or has taken or the reasons for not taking such measures.
- (5) Except as mentioned in subsection (6), the [regulator] may not exercise its power of intervention [F258 before informing the firm's home state regulator and ] unless satisfied —
- (a) that the firm's home state regulator has failed or refused to take measures for the purpose mentioned in subsection (4)(a); or
  - (b) that the measures taken by the home state regulator have proved inadequate for that purpose.
- (6) If the [regulator] decides that it should exercise its power of intervention in respect of the incoming EEA firm as a matter of urgency in order to protect the interests of consumers, it may exercise that power—
- (a) before complying with subsections (3) and (4); or
  - (b) where it has complied with those subsections, before it is satisfied as mentioned in subsection (5).
- (7) In such a case the [regulator] must at the earliest opportunity inform the firm's home state regulator and the Commission.
- (8) If—
- (a) the [regulator] has (by virtue of subsection (6)) exercised its power of intervention before complying with subsections (3) and (4) or before it is satisfied as mentioned in subsection (5), and
  - (b) the Commission decides under any of the single market directives [F259 (other than the markets in financial instruments directive)] that the [regulator] must rescind or vary any requirement imposed in the exercise of its power of intervention,
- the [regulator] must in accordance with the decision rescind or vary the requirement.
- [F260 (9) In the case of a firm falling within paragraph 5(da) of Schedule 3, the [regulator] may not exercise its power of intervention before informing the firm's home state regulator and unless satisfied—
- (a) that the firm's home state regulator has failed or refused to take all appropriate measures for the purpose of ensuring that the firm remedies the situation which gave rise to the notice under subsection (3); or
  - (b) that the measures taken by the home state regulator have proved inadequate for that purpose.]

#### Annotations:

#### Amendments (Textual)

**F256** S. 199(2)(b) substituted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 4\(a\)](#)

**F257** S. 199(3A)(3B) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 4\(b\)](#)

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- F258** Words in s. 199(5) inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 4(c)**
- F259** Words in s. 199(2)(b)(8)(b) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(1), **Sch. 1 para. 4**
- F260** S. 199(9) inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 4(d)**

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

- C385** S. 199 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 37, 52(4); S.I. 2001/3538, **art. 2(1)**  
S. 199 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 22(6) (with art. 23(2))
- C386** S. 199(7) modified (1.12.2001) by S.I. 2001/3084, **arts. 1(1)(b)**, 2(7); S.I. 2001/3538, **art. 2(1)**

**Commencement Information**

- I52** S. 199 wholly in force at 1.12.2001; s. 199 not in force at Royal Assent see s. 431(2); s. 199 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2(2)**, **Sch. Pt. 2**; s. 199 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

*Supplemental*

**200 Rescission and variation of requirements.**

- (1) [Either regulator] may rescind or vary a requirement imposed in exercise of its power of intervention on its own initiative or on the application of the person subject to the requirement.
- (2) The power of [either regulator] on its own initiative to rescind a requirement is exercisable by written notice given by the [regulator] to the person concerned, which takes effect on the date specified in the notice.
- (3) Section 197 applies to the exercise of the power of the [regulator] on its own initiative to vary a requirement as it applies to the imposition of a requirement.
- (4) If the [regulator] proposes to refuse an application for the variation or rescission of a requirement, it must give the applicant a warning notice.
- (5) If [either regulator] decides to refuse an application for the variation or rescission of a requirement—
  - (a) [the regulator] must give the applicant a decision notice; and
  - (b) that person may refer the matter to the Tribunal.

**Annotations:**

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

- C387** S. 200 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 4(2) (with art. 23(2))
- C388** S. 200(2)-(5) excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 61(4), 110(5), 115(4) (with art. 23(2))
- C389** S. 200(5)(a) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 7(3)(4) (with art. 23(2))

**201 Effect of certain requirements on other persons.**

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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[If either regulator, in exercising its power of intervention, imposes on an incoming firm a requirement of the kind mentioned in subsection (4) of section 55P, the requirement has the same effect in relation to the firm as it would have in relation to an authorised person if it had been imposed on the authorised person by the regulator acting under section 55L or 55M.]

## 202 Contravention of requirement imposed under this Part.

- (1) Contravention of a requirement imposed by [a regulator] under this Part does not—
- (a) make a person guilty of an offence;
  - (b) make any transaction void or unenforceable; or
  - (c) (subject to subsection (2)) give rise to any right of action for breach of statutory duty.
- (2) In prescribed cases the contravention is actionable at the suit of a 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.

### Annotations:

#### Commencement Information

**I53** S. 202 wholly in force at 3.9.2001; s. 202 not in force at Royal Assent see s. 431(2); s. 202(2) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 202 in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**

### *Powers of* [F<sup>261</sup>Office of Fair Trading]

### Annotations:

#### Amendments (Textual)

**F261** S. 203: words in cross-heading substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(7)(c)**; S.I. 2003/766, art. 2, **Sch.** (with art. 3)

## 203 Power to prohibit the carrying on of Consumer Credit Act business.

- (1) If it appears to [F<sup>262</sup> the Office of Fair Trading (“the OFT”)] that subsection (4) has been, or is likely to be, contravened as respects a consumer credit EEA firm, [F<sup>263</sup>it] may by written notice given to the firm impose on the firm a consumer credit prohibition.
- (2) If it appears to the [F<sup>264</sup> OFT ] that a restriction imposed under section 204 on an EEA consumer credit firm has not been complied with, [F<sup>265</sup>it] may by written notice given to the firm impose a consumer credit prohibition.
- (3) “Consumer credit prohibition” means a prohibition on carrying on, or purporting to carry on, in the United Kingdom any Consumer Credit Act business which consists of or includes carrying on one or more listed activities.
- (4) This subsection is contravened as respects a firm if—

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (a) the firm or any of its employees, agents or associates (whether past or present),  
or
- (b) if the firm is a body corporate, any controller of the firm or an associate of  
any such controller,
- does any of the things specified in paragraphs [F266(a) to (e) of section 25(2A)] of the  
M23 Consumer Credit Act 1974.
- (5) A consumer credit prohibition may be absolute or may be imposed—
- (a) for such period,  
(b) until the occurrence of such event, or  
(c) until such conditions are complied with,  
as may be specified in the notice given under subsection (1) or (2).
- (6) Any period, event or condition so specified may be varied by the [F267 OFT ]  
on the application of the firm concerned.
- (7) A consumer credit prohibition may be withdrawn by written notice served by the [F267  
OFT ] on the firm concerned, and any such notice takes effect on such date as  
is specified in the notice.
- (8) Schedule 16 has effect as respects consumer credit prohibitions and restrictions under  
section 204.
- (9) A firm contravening a prohibition under this section is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;  
(b) on conviction on indictment, to a fine.
- (10) In this section and section 204—
- “a consumer credit EEA firm” means an EEA firm falling within any of  
paragraphs (a) to (c) of paragraph 5 of Schedule 3 whose EEA authorisation  
covers any Consumer Credit Act business;
- “Consumer Credit Act business” means consumer credit business,  
consumer hire business or ancillary credit business;
- “consumer credit business”, “consumer hire business” and “ancillary credit  
business” have the same meaning as in the M24 Consumer Credit Act 1974;
- “listed activity” means an activity listed in [F268 Annex 1 to the banking  
consolidation directive] or the Annex to the investment services directive;
- “associate” has the same meaning as in section [F269 25(2A)] of the  
M25 Consumer Credit Act 1974;
- “controller” has the meaning given by section 189(1) of that Act.

#### Annotations:

##### Amendments (Textual)

- F262** Words in s. 203(1) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(7)(a); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F263** Word in s. 203(1) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(7)(a); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F264** Words in s. 203(2) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(7)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F265** Word in s. 203(2) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(7)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- F266** Words in s. 203(4) substituted (6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), **ss. 33(7)**, 71(2); S.I. 2007/3300, **art. 3(2)**, Sch. 2
- F267** Words in s. 203(6)(7) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 40(7)(c)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F268** S. 203(10): words in definition of "listed activity" substituted (22.11.2000) by S.I. 2000/2952, **reg. 8(2)**
- F269** S. 203(10): words in definition of "associate" substituted (6.4.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), **ss. 33(8)**, 71(2); S.I. 2007/3300, **art. 3(2)**, Sch. 2

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

- C390** S. 203 applied (with modifications) (1.5.2009 for certain purposes and 1.11.2009 otherwise) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2), **26(1)** (with reg. 3)
- C391** S. 203 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), **reg. 31(1)** (with reg. 3)
- C392** S. 203(5) modified (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 53(2); S.I. 2001/3538, **art. 2(1)**

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**Marginal Citations**

- M23** 1974 c. 39.  
**M24** 1974 c. 39.  
**M25** 1974 c. 39.

**204 Power to restrict the carrying on of Consumer Credit Act business.**

- (1) In this section “restriction” means a direction that a consumer credit EEA firm may not carry on in the United Kingdom, otherwise than in accordance with such condition or conditions as may be specified in the direction, any Consumer Credit Act business which—
- (a) consists of or includes carrying on any listed activity; and
  - (b) is specified in the direction.
- (2) If it appears to the <sup>[F270]</sup> OFT that the situation as respects a consumer credit EEA firm is such that the powers conferred by section 203(1) are exercisable, the <sup>[F270]</sup> OFT may, instead of imposing a prohibition, impose such restriction as appears to <sup>[F271;it]</sup> desirable.
- (3) A restriction—
- (a) may be withdrawn, or
  - (b) may be varied with the agreement of the firm concerned,
- by written notice served by the <sup>[F270]</sup> OFT on the firm, and any such notice takes effect on such date as is specified in the notice.
- (4) A firm contravening a restriction is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

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**Annotations:**

**Amendments (Textual)**

- F270** Words in s. 204 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 40(8)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

**F271** Word in s. 204 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(8); S.I. 2003/766, art. 2, Sch. (with art. 3)

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

**C393** S. 204 extended (1.12.2001) by S.I. 2001/2636, arts. 1(2)(b), 53(3); S.I. 2001/3538, art. 2(1)

**C394** S. 204 applied (with modifications) (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2), 26(1) (with reg. 3)

**C395** S. 204 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), reg. 31(1) (with reg. 3)

## PART XIV

### DISCIPLINARY MEASURES

**Annotations:**

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

**C396** Pt. XIV (ss. 205-211) applied (1.12.2001) by 1951 c. 65, s. 57(5) (as substituted (1.12.2001) by S.I. 2001/3647, art. 5, Sch. 3 Pt. I para. 5(3))

#### **[204A Meaning of “relevant requirement” and “appropriate regulator”]**

- (1) The following definitions apply for the purposes of this Part.
- (2) “Relevant requirement” means a requirement imposed—
  - (a) by or under this Act; or
  - (b) by any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury.
- (3) The PRA is the “appropriate regulator” in the case of a contravention of—
  - (a) a requirement that is imposed under any provision of this Act by the PRA;
  - (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA;
  - (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA; or
  - (d) a requirement that is imposed by any directly applicable EU regulation and is specified (or is of a description specified) in an order made by the Treasury.
- (4) In the case of a contravention of a requirement where the contravention constitutes an offence, the “appropriate regulator” is whichever of the PRA or the FCA has power to prosecute the offence (see section 401).
- (5) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.
- (6) The Treasury may by order amend the definition of “appropriate regulator”.]

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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## 205 Public censure.

If the [appropriate regulator] considers that an authorised person has contravened [a relevant requirement imposed on the person, it may] publish a statement to that effect.

### Annotations:

#### Amendments (Textual)

**F272** Words in s. 205 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(5), **Sch. 5 para. 10**

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

- C397** S. 205 modified (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 6, 7** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**  
S. 205 modified (1.12.2001) by S.I. 2001/3083, **arts. 1(1), 6, 7**; S.I. 2001/3538, **art. 2(1)**  
S. 205 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 107(1)** (with art. 23(2))
- C398** S. 205 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(1)**

## 206 Financial penalties.

- (1) If the [appropriate regulator] considers that an authorised person has contravened [a relevant requirement imposed on the person,] it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.
- (2) <sup>F274</sup> .....
- (3) A penalty under this section is payable to the [body that imposed the penalty].

### Annotations:

#### Amendments (Textual)

- F273** Words in s. 206(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(5), **Sch. 5 para. 11**
- F274** S. 206(2) omitted (8.6.2010) by virtue of Financial Services Act 2010 (c. 28), **ss. 10, 26(2)**

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

- C399** S. 206 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 107(1)** (with art. 23(2))  
S. 206 restricted (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 60(2)** (with art. 23(2))  
S. 206 modified (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 8** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**  
S. 206 modified (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 8**; S.I. 2001/3538, **art. 2(1)**
- C400** S. 206 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(1)**

[<sup>F275</sup>206A Suspending permission to carry on regulated activities etc

- (1) If the [appropriate regulator] considers that an authorised person has contravened a relevant requirement imposed on the person, it may—
- (a) suspend, for such period as it considers appropriate, any permission which the person has to carry on a regulated activity; or
  - (b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the carrying on of a regulated activity by the person as it considers appropriate.

[(1A) The power conferred by subsection (1) is also exercisable by the FCA if it considers that an authorised person has contravened a requirement imposed on the person by—

- (a) the Payment Services Regulations 2009; or
- (b) the Electronic Money Regulations 2011.]

- (2) In subsection (1)—
- “permission” means any permission that the authorised person has, whether given (or treated as given) by the [FCA or the PRA] or conferred by any provision of this Act;
- “relevant requirement” means a requirement imposed—
- (a) by or under this Act;<sup>F276</sup> ...
  - (b) by any directly applicable Community regulation made under the markets in financial instruments directive.
  - (c) [<sup>F277</sup>by the Payment Services Regulations 2009; or
  - (d) by the Electronic Money Regulations 2011.]
- (3) The period for which a suspension or restriction is to have effect may not exceed 12 months.
- (4) A suspension may relate only to the carrying on of an activity in specified circumstances.
- (5) A restriction may, in particular, be imposed so as to require the person concerned to take, or refrain from taking, specified action.
- (6) The [appropriate regulator] may—
- (a) withdraw a suspension or restriction; or
  - (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (7) The power under this section may (but need not) be exercised so as to have effect in relation to all the regulated activities that the person concerned carries on.
- (8) Any one or more of the powers under—
- (a) subsection (1)(a) and (b) of this section, and
  - (b) sections 205 and 206,
- may be exercised in relation to the same contravention.]

**Annotations:**

**Amendments (Textual)**

**F275** S. 206A inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 9, 26(2)

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- F276** S. 206A(2): word in definition of "relevant requirement" omitted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by virtue of [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, **Sch. 4 para. 2(2)** (with reg. 3)
- F277** S. 206A(2)(c)(d) inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, **Sch. 4 para. 2(2)** (with reg. 3)

## 207 Proposal to take disciplinary measures.

- (1) If [\[an appropriate regulator\]](#) proposes—
- (a) to publish a statement in respect of an authorised person (under section 205),  
<sup>F278</sup> ...
  - (b) to impose a penalty on an authorised person (under section 206),<sup>F279</sup> or
  - (c) to suspend a permission of an authorised person or impose a restriction in relation to the carrying on of a regulated activity by an authorised person (under section 206A),]

it must give the authorised person 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.

<sup>F280</sup>(4) A warning notice about a proposal to suspend a permission or impose a restriction must state the period for which the suspension or restriction is to have effect.]

### Annotations:

#### Amendments (Textual)

- F278** Word in s. 207(1) omitted (8.6.2010) by virtue of [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), **Sch. 2 para. 18(2)**
- F279** S. 207(1)(c) and preceding word inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), **Sch. 2 para. 18(2)**
- F280** S. 207(4) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), **Sch. 2 para. 18(3)**

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

- C401** S. 207 excluded (1.12.2001) by [S.I. 2001/3592](#), **arts. 1(2)**, 61(5), 110(6) (with art. 23(2))
- C402** S. 207 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, **12(1)**

## 208 Decision notice.

- (1) If [\[an appropriate regulator\]](#) decides—
- (a) to publish a statement under section 205 (whether or not in the terms proposed),<sup>F281</sup> ...
  - (b) to impose a penalty under section 206 (whether or not of the amount proposed),<sup>F282</sup> or
  - (c) to suspend a permission or impose a restriction under section 206A (whether or not in the manner proposed),]

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

it must without delay give the authorised person concerned 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.

[<sup>F283</sup>(3A) In the case of a suspension or restriction, the decision notice must state the period for which the suspension or restriction is to have effect.]

(4) If [an appropriate regulator] decides to—

- (a) publish a statement in respect of an authorised person under section 205, <sup>F284</sup> ...
- (b) impose a penalty on an authorised person under section 206, [<sup>F285</sup> or
- (c) suspend a permission of an authorised person, or impose a restriction in relation to the carrying on of a regulated activity by an authorised person, under section 206A,]

the authorised person may refer the matter to the Tribunal.

#### Annotations:

##### Amendments (Textual)

**F281** Word in s. 208(1) omitted (8.6.2010) by virtue of [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 19\(2\)](#)

**F282** S. 208(1)(c) and preceding word inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 19\(2\)](#)

**F283** S. 208(3A) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 19\(3\)](#)

**F284** Word in s. 208(4) omitted (8.6.2010) by virtue of [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 19\(4\)](#)

**F285** S. 208(4)(c) and preceding word inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 19\(4\)](#)

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

**C403** S. 208 excluded (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 61(5), 110(6) (with [art. 23\(2\)](#))

**C404** S. 208 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, [12\(1\)](#)

**C405** S. 208(1)(a)(b) modified (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 68(2), 69(2) (with [art. 23\(2\)](#))

## 209 Publication.

After a statement under section 205 is published, the [appropriate regulator concerned] must send a copy of it to the authorised person and to any person on whom a copy of the decision notice was given under section 393(4).

#### Annotations:

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

**C406** S. 209 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, [12\(1\)](#)

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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## 210 Statements of policy.

- (1) [Each appropriate regulator] must prepare and issue a statement of its policy with respect to—
  - [<sup>F286</sup>(a) the imposition of penalties, suspensions or restrictions under this Part;
  - (b) the amount of penalties under this Part; and
  - (c) the period for which suspensions or restrictions under this Part are to have effect.]
- (2) [An appropriate regulator’s policy] in determining what the amount of a penalty should be [<sup>F287</sup>, 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 contravention in question in relation to the nature of the requirement contravened;
  - (b) the extent to which that contravention was deliberate or reckless; and
  - (c) whether [<sup>F288</sup>the person against whom action is to be taken] is an individual.
- (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) [An appropriate regulator] must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (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) In exercising, or deciding whether to exercise, its power under section 206 [<sup>F289</sup>or 206A] in the case of any particular contravention, [an appropriate regulator] must have regard to any statement published [by it] under this section and in force at the time when the contravention in question occurred.
- (8) [An appropriate regulator] may charge a reasonable fee for providing a person with a copy of the statement.

### Annotations:

#### Amendments (Textual)

- F286** S. 210(1)(a)–(c) substituted (8.6.2010) for s. 210(1)(a)(b) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 20\(2\)](#)
- F287** Words in s. 210(2) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 20\(3\)\(a\)](#)
- F288** Words in s. 210(2)(c) substituted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 20\(3\)\(b\)](#)
- F289** Words in s. 210(7) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(d)(e), [Sch. 2 para. 20\(4\)](#)

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

- C407** S. 210 applied (6.3.2008) by [The Regulated Covered Bonds Regulations 2008 \(S.I. 2008/346\)](#), [reg. 36](#)
- C408** S. 210 applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), [regs. 1\(2\), 86\(6\)](#) (with [reg. 3](#))

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- C409** S. 210 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, **Sch. para. 3**
- C410** S. 210 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 22(2)**
- C411** S. 210 applied (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), **reg. 53(6)** (with reg. 3)
- C412** S. 210(7) excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 110(6)** (with art. 23(2))

## 211 Statements of policy: procedure.

- (1) Before issuing a statement under section 210, **[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.

### Annotations:

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

- C413** S. 211 applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 36**
- C414** S. 211 applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I. 2009/209), **regs. 1(2), 86(6)** (with reg. 3)
- C415** S. 211 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, **Sch. para. 3**
- C416** S. 211 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 22(2)**
- C417** S. 211 applied (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), **reg. 53(6)** (with reg. 3)

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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## PART XV

### THE FINANCIAL SERVICES COMPENSATION SCHEME

#### Annotations:

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

- C418** Pt. XV (ss. 212-224) excluded (27.4.2002) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) Order 2001 \(S.I. 2001/544\)](#), art. 9J (as inserted by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2002 \(S.I. 2002/682\)](#), arts. 1(2), 4) Pt. XV (ss. 212-224) modified (2.7.2002) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Transitional Provisions\) \(Credit Unions\) Order 2002 \(S.I. 2002/1501\)](#), art. 5
- C419** Pt. 15 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. 29 (with art. 30(6))
- C420** Pt. 15 modified (7.10.2008 at 9.30 a.m.) by [The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2644\)](#), art. 14 (with art. 15(8))
- C421** Pt. 15 modified (8.10.2008 at 12.15 p.m.) by [The Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2674\)](#), art. 15 (with art. 16(8))

#### *The scheme manager*

### 212 The scheme manager.

- (1) The Authority must establish a body corporate (“the scheme manager”) to exercise the functions conferred on the scheme manager by or under this Part.
- (2) The [regulators] must take such steps as are necessary to ensure that the scheme manager is, at all times, capable of exercising those functions [<sup>F290</sup>and the functions conferred on it by or under Part 15A].
- (3) The constitution of the scheme manager must provide for it to have—
  - (a) a chairman; and
  - (b) a board (which must include the chairman) whose members are the scheme manager’s directors.
- (4) The chairman and other members of the board must be persons appointed, and liable to removal from office, by the [regulators] (acting, in the case of the chairman, with the approval of the Treasury).
- (5) But the terms of their appointment (and in particular those governing removal from office) must be such as to secure their independence from the [regulators] in the operation of the compensation scheme.
- (6) The scheme manager is not to be regarded as exercising functions on behalf of the Crown.
- (7) The scheme manager’s board members, officers and staff are not to be regarded as Crown servants.

**Annotations:**

**Amendments (Textual)**

**F290** Words in s. 212(2) inserted (12.10.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(3), [Sch. 2 para. 21](#); S.I. 2010/2480, [art. 2\(e\)\(f\)](#)

*The scheme*

**213 The compensation scheme.**

(1) The [regulators] must by rules [made in accordance with an order under subsection (1A)] establish a scheme for compensating persons in cases where relevant persons are unable, or are likely to be unable, to satisfy claims against them.

[(1A) The Treasury must by order specify—

- (a) the cases in which the FCA are, or are not, to make rules under subsection (1), and
- (b) the cases in which the PRA are, or are not, to make rules under that subsection.

[(1B) Each regulator must consult the other regulator before making rules under this section.]

(2) The rules [(taken together)] are to be known as the Financial Services Compensation Scheme (but are referred to in this Act as “the compensation scheme”).

(3) The compensation scheme must, in particular, provide for the scheme manager—

- (a) to assess and pay compensation, in accordance with the scheme, to claimants in respect of claims made in connection with regulated activities carried on (whether or not with permission) by relevant persons; and
- (b) to have power to impose levies on authorised persons, or any class of authorised person, for the purpose of meeting its expenses (including in particular expenses incurred, or expected to be incurred, in paying compensation, borrowing or insuring risks).

(4) The compensation scheme may provide for the scheme manager to have power to impose levies on authorised persons, or any class of authorised person, for the purpose of recovering the cost (whenever incurred) of establishing the scheme.

(5) In making any provision of the scheme by virtue of subsection (3)(b), the [regulators] must take account of the desirability of ensuring that the amount of the levies imposed on a particular class of authorised person reflects, so far as practicable, the amount of the claims made, or likely to be made, in respect of that class of person.

(6) An amount payable to the scheme manager as a result of any provision of the scheme made by virtue of subsection (3)(b) or (4) may be recovered as a debt due to the scheme manager.

(7) Sections 214 to 217 make further provision about the scheme but are not to be taken as limiting the power conferred on the [regulators] by subsection (1).

(8) In those sections “specified” means specified in the scheme.

(9) In this Part (except in sections 219, 220 or 224) “relevant person” means a person who was—

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (a) an authorised person at the time the act or omission giving rise to the claim against him took place; or
  - (b) an appointed representative at that time.
- (10) But a person who, at that time—
- (a) qualified for authorisation under Schedule 3, and
  - (b) fell within a prescribed category,
- is not to be regarded as a relevant person in relation to any activities for which he had permission as a result of any provision of, or made under, that Schedule unless he had elected to participate in the scheme in relation to those activities at that time.

#### Annotations:

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

- C422** S. 213(3)(a) excluded (31.10.2004) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Mortgages\) Order 2004 \(S.I. 2004/2615\)](#), arts. 1(2), 5, **Sch. para. 8**
- C423** S. 213(3)(a) excluded (14.1.2005) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(General Insurance Intermediaries\) Order 2004 \(S.I. 2004/3351\)](#), arts. 1(2), **6**
- C424** S. 213(9) excluded (2.7.2002) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Transitional Provisions\) \(Credit Unions\) Order 2002 \(S.I. 2002/1501\)](#), **art. 5(1)**

#### Commencement Information

- I54** S. 213 wholly in force at 18.6.2001; s. 213 not in force at Royal Assent see s. 431(2); s. 213(10) in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), art. 2(b), **Sch. Pt. 2**; s. 213 in force in so far as not already in force at 18.6.2001 by [S.I. 2001/1820](#), art. 2, **Sch.**

### *Provisions of the scheme*

#### 214 General.

- (1) The compensation scheme may, in particular, make provision—
- (a) as to the circumstances in which a relevant person is to be taken (for the purposes of the scheme) to be unable, or likely to be unable, to satisfy claims made against him;
  - (b) for the establishment of different funds for meeting different kinds of claim;
  - (c) for the imposition of different levies in different cases;
  - (d) limiting the levy payable by a person in respect of a specified period;
  - (e) for repayment of the whole or part of a levy in specified circumstances;
  - (f) for a claim to be entertained only if it is made by a specified kind of claimant;
  - (g) for a claim to be entertained only if it falls within a specified kind of claim;
  - (h) as to the procedure to be followed in making a claim;
  - (i) for the making of interim payments before a claim is finally determined;
  - (j) limiting the amount payable on a claim to a specified maximum amount or a maximum amount calculated in a specified manner;
  - (k) for payment to be made, in specified circumstances, to a person other than the claimant.

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- [<sup>F291</sup>(1A) Rules by virtue of subsection (1)(h) may, in particular, allow the scheme manager to treat persons who are or may be entitled to claim under the scheme as if they had done so.
- (1B) A reference in any enactment or instrument to a claim or claimant under this Part includes a reference to a deemed claim or claimant in accordance with subsection (1A).
- (1C) Rules by virtue of subsection (1)(j) may, in particular, allow, or be subject to rules which allow, the scheme manager to settle a class of claim by payment of sums fixed without reference to, or by modification of, the normal rules for calculation of maximum entitlement for individual claims.]
- (2) Different provision may be made with respect to different kinds of claim.
- (3) The scheme may provide for the determination and regulation of matters relating to the scheme by the scheme manager.
- (4) The scheme, or particular provisions of the scheme, may be made so as to apply only in relation to—
- (a) activities carried on,
  - (b) claimants,
  - (c) matters arising, or
  - (d) events occurring,
- in specified territories, areas or localities.
- (5) The scheme may provide for a person who—
- (a) qualifies for authorisation under Schedule 3, and
  - (b) falls within a prescribed category,
- to elect to participate in the scheme in relation to some or all of the activities for which he has permission as a result of any provision of, or made under, that Schedule.
- (6) The scheme may provide for the scheme manager to have power—
- (a) in specified circumstances,
  - (b) but only if the scheme manager is satisfied that the claimant is entitled to receive a payment in respect of his claim—
    - (i) under a scheme which is comparable to the compensation scheme, or
    - (ii) as the result of a guarantee given by a government or other authority, to make a full payment of compensation to the claimant and recover the whole or part of the amount of that payment from the other scheme or under that guarantee.

**Annotations:**

**Amendments (Textual)**

**F291** S. 214(1A)-(1C) inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\)](#), [ss. 174\(1\), 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), [Sch.](#)

**Commencement Information**

**I55** S. 214 wholly in force at 18.6.2001; s. 214 not in force at Royal Assent see s. 431(2); s. 214(5) in force for certain purposes at 25.2.2001 by S.I. 2001/516, [art. 2\(b\)](#), [Sch. Pt. 2](#); s. 214 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, [art. 2](#), [Sch.](#)

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**Proposed Legislation:** *This version shows proposed changes to this legislation item. It has no official standing.*

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PROSPECTIVE

**[<sup>F292</sup>214A Contingency funding**

- (1) The Treasury may make regulations (“contingency fund regulations”) permitting the scheme manager to impose levies under section 213 for the purpose of maintaining contingency funds from which possible expenses may be paid.
- (2) Contingency fund regulations may make provision about the establishment and management of contingency funds; in particular, the regulations may make provision about—
  - (a) the number and size of funds;
  - (b) the circumstances and timing of their establishment;
  - (c) the classes of person from whom contributions to the funds may be levied;
  - (d) the amount and timing of payments into and out of funds (which may include provision for different levies for different classes of person);
  - (e) refunds;
  - (f) the ways in which funds' contents may be invested (including (i) the extent of reliance on section 223A, and (ii) the application of investment income);
  - (g) the purposes for which funds may be applied, but only so as to determine whether a fund is to be used (i) for the payment of compensation, (ii) for the purposes of co-operating with a bank liquidator in accordance with section 99 of the Banking Act 2009, or (iii) for contributions under section 214B;
  - (h) procedures to be followed in connection with funds, including the keeping of records and the provision of information.
- (3) The compensation scheme may include provision about contingency funds provided that it is not inconsistent with contingency fund regulations.]

**Annotations:**

**Amendments (Textual)**

**F292** S. 214A inserted (prosp.) by [Banking Act 2009 \(c. 1\)](#), **ss. 170(1), 263(1)(2)** (with s. 247)

**[<sup>F293</sup>214B Contribution to costs of special resolution regime**

- (1) This section applies if—
  - (a) a stabilisation power under Part 1 of the Banking Act 2009 has been exercised in respect of a bank, building society or credit union within the meaning of that Part (“the institution”); and
  - (b) the Treasury think that the institution was or was likely to have been, or but for the exercise of the power would have become, unable to satisfy claims against it.
- (2) The Treasury may require the scheme manager to make payments (to the Treasury or any other person) in respect of expenses of a prescribed description incurred (by the Treasury or that person) in connection with the exercise of the power.
- (3) Subsection (2) is subject to section 214C (limit on amount of special resolution regime payments).

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (4) In subsection (2) “expenses” includes interest at a specified rate on the difference, at any time, between—
  - (a) the total amount of expenses (including interest) incurred at or before that time; and
  - (b) the total amount recovered, or received from the scheme manager, in respect of the institution, at or before that time, by—
    - (i) the Treasury; and
    - (ii) any other person who has incurred expenses in connection with the exercise of the power that are of a description prescribed under subsection (2).
- (5) Any payment made by the scheme manager under subsection (2) is to be treated for the purposes of this Part as an expense under the compensation scheme.
- (6) In this section and section 214C “specified rate” means a rate specified by the Treasury.
- (7) Different rates may be specified under different provisions or for different periods.
- (8) A rate may be specified by reference to a rate set (from time to time) by any person.]]

**Annotations:**

**Amendments (Textual)**

**F293** S. 214B inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\)](#), [ss. 171\(1\)](#), [263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), Sch.

**F294** Ss. 214B-214D substituted (8.4.2010) for s. 214B by [Financial Services Act 2010 \(c. 28\)](#), [ss. 16\(1\)](#), [26\(1\)](#)

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

**C425** S. 214B applied (with modifications) (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\)](#), [ss. 83\(2\)\(h\)\(i\)](#), [263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), Sch.

**C426** Ss. 214B-214D applied (with modifications) (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 16\(2\)](#), [26\(1\)](#)

[<sup>F295</sup>**214C** **Limit on amount of special resolution regime payments**

- (1) The total amount of special resolution regime payments required to be made in respect of a person (“the institution”) may not exceed—
  - (a) notional net expenditure (see subsection (3)), minus
  - (b) actual net expenditure (see subsection (4)).
- (2) A “special resolution regime payment” is—
  - (a) a payment under section 214B(2); or
  - (b) a payment required to be made by the scheme manager by virtue of section 61 of the Banking Act 2009 (special resolution regime: compensation).
- (3) Notional net expenditure is—
  - (a) the total amount of expenses that would have been incurred under the compensation scheme in respect of the institution if the stabilisation power had not been exercised and the institution had been unable to satisfy claims against it, minus

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- (b) the total amount that would have been likely, at the time when the power was exercised, to be recovered by the scheme manager in respect of the institution in those circumstances.
- (4) Actual net expenditure is—
  - (a) the total amount of expenses (other than special resolution regime payments) actually incurred by the scheme manager in respect of the institution, minus
  - (b) the total amount actually recovered by the scheme manager in respect of the institution.
- (5) In subsection (3)(a) “expenses” includes interest at a specified rate on the difference, at any time, between—
  - (a) the total amount of expenses (including interest) that would have been incurred as mentioned in subsection (3)(a) at or before that time; and
  - (b) the total amount that would have been likely to have been recovered as mentioned in subsection (3)(b) at or before that time.
- (6) In subsection (4)(a) “expenses” includes interest at a specified rate on the difference, at any time, between—
  - (a) the total amount of expenses (including special resolution regime payments and interest) actually incurred by the scheme manager in respect of the institution at or before that time; and
  - (b) the total amount actually recovered by the scheme manager in respect of the institution at or before that time.
- (7) In paragraph (b) of subsections (3) to (6) references to amounts recovered (or likely to have been recovered) by the scheme manager do not include any levy received (or likely to have been received) by it.

**Annotations:**

**Amendments (Textual)**

**F295** Ss. 214B-214D substituted (8.4.2010) for s. 214B by [Financial Services Act 2010 \(c. 28\)](#), **ss. 16(1), 26**

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

**C427** Ss. 214B-214D applied (with modifications) (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 16(2), 26(1)**

**214D Contributions under section 214B: supplementary**

- (1) This section supplements sections 214B and 214C.
- (2) The scheme manager must determine—
  - (a) the amounts of expenses (other than interest) that would have been incurred as mentioned in section 214C(3)(a); and
  - (b) the time or times at which those amounts would have been likely to have been incurred.
- (3) The Treasury, or a person designated by the Treasury, must in accordance with regulations appoint a person (“the valuer”) to determine—
  - (a) the amounts that would have been likely, at the time when the stabilisation power was exercised, to be recovered as mentioned in section 214C(3)(b); and

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- (b) the time or times at which those amounts would have been likely to be recovered.

The person appointed under this subsection may be the person appointed as valuer under section 54 of the Banking Act 2009 in respect of the exercise of the stabilisation power.

- (4) Regulations may enable the Treasury to specify principles to be applied by—
  - (a) the scheme manager when exercising functions under subsection (2); or
  - (b) the valuer when exercising functions under subsection (3).
- (5) The regulations may in particular enable the Treasury to require the scheme manager or valuer—
  - (a) to use, or not to use, specified methods;
  - (b) to take specified matters into account in a specified manner; or
  - (c) not to take specified matters into account.
- (6) Regulations—
  - (a) must provide for independent verification of expenses within section 214B(2);
  - (b) may provide for the independent verification of other matters; and
  - (c) may contain provision about the appointment and payment of an auditor.
- (7) Regulations—
  - (a) must contain provision enabling the valuer to reconsider a decision;
  - (b) must provide a right of appeal to a court or tribunal against any decision of the valuer;
  - (c) may provide for payment of the valuer; and
  - (d) may apply (with or without modifications) or make provision corresponding to—
    - (i) any provision of sections 54 to 56 of the Banking Act 2009; or
    - (ii) any provision made, or that could be made, by virtue of any of those sections.
- (8) Regulations may make provision for payments under section 214B(2) to be made—
  - (a) before any verification required by the regulations is undertaken, and
  - (b) before the limit imposed by section 214C is calculated,subject to any necessary later adjustment.
- (9) If they do so they must provide that the amount of any payment required by virtue of subsection (8) must not be such as to give rise to an expectation that an amount will be required to be repaid to the scheme manager (once any necessary verification has been undertaken and the limit imposed by section 214C has been calculated).
- (10) Regulations may—
  - (a) make provision supplementing section 214B or 214C or this section;
  - (b) make further provision about the method by which amounts to be paid under section 214B(2) are to be determined;
  - (c) make provision about timing;
  - (d) make provision about procedures to be followed;
  - (e) provide for discretionary functions to be exercised by a specified body or by persons of a specified class; and

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- (f) make provision about the resolution of disputes (which may include provision conferring jurisdiction on a court or tribunal).
- (11) “Regulations” means regulations made by the Treasury.
- (12) Any payment made by the Treasury by virtue of this section is to be met out of money provided by Parliament.
- (13) The compensation scheme may make provision about payments under section 214B(2) and levies in connection with such payments (except provision inconsistent with any provision made by or under section 214B or 214C or this section.)]

**Annotations:**

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

**C428** Ss. 214B-214D applied (with modifications) (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. [16\(2\)](#), [26\(1\)](#)

**215** [<sup>F296</sup>**Rights of the scheme in insolvency]**

- [<sup>F297</sup>(1) The compensation scheme may make provision—
- (a) about the effect of a payment of compensation under the scheme on rights or obligations arising out of matters in connection with which the compensation was paid;
  - (b) giving the scheme manager a right of recovery in respect of those rights or obligations.]
- (2) Such a right of recovery conferred by the scheme does not, in the event of [<sup>F298</sup>a person's insolvency], exceed such right (if any) as the claimant would have had in that event.
- (3) If a person other than the scheme manager [<sup>F299</sup>makes an administration application under Schedule B1 to the 1986 Act or [<sup>F300</sup>Schedule B1 to] the 1989 Order] in relation to a company or partnership which is a relevant person, the scheme manager has the same rights as are conferred on the [regulators] by section 362.
- [<sup>F301</sup>(3A) In subsection (3) the reference to making an administration application includes a reference to—
- (a) appointing an administrator under paragraph 14 or 22 of Schedule B1 to the 1986 Act [<sup>F302</sup>or paragraph 15 or 23 of Schedule B1 to the 1989 Order], or
  - (b) filing with the court a copy of notice of intention to appoint an administrator under [<sup>F303</sup>any] of those paragraphs.]
- (4) If a person other than the scheme manager presents a petition for the winding up of a body which is a relevant person, the scheme manager has the same rights as are conferred on [the regulators] by section 371.
- (5) If a person other than the scheme manager presents a bankruptcy petition to the court in relation to an individual who, or an entity which, is a relevant person, the scheme manager has the same rights as are conferred on the [regulators] by section 374.
- (6) Insolvency rules may be made for the purpose of integrating any procedure for which provision is made as a result of subsection (1) into the general procedure on

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

the administration of a company or partnership or on a winding-up, bankruptcy or sequestration.

- (7) “Bankruptcy petition” means a petition to the court—
- (a) under section 264 of the 1986 Act or Article 238 of the 1989 Order for a bankruptcy order to be made against an individual;
  - (b) under section 5 of the 1985 Act for the sequestration of the estate of an individual; or
  - (c) under section 6 of the 1985 Act for the sequestration of the estate belonging to or held for or jointly by the members of an entity mentioned in subsection (1) of that section.
- (8) “Insolvency rules” are—
- (a) for England and Wales, rules made under sections 411 and 412 of the 1986 Act;
  - (b) for Scotland, rules made by order by the Treasury, after consultation with the Scottish Ministers, for the purposes of this section; and
  - (c) for Northern Ireland, rules made under Article 359 of the 1989 Order and section 55 of the <sup>M26</sup>Judicature (Northern Ireland) Act 1978.
- (9) “The 1985 Act”, “the 1986 Act”, “the 1989 Order” and “court” have the same meaning as in Part XXIV.

#### Annotations:

##### Amendments (Textual)

- F296** S. 215: heading substituted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by virtue of [Banking Act 2009 \(c. 1\)](#), [ss. 175\(4\)](#), [263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), Sch.
- F297** S. 215(1) substituted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\)](#), [ss. 175\(2\)](#), [263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), Sch.
- F298** Words in s. 215(2) substituted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\)](#), [ss. 175\(3\)](#), [263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), Sch.
- F299** Words in s. 215(3) substituted (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), [ss. 248\(3\)](#), [279](#), [Sch. 17 para. 54\(2\)](#); S.I. 2003/2093, [art. 2\(1\)](#), Sch. 1 (subject to [arts. 1\(3\)-\(5\)](#), 3-8 (as amended by S.I. 2003/2332, art. 2))
- F300** Words in s. 215(3) substituted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), [arts. 1\(3\)](#), [3\(3\)](#), [Sch. 2 para. 57\(2\)](#); S.R. 2006/21, [art. 2](#) (subject to S.R. 2006/22, arts. 2-7)
- F301** S. 215(3A) inserted (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), [ss. 248\(3\)](#), [279](#), [Sch. 17 para. 54\(3\)](#); S.I. 2003/2093, [art. 2\(1\)](#), Sch. 1 (subject to [arts. 1\(3\)-\(5\)](#), 3-8 (as amended by S.I. 2003/2332, art. 2))
- F302** Words in s. 215(3A)(a) inserted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), [arts. 1\(3\)](#), [3\(3\)](#), [Sch. 2 para. 57\(3\)\(a\)](#); S.R. 2006/21, [art. 2](#) (subject to S.R. 2006/22, arts. 2-7)
- F303** Word in s. 215(3A)(b) substituted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), [arts. 1\(3\)](#), [3\(3\)](#), [Sch. 2 para. 57\(3\)\(b\)](#); S.R. 2006/21, [art. 2](#) (subject to S.R. 2006/22, arts. 2-7)

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

- C429** S. 215 modified (21.2.2009) by [The Banking Act 2009 \(Parts 2 and 3 Consequential Amendments\) Order 2009 \(S.I. 2009/317\)](#), [art. 5\(1\)\(2\)](#)

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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**C430** S. 215 applied (with modifications) (8.2.2011 with application in accordance with reg. 27(a) of the applying S.I.) by [The Investment Bank Special Administration Regulations 2011 \(S.I. 2011/245\)](#), reg. 27, **Sch. 6 Pt. 2 para. 3(2)**

**C431** S. 215(3)(4)(6) applied (with modifications) (6.4.2001 for E.W.S and 13.9.2004 for N.I.) by S.I. 2001/1090, regs. 1, 6; S.R. 2004/307, **reg. 6**

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**Commencement Information**

**I56** S. 215 wholly in force at 18.6.2001; s. 215 not in force at Royal Assent see s. 431(2); s. 215(6)(8)(9) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 215 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**

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**Marginal Citations**

**M26** 1978 c. 23.

**216 Continuity of long-term insurance policies.**

- (1) The compensation scheme may, in particular, include provision requiring the scheme manager to make arrangements for securing continuity of insurance for policyholders, or policyholders of a specified class, of relevant long-term insurers.
- (2) “Relevant long-term insurers” means relevant persons who—
  - (a) have permission to effect or carry out contracts of long-term insurance; and
  - (b) are unable, or likely to be unable, to satisfy claims made against them.
- (3) The scheme may provide for the scheme manager to take such measures as appear to him to be appropriate—
  - (a) for securing or facilitating the transfer of a relevant long-term insurer’s business so far as it consists of the carrying out of contracts of long-term insurance, or of any part of that business, to another authorised person;
  - (b) for securing the issue by another authorised person to the policyholders concerned of policies in substitution for their existing policies.
- (4) The scheme may also provide for the scheme manager to make payments to the policyholders concerned—
  - (a) during any period while he is seeking to make arrangements mentioned in subsection (1);
  - (b) if it appears to him that it is not reasonably practicable to make such arrangements.
- (5) A provision of the scheme made by virtue of section 213(3)(b) may include power to impose levies for the purpose of meeting expenses of the scheme manager incurred in—
  - (a) taking measures as a result of any provision of the scheme made by virtue of subsection (3);
  - (b) making payments as a result of any such provision made by virtue of subsection (4).

**217 Insurers in financial difficulties.**

- (1) The compensation scheme may, in particular, include provision for the scheme manager to have power to take measures for safeguarding policyholders, or policyholders of a specified class, of relevant insurers.

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (2) “Relevant insurers” means relevant persons who—
- (a) have permission to effect or carry out contracts of insurance; and
  - (b) are in financial difficulties.
- (3) The measures may include such measures as the scheme manager considers appropriate for—
- (a) securing or facilitating the transfer of a relevant insurer’s business so far as it consists of the carrying out of contracts of insurance, or of any part of that business, to another authorised person;
  - (b) giving assistance to the relevant insurer to enable it to continue to effect or carry out contracts of insurance.
- (4) The scheme may provide—
- (a) that if measures of a kind mentioned in subsection (3)(a) are to be taken, they should be on terms appearing to the scheme manager to be appropriate, including terms reducing, or deferring payment of, any of the things to which any of those who are eligible policyholders in relation to the relevant insurer are entitled in their capacity as such;
  - (b) that if measures of a kind mentioned in subsection (3)(b) are to be taken, they should be conditional on the reduction of, or the deferment of the payment of, the things to which any of those who are eligible policyholders in relation to the relevant insurer are entitled in their capacity as such;
  - (c) for ensuring that measures of a kind mentioned in subsection (3)(b) do not benefit to any material extent persons who were members of a relevant insurer when it began to be in financial difficulties or who had any responsibility for, or who may have profited from, the circumstances giving rise to its financial difficulties, except in specified circumstances;
  - (d) for requiring the scheme manager to be satisfied that any measures he proposes to take are likely to cost less than it would cost to pay compensation under the scheme if the relevant insurer became unable, or likely to be unable, to satisfy claims made against him.
- (5) The scheme may provide for [either regulator or both regulators] to have power—
- (a) to give such assistance to the scheme manager as it considers appropriate for assisting the scheme manager to determine what measures are practicable or desirable in the case of a particular relevant insurer;
  - (b) to impose constraints on the taking of measures by the scheme manager in the case of a particular relevant insurer;
  - (c) to require the scheme manager to provide it with information about any particular measures which the scheme manager is proposing to take.
- (6) The scheme may include provision for the scheme manager to have power—
- (a) to make interim payments in respect of eligible policyholders of a relevant insurer;
  - (b) to indemnify any person making payments to eligible policyholders of a relevant insurer.
- (7) A provision of the scheme made by virtue of section 213(3)(b) may include power to impose levies for the purpose of meeting expenses of the scheme manager incurred in—

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- (a) taking measures as a result of any provision of the scheme made by virtue of subsection (1);
  - (b) making payments or giving indemnities as a result of any such provision made by virtue of subsection (6).
- (8) “Financial difficulties” and “eligible policyholders” have such meanings as may be specified.

*[Relationship with the regulators]*

**217A Co-operation**

- (1) The regulators and the scheme manager must each take such steps as they consider appropriate to co-operate with each other in the exercise of their functions under this Part and Part 15A.
- (2) The regulators and the scheme manager must prepare and maintain a memorandum of understanding describing how they intend to comply with subsection (1).
- (3) The scheme manager must ensure that the memorandum of understanding as currently in force is published in the way appearing to it to be best calculated to bring it to the attention of the public.]

*[Annual plan and report]*

**[217B Annual plan**

- (1) The scheme manager must in respect of each of its financial years prepare an annual plan which has been approved by the regulators.
- (2) The plan must be prepared before the start of the financial year.
- (3) An annual plan in respect of a financial year must make provision about the use of the resources of the scheme manager.
- (4) The plan may include material relating to periods longer than the financial year in question.
- (5) Before preparing an annual plan, the scheme manager must consult such persons (if any) as the scheme manager considers appropriate.
- (6) The scheme manager must publish each annual plan in the way it considers appropriate.]

**218 Annual report.**

- (1) At least once a year, the scheme manager must make a report to the [regulators] on the discharge of its functions.
- (2) The report must—
  - (a) include a statement setting out the value of each of the funds established by the compensation scheme; and
  - (b) comply with any requirements specified in rules made by the [regulators].

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- (3) The scheme manager must publish each report in the way it considers appropriate.
- ~~[(4) The Treasury may—~~
- ~~(a) require the scheme manager to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or~~
  - ~~(b) direct that any such provision of that Act is to apply to the scheme manager with such modifications as are specified in the direction.~~
- ~~(5) Compliance with any requirement under subsection (4)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.~~
- ~~(6) Proceedings under subsection (5) may be brought only by the Treasury.]~~

### **218ZA Audit of accounts**

- ~~(1) The scheme manager must send a copy of its annual accounts to the Comptroller and Auditor General as soon as is reasonably practicable.~~
- ~~(2) The Comptroller and Auditor General must—~~
- ~~(a) examine, certify and report to the Treasury on accounts received under this section, and~~
  - ~~(b) send a copy of the accounts and the report to the Treasury.~~
- ~~(3) The Treasury must lay the copy of the accounts and the report before Parliament.~~
- ~~(4) The scheme manager must send a copy of the accounts and the report to the regulators.~~
- ~~(5) The expenses of the Comptroller and Auditor General under this section are to be met by the scheme manager.~~
- ~~(6) Except as provided by section 218(4), the scheme manager is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.~~
- ~~(7) In this section “annual accounts” has the meaning given by section 471 of the Companies Act 2006.]~~

### *Information and documents*

### **[<sup>F304</sup>218A[Regulators’] power to require information**

- (1) [Each regulator] may make rules enabling [that regulator] to require authorised persons to provide information, which may then be made available to the scheme manager by [that regulator].
- (2) A requirement may be imposed only if the [regulator] thinks the information is of a kind that may be of use to the scheme manager in connection with functions in respect of the scheme.
- (3) A requirement under this section may apply—
- (a) to authorised persons generally or only to specified persons or classes of person;

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- (b) to the provision of information at specified periods, in connection with specified events or in other ways.
- (4) In addition to requirements under this section, a notice under section 165 may relate to information or documents which the [regulator] thinks are reasonably required by the scheme manager in connection with the performance of functions in respect of the scheme; and section 165(4) is subject to this subsection.
- (5) Rules under subsection (1) shall be prepared, made and treated in the same way as (and may be combined with) the [regulator's] general rules.]

**Annotations:**

**Amendments (Textual)**

**F304** S. 218A inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\)](#), [ss. 176\(1\), 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), Sch.

**219 Scheme manager's power to require information.**

- (1) The scheme manager may, by notice in writing [<sup>F305</sup>require a person]—
  - (a) to provide specified information or information of a specified description; or
  - (b) to produce specified documents or documents of a specified description.
- [<sup>F306</sup>(1A) A requirement may be imposed only—
  - (a) on a person (P) against whom a claim has been made under the scheme,
  - (b) on a person (P) who is unable or likely to be unable to satisfy claims under the scheme against P,
  - (c) on a person (“the Third Party”) whom the scheme manager thinks was knowingly involved in matters giving rise to a claim against another person (P) under the scheme, or
  - (d) on a person (“the Third Party”) whom the scheme manager thinks was knowingly involved in matters giving rise to the actual or likely inability of another person (P) to satisfy claims under the scheme.
- (1B) For the purposes of subsection (1A)(b) and (d) whether P is unable or likely to be unable to satisfy claims shall be determined in accordance with provision to be made by the scheme (which may, in particular—
  - (a) apply or replicate, with or without modifications, a provision of an enactment;
  - (b) confer discretion on a specified person).]
- (2) The information or documents must be provided or produced—
  - (a) before the end of such reasonable period as may be specified; and
  - (b) in the case of information, in such manner or form as may be specified.
- (3) This section applies only to information and documents the provision or production of which the scheme manager considers [<sup>F307</sup>to be necessary (or likely to be necessary) for the fair determination of claims which have been or may be made against P].
- [<sup>F308</sup>(3A) Where a stabilisation power under Part 1 of the Banking Act 2009 has been exercised in respect of a bank, [<sup>F309</sup>building society or credit union,] the scheme manager may by notice in writing require [<sup>F310</sup>the bank, building society or credit union, or the Bank

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- of England,] to provide information that the scheme manager requires for the purpose of [F311 determining the matters mentioned in section 214D(2)(a) and (b) above].]
- (4) If a document is produced in response to a requirement imposed under this section, the scheme manager may—
- (a) take copies or extracts from the document; or
  - (b) require the person producing the document to provide an explanation of the document.
- (5) If a person who is required under this section to produce a document fails to do so, the scheme manager may require the person to state, to the best of his knowledge and belief, where the document is.
- (6) If [F312 P] is insolvent, no requirement may be imposed under this section on a person to whom section 220 or 224 applies.
- (7) If a person claims a lien on a document, its production under this Part does not affect the lien.
- (8) F313 .....
- (9) “Specified” means specified in the notice given under subsection (1).
- (10) F314 .....

**Annotations:**

**Amendments (Textual)**

- F305** Words in s. 219(1) substituted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\)](#), **ss. 176(3)**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch.
- F306** S. 219(1A)-(1B) inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\)](#), **ss. 176(4)**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch.
- F307** Words in s. 219(3) substituted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\)](#), **ss. 176(5)**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch.
- F308** S. 219(3A) inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\)](#), **ss. 176(6)**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch.
- F309** Words in s. 219(3A) inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 21(8)(a)**, 26(1)
- F310** Words in s. 219(3A) substituted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 21(8)(b)**, 26(1)
- F311** Words in s. 219(3A) substituted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(1), **Sch. 2 para. 22**
- F312** Word in s. 219(6) substituted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\)](#), **ss. 176(7)**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch.
- F313** S. 219(8) omitted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by virtue of [Banking Act 2009 \(c. 1\)](#), **ss. 176(8)**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch.
- F314** S. 219(10) omitted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by virtue of [Banking Act 2009 \(c. 1\)](#), **ss. 176(9)**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch.

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

- C432** S. 219 extended (1.12.2001) by S.I. 2001/2967, **arts. 1(2)**, 7(a), 12(4)(a); S.I. 2001/3538, **art. 2(1)**
- C433** S. 219(2)(4)(5)(7) applied (7.10.2008 at 9.30 a.m.) by The Heritable Bank plc [Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2644\)](#), **art. 16** (with **art. 15(8)**)
- C434** S. 219(2)(4)(5)(7) applied (8.10.2008 at 10.10 a.m.) by The Transfer of Rights and Liabilities to ING [Order 2008 \(S.I. 2008/2666\)](#), **art. 13(3)**

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**C435** S. 219(2)(4)(5)(7) applied (8.10.2008 at 12.15 p.m.) by The Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2674), **art. 17(3)** (with art. 16(8))

## 220 Scheme manager’s power to inspect information held by liquidator etc.

- (1) For the purpose of assisting the scheme manager to discharge its functions in relation to a claim made in respect of an insolvent relevant person, a person to whom this section applies must permit a person authorised by the scheme manager to inspect relevant documents.
- (2) A person inspecting a document under this section may take copies of, or extracts from, the document.
- (3) This section applies to—
  - (a) the administrative receiver, administrator, liquidator [<sup>F315</sup>, bank liquidator][<sup>F316</sup>, building society liquidator] or trustee in bankruptcy of an insolvent relevant person;
  - (b) the permanent trustee, within the meaning of the <sup>M27</sup>Bankruptcy (Scotland) Act 1985, on the estate of an insolvent relevant person.
- (4) This section does not apply to a liquidator, administrator or trustee in bankruptcy who is—
  - (a) the Official Receiver;
  - (b) the Official Receiver for Northern Ireland; or
  - (c) the Accountant in Bankruptcy.
- (5) “Relevant person” has the same meaning as in section 224.

### Annotations:

#### Amendments (Textual)

**F315** Words in s. 220(3)(a) inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\)](#), **ss. 123(3)**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch.

**F316** Words in s. 220(3)(a) inserted (29.3.2009) by [The Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), **art. 15**

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

**C436** S. 220 extended (1.12.2001) by S.I. 2001/2967, **arts. 1(2)**, 8, 12(4)(c); S.I. 2001/3538, **art. 2(1)**

**C437** S. 220(3) applied (with modifications) (8.2.2011 with application in accordance with reg. 27(a) of the applying S.I.) by [The Investment Bank Special Administration Regulations 2011 \(S.I. 2011/245\)](#), reg. 27, **Sch. 6 Pt. 2 para. 3(3)**

#### Marginal Citations

**M27** 1985 c. 66.

## 221 Powers of court where information required.

- (1) If a person (“the defaulter”)—
  - (a) fails to comply with a requirement imposed under section 219, or
  - (b) fails to permit documents to be inspected under section 220,

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the scheme manager may certify that fact in writing to the court and the court may enquire into the case.

- (2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement (or to permit the documents to be inspected), it may deal with the defaulter (and, in the case of a body corporate, any director or officer) as if he were in contempt [<sup>F317</sup>; and “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership].
- (3) “Court” means—
  - (a) the High Court;
  - (b) in Scotland, the Court of Session.

**Annotations:**

**Amendments (Textual)**

**F317** Words in s. 221(2) inserted (6.4.2001 for E.W.S. and 13.9.2004 for N.I.) by S.I. 2001/1090, regs. 1, 9, Sch. 5 para. 21; S.R. 2004/307, reg. 9, Sch. 4 para. 17

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

**C438** S. 221 extended (1.12.2001) by S.I. 2001/2967, arts. 1(2), 7(b), 8, 12(4)(b)(c); S.I. 2001/3538, art. 2(1)

*Miscellaneous*

[<sup>F318</sup>**221A** **Delegation of functions**

- (1) The scheme manager may arrange for any of its functions to be discharged on its behalf by another person (a “scheme agent”).
- (2) Before entering into arrangements the scheme manager must be satisfied that the scheme agent—
  - (a) is competent to discharge the function, and
  - (b) has been given sufficient directions to enable the agent to take any decisions required in the course of exercising the function in accordance with policy determined by the scheme manager.
- (3) Arrangements may include provision for payments to be made by the scheme manager to the scheme agent (which payments are management expenses of the scheme manager [<sup>F319</sup>except where the function in question is one under Part 15A]).]

**Annotations:**

**Amendments (Textual)**

**F318** S. 221A inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), ss. 179(1), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

**F319** Words in s. 221A(3) inserted (12.10.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(3), Sch. 2 para. 23; S.I. 2010/2480, art. 2(e)(f)

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## 222 Statutory immunity.

- (1) Neither the scheme manager nor any person who is, or is acting as, its board member, officer [<sup>F320</sup>, scheme agent] or member of staff is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the scheme manager's functions.
- (2) Subsection (1) does not apply—
  - (a) if the act or omission is shown to have been in bad faith; or
  - (b) so as to 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>M28</sup>Human Rights Act 1998.

### Annotations:

#### Amendments (Textual)

**F320** Words in s. 222(1) inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\), ss. 179\(2\), 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), Sch.

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

**C439** S. 222 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. 32](#) (with [art. 30\(6\)](#))

**C440** S. 222 modified (7.10.2008 at 9.30 a.m.) by The Heritable Bank plc [Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2644\)](#), [art. 17](#) (with [art. 15\(8\)](#))

**C441** S. 222 modified (8.10.2008 at 10.10 a.m.) by The Transfer of Rights and Liabilities to ING Order 2008 (S.I. 2008/2666), [art. 14](#)

**C442** S. 222 modified (8.10.2008 at 12.15 p.m.) by The Kaupthing Singer & Friedlander Limited [Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2674\)](#), [art. 18](#) (with [art. 16\(8\)](#))

#### Marginal Citations

**M28** 1998 c. 42.

## 223 Management expenses.

- (1) The amount which the scheme manager may recover, from the sums levied under the scheme, as management expenses attributable to a particular period may not exceed such amount as may be fixed by the scheme as the limit applicable to that period.
- (2) In calculating the amount of any levy to be imposed by the scheme manager, no amount may be included to reflect management expenses unless the limit mentioned in subsection (1) has been fixed by the scheme.
- (3) “Management expenses” means expenses incurred, or expected to be incurred, by the scheme manager in connection with its functions under this Act other than those incurred—
  - (a) in paying compensation;
  - (b) as a result of any provision of the scheme made by virtue of section 216(3) or (4) or 217(1) or (6) [<sup>F321</sup>;
  - (c) under section 214B [<sup>F322</sup> or 214D].]
  - [<sup>F323</sup>(d) under Part 15A.]

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**Annotations:**

**Amendments (Textual)**

- F321** S. 223(3)(c) added (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009](#) (c. 1), [ss. 171\(2\), 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), [Sch.](#)
- F322** Words in s. 223(3)(c) inserted (8.4.2010) by [Financial Services Act 2010](#) (c. 28), [ss. 24\(1\), 26\(1\)](#), [Sch. 2 para. 24\(2\)](#)
- F323** S. 223(3)(d) inserted (12.10.2010) by [Financial Services Act 2010](#) (c. 28), [ss. 24\(1\), 26\(3\)](#), [Sch. 2 para. 24\(3\)](#); S.I. 2010/2480, [art. 2\(e\)\(f\)](#)

**Commencement Information**

- I57** S. 223 wholly in force at 1.12.2001; s. 223 not in force at Royal Assent see s. 431(2); s. 223 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, [art. 2](#), [Sch.](#); s. 223 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, [art. 2\(1\)](#)

PROSPECTIVE

[<sup>F324</sup>**223A Investing in National Loans Fund**

- (1) Sums levied for the purpose of maintaining a contingency fund may be paid to the Treasury.
- (2) The Treasury may receive sums under subsection (1) and may set terms and conditions of receipts.
- (3) Sums received shall be treated as if raised under section 12 of the National Loans Act 1968 (and shall therefore be invested as part of the National Loans Fund).
- (4) Interest accruing on the invested sums may be credited to the contingency fund (subject to any terms and conditions set under subsection (2)).
- (5) The Treasury shall comply with any request of the scheme manager to arrange for the return of sums for the purpose of making payments out of a contingency fund (subject to any terms and conditions set under subsection (2)).]

**Annotations:**

**Amendments (Textual)**

- F324** S. 223A inserted (prosp.) by [Banking Act 2009](#) (c. 1), [ss. 172, 263\(1\)\(2\)](#) (with s. 247)

[<sup>F325</sup>**223B Borrowing from National Loans Fund**

- (1) The scheme manager may request a loan from the National Loans Fund for the purpose of funding expenses incurred or expected to be incurred under the scheme.
- (2) The Treasury may arrange for money to be paid out of the National Loans Fund in pursuance of a request under subsection (1).
- (3) The Treasury shall determine—
  - (a) the rate of interest on a loan, and
  - (b) other terms and conditions.

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- (4) The Treasury may make regulations—
- (a) about the amounts that may be borrowed under this section;
  - (b) permitting the scheme manager to impose levies under section 213 for the purpose of meeting expenses in connection with loans under this section (and the regulations may have effect despite any provision of this Act);
  - (c) about the classes of person on whom those levies may be imposed;
  - (d) about the amounts and timing of those levies.
- (5) The compensation scheme may include provision about borrowing under this section provided that it is not inconsistent with regulations under this section.]

**Annotations:**

**Amendments (Textual)**

**F325** S. 223B inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\)](#), [ss. 173, 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), [Sch.](#)

**[<sup>F326</sup>223 Payments in error**

- (1) Payments made by the scheme manager in error may be provided for in setting a levy by virtue of section 213, 214A, 214B or 223B.
- (2) This section does not apply to payments made in bad faith.]

**Annotations:**

**Amendments (Textual)**

**F326** S. 223C inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\)](#), [ss. 177, 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), [Sch.](#)

**224 Scheme manager’s power to inspect documents held by Official Receiver etc.**

- (1) If, as a result of the insolvency or bankruptcy of a relevant person, any documents have come into the possession of a person to whom this section applies, he must permit any person authorised by the scheme manager to inspect the documents for the purpose of establishing—
- (a) the identity of persons to whom the scheme manager may be liable to make a payment in accordance with the compensation scheme; or
  - (b) the amount of any payment which the scheme manager may be liable to make.
- (2) A person inspecting a document under this section may take copies or extracts from the document.
- (3) In this section “relevant person” means a person who was—
- (a) an authorised person at the time the act or omission which may give rise to the liability mentioned in subsection (1)(a) took place; or
  - (b) an appointed representative at that time.
- (4) But a person who, at that time—
- (a) qualified for authorisation under Schedule 3, and

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(b) fell within a prescribed category,  
is not to be regarded as a relevant person for the purposes of this section in relation to any activities for which he had permission as a result of any provision of, or made under, that Schedule unless he had elected to participate in the scheme in relation to those activities at that time.

- (5) This section applies to—
- (a) the Official Receiver;
  - (b) the Official Receiver for Northern Ireland; and
  - (c) the Accountant in Bankruptcy.

**Annotations:**

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

- C443** S. 224 extended (1.12.2001) by S.I. 2001/2967, **arts. 1(2)**, 8, 12(4)(c); S.I. 2001/3538, **art. 2(1)**  
**C444** S. 224(3) excluded (2.7.2002) by The Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (S.I. 2002/1501), **art. 5(1)**

**Commencement Information**

- I58** S. 224 wholly in force at 1.12.2001; s. 224 not in force at Royal Assent see s. 431(2); s. 224(4) in force for certain purposes at 25.2.2001 by S.I. 2001/516, **art. 2(b)**, **Sch. Pt. 2**; s. 224 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

[<sup>F327</sup>224A] **Functions under the Banking Act 2009**

[<sup>F328</sup>(1)] A reference in this Part to functions of the scheme manager (including a reference to functions conferred by or under this Part) includes a reference to functions conferred by or under the Banking Act 2009.

[<sup>F329</sup>(2) Any payment required to be made by the scheme manager by virtue of section 61 of that Act (special resolution regime: compensation) is to be treated for the purposes of this Part as an expense under the compensation scheme.]]

**Annotations:**

**Amendments (Textual)**

- F327** S. 224A added (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), **ss. 180**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, **Sch.**  
**F328** S. 224A renumbered as s. 224A(1) (8.4.2010) by Financial Services Act 2010 (c. 28), **ss. 24(1)**, 26(1), **Sch. 2 para. 25(2)**  
**F329** S. 224A(2) inserted (8.4.2010) by Financial Services Act 2010 (c. 28), **ss. 24(1)**, 26(1), **Sch. 2 para. 25(3)**

## [<sup>F330</sup>PART 15A

### POWER TO REQUIRE FSCS MANAGER TO ACT IN RELATION TO OTHER SCHEMES

#### Annotations:

#### Amendments (Textual)

**F330** Pt. 15A inserted (12.10.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 17, 26\(3\)](#); [S.I. 2010/2480](#), [art. 2\(d\)](#)

### Introduction

#### **224B** Meaning of “relevant scheme” etc

- (1) The following provisions apply for the purposes of this Part.
- (2) “Relevant scheme” means a scheme or arrangement (other than the FSCS) for the payment of compensation (in certain cases) to customers of persons who provide financial services or carry on a business connected with the provision of such services.
- (3) References to the manager of a relevant scheme are to the person who administers it or (if there is no such person) the person responsible for making payments under it.
- (4) “The FSCS” means the Financial Services Compensation Scheme (see section 213(2)).
- (5) “The FSCS manager” means the scheme manager as defined by section 212(1).
- (6) “Expense” includes anything that, if incurred in relation to the FSCS, would amount to an expense for the purposes of the FSCS.
- (7) “Notice” means a notice in writing.
- (8) In subsection (2)—
  - (a) “customers” includes customers outside the United Kingdom;
  - (b) “persons” includes persons outside the United Kingdom;
  - (c) references to the provision of financial services include the provision outside the United Kingdom of such services.
- (9) This Part applies to cases where the manager of the relevant scheme is the Treasury or any other Minister of the Crown as it applies to cases where that manager is any other person.

### Power to require FSCS manager to act

#### **224C** Power to require FSCS manager to act on behalf of manager of relevant scheme

- (1) This section applies if compensation is payable under a relevant scheme.
- (2) The Treasury may by notice require the FSCS manager to exercise (on behalf of the manager of the relevant scheme) specified functions in respect of specified claims for compensation under the relevant scheme.
- (3) A notice may be given only with the consent of the manager of the relevant scheme.

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- (4) In subsection (2) “specified” means specified, or of a description specified, in the notice.
- (5) Claims or descriptions of claims may be specified by reference to the persons or description of persons whose claims they are.

#### **224D Cases where FSCS manager may decline to act**

- (1) This section applies where a notice under section 224C(2) (a “section 224C notice”) has been given in respect of a relevant scheme.
- (2) The FSCS manager is not under a duty to comply with the section 224C notice if, as soon as reasonably practicable after receiving it, the FSCS manager gives a notice to the Treasury stating that a ground set out in section 224E applies.
- (3) Where a notice under subsection (2) is given, the FSCS manager may recover from the manager of the relevant scheme an amount equal to the total expenses incurred by the FSCS manager in connection with the relevant scheme in the period—
  - (a) beginning with the giving of the section 224C notice; and
  - (b) ending with the giving of the notice under subsection (2).
- (4) The duty to comply with the section 224C notice ceases if, after starting to comply with it, the FSCS manager gives a notice to the Treasury and the manager of the relevant scheme stating that a ground set out in section 224E applies.
- (5) Where a notice under subsection (4) is given, the FSCS manager must give the Treasury such information connected with the FSCS manager's exercise of functions in relation to the relevant scheme as the Treasury may reasonably require.
- (6) Any notice under this section—
  - (a) may be given only if, before giving it, the FSCS manager has taken reasonable steps to deal with anything that is causing the ground or grounds in question to apply; and
  - (b) must contain details of those steps.

#### **224E Grounds for declining to act**

- (1) This section sets out the grounds referred to in section 224D(2) and (4).
- (2) The first ground is that the FSCS manager is not satisfied that it will be able to obtain any information required in order to comply with the section 224C notice.
- (3) The second ground is that the FSCS manager is not satisfied that it will be able to obtain any advice or other assistance from the manager of the relevant scheme that is required in order to comply with the section 224C notice.
- (4) The third ground is—
  - (a) that the FSCS manager has not received an amount at least equal to the total expenses it expects to incur in connection with its relevant scheme functions; and
  - (b) either—
    - (i) that there are no arrangements for the provision of funds to the FSCS manager to enable it to exercise those functions and meet those expenses; or

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- (ii) that the FSCS manager considers that any such arrangements are unsatisfactory.
- (5) The fourth ground is that the FSCS manager considers that complying with the section 224C notice would detrimentally affect the exercise of its functions under the FSCS.
- (6) The fifth ground is—
  - (a) that there is no undertaking from the manager of the relevant scheme not to bring proceedings against the FSCS manager; or
  - (b) that the FSCS manager considers that the terms of any such undertaking are unsatisfactory.
- (7) The sixth ground is—
  - (a) that there are no arrangements for the reimbursement of any expenses incurred by the FSCS manager in connection with any proceedings brought against it in respect of its relevant scheme functions (including expenses incurred in meeting any award of damages made against it); or
  - (b) that the FSCS manager considers that any such arrangements are unsatisfactory.
- (8) In subsection (6) references to an undertaking of the kind mentioned there are to an undertaking not to bring proceedings in respect of the FSCS manager's relevant scheme functions except proceedings in respect of an act or omission of the FSCS manager that is alleged to have been in bad faith.
- (9) In this section “proceedings” includes proceedings outside the United Kingdom.

## Rules

### **224F Rules about relevant schemes**

- (1) The [regulators] may by rules make provision in connection with the exercise by the FSCS manager of functions in respect of relevant schemes.
- (2) The provision that may be made by the rules includes any provision corresponding to provision that could be contained in the FSCS; but this is subject to subsections (3) and (4).
- (3) The rules may confer on the FSCS manager a power to impose levies on authorised persons (or any class of authorised persons) for the purpose of meeting its management expenses incurred in connection with its functions in respect of relevant schemes.
- (4) But if the rules confer such a power they must provide that the power may be exercised in relation to expenses incurred in connection with a relevant scheme only if the FSCS manager has tried its best to obtain reimbursement of the expenses from the manager of the relevant scheme.
- (5) The rules may apply any provision of the FSCS, with or without modifications.
- (6) An amount payable to the FSCS manager as a result of any provision of the rules made by virtue of subsection (3) may be recovered as a debt due to the FSCS manager.
- (7) References to the FSCS manager's “management expenses” are to its expenses incurred otherwise than in paying compensation.]

## PART XVI

### THE OMBUDSMAN SCHEME

#### Annotations:

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

- C445** Pt. 16 applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2), **125** (with reg. 3)
- C446** Pt. 16 applied (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), **reg. 76(2)** (with reg. 3)

#### *The scheme*

#### **225 The scheme and the scheme operator.**

- (1) This Part provides for a scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person.
- (2) The scheme is to be administered by a body corporate (“the scheme operator”).
- (3) The scheme is to be operated under a name chosen by the scheme operator but is referred to in this Act as “the ombudsman scheme”.
- (4) Schedule 17 makes provision in connection with the ombudsman scheme and the scheme operator.

#### **226 Compulsory jurisdiction.**

- (1) A complaint which relates to an act or omission of a person (“the respondent”) in carrying on an activity to which compulsory jurisdiction rules apply is to be dealt with under the ombudsman scheme if the conditions mentioned in subsection (2) are satisfied.
- (2) The conditions are that—
  - (a) the complainant is eligible and wishes to have the complaint dealt with under the scheme;
  - (b) the respondent was an authorised person <sup>[<sup>F331</sup></sup>or an electronic money issuer within the meaning of the Electronic Money Regulations 2011]<sup>[<sup>F332</sup></sup>, or a payment service provider within the meaning of the Payment Services Regulations 2009,] at the time of the act or omission to which the complaint relates; and
  - (c) the act or omission to which the complaint relates occurred at a time when compulsory jurisdiction rules were in force in relation to the activity in question.
- (3) “Compulsory jurisdiction rules” means rules—
  - (a) made by the [\[FCA\]](#) for the purposes of this section; and
  - (b) specifying the activities to which they apply.
- (4) Only activities which are regulated activities, or which could be made regulated activities by an order under section 22, may be specified.

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- (5) Activities may be specified by reference to specified categories (however described).
- (6) A complainant is eligible, in relation to the compulsory jurisdiction of the ombudsman scheme, if he falls within a class of person specified in the rules as eligible.
- (7) The rules—
  - (a) may include provision for persons other than individuals to be eligible; but
  - (b) may not provide for authorised persons to be eligible except in specified circumstances or in relation to complaints of a specified kind.
- (8) The jurisdiction of the scheme which results from this section is referred to in this Act as the “compulsory jurisdiction”.

#### Annotations:

##### Amendments (Textual)

**F331** Words in s. 226(2)(b) inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, **Sch. 4 para. 2(3)(a)** (with reg. 3)

**F332** Words in s. 226(2)(b) inserted (2.3.2009 for certain purposes, 1.5.2009 for certain further purposes and 1.11.2009 otherwise) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2), 126, **Sch. 6 para. 1(1)(a)** (with reg. 3)

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

**C447** S. 226 extended (19.7.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/2326](#), **arts. 1(1), 3(1)**; [S.I. 2001/3538](#), **art. 2(1)**

**C448** S. 226(2) excluded (19.7.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/2326](#), **arts. 1(1), 2(4)**; [S.I. 2001/3538](#), **art. 2(1)**

##### Commencement Information

**I59** S. 226 wholly in force at 1.12.2001; s. 226 not in force at Royal Assent see [s. 431\(2\)](#); s. 226 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), **art. 2, Sch.**; s. 226 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

#### [<sup>F333</sup>226A Consumer credit jurisdiction

- (1) A complaint which relates to an act or omission of a person (“the respondent”) is to be dealt with under the ombudsman scheme if the conditions mentioned in subsection (2) are satisfied.
- (2) The conditions are that—
  - (a) the complainant is eligible and wishes to have the complaint dealt with under the scheme;
  - (b) the complaint falls within a description specified in consumer credit rules;
  - (c) at the time of the act or omission the respondent was the licensee under a standard licence or was authorised to carry on an activity by virtue of section 34A of the Consumer Credit Act 1974;
  - (d) the act or omission occurred in the course of a business being carried on by the respondent which was of a type mentioned in subsection (3);
  - (e) at the time of the act or omission that type of business was specified in an order made by the Secretary of State; and

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- (f) the complaint cannot be dealt with under the compulsory jurisdiction.
- (3) The types of business referred to in subsection (2)(d) are—
- (a) a consumer credit business;
  - (b) a consumer hire business;
  - (c) a business so far as it comprises or relates to credit brokerage;
  - (d) a business so far as it comprises or relates to debt-adjusting;
  - (e) a business so far as it comprises or relates to debt-counselling;
  - (f) a business so far as it comprises or relates to debt-collecting;
  - (g) a business so far as it comprises or relates to debt administration;
  - (h) a business so far as it comprises or relates to the provision of credit information services;
  - (i) a business so far as it comprises or relates to the operation of a credit reference agency.
- (4) A complainant is eligible if—
- (a) he is—
    - (i) an individual; or
    - (ii) a surety in relation to a security provided to the respondent in connection with the business mentioned in subsection (2)(d); and
  - (b) he falls within a class of person specified in consumer credit rules.
- (5) The approval of the Treasury is required for an order under subsection (2)(e).
- (6) The jurisdiction of the scheme which results from this section is referred to in this Act as the “consumer credit jurisdiction”.
- (7) In this Act “consumer credit rules” means rules made by the scheme operator with the approval of the [FCA] for the purposes of the consumer credit jurisdiction.
- (8) Consumer credit rules under this section may make different provision for different cases.
- (9) Expressions used in the Consumer Credit Act 1974 have the same meaning in this section as they have in that Act.]

**Annotations:**

**Amendments (Textual)**

**F333** S. 226A inserted (16.6.2006) by [Consumer Credit Act 2006 \(c. 14\)](#), **ss. 59(1), 71(2)** (with [Sch. 3 para. 29](#)); [S.I. 2006/1508](#), **art. 3(1)**, [Sch. 1](#)

**227 Voluntary jurisdiction.**

- (1) A complaint which relates to an act or omission of a person (“the respondent”) in carrying on an activity to which voluntary jurisdiction rules apply is to be dealt with under the ombudsman scheme if the conditions mentioned in subsection (2) are satisfied.
- (2) The conditions are that—
- (a) the complainant is eligible and wishes to have the complaint dealt with under the scheme;

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- (b) at the time of the act or omission to which the complaint relates, the respondent was participating in the scheme;
  - (c) at the time when the complaint is referred under the scheme, the respondent has not withdrawn from the scheme in accordance with its provisions;
  - (d) the act or omission to which the complaint relates occurred at a time when voluntary jurisdiction rules were in force in relation to the activity in question; and
  - (e) the complaint cannot be dealt with under the compulsory jurisdiction [F334 or the consumer credit jurisdiction].
- (3) “Voluntary jurisdiction rules” means rules—
- (a) made by the scheme operator for the purposes of this section; and
  - (b) specifying the activities to which they apply.
- (4) The only activities which may be specified in the rules are activities which are, or could be, specified in compulsory jurisdiction rules.
- (5) Activities may be specified by reference to specified categories (however described).
- (6) The rules require the [FCA’s] approval.
- (7) A complainant is eligible, in relation to the voluntary jurisdiction of the ombudsman scheme, if he falls within a class of person specified in the rules as eligible.
- (8) The rules may include provision for persons other than individuals to be eligible.
- (9) A person qualifies for participation in the ombudsman scheme if he falls within a class of person specified in the rules in relation to the activity in question.
- (10) Provision may be made in the rules for persons other than authorised persons to participate in the ombudsman scheme.
- (11) The rules may make different provision in relation to complaints arising from different activities.
- (12) The jurisdiction of the scheme which results from this section is referred to in this Act as the “voluntary jurisdiction”.
- (13) In such circumstances as may be specified in voluntary jurisdiction rules, a complaint —
- (a) which relates to an act or omission occurring at a time before the rules came into force, and
  - (b) which could have been dealt with under a scheme which has to any extent been replaced by the voluntary jurisdiction,
- is to be dealt with under the ombudsman scheme even though paragraph (b) or (d) of subsection (2) would otherwise prevent that.
- (14) In such circumstances as may be specified in voluntary jurisdiction rules, a complaint is to be dealt with under the ombudsman scheme even though—
- (a) paragraph (b) or (d) of subsection (2) would otherwise prevent that, and
  - (b) the complaint is not brought within the scheme as a result of subsection (13), but only if the respondent has agreed that complaints of that kind were to be dealt with under the scheme.

**Annotations:**

**Amendments (Textual)**

**F334** Words in s. 227(2)(e) inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 61(2), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1

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

**C449** S. 227(2) modified (7.10.2008 at 9.30 a.m.) by The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2644), art. 25

**Commencement Information**

**I60** S. 227 wholly in force at 1.12.2001; s. 227 not in force at Royal Assent see s. 431(2); s. 227 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 227 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

*Determination of complaints*

**228 Determination under the compulsory jurisdiction.**

- (1) This section applies only in relation to the compulsory jurisdiction [<sup>F335</sup>and to the consumer credit jurisdiction].
- (2) A complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case.
- (3) When the ombudsman has determined a complaint he must give a written statement of his determination to the respondent and to the complainant.
- (4) The statement must—
  - (a) give the ombudsman’s reasons for his determination;
  - (b) be signed by him; and
  - (c) require the complainant to notify him [~~in writing~~], before a date specified in the statement, whether he accepts or rejects the determination.
- (5) If the complainant notifies the ombudsman that he accepts the determination, it is binding on the respondent and the complainant and final.
- (6) If, by the specified date, the complainant has not notified the ombudsman of his acceptance or rejection of the determination he is to be treated as having rejected it.
- [(6A) But the complainant is not to be treated as having rejected the determination by virtue of subsection (6) if—
  - (a) the complainant notifies the ombudsman after the specified date of the complainant’s acceptance of the determination,
  - (b) the complainant has not previously notified the ombudsman of the complainant’s rejection of the determination, and
  - (c) the ombudsman is satisfied that such conditions as may be prescribed by rules made by the scheme operator for the purposes of this section are satisfied.]
- (7) The ombudsman must notify the respondent of the outcome.
- [(7A) Where a determination is rejected by virtue of subsection (6), the notification under subsection (7) must contain a general description of the effect of subsection (6A).]

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (8) A copy of the determination on which appears a certificate signed by an ombudsman is evidence (or in Scotland sufficient evidence) that the determination was made under the scheme.
- (9) Such a certificate purporting to be signed by an ombudsman is to be taken to have been duly signed unless the contrary is shown.

**Annotations:**

**Amendments (Textual)**

**F335** Words in s. 228(1) inserted (16.6.2006) by [Consumer Credit Act 2006 \(c. 14\), ss. 61\(3\), 71\(2\)](#); S.I. 2006/1508, [art. 3\(1\)](#), Sch. 1

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

**C450** S. 228 applied (1.12.2001) by S.I. 2001/2326, [arts. 1\(1\)\(b\)](#), 6(11), 7(1); S.I. 2001/3538, [art. 2\(1\)](#)

**C451** Ss. 228-232 applied (31.10.2004 for certain purposes and 14.1.2005 otherwise) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Complaints Relating to General Insurance and Mortgages\) Order 2004 \(S.I. 2004/454\)](#), [arts. 1\(2\), 5](#)

**C452** S. 228(2) excluded (1.12.2001) by S.I. 2001/2326, [arts. 1\(1\)\(b\)](#), 6(1)(a); S.I. 2001/3538, [art. 2\(1\)](#)

**C453** S. 228(4)(c)(5)-(7) excluded (1.12.2001) by S.I. 2001/2326, [arts. 1\(1\)\(b\)](#), 6(7)(8)(9); S.I. 2001/3538, [art. 2\(1\)](#)

**229 Awards.**

- (1) This section applies only in relation to the compulsory jurisdiction [<sup>F336</sup>and to the consumer credit jurisdiction].
- (2) If a complaint which has been dealt with under the scheme is determined in favour of the complainant, the determination may include—
  - (a) an award against the respondent of such amount as the ombudsman considers fair compensation for loss or damage (of a kind falling within subsection (3)) suffered by the complainant (“a money award”);
  - (b) a direction that the respondent take such steps in relation to the complainant as the ombudsman considers just and appropriate (whether or not a court could order those steps to be taken).
- (3) A money award may compensate for—
  - (a) financial loss; or
  - (b) any other loss, or any damage, of a specified kind.
- (4) The [[FCA](#)] may specify [<sup>F337</sup>for the purposes of the compulsory jurisdiction] the maximum amount which may be regarded as fair compensation for a particular kind of loss or damage specified under subsection (3)(b).
- [<sup>F338</sup>(4A) The scheme operator may specify for the purposes of the consumer credit jurisdiction the maximum amount which may be regarded as fair compensation for a particular kind of loss or damage specified under subsection (3)(b).]
- (5) A money award may not exceed the monetary limit; but the ombudsman may, if he considers that fair compensation requires payment of a larger amount, recommend that the respondent pay the complainant the balance.
- (6) The monetary limit is such amount as may be specified.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (7) Different amounts may be specified in relation to different kinds of complaint.
- (8) A money award—
- (a) may provide for the amount payable under the award to bear interest at a rate and as from a date specified in the award; and
  - (b) is enforceable by the complainant in accordance with Part III of Schedule 17 <sup>F339</sup>or (as the case may be) Part 3A of that Schedule].
- (9) Compliance with a direction under subsection (2)(b)—
- (a) is enforceable by an injunction; or
  - (b) in Scotland, is enforceable by an order under section 45 of the <sup>M29</sup>Court of Session Act 1988.
- (10) Only the complainant may bring proceedings for an injunction or proceedings for an order.
- <sup>F340</sup>(11) “Specified” means—
- (a) for the purposes of the compulsory jurisdiction, specified in compulsory jurisdiction rules;
  - (b) for the purposes of the consumer credit jurisdiction, specified in consumer credit rules.
- (12) Consumer credit rules under this section may make different provision for different cases.]

#### Annotations:

##### Amendments (Textual)

- F336** Words in s. 229(1) inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 61(3), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1
- F337** Words in s. 229(4) inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 61(4), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1
- F338** S. 229(4A) inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 61(5), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1
- F339** Words in s. 229(8)(b) inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 61(6), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1
- F340** S. 229(11)(12) substituted (16.6.2006) for s. 229(11) by Consumer Credit Act 2006 (c. 14), ss. 61(7), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1

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

- C454** S. 229 applied (1.12.2001) by S.I. 2001/2326, arts. 1(1)(b), 7(1); S.I. 2001/3538, art. 2(1)  
S. 229 restricted (1.12.2001) by S.I. 2001/2326, arts. 1(1)(b), 6(1)(b)(4)(5); S.I. 2001/3538, art. 2(1)
- C455** Ss. 228-232 applied (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), arts. 1(2), 5
- C456** S. 229(8)(b) applied (1.12.2001) by S.I. 2001/2326, arts. 1(1)(b), 6(4); S.I. 2001/3538, art. 2(1)
- C457** S. 229(9)(10) applied (1.12.2001) by S.I. 2001/2326, arts. 1(1)(b), 6(5); S.I. 2001/3538, art. 2(1)

##### Commencement Information

- I61** S. 229 wholly in force at 1.12.2001; s. 229 not in force at Royal Assent see s. 431(2); s. 229 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 229 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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### Marginal Citations

M29 1988 c. 36.

## 230 Costs.

- (1) The scheme operator may by rules (“costs rules”) provide for an ombudsman to have power, on determining a complaint under the compulsory jurisdiction [<sup>F341</sup>or the consumer credit jurisdiction], to award costs in accordance with the provisions of the rules.
- (2) Costs rules require the approval of the [FCA].
- (3) Costs rules may not provide for the making of an award against the complainant in respect of the respondent’s costs.
- (4) But they may provide for the making of an award against the complainant in favour of the scheme operator, for the purpose of providing a contribution to resources deployed in dealing with the complaint, if in the opinion of the ombudsman—
  - (a) the complainant’s conduct was improper or unreasonable; or
  - (b) the complainant was responsible for an unreasonable delay.
- (5) Costs rules may authorise an ombudsman making an award in accordance with the rules to order that the amount payable under the award bears interest at a rate and as from a date specified in the order.
- (6) An amount due under an award made in favour of the scheme operator is recoverable as a debt due to the scheme operator.
- (7) Any other award made against the respondent is to be treated as a money award for the purposes of paragraph 16 of Schedule 17 [<sup>F342</sup>or (as the case may be) paragraph 16D of that Schedule].

### Annotations:

#### Amendments (Textual)

**F341** Words in s. 230(1) inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 61(8)(a), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1

**F342** Words in s. 230(7) inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 61(8)(b), 71(2); S.I. 2006/1508, art. 3(1), Sch. 1

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

**C458** S. 230 applied (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, arts. 1(1), 7(1); S.I. 2001/3538, art. 2(1)

S. 230 restricted (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, arts. 1(1), 6(1)(c); S.I. 2001/3538, art. 2(1)

**C459** Ss. 228-232 applied (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), arts. 1(2), 5

**C460** S. 230(6)(7) applied (19.7.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/2326, arts. 1(1), 6(6); S.I. 2001/3538, art. 2(1)

### **[230A Reports of determinations**

- (1) The scheme operator must publish a report of any determination made under this Part.
- (2) But if the ombudsman who makes the determination informs the scheme operator that, in the ombudsman’s opinion, it is inappropriate to publish a report of that determination (or any part of it) the scheme operator must not publish a report of that determination (or that part).
- (3) Unless the complainant agrees, a report of a determination published by the scheme operator may not include the name of the complainant, or particulars which, in the opinion of the scheme operator, are likely to identify the complainant.
- (4) The scheme operator may charge a reasonable fee for providing a person with a copy of a report.]

### *Information*

### **231 Ombudsman’s power to require information.**

- (1) An ombudsman may, by notice in writing given to a party to a complaint, require that party—
  - (a) to provide specified information or information of a specified description; or
  - (b) to produce specified documents or documents of a specified description.
- (2) The information or documents must be provided or produced—
  - (a) before the end of such reasonable period as may be specified; and
  - (b) in the case of information, in such manner or form as may be specified.
- (3) This section applies only to information and documents the production of which the ombudsman considers necessary for the determination of the complaint.
- (4) If a document is produced in response to a requirement imposed under this section, the ombudsman may—
  - (a) take copies or extracts from the document; or
  - (b) require the person producing the document to provide an explanation of the document.
- (5) If a person who is required under this section to produce a document fails to do so, the ombudsman may require him to state, to the best of his knowledge and belief, where the document is.
- (6) If a person claims a lien on a document, its production under this Part does not affect the lien.
- (7) “Specified” means specified in the notice given under subsection (1).

#### **Annotations:**

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

**C461** S. 231 applied (1.12.2001) by S.I. 2001/2326, arts. 1(1)(b), 11(5); S.I. 2001/3538, art. 2(1)

**C462** Ss. 228-232 applied (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (S.I. 2004/454), arts. 1(2), 5

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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S. 231 applied (31.10.2004 for certain purposes and 14.1.2005 otherwise) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Complaints Relating to General Insurance and Mortgages\) Order 2004 \(S.I. 2004/454\)](#), arts. 1(2), **11(5)**

### **232 Powers of court where information required.**

- (1) If a person (“the defaulter”) fails to comply with a requirement imposed under section 231, the ombudsman may certify that fact in writing to the court and the court may enquire into the case.
- (2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and, in the case of a body corporate, any director or officer) as if he were in contempt [<sup>F343</sup>; and “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.].
- (3) “Court” means—
  - (a) the High Court;
  - (b) in Scotland, the Court of Session.

#### **Annotations:**

##### **Amendments (Textual)**

**F343** Words in s. 232(2) inserted (6.4.2001 for E.W.S and 13.9.2004 for N.I.) by [S.I. 2001/1090](#), regs. 1, 9, [Sch. 5 para. 21](#); [S.R. 2004/307](#), reg. 9, [Sch. 4 para. 17](#)

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

**C463** S. 232 applied (1.12.2001) by [S.I. 2001/2326](#), arts. **1(1)(b)**, 11(5); [S.I. 2001/3538](#), art. **2(1)**

**C464** Ss. 228-232 applied (31.10.2004 for certain purposes and 14.1.2005 otherwise) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Complaints Relating to General Insurance and Mortgages\) Order 2004 \(S.I. 2004/454\)](#), arts. 1(2), **5**

S. 232 applied (31.10.2004 for certain purposes and 14.1.2005 otherwise) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Complaints Relating to General Insurance and Mortgages\) Order 2004 \(S.I. 2004/454\)](#), arts. 1(2), **11(5)**

### **[232A Scheme operator’s duty to provide information to FCA**

If the scheme operator considers that it has information that, in its opinion, would or might be of assistance to the FCA in advancing one or more of the FCA’s operational objectives, it must disclose that information to the FCA.]

### **233 Data protection.**

In section 31 of the <sup>M30</sup>Data Protection Act 1998 (regulatory activity), after subsection (4), insert—

“(4A) Personal data processed for the purpose of discharging any function which is conferred by or under Part XVI of the Financial Services and Markets Act 2000 on the body established by the Financial Services Authority for the purposes of that Part are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of the function.”

**Annotations:**

**Marginal Citations**

**M30** 1998 c. 29.

*Funding*

**234 Industry funding.**

- (1) For the purpose of funding—
- (a) the establishment of the ombudsman scheme (whenever any relevant expense is incurred), and
  - (b) its operation in relation to the compulsory jurisdiction,
- the [FCA] may make rules requiring the payment to it or to the scheme operator, by authorised persons or any class of authorised person <sup>F344</sup>, any electronic money issuer within the meaning of the Electronic Money Regulations 2011<sup>F345</sup> or any payment service provider within the meaning of the Payment Services Regulations 2009] of specified amounts (or amounts calculated in a specified way).
- (2) “Specified” means specified in the rules.

**Annotations:**

**Amendments (Textual)**

**F344** Words in s. 234(1) inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, **Sch. 4 para. 2(3)(b)** (with reg. 3)

**F345** Words in s. 234(1) inserted (2.3.2009 for certain purposes, 1.5.2009 for certain further purposes and 1.11.2009 otherwise) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2), 126, **Sch. 6 para. 1(1)(b)** (with reg. 3)

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

**C465** S. 234(1) amended (1.12.2001) by [S.I. 2001/2326](#), **arts. 1(1)(b), 12(1)**; [S.I. 2001/3538](#), **art. 2(1)**

**C466** S. 234(1) extended (31.10.2004 for certain purposes and 14.1.2005 otherwise) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Complaints Relating to General Insurance and Mortgages\) Order 2004 \(S.I. 2004/454\)](#), arts. 1(2), **6(1)**

<sup>F346</sup>**234A Funding by consumer credit licensees etc.**

- (1) For the purpose of funding—
- (a) the establishment of the ombudsman scheme so far as it relates to the consumer credit jurisdiction (whenever any relevant expense is incurred), and
  - (b) its operation in relation to the consumer credit jurisdiction,
- the scheme operator may from time to time with the approval of the [FCA] determine a sum which is to be raised by way of contributions under this section.
- (2) A sum determined under subsection (1) may include a component to cover the costs of the collection of contributions to that sum (“collection costs”) under this section.
- (3) The scheme operator must notify the OFT of every determination under subsection (1).

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**Proposed Legislation:** *This version shows proposed changes to this legislation item. It has no official standing.*

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- (4) The OFT must give general notice of every determination so notified.
- (5) The OFT may by general notice impose requirements on—
  - (a) licensees to whom this section applies, or
  - (b) persons who make applications to which this section applies,to pay contributions to the OFT for the purpose of raising sums determined under subsection (1).
- (6) The amount of the contribution payable by a person under such a requirement—
  - (a) shall be the amount specified in or determined under the general notice; and
  - (b) shall be paid before the end of the period or at the time so specified or determined.
- (7) A general notice under subsection (5) may—
  - (a) impose requirements only on descriptions of licensees or applicants specified in the notice;
  - (b) provide for exceptions from any requirement imposed on a description of licensees or applicants;
  - (c) impose different requirements on different descriptions of licensees or applicants;
  - (d) make provision for refunds in specified circumstances.
- (8) Contributions received by the OFT must be paid to the scheme operator.
- (9) As soon as practicable after the end of—
  - (a) each financial year of the scheme operator, or
  - (b) if the OFT and the scheme operator agree that this paragraph is to apply instead of paragraph (a) for the time being, each period agreed by them,the scheme operator must pay to the OFT an amount representing the extent to which collection costs are covered in accordance with subsection (2) by the total amount of the contributions paid by the OFT to it during the year or (as the case may be) the agreed period.
- (10) Amounts received by the OFT from the scheme operator are to be retained by it for the purpose of meeting its costs.
- (11) The Secretary of State may by order provide that the functions of the OFT under this section are for the time being to be carried out by the scheme operator.
- (12) An order under subsection (11) may provide that while the order is in force this section shall have effect subject to such modifications as may be set out in the order.
- (13) The licensees to whom this section applies are licensees under standard licences which cover to any extent the carrying on of a type of business specified in an order under section 226A(2)(e).
- (14) The applications to which this section applies are applications for—
  - (a) standard licences covering to any extent the carrying on of a business of such a type;
  - (b) the renewal of standard licences on terms covering to any extent the carrying on of a business of such a type.

- (15) Expressions used in the Consumer Credit Act 1974 have the same meaning in this section as they have in that Act.]

**Annotations:**

**Amendments (Textual)**

- F346** S. 234A inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. 60, 71(2); S.I. 2006/1508, art. 3(1), Sch. 1

*[Successors to businesses]*

**234B** **Transfers of liability**

- (1) This section applies where a person (the “successor”) has assumed a liability (including a contingent one) of a person (the “predecessor”) who was, or (apart from this section) would have been, the respondent in respect of a complaint falling to be dealt with under the ombudsman scheme.
- (2) The complaint may (but need not) be dealt with under this Part as if the successor were the respondent.]

**PART XVII**

COLLECTIVE INVESTMENT SCHEMES

**CHAPTER I**

INTERPRETATION

**235** **Collective investment schemes.**

- (1) In this Part “collective investment scheme” means any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (2) The arrangements must be such that the persons who are to participate (“participants”) do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions.
- (3) The arrangements must also have either or both of the following characteristics—
- the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
  - the property is managed as a whole by or on behalf of the operator of the scheme.

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- (4) If arrangements provide for such pooling as is mentioned in subsection (3)(a) in relation to separate parts of the property, the arrangements are not to be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.
- (5) The Treasury may by order provide that arrangements do not amount to a collective investment scheme—
  - (a) in specified circumstances; or
  - (b) if the arrangements fall within a specified category of arrangement.

### 236 Open-ended investment companies.

- (1) In this Part “an open-ended investment company” means a collective investment scheme which satisfies both the property condition and the investment condition.
- (2) The property condition is that the property belongs beneficially to, and is managed by or on behalf of, a body corporate (“BC”) having as its purpose the investment of its funds with the aim of—
  - (a) spreading investment risk; and
  - (b) giving its members the benefit of the results of the management of those funds by or on behalf of that body.
- (3) The investment condition is that, in relation to BC, a reasonable investor would, if he were to participate in the scheme—
  - (a) expect that he would be able to realize, within a period appearing to him to be reasonable, his investment in the scheme (represented, at any given time, by the value of shares in, or securities of, BC held by him as a participant in the scheme); and
  - (b) be satisfied that his investment would be realized on a basis calculated wholly or mainly by reference to the value of property in respect of which the scheme makes arrangements.
- (4) In determining whether the investment condition is satisfied, no account is to be taken of any actual or potential redemption or repurchase of shares or securities under—
  - [<sup>F347</sup>(a) Chapters 3 to 7 of Part 18 of the Companies Act 2006;]
  - (c) corresponding provisions in force in another EEA State; or
  - (d) provisions in force in a country or territory other than an EEA state which the Treasury have, by order, designated as corresponding provisions.
- (5) The Treasury may by order amend the definition of “an open-ended investment company” for the purposes of this Part.

#### Annotations:

#### Amendments (Textual)

**F347** S. 236(4)(a) substituted (1.10.2009) for s. 236(4)(a)(b) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 181(3)** (with art. 10)

### 237 Other definitions.

(1) In this Part “unit trust scheme” means a collective investment scheme under which the property is held on trust for the participants.

(2) In this Part—

“trustee”, in relation to a unit trust scheme, means the person holding the property in question on trust for the participants;

“depository”, in relation to—

(a) a collective investment scheme which is constituted by a body incorporated by virtue of regulations under section 262, or

(b) any other collective investment scheme which is not a unit trust scheme,

means any person to whom the property subject to the scheme is entrusted for safekeeping;

“the operator”, in relation to a unit trust scheme with a separate trustee, means the manager and in relation to an open-ended investment company, means that company;

“units” means the rights or interests (however described) of the participants in a collective investment scheme.

(3) In this Part—

“an authorised unit trust scheme” means a unit trust scheme which is authorised for the purposes of this Act by an authorisation order in force under section 243;

“an authorised open-ended investment company” means a body incorporated by virtue of regulations under section 262 in respect of which an authorisation order is in force under any provision made in such regulations by virtue of subsection (2)(l) of that section;

“a recognised scheme” means a scheme recognised under section 264, 270 or 272.

## CHAPTER II

### RESTRICTIONS ON PROMOTION

#### Annotations:

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

C467 Pt. XVII Ch. II (ss. 238-241) modified (31.10.2001) by S.I. 2001/3347, Sch. para. 8

### 238 Restrictions on promotion.

(1) An authorised person must not communicate an invitation or inducement to participate in a collective investment scheme.

(2) But that is subject to the following provisions of this section and to section 239.

(3) Subsection (1) applies in the case of a communication originating outside the United Kingdom only if the communication is capable of having an effect in the United Kingdom.

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- (4) Subsection (1) does not apply in relation to—
  - (a) an authorised unit trust scheme;
  - (b) a scheme constituted by an authorised open-ended investment company; or
  - (c) a recognised scheme.
- (5) Subsection (1) does not apply to anything done in accordance with rules made by the Authority for the purpose of exempting from that subsection the promotion otherwise than to the general public of schemes of specified descriptions.
- (6) The Treasury may by order specify circumstances in which subsection (1) does not apply.
- (7) An order under subsection (6) may, in particular, provide that subsection (1) does not apply in relation to communications—
  - (a) of a specified description;
  - (b) originating in a specified country or territory outside the United Kingdom;
  - (c) originating in a country or territory which falls within a specified description of country or territory outside the United Kingdom; or
  - (d) originating outside the United Kingdom.
- (8) The Treasury may by order repeal subsection (3).
- (9) “Communicate” includes causing a communication to be made.
- (10) “Promotion otherwise than to the general public” includes promotion in a way designed to reduce, so far as possible, the risk of participation by persons for whom participation would be unsuitable.
- (11) “Participate”, in relation to a collective investment scheme, means become a participant (within the meaning given by section 235(2)) in the scheme.

**Annotations:**

**Commencement Information**

**I62** S. 238 wholly in force at 1.12.2001; s. 238 not in force at Royal Assent see s. 431(2); s. 238 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pt. 2; s. 238 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 238 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**239 Single property schemes.**

- (1) The Treasury may by regulations make provision for exempting single property schemes from section 238(1).
- (2) For the purposes of subsection (1) a single property scheme is a scheme which has the characteristics mentioned in subsection (3) and satisfies such other requirements as are prescribed by the regulations conferring the exemption.
- (3) The characteristics are—
  - (a) that the property subject to the scheme (apart from cash or other assets held for management purposes) consists of—
    - (i) a single building (or a single building with ancillary buildings) managed by or on behalf of the operator of the scheme, or

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- (ii) a group of adjacent or contiguous buildings managed by him or on his behalf as a single enterprise,  
with or without ancillary land and with or without furniture, fittings or other contents of the building or buildings in question; and
  - (b) that the units of the participants in the scheme are either dealt in on a recognised investment exchange or offered on terms such that any agreement for their acquisition is conditional on their admission to dealings on such an exchange.
- (4) If regulations are made under subsection (1), the Authority may make rules imposing duties or liabilities on the operator and (if any) the trustee or depositary of a scheme exempted by the regulations.
- (5) The rules may include, to such extent as the Authority thinks appropriate, provision for purposes corresponding to those for which provision can be made under section 248 in relation to authorised unit trust schemes.

**Annotations:**

**Commencement Information**

**I63** S. 239 wholly in force at 18.6.2001; s. 239 not in force at Royal Assent see s. 431(2); s. 239(1)-(3) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 239 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**

**240 Restriction on approval of promotion.**

- (1) An authorised person may not approve for the purposes of section 21 the content of a communication relating to a collective investment scheme if he would be prohibited by section 238(1) from effecting the communication himself or from causing it to be communicated.
- (2) For the purposes of determining in any case whether there has been a contravention of section 21(1), an approval given in contravention of subsection (1) is to be regarded as not having been given.

**241 Actions for damages.**

If an authorised person contravenes a requirement imposed on him by section 238 or 240, section 150 applies to the contravention as it applies to a contravention mentioned in that section.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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## CHAPTER III

### AUTHORISED UNIT TRUST SCHEMES

#### *Applications for authorisation*

#### **242 Applications for authorisation of unit trust schemes.**

- (1) Any application for an order declaring a unit trust scheme to be an authorised unit trust scheme must be made to the Authority by the manager and trustee, or proposed manager and trustee, of the scheme.
- (2) The manager and trustee (or proposed manager and trustee) must be different persons.
- (3) The application—
  - (a) must be made in such manner as the Authority may direct; and
  - (b) must contain or be accompanied by such information as the Authority may reasonably require for the purpose of determining the application.
- (4) At any time after receiving an application and before determining it, the Authority may require the applicants to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
- (5) Different directions may be given, and different requirements imposed, in relation to different applications.
- (6) The Authority may require applicants to present information which they are required to give under this section in such form, or to verify it in such a way, as the Authority may direct.

#### **Annotations:**

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

**C468** S. 242 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 39(1)** (with **art. 23(2)**)

#### **Commencement Information**

**I64** S. 242 wholly in force at 1.12.2001; s. 242 not in force at Royal Assent see s. 431(2); s. 242(3) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, **art. 2, Sch.**; s. 242 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2(2), Sch. Pt. 2**; s. 242 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

#### **243 Authorisation orders.**

- (1) If, on an application under section 242 in respect of a unit trust scheme, the Authority
  - (a) is satisfied that the scheme complies with the requirements set out in this section,
  - (b) is satisfied that the scheme complies with the requirements of the trust scheme rules, and
  - (c) has been provided with a copy of the trust deed and a certificate signed by a solicitor to the effect that it complies with such of the requirements of this section or those rules as relate to its contents,

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- the Authority may make an order declaring the scheme to be an authorised unit trust scheme.
- (2) If the Authority makes an order under subsection (1), it must give written notice of the order to the applicant.
  - (3) In this Chapter “authorisation order” means an order under subsection (1).
  - (4) The manager and the trustee must be persons who are independent of each other.
  - (5) The manager and the trustee must each—
    - (a) be a body corporate incorporated in the United Kingdom or another EEA State, and
    - (b) have a place of business in the United Kingdom,and the affairs of each must be administered in the country in which it is incorporated.
  - (6) If the manager is incorporated in another EEA State, the scheme must not be one which satisfies the requirements prescribed for the purposes of section 264.
  - (7) The manager and the trustee must each be an authorised person and the manager must have permission to act as manager and the trustee must have permission to act as trustee.
  - (8) The name of the scheme must not be undesirable or misleading.
  - (9) The purposes of the scheme must be reasonably capable of being successfully carried into effect.
  - (10) The participants must be entitled to have their units redeemed in accordance with the scheme at a price—
    - (a) related to the net value of the property to which the units relate; and
    - (b) determined in accordance with the scheme.
  - (11) But a scheme is to be treated as complying with subsection (10) if it requires the manager to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in that subsection.

**Annotations:**

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

C469 S. 243(1) extended (1.12.2001) by S.I. 2001/2636, arts. 1(2)(b), 65(1); S.I. 2001/3538, art. 2(1)

**Commencement Information**

I65 S. 243 wholly in force at 1.12.2001; s. 243 not in force at Royal Assent see s. 431(2); s. 243 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 243 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**244 Determination of applications.**

- (1) An application under section 242 must be determined by the Authority before the end of the period of six months beginning with the date on which it receives the completed application.

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- (2) The Authority may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it first receives the application.
- (3) The applicant may withdraw his application, by giving the Authority written notice, at any time before the Authority determines it.

**Annotations:**

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

**C470** S. 244 applied (1.12.2001) by S.I. 2001/3592, arts. 1(2), 39(1) (with art. 23(2))

**Commencement Information**

**I66** S. 244 wholly in force at 1.12.2001; s. 244 not in force at Royal Assent see s. 431(2); s. 244 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 244 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

*Applications refused*

**245 Procedure when refusing an application.**

- (1) If the Authority proposes to refuse an application made under section 242 it must give each of the applicants a warning notice.
- (2) If the Authority decides to refuse the application—
  - (a) it must give each of the applicants a decision notice; and
  - (b) either applicant may refer the matter to the Tribunal.

**Annotations:**

**Commencement Information**

**I67** S. 245 wholly in force at 1.12.2001; s. 245 not in force at Royal Assent see s. 431(2); s. 245 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 245 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

*Certificates*

**246 Certificates.**

- (1) If the manager or trustee of a unit trust scheme which complies with the conditions necessary for it to enjoy the rights conferred by any relevant [F348 EU] instrument so requests, the Authority may issue a certificate to the effect that the scheme complies with those conditions.
- (2) Such a certificate may be issued on the making of an authorisation order in respect of the scheme or at any subsequent time.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

**Annotations:**

**Amendments (Textual)**

**F348** Word in [s. 246\(1\)](#) 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\(1\)\(3\)\(4\)](#)

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

**C471** [S. 246](#) extended (1.12.2001) by [S.I. 2001/2636](#), [arts. 1\(2\)\(b\)](#), 65(3); [S.I. 2001/3538](#), [art. 2\(1\)](#)

**Commencement Information**

**I68** [S. 246](#) wholly in force at 1.12.2001; [s. 246](#) not in force at Royal Assent see [s. 431\(2\)](#); [s. 246](#) in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), [art. 2\(2\)](#), [Sch. Pt. 2](#); [s. 246](#) in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

*Rules*

**247 Trust scheme rules.**

- (1) The Authority may make rules (“trust scheme rules”) as to—
  - (a) the constitution, management and operation of authorised unit trust schemes;
  - (b) the powers, duties, rights and liabilities of the manager and trustee of any such scheme;
  - (c) the rights and duties of the participants in any such scheme; and
  - (d) the winding up of any such scheme.
- (2) Trust scheme rules may, in particular, make provision—
  - (a) as to the issue and redemption of the units under the scheme;
  - (b) as to the expenses of the scheme and the means of meeting them;
  - (c) for the appointment, removal, powers and duties of an auditor for the scheme;
  - (d) for restricting or regulating the investment and borrowing powers exercisable in relation to the scheme;
  - (e) requiring the keeping of records with respect to the transactions and financial position of the scheme and for the inspection of those records;
  - (f) requiring the preparation of periodical reports with respect to the scheme and the provision of those reports to the participants and to the Authority; and
  - (g) with respect to the amendment of the scheme.
- (3) Trust scheme rules may make provision as to the contents of the trust deed, including provision requiring any of the matters mentioned in subsection (2) to be dealt with in the deed.
- (4) But trust scheme rules are binding on the manager, trustee and participants independently of the contents of the trust deed and, in the case of the participants, have effect as if contained in it.
- (5) If—
  - (a) a modification is made of the statutory provisions in force in Great Britain or Northern Ireland relating to companies,

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (b) the modification relates to the rights and duties of persons who hold the beneficial title to any shares in a company without also holding the legal title, and
- (c) it appears to the Treasury that, for the purpose of assimilating the law relating to authorised unit trust schemes to the law relating to companies as so modified, it is expedient to modify the rule-making powers conferred on the Authority by this section,

the Treasury may by order make such modifications of those powers as they consider appropriate.

#### **248 Scheme particulars rules.**

- (1) The Authority may make rules (“scheme particulars rules”) requiring the manager of an authorised unit trust scheme—
  - (a) to submit scheme particulars to the Authority; and
  - (b) to publish scheme particulars or make them available to the public on request.
- (2) “Scheme particulars” means particulars in such form, containing such information about the scheme and complying with such requirements, as are specified in scheme particulars rules.
- (3) Scheme particulars rules may require the manager of an authorised unit trust scheme to submit, and to publish or make available, revised or further scheme particulars if there is a significant change affecting any matter—
  - (a) which is contained in scheme particulars previously published or made available; and
  - (b) whose inclusion in those particulars was required by the rules.
- (4) Scheme particulars rules may require the manager of an authorised unit trust scheme to submit, and to publish or make available, revised or further scheme particulars if—
  - (a) a significant new matter arises; and
  - (b) the inclusion of information in respect of that matter would have been required in previous particulars if it had arisen when those particulars were prepared.
- (5) Scheme particulars rules may provide for the payment, by the person or persons who in accordance with the rules are treated as responsible for any scheme particulars, of compensation to any qualifying person who has suffered loss as a result of—
  - (a) any untrue or misleading statement in the particulars; or
  - (b) the omission from them of any matter required by the rules to be included.
- (6) “Qualifying person” means a person who—
  - (a) has become or agreed to become a participant in the scheme; or
  - (b) although not being a participant, has a beneficial interest in units in the scheme.
- (7) Scheme particulars rules do not affect any liability which any person may incur apart from the rules.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

## 249 Disqualification of auditor for breach of trust scheme rules.

- (1) If it appears to the Authority that an auditor has failed to comply with a duty imposed on him by trust scheme rules, it may disqualify him from being the auditor for any authorised unit trust scheme or authorised open-ended investment company.
- (2) Subsections (2) to (5) of section 345 have effect in relation to disqualification under subsection (1) as they have effect in relation to disqualification under subsection (1) of that section.

### Annotations:

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

**C472** S. 249(1) applied (with modifications) (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) (S.R. 2004/335), regs. 1(1)(b), 69, {Sch. 5 para. 20} (with reg. 1(2))

## 250 Modification or waiver of rules.

- (1) In this section “rules” means—
  - (a) trust scheme rules; or
  - (b) scheme particulars rules.
- (2) The Authority may, on the application or with the consent of any person to whom any rules apply, direct that all or any of the rules—
  - (a) are not to apply to him as respects a particular scheme; or
  - (b) are to apply to him, as respects a particular scheme, with such modifications as may be specified in the direction.
- (3) The Authority may, on the application or with the consent of the manager and trustee of a particular scheme acting jointly, direct that all or any of the rules—
  - (a) are not to apply to the scheme; or
  - (b) are to apply to the scheme with such modifications as may be specified in the direction.
- (4) Subsections (3) to (9) and (11) of section 148 have effect in relation to a direction under subsection (2) as they have effect in relation to a direction under section 148(2) but with the following modifications—
  - (a) <sup>F349</sup> .....
  - (b) any reference to the [<sup>F350</sup>person] is to be read as a reference to the person mentioned in subsection (2); and
  - (c) subsection (7)(b) is to be read, in relation to a participant of the scheme, as if the word “commercial” were omitted.
- (5) Subsections (3) to (9) and (11) of section 148 have effect in relation to a direction under subsection (3) as they have effect in relation to a direction under section 148(2) but with the following modifications—
  - (a) subsection (4)(a) is to be read as if the words “by the <sup>F351</sup>... person” were omitted;
  - (b) subsections (7)(b) and (11) are to be read as if references to the ... person were references to each of the manager and the trustee of the scheme;
  - (c) subsection (7)(b) is to be read, in relation to a participant of the scheme, as if the word “commercial” were omitted;

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (d) subsection (8) is to be read as if the reference to the ... person concerned were a reference to the scheme concerned and to its manager and trustee; and
- (e) subsection (9) is to be read as if the reference to the ... person were a reference to the manager and trustee of the scheme acting jointly.

**Annotations:**

**Amendments (Textual)**

**F349** S. 250(4)(a) omitted (12.7.2007) by virtue of [The Regulatory Reform \(Financial Services and Markets Act 2000\) Order 2007 \(S.I. 2007/1973\)](#), [art. 11\(a\)](#)

**F350** Word in s. 250(4)(b) substituted (12.7.2007) by [The Regulatory Reform \(Financial Services and Markets Act 2000\) Order 2007 \(S.I. 2007/1973\)](#), [art. 11\(b\)](#)

**F351** Word in s. 250(5)(a)(b)(d)(e) omitted (12.7.2007) by virtue of [The Regulatory Reform \(Financial Services and Markets Act 2000\) Order 2007 \(S.I. 2007/1973\)](#), [art. 11\(c\)](#)

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

**C473** S. 250(2) amended (*temp.* from 3.9.2001 to 1.12.2001) by [S.I. 2001/2659](#), [arts. 1\(2\)](#), 3(6); [S.I. 2001/3538](#), [art. 2\(1\)](#)

*Alterations*

**251 Alteration of schemes and changes of manager or trustee.**

- (1) The manager of an authorised unit trust scheme must give written notice to the Authority of any proposal to alter the scheme or to replace its trustee.
- (2) Any notice given in respect of a proposal to alter the scheme involving a change in the trust deed must be accompanied by a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the trust scheme rules.
- (3) The trustee of an authorised unit trust scheme must give written notice to the Authority of any proposal to replace the manager of the scheme.
- (4) Effect is not to be given to any proposal of which notice has been given under subsection (1) or (3) unless—
  - (a) the Authority, by written notice, has given its approval to the proposal; or
  - (b) one month, beginning with the date on which the notice was given, has expired without the manager or trustee having received from the Authority a warning notice under section 252 in respect of the proposal.
- (5) The Authority must not approve a proposal to replace the manager or the trustee of an authorised unit trust scheme unless it is satisfied that, if the proposed replacement is made, the scheme will continue to comply with the requirements of section 243(4) to (7).

**Annotations:**

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

**C474** S. 251 amended (*temp.* from 3.9.2001 to 1.12.2001) by [S.I. 2001/2659](#), [arts. 1\(2\)](#), 3(7); [S.I. 2001/3538](#), [art. 2\(1\)](#)

**C475** S. 251(1) extended (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 40(1) (with art. 23(2))

**C476** S. 251(3) extended (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 41(1) (with art. 23(2))

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

#### Commencement Information

**I69** S. 251 wholly in force at 1.12.2001; s. 251 not in force at Royal Assent see s. 431(2); s. 251 (except subsection (4)(b)) in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 251 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

#### 252 Procedure when refusing approval of change of manager or trustee.

- (1) If the Authority proposes to refuse approval of a proposal to replace the trustee or manager of an authorised unit trust scheme, it must give a warning notice to the person by whom notice of the proposal was given under section 251(1) or (3).
- (2) If the Authority proposes to refuse approval of a proposal to alter an authorised unit trust scheme it must give separate warning notices to the manager and the trustee of the scheme.
- (3) To be valid the warning notice must be received by that person before the end of one month beginning with the date on which notice of the proposal was given.
- (4) If, having given a warning notice to a person, the Authority decides to refuse approval
  - (a) it must give him a decision notice; and
  - (b) he may refer the matter to the Tribunal.

#### Annotations:

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

**C477** S. 252 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, arts. 1(2), 3(7); S.I. 2001/3538, art. 2(1)

**C478** S. 252(3) modified (1.12.2001) by S.I. 2001/3592, arts. 1(2), 40(3), 41(2) (with art. 23(2))

##### Commencement Information

**I70** S. 252 wholly in force at 1.12.2001; s. 252 not in force at Royal Assent see s. 431(2); s. 252 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 252 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

#### *Exclusion clauses*

#### 253 Avoidance of exclusion clauses.

Any provision of the trust deed of an authorised unit trust scheme is void in so far as it would have the effect of exempting the manager or trustee from liability for any failure to exercise due care and diligence in the discharge of his functions in respect of the scheme.

#### *Ending of authorisation*

#### 254 Revocation of authorisation order otherwise than by consent.

- (1) An authorisation order may be revoked by an order made by the Authority if it appears to the Authority that—

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (a) one or more of the requirements for the making of the order are no longer satisfied;
  - (b) the manager or trustee of the scheme concerned has contravened a requirement imposed on him by or under this Act;
  - (c) the manager or trustee of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular;
  - (d) no regulated activity is being carried on in relation to the scheme and the period of that inactivity began at least twelve months earlier; or
  - (e) none of paragraphs (a) to (d) applies, but it is desirable to revoke the authorisation order in order to protect the interests of participants or potential participants in the scheme.
- (2) For the purposes of subsection (1)(e), the Authority may take into account any matter relating to—
- (a) the scheme;
  - (b) the manager or trustee;
  - (c) any person employed by or associated with the manager or trustee in connection with the scheme;
  - (d) any director of the manager or trustee;
  - (e) any person exercising influence over the manager or trustee;
  - (f) any body corporate in the same group as the manager or trustee;
  - (g) any director of any such body corporate;
  - (h) any person exercising influence over any such body corporate.

**Annotations:**

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

**C479** S. 254 applied (with modifications) (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 46(4)(5) (with art. 23(2))

**C480** S. 254(1)(a) modified (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 65(2); S.I. 2001/3538, **art. 2(1)**

**C481** S. 254(1)(d) excluded (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(2); S.I. 2001/3538, **art. 2(1)**

**255 Procedure.**

- (1) If the Authority proposes to make an order under section 254 revoking an authorisation order (“a revoking order”), it must give separate warning notices to the manager and the trustee of the scheme.
- (2) If the Authority decides to make a revoking order, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

**Annotations:**

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

**C482** S. 255(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 46(1) (with art. 23(2))

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

## 256 Requests for revocation of authorisation order.

- (1) An authorisation order may be revoked by an order made by the Authority at the request of the manager or trustee of the scheme concerned.
- (2) If the Authority makes an order under subsection (1), it must give written notice of the order to the manager and trustee of the scheme concerned.
- (3) The Authority may refuse a request to make an order under this section if it considers that—
  - (a) the public interest requires that any matter concerning the scheme should be investigated before a decision is taken as to whether the authorisation order should be revoked; or
  - (b) revocation would not be in the interests of the participants or would be incompatible with [<sup>F352</sup>an EU] obligation.
- (4) If the Authority proposes to refuse a request under this section, it must give separate warning notices to the manager and the trustee of the scheme.
- (5) If the Authority decides to refuse the request, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

### Annotations:

#### Amendments (Textual)

**F352** Words in s. 256(3)(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(1)(3)(4)

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

**C483** S. 256(1) extended (1.12.2001) by S.I. 2001/3592, arts. 1(2), 46(6) (with art. 23(2))

### *Powers of intervention*

## 257 Directions.

- (1) The Authority may give a direction under this section if it appears to the Authority that—
  - (a) one or more of the requirements for the making of an authorisation order are no longer satisfied;
  - (b) the manager or trustee of an authorised unit trust scheme has contravened, or is likely to contravene, a requirement imposed on him by or under this Act;
  - (c) the manager or trustee of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular; or
  - (d) none of paragraphs (a) to (c) applies, but it is desirable to give a direction in order to protect the interests of participants or potential participants in such a scheme.
- (2) A direction under this section may—
  - (a) require the manager of the scheme to cease the issue or redemption, or both the issue and redemption, of units under the scheme;

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (b) require the manager and trustee of the scheme to wind it up.
- (3) If the authorisation order is revoked, the revocation does not affect any direction under this section which is then in force.
- (4) A direction may be given under this section in relation to a scheme in the case of which the authorisation order has been revoked if a direction under this section was already in force at the time of revocation.
- (5) If a person contravenes a direction under this section, section 150 applies to the contravention as it applies to a contravention mentioned in that section.
- (6) The Authority may, either on its own initiative or on the application of the manager or trustee of the scheme concerned, revoke or vary a direction given under this section if it appears to the Authority—
  - (a) in the case of revocation, that it is no longer necessary for the direction to take effect or continue in force;
  - (b) in the case of variation, that the direction should take effect or continue in force in a different form.

**Annotations:**

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

- C484** S. 257(1) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 69(1); S.I. 2001/3538, **art. 2(1)**
- C485** S. 257(1)(b) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(7); S.I. 2001/3538, **art. 2(1)**
- C486** S. 257(6) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 69(3); S.I. 2001/3538, **art. 2(1)**

**Commencement Information**

- I71** S. 257 wholly in force at 1.12.2001; s. 257 not in force at Royal Assent see s. 431(2); s. 257 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2(2)**, **Sch. Pt. 2**; s. 257 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

**258 Applications to the court.**

- (1) If the Authority could give a direction under section 257, it may also apply to the court for an order—
  - (a) removing the manager or the trustee, or both the manager and the trustee, of the scheme; and
  - (b) replacing the person or persons removed with a suitable person or persons nominated by the Authority.
- (2) The Authority may nominate a person for the purposes of subsection (1)(b) only if it is satisfied that, if the order was made, the requirements of section 243(4) to (7) would be complied with.
- (3) If it appears to the Authority that there is no person it can nominate for the purposes of subsection (1)(b), it may apply to the court for an order—
  - (a) removing the manager or the trustee, or both the manager and the trustee, of the scheme; and
  - (b) appointing an authorised person to wind up the scheme.
- (4) On an application under this section the court may make such order as it thinks fit.

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (5) The court may, on the application of the Authority, rescind any such order as is mentioned in subsection (3) and substitute such an order as is mentioned in subsection (1).
- (6) The Authority must give written notice of the making of an application under this section to the manager and trustee of the scheme concerned.
- (7) The jurisdiction conferred by this section may be exercised by—
  - (a) the High Court;
  - (b) in Scotland, the Court of Session.

**259 Procedure on giving directions under section 257 and varying them on Authority's own initiative.**

- (1) A direction takes effect—
  - (a) immediately, if the notice given under subsection (3) states that that is the case;
  - (b) on such date as may be specified in the notice; or
  - (c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.
- (2) A direction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its power under section 257, considers that it is necessary for the direction to take effect immediately (or on that date).
- (3) If the Authority proposes to give a direction under section 257, or gives such a direction with immediate effect, it must give separate written notice to the manager and the trustee of the scheme concerned.
- (4) The notice must—
  - (a) give details of the direction;
  - (b) inform the person to whom it is given of when the direction takes effect;
  - (c) state the Authority's reasons for giving the direction and for its determination as to when the direction takes effect;
  - (d) inform the person to whom it is given that he may make representations to the Authority within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and
  - (e) inform him of his right to refer the matter to the Tribunal.
- (5) If the direction imposes a requirement under section 257(2)(a), the notice must state that the requirement has effect until—
  - (a) a specified date; or
  - (b) a further direction.
- (6) If the direction imposes a requirement under section 257(2)(b), the scheme must be wound up—
  - (a) by a date specified in the notice; or
  - (b) if no date is specified, as soon as practicable.
- (7) The Authority may extend the period allowed under the notice for making representations.

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**Proposed Legislation:** *This version shows proposed changes to this legislation item. It has no official standing.*

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- (8) If, having considered any representations made by a person to whom the notice was given, the Authority decides—
- (a) to give the direction in the way proposed, or
  - (b) if it has been given, not to revoke the direction,
- it must give separate written notice to the manager and the trustee of the scheme concerned.
- (9) If, having considered any representations made by a person to whom the notice was given, the Authority decides—
- (a) not to give the direction in the way proposed,
  - (b) to give the direction in a way other than that proposed, or
  - (c) to revoke a direction which has effect,
- it must give separate written notice to the manager and the trustee of the scheme concerned.
- (10) A notice given under subsection (8) must inform the person to whom it is given of his right to refer the matter to the Tribunal.
- (11) A notice under subsection (9)(b) must comply with subsection (4).
- (12) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (13) This section applies to the variation of a direction on the Authority's own initiative as it applies to the giving of a direction.
- (14) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

**Annotations:**

**Commencement Information**

**I72** S. 259 wholly in force at 1.12.2001; s. 259 not in force at Royal Assent see s. 431(2); s. 259 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 259 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**260 Procedure: refusal to revoke or vary direction.**

- (1) If on an application under section 257(6) for a direction to be revoked or varied the Authority proposes—
- (a) to vary the direction otherwise than in accordance with the application, or
  - (b) to refuse to revoke or vary the direction,
- it must give the applicant a warning notice.
- (2) If the Authority decides to refuse to revoke or vary the direction—
- (a) it must give the applicant a decision notice; and
  - (b) the applicant may refer the matter to the Tribunal.

**Annotations:**

**Commencement Information**

- I73** S. 260 wholly in force at 1.12.2001; s. 260 not in force at Royal Assent see s. 431(2); s. 260 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 260 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**261 Procedure: revocation of direction and grant of request for variation.**

- (1) If the Authority decides on its own initiative to revoke a direction under section 257 it must give separate written notices of its decision to the manager and trustee of the scheme.
- (2) If on an application under section 257(6) for a direction to be revoked or varied the Authority decides to revoke the direction or vary it in accordance with the application, it must give the applicant written notice of its decision.
- (3) A notice under this section must specify the date on which the decision takes effect.
- (4) The Authority may publish such information about the revocation or variation, in such way, as it considers appropriate.

**Annotations:**

**Commencement Information**

- I74** S. 261 wholly in force at 1.12.2001; s. 261 not in force at Royal Assent see s. 431(2); s. 261 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2 Sch. Pt. 2; s. 261 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**CHAPTER IV**

**OPEN-ENDED INVESTMENT COMPANIES**

**262 Open-ended investment companies.**

- (1) The Treasury may by regulations make provision for—
  - (a) facilitating the carrying on of collective investment by means of open-ended investment companies;
  - (b) regulating such companies.
- (2) The regulations may, in particular, make provision—
  - (a) for the incorporation and registration in Great Britain of bodies corporate;
  - (b) for a body incorporated by virtue of the regulations to take such form as may be determined in accordance with the regulations;
  - (c) as to the purposes for which such a body may exist, the investments which it may issue and otherwise as to its constitution;
  - (d) as to the management and operation of such a body and the management of its property;
  - (e) as to the powers, duties, rights and liabilities of such a body and of other persons, including—

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- (i) the directors or sole director of such a body;
  - (ii) its depositary (if any);
  - (iii) its shareholders, and persons who hold the beneficial title to shares in it without holding the legal title;
  - (iv) its auditor; and
  - (v) any persons who act or purport to act on its behalf;
  - (f) as to the merger of one or more such bodies and the division of such a body;
  - (g) for the appointment and removal of an auditor for such a body;
  - (h) as to the winding up and dissolution of such a body;
  - (i) for such a body, or any director or depositary of such a body, to be required to comply with directions given by the Authority;
  - (j) enabling the Authority to apply to a court for an order removing and replacing any director or depositary of such a body;
  - (k) for the carrying out of investigations by persons appointed by the Authority or the Secretary of State;
  - (l) corresponding to any provision made in relation to unit trust schemes by Chapter III of this Part.
- (3) Regulations under this section may—
- (a) impose criminal liability;
  - (b) confer functions on the Authority;
  - (c) in the case of provision made by virtue of subsection (2)(l), authorise the making of rules by the Authority;
  - (d) confer jurisdiction on any court or on the Tribunal;
  - (e) provide for fees to be charged by the Authority in connection with the carrying out of any of its functions under the regulations (including fees payable on a periodical basis);
  - (f) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act);
  - (g) make consequential amendments, repeals and revocations of any such legislation;
  - (h) modify or exclude any rule of law.
- (4) The provision that may be made by virtue of subsection (3)(f) includes provision extending or adapting any power to make subordinate legislation.
- (5) Regulations under this section may, in particular—
- (a) revoke the <sup>M31</sup>Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996; and
  - (b) provide for things done under or in accordance with those regulations to be treated as if they had been done under or in accordance with regulations under this section.

**Annotations:**

**Marginal Citations**

M31 [S.I. 1996/2827](#).

## 263 Amendment of section 716 Companies Act 1985.

In section 716(1) of the <sup>M32</sup>Companies Act 1985 (prohibition on formation of companies with more than 20 members unless registered under the Act etc.), after “this Act,” insert “ is incorporated by virtue of regulations made under section 262 of the Financial Services and Markets Act 2000 ”.

### Annotations:

### Marginal Citations

M32 1985 c. 6.

## CHAPTER V

### RECOGNISED OVERSEAS SCHEMES

#### *Schemes constituted in other EEA States*

## 264 Schemes constituted in other EEA States.

- (1) A collective investment scheme constituted in another EEA State is a recognised scheme if—
  - (a) it satisfies such requirements as are prescribed for the purposes of this section; and
  - (b) not less than two months before inviting persons in the United Kingdom to become participants in the scheme, the operator of the scheme gives notice to the Authority of his intention to do so, specifying the way in which the invitation is to be made.
- (2) But this section does not make the scheme a recognised scheme if within two months of receiving the notice under subsection (1) the Authority notifies—
  - (a) the operator of the scheme, and
  - (b) the authorities of the State in question who are responsible for the authorisation of collective investment schemes,that the way in which the invitation is to be made does not comply with the law in force in the United Kingdom.
- (3) The notice to be given to the Authority under subsection (1)—
  - (a) must be accompanied by a certificate from the authorities mentioned in subsection (2)(b) to the effect that the scheme complies with the conditions necessary for it to enjoy the rights conferred by any relevant [ <sup>F353</sup> EU ] instrument;
  - (b) must contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act; and
  - (c) must contain or be accompanied by such other information and documents as may be prescribed.
- (4) A notice given by the Authority under subsection (2) must—

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- (a) give the reasons for which the Authority considers that the law in force in the United Kingdom will not be complied with; and
  - (b) specify a reasonable period (which may not be less than 28 days) within which any person to whom it is given may make representations to the Authority.
- (5) For the purposes of this section a collective investment scheme is constituted in another EEA State if—
- (a) it is constituted under the law of that State by a contract or under a trust and is managed by a body corporate incorporated under that law; or
  - (b) it takes the form of an open-ended investment company incorporated under that law.
- (6) The operator of a recognised scheme may give written notice to the Authority that he desires the scheme to be no longer recognised by virtue of this section.
- (7) On the giving of notice under subsection (6), the scheme ceases to be a recognised scheme.

**Annotations:**

**Amendments (Textual)**

**F353** Word in s. 264(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\(1\)\(3\)\(4\)](#)

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

**C487** S. 264 extended (1.12.2001) by [S.I. 2001/2636](#), [arts. 1\(2\)\(b\)](#), 66(1); [S.I. 2001/3538](#), [art. 2\(1\)](#)

**C488** S. 264(1)(b) extended (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 42(1) (with [art. 23\(2\)](#))

**C489** S. 264(2) modified (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 42(4) (with [art. 23\(2\)](#))  
 S. 264(2) amended (*temp.* from 3.9.2001 to 1.12.2001) by [S.I. 2001/2659](#), [arts. 1\(2\)](#), 3(8); [S.I. 2001/3538](#), [art. 2\(1\)](#)

**Commencement Information**

**I75** S. 264 wholly in force at 1.12.2001; s. 264 not in force at Royal Assent see s. 431(2); s. 264(1)(3)(c) in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)](#), [Sch. Pt. 2](#); s. 264 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), [art. 2\(2\)](#), [Sch. Pt. 2](#); s. 264 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

**265 Representations and references to the Tribunal.**

- (1) This section applies if any representations are made to the Authority, before the period for making representations has ended, by a person to whom a notice was given by the Authority under section 264(2).
- (2) The Authority must, within a reasonable period, decide in the light of those representations whether or not to withdraw its notice.
- (3) If the Authority withdraws its notice the scheme is a recognised scheme from the date on which the notice is withdrawn.
- (4) If the Authority decides not to withdraw its notice, it must give a decision notice to each person to whom the notice under section 264(2) was given.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (5) The operator of the scheme to whom the decision notice is given may refer the matter to the Tribunal.

**Annotations:**

**Commencement Information**

- I76** S. 265 wholly in force at 1.12.2001; s. 265 not in force at Royal Assent see s. 431(2); s. 265 (except subsection (3)) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 265 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**266 Disapplication of rules.**

- (1) Apart from—

- (a) financial promotion rules, and
- (b) rules under section 283(1),

rules made by the Authority under this Act do not apply to the operator, trustee or depositary of a scheme in relation to the carrying on by him of regulated activities for which he has permission in that capacity.

[<sup>F354</sup>(1A) But subsection (1) does not affect the application of rules to an operator of a scheme if the operator is an EEA firm falling within paragraph 5(f) of Schedule 3 who qualifies for authorisation under that Schedule.]

- (2) “Scheme” means a scheme which is a recognised scheme by virtue of section 264.

**Annotations:**

**Amendments (Textual)**

- F354** S. 266(1A) inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), reg. 9

**267 Power of Authority to suspend promotion of scheme.**

- (1) Subsection (2) applies if it appears to the Authority that the operator of a scheme has communicated an invitation or inducement in relation to the scheme in a manner contrary to financial promotion rules.

- (2) The Authority may direct that—

- (a) the exemption from subsection (1) of section 238 provided by subsection (4) (c) of that section is not to apply in relation to the scheme; and
- (b) subsection (5) of that section does not apply with respect to things done in relation to the scheme.

- (3) A direction under subsection (2) has effect—

- (a) for a specified period;
- (b) until the occurrence of a specified event; or
- (c) until specified conditions are complied with.

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**Proposed Legislation:** *This version shows proposed changes to this legislation item. It has no official standing.*

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- (4) The Authority may, either on its own initiative or on the application of the operator of the scheme concerned, vary a direction given under subsection (2) if it appears to the Authority that the direction should take effect or continue in force in a different form.
- (5) The Authority may, either on its own initiative or on the application of the operator of the recognised scheme concerned, revoke a direction given under subsection (2) if it appears to the Authority—
  - (a) that the conditions specified in the direction have been complied with; or
  - (b) that it is no longer necessary for the direction to take effect or continue in force.
- (6) If an event is specified, the direction ceases to have effect (unless revoked earlier) on the occurrence of that event.
- (7) For the purposes of this section and sections 268 and 269—
  - (a) the scheme’s home State is the EEA State in which the scheme is constituted (within the meaning given by section 264);
  - (b) the competent authorities in the scheme’s home State are the authorities in that State who are responsible for the authorisation of collective investment schemes.
- (8) “Scheme” means a scheme which is a recognised scheme by virtue of section 264.
- (9) “Specified”, in relation to a direction, means specified in it.

**268 Procedure on giving directions under section 267 and varying them on Authority’s own initiative.**

- (1) A direction under section 267 takes effect—
  - (a) immediately, if the notice given under subsection (3)(a) states that that is the case;
  - (b) on such date as may be specified in the notice; or
  - (c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.
- (2) A direction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to its reasons for exercising its power under section 267, considers that it is necessary for the direction to take effect immediately (or on that date).
- (3) If the Authority proposes to give a direction under section 267, or gives such a direction with immediate effect, it must—
  - (a) give the operator of the scheme concerned written notice; and
  - (b) inform the competent authorities in the scheme’s home State of its proposal or (as the case may be) of the direction.
- (4) The notice must—
  - (a) give details of the direction;
  - (b) inform the operator of when the direction takes effect;
  - (c) state the Authority’s reasons for giving the direction and for its determination as to when the direction takes effect;

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (d) inform the operator that he may make representations to the Authority within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and
  - (e) inform him of his right to refer the matter to the Tribunal.
- (5) The Authority may extend the period allowed under the notice for making representations.
- (6) Subsection (7) applies if, having considered any representations made by the operator, the Authority decides—
  - (a) to give the direction in the way proposed, or
  - (b) if it has been given, not to revoke the direction.
- (7) The Authority must—
  - (a) give the operator of the scheme concerned written notice; and
  - (b) inform the competent authorities in the scheme’s home State of the direction.
- (8) Subsection (9) applies if, having considered any representations made by a person to whom the notice was given, the Authority decides—
  - (a) not to give the direction in the way proposed,
  - (b) to give the direction in a way other than that proposed, or
  - (c) to revoke a direction which has effect.
- (9) The Authority must—
  - (a) give the operator of the scheme concerned written notice; and
  - (b) inform the competent authorities in the scheme’s home State of its decision.
- (10) A notice given under subsection (7)(a) must inform the operator of his right to refer the matter to the Tribunal.
- (11) A notice under subsection (9)(a) given as a result of subsection (8)(b) must comply with subsection (4).
- (12) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (13) This section applies to the variation of a direction on the Authority’s own initiative as it applies to the giving of a direction.
- (14) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

## **269 Procedure on application for variation or revocation of direction.**

- (1) If, on an application under subsection (4) or (5) of section 267, the Authority proposes—
  - (a) to vary a direction otherwise than in accordance with the application, or
  - (b) to refuse the application,it must give the operator of the scheme concerned a warning notice.
- (2) If, on such an application, the Authority decides—
  - (a) to vary a direction otherwise than in accordance with the application, or
  - (b) to refuse the application,

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**Proposed Legislation:** *This version shows proposed changes to this legislation item. It has no official standing.*

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it must give the operator of the scheme concerned a decision notice.

- (3) If the application is refused, the operator of the scheme may refer the matter to the Tribunal.
- (4) If, on such an application, the Authority decides to grant the application it must give the operator of the scheme concerned written notice.
- (5) If the Authority decides on its own initiative to revoke a direction given under section 267 it must give the operator of the scheme concerned written notice.
- (6) The Authority must inform the competent authorities in the scheme's home State of any notice given under this section.

*Schemes authorised in designated countries or territories*

**270 Schemes authorised in designated countries or territories.**

- (1) A collective investment scheme which is not a recognised scheme by virtue of section 264 but is managed in, and authorised under the law of, a country or territory outside the United Kingdom is a recognised scheme if—
  - (a) that country or territory is designated for the purposes of this section by an order made by the Treasury;
  - (b) the scheme is of a class specified by the order;
  - (c) the operator of the scheme has given written notice to the Authority that he wishes it to be recognised; and
  - (d) either—
    - (i) the Authority, by written notice, has given its approval to the scheme's being recognised; or
    - (ii) two months, beginning with the date on which notice was given under paragraph (c), have expired without the operator receiving a warning notice from the Authority under section 271.
- (2) The Treasury may not make an order designating any country or territory for the purposes of this section unless satisfied—
  - (a) that the law and practice under which relevant collective investment schemes are authorised and supervised in that country or territory affords to investors in the United Kingdom protection at least equivalent to that provided for them by or under this Part in the case of comparable authorised schemes; and
  - (b) that adequate arrangements exist, or will exist, for co-operation between the authorities of the country or territory responsible for the authorisation and supervision of relevant collective investment schemes and the Authority.
- (3) "Relevant collective investment schemes" means collective investment schemes of the class or classes to be specified by the order.
- (4) "Comparable authorised schemes" means whichever of the following the Treasury consider to be the most appropriate, having regard to the class or classes of scheme to be specified by the order—
  - (a) authorised unit trust schemes;
  - (b) authorised open-ended investment companies;
  - (c) both such unit trust schemes and such companies.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (5) If the Treasury are considering whether to make an order designating a country or territory for the purposes of this section—
- (a) the Treasury must ask the Authority for a report—
    - (i) on the law and practice of that country or territory in relation to the authorisation and supervision of relevant collective investment schemes,
    - (ii) on any existing or proposed arrangements for co-operation between it and the authorities responsible in that country or territory for the authorisation and supervision of relevant collective investment schemes,having regard to the Treasury's need to be satisfied as mentioned in subsection (2);
  - (b) the Authority must provide the Treasury with such a report; and
  - (c) the Treasury must have regard to it in deciding whether to make the order.
- (6) The notice to be given by the operator under subsection (1)(c)—
- (a) must contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act; and
  - (b) must contain or be accompanied by such information and documents as may be specified by the Authority.

**Annotations:**

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

**C490** S. 270 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 67(2); S.I. 2001/3538, **art. 2(1)**

**C491** S. 270(1) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 67(1); S.I. 2001/3538, **art. 2(1)**

**C492** S. 270(1)(c) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 43(1) (with **art. 23(2)**)

**Commencement Information**

**I77** S. 270 wholly in force at 1.12.2001; s. 270 not in force at Royal Assent see s. 431(2); s. 270 in force for certain purposes at 25.2.2001 by S.I. 2001/516, **art. 2(b)**, **Sch. Pt. 2**; s. 270 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2(2)**, **Sch. Pt. 2**; s. 270 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

**271 Procedure.**

- (1) If the Authority proposes to refuse approval of a scheme's being a recognised scheme by virtue of section 270, it must give the operator of the scheme a warning notice.
- (2) To be valid the warning notice must be received by the operator before the end of two months beginning with the date on which notice was given under section 270(1)(c).
- (3) If, having given a warning notice, the Authority decides to refuse approval—
  - (a) it must give the operator of the scheme a decision notice; and
  - (b) the operator may refer the matter to the Tribunal.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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**Annotations:**

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

**C493** S. 271(2) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 43(4)** (with **art. 23(2)**)

**Commencement Information**

**I78** S. 271 wholly in force at 1.12.2001; s. 271 not in force at Royal Assent see s. 431(2); s. 271 (except subsection (2)) in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2(2), Sch. Pt. 2**; s. 271 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

*Individually recognised overseas schemes*

**272 Individually recognised overseas schemes.**

- (1) The Authority may, on the application of the operator of a collective investment scheme which—
  - (a) is managed in a country or territory outside the United Kingdom,
  - (b) does not satisfy the requirements prescribed for the purposes of section 264,
  - (c) is not managed in a country or territory designated for the purposes of section 270 or, if it is so managed, is of a class not specified by the designation order, and
  - (d) appears to the Authority to satisfy the requirements set out in the following provisions of this section,
 make an order declaring the scheme to be a recognised scheme.
- (2) Adequate protection must be afforded to participants in the scheme.
- (3) The arrangements for the scheme’s constitution and management must be adequate.
- (4) The powers and duties of the operator and, if the scheme has a trustee or depositary, of the trustee or depositary must be adequate.
- (5) In deciding whether the matters mentioned in subsection (3) or (4) are adequate, the Authority must have regard to—
  - (a) any rule of law, and
  - (b) any matters which are, or could be, the subject of rules, applicable in relation to comparable authorised schemes.
- (6) “Comparable authorised schemes” means whichever of the following the Authority considers the most appropriate, having regard to the nature of scheme in respect of which the application is made—
  - (a) authorised unit trust schemes;
  - (b) authorised open-ended investment companies;
  - (c) both such unit trust schemes and such companies.
- (7) The scheme must take the form of an open-ended investment company or (if it does not take that form) the operator must be a body corporate.
- (8) The operator of the scheme must—
  - (a) if an authorised person, have permission to act as operator;
  - (b) if not an authorised person, be a fit and proper person to act as operator.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (9) The trustee or depositary (if any) of the scheme must—
  - (a) if an authorised person, have permission to act as trustee or depositary;
  - (b) if not an authorised person, be a fit and proper person to act as trustee or depositary.
- (10) The operator and the trustee or depositary (if any) of the scheme must be able and willing to co-operate with the Authority by the sharing of information and in other ways.
- (11) The name of the scheme must not be undesirable or misleading.
- (12) The purposes of the scheme must be reasonably capable of being successfully carried into effect.
- (13) The participants must be entitled to have their units redeemed in accordance with the scheme at a price related to the net value of the property to which the units relate and determined in accordance with the scheme.
- (14) But a scheme is to be treated as complying with subsection (13) if it requires the operator to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in that subsection.
- (15) Subsection (13) is not to be read as imposing a requirement that the participants must be entitled to have their units redeemed (or sold as mentioned in subsection (14)) immediately following a demand to that effect.

**Annotations:**

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

**C494** S. 272(1) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 68(1); S.I. 2001/3538, **art. 2(1)**

**C495** S. 272(8)(9) modified (31.10.2001) by S.I. 2001/3374, **art. 1**, **Sch. para. 9**

**Commencement Information**

**I79** S. 272 wholly in force at 1.12.2001; s. 272 not in force at Royal Assent see s. 431(2); s. 272 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2(2)**, **Sch. Pt. 2**; s. 272 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

**273 Matters that may be taken into account.**

For the purposes of subsections (8)(b) and (9)(b) of section 272, the Authority may take into account any matter relating to—

- (a) any person who is or will be employed by or associated with the operator, trustee or depositary in connection with the scheme;
- (b) any director of the operator, trustee or depositary;
- (c) any person exercising influence over the operator, trustee or depositary;
- (d) any body corporate in the same group as the operator, trustee or depositary;
- (e) any director of any such body corporate;
- (f) any person exercising influence over any such body corporate.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

**Annotations:**

**Commencement Information**

**I80** S. 273 wholly in force at 1.12.2001; s. 273 not in force at Royal Assent see s. 431(2); s. 273 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 273 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**274 Applications for recognition of individual schemes.**

- (1) An application under section 272 for an order declaring a scheme to be a recognised scheme must be made to the Authority by the operator of the scheme.
- (2) The application—
  - (a) must be made in such manner as the Authority may direct;
  - (b) must contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act;
  - (c) must contain or be accompanied by such information as the Authority may reasonably require for the purpose of determining the application.
- (3) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
- (4) Different directions may be given, and different requirements imposed, in relation to different applications.
- (5) The Authority may require an applicant to present information which he is required to give under this section in such form, or to verify it in such a way, as the Authority may direct.

**Annotations:**

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

**C496** S. 274 extended (1.12.2001) by S.I. 2001/3592, arts. 1(2), 44(1) (with art. 23(2))

**Commencement Information**

**I81** S. 274 wholly in force at 1.12.2001; s. 274 not in force at Royal Assent see s. 431(2); s. 274(2) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 274 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 274 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**275 Determination of applications.**

- (1) An application under section 272 must be determined by the Authority before the end of the period of six months beginning with the date on which it receives the completed application.
- (2) The Authority may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it first receives the application.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (3) If the Authority makes an order under section 272(1), it must give written notice of the order to the applicant.

**Annotations:**

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

C497 S. 275(1)(2) modified (1.12.2001) by S.I. 2001/3592, arts. 1(2), 44(2)(3) (with art. 23(2))

**Commencement Information**

I82 S. 275 wholly in force at 1.12.2001; s. 275 not in force at Royal Assent see s. 431(2); s. 275 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 275 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**276 Procedure when refusing an application.**

- (1) If the Authority proposes to refuse an application made under section 272 it must give the applicant a warning notice.
- (2) If the Authority decides to refuse the application—
- (a) it must give the applicant a decision notice; and
  - (b) the applicant may refer the matter to the Tribunal.

**Annotations:**

**Commencement Information**

I83 S. 276 wholly in force at 1.12.2001; s. 276 not in force at Royal Assent see s. 431(2); s. 276 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 276 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**277 Alteration of schemes and changes of operator, trustee or depositary.**

- (1) The operator of a scheme recognised by virtue of section 272 must give written notice to the Authority of any proposed alteration to the scheme.
- (2) Effect is not to be given to any such proposal unless—
- (a) the Authority, by written notice, has given its approval to the proposal; or
  - (b) one month, beginning with the date on which notice was given under subsection (1), has expired without the Authority having given written notice to the operator that it has decided to refuse approval.
- (3) At least one month before any replacement of the operator, trustee or depositary of such a scheme, notice of the proposed replacement must be given to the Authority—
- (a) by the operator, trustee or depositary (as the case may be); or
  - (b) by the person who is to replace him.

**Annotations:**

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

C498 S. 277(1) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, arts. 1(2), 3(9); S.I. 2001/3538, art. 2(1)

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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S. 277(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 45(1) (with art. 23(2))  
**C499** S. 277(2)(b) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 45(2) (with art. 23(2))  
**C500** S. 277(3) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 45(3) (with art. 23(2))

#### **Commencement Information**

**I84** S. 277 wholly in force at 1.12.2001; s. 277 not in force at Royal Assent see s. 431(2); s. 277 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 277 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

### *Schemes recognised under sections 270 and 272*

#### **278 Rules as to scheme particulars.**

The Authority may make rules imposing duties or liabilities on the operator of a scheme recognised under section 270 or 272 for purposes corresponding to those for which rules may be made under section 248 in relation to authorised unit trust schemes.

#### **279 Revocation of recognition.**

The Authority may direct that a scheme is to cease to be recognised by virtue of section 270 or revoke an order under section 272 if it appears to the Authority—

- (a) that the operator, trustee or depositary of the scheme has contravened a requirement imposed on him by or under this Act;
- (b) that the operator, trustee or depositary of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular;
- (c) in the case of an order under section 272, that one or more of the requirements for the making of the order are no longer satisfied; or
- (d) that none of paragraphs (a) to (c) applies, but it is undesirable in the interests of the participants or potential participants that the scheme should continue to be recognised.

#### **Annotations:**

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

**C501** S. 279 applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 47(4)(b) (with art. 23(2))  
 S. 279 applied (with modifications) (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 48(4)(5) (with art. 23(2))  
**C502** S. 279(c) modified (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 68(2); S.I. 2001/3538, **art. 2(1)**

#### **280 Procedure.**

- (1) If the Authority proposes to give a direction under section 279 or to make an order under that section revoking a recognition order, it must give a warning notice to the operator and (if any) the trustee or depositary of the scheme.
- (2) If the Authority decides to give a direction or make an order under that section—
  - (a) it must without delay give a decision notice to the operator and (if any) the trustee or depositary of the scheme; and
  - (b) the operator or the trustee or depositary may refer the matter to the Tribunal.

**Annotations:**

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

**C503** S. 280(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 47(1), 48(1) (with art. 23(2))

**281 Directions.**

- (1) In this section a “relevant recognised scheme” means a scheme recognised under section 270 or 272.
- (2) If it appears to the Authority that—
- (a) the operator, trustee or depositary of a relevant recognised scheme has contravened, or is likely to contravene, a requirement imposed on him by or under this Act,
  - (b) the operator, trustee or depositary of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular,
  - (c) one or more of the requirements for the recognition of a scheme under section 272 are no longer satisfied, or
  - (d) none of paragraphs (a) to (c) applies, but the exercise of the power conferred by this section is desirable in order to protect the interests of participants or potential participants in a relevant recognised scheme who are in the United Kingdom,

it may direct that the scheme is not to be a recognised scheme for a specified period or until the occurrence of a specified event or until specified conditions are complied with.

**Annotations:**

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

**C504** S. 281 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 70(b), 71(b); S.I. 2001/3538, **art. 2(1)**  
S. 281 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(9); S.I. 2001/3538, **art. 2(1)**

**282 Procedure on giving directions under section 281 and varying them otherwise than as requested.**

- (1) A direction takes effect—
- (a) immediately, if the notice given under subsection (3) states that that is the case;
  - (b) on such date as may be specified in the notice; or
  - (c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.
- (2) A direction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its power under section 281, considers that it is necessary for the direction to take effect immediately (or on that date).

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- (3) If the Authority proposes to give a direction under section 281, or gives such a direction with immediate effect, it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.
- (4) The notice must—
- (a) give details of the direction;
  - (b) inform the person to whom it is given of when the direction takes effect;
  - (c) state the Authority's reasons for giving the direction and for its determination as to when the direction takes effect;
  - (d) inform the person to whom it is given that he may make representations to the Authority within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and
  - (e) inform him of his right to refer the matter to the Tribunal.
- (5) The Authority may extend the period allowed under the notice for making representations.
- (6) If, having considered any representations made by a person to whom the notice was given, the Authority decides—
- (a) to give the direction in the way proposed, or
  - (b) if it has been given, not to revoke the direction,
- it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.
- (7) If, having considered any representations made by a person to whom the notice was given, the Authority decides—
- (a) not to give the direction in the way proposed,
  - (b) to give the direction in a way other than that proposed, or
  - (c) to revoke a direction which has effect,
- it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.
- (8) A notice given under subsection (6) must inform the person to whom it is given of his right to refer the matter to the Tribunal.
- (9) A notice under subsection (7)(b) must comply with subsection (4).
- (10) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (11) This section applies to the variation of a direction on the Authority's own initiative as it applies to the giving of a direction.
- (12) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

### *Facilities and information in UK*

## **283 Facilities and information in UK.**

- (1) The Authority may make rules requiring operators of recognised schemes to maintain in the United Kingdom, or in such part or parts of it as may be specified, such facilities

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as the Authority thinks desirable in the interests of participants and as are specified in rules.

- (2) The Authority may by notice in writing require the operator of any recognised scheme to include such explanatory information as is specified in the notice in any communication of his which—
  - (a) is a communication of an invitation or inducement of a kind mentioned in section 21(1); and
  - (b) names the scheme.
- (3) In the case of a communication originating outside the United Kingdom, subsection (2) only applies if the communication is capable of having an effect in the United Kingdom.

**Annotations:**

**Commencement Information**

**I85** S. 283 wholly in force at 1.12.2001; s. 283 not in force at Royal Assent see s. 431(2); s. 283(1) in force at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 283 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

## CHAPTER VI

### INVESTIGATIONS

#### 284 Power to investigate.

- (1) An investigating authority may appoint one or more competent persons to investigate on its behalf—
  - (a) the affairs of, or of the manager or trustee of, any authorised unit trust scheme,
  - (b) the affairs of, or of the operator, trustee or depositary of, any recognised scheme so far as relating to activities carried on in the United Kingdom, or
  - (c) the affairs of, or of the operator, trustee or depositary of, any other collective investment scheme except a body incorporated by virtue of regulations under section 262,if it appears to the investigating authority that it is in the interests of the participants or potential participants to do so or that the matter is of public concern.
- (2) A person appointed under subsection (1) to investigate the affairs of, or of the manager, trustee, operator or depositary of, any scheme (scheme “A”), may also, if he thinks it necessary for the purposes of that investigation, investigate—
  - (a) the affairs of, or of the manager, trustee, operator or depositary of, any other such scheme as is mentioned in subsection (1) whose manager, trustee, operator or depositary is the same person as the manager, trustee, operator or depositary of scheme A;
  - (b) the affairs of such other schemes and persons (including bodies incorporated by virtue of regulations under section 262 and the directors and depositaries of such bodies) as may be prescribed.

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- (3) If the person appointed to conduct an investigation under this section (“B”) considers that a person (“C”) is or may be able to give information which is relevant to the investigation, B may require C—
- (a) to produce to B any documents in C’s possession or under his control which appear to B to be relevant to the investigation,
  - (b) to attend before B, and
  - (c) otherwise to give B all assistance in connection with the investigation which C is reasonably able to give,
- and it is C’s duty to comply with that requirement.
- (4) Subsections (5) to (9) of section 170 apply if an investigating authority appoints a person under this section to conduct an investigation on its behalf as they apply in the case mentioned in subsection (1) of that section.
- (5) Section 174 applies to a statement made by a person in compliance with a requirement imposed under this section as it applies to a statement mentioned in that section.
- (6) Subsections (2) to (4) and (6) of section 175 and section 177 have effect as if this section were contained in Part XI.
- (7) Subsections (1) to (9) of section 176 apply in relation to a person appointed under subsection (1) as if—
- (a) references to an investigator were references to a person so appointed;
  - (b) references to an information requirement were references to a requirement imposed under section 175 or under subsection (3) by a person so appointed;
  - (c) the premises mentioned in subsection (3)(a) were the premises of a person whose affairs are the subject of an investigation under this section or of an appointed representative of such a person.
- (8) No person may be required under this section to disclose information or produce a document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless subsection (9) or (10) applies.
- (9) This subsection applies if—
- (a) the person to whom the obligation of confidence is owed consents to the disclosure or production; or
  - (b) the imposing on the person concerned of a requirement with respect to information or a document of a kind mentioned in subsection (8) has been specifically authorised by the investigating authority.
- (10) This subsection applies if the person owing the obligation of confidence or the person to whom it is owed is—
- (a) the manager, trustee, operator or depositary of any collective investment scheme which is under investigation;
  - (b) the director of a body incorporated by virtue of regulations under section 262 which is under investigation;
  - (c) any other person whose own affairs are under investigation.
- (11) “Investigating authority” means the Authority or the Secretary of State.

**Annotations:**

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

**C505** S. 284(1) extended (with modifications) (1.12.2001) by S.I. 2001/3646, **arts. 1(2), 8**

**Commencement Information**

**I86** S. 284 wholly in force at 1.12.2001; s. 284 not in force at Royal Assent see s. 431(2); s. 284(2) in force for certain purposes at 25.2.2001 by S.I. 2001/516, **art. 2(b), Sch. Pt. 2**; s. 284 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

**PART XVIII**

RECOGNISED INVESTMENT EXCHANGES AND CLEARING HOUSES

**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; and
  - (b) “recognised clearing house” means a clearing house in relation to which a recognition order is in force.
- (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]
  - (b) [~~which is carried on for the purposes of, or in connection with, the provision of clearing services by the exchange.~~]
- (3) A recognised clearing house is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the provision of clearing services by the clearing house.

**[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—

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- (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; and
- (c) Part 3 makes provision about fees.]

## **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 [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—
  - (a) a contract to which Part VII of the <sup>M33</sup>Companies Act 1989 applies as a result of section 155 of that Act or a contract to which Part V of the <sup>M34</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>F355</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 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

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- (b) Article 45.1 of that directive and that Regulation, the regulations may authorise 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.]
- [(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>F356</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 the [FCA] may make a recognition order declaring the exchange to be a recognised investment exchange.]

**Annotations:**

**Amendments (Textual)**

**F355** 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**

**F356** 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**

**Marginal Citations**

**M33** 1989 c. 40.

**M34** 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 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 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

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- (d) such other information as 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 of clearing services in respect of transactions effected on the exchange;
  - (b) if the applicant proposes to provide clearing services 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>F357</sup>;
  - (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 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 the [FCA] may reasonably require.]

<sup>F358</sup>(4) Subsection (3)(c) to (e) does not apply to an application by an overseas applicant.]

**Annotations:**

**Amendments (Textual)**

**F357** 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\(a\)](#)

**F358** 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**

**I87** 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.**

- (1) Any body corporate or unincorporated association may apply to the [Bank of England] for an order declaring it to be a recognised clearing house for the purposes of this Act.
- (2) The application must be made in such manner as 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 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 for persons other than recognised investment exchanges, particulars of the criteria which it will apply when determining to whom it will provide those services.

**Annotations:**

**Commencement Information**

**I88** 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, the [appropriate regulator] may require the applicant to provide such further information as it reasonably considers necessary to enable it to determine the application.
- (2) Information which the [appropriate regulator] requires in connection with an application must be provided in such form, or verified in such manner, as the [appropriate regulator] may direct.
- (3) Different directions may be given, or requirements imposed, by the [appropriate regulator] with respect to different applications.

**290 Recognition orders.**

- (1) If it appears to the [appropriate regulator] that the applicant satisfies the recognition requirements applicable in its case, the [regulator concerned] may make a recognition order declaring the applicant to be—
  - (a) a recognised investment exchange, if the application is made under section 287;
  - (b) a recognised clearing house, if it is made under section 288.
- <sup>F359</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 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.]
- (2) [~~The Treasury's approval of the making of a recognition order is required under section 307.~~]
- (3) In considering an application, 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.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (5) Section 298 has effect in relation to a decision to refuse to make 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.
- (6) ~~[Subsection (5) does not apply in a case in which the Treasury have failed to give their approval under section 307.]~~

**Annotations:**

**Amendments (Textual)**

**F359** 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](#)

**Commencement Information**

**I89** 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>F360</sup>290A] Refusal of recognition on ground of excessive regulatory provision**

- (1) The ~~[appropriate regulator must]~~ not make a recognition order if it appears to ~~[it that]~~ an existing or proposed regulatory provision of the applicant in connection with—
- (a) the applicant's business as an investment exchange, or
  - (b) the provision by the applicant of clearing services,
- 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.
- (3) Expressions used in subsection (1) above that are defined for the purposes of section 300A (power of ~~[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.
- (6) This section does not apply to an application for recognition as an overseas investment exchange or overseas clearing house.]

**Annotations:**

**Amendments (Textual)**

**F360** S. 290A inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006 \(c. 55\)](#), **ss. 4, 5(2)**

**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>M35</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.

**Annotations:**

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

**C506** S. 291 modified (22.2.2008) by The Northern Rock plc [Transfer Order 2008 \(S.I. 2008/432\)](#), **art. 20**

**C507** 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**

**M35** 1998 c. 42.

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

- (1) An application under section 287 or 288 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 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.
- (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>F361</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;

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- (c) the applicant is able and willing to co-operate with the [appropriate regulator] by the sharing of information and in other ways;
  - (d) adequate arrangements exist for co-operation between 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), 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;
  - (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 the [appropriate regulator] arrangements of the kind mentioned in subsection (3) (d) no longer exist.

**Annotations:**

**Amendments (Textual)**

**F361** 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**

**Commencement Information**

**I90** 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>F362</sup>Publication of information by recognised investment exchange

**Annotations:**

**Amendments (Textual)**

**F362** 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**

## **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 [FCA] 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 [FCA] 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 [FCA] may reasonably require.
- (6) The [FCA] 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.]

### *Supervision*

## **293 Notification requirements.**

- (1) The [appropriate 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 [appropriate regulator], at such times or in respect of such periods as may be specified, such information relating to the body as may be specified.
- (3) An obligation imposed by the rules extends only to a notice or information which the [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 [appropriate regulator] without delay.
- (6) If a recognised investment exchange makes a change—
  - (a) in the arrangements it makes for the provision of clearing services in respect of transactions effected on the exchange, or

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**Proposed Legislation:** *This version shows proposed changes to this legislation item. It has no official standing.*

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- (b) in the criteria which it applies when determining to whom it will provide clearing services,  
it must give written notice to 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, or
- (b) in the criteria which it applies when determining to whom (other than recognised investment exchanges) it will provide clearing services,  
it must give written notice to 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 the [appropriate regulator’s] rules.

**Annotations:**

**Commencement Information**

**191** 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>F363</sup>293] Information: compliance of recognised investment exchanges with directly applicable Community regulations**

The [appropriate regulator] may require [a recognised body][exchange] to give the [appropriate regulator] such information as it reasonably requires in order to satisfy itself that [the body] is complying with any directly applicable [EU regulation specified (or of a description specified) in an order made by the Treasury].

**Annotations:**

**Amendments (Textual)**

**F363** S. 293A 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. 6**

**294 Modification or waiver of rules.**

- (1) The [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 [appropriate regulator] may direct.
- (3) Subsections (4) to (6) apply to a direction given under subsection (1).
- (4) The [appropriate regulator] may not give a direction unless it is satisfied that—

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

**Annotations:**

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

**C508** 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**

**I92** 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 the [appropriate regulator] with a report.
- (2) The report must contain a statement as to whether any events have occurred which are [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 the [appropriate regulator].  
.....

**Annotations:**

**Amendments (Textual)**

**F364** Words in s. 295 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(9)**; S.I. 2003/766, **art. 2, Sch.** (with art. 3)

**Commencement Information**

**I93** 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)**

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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

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

[<sup>F365</sup>(1A) This section also applies [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 directly applicable [EU regulation specified (or of a description specified) in an order made by the Treasury].]

- (2) 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.

[<sup>F366</sup>(2A) In the case of [a recognised body other than an overseas investment exchange or overseas clearing house], those steps may include—

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

- (3) A direction under this section is enforceable, on the application of [an regulator concerned], by an injunction or, in Scotland, by an order for specific performance under section 45 of the <sup>M36</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 [an appropriate regulator] does not prevent it from being subsequently altered or revoked by the recognised body.

### Annotations:

#### Amendments (Textual)

**F365** 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\(a\)](#)

**F366** 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\(b\)](#)

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

**C509** 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

**M36** 1988 c. 36.

## 297 Revoking recognition.

(1) A recognition order may be revoked by an order made by the [appropriate regulator] at the request, or with the consent, of the recognised body concerned.

(2) If it appears to the [appropriate regulator] that a recognised body—

- (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>F367</sup>(2A) If it appears to the [appropriate regulator] that a recognised body [which is a recognised investment exchange]—

- (a) has not carried on the business of an investment exchange [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 [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 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 [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>F368</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 the [appropriate regulator] thinks necessary or expedient.

### Annotations:

#### Amendments (Textual)

**F367** 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\(a\)](#)

**F368** 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\(b\)](#)

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

**C510** 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, or making a revocation order under section 297(2) [<sup>F369</sup>or (2A)], the [appropriate regulator] must—
  - (a) give written notice of its intention to do so to the recognised body concerned;
  - (b) ~~[take such steps as it considers reasonably practicable to bring the notice to the attention of members (if any) of that body; and]~~
  - (c) ~~[publish the notice in such manner as it thinks appropriate for bringing it to the attention of other persons who are, in its opinion, likely to be affected.]~~
- (2) A notice under subsection (1) must—
  - (a) state why 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,
  - (b) ~~[any member of that body, and]~~
  - (c) ~~[any other person who is likely to be affected by the proposed direction or revocation order,]~~
 may make representations to the [appropriate regulator].
- ~~(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,
 the [appropriate regulator] must have regard to any representations made in accordance with subsection (3).
- (6) When the [appropriate regulator] has decided whether to give a direction under section 296 or to make the proposed revocation order, it must—
  - (a) give the recognised body written notice of its decision; ~~[and]~~
  - (b) ~~[if it has decided to give a direction or make an order, take such steps as it considers reasonably practicable for bringing its decision to the attention of members of the body or of other persons who are, in the Authority's opinion, likely to be affected.]~~
- (7) If the [appropriate regulator] ~~[reasonably considers it necessary]~~ to do so, it may give a direction under section 296—
  - (a) without following the procedure set out in this section; or
  - (b) if the [appropriate regulator] has begun to follow that procedure, regardless of whether the period for making representations has expired.
- (8) If 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).

**Annotations:**

**Amendments (Textual)**

**F369** 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**

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

**C511** 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)**

**Commencement Information**

**I94** 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 [\[appropriate regulator\]](#) must make arrangements for the investigation of any relevant complaint about a recognised body.
- (2) “Relevant complaint” means a complaint which the [\[appropriate regulator\]](#) considers is relevant to the question of whether the body concerned should remain a recognised body.

**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.
- (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.

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- (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>M37</sup>Human Rights Act 1998.

**Annotations:**

**Marginal Citations**

M37 1998 c. 42.

[<sup>F370</sup>Power to disallow excessive regulatory provision

**Annotations:**

**Amendments (Textual)**

**F370** S. 300A and preceding 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 [appropriate regulator] to disallow excessive regulatory provision**

- (1) This section applies where a recognised body proposes to make any regulatory provision in connection with its business as an investment exchange or the provision by it of clearing services.
- (2) If it appears to the [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 [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>F371</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 [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.
- (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.

**Annotations:**

**Amendments (Textual)**

- F371** 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\(2\)-\(5\)](#)

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

**Annotations:**

**Amendments (Textual)**

- F372** 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))

**300C Restriction on making provision before [\[appropriate regulator\]](#) decides whether to act**

- (1) Where notice of a proposal to make regulatory provision is required to be given to the [\[appropriate regulator\]](#) 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 [\[appropriate regulator\]](#) 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 [\[appropriate regulator\]](#) notifies the body that it is calling in the proposal, the provisions of section 300D (consideration by [\[appropriate regulator\]](#) whether to disallow proposed provision) apply as to when the provision may be made.
- (4) If—

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- (a) before the end of the initial period the [appropriate regulator] notifies the body that it is not calling in the proposal, or
  - (b) the initial period ends without the [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.

**300D Consideration by [appropriate regulator] whether to disallow proposed provision**

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

**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

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- (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 or overseas clearing house.]]

#### *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>M38</sup>Companies Act 1989 (financial markets and insolvency), and
  - (b) Part V of the <sup>M39</sup>Companies (No. 2)(Northern Ireland) Order 1990, 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 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 the [FCA or the Bank of England], that it is appropriate for the arrangements mentioned in subsection (2) to be supervised by the [Bank].
- (4) The approval of the Treasury is required for—
  - (a) the conditions set by the [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 [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 [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.

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- (9) A copy of the list which purports to be certified by or on behalf of the [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>M40</sup>Companies Act 1989 and Part V of the <sup>M41</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).

**Annotations:**

**Marginal Citations**

- M38** 1989 c. 40.  
**M39** S.I. 1990/1504 (N.I. 10).  
**M40** 1989 c. 40.  
**M41** S.I. 1990/1504 (N.I. 10).

**[CHAPTER 1A**

**CONTROL OVER RECOGNISED INVESTMENT EXCHANGE**

Notices of acquisitions of control over recognised investment exchanges

**301A Obligation to notify [the FCA]: acquisitions of control**

- (1) A person who decides to acquire or increase control over a recognised investment exchange must give [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 [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.
- (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”.

**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 [FCA] may reasonably require.

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (2) The [FCA] must publish a list of its requirements as to the form, information and accompanying documents for a section 301A notice.
- (3) The [FCA] may impose different requirements for different cases and may vary or waive requirements in particular cases.

### **301C Acknowledgment of receipt**

- (1) The [FCA] must acknowledge receipt of a section 301A notice in writing before the end of the second working day following receipt.
- (2) If the [FCA] receives an incomplete section 301A notice it must inform the section 301A notice-giver as soon as reasonably practicable.

### 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);

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- (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.
- (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 Article 1a.2 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—
- (a) manages holdings for its parent undertaking or an undertaking in respect of which the parent undertaking is a controller;
  - (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
    - (ii) an undertaking in respect of which of the parent undertaking is a controller.
- (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.

## Assessment procedure

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

- (1) Where the [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 [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 [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.

### **301G Assessment: Procedure**

- (1) The [FCA] must act under section 301F within a period three months from the date the [FCA] receives the completed section 301A notice (“the assessment period”).
- (2) The [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 [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)—
  - (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 [FCA] 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 [FCA] 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 [the FCA’s] decision to the Tribunal.

### **301H Duration of approval**

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

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- (3) Where [the 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 [the 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.

#### Enforcement procedures

### 301I Objections by the [FCA]

- (1) The [FCA] 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 [FCA] 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 [FCA] proposes to object to a person's control over a recognised investment exchange, it must give that person a warning notice.
- (4) If the [FCA] 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 [FCA] gives a decision notice under this section may refer the matter to the Tribunal.

### 301J Restriction notices

- (1) The [FCA] 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 [FCA] 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 [FCA] 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;
  - (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;

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

### **301K Orders for sale of shares**

- (1) The court may, on the application of [the 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.
- (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.

### Offences

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

- (1) A person who fails to comply with an obligation to notify [the FCA] under section 301A(1) or (2) is guilty of an offence.

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- (2) A person who gives notice to [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 [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 [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 [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 knowledge of the act or circumstances by virtue of which the duty to notify [the FCA] arose.

## 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 banking consolidation 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.]

## CHAPTER II

### COMPETITION SCRUTINY

## CHAPTER III

### EXCLUSION FROM THE COMPETITION ACT 1998

## [<sup>F400</sup>CHAPTER 3A

### PASSPORT RIGHTS

#### Annotations:

#### Amendments (Textual)

**F400** 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)

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 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.

#### **312B Removal of passport rights from EEA market operator**

- (1) The [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 [FCA] has clear and demonstrable grounds for believing that the operator has contravened a relevant requirement, and
  - (b) the [FCA] has first complied with subsections (3) to (9).
- (2) A requirement is relevant if it is imposed—

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- (a) by the operator's home state regulator in the implementation of the markets in financial instruments directive or any [F401EU] legislation made under that directive;
  - (b) by provision implementing that directive, or any [F401EU] legislation made under it, in the operator's home state; or
  - (c) by any directly applicable Community regulation made under that directive.
- (3) The [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
  - (b) state that the [FCA][Authority] proposes to exercise the power under subsection (1) if the operator continues the contravention.
- (5) The [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 [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 [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 [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 [FCA] may allow in a particular case.
- (9) If, having considered any representations made by the operator, the [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 [FCA] exercises the power under subsection (1) it must at the earliest opportunity notify the Commission of the action taken in relation to the operator.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (11) The exemption conferred on an operator by section 312A(2) ceases to apply if the [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 [FCA] is satisfied that the contravention which led to the [FCA] exercising the power under subsection (1) has been remedied.

**Annotations:**

**Amendments (Textual)**

**F401** 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\(2\)-\(5\)](#)

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 [FCA] 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 [FCA] 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 [FCA] has complied with subsection (3).
- (5) Subsection (6) applies if the [FCA] 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 [FCA] 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.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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## 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 subparagraph of Article 42.6 of that directive;

“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.]

## [CHAPTER 3B

### DISCIPLINARY MEASURES

### 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 any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury; 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 any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury; or

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- (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 24 of Schedule 17A).

### **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.

### **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.

### **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,
- the body may refer the matter to the Tribunal.

### **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).

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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### **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 replaced 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.
- (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.

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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(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;

[<sup>F402</sup>“multilateral trading facility” has the meaning given in Article 4.1.15 of the markets in financial instruments directive;]

[<sup>F403</sup>“OFT” means the Office of Fair Trading;

“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;

“overseas clearing house” 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;

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

“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>F404</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.

(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.

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- (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).
- (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.

**Annotations:**

**Amendments (Textual)**

- F402** 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**
- F403** S. 313(1): definition substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 40(15)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F404** 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**

[<sup>F405</sup>PART 18A

SUSPENSION AND REMOVAL OF FINANCIAL INSTRUMENTS FROM TRADING

**Annotations:**

**Amendments (Textual)**

- F405** Pt. 18A (ss. 313A-313D) 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(3), **Sch. 3 para. 1**

**313A [FCA]'s power to require suspension or removal of financial instruments from trading**

- (1) The [FCA] may, for the purpose of protecting—
- (a) the interests of investors, or
  - (b) the orderly functioning of the financial markets,
- require an institution [<sup>F406</sup>or a class of institutions] to suspend or remove a financial instrument from trading.

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- [<sup>F407</sup>(2) If the [FCA] exercises the power conferred by subsection (1), the matter may be referred to the Tribunal by—
- (a) the institution or, as the case may be, any institution in the class, or
  - (b) the issuer of the financial instrument (if any).]
- (3) In this section, “trading” includes trading otherwise than on a regulated market or a multilateral trading facility.

**Annotations:**

**Amendments (Textual)**

**F406** Words in s. 313A(1) inserted (9.4.2010) by [The Financial Services and Markets Act 2000 \(Amendments to Part 18A etc.\) Regulations 2010 \(S.I. 2010/1193\)](#), **reg. 2(2)**

**F407** S. 313A(2) substituted (9.4.2010) by [The Financial Services and Markets Act 2000 \(Amendments to Part 18A etc.\) Regulations 2010 \(S.I. 2010/1193\)](#), **reg. 2(3)**

**313B Suspension or removal of financial instruments from trading: procedure**

- (1) A requirement imposed on an institution under section 313A (a “relevant requirement”) takes effect—
- (a) immediately, if the notice given under subsection (2) states that this is the case;
  - (b) in any other case, on such date as may be specified in the notice.
- (2) If the [FCA] proposes to impose a relevant requirement on an institution, [<sup>F408</sup>or a class of institutions,] or imposes such a requirement with immediate effect, it must give written notice to [<sup>F409</sup>give notice—
- (a) by written notice to—
    - (i) the institution or, as the case may be, each institution in the class, and
    - (ii) the issuer of the financial instrument in question (if any); or
  - (b) by publishing a notice by means of a regulatory information service.]
- (3) [<sup>F410</sup>A notice given under subsection (2)(a)] must—
- (a) give details of the relevant requirement;
  - (b) state the [FCA]’s reasons for imposing the requirement and choosing the date on which it took effect or takes effect;
  - (c) inform the recipient that he may make representations to the [FCA] within such period as may be specified by the notice (whether or not he has referred the matter to the Tribunal);
  - (d) inform him of the date on which the requirement took effect or takes effect; and
  - (e) inform him of his right to refer the matter to the Tribunal and give an indication of the procedure on such a reference.
- [<sup>F411</sup>(3A) A notice published under subsection (2)(b) must—
- (a) give details of the relevant requirement;
  - (b) specify the institution, or the class of institutions, to which it applies;
  - (c) state the [FCA]’s reasons for imposing the requirement and choosing the date on which it took effect or takes effect;
  - (d) state that any institution to which the requirement applies or the issuer of the financial instrument in question may make representations to the [FCA]

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within such period as may be specified by the notice (whether or not the institution or the issuer has referred the matter to the Tribunal);

- (e) state the date on which the requirement took effect or takes effect; and
- (f) state that any institution to which the requirement applies or the issuer of the financial instrument in question has a right to refer the matter to the Tribunal, and give an indication of the procedure on such a reference.]

(4) The [FCA] may extend the period within which representations may be made to it.

(5) <sup>F412</sup> .....

(6) .....

(7) .....

(8) .....

(9) .....

(10) .....

(11) .....

(12) .....

#### Annotations:

##### Amendments (Textual)

**F408** Words in s. 313B(2) inserted (9.4.2010) by The Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010 (S.I. 2010/1193), **reg. 3(2)(a)**

**F409** Words in s. 313B(2) substituted (9.4.2010) by The Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010 (S.I. 2010/1193), **reg. 3(2)(b)**

**F410** Words in s. 313B(3) substituted (9.4.2010) by The Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010 (S.I. 2010/1193), **reg. 3(3)**

**F411** S. 313B(3A) inserted (9.4.2010) by The Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010 (S.I. 2010/1193), **reg. 3(4)**

**F412** S. 313B(5)-(12) omitted (9.4.2010) by virtue of The Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010 (S.I. 2010/1193), **reg. 3(5)**

### 313BA Procedure following consideration of representations

- (1) This section applies where, within the period specified under section 313B(3), (3A) or (4), representations are made to the [FCA] in relation to a requirement that it has proposed to impose or has imposed under section 313A.
- (2) The [FCA] must decide whether to impose the requirement or (in the case of a requirement that has been imposed) whether to revoke it.
- (3) In the case of a requirement that the [FCA] has proposed to impose on a class of institutions, the [FCA] may decide to impose the requirement—
  - (a) on the class;
  - (b) on the class apart from one or more specified members of it; or
  - (c) only on one or more specified members of the class.

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- (4) In the case of a requirement that the [FCA] has imposed on a class of institutions, the [FCA] may decide to revoke it in relation to—
  - (a) the class;
  - (b) the class apart from one or more specified members of it; or
  - (c) one or more specified members of the class only.
- (5) The [FCA] must give written notice of its decision to—
  - (a) any institution which has made representations, and
  - (b) the issuer of the financial instrument in question (if any).
- (6) In the case of a requirement that the [FCA] has proposed to impose or has imposed on a class, the [FCA] must also give notice of its decision by publishing it by means of a regulatory information service unless the decision is—
  - (a) to impose the requirement on the class, or
  - (b) not to revoke the requirement in relation to the class or any member of it.
- (7) An institution to which notice is required to be given under subsection (5) may refer the matter to the Tribunal if the [FCA]'s decision is that the requirement will be imposed on, or will continue to apply to, the institution.
- (8) An issuer to whom notice is required to be given under subsection (5) may refer the matter to the Tribunal if the [FCA]'s decision is that the requirement will be imposed on, or will continue to apply to, the institution or (in the case of a requirement relating to a class) any of the institutions in the class.
- (9) A notice given under subsection (5) must inform the recipient if the recipient has a right to refer the matter to the Tribunal.

**Annotations:**

**Amendments (Textual)**

**F413** Ss. 313BA-313BE inserted (9.4.2010) by [The Financial Services and Markets Act 2000 \(Amendments to Part 18A etc.\) Regulations 2010 \(S.I. 2010/1193\)](#), [reg. 4](#)

**313BB Revocation of requirements: applications by institutions**

- (1) This section applies where the [FCA] has imposed a requirement on an institution or a class of institutions under section 313A.
- (2) The institution or any of the institutions in the class may apply to the [FCA] for the revocation of the requirement.
- (3) The [FCA] must decide whether to revoke the requirement.
- (4) In the case of a requirement imposed on a class of institutions, the [FCA] may decide to revoke it in relation to—
  - (a) the class;
  - (b) the class apart from one or more specified members of it; or
  - (c) one or more specified members of the class only.
- (5) The [FCA] must give a warning notice if—

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- (a) in the case of a requirement imposed on an institution, the [FCA] proposes not to revoke the requirement, or
  - (b) in the case of a requirement imposed on a class, the [FCA] proposes to make a decision which would have the effect that the requirement continues to apply to the applicant (whether or not it would have the effect that it continues to apply to other members of the class).
- (6) The warning notice must be given to—
- (a) the applicant, and
  - (b) the issuer of the financial instrument in question (if any).

### **313BC Decisions on applications for revocation by institutions**

- (1) This section applies where, having considered any representations made in response to a warning notice, the [FCA] has decided whether to grant an application for revocation made under section 313BB.
- (2) The [FCA] must give written notice in accordance with subsection (3) if—
- (a) in the case of a requirement imposed on an institution, the [FCA] decides to revoke the requirement, or
  - (b) in the case of a requirement imposed on a class, the [FCA] makes a decision which has the effect that the requirement will no longer apply to the applicant (whether or not it will continue to apply to other members of the class).
- (3) The written notice must be given to—
- (a) the applicant, and
  - (b) the issuer of the financial instrument in question (if any).
- (4) If the [FCA] is required to give written notice under subsection (2) in relation to a requirement imposed on a class, the [FCA] must also give notice of its decision by publishing it by means of a regulatory information service.
- (5) The [FCA] must give a decision notice in accordance with subsection (6) if—
- (a) in the case of a requirement imposed on an institution, the [FCA] decides not to revoke the requirement, or
  - (b) in the case of a requirement imposed on a class, the [FCA] makes a decision which has the effect that the requirement will continue to apply to the applicant (whether or not it will continue to apply to other members of the class).
- (6) The decision notice must be given to—
- (a) the applicant, and
  - (b) the issuer of the financial instrument in question (if any).
- (7) If the [FCA] is required to give a decision notice in relation to a requirement imposed on a class, the [FCA] must also give notice of its decision by publishing it by means of a regulatory information service.
- (8) If the [FCA] gives a decision notice, the recipient may refer the matter to the Tribunal.

### **313BD Revocation of requirements: applications by issuers**

- (1) This section applies where the [FCA] has imposed a requirement on an institution or a class of institutions under section 313A.

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- (2) The issuer of the financial instrument may apply to the [FCA] for the revocation of the requirement.
- (3) The [FCA] must decide whether to revoke the requirement.
- (4) In the case of a requirement imposed on a class of institutions, the [FCA] may decide to revoke it in relation to—
  - (a) the class;
  - (b) the class apart from one or more specified members of it; or
  - (c) one or more specified members of the class only.
- (5) The [FCA] must give the issuer a warning notice if—
  - (a) in the case of a requirement imposed on an institution, the [FCA] proposes not to revoke the requirement, or
  - (b) in the case of a requirement imposed on a class, the [FCA] proposes not to revoke the requirement or to revoke it in relation to—
    - (i) the class apart from one or more specified members of it, or
    - (ii) one or more specified members of the class only.

### **313BE Decisions on applications for revocation by issuers**

- (1) This section applies where, having considered any representations made in response to a warning notice, the [FCA] has decided whether to grant an application for revocation made under section 313BD.
- (2) The [FCA] must give written notice to the issuer if the [FCA] decides to revoke the requirement.
- (3) If the [FCA] is required to give written notice under subsection (2) in relation to a requirement imposed on a class, the [FCA] must also give notice of its decision by publishing it by means of a regulatory information service.
- (4) The [FCA] must give the issuer a decision notice if—
  - (a) in the case of a requirement imposed on an institution, the [FCA] decides not to revoke the requirement, or
  - (b) in the case of a requirement imposed on a class, the [FCA] decides not to revoke the requirement or makes a decision to revoke the requirement in relation to—
    - (i) the class apart from one or more specified members of it, or
    - (ii) one or more specified members of the class only.
- (5) If the [FCA] is required to give a decision notice under subsection (4)(b), it must also give notice of its decision by publishing it by means of a regulatory information service.
- (6) If the [FCA] gives a decision notice under subsection (4), the issuer may refer the matter to the Tribunal.]

### **313C Notification in relation to suspension or removal of a financial instrument from trading**

- (1) If the [FCA] exercises the power under section 313A(1) in relation to a financial instrument traded on a regulated market, it must as soon as reasonably practicable—

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- (a) publish its decision in such manner as it considers appropriate [F414 unless the decision has already been published under section 313B(2)(b)], and
  - (b) inform the competent authorities of all other EEA States of its decision.
- (2) If the [FCA] receives notice from a recognised investment exchange that the exchange has suspended or removed a financial instrument from trading on a regulated market operated by it, the [FCA] must inform the competent authorities of all other EEA States of the action taken by the exchange.
- (3) Subsections (4) and (5) apply if the [FCA] receives notice from the competent authority of another EEA State that that authority, pursuant to Article 41.2 of the markets in financial instruments directive—
- (a) has required the suspension of a financial instrument from trading, or
  - (b) has required the removal of a financial instrument from trading.
- (4) In the case of a notice under subsection (3)(a), the [FCA]—
- (a) must require each recognised investment exchange to suspend the instrument from trading on any regulated market operated by the exchange, and
  - (b) must require each institution operating a multilateral trading facility to suspend the instrument from trading on that facility,
- unless such a step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.
- (5) In the case of a notice under subsection (3)(b), the [FCA]—
- (a) must require each recognised investment exchange to remove the instrument from trading on any regulated market operated by the exchange, and
  - (b) must require each institution operating a multilateral trading facility to remove the instrument from trading on that facility,
- unless such a step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.
- (6) "Competent authority" has the meaning given in Article 4.1.22 of the markets in financial instruments directive.

**Annotations:**

**Amendments (Textual)**

**F414** Words in s. 313C(1)(a) inserted (9.4.2010) by [The Financial Services and Markets Act 2000 \(Amendments to Part 18A etc.\) Regulations 2010 \(S.I. 2010/1193\)](#), **reg. 5**

### 313D Interpretation of Part 18A

In this Part—

“financial instrument” has the meaning given in Article 4.1.17 of the markets in financial instruments directive;

“institution” means—

- (a) a recognised investment exchange, other than an overseas investment exchange (within the meaning of Part 18);
- (b) an investment firm;
- (c) a credit institution authorised under the banking consolidation directive, when carrying on investment services and activities; or

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(d) 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,

but does not include an EEA firm qualifying for authorisation under Schedule 3;

“issuer”, in relation to a financial instrument, means the person who issued the instrument;

“multilateral trading facility” has the meaning given in Article 4.1.15 of the markets in financial instruments directive;

[<sup>F415</sup>“regulated information” has the meaning given in Article 2(1)(k) of the transparency obligations directive (as defined in section 103 of this Act);]

[<sup>F416</sup>“regulatory information service” means—

- (a) a service approved by the [FCA] to disseminate regulated information in accordance with rules made under section 89A of this Act, or
- (b) a service established in an EEA state other than the United Kingdom which is used for the dissemination of regulated information for the purposes of Article 21 of the transparency obligations directive;]

“regulated market” has the meaning given in Article 4.1.14 of the markets in financial instruments directive.]

**Annotations:**

**Amendments (Textual)**

**F415** S. 313D: definition of "regulated information" inserted (9.4.2010) by [The Financial Services and Markets Act 2000 \(Amendments to Part 18A etc.\) Regulations 2010 \(S.I. 2010/1193\)](#), [reg. 6](#)

**F416** S. 313D: definition of "regulatory information service" inserted (9.4.2010) by [The Financial Services and Markets Act 2000 \(Amendments to Part 18A etc.\) Regulations 2010 \(S.I. 2010/1193\)](#), [reg. 6](#)

**PART XIX**

LLOYD’S

*General*

**314 [Regulators’] general duty.**

[(1) So far as it is appropriate to do so for the purpose of advancing one or more of its operational objectives, the FCA must keep itself informed about—

- (a) the way in which the Council supervises and regulates the market at Lloyd’s;  
and
- (b) the way in which regulated activities are being carried on in that market.

(1A) So far as it is appropriate to do so for the purpose of advancing its general objective or (if section 2C applies) its insurance objective, the PRA must keep itself informed about—

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- (a) the way in which the Council supervises and regulates the market at Lloyd's; and
  - (b) the way in which any PRA-regulated activities are being carried on in that market.]
- (2) [Each regulator] must keep under review the desirability of exercising—
- (a) any of its powers under this Part;
  - (b) any powers which it has in relation to the Society as a result of section 315.

### **[314A The PRA's objectives in relation to Lloyd's etc**

- (1) This section modifies—
- (a) the effect of sections 2B and 2C (the PRA's general objective and insurance objective), and
  - (b) the effect of section 3H (power of PRA to require FCA to refrain from specified action),
- in relation to anything done, or proposed to be done, by the PRA under or for the purposes of this Part.
- (2) This section applies only if PRA-authorised persons include—
- (a) the Society; or
  - (b) other persons who carry on regulated activities in relation to anything done at Lloyd's.
- (3) Section 2B(2) and (3) have effect as if references to PRA-authorised persons (or a PRA-authorised person) were references to the Society, and the members of the Society, taken together (and sections 2F and 2I(2) and (4) are to be read accordingly).
- (4) Section 2C(1) has effect as if the reference to the discharge of the PRA's general functions so far as relating to the activity mentioned there were a reference to the discharge of its general functions so far as relating to the carrying on by the Society or other persons of regulated activities in relation to anything done at Lloyd's.
- (5) Section 3H(3)(b) has effect as if the reference to a PRA-authorised person were a reference to the Society, and the members of the Society, taken together.]

#### *The Society*

### **[315 The Society: regulated activities**

- (1) This section applies if an activity carried on by the Society is of a kind specified in an order made under section 22 (regulated activities).
- (2) The order may provide that the Society is not to be subject to any requirement of this Act concerning the registered office of a body corporate.]

#### *Power to apply Act to Lloyd's underwriting*

### **316 Direction by [a regulator].**

- (1) The general prohibition or (if the general prohibition is not applied under this section) a core provision applies to the carrying on of an insurance market activity by—

- (a) a member of the Society, or
  - (b) the members of the Society taken together,
- only if [a regulator]so directs.

**[(1A) A direction under subsection (1)—**

- (a) may be given by the FCA only if it considers that giving the direction is necessary or expedient for the purpose of advancing one or more of its operational objectives; and
  - (b) may be given by the PRA only if it considers that giving the direction is necessary or expedient for the purpose of advancing its general objective or (if section 2C applies) the insurance objective.]
- (2) A direction given under subsection (1) which applies a core provision is referred to in this Part as “an insurance market direction”.
- (3) In subsection (1)—
- “core provision” means a provision of this Act mentioned in section 317; and
  - “insurance market activity” means a regulated activity relating to contracts of insurance written at Lloyd’s.
- (4) In deciding whether to give a direction under subsection (1), [the regulator concerned] must have particular regard to—
- (a) the interests of policyholders and potential policyholders;
  - (b) any failure by the Society to satisfy an obligation to which it is subject as a result of a provision of the law of another EEA State which—
    - (i) gives effect to any of the insurance directives; and
    - (ii) is applicable to an activity carried on in that State by a person to whom this section applies;
  - (c) the need to ensure the effective exercise of the functions which [the regulator concerned] has in relation to the Society as a result of section 315.
- (5) A direction under subsection (1) must be in writing.
- (6) A direction under subsection (1) applying the general prohibition may apply it in relation to different classes of person.
- (7) An insurance market direction—
- (a) must specify each core provision, class of person and kind of activity to which it applies;
  - (b) may apply different provisions in relation to different classes of person and different kinds of activity.
- (8) A direction under subsection (1) has effect from the date specified in it, which may not be earlier than the date on which it is made.
- (9) A direction under subsection (1) [given by a regulator] must be published in the way appearing to [the regulator] to be best calculated to bring it to the attention of the public.
- (10) [A regulator who gives a direction under subsection (1)] may charge a reasonable fee for providing a person with a copy of the direction.

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- (11) [A regulator who gives a direction under subsection (1)] must, without delay, give the Treasury a copy of [the direction].

**Annotations:**

**Commencement Information**

- I99** S. 316 wholly in force at 1.12.2001; s. 316 not in force at Royal Assent see s. 431(2); s. 316(1) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 316 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**317 The core provisions.**

- (1) The core provisions are Parts V, X, XI, XII, XIV, XV, XVI, XXII and XXIV, sections 384 to 386 and Part XXVI.
- (2) References in an applied core provision to an authorised person are (where necessary) to be read as references to a person in the class to which the insurance market direction applies.
- (3) An insurance market direction may provide that a core provision is to have effect, in relation to persons to whom the provision is applied by the direction, with modifications.

**318 Exercise of powers through Council.**

- (1) [A regulator] may give a direction under this subsection to the Council or to the Society (acting through the Council) or to both.
  - (2) A direction under subsection (1) is one given to the body concerned—
    - (a) in relation to the exercise of its powers generally with a view to achieving, or in support of, a specified objective; or
    - (b) in relation to the exercise of a specified power which it has, whether in a specified manner or with a view to achieving, or in support of, a specified objective.
  - (3) “Specified” means specified in the direction.
- [(3A) A direction under subsection (1)—
- (a) may be given by the FCA only if it considers that giving the direction is necessary or expedient for the purpose of advancing one or more of its operational objectives; and
  - (b) may be given by the PRA only if it considers that giving the direction is necessary or expedient for the purpose of advancing its general objective or (if section 2C applies) the insurance objective.]
- (4) A direction under subsection (1) may be given—
    - (a) instead of giving a direction under section 316(1); or
    - (b) if [the regulator concerned] considers it necessary or expedient to do so, at the same time as, or following, the giving of such a direction.
  - (5) A direction may also be given under subsection (1) in respect of underwriting agents as if they were among the persons mentioned in section 316(1).

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (6) A direction under this section—
  - (a) does not, at any time, prevent the exercise by [a regulator] of any of its powers;
  - (b) must be in writing.
- (7) A direction under subsection (1) [given by a regulator] must be published in the way appearing to [the regulator] to be best calculated to bring it to the attention of the public.
- (8) [A regulator who gives a direction under subsection (1)] may charge a reasonable fee for providing a person with a copy of the direction.
- (9) [A regulator who gives a direction under subsection (1)] must, without delay, give the Treasury a copy of [the direction].

**Annotations:**

**Commencement Information**

**I100** S. 318 wholly in force at 1.12.2001; s. 318 not in force at Royal Assent see s. 431(2); s. 318(1) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 318 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**319 Consultation.**

- [(1) Before a regulator gives a direction under section 316 or 318, it must—
  - (a) consult the other regulator, and
  - (b) after doing so, publish a draft of the proposed direction.]
- (2) The draft must be accompanied by—
  - (a) a cost benefit analysis; and
  - (b) notice that representations about the proposed direction may be made to [the regulator] within a specified time.
- (3) Before [a regulator gives the proposed direction, it] must have regard to any representations made to it in accordance with subsection (2)(b).
- (4) If [the regulator] gives the proposed direction it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2)(b); and
  - (b) its response to them.
- (5) If the direction differs from the draft published under subsection (1) in a way which is, in the opinion of [the regulator], significant—
  - (a) [the regulator] must (in addition to complying with subsection (4)) publish details of the difference; and
  - (b) those details must be accompanied by a cost benefit analysis.
- [(6) Subsections (1)(b) and (2) to (5) do not apply in relation to—
  - (a) a direction given by the FCA if it considers that the delay involved in complying with them would be prejudicial to the interests of consumers, as defined in section 425A; or
  - (b) a direction given by the PRA if it considers that the delay involved in complying with them would—

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (i) be prejudicial to the safety and soundness of PRA-~~authorised~~ persons,  
or
  - (ii) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policy holders.]
- (7) Neither subsection (2)(a) nor subsection (5)(b) applies if [the regulator concerned] considers—
- (a) that, making the appropriate comparison, there will be no increase in costs; or
  - (b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.
- (8) [A regulator who publishes a draft under subsection (1)] may charge a reasonable fee for providing a person with a copy of [the draft].
- (9) When [a regulator] is required to publish a document under this section it must do so in the way appearing to it to be best calculated to bring it to the attention of the public.
- [(10) Cost benefit analysis” means—
- (a) an analysis of the costs together with an analysis of the benefits that will arise  
=
    - (i) if the proposed direction is given; or
    - (ii) if subsection (5)(b) applies, from the direction that has been given;  
and
  - (b) subject to subsection (10A), an estimate of those costs and of those benefits.
- (10A) If, in the opinion of the regulator concerned—
- (a) the costs or benefits referred to in subsection (10) cannot reasonably be estimated, or
  - (b) it is not reasonably practicable to produce an estimate,
- the cost benefit analysis need not estimate them, but must include a statement of the opinion of the regulator concerned and an explanation of it.]
- (11) “The appropriate comparison” means—
- (a) in relation to subsection (2)(a), a comparison between the overall position if the direction is given and the overall position if it is not given;
  - (b) in relation to subsection (5)(b), a comparison between the overall position after the giving of the direction and the overall position before it was given.

*Former underwriting members*

**320 Former underwriting members.**

- (1) A former underwriting member may carry out each contract of insurance that he has underwritten at Lloyd's whether or not he is an authorised person.
- (2) If he is an authorised person, any [Part 4A permission] that he has does not extend to his activities in carrying out any of those contracts.
- (3) [The PRA] may impose on a former underwriting member such requirements as appear to it to be appropriate for the purpose of protecting policyholders against the risk that he may not be able to meet his liabilities.
- (4) A person on whom a requirement is imposed may refer the matter to the Tribunal.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

[(5) In the event that the activity of effecting or carrying out contracts of insurance as principal is not to any extent a PRA-regulated activity, the function conferred on the PRA by subsection (3) is exercisable instead by the FCA.

(6) Accordingly, in that case—

- (a) references in section 321 to the PRA are to be read as references to the FCA, and
- (b) the reference in section 321(13) to the FCA is to be read as a reference to the PRA.]

**Annotations:**

**Commencement Information**

**I101** S. 320 wholly in force at 1.12.2001; s. 320 not in force at Royal Assent see s. 431(2); s. 320(3)(4) in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 320 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**321 Requirements imposed under section 320.**

- (1) A requirement imposed under section 320 takes effect—
  - (a) immediately, if the notice given under subsection (2) states that that is the case;
  - (b) in any other case, on such date as may be specified in that notice.
- (2) If [the PRA] proposes to impose a requirement on a former underwriting member (“A”) under section 320, or imposes such a requirement on him which takes effect immediately, it must give him written notice.
- (3) The notice must—
  - (a) give details of the requirement;
  - (b) state [the PRA’s] reasons for imposing it;
  - (c) inform A that he may make representations to [the PRA] within such period as may be specified in the notice (whether or not he has referred the matter to the Tribunal);
  - (d) inform him of the date on which the requirement took effect or will take effect; and
  - (e) inform him of his right to refer the matter to the Tribunal.
- (4) The [PRA] may extend the period allowed under the notice for making representations.
- (5) If, having considered any representations made by A, the [PRA] decides—
  - (a) to impose the proposed requirement, or
  - (b) if it has been imposed, not to revoke it,it must give him written notice.
- (6) If the [PRA] decides—
  - (a) not to impose a proposed requirement, or
  - (b) to revoke a requirement that has been imposed,it must give A written notice.
- (7) If the [PRA] decides to grant an application by A for the variation or revocation of a requirement, it must give him written notice of its decision.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (8) If the [PRA] proposes to refuse an application by A for the variation or revocation of a requirement it must give him a warning notice.
- (9) If the [PRA], having considered any representations made in response to the warning notice, decides to refuse the application, it must give A a decision notice.
- (10) A notice given under—
- (a) subsection (5), or
  - (b) subsection (9) in the case of a decision to refuse the application,
- must inform A of his right to refer the matter to the Tribunal.
- (11) If the [PRA] decides to refuse an application for a variation or revocation of the requirement, the applicant may refer the matter to the Tribunal.
- (12) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- [(13) Before giving a notice under any provision of this section, the PRA must consult the FCA.]

**Annotations:**

**Commencement Information**

**I102** S. 321 wholly in force at 1.12.2001; s. 321 not in force at Royal Assent see s. 431(2); s. 321 in force for certain purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 321 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**322 Rules applicable to former underwriting members.**

- (1) [The PRA] may make rules imposing such requirements on persons to whom the rules apply as appear to it to be appropriate for protecting policyholders against the risk that those persons may not be able to meet their liabilities.
- (2) The rules may apply to—
- (a) former underwriting members generally; or
  - (b) to a class of former underwriting member specified in them.
- (3) Section 319 applies to the making of proposed rules under this section as it applies to the giving of a proposed direction under section 316.
- (4) [Part 9A (except sections 137Q, 138G, 138H and 138I)] does not apply to rules made under this section.
- [(5) In the event that the activity of effecting or carrying out contracts of insurance as principal is not to any extent a PRA-regulated activity, the function conferred on the PRA by subsection (1) is exercisable instead by the FCA.]

**Annotations:**

**Commencement Information**

**I103** S. 322 wholly in force at 1.12.2001; s. 322 not in force at Royal Assent see s. 431(2); s. 322 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 322 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

*Transfers of business done at Lloyd's*

**323 Transfer schemes.**

The Treasury may by order provide for the application of any provision of Part VII (with or without modification) in relation to schemes for the transfer of the whole or any part of the business carried on by one or more members of the Society or former underwriting members.

*Supplemental*

**324 Interpretation of this Part.**

(1) In this Part—

“arranging deals”, in relation to the investments to which this Part applies, has the same meaning as in paragraph 3 of Schedule 2;

“former underwriting member” means a person ceasing to be an underwriting member of the Society on, or at any time after, 24 December 1996; and

“participation in Lloyd's syndicates”, in relation to the secondary market activity, means the investment described in sub-paragraph (1) of paragraph 21 of Schedule 2.

(2) A term used in this Part which is defined in <sup>M44</sup>Lloyd's Act 1982 has the same meaning as in that Act.

**Annotations:**

**Marginal Citations**

**M44** 1982 c.xiv.

**PART XX**

PROVISION OF FINANCIAL SERVICES BY MEMBERS OF THE PROFESSIONS

**Annotations:**

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

**C514** Pt. 20 modified (E.W.S.) by S.I. 2000/119, Sch. 4 para. 11 (as substituted (1.7.2009 in accordance with art. 1(1)(c) of S.I. 2009/1587) by S.I. 2009/1587, art. 3(11))

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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### 325 [FCA's] general duty.

- (1) The [FCA] must keep itself informed about—
  - (a) the way in which designated professional bodies supervise and regulate the carrying on of exempt regulated activities by members of the professions in relation to which they are established;
  - (b) the way in which such members are carrying on exempt regulated activities.
- (2) In this Part—
 

“exempt regulated activities” means regulated activities which may, as a result of this Part, be carried on by members of a profession which is supervised and regulated by a designated professional body without breaching the general prohibition; and

“members”, in relation to a profession, means persons who are entitled to practise the profession in question and, in practising it, are subject to the rules of the body designated in relation to that profession, whether or not they are members of that body.
- (3) The [FCA] must keep under review the desirability of exercising any of its powers under this Part.
- (4) Each designated professional body must co-operate with the [FCA], by the sharing of information and in other ways, in order to enable the [FCA] to perform its functions under this Part.

#### Annotations:

#### Commencement Information

**I104** S. 325 wholly in force at 1.12.2001; s. 325 not in force at Royal Assent see s. 431(2); s. 325(4) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 325 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

### 326 Designation of professional bodies.

- (1) The Treasury may by order designate bodies for the purposes of this Part.
- (2) A body designated under subsection (1) is referred to in this Part as a designated professional body.
- (3) The Treasury may designate a body under subsection (1) only if they are satisfied that—
  - (a) the basic condition, and
  - (b) one or more of the additional conditions,
 are met in relation to it.
- (4) The basic condition is that the body has rules applicable to the carrying on by members of the profession in relation to which it is established of regulated activities which, if the body were to be designated, would be exempt regulated activities.
- (5) The additional conditions are that—
  - (a) the body has power under any enactment to regulate the practice of the profession;

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- (b) being a member of the profession is a requirement under any enactment for the exercise of particular functions or the holding of a particular office;
  - (c) the body has been recognised for the purpose of any enactment other than this Act and the recognition has not been withdrawn;
  - (d) the body is established in an EEA State other than the United Kingdom and in that State—
    - (i) the body has power corresponding to that mentioned in paragraph (a);
    - (ii) there is a requirement in relation to the body corresponding to that mentioned in paragraph (b); or
    - (iii) the body is recognised in a manner corresponding to that mentioned in paragraph (c).
- (6) “Enactment” includes an Act of the Scottish Parliament, Northern Ireland legislation and subordinate legislation (whether made under an Act, an Act of the Scottish Parliament or Northern Ireland legislation).
- (7) “Recognised” means recognised by—
  - (a) a Minister of the Crown;
  - (b) the Scottish Ministers;
  - (c) a Northern Ireland Minister;
  - (d) a Northern Ireland department or its head.

### **327 Exemption from the general prohibition.**

- (1) The general prohibition does not apply to the carrying on of a regulated activity by a person (“P”) if—
  - (a) the conditions set out in subsections (2) to (7) are satisfied; and
  - (b) there is not in force—
    - (i) a direction under section 328, or
    - (ii) an order under section 329,which prevents this subsection from applying to the carrying on of that activity by him.
- (2) P must be—
  - (a) a member of a profession; or
  - (b) controlled or managed by one or more such members.
- (3) P must not receive from a person other than his client any pecuniary reward or other advantage, for which he does not account to his client, arising out of his carrying on of any of the activities.
- (4) The manner of the provision by P of any service in the course of carrying on the activities must be incidental to the provision by him of professional services.
- (5) P must not carry on, or hold himself out as carrying on, a regulated activity other than—
  - (a) one which rules made as a result of section 332(3) allow him to carry on; or
  - (b) one in relation to which he is an exempt person.
- (6) The activities must not be of a description, or relate to an investment of a description, specified in an order made by the Treasury for the purposes of this subsection.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (7) The activities must be the only regulated activities carried on by P (other than regulated activities in relation to which he is an exempt person).
- (8) “Professional services” means services—
- (a) which do not constitute carrying on a regulated activity, and
  - (b) the provision of which is supervised and regulated by a designated professional body.

**Annotations:**

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

**C515** S. 327(5)(7) restricted (1.12.2001) by S.I. 2001/544, arts. 2(1), 13(1); S.I. 2001/3538, art. 2(1)

**Commencement Information**

**I105** S. 327 wholly in force at 1.12.2001; s. 327 not in force at Royal Assent see s. 431(2); s. 327(6) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pt. 2; s. 327 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**328 Directions in relation to the general prohibition.**

- (1) The [FCA] may direct that section 327(1) is not to apply to the extent specified in the direction.
- (2) A direction under subsection (1)—
  - (a) must be in writing;
  - (b) may be given in relation to different classes of person or different descriptions of regulated activity.
- (3) A direction under subsection (1) must be published in the way appearing to the [FCA] to be best calculated to bring it to the attention of the public.
- (4) The [FCA] may charge a reasonable fee for providing a person with a copy of the direction.
- (5) The [FCA] must, without delay, give the Treasury a copy of any direction which it gives under this section.
- [<sup>F417</sup>(6) The [FCA] may exercise the power conferred by subsection (1) only if it is satisfied either—
  - (a) that it is desirable to do so in order to protect the interests of clients; or
  - (b) that it is necessary to do so in order to comply with [<sup>F418</sup>an EU] obligation imposed by the insurance mediation directive.]
- (7) In considering whether it is [<sup>F419</sup>satisfied of the matter specified in subsection (6) (a)], the [FCA] must have regard amongst other things to the effectiveness of any arrangements made by any designated professional body—
  - (a) for securing compliance with rules made under section 332(1);
  - (b) for dealing with complaints against its members in relation to the carrying on by them of exempt regulated activities;
  - (c) in order to offer redress to clients who suffer, or claim to have suffered, loss as a result of misconduct by its members in their carrying on of exempt regulated activities;

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (d) for co-operating with the [FCA] under section 325(4).
- (8) In this Part “clients” means—
- (a) persons who use, have used or are or may be contemplating using, any of the services provided by a member of a profession in the course of carrying on exempt regulated activities;
  - (b) persons who have rights or interests which are derived from, or otherwise attributable to, the use of any such services by other persons; or
  - (c) persons who have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them.
- (9) If a member of a profession is carrying on an exempt regulated activity in his capacity 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 are or may be contemplating using services provided by that person in his carrying on of that activity.

**Annotations:**

**Amendments (Textual)**

**F417** S. 328(6) substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 9(a)**

**F418** Words in s. 328(6)(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(1)(3)(4)**

**F419** Words in s. 328(7) substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 9(b)**

**329 Orders in relation to the general prohibition.**

- (1) Subsection (2) applies if it appears to the [FCA] that a person to whom, as a result of section 327(1), the general prohibition does not apply is not a fit and proper person to carry on regulated activities in accordance with that section.
- (2) The [FCA] may make an order disapplying section 327(1) in relation to that person to the extent specified in the order.
- (3) The [FCA] may, on the application of the person named in an order under subsection (1), vary or revoke it.
- (4) “Specified” means specified in the order.
- (5) If a partnership is named in an order under this section, the order is not affected by any change in its membership.
- (6) If a partnership named in an order under this section is dissolved, the order continues to have effect in relation to any partnership which succeeds to the business of the dissolved partnership.
- (7) For the purposes of subsection (6), a partnership is to be regarded as succeeding to the business of another partnership only if—
  - (a) the members of the resulting partnership are substantially the same as those of the former partnership; and

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (b) succession is to the whole or substantially the whole of the business of the former partnership.

**Annotations:**

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

**C516** S. 329(1) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, arts. 1(2), 3(4); S.I. 2001/3538, art. 2(1)

**330 Consultation.**

- (1) Before giving a direction under section 328(1), the [FCA] must publish a draft of the proposed direction.
- (2) The draft must be accompanied by—
  - (a) a cost benefit analysis; and
  - (b) notice that representations about the proposed direction may be made to the [FCA] within a specified time.
- (3) Before giving the proposed direction, the [FCA] must have regard to any representations made to it in accordance with subsection (2)(b).
- (4) If the [FCA] gives the proposed direction it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2)(b); and
  - (b) its response to them.
- (5) If the direction differs from the draft published under subsection (1) in a way which is, in the opinion of the [FCA], significant—
  - (a) the [FCA] must (in addition to complying with subsection (4)) publish details of the difference; and
  - (b) those details must be accompanied by a cost benefit analysis.
- (6) Subsections (1) to (5) do not apply if the [FCA] considers that the delay involved in complying with them would prejudice the interests of consumers.
- (7) Neither subsection (2)(a) nor subsection (5)(b) applies if the [FCA] considers—
  - (a) that, making the appropriate comparison, there will be no increase in costs; or
  - (b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.
- (8) The [FCA] may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (9) When the [FCA] is required to publish a document under this section it must do so in the way appearing to it to be best calculated to bring it to the attention of the public.
- [(10) “Cost benefit analysis” means—
  - (a) an analysis of the costs together with an analysis of the benefits that will arise  
 =  
    - (i) if the proposed direction is given, or
    - (ii) if subsection (5)(b) applies, from the direction that has been given,  
 and

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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(b) subject to subsection (10A), an estimate of those costs and of those benefits.

(10A) If, in the opinion of the FCA—

(a) the costs or benefits referred to in subsection (10) cannot reasonably be estimated, or

(b) it is not reasonably practicable to produce an estimate,

the cost benefit analysis need not estimate them, but must include a statement of the FCA's opinion and an explanation of it.]

(11) “The appropriate comparison” means—

(a) in relation to subsection (2)(a), a comparison between the overall position if the direction is given and the overall position if it is not given;

(b) in relation to subsection (5)(b), a comparison between the overall position after the giving of the direction and the overall position before it was given.

### **331 Procedure on making or varying orders under section 329.**

(1) If the [FCA] proposes to make an order under section 329, it must give the person concerned a warning notice.

(2) The warning notice must set out the terms of the proposed order.

(3) If the [FCA] decides to make an order under section 329, it must give the person concerned a decision notice.

(4) The decision notice must—

(a) name the person to whom the order applies;

(b) set out the terms of the order; and

(c) be given to the person named in the order.

(5) Subsections (6) to (8) apply to an application for the variation or revocation of an order under section 329.

(6) If the [FCA] decides to grant the application, it must give the applicant written notice of its decision.

(7) If the [FCA] proposes to refuse the application, it must give the applicant a warning notice.

(8) If the [FCA] decides to refuse the application, it must give the applicant a decision notice.

(9) A person—

(a) against whom the [FCA] have decided to make an order under section 329, or

(b) whose application for the variation or revocation of such an order the [FCA] had decided to refuse,

may refer the matter to the Tribunal.

(10) The [FCA] may not make an order under section 329 unless—

(a) the period within which the decision to make to the order may be referred to the Tribunal has expired and no such reference has been made; or

(b) if such a reference has been made, the reference has been determined.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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**332 Rules in relation to persons to whom the general prohibition does not apply.**

- (1) The [FCA] may make rules applicable to persons to whom, as a result of section 327(1), the general prohibition does not apply.
- (2) The power conferred by subsection (1) is to be exercised for the purpose of ensuring that clients are aware that such persons are not authorised persons.
- (3) A designated professional body must make rules—
  - (a) applicable to members of the profession in relation to which it is established who are not authorised persons; and
  - (b) governing the carrying on by those members of regulated activities (other than regulated activities in relation to which they are exempt persons).
- (4) Rules made in compliance with subsection (3) must be designed to secure that, in providing a particular professional service to a particular client, the member carries on only regulated activities which arise out of, or are complementary to, the provision by him of that service to that client.
- (5) Rules made by a designated professional body under subsection (3) require the approval of the [FCA]

**Annotations:**

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

C517 S. 332(3)(b) restricted (1.12.2001) by S.I. 2001/544, arts. 2(1), 13(1); S.I. 2001/3538, art. 2(1)

**333 False claims to be a person to whom the general prohibition does not apply.**

- (1) A person who—
  - (a) describes himself (in whatever terms) as a person to whom the general prohibition does not apply, in relation to a particular regulated activity, as a result of this Part, or
  - (b) behaves, or otherwise holds himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is such a person,
 is guilty of an offence if he is not such a person.
- (2) In proceedings for an offence under this section it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.
- (4) But where the conduct constituting the offence involved or included the public display of any material, the maximum fine for the offence is level 5 on the standard scale multiplied by the number of days for which the display continued.

## PART XXI

### MUTUAL SOCIETIES

#### *Friendly societies*

#### **334 The Friendly Societies Commission.**

- (1) The Treasury may by order provide—
  - (a) for any functions of the Friendly Societies Commission to be transferred to the Authority;
  - (b) for any functions of the Friendly Societies Commission which have not been, or are not being, transferred to the Authority to be transferred to the Treasury.
- (2) If the Treasury consider it appropriate to do so, they may by order provide for the Friendly Societies Commission to cease to exist on a day specified in or determined in accordance with the order.
- (3) The enactments relating to friendly societies which are mentioned in Part I of Schedule 18 are amended as set out in that Part.
- (4) Part II of Schedule 18—
  - (a) removes certain restrictions on the ability of incorporated friendly societies to form subsidiaries and control corporate bodies; and
  - (b) makes connected amendments.

#### **Annotations:**

#### **Commencement Information**

**I106** S. 334 wholly in force at 1.12.2001; s. 334 not in force at Royal Assent see s. 431(2); s. 334(1)(2) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), Sch. Pt. 1; s. 334 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

#### **335 The Registry of Friendly Societies.**

- (1) The Treasury may by order provide—
  - (a) for any functions of the Chief Registrar of Friendly Societies, or of an assistant registrar of friendly societies for the central registration area, to be transferred to the Authority;
  - (b) for any of their functions which have not been, or are not being, transferred to the Authority to be transferred to the Treasury.
- (2) The Treasury may by order provide—
  - (a) for any functions of the central office of the registry of friendly societies to be transferred to the Authority;
  - (b) for any functions of that office which have not been, or are not being, transferred to the Authority to be transferred to the Treasury.
- (3) The Treasury may by order provide—
  - (a) for any functions of the assistant registrar of friendly societies for Scotland to be transferred to the Authority;

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (b) for any functions of the assistant registrar which have not been, or are not being, transferred to the Authority to be transferred to the Treasury.
- (4) If the Treasury consider it appropriate to do so, they may by order provide for—
- (a) the office of Chief Registrar of Friendly Societies,
  - (b) the office of assistant registrar of friendly societies for the central registration area,
  - (c) the central office, or
  - (d) the office of assistant registrar of friendly societies for Scotland,
- to cease to exist on a day specified in or determined in accordance with the order.

### *Building societies*

#### **336 The Building Societies Commission.**

- (1) The Treasury may by order provide—
- (a) for any functions of the Building Societies Commission to be transferred to the Authority;
  - (b) for any functions of the Building Societies Commission which have not been, or are not being, transferred to the Authority to be transferred to the Treasury.
- (2) If the Treasury consider it appropriate to do so, they may by order provide for the Building Societies Commission to cease to exist on a day specified in or determined in accordance with the order.
- (3) The enactments relating to building societies which are mentioned in Part III of Schedule 18 are amended as set out in that Part.

#### **Annotations:**

##### **Commencement Information**

**I107** S. 336 wholly in force at 1.12.2001; s. 336 not in force at Royal Assent see s. 431(2); s. 336(1)(2) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 336 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

#### **337 The Building Societies Investor Protection Board.**

The Treasury may by order provide for the Building Societies Investor Protection Board to cease to exist on a day specified in or determined in accordance with the order.

### *Industrial and provident societies and credit unions*

#### **338 Industrial and provident societies and credit unions.**

- (1) The Treasury may by order provide for the transfer to the Authority of any functions conferred by—
- (a) the <sup>M45</sup>Industrial and Provident Societies Act 1965;
  - (b) the <sup>M46</sup>Industrial and Provident Societies Act 1967;
  - (c) the <sup>M47</sup>Friendly and Industrial and Provident Societies Act 1968;

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (d) the <sup>M48</sup>Industrial and Provident Societies Act 1975;
  - (e) the <sup>M49</sup>Industrial and Provident Societies Act 1978;
  - (f) the <sup>M50</sup>Credit Unions Act 1979.
- (2) The Treasury may by order provide for the transfer to the Treasury of any functions under those enactments which have not been, or are not being, transferred to the Authority.
- (3) The enactments relating to industrial and provident societies which are mentioned in Part IV of Schedule 18 are amended as set out in that Part.
- (4) The enactments relating to credit unions which are mentioned in Part V of Schedule 18 are amended as set out in that Part.

**Annotations:**

**Commencement Information**

**I108** S. 388 wholly in force at 1.12.2001; s. 388 not in force at Royal Assent see s. 431(2); s. 338(1)(2) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 388 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

**Marginal Citations**

**M45** 1965 c. 12.

**M46** 1967 c. 48.

**M47** 1968 c. 55.

**M48** 1975 c. 41.

**M49** 1978 c. 34.

**M50** 1979 c. 34.

*Supplemental*

**339 Supplemental provisions.**

- (1) The additional powers conferred by section 428 on a person making an order under this Act include power for the Treasury, when making an order under section 334, 335, 336 or 338 which transfers functions, to include provision—
- (a) for the transfer of any functions of a member of the body, or servant or agent of the body or person, whose functions are transferred by the order;
  - (b) for the transfer of any property, rights or liabilities held, enjoyed or incurred by any person in connection with transferred functions;
  - (c) for the carrying on and completion by or under the authority of the person to whom functions are transferred of any proceedings, investigations or other matters commenced, before the order takes effect, by or under the authority of the person from whom the functions are transferred;
  - (d) amending any enactment relating to transferred functions in connection with their exercise by, or under the authority of, the person to whom they are transferred;
  - (e) for the substitution of the person to whom functions are transferred for the person from whom they are transferred, in any instrument, contract or legal proceedings made or begun before the order takes effect.

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (2) The additional powers conferred by section 428 on a person making an order under this Act include power for the Treasury, when making an order under section 334(2), 335(4), 336(2) or 337, to include provision—
- (a) for the transfer of any property, rights or liabilities held, enjoyed or incurred by any person in connection with the office or body which ceases to have effect as a result of the order;
  - (b) for the carrying on and completion by or under the authority of such person as may be specified in the order of any proceedings, investigations or other matters commenced, before the order takes effect, by or under the authority of the person whose office, or the body which, ceases to exist as a result of the order;
  - (c) amending any enactment which makes provision with respect to that office or body;
  - (d) for the substitution of the Authority, the Treasury or such other body as may be specified in the order in any instrument, contract or legal proceedings made or begun before the order takes effect.
- (3) On or after the making of an order under any of sections 334 to 338 (“the original order”), the Treasury may by order make any incidental, supplemental, consequential or transitional provision which they had power to include in the original order.
- (4) A certificate issued by the Treasury that property vested in a person immediately before an order under this Part takes effect has been transferred as a result of the order is conclusive evidence of the transfer.
- (5) Subsections (1) and (2) are not to be read as affecting in any way the powers conferred by section 428.

## PART XXII

### AUDITORS AND ACTUARIES

#### Annotations:

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

**C518** Pt. 22 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(b), 62, [Sch. 3 para. 5](#) (with reg. 3)

#### *Appointment*

#### **340 Appointment.**

- (1) Rules may require an authorised person, or an authorised person falling within a specified class—
- (a) to appoint an auditor, or
  - (b) to appoint an actuary,
- if he is not already under an obligation to do so imposed by another enactment.
- (2) Rules may require an authorised person, or an authorised person falling within a specified class—

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (a) to produce periodic financial reports; and
  - (b) to have them reported on by an auditor or an actuary.
- (3) Rules may impose such other duties on auditors of, or actuaries acting for, authorised persons as may be specified.
- (4) Rules under subsection (1) may make provision—
- (a) specifying the manner in which and time within which an auditor or actuary is to be appointed;
  - (b) requiring the Authority to be notified of an appointment;
  - (c) enabling the Authority to make an appointment if no appointment has been made or notified;
  - (d) as to remuneration;
  - (e) as to the term of office, removal and resignation of an auditor or actuary.
- (5) An auditor or actuary appointed as a result of rules under subsection (1), or on whom duties are imposed by rules under subsection (3)—
- (a) must act in accordance with such provision as may be made by rules; and
  - (b) is to have such powers in connection with the discharge of his functions as may be provided by rules.
- (6) In subsections (1) to (3) “auditor” or “actuary” means an auditor, or actuary, who satisfies such requirements as to qualifications, experience and other matters (if any) as may be specified.
- (7) “Specified” means specified in rules.

### *Information*

#### **341 Access to books etc.**

- (1) An appointed auditor of, or an appointed actuary acting for, an authorised person—
- (a) has a right of access at all times to the authorised person’s books, accounts and vouchers; and
  - (b) is entitled to require from the authorised person’s officers such information and explanations as he reasonably considers necessary for the performance of his duties as auditor or actuary.
- (2) “Appointed” means appointed under or as a result of this Act.

#### **Annotations:**

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

**C519** Ss. 341-346 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, [Sch. 5 para. 4](#) (with reg. 3)

#### **342 Information given by auditor or actuary to the Authority.**

- (1) This section applies to a person who is, or has been, an auditor of an authorised person appointed under or as a result of a statutory provision.

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (2) This section also applies to a person who is, or has been, an actuary acting for an authorised person and appointed under or as a result of a statutory provision.
- (3) An auditor or actuary does not contravene any duty to which he is subject merely because he gives to the Authority—
  - (a) information on a matter of which he has, or had, become aware in his capacity as auditor of, or actuary acting for, the authorised person, or
  - (b) his opinion on such a matter,
 if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the Authority.
- (4) Subsection (3) applies whether or not the auditor or actuary is responding to a request from the Authority.
- (5) The Treasury may make regulations prescribing circumstances in which an auditor or actuary must communicate matters to the Authority as mentioned in subsection (3).
- (6) It is the duty of an auditor or actuary to whom any such regulations apply to communicate a matter to the Authority in the circumstances prescribed by the regulations.
- (7) The matters to be communicated to the Authority in accordance with the regulations may include matters relating to persons other than the authorised person concerned.

**Annotations:**

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

**C520** Ss. 341-346 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, [Sch. 5 para. 4](#) (with reg. 3)

**Commencement Information**

**I109** S. 342 wholly in force at 1.12.2001; s. 342 not in force at Royal Assent see s. 431(2); s. 342(5) in force at 25.2.2001 by [S.I. 2001/516](#), art. 2(a), [Sch. Pt. 1](#); s. 342 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

**343 Information given by auditor or actuary to the Authority: persons with close links.**

- (1) This section applies to a person who—
  - (a) is, or has been, an auditor of an authorised person appointed under or as a result of a statutory provision; and
  - (b) is, or has been, an auditor of a person (“CL”) who has close links with the authorised person.
- (2) This section also applies to a person who—
  - (a) is, or has been, an actuary acting for an authorised person and appointed under or as a result of a statutory provision; and
  - (b) is, or has been, an actuary acting for a person (“CL”) who has close links with the authorised person.
- (3) An auditor or actuary does not contravene any duty to which he is subject merely because he gives to the Authority—

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (a) information on a matter concerning the authorised person of which he has, or had, become aware in his capacity as auditor of, or actuary acting for, CL, or
  - (b) his opinion on such a matter,
- if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the Authority.
- (4) Subsection (3) applies whether or not the auditor or actuary is responding to a request from the Authority.
  - (5) The Treasury may make regulations prescribing circumstances in which an auditor or actuary must communicate matters to the Authority as mentioned in subsection (3).
  - (6) It is the duty of an auditor or actuary to whom any such regulations apply to communicate a matter to the Authority in the circumstances prescribed by the regulations.
  - (7) The matters to be communicated to the Authority in accordance with the regulations may include matters relating to persons other than the authorised person concerned.
  - (8) CL has close links with the authorised person concerned (“A”) if CL is—
    - (a) a parent undertaking of A;
    - (b) a subsidiary undertaking of A;
    - (c) a parent undertaking of a subsidiary undertaking of A; or
    - (d) a subsidiary undertaking of a parent undertaking of A.
  - (9) “Subsidiary undertaking” includes all the instances mentioned in Article 1(1) and (2) of the Seventh Company Law Directive in which an entity may be a subsidiary of an undertaking.

**Annotations:**

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

**C521** Ss. 341-346 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, **Sch. 5 para. 4** (with reg. 3)

**Commencement Information**

**I110** S. 343 wholly in force at 1.12.2001; s. 343 not in force at Royal Assent see s. 431(2); s. 343(5) in force at 25.2.2001 by [S.I. 2001/516](#), art. 2(a), **Sch. Pt. 1**; s. 343 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

**344 Duty of auditor or actuary resigning etc. to give notice.**

- (1) This section applies to an auditor or actuary to whom section 342 applies.
- (2) He must without delay notify the Authority if he—
  - (a) is removed from office by an authorised person;
  - (b) resigns before the expiry of his term of office with such a person; or
  - (c) is not re-appointed by such a person.
- (3) If he ceases to be an auditor of, or actuary acting for, such a person, he must without delay notify the Authority—

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (a) of any matter connected with his so ceasing which he thinks ought to be drawn to the Authority's attention; or
- (b) that there is no such matter.

**Annotations:**

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

**C522** Ss. 341-346 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, **Sch. 5 para. 4** (with reg. 3)

*Disqualification*

**345 Disqualification.**

- (1) If it appears to the Authority that an auditor or actuary to whom section 342 applies has failed to comply with a duty imposed on him under this Act, it may disqualify him from being the auditor of, or (as the case may be) from acting as an actuary for, any authorised person or any particular class of authorised person.
- (2) If the Authority proposes to disqualify a person under this section it must give him a warning notice.
- (3) If it decides to disqualify him it must give him a decision notice.
- (4) The Authority may remove any disqualification imposed under this section if satisfied that the disqualified person will in future comply with the duty in question.
- (5) A person who has been disqualified under this section may refer the matter to the Tribunal.

**Annotations:**

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

**C523** S. 345 extended (1.12.2001) by [S.I. 2001/2636](#), **arts. 1(2)(b)**, 78; [S.I. 2001/3538](#), **art. 2(1)**  
 S. 345 amended (1.12.2001) by [S.I. 2001/2657](#), **arts. 1(1)**, 19 (which was revoked (8.10.2001) by [S.I. 2001/3083](#), **arts. 1(2)**, 23); [S.I. 2001/3538](#), **art. 2(1)**  
 S. 345 amended (1.12.2001) by [S.I. 2001/3083](#), **arts. 1(2)**, 19; [S.I. 2001/3538](#), **art. 2(1)**

**C524** Ss. 341-346 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, **Sch. 5 para. 4** (with reg. 3)

*Offence*

**346 Provision of false or misleading information to auditor or actuary.**

- (1) An authorised person who knowingly or recklessly gives an appointed auditor or actuary information which is false or misleading in a material particular is guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (2) Subsection (1) applies equally to an officer, controller or manager of an authorised person.
- (3) “Appointed” means appointed under or as a result of this Act.

**Annotations:**

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

**C525** Ss. 341-346 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, [Sch. 5 para. 4](#) (with reg. 3)

## PART XXIII

### PUBLIC RECORD, DISCLOSURE OF INFORMATION AND CO-OPERATION

#### *The public record*

#### **347 The record of authorised persons etc.**

- (1) The [FCA] must maintain a record of every—
  - (a) person who appears to the [FCA] to be an authorised person;
  - (b) authorised unit trust scheme;
  - (c) authorised open-ended investment company;
  - (d) recognised scheme;
  - (e) recognised investment exchange;
  - (f) ~~[recognised clearing house;]~~
  - (g) individual to whom a prohibition order relates;
  - (h) approved person; <sup>F420</sup> ...
  - [<sup>F421</sup>(ha) person to whom subsection (2A) applies; and]
  - (i) person falling within such other class (if any) as the [FCA] may determine.
- (2) The record must include such information as the [FCA] considers appropriate and at least the following information—
  - (a) in the case of a person appearing to the [FCA] to be an authorised person—
    - (i) information as to the services which he holds himself out as able to provide; and
    - (ii) any address of which the [FCA] is aware at which a notice or other document may be served on him;
  - (b) in the case of an authorised unit trust scheme, the name and address of the manager and trustee of the scheme;
  - (c) in the case of an authorised open-ended investment company, the name and address of—
    - (i) the company;
    - (ii) if it has only one director, the director; and
    - (iii) its depositary (if any);

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**Proposed Legislation:** *This version shows proposed changes to this legislation item. It has no official standing.*

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- (d) in the case of a recognised scheme, the name and address of—
  - (i) the operator of the scheme; and
  - (ii) any representative of the operator in the United Kingdom;
- (e) in the case of a recognised investment exchange [~~or recognised clearing house~~], the name and address of the exchange [~~or clearing house~~];
- (f) in the case of an individual to whom a prohibition order relates—
  - (i) his name; and
  - (ii) details of the effect of the order;
- (g) in the case of a person who is an approved person—
  - (i) his name;
  - (ii) the name of the relevant authorised person;
  - (iii) if the approved person is performing a controlled function under an arrangement with a contractor of the relevant authorised person, the name of the contractor.

[<sup>F422</sup>(2A) This subsection applies to—

- (a) an appointed representative to whom subsection (1A) of section 39 applies for whom the applicable register (as defined by subsection (1B) of that section) is the record maintained by virtue of subsection (1)(ha) above;
  - (b) a person mentioned in subsection (1)(a) of section 39A if—
    - (i) the contract with an authorised person to which he is party complies with the applicable requirements (as defined by subsection (7) of that section), and
    - (ii) the authorised person has accepted responsibility in writing for the person's activities in carrying on investment services business (as defined by subsection (8) of that section); and
  - (c) any person not falling within paragraph (a) or (b) in respect of whom the [FCA] considers that a record must be maintained for the purpose of securing compliance with Article 23.3 of the markets in financial instruments directive (registration of tied agents).]
- (3) If it appears to the [FCA] that a person in respect of whom there is an entry in the record as a result of one of the paragraphs of subsection (1) has ceased to be a person to whom that paragraph applies, the [FCA] may remove the entry from the record.
- (4) But if the [FCA] decides not to remove the entry, it must—
- (a) make a note to that effect in the record; and
  - (b) state why it considers that the person has ceased to be a person to whom that paragraph applies.
- (5) The [FCA] must—
- (a) make the record available for inspection by members of the public in a legible form at such times and in such place or places as the [FCA] may determine; and
  - (b) provide a certified copy of the record, or any part of it, to any person who asks for it—
    - (i) on payment of the fee (if any) fixed by the [FCA]; and
    - (ii) in a form (either written or electronic) in which it is legible to the person asking for it.
- (6) The [FCA] may—

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (a) publish the record, or any part of it;
  - (b) exploit commercially the information contained in the record, or any part of that information.
- (7) “Authorised unit trust scheme”, “authorised open-ended investment company” and “recognised scheme” have the same meaning as in Part XVII, and associated expressions are to be read accordingly.
- (8) “Approved person” means a person in relation to whom the [FCA or the PRA] has given its approval under section 59 and “controlled function” and “arrangement” have the same meaning as in that section.
- (9) “Relevant authorised person” has the meaning given in section 66.

#### Annotations:

##### Amendments (Textual)

- F420** Word in s. 347(1) omitted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by virtue of [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(5), **Sch. 5 para. 12(a)**
- F421** S. 347(1)(ha) 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(5), **Sch. 5 para. 12(b)**
- F422** S. 347(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(5), **Sch. 5 para. 12(c)**

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

- C526** S. 347(1)(a) disapplied (temp. from 31.10.2004 until 30.4.2005) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Mortgages\) Order 2004 \(S.I. 2004/2615\)](#), arts. 1(2)(b), 5, **Sch. para. 9**
- C527** S. 347(1)(a) disapplied (temp. from 14.1.2005 until 14.7.2005) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(General Insurance Intermediaries\) Order 2004, \(S.I. 2004/3351\)](#), arts. 1(2)(b), 5, {Sch. para. 8}
- C528** S. 347(1)(a) disapplied (6.4.2007) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2006 \(S.I. 2006/1969\)](#), arts. 1(3), 7, **Sch. para. 9**
- C529** S. 347(1)(h) disapplied (temp. from 31.10.2004 until 30.4.2005) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Mortgages\) Order 2004 \(S.I. 2004/2615\)](#), arts. 1(2)(b), 5, **Sch. para. 10**
- C530** S. 347(1)(h) disapplied (temp. from 14.1.2005 until 14.7.2005) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(General Insurance Intermediaries\) Order 2004, \(S.I. 2004/3351\)](#), arts. 1(2)(b), 5, {Sch. para. 9}
- C531** S. 347(1)(h) disapplied (6.4.2007) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2006 \(S.I. 2006/1969\)](#), arts. 1(3), 7, **Sch. para. 10**

##### Commencement Information

- I111** S. 347 partly in force; s. 347 not in force at Royal Assent see s. 431(2); s. 347(3)-(9) in force at 1.12.2001 by [S.I. 2001/3538, art. 2\(1\)](#); s. 347(1)(2) in force for specified purposes at 1.12.2001, 1.5.2002, 1.8.2002, 1.12.2002 by [S.I. 2001/3528, art. 2\(1\)\(3\)](#)

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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**[347A Duty of PRA to disclose information relevant to the record**

- (1) The PRA must, for the purpose of assisting the FCA to comply with its duty under section 347—
  - (a) notify the FCA if the information included in the record as required under section 347(2)(a) appears to the PRA to be incomplete or inaccurate,
  - (b) if it makes a prohibition order relating to an individual, provide the FCA with information falling within section 347(2)(f) in relation to that order,
  - (c) where it is the appropriate regulator in relation to an approved person, provide the FCA with information falling within section 347(2)(g) in relation to that approved person, and
  - (d) where the FCA has notified the PRA that it considers it appropriate to include in the record information of a certain description, disclose to the FCA such information of that description as the PRA has in its possession.
- (2) The duty to provide information under this section does not apply to information which the PRA reasonably believes is in the possession of the FCA.
- (3) Subsection (1) does not require or authorise the disclosure of information whose disclosure is prohibited by or under section 348.
- (4) This section is without prejudice to any other power to disclose information.
- (5) In this section references to the “record” are to the record maintained under section 347.]

*Disclosure of information*

**348 Restrictions on disclosure of confidential information by [FCA, PRA]etc.**

- (1) Confidential information must not be disclosed by a primary recipient, or by any person obtaining the information directly or indirectly from a primary recipient, without the consent of—
  - (a) the person from whom the primary recipient obtained the information; and
  - (b) if different, the person to whom it relates.
- (2) In this Part “confidential information” means information which—
  - (a) relates to the business or other affairs of any person;
  - (b) was received by the primary recipient for the purposes of, or in the discharge of, any functions of the [FCA, the PRA][, the competent authority for the purposes of Part VI] or the Secretary of State under any provision made by or under this Act; and
  - (c) is not prevented from being confidential information by subsection (4).
- (3) It is immaterial for the purposes of subsection (2) whether or not the information was received—
  - (a) by virtue of a requirement to provide it imposed by or under this Act;
  - (b) for other purposes as well as purposes mentioned in that subsection.
- (4) Information is not confidential information if—
  - (a) it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section; or

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- (b) it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.
- (5) Each of the following is a primary recipient for the purposes of this Part—
- ~~[(a) the FCA;~~
  - ~~(aa) the PRA;]~~
  - ~~(b) [any person exercising functions conferred by Part VI on the competent authority;]~~
  - (c) the Secretary of State;
  - (d) a person appointed [<sup>F423</sup>to collect or update information under section [166A]or] to make a report under section [97A or] 166;
  - (e) any person who is or has been employed by a person mentioned in paragraphs (a) to (c);
  - (f) any auditor or expert instructed by a person mentioned in those paragraphs.
- (6) In subsection (5)(f) “expert” includes—
- (a) a competent person appointed by [the FCA] under section 97;
  - (b) a competent person appointed by the [FCA, the PRA] or the Secretary of State to conduct an investigation under Part XI;
  - ~~[(c) any body or person appointed under paragraph 9 of Schedule 1ZA to perform a function on behalf of the FCA;~~
  - ~~(d) any body or person appointed under paragraph 17 of Schedule 1ZB to perform a function on behalf of the PRA.]~~

#### Annotations:

#### Amendments (Textual)

**F423** Words in s. 348(5)(d) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(e), Sch. 2 para. 26

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

**C532** S. 348 extended (1.12.2001) by S.I. 2001/3648, arts. 1, 3(2), 4, 5(2), 7(2)

S. 348 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, s. 53A (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 152); S.I. 2001/3538, art. 2(1)

S. 348 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, s. 63A(1) (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. I para. 78); S.I. 2001/3538, art. 2(1)

**C533** S. 348 applied (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), regs. 16(2), 50(3) (with reg. 3)

**C534** S. 348 modified (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), reg. 50(4) (with reg. 3)

**C535** S. 348 applied (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), reg. 16(2)(3) (with reg. 3)

**C536** S. 348 applied (with modifications) (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), reg. 50(3)-(6) (with reg. 3)

**C537** S. 348 applied (with modifications) (5.5.2004) by The Credit Institutions (Reorganisation and Winding up) Regulations 2004 (S.I. 2004/1045), regs. 18, 38

**C538** S. 348 excluded (20.5.2006) by The Takeovers Directive (Interim Implementation) Regulations 2006 (S.I. 2006/1183), reg. 18(1)

**C539** S. 348 applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 43

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- C540** S. 348 applied (with modifications) (2.3.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(a), 95, **Sch. 5 para. 5** (with reg. 3)
- C541** S. 348 applied (with modifications) (11.2.2010) by [The Cross-Border Payments in Euro Regulations 2010 \(S.I. 2010/89\)](#), reg. 19, **Sch. para. 4**
- C542** S. 348 applied (with modifications) (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xiv)(b), 62, **Sch. 3 para. 6** (with reg. 3)
- C543** S. 348(1) restricted (20.4.2003) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2003 \(S.I. 2003/1102\)](#), **regs. 16(3), 50(5)** (with reg. 3)

### 349 Exceptions from section 348.

- (1) Section 348 does not prevent a disclosure of confidential information which is—
    - (a) made for the purpose of facilitating the carrying out of a public function; and
    - (b) permitted by regulations made by the Treasury under this section.
  - (2) The regulations may, in particular, make provision permitting the disclosure of confidential information or of confidential information of a prescribed kind—
    - (a) by prescribed recipients, or recipients of a prescribed description, to any person for the purpose of enabling or assisting the recipient to discharge prescribed public functions;
    - (b) by prescribed recipients, or recipients of a prescribed description, to prescribed persons, or persons of prescribed descriptions, for the purpose of enabling or assisting those persons to discharge prescribed public functions;
    - (c) by the [FCA or the PRA] to the Treasury or the Secretary of State for any purpose;
    - (d) by any recipient if the disclosure is with a view to or in connection with prescribed proceedings.
  - (3) The regulations may also include provision—
    - (a) making any permission to disclose confidential information subject to conditions (which may relate to the obtaining of consents or any other matter);
    - (b) restricting the uses to which confidential information disclosed under the regulations may be put.
- <sup>F424</sup>(3A) Section 348 does not apply to—
- (a) the disclosure by a recipient to which subsection (3B) applies of confidential information disclosed to it by the [FCA or the PRA] in reliance on subsection (1);
  - (b) the disclosure of such information by a person obtaining it directly or indirectly from a recipient to which subsection (3B) applies.
- (3B) This subsection applies to—
- (a) the Panel on Takeovers and Mergers;
  - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
  - (c) any other person or body that exercises public functions, under legislation in an EEA State other than the United Kingdom, that are similar to the [functions of the FCA or the PRA] or those of the Panel on Takeovers and Mergers.]
- (4) In relation to confidential information, each of the following is a “recipient”—

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- (a) a primary recipient;
  - (b) a person obtaining the information directly or indirectly from a primary recipient.
- (5) “Public functions” includes—
- (a) functions conferred by or in accordance with any provision contained in any enactment or subordinate legislation;
  - (b) functions conferred by or in accordance with any provision contained in the [F425 EU ] Treaties or any [F425 EU ] instrument;
  - (c) similar functions conferred on persons by or under provisions having effect as part of the law of a country or territory outside the United Kingdom;
  - (d) functions exercisable in relation to prescribed disciplinary proceedings.
- (6) “Enactment” includes—
- (a) an Act of the Scottish Parliament;
  - (b) Northern Ireland legislation.
- (7) “Subordinate legislation” has the meaning given in the <sup>M51</sup>Interpretation Act 1978 and also includes an instrument made under an Act of the Scottish Parliament or under Northern Ireland legislation.
- (8) <sup>F426</sup> .....

**Annotations:**

**Amendments (Textual)**

- F424** S. 349(3A)(3B) inserted (6.4.2007) by *Companies Act 2006 (c. 46)*, ss. **964(4)**, 1300(2); S.I. 2007/1093, **art. 2(1)(b)** (with arts. 4, 11)
- F425** Words in s. 349(5) 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(1)(3)(4)**
- F426** S. 349(8) repealed (6.4.2007) by *The Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093)*, art. 7, **Sch. 5** (with arts. 4, 11) (as amended by S.I. 2008/2860, **art. 6**)

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

- C544** S. 349 extended (1.12.2001) by S.I. 2001/3648, **arts. 1, 3(2), 4, 5(2), 7(2)**  
S. 349 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, s. **53A** as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 152**; S.I. 2001/3538, **art. 2(1)**  
S. 349 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40 (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. I para. 78**; S.I. 2001/3538, **art. 2(1)**)
- C545** S. 349 applied (20.4.2003) by *The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102)*, **regs. 16(2), 50(3)** (with reg. 3)
- C546** S. 349 modified (20.4.2003) by *The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102)*, **reg. 50(4)** (with reg. 3)
- C547** S. 349 applied (18.2.2004) by *The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353)*, **reg. 16(2)(3)** (with reg. 3)
- C548** S. 349 applied (with modifications) (18.2.2004) by *The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353)*, **reg. 50(3)-(6)** (with reg. 3)

**Proposed Legislation:** *This version shows proposed changes to this legislation item. It has no official standing.*

- C549** S. 349 applied (with modifications) (5.5.2004) by [The Credit Institutions \(Reorganisation and Winding up\) Regulations 2004 \(S.I. 2004/1045\)](#), **regs. 18, 38**
- C550** S. 349 applied (6.3.2008) by [The Regulated Covered Bonds Regulations 2008 \(S.I. 2008/346\)](#), **reg. 43**
- C551** S. 349 applied (with modifications) (2.3.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), **regs. 1(2)(a), 95, Sch. 5 para. 5** (with reg. 3)
- C552** S. 349 applied (with modifications) (11.2.2010) by [The Cross-Border Payments in Euro Regulations 2010 \(S.I. 2010/89\)](#), **reg. 19, Sch. para. 4**
- C553** S. 349 applied (with modifications) (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), **regs. 1(2)(a)(xiv)(b), 62, Sch. 3 para. 6** (with reg. 3)

#### Commencement Information

- I112** S. 349 wholly in force at 18.6.2001; s. 349 not in force at Royal Assent see s. 431(2); s. 349 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), **art. 2(b), Sch. Pt. 2**; s. 349 in force in so far as not already in force at 18.6.2001 by [S.I. 2001/1820](#), **art. 2, Sch.**

#### Marginal Citations

- M51** 1978 c. 30.

### 350 Disclosure of information by the Inland Revenue.

- (1) No obligation as to secrecy imposed by statute or otherwise prevents the disclosure of Revenue information to—
- (a) the Authority, or
  - (b) the Secretary of State,
- if the disclosure is made for the purpose of assisting in the investigation of a matter under section 168 or with a view to the appointment of an investigator under that section.
- (2) A disclosure may only be made under subsection (1) by or under the authority of the Commissioners of Inland Revenue.
- (3) Section 348 does not apply to Revenue information.
- (4) Information obtained as a result of subsection (1) may not be used except—
- (a) for the purpose of deciding whether to appoint an investigator under section 168;
  - (b) in the conduct of an investigation under section 168;
  - (c) in criminal proceedings brought against a person under this Act or the <sup>M52</sup>Criminal Justice Act 1993 as a result of an investigation under section 168;
  - (d) for the purpose of taking action under this Act against a person as a result of an investigation under section 168;
  - (e) in proceedings before the Tribunal as a result of action taken as mentioned in paragraph (d).
- (5) Information obtained as a result of subsection (1) may not be disclosed except—
- (a) by or under the authority of the Commissioners of Inland Revenue;
  - (b) in proceedings mentioned in subsection (4)(c) or (e) or with a view to their institution.
- (6) Subsection (5) does not prevent the disclosure of information obtained as a result of subsection (1) to a person to whom it could have been disclosed under subsection (1).

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (7) “Revenue information” means information held by a person which it would be an offence under section 182 of the <sup>M53</sup>Finance Act 1989 for him to disclose.

**Annotations:**

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

**C554** S. 350 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, s. 53A (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 152); S.I. 2001/3538, art. 2(1)

S. 350 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, s. 63A (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. I para. 78); S.I. 2001/3538, art. 2(1)

**C555** S. 350 restricted (7.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), ss. 17(6), 53(1), Sch. 2 Pt. 2 para. 18 (with s. 22); S.I. 2005/1126, art. 2(1)

**Commencement Information**

**I113** S. 350 wholly in force 3.9.2001; s. 350 not in force at Royal Assent see s. 431(2); s. 350(3)(7) in force at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 350 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2

**Marginal Citations**

**M52** 1993 c. 36.

**M53** 1989 c. 26.

**351 Competition information.**

**Annotations:**

**Amendments (Textual)**

**F427** S. 351(1)-(3) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 247(k), 278(2), 279, Sch. 26 (with s. 237); S.I. 2003/1397, art. 2(1), Sch.

**F428** S. 351(7) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 247(k), 278(2), 279, Sch. 26 (with s. 237); S.I. 2003/1397, art. 2(1), Sch.

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

**C556** S. 351 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, s. 53A (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 152); S.I. 2001/3538, art. 2(1)

S. 351 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, s. 63A (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. I para. 78); S.I. 2001/3538, art. 2(1)

**C557** S. 351 applied (2.3.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(a), 95, Sch. 5 para. 5 (with reg. 3)

**C558** S. 351 applied (9.2.2011 for certain purposes and 30.4.2011 otherwise) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(a)(xiv)(b), 62, Sch. 3 para. 6 (with reg. 3)

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

### Commencement Information

**I114** S. 351 wholly in force at 18.6.2001; s. 351 not in force at Royal Assent see s. 431(2); s. 351(7) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 351 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**

### 352 Offences.

- (1) A person who discloses information in contravention of section 348 or 350(5) is guilty of an offence.
- (2) A person guilty of an offence under subsection (1) is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (3) A person is guilty of an offence if, in contravention of any provision of regulations made under section 349, he uses information which has been disclosed to him in accordance with the regulations.
- (4) A person is guilty of an offence if, in contravention of subsection (4) of section 350, he uses information which has been disclosed to him in accordance with that section.
- (5) A person guilty of an offence under subsection (3) or (4) is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.
- (6) In proceedings for an offence under this section it is a defence for the accused to prove—
  - (a) that he did not know and had no reason to suspect that the information was confidential information or that it had been disclosed in accordance with section 350;
  - (b) that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

### Annotations:

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

- C559** S. 352 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, s. 53A (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 152**); S.I. 2001/3538, art. 2(1)
- S. 352 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, s. 63A (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. I para. 78**; S.I. 2001/3538, art. 2(1)
- S. 352 extended (1.12.2001) by S.I. 2001/3648, arts. 1, 3(2)
- C560** S. 352 applied (20.4.2003) by *The Insurers (Reorganisation and Winding Up) Regulations 2003* (S.I. 2003/1102), **regs. 16(2), 50(3)** (with reg. 3)
- C561** S. 352 modified (20.4.2003) by *The Insurers (Reorganisation and Winding Up) Regulations 2003* (S.I. 2003/1102), **reg. 50(4)** (with reg. 3)
- C562** S. 352 applied (18.2.2004) by *The Insurers (Reorganisation and Winding Up) Regulations 2004* (S.I. 2004/353), **reg. 16(2)(3)** (with reg. 3)

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- C563** S. 352 applied (with modifications) (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), **reg. 50(3)-(6)** (with reg. 3)
- C564** S. 352 applied (with modifications) (5.5.2004) by The Credit Institutions (Reorganisation and Winding up) Regulations 2004 (S.I. 2004/1045), **regs. 18, 38**
- C565** S. 352 applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 43**
- C566** S. 352 applied (2.3.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), **regs. 1(2)(a), 95, Sch. 5 para. 5** (with reg. 3)
- C567** S. 352 applied (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), **reg. 19, Sch. para. 4**
- C568** S. 352 applied (9.2.2011 for certain purposes and 30.4.2011 otherwise) by The Electronic Money Regulations 2011 (S.I. 2011/99), **regs. 1(2)(a)(xiv)(b), 62, Sch. 3 para. 6** (with reg. 3)

#### Commencement Information

- I115** S. 352 wholly in force at 3.9.2001; s. 352 not in force at Royal Assent see s. 431(2); s. 352 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, **art. 2, Sch.**; s. 352 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, **art. 2(2), Sch. Pt. 2**

### 353 Removal of other restrictions on disclosure.

- (1) The Treasury may make regulations permitting the disclosure of any information, or of information of a prescribed kind—
- (a) by prescribed persons for the purpose of assisting or enabling them to discharge prescribed functions under this Act or any rules or regulations made under it;
  - (b) by prescribed persons, or persons of a prescribed description, to the [PRA or the FCA] for the purpose of assisting or enabling [either of them] to discharge prescribed functions.
  - [<sup>F429</sup>(c) by the scheme operator to the Office of Fair Trading for the purpose of assisting or enabling that Office to discharge prescribed functions under the Consumer Credit Act 1974.]
- (2) Regulations under this section may not make any provision in relation to the disclosure of confidential information by primary recipients or by any person obtaining confidential information directly or indirectly from a primary recipient.
- (3) If a person discloses any information as permitted by regulations under this section the disclosure is not to be taken as a contravention of any duty to which he is subject.

#### Annotations:

##### Amendments (Textual)

- F429** S. 353(1)(c) inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), **ss. 61(9), 71(2)**; S.I. 2006/1508, **art. 3(1), Sch. 1**

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

- C569** S. 353 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, **s. 53A** (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, **arts. 2, 8, 13(1), Sch. 3 Pt. II para. 152**); S.I. 2001/3538, **art. 2(1)**
- S. 353 modified (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, 63A (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, **arts. 2, 8, 13(1), Sch. 3 Pt. I para. 78**); S.I. 2001/3538, **art. 2(1)**

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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*[Information received from Bank of England*

**353A Information received from Bank of England**

- (1) A regulator must not disclose to any person specially protected information.
- (2) “Specially protected information” is information in relation to which the first and second conditions are met.
- (3) The first condition is that the regulator received the information from—
  - (a) the Bank of England (“the Bank”), or
  - (b) the other regulator where that regulator had received the information from the Bank.
- (4) The second condition is that the Bank notified the regulator to which it disclosed the information that the Bank held the information for the purpose of its functions with respect to any of the following—
  - (a) monetary policy;
  - (b) financial operations intended to support financial institutions for the purposes of maintaining stability;
  - (c) the provision of private banking services and related services.
- (5) The notification referred to in subsection (4) must be—
  - (a) in writing, and
  - (b) given before, or at the same time as, the Bank discloses the information.
- (6) The prohibition in subsection (1) does not apply—
  - (a) to disclosure by one regulator to the other regulator where the regulator making the disclosure informs the other regulator that the information is specially protected information by virtue of this section;
  - (b) where the Bank has consented to disclosure of the information;
  - (c) to information which has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section;
  - (d) to information which the regulator is required to disclose in pursuance of any EU obligation.
- (7) In this section references to disclosure by or to a regulator or by the Bank include references to disclosure by or to—
  - (a) the regulator’s or the Bank’s, officers or employees (including persons on secondment to the regulator or the Bank); or
  - (b) auditors, experts, contractors or investigators appointed by the regulator or the Bank under powers conferred by this Act or otherwise.
- (8) References to disclosure by a regulator do not include references to disclosure between persons who fall within subsection (7)(a) or (b) in relation to that regulator.
- (9) Each regulator must take such steps as are reasonable in the circumstances to prevent the disclosure of specially protected information, in cases not excluded by subsection (6), by those who are or have been—
  - (a) its officers or employees (including persons seconded to it);
  - (b) auditors, experts, contractors or investigators appointed by the regulator under powers conferred by this Act or otherwise;

- (c) persons to whom the regulator has delegated any of its functions.]

### *Co-operation*

#### **[354A FCA’s duty to co-operate with others**

- (1) The FCA must take such steps as it considers appropriate to co-operate with other persons (whether in the United Kingdom or elsewhere) who have functions—
  - (a) similar to those of the FCA, or
  - (b) in relation to the prevention or detection of financial crime.
- (2) The persons referred to in subsection (1) do not include the Bank of England or the PRA (but see sections 3D and 3O).
- (3) The FCA must take such steps as it considers appropriate to co-operate with—
  - (a) the Panel on Takeovers and Mergers;
  - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
  - (c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appears to the FCA to be similar to those of the Panel on Takeovers and Mergers.
- (4) Co-operation may include the sharing of information which the FCA is not prevented from disclosing.
- (5) “Financial crime” has the meaning given in section 1B(6).

#### **354B PRA’s duty to co-operate with others**

- (1) The PRA must take such steps as it considers appropriate to co-operate with—
  - (a) other persons (whether in the United Kingdom or elsewhere) who have functions similar to those of the PRA, and
  - (b) other bodies that have functions relevant to financial stability.
- (2) The persons referred to in subsection (1) do not include the Bank of England or the FCA (but see sections 3D and 3O).
- (3) Co-operation may include the sharing of information which the PRA is not prevented from disclosing.

#### **354C PRA’s duty to provide information to Bank of England**

- (1) The PRA must disclose to the Bank of England (“the Bank”) any information in its possession that it thinks will or may assist the Bank in achieving its financial stability objective.
- (2) The duty in subsection (1) applies whether or not the Bank has requested that the information be disclosed to it.
- (3) Subsection (1) does not require or authorise the disclosure of information whose disclosure—
  - (a) is prohibited by or under section 348 or any other enactment;

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- (b) is incompatible with any EU obligation;
- (c) would constitute or be punishable as a contempt of court.
- (4) This section is without prejudice to any other power to disclose information.
- (5) The Bank’s financial stability objective is the objective set out in section 2A(1) of the Bank of England Act 1998.
- (6) In this section “enactment” includes—
  - (a) an Act of the Scottish Parliament,
  - (b) Northern Ireland legislation, and
  - (c) a Measure or Act of the National Assembly for Wales.]

*[Power of FCA to make request to Office of Fair Trading*

### **354D Power of FCA to make request to Office of Fair Trading**

- (1) The FCA may ask the Office of Fair Trading (“the OFT”) to consider whether any feature, or combination of features, of a market in the United Kingdom for financial services may prevent, restrict or distort competition in connection with the supply or acquisition of any financial services in the United Kingdom or a part of the United Kingdom.
- (2) The OFT must, within 90 days after the day on which it receives the request, publish a response stating how it proposes to deal with the request and in particular—
  - (a) whether it has decided to take any action, or to take no action, in response to the request, and
  - (b) if it has decided to take action, what action it proposes to take.
- (3) The response must state the OFT’s reasons for its proposals.
- (4) The Treasury may by order amend subsection (2) by substituting any period for the period for the time being specified there.
- (5) In this section—
  - (a) “market in the United Kingdom” has the meaning given in section 140A(1);
  - (b) the reference to a feature of a market in the United Kingdom for financial services has a meaning corresponding to that which a reference to a feature of a market in the United Kingdom for goods and services has (by virtue of section 140A(3)) for the purposes of Chapter 4 of Part 9A.]

## **PART XXIV**

### **INSOLVENCY**

#### *Interpretation*

### **355 Interpretation of this Part.**

- (1) In this Part—
  - “the 1985 Act” means the <sup>M54</sup>Bankruptcy (Scotland) Act 1985;

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- “the 1986 Act” means the <sup>M55</sup>Insolvency Act 1986;  
“the 1989 Order” means the <sup>M56</sup>Insolvency (Northern Ireland) Order 1989;  
“body” means a body of persons—  
(a) over which the court has jurisdiction under any provision of, or made under, the 1986 Act (or the 1989 Order); but  
(b) which is not a building society, a friendly society or an industrial and provident society; and  
“court” means—  
(a) the court having jurisdiction for the purposes of the 1985 Act or the 1986 Act; or  
(b) in Northern Ireland, the High Court.

- (2) In this Part “insurer” has such meaning as may be specified in an order made by the Treasury.

**Annotations:**

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

**C570** S. 355 modified (21.2.2009) by [The Banking Act 2009 \(Parts 2 and 3 Consequential Amendments\) Order 2009 \(S.I. 2009/317\)](#), [art. 5\(1\)\(3\)](#)

**Marginal Citations**

**M54** 1985 c. 66.

**M55** 1986 c. 45.

**M56** S.I. 1989/2405 (N.I. 19).

*Voluntary arrangements*

**356 Authority’s powers to participate in proceedings: company voluntary arrangements.**

[<sup>F432</sup>(1) Where a voluntary arrangement has effect under Part I of the 1986 Act in respect of a company or insolvent partnership which is an authorised person, the Authority may apply to the court under section 6 or 7 of that Act.]

[<sup>F433</sup>(2) Where a voluntary arrangement has been approved under Part II of the 1989 Order in respect of a company or insolvent partnership which is an authorised person, the Authority may apply to the court under Article 19 or 20 of that Order.]

- (3) If a person other than the Authority makes an application to the court in relation to the company or insolvent partnership under [<sup>F434</sup>any] of those provisions, the Authority is entitled to be heard at any hearing relating to the application.

**Annotations:**

**Amendments (Textual)**

**F432** S. 356(1) substituted (1.1.2003 subject to transitional provisions in arts. 3-5 of the commencing S.I.) by [2000 c. 39, s. 15\(3\)\(a\)](#); [S.I. 2002/2711](#), [art. 2](#)

**F433** S. 356(2) substituted (1.1.2003 subject to transitional provisions in arts. 3-5 of the commencing S.I.) by [2000 c. 39, s. 15\(3\)\(b\)](#); [S.I. 2002/2711](#), [art. 2](#)

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**F434** Word in s. 356(3) substituted (1.1.2003 subject to transitional provisions in arts. 3-5 of the commencing S.I.) by 2000 c. 39, s. 15(3)(c); S.I. 2002/2711, **art. 2**

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

**C571** S. 356 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **regs. 1, 6**

**C572** S. 356 applied (with modifications) (N.I.) (13.9.2004) by **Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), reg. 6**

**357 Authority’s powers to participate in proceedings: individual voluntary arrangements.**

- (1) The Authority is entitled to be heard on an application by an individual who is an authorised person under section 253 of the 1986 Act (or Article 227 of the 1989 Order).
- (2) Subsections (3) to (6) apply if such an order is made on the application of such a person.
- (3) A person appointed for the purpose by the Authority is entitled to attend any meeting of creditors of the debtor summoned under section 257 of the 1986 Act (or Article 231 of the 1989 Order).
- (4) Notice of the result of a meeting so summoned is to be given to the Authority by the chairman of the meeting.
- (5) The Authority may apply to the court—
  - (a) under section 262 of the 1986 Act (or Article 236 of the 1989 Order); or
  - (b) under section 263 of the 1986 Act (or Article 237 of the 1989 Order).
- (6) If a person other than the Authority makes an application to the court under any provision mentioned in subsection (5), the Authority is entitled to be heard at any hearing relating to the application.

**358 Authority’s powers to participate in proceedings: trust deeds for creditors in Scotland.**

- (1) This section applies where a trust deed has been granted by or on behalf of a debtor who is an authorised person.
- (2) The trustee must, as soon as practicable after he becomes aware that the debtor is an authorised person, send to the Authority—
  - (a) in every case, a copy of the trust deed;
  - (b) where any other document or information is sent to every creditor known to the trustee in pursuance of paragraph 5(1)(c) of Schedule 5 to the 1985 Act, a copy of such document or information.
- (3) Paragraph 7 of that Schedule applies to the Authority as if it were a qualified creditor who has not been sent a copy of the notice as mentioned in paragraph 5(1)(c) of the Schedule.
- (4) The Authority must be given the same notice as the creditors of any meeting of creditors held in relation to the trust deed.

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (5) A person appointed for the purpose by the Authority is entitled to attend and participate in (but not to vote at) any such meeting of creditors as if the Authority were a creditor under the deed.
- (6) This section does not affect any right the Authority has as a creditor of a debtor who is an authorised person.
- (7) Expressions used in this section and in the 1985 Act have the same meaning in this section as in that Act.

#### *Administration orders*

### **[<sup>F435</sup>359 Administration order**

- (1) The Authority may make an administration application under Schedule B1 to the 1986 Act [<sup>F436</sup>or Schedule B1 to the 1989 Order] in relation to a company or insolvent partnership which—
  - (a) is or has been an authorised person,
  - (b) is or has been an appointed representative, or
  - (c) is carrying on or has carried on a regulated activity in contravention of the general prohibition.
- (2) Subsection (3) applies in relation to an administration application made (or a petition presented) by the Authority by virtue of this section.
- (3) Any of the following shall be treated for the purpose of paragraph 11(a) of Schedule B1 to the 1986 Act [<sup>F437</sup>or paragraph 12(a) of Schedule B1 to the 1989 Order] as unable to pay its debts—
  - (a) a company or partnership in default on an obligation to pay a sum due and payable under an agreement, <sup>F438</sup>...
  - (b) an authorised deposit taker in default on an obligation to pay a sum due and payable in respect of a relevant deposit. [<sup>F439</sup>, and—
  - (c) an authorised reclaim fund in default on an obligation to pay a sum payable as a result of a claim made by virtue of section 1(2)(b) or 2(2)(b) of the Dormant Bank and Building Society Accounts Act 2008.]
- (4) In this section—

“agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the company or partnership,

“authorised deposit taker” means a person with a Part IV permission to accept deposits (but not a person who has a Part IV permission to accept deposits only for the purpose of carrying on another regulated activity in accordance with that permission),

[<sup>F440</sup>“authorised reclaim fund” means a reclaim fund within the meaning given by section 5(1) of the Dormant Bank and Building Society Accounts Act 2008 that is authorised for the purposes of this Act;]

“company” means a company—

- (a) in respect of which an administrator may be appointed under Schedule B1 to the 1986 Act, or

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (b) [<sup>F441</sup>in respect of which an administrator may be appointed under Schedule B1 to the 1989 Order,]  
 “relevant deposit” shall, ignoring any restriction on the meaning of deposit arising from the identity of the person making the deposit, be construed in accordance with—
- (a) section 22,
  - (b) any relevant order under that section, and
  - (c) Schedule 2.
- (5) The definition of “authorised deposit taker” in subsection (4) shall be construed in accordance with—
- (a) section 22,
  - (b) any relevant order under that section, and
  - (c) Schedule 2.]

#### Annotations:

##### Amendments (Textual)

- F435** S. 359 substituted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 55** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**))
- F436** Words in s. 359(1) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 58(2)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)
- F437** Words in s. 359(3) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 58(3)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)
- F438** Word in s. 359(3)(a) omitted (12.3.2009) by virtue of Dormant Bank and Building Society Accounts Act 2008 (c. 31), ss. 15, 31(1), **Sch. 2 para. 6(2)**; S.I. 2009/490, **art. 2** (with art. 3)
- F439** S. 359(3)(c) and preceding word inserted (12.3.2009) by Dormant Bank and Building Society Accounts Act 2008 (c. 31), ss. 15, 31(1), **Sch. 2 para. 6(2)**; S.I. 2009/490, **art. 2** (with art. 3)
- F440** S. 359(4): definition of “authorised reclaim fund” inserted (12.3.2009) by Dormant Bank and Building Society Accounts Act 2008 (c. 31), ss. 15, 31(1), **Sch. 2 para. 6(3)**; S.I. 2009/490, **art. 2** (with art. 3)
- F441** S. 359(4): in the definition of “company”, paragraph (b) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 58(4)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)

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

- C573** S. 359 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, **Sch. 5 para. 6** (with reg. 3)
- C574** S. 359 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(b), 62, **Sch. 3 para. 7** (with reg. 3)
- C575** S. 359(1)-(4) applied (with modifications) (N.I.) (13.9.2004) by Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), **reg. 6**

## 360 Insurers.

- (1) The Treasury may by order provide that such provisions of Part II of the 1986 Act (or Part III of the 1989 Order) as may be specified are to apply in relation to insurers with such modifications as may be specified.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (2) An order under this section—
- (a) may provide that such provisions of this Part as may be specified are to apply in relation to the administration of insurers in accordance with the order with such modifications as may be specified; and
  - (b) requires the consent of the Secretary of State.
- (3) “Specified” means specified in the order.

**Annotations:**

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

**C576** S. 360 excluded (10.8.2005) by [The Insurers \(Reorganisation and Winding Up\) \(Lloyd's\) Regulations 2005 \(S.I. 2005/1998\)](#), **reg. 2(4)**

**[<sup>F442</sup>361 Administrator’s duty to report to Authority**

- (1) This section applies where a company or partnership is—
- (a) in administration within the meaning of Schedule B1 to the 1986 Act, or
  - <sup>F443</sup>(b) in administration within the meaning of Schedule B1 to the 1989 Order.]
- (2) If the administrator thinks that the company or partnership is carrying on or has carried on a regulated activity in contravention of the general prohibition, he must report to the Authority without delay.
- (3) Subsection (2) does not apply where the administration arises out of an administration order made on an application made or petition presented by the Authority.]

**Annotations:**

**Amendments (Textual)**

**F442** S. 361 substituted (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 248(3), 279, **Sch. 17 para. 56** (with s. 249(1)-(3)); [S.I. 2003/2093](#), **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by [S.I. 2003/2332](#), **art. 2**))

**F443** S. 361(1)(b) substituted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), **Sch. 2 para. 59**; [S.R. 2006/21](#), **art. 2** (subject to [S.R. 2006/22](#), arts. 2-7)

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

**C577** Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\)](#), **reg. 6**

**C578** S. 361 modified (21.2.2009) by [The Banking Act 2009 \(Parts 2 and 3 Consequential Amendments\) Order 2009 \(S.I. 2009/317\)](#), **art. 5(1)(4)**

**362 Authority’s powers to participate in proceedings.**

- (1) This section applies if a person other than the Authority [<sup>F444</sup> makes an administration application under Schedule B1 to the 1986 Act [<sup>F445</sup> or Schedule B1 to the 1989 Order]] in relation to a company or partnership which—
- (a) is, or has been, an authorised person;
  - (b) is, or has been, an appointed representative; or

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- (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

[<sup>F446</sup>(1A) This section also applies in relation to—

- (a) the appointment under paragraph 14 or 22 of Schedule B1 to the 1986 Act [<sup>F447</sup>or paragraph 15 or 23 of Schedule B1 to the 1989 Order] of an administrator of a company of a kind described in subsection (1)(a) to (c), or
- (b) the filing with the court of a copy of notice of intention to appoint an administrator under [<sup>F448</sup>any] of those paragraphs.]

(2) The Authority is entitled to be heard—

- (a) at the hearing of the [<sup>F449</sup>administration application <sup>F450</sup>[<sup>F450</sup>...or the petition]...]; and
- (b) at any other hearing of the court in relation to the company or partnership under Part II of the 1986 Act (or Part III of the 1989 Order).

(3) Any notice or other document required to be sent to a creditor of the company or partnership must also be sent to the Authority.

[<sup>F451</sup>(4) The Authority may apply to the court under paragraph 74 of Schedule B1 to the 1986 Act [<sup>F452</sup>or paragraph 75 of Schedule B1 to the 1989 Order].

(4A) In respect of an application under subsection (4)—

- (a) paragraph 74(1)(a) and (b) shall have effect as if for the words “harm the interests of the applicant (whether alone or in common with some or all other members or creditors)” there were substituted the words “harm the interests of some or all members or creditors”, and
- [<sup>F453</sup>(b) paragraph 75(1)(a) and (b) of Schedule B1 to the 1989 Order shall have effect as if for the words “harm the interests of the applicant (whether alone or in common with some or all other members or creditors)” there were substituted the words harm the interests of some or all members or creditors.]]

(5) A person appointed for the purpose by the Authority is entitled—

- (a) to attend any meeting of creditors of the company or partnership summoned under any enactment;
- (b) to attend any meeting of a committee established under [<sup>F454</sup>paragraph 57 of Schedule B1 to the 1986 Act](or [<sup>F455</sup>paragraph 58 of Schedule B1 to the 1989 Order]); and
- (c) to make representations as to any matter for decision at such a meeting.

(6) If, during the course of the administration of a company, a compromise or arrangement is proposed between the company and its creditors, or any class of them, the Authority may apply to the court under [<sup>F456</sup>section 896 or 899 of the Companies Act 2006].

#### Annotations:

##### Amendments (Textual)

**F444** Words in s. 362(1) substituted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, Sch. 17 para. 57(a) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, art. 2)

**F445** Words in s. 362(1) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 60(2); S.R. 2006/21, art. 2 (subject to S.R. 2006/22, arts. 2-7)

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- F446** S. 362(1A) inserted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 57(b)** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**))
- F447** Words in s. 362(1A)(a) inserted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 60(3)(a)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, **arts. 2-7**)
- F448** Word in s. 362(1A)(b) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 60(3)(b)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, **arts. 2-7**)
- F449** Words in s. 362(2)(a) substituted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 57(c)** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**))
- F450** Words in s. 362(2)(a) repealed (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 60(4), **Sch. 9**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, **arts. 2-7**)
- F451** S. 362(4)(4A) substituted (15.9.2003) for s. 362(4) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 57(d)** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**))
- F452** Words in s. 362(4) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 60(5)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, **arts. 2-7**)
- F453** S. 362(4A)(b) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 60(6)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, **arts. 2-7**)
- F454** Words in s. 362(5)(b) substituted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 57(e)** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**))
- F455** Words in s. 362(5)(b) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 60(7)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, **arts. 2-7**)
- F456** Words in s. 362(6) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 211(4)** (with arts. 6, 11, 12)

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

- C579** S. 362 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **regs. 1, 6**
- C580** Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), **reg. 6**
- C581** S. 362 modified (21.2.2009) by The Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 (S.I. 2009/317), **art. 5(1)(5)**
- C582** S. 362(6) applied (with modifications) (8.2.2011 with application in accordance with reg. 27(a) of the applying S.I.) by The Investment Bank Special Administration Regulations 2011 (S.I. 2011/245), **regs. 1, 27(a), Sch. 6 para. 3(4)**

#### [<sup>F457</sup>362A] Administrator appointed by company or directors

- (1) This section applies in relation to a company of a kind described in section 362(1)(a) to (c).
- (2) An administrator of the company may not be appointed under paragraph 22 of Schedule B1 to the 1986 Act [<sup>F458</sup> or paragraph 23 of Schedule B1 to the 1989 Order] without the consent of the Authority.
- (3) Consent under subsection (2)—

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- (a) must be in writing, and
  - (b) must be filed with the court along with the notice of intention to appoint under paragraph 27 of [<sup>F459</sup>Schedule B1 to the 1986 Act or paragraph 28 of Schedule B1 to the 1989 Order].
- (4) In a case where no notice of intention to appoint is required—
- (a) subsection (3)(b) shall not apply, but
  - (b) consent under subsection (2) must accompany the notice of appointment filed under paragraph 29 of [<sup>F460</sup>Schedule B1 to the 1986 Act or paragraph 30 of Schedule B1 to the 1989 Order].]

#### Annotations:

##### Amendments (Textual)

- F457** S. 362A inserted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 58** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**))
- F458** Words in s. 362A(2) inserted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 61(2)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)
- F459** Words in s. 362A(3)(b) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 61(3)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)
- F460** Words in s. 362A(4) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 61(4)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)

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

- C583** Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), **reg. 6**

### Receivership

#### 363 Authority's powers to participate in proceedings.

- (1) This section applies if a receiver has been appointed in relation to a company which—
- (a) is, or has been, an authorised person;
  - (b) is, or has been, an appointed representative; or
  - (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (2) The Authority is entitled to be heard on an application made under section 35 or 63 of the 1986 Act (or Article 45 of the 1989 Order).
- (3) The Authority is entitled to make an application under section 41(1)(a) or 69(1)(a) of the 1986 Act (or Article 51(1)(a) of the 1989 Order).
- (4) A report under section 48(1) or 67(1) of the 1986 Act (or Article 58(1) of the 1989 Order) must be sent by the person making it to the Authority.
- (5) A person appointed for the purpose by the Authority is entitled—

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (a) to attend any meeting of creditors of the company summoned under any enactment;
- (b) to attend any meeting of a committee established under section 49 or 68 of the 1986 Act (or Article 59 of the 1989 Order); and
- (c) to make representations as to any matter for decision at such a meeting.

**Annotations:**

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

**C584** [S. 363](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [regs. 1, 6](#)

**C585** [Ss. 361-365](#) applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\)](#), [reg. 6](#)

**364 Receiver’s duty to report to Authority.**

If—

- (a) a receiver has been appointed in relation to a company, and
- (b) it appears to the receiver that the company is carrying on, or has carried on, a regulated activity in contravention of the general prohibition,

the receiver must report the matter to the Authority without delay.

**Annotations:**

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

**C586** [S. 364](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [regs. 1, 6](#)

**C587** [Ss. 361-365](#) applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\)](#), [reg. 6](#)

*Voluntary winding up*

**365 Authority’s powers to participate in proceedings.**

- (1) This section applies in relation to a company which—
  - (a) is being wound up voluntarily;
  - (b) is an authorised person; and
  - (c) is not an insurer effecting or carrying out contracts of long-term insurance.
- (2) The Authority may apply to the court under section 112 of the 1986 Act (or Article 98 of the 1989 Order) in respect of the company.
- (3) The Authority is entitled to be heard at any hearing of the court in relation to the voluntary winding up of the company.
- (4) Any notice or other document required to be sent to a creditor of the company must also be sent to the Authority.
- (5) A person appointed for the purpose by the Authority is entitled—
  - (a) to attend any meeting of creditors of the company summoned under any enactment;

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (b) to attend any meeting of a committee established under section 101 of the 1986 Act (or Article 87 of the 1989 Order); and
  - (c) to make representations as to any matter for decision at such a meeting.
- (6) The voluntary winding up of the company does not bar the right of the Authority to have it wound up by the court.
- (7) If, during the course of the winding up of the company, a compromise or arrangement is proposed between the company and its creditors, or any class of them, the Authority may apply to the court under [<sup>F461</sup>section 896 or 899 of the Companies Act 2006].

#### Annotations:

##### Amendments (Textual)

**F461** Words in s. 365(7) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 211(4)** (with arts. 6, 11, 12)

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

**C588** S. 365 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), **regs. 1, 6**

**C589** Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\)](#), **reg. 6**

### 366 Insurers effecting or carrying out long-term contracts or insurance.

- (1) An insurer effecting or carrying out contracts of long-term insurance may not be wound up voluntarily without the consent of the Authority.
- (2) If notice of a general meeting of such an insurer is given, specifying the intention to propose a resolution for voluntary winding up of the insurer, a director of the insurer must notify the Authority as soon as practicable after he becomes aware of it.
- (3) A person who fails to comply with subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- [<sup>F462</sup>(4) A winding up resolution may not be passed—
  - (a) as a written resolution (in accordance with Chapter 2 of Part 13 of the Companies Act 2006), or
  - (b) at a meeting called in accordance with section 307(4) to (6) or 337(2) of that Act (agreement of members to calling of meeting at short notice).]
- (5) A copy of a winding-up resolution forwarded to the registrar of companies in accordance with [<sup>F463</sup>section 30 of the Companies Act 2006] must be accompanied by a certificate issued by the Authority stating that it consents to the voluntary winding up of the insurer.
- (6) If subsection (5) is complied with, the voluntary winding up is to be treated as having commenced at the time the resolution was passed.
- (7) If subsection (5) is not complied with, the resolution has no effect.
- (8) “Winding-up resolution” means a resolution for voluntary winding up of an insurer effecting or carrying out contracts of long-term insurance.

**Annotations:**

**Amendments (Textual)**

**F462** S. 366(4) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 93(2)**

**F463** Words in s. 366(5) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 93(3)**

*Winding up by the court*

**367 Winding-up petitions.**

- (1) The Authority may present a petition to the court for the winding up of a body which—
  - (a) is, or has been, an authorised person;
  - (b) is, or has been, an appointed representative; or
  - (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (2) In subsection (1) “body” includes any partnership.
- (3) On such a petition, the court may wind up the body if—
  - (a) the body is unable to pay its debts within the meaning of section 123 or 221 of the 1986 Act (or Article 103 or 185 of the 1989 Order); or
  - (b) the court is of the opinion that it is just and equitable that it should be wound up.
- (4) If a body is in default on an obligation to pay a sum due and payable under an agreement, it is to be treated for the purpose of subsection (3)(a) as unable to pay its debts.
- (5) “Agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the body concerned.
- (6) Subsection (7) applies if a petition is presented under subsection (1) for the winding up of a partnership—
  - (a) on the ground mentioned in subsection (3)(b); or
  - (b) in Scotland, on a ground mentioned in subsection (3)(a) or (b).
- (7) The court has jurisdiction, and the 1986 Act (or the 1989 Order) has effect, as if the partnership were an unregistered company as defined by section 220 of that Act (or Article 184 of that Order).

**Annotations:**

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

**C590** S. 367 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **regs. 1, 6**

S. 367 amended (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 12** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**

S. 367 amended (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 12**; S.I. 2001/3538, **art. 2(1)**

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- C591** S. 367 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\)](#), **reg. 6**
- C592** S. 367 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, **Sch. 5 para. 6** (with reg. 3)
- C593** S. 367 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(b), 62, **Sch. 3 para. 7** (with reg. 3)
- C594** S. 367(3)(a) modified (1.12.2001) by [S.I. 2001/3650](#), **arts. 1(a)**, 15
- C595** S. 367(5) modified (1.12.2001) by [S.I. 2001/3650](#), **arts. 1(a)**, 14

### 368 Winding-up petitions: EEA and Treaty firms.

The Authority may not present a petition to the court under section 367 for the winding up of—

- (a) an EEA firm which qualifies for authorisation under Schedule 3, or
- (b) a Treaty firm which qualifies for authorisation under Schedule 4,

unless it has been asked to do so by the home state regulator of the firm concerned.

#### Annotations:

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

- C596** S. 368 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(c), 95, **Sch. 5 para. 6** (with reg. 3)
- C597** S. 368 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(b), 62, **Sch. 3 para. 7** (with reg. 3)

### 369 Insurers: service of petition etc. on Authority.

- (1) If a person other than the Authority presents a petition for the winding up of an authorised person with permission to effect or carry out contracts of insurance, the petitioner must serve a copy of the petition on the Authority.
- (2) If a person other than the Authority applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of an authorised person with permission to effect or carry out contracts of insurance, the applicant must serve a copy of the application on the Authority.

### <sup>F464</sup>369A Reclaim funds: service of petition etc on Authority

- (1) If a person other than the Authority presents a petition for the winding up of an authorised reclaim fund, the petitioner must serve a copy of the petition on the Authority.
- (2) If a person other than the Authority applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of an authorised reclaim fund, the applicant must serve a copy of the application on the Authority.
- (3) In this section “authorised reclaim fund” means a reclaim fund within the meaning given by section 5(1) of the Dormant Bank and Building Society Accounts Act 2008 that is authorised for the purposes of this Act.]

**Annotations:**

**Amendments (Textual)**

**F464** S. 369A inserted (12.3.2009) by [Dormant Bank and Building Society Accounts Act 2008 \(c. 31\)](#), ss. 15, 31(1), [Sch. 2 para. 7](#); S.I. 2009/490, [art. 2](#) (with [art. 3](#))

**370 Liquidator’s duty to report to Authority.**

If—

- (a) a company is being wound up voluntarily or a body is being wound up on a petition presented by a person other than the Authority, and
  - (b) it appears to the liquidator that the company or body is carrying on, or has carried on, a regulated activity in contravention of the general prohibition,
- the liquidator must report the matter to the Authority without delay.

**Annotations:**

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

**C598** S. 370 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [regs. 1, 6](#)

**C599** S. 370 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\)](#), [reg. 6](#)

**C600** S. 370 modified (21.2.2009) by [The Banking Act 2009 \(Parts 2 and 3 Consequential Amendments\) Order 2009 \(S.I. 2009/317\)](#), [art. 5\(1\)\(6\)](#)

**371 Authority’s powers to participate in proceedings.**

- (1) This section applies if a person other than the Authority presents a petition for the winding up of a body which—
  - (a) is, or has been, an authorised person;
  - (b) is, or has been, an appointed representative; or
  - (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (2) The Authority is entitled to be heard—
  - (a) at the hearing of the petition; and
  - (b) at any other hearing of the court in relation to the body under or by virtue of Part IV or V of the 1986 Act (or Part V or VI of the 1989 Order).
- (3) Any notice or other document required to be sent to a creditor of the body must also be sent to the Authority.
- (4) A person appointed for the purpose by the Authority is entitled—
  - (a) to attend any meeting of creditors of the body;
  - (b) to attend any meeting of a committee established for the purposes of Part IV or V of the 1986 Act under section 101 of that Act or under section 141 or 142 of that Act;
  - (c) to attend any meeting of a committee established for the purposes of Part V or VI of the 1989 Order under Article 87 of that Order or under Article 120 of that Order; and

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (d) to make representations as to any matter for decision at such a meeting.
- (5) If, during the course of the winding up of a company, a compromise or arrangement is proposed between the company and its creditors, or any class of them, the Authority may apply to the court under [<sup>F465</sup>section 896 or 899 of the Companies Act 2006].

**Annotations:**

**Amendments (Textual)**

**F465** Words in s. 371(5) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 211(4)** (with arts. 6, 11, 12)

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

**C601** S. 371 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), **regs. 1, 6**

**C602** S. 371 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\)](#), **reg. 6**

*Bankruptcy*

**372 Petitions.**

- (1) The Authority may present a petition to the court—
- (a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual; or
  - (b) under section 5 of the 1985 Act for the sequestration of the estate of an individual.
- (2) But such a petition may be presented only on the ground that—
- (a) the individual appears to be unable to pay a regulated activity debt; or
  - (b) the individual appears to have no reasonable prospect of being able to pay a regulated activity debt.
- (3) An individual appears to be unable to pay a regulated activity debt if he is in default on an obligation to pay a sum due and payable under an agreement.
- (4) An individual appears to have no reasonable prospect of being able to pay a regulated activity debt if—
- (a) the Authority has served on him a demand requiring him to establish to the satisfaction of the Authority that there is a reasonable prospect that he will be able to pay a sum payable under an agreement when it falls due;
  - (b) at least three weeks have elapsed since the demand was served; and
  - (c) the demand has been neither complied with nor set aside in accordance with rules.
- (5) A demand made under subsection (4)(a) is to be treated for the purposes of the 1986 Act (or the 1989 Order) as if it were a statutory demand under section 268 of that Act (or Article 242 of that Order).
- (6) For the purposes of a petition presented in accordance with subsection (1)(b)—
- (a) the Authority is to be treated as a qualified creditor; and
  - (b) a ground mentioned in subsection (2) constitutes apparent insolvency.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (7) “Individual” means an individual—
- (a) who is, or has been, an authorised person; or
  - (b) who is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (8) “Agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the individual concerned.
- (9) “Rules” means—
- (a) in England and Wales, rules made under section 412 of the 1986 Act;
  - (b) in Scotland, rules made by order by the Treasury, after consultation with the Scottish Ministers, for the purposes of this section; and
  - (c) in Northern Ireland, rules made under Article 359 of the 1989 Order.

**Annotations:**

**Commencement Information**

**I116** S. 372 wholly in force at 1.12.2001; s. 372 not in force at Royal Assent see s. 431(2); s. 372 in force for certain purposes at 20.7.2001 by S.I. 2001/2632, art. 2(1), Sch. Pt. 1; s. 372 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**373 Insolvency practitioner’s duty to report to Authority.**

- (1) If—
- (a) a bankruptcy order or sequestration award is in force in relation to an individual by virtue of a petition presented by a person other than the Authority, and
  - (b) it appears to the insolvency practitioner that the individual is carrying on, or has carried on, a regulated activity in contravention of the general prohibition, the insolvency practitioner must report the matter to the Authority without delay.
- (2) “Bankruptcy order” means a bankruptcy order under Part IX of the 1986 Act (or Part IX of the 1989 Order).
- (3) “Sequestration award” means an award of sequestration under section 12 of the 1985 Act.
- (4) “Individual” includes an entity mentioned in section 374(1)(c).

**374 Authority’s powers to participate in proceedings.**

- (1) This section applies if a person other than the Authority presents a petition to the court —
- (a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual;
  - (b) under section 5 of the 1985 Act for the sequestration of the estate of an individual; or
  - (c) under section 6 of the 1985 Act for the sequestration of the estate belonging to or held for or jointly by the members of an entity mentioned in subsection (1) of that section.

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (2) The Authority is entitled to be heard—
- (a) at the hearing of the petition; and
  - (b) at any other hearing in relation to the individual or entity under—
    - (i) Part IX of the 1986 Act;
    - (ii) Part IX of the 1989 Order; or
    - (iii) the 1985 Act.
- (3) A copy of the report prepared under section 274 of the 1986 Act (or Article 248 of the 1989 Order) must also be sent to the Authority.
- (4) A person appointed for the purpose by the Authority is entitled—
- (a) to attend any meeting of creditors of the individual or entity;
  - (b) to attend any meeting of a committee established under section 301 of the 1986 Act (or Article 274 of the 1989 Order);
  - (c) to attend any meeting of commissioners held under paragraph 17 or 18 of Schedule 6 to the 1985 Act; and
  - (d) to make representations as to any matter for decision at such a meeting.
- (5) “Individual” means an individual who—
- (a) is, or has been, an authorised person; or
  - (b) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (6) “Entity” means an entity which—
- (a) is, or has been, an authorised person; or
  - (b) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

*Provisions against debt avoidance*

**375 Authority’s right to apply for an order.**

- (1) The Authority may apply for an order under section 423 of the 1986 Act (or Article 367 of the 1989 Order) in relation to a debtor if—
- (a) at the time the transaction at an undervalue was entered into, the debtor was carrying on a regulated activity (whether or not in contravention of the general prohibition); and
  - (b) a victim of the transaction is or was party to an agreement entered into with the debtor, the making or performance of which constituted or was part of a regulated activity carried on by the debtor.
- (2) An application made under this section is to be treated as made on behalf of every victim of the transaction to whom subsection (1)(b) applies.
- (3) Expressions which are given a meaning in Part XVI of the 1986 Act (or Article 367, 368 or 369 of the 1989 Order) have the same meaning when used in this section.

**Annotations:**

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

**C603** S. 375 modified (21.2.2009) by [The Banking Act 2009 \(Parts 2 and 3 Consequential Amendments\) Order 2009 \(S.I. 2009/317\)](#), [art. 5\(1\)\(7\)](#)

**C604** S. 375 applied (with modifications) (8.2.2011 with application in accordance with reg. 27(a) of the applying S.I.) by [The Investment Bank Special Administration Regulations 2011 \(S.I. 2011/245\)](#), regs. 1, 27(a), [Sch. 6 para. 3\(5\)](#)

*Supplemental provisions concerning insurers*

**376 Continuation of contracts of long-term insurance where insurer in liquidation.**

- (1) This section applies in relation to the winding up of an insurer which effects or carries out contracts of long-term insurance.
- (2) Unless the court otherwise orders, the liquidator must carry on the insurer's business so far as it consists of carrying out the insurer's contracts of long-term insurance with a view to its being transferred as a going concern to a person who may lawfully carry out those contracts.
- (3) In carrying on the business, the liquidator—
  - (a) may agree to the variation of any contracts of insurance in existence when the winding up order is made; but
  - (b) must not effect any new contracts of insurance.
- (4) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the insurer attributable to contracts of long-term insurance effected by it require the appointment of a special manager, he may apply to the court.
- (5) On such an application, the court may appoint a special manager to act during such time as the court may direct.
- (6) The special manager is to have such powers, including any of the powers of a receiver or manager, as the court may direct.
- (7) Section 177(5) of the 1986 Act (or Article 151(5) of the 1989 Order) applies to a special manager appointed under subsection (5) as it applies to a special manager appointed under section 177 of the 1986 Act (or Article 151 of the 1989 Order).
- (8) If the court thinks fit, it may reduce the value of one or more of the contracts of long-term insurance effected by the insurer.
- (9) Any reduction is to be on such terms and subject to such conditions (if any) as the court thinks fit.
- (10) The court may, on the application of an official, appoint an independent actuary to investigate the insurer's business so far as it consists of carrying out its contracts of long-term insurance and to report to the official—
  - (a) on the desirability or otherwise of that part of the insurer's business being continued; and

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (b) on any reduction in the contracts of long-term insurance effected by the insurer that may be necessary for successful continuation of that part of the insurer’s business.
- (11) “Official” means—
- (a) the liquidator;
  - (b) a special manager appointed under subsection (5); or
  - (c) the Authority.
- (12) The liquidator may make an application in the name of the insurer and on its behalf under Part VII without obtaining the permission that would otherwise be required by section 167 of, and Schedule 4 to, the 1986 Act (or Article 142 of, and Schedule 2 to, the 1989 Order).

### **377 Reducing the value of contracts instead of winding up.**

- (1) This section applies in relation to an insurer which has been proved to be unable to pay its debts.
- (2) If the court thinks fit, it may reduce the value of one or more of the insurer’s contracts instead of making a winding up order.
- (3) Any reduction is to be on such terms and subject to such conditions (if any) as the court thinks fit.

#### **Annotations:**

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

**C605** S. 377 excluded (20.4.2003) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2003 \(S.I. 2003/1102\)](#), [reg. 4\(6\)](#) (with [reg. 3](#))

**C606** S. 377 excluded (18.2.2004) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2004 \(S.I. 2004/353\)](#), [reg. 4\(7\)](#) (with [reg. 3](#))

### **378 Treatment of assets on winding up.**

- (1) The Treasury may by regulations provide for the treatment of the assets of an insurer on its winding up.
- (2) The regulations may, in particular, provide for—
  - (a) assets representing a particular part of the insurer’s business to be available only for meeting liabilities attributable to that part of the insurer’s business;
  - (b) separate general meetings of the creditors to be held in respect of liabilities attributable to a particular part of the insurer’s business.

### **379 Winding-up rules.**

- (1) Winding-up rules may include provision—
  - (a) for determining the amount of the liabilities of an insurer to policyholders of any class or description for the purpose of proof in a winding up; and
  - (b) generally for carrying into effect the provisions of this Part with respect to the winding up of insurers.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (2) Winding-up rules may, in particular, make provision for all or any of the following matters—
  - (a) the identification of assets and liabilities;
  - (b) the apportionment, between assets of different classes or descriptions, of—
    - (i) the costs, charges and expenses of the winding up; and
    - (ii) any debts of the insurer of a specified class or description;
  - (c) the determination of the amount of liabilities of a specified description;
  - (d) the application of assets for meeting liabilities of a specified description;
  - (e) the application of assets representing any excess of a specified description.
- (3) “Specified” means specified in winding-up rules.
- (4) “Winding-up rules” means rules made under section 411 of the 1986 Act (or Article 359 of the 1989 Order).
- (5) Nothing in this section affects the power to make winding-up rules under the 1986 Act or the 1989 Order.

## PART XXV

### INJUNCTIONS AND RESTITUTION

#### Annotations:

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

C607 Pt. XXV (ss. 380-386) amended (1.12.2001) by S.I. 2001/2657, arts. 1(1), 10(10), 11(10) (which was revoked (8.10.2001) by S.I. 2001/3083, arts. 1(2), 23); S.I. 2001/3538, art. 2(1)

Pt. XXV (ss. 380-386) amended (1.12.2001) by S.I. 2001/3083, arts. 1(2), 10(10), 11(10); S.I. 2001/3538, art. 2(1)

Pt. XXV (ss. 380-386) extended (1.12.2001) by S.I. 2001/3646, arts. 1(1), 3(1)(a)

### *Injunctions*

#### 380 Injunctions.

- (1) If, on the application of the [appropriate regulator] or the Secretary of State, the court is satisfied—
  - (a) that there is a reasonable likelihood that any person will contravene a relevant requirement, or
  - (b) that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.
- (2) If on the application of the [appropriate regulator] or the Secretary of State the court is satisfied—
  - (a) that any person has contravened a relevant requirement, and
  - (b) that there are steps which could be taken for remedying the contravention,

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the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

- (3) If, on the application of the [appropriate regulator] or the Secretary of State, the court is satisfied that any person may have—
- (a) contravened a relevant requirement, or
  - (b) been knowingly concerned in the contravention of such a requirement,
- it may make an order restraining (or in Scotland an interdict prohibiting) him from disposing of, or otherwise dealing with, any assets of his which it is satisfied he is reasonably likely to dispose of or otherwise deal with.
- (4) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.
- (5) In subsection (2), references to remedying a contravention include references to mitigating its effect.
- (6) “Relevant requirement”—
- (a) in relation to an application by the [appropriate regulator], means a requirement—
    - (i) which is imposed by or under this Act <sup>[F466]</sup> or by [any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury]; or
    - (ii) which is imposed by or under any other Act and whose contravention constitutes an offence [mentioned in section 402(1)];
  - (b) in relation to an application by the Secretary of State, means a requirement which is imposed by or under this Act and whose contravention constitutes an offence which the Secretary of State has power to prosecute under this Act.
- (7) In the application of subsection (6) to Scotland—
- (a) ~~[in paragraph (a)(ii) for “which the Authority has power to prosecute under this Act” substitute “~~ mentioned in paragraph (a) or (b) of section 402(1) ~~”]; and]~~
  - (b) in paragraph (b) omit “which the Secretary of State has power to prosecute under this Act”.
- [(8) The PRA is the “appropriate regulator” in the case of a contravention of—
- (a) a requirement that is imposed under any provision of this Act by the PRA;
  - (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA;
  - (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA; or
  - (d) a requirement that is imposed by any directly applicable EU regulation and is specified (or is of a description specified) in an order made by the Treasury.
- (9) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the “appropriate regulator” is whichever of the PRA or the FCA has power to prosecute the offence (see section 401).

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

(10) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.

(11) The Treasury may by order amend the definition of “appropriate regulator”.]

**Annotations:**

**Amendments (Textual)**

**F466** Words in s. 380(6)(a)(i) 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(5), [Sch. 5 para. 13](#)

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

**C608** S. 380 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, [12\(2\)](#)

**C609** S. 380(1)(2) modified (1.12.2001) by [S.I. 2001/2657](#), [arts. 1\(1\), 20\(3\)](#) (which was revoked (8.10.2001) by [S.I. 2001/3083](#), [arts. 1\(2\), 23](#)); [S.I. 2001/3538](#), [art. 2\(1\)](#)

S. 380(1)(2) modified (1.12.2001) by [S.I. 2001/3083](#), [arts. 1\(2\), 20\(3\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

**C610** S. 380(2) extended (with modifications) (1.12.2001) by [S.I. 2001/2657](#), [arts. 1\(1\), 2](#) (which was revoked (8.10.2001) by [S.I. 2001/3083](#), [arts. 1\(2\), 23](#)); [S.I. 2001/3538](#), [art. 2\(1\)](#)

S. 380(2) extended (with modifications) (1.12.2001) by [S.I. 2001/3083](#), [arts. 1\(2\), 2](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

S. 380(2) extended (1.12.2001) by [S.I. 2001/3646](#), [arts. 1\(2\), 3\(3\)\(a\)](#)

**C611** S. 380(3)(a) extended (with modifications) (1.12.2001) by [S.I. 2001/2657](#), [arts. 1\(1\), 4](#) (which was revoked (8.10.2001) by [S.I. 2001/3083](#), [arts. 1\(2\), 23](#)); [S.I. 2001/3538](#), [art. 2\(1\)](#)

S. 380(3)(a) extended (with modifications) (1.12.2001) by [S.I. 2001/3083](#), [arts. 1\(2\), 4](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

**381 Injunctions in cases of market abuse.**

- (1) If, on the application of the [\[FCA\]](#), the court is satisfied—
- (a) that there is a reasonable likelihood that any person will engage in market abuse, or
  - (b) that any person is or has engaged in market abuse and that there is a reasonable likelihood that the market abuse will continue or be repeated,
- the court may make an order restraining (or in Scotland an interdict prohibiting) the market abuse.
- (2) If on the application of the [\[FCA\]](#) the court is satisfied—
- (a) that any person is or has engaged in market abuse, and
  - (b) that there are steps which could be taken for remedying the market abuse,
- the court may make an order requiring him to take such steps as the court may direct to remedy it.
- (3) Subsection (4) applies if, on the application of the [\[FCA\]](#), the court is satisfied that any person—
- (a) may be engaged in market abuse; or
  - (b) may have been engaged in market abuse.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (4) The court [may]make an order restraining (or in Scotland an interdict prohibiting) the person concerned from disposing of, or otherwise dealing with, any assets of his which it is satisfied that he is reasonably likely to dispose of, or otherwise deal with.
- (5) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.
- (6) In subsection (2), references to remedying any market abuse include references to mitigating its effect.

### *Restitution orders*

#### **382 Restitution orders.**

- (1) The court may, on the application of the [appropriate regulator] or the Secretary of State, make an order under subsection (2) if it is satisfied that a person has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and—
  - (a) that profits have accrued to him as a result of the contravention; or
  - (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.
- (2) The court may order the person concerned to pay to the [regulator concerned] such sum as appears to the court to be just having regard—
  - (a) in a case within paragraph (a) of subsection (1), to the profits appearing to the court to have accrued;
  - (b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect;
  - (c) in a case within both of those paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.
- (3) Any amount paid to the [regulator concerned] in pursuance of an order under subsection (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.
- (4) On an application under subsection (1) the court may require the person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes—
  - (a) establishing whether any and, if so, what profits have accrued to him as mentioned in paragraph (a) of that subsection;
  - (b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in paragraph (b) of that subsection and, if so, the extent of that loss or adverse effect; and
  - (c) determining how any amounts are to be paid or distributed under subsection (3).
- (5) The court may require any accounts or other information supplied under subsection (4) to be verified in such manner as it may direct.
- (6) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (7) Nothing in this section affects the right of any person other than the [appropriate regulator] or the Secretary of State to bring proceedings in respect of the matters to which this section applies.
- (8) “Qualifying person” means a person appearing to the court to be someone—
- (a) to whom the profits mentioned in subsection (1)(a) are attributable; or
  - (b) who has suffered the loss or adverse effect mentioned in subsection (1)(b).
- (9) “Relevant requirement”—
- (a) in relation to an application by the [appropriate regulator], means a requirement—
    - (i) which is imposed by or under this Act <sup>[F467]</sup> or by [any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury]; or
    - (ii) which is imposed by or under any other Act and whose contravention constitutes an offence [mentioned in section 402(1)];
  - (b) in relation to an application by the Secretary of State, means a requirement which is imposed by or under this Act and whose contravention constitutes an offence which the Secretary of State has power to prosecute under this Act.
- (10) In the application of subsection (9) to Scotland—
- (a) [in paragraph (a)(ii) for “which the Authority has power to prosecute under this Act” substitute “mentioned in paragraph (a) or (b) of section 402(1)”]; and
  - (b) in paragraph (b) omit “which the Secretary of State has power to prosecute under this Act”.
- [(11) The PRA is the “appropriate regulator” in the case of a contravention of—
- (a) a requirement that is imposed under any provision of this Act by the PRA;
  - (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA;
  - (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA; or
  - (d) a requirement that is imposed by any directly applicable EU regulation and is specified (or is of a description specified) in an order made by the Treasury.
- (12) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the “appropriate regulator” is whichever of the PRA or the FCA has power to prosecute the offence (see section 401).
- (13) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.
- (14) The Treasury may by order amend the definition of “appropriate regulator”.]

#### Annotations:

#### Amendments (Textual)

**F467** Words in s. 382(9)(a)(i) 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(5), [Sch. 5 para. 14](#)

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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

- C612** S. 382 extended (with modifications) (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 2** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**
- S. 382 extended (with modifications) (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 2**; S.I. 2001/3538, **art. 2(1)**
- C613** S. 382 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002](#) (S.I. 2002/1775), **regs. 1, 12(2)**
- C614** S. 382(3)-(5)(8) applied (with modifications) (26.11.2001) by S.I. 2001/3755, **regs. 1, 9(7)(9)** (with **regs. 39, 45**)

**383 Restitution orders in cases of market abuse.**

- (1) The court may, on the application of the [FCA], make an order under subsection (4) if it is satisfied that a person (“the person concerned”)—
- (a) has engaged in market abuse, or
  - (b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by the person concerned, would amount to market abuse,
- and the condition mentioned in subsection (2) is fulfilled.
- (2) The condition is—
- (a) that profits have accrued to the person concerned as a result; or
  - (b) that one or more persons have suffered loss or been otherwise adversely affected as a result.
- (3) But the court may not make an order under subsection (4) if it is satisfied that—
- (a) the person concerned believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of subsection (1); or
  - (b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of subsection (1).
- (4) The court may order the person concerned to pay to the [FCA] such sum as appears to the court to be just having regard—
- (a) in a case within paragraph (a) of subsection (2), to the profits appearing to the court to have accrued;
  - (b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect;
  - (c) in a case within both of those paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.
- (5) Any amount paid to the [FCA] in pursuance of an order under subsection (4) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.
- (6) On an application under subsection (1) the court may require the person concerned to supply it with such accounts or other information as it may require for any one or more of the following purposes—
- (a) establishing whether any and, if so, what profits have accrued to him as mentioned in subsection (2)(a);

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- (b) establishing whether any person or persons have suffered any loss or adverse effect as mentioned in subsection (2)(b) and, if so, the extent of that loss or adverse effect; and
  - (c) determining how any amounts are to be paid or distributed under subsection (5).
- (7) The court may require any accounts or other information supplied under subsection (6) to be verified in such manner as it may direct.
- (8) The jurisdiction conferred by this section is exercisable by the High Court and the Court of Session.
- (9) Nothing in this section affects the right of any person other than the [FCA] to bring proceedings in respect of the matters to which this section applies.
- (10) “Qualifying person” means a person appearing to the court to be someone—
- (a) to whom the profits mentioned in paragraph (a) of subsection (2) are attributable; or
  - (b) who has suffered the loss or adverse effect mentioned in paragraph (b) of that subsection.

*Restitution required by [FCA or PRA]*

**384 Power of [FCA or PRA] to require restitution.**

- (1) The [appropriate regulator] may exercise the power in subsection (5) if it is satisfied that an authorised person (“the person concerned”) has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and—
- (a) that profits have accrued to him as a result of the contravention; or
  - (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.
- (2) The [FCA] may exercise the power in subsection (5) if it is satisfied that a person (“the person concerned”)—
- (a) has engaged in market abuse, or
  - (b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by the person concerned, would amount to market abuse,
- and the condition mentioned in subsection (3) is fulfilled,
- (3) The condition is—
- (a) that profits have accrued to the person concerned as a result of the market abuse; or
  - (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the market abuse.
- (4) But the [FCA] may not exercise that power as a result of subsection (2) if, having considered any representations made to it in response to a warning notice, there are reasonable grounds for it to be satisfied that—
- (a) the person concerned believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of that subsection; or

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of that subsection.
- (5) The power referred to in subsections (1) and (2) is a power to require the person concerned, in accordance with such arrangements as the [body exercising the power (“the body concerned”)] considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the [body concerned] to be just having regard—
- (a) in a case within paragraph (a) of subsection (1) or (3), to the profits appearing to the [body concerned] to have accrued;
  - (b) in a case within paragraph (b) of subsection (1) or (3), to the extent of the loss or other adverse effect;
  - (c) in a case within paragraphs (a) and (b) of subsection (1) or (3), to the profits appearing to the [body concerned] to have accrued and to the extent of the loss or other adverse effect.
- (6) “Appropriate person” means a person appearing to the [body concerned] to be someone—
- (a) to whom the profits mentioned in paragraph (a) of subsection (1) or (3) are attributable; or
  - (b) who has suffered the loss or adverse effect mentioned in paragraph (b) of subsection (1) or (3).
- (7) “Relevant requirement” means—
- (a) a requirement imposed by or under this Act <sup>F468</sup>or by [any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury]]; and
  - (b) a requirement which is imposed by or under any other Act and whose contravention constitutes an offence [mentioned in section 402(1)].
- (8) ~~[In the application of subsection (7) to Scotland, in paragraph (b) for “in relation to which this Act confers power to prosecute on the Authority” substitute “mentioned in paragraph (a) or (b) of section 402(1) ———”.]~~
- [(9) The PRA is the “appropriate regulator” in the case of a contravention of—
- (a) a requirement that is imposed under any provision of this Act by the PRA;
  - (b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA;
  - (c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA; or
  - (d) a requirement that is imposed by any directly applicable EU regulation and is specified (or is of a description specified) in an order made by the Treasury.
- (10) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the “appropriate regulator” is whichever of the PRA or the FCA has power to prosecute the offence (see section 401).
- (11) The FCA is the “appropriate regulator” in the case of a contravention of any other requirement.
- (12) The Treasury may by order amend the definition of “appropriate regulator”.]

**Annotations:**

**Amendments (Textual)**

**F468** Words in s. 384(7)(a) 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(5), **Sch. 5 para. 15**

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

**C615** S. 384 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002](#) (S.I. 2002/1775), regs. 1, **12(1)**

**C616** S. 384(5) extended (with modifications) (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 3** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**  
S. 384(5) extended (with modifications) (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 3**; S.I. 2001/3538, **art. 2(1)**

**385 Warning notices.**

- (1) If the [\[FCA or the PRA\]](#) proposes to exercise the power under section 384(5) in relation to a person, it must give him a warning notice.
- (2) A warning notice under this section must specify the amount which the [\[FCA or \(as the case may be\) the PRA\]](#) proposes to require the person concerned to pay or distribute as mentioned in section 384(5).

**Annotations:**

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

**C617** S. 385 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 61(6)** (with art. 23(2))

**386 Decision notices.**

- (1) If the [\[FCA or the PRA\]](#) decides to exercise the power under section 384(5), it must give a decision notice to the person in relation to whom the power is exercised.
- (2) The decision notice must—
  - (a) state the amount that he is to pay or distribute as mentioned in section 384(5);
  - (b) identify the person or persons to whom that amount is to be paid or among whom that amount is to be distributed; and
  - (c) state the arrangements in accordance with which the payment or distribution is to be made.
- (3) If the [\[FCA or the PRA\]](#) decides to exercise the power under section 384(5), the person in relation to whom it is exercised may refer the matter to the Tribunal.

**Annotations:**

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

**C618** S. 386 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 61(6)** (with art. 23(2))

**C619** S. 386(1) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 70(2)** (with art. 23(2))

**PART XXVI**

## NOTICES

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

- C620** Pt. XXVI (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, s. 58A(6)(8) (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. I para. 75 (with art. 13(3), Sch.5)); S.I. 2001/3538, art. 2(1)
- Pt. XXVI (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, s. 85(4B) (as inserted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. I para. 95 (with art. 13(3), Sch. 5)); S.I. 2001/3538, art. 2(1)
- Pt. XXVI (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1992 c. 40, s. 36A(5C)(5D) (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 142(c) (with art. 13(3), Sch. 5)); S.I. 2001/3538, art. 2(1)
- Pt. XXVI (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, s. 46A(6)(8) (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 148 (with art. 13(3), Sch. 5)); S.I. 2001/3538, art. 2(1)
- Pt. XXVI (ss. 387-396) applied (with modifications) (17.8.2001 for certain purposes otherwise 1.12.2001) by 1986 c. 53, s. 93(6A) (as substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 177(d) (with art. 13(3), Sch. 5)); S.I. 2001/3538, art. 2
- C621** Pt. 26 applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 44
- C622** Pt. 26 applied (with modifications) (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(b)(xiii)(c), 95, Sch. 5 para. 7 (with reg. 3)
- C623** Pt. 26 applied (with modifications) (11.2.2010) by The Cross-Border Payments in Euro Regulations 2010 (S.I. 2010/89), reg. 19, Sch. para. 5
- C624** Pt. 26 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), reg. 30
- C625** Pt. 26 applied (with modifications) (9.2.2011 for certain purposes and 30.4.2011 otherwise) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(a)(xiv)(b), 62, Sch. 3 para. 8 (with reg. 3)

*Warning notices***387 Warning notices.**

- (1) A warning notice must—
- (a) state the action which the [body giving the notice (“the regulator concerned”)] proposes to take;
  - (b) be in writing;
  - (c) give reasons for the proposed action;
  - (d) state whether section 394 applies; and

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (e) if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it.
- (2) The warning notice must specify a reasonable period (which may not be less than [14 days]) within which the person to whom it is given may make representations to [the regulator concerned].
- (3) [The regulator concerned] may extend the period specified in the notice.
- (4) [The regulator concerned] must then decide, within a reasonable period, whether to give the person concerned a decision notice.

**Annotations:**

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

**C626** S. 387 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 8(a)** (with **reg. 1(2)(3)**); S.I. 2001/3538, **art. 2(1)**

**C627** S. 387 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 8(a)** (with **reg. 1(2)**)

*Decision notices*

**388 Decision notices.**

- (1) A decision notice must—
  - (a) be in writing;
  - (b) give [the reasons of the body giving the notice (“the regulator concerned”)] for the decision to take the action to which the notice relates;
  - (c) state whether section 394 applies;
  - (d) if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it; and
  - (e) give an indication of—
    - (i) any right to have the matter referred to the Tribunal which is given by this Act; and
    - (ii) the procedure on such a reference.
- (2) If the decision notice was preceded by a warning notice, the action to which the decision notice relates must be action under the same Part as the action proposed in the warning notice.
- (3) [The regulator concerned] may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.
- (4) [The regulator concerned] may give a further decision notice as a result of subsection (3) only if the person to whom the original notice was given consents.
- (5) If the person to whom a decision notice is given under subsection (3) had the right to refer the matter to which the original decision notice related to the Tribunal, he has that right as respects the decision notice under subsection (3).

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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

**C628** S. 388 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 8(b)** (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**

**C629** S. 388 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 8(b)** (with reg. 1(2))

*Conclusion of proceedings***389 Notices of discontinuance.**

- (1) If [the FCA or the PRA] decides not to take—
  - (a) the action proposed in a warning notice, or
  - (b) the action to which a decision notice relates,
 it must give a notice of discontinuance to the person to whom the warning notice or decision notice was given.
- (2) But subsection (1) does not apply if the discontinuance of the proceedings concerned results in the granting of an application made by the person to whom the warning or decision notice was given.
- (3) A notice of discontinuance must identify the proceedings which are being discontinued.

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

**C630** S. 389 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 8(c)** (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**

**C631** S. 389 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 8(c)** (with reg. 1(2))

**390 Final notices.**

- (1) If [the FCA or the PRA] has given a person a decision notice and the matter was not referred to the Tribunal within the [<sup>F469</sup>time required by Tribunal Procedure Rules], [the FCA or (as the case may be) the PRA] must, on taking the action to which the decision notice relates, give the person concerned and any person to whom the decision notice was copied a final notice.
- (2) If [the FCA or the PRA] has given a person a decision notice and the matter was referred to the Tribunal, [the FCA or (as the case may be) the PRA] must, on taking action in accordance with any directions given by—
  - (a) the Tribunal, or
  - [<sup>F470</sup>(b) a court on an appeal against the decision of the Tribunal,]
 give that person and any person to whom the decision notice was copied a final notice.
- (3) A final notice about a statement must—
  - (a) set out the terms of the statement;

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (b) give details of the manner in which, and the date on which, the statement will be published.
- (4) A final notice about an order must—
  - (a) set out the terms of the order;
  - (b) state the date from which the order has effect.
- (5) A final notice about a penalty must—
  - (a) state the amount of the penalty;
  - (b) state the manner in which, and the period within which, the penalty is to be paid;
  - (c) give details of the way in which the penalty will be recovered if it is not paid by the date stated in the notice.
- (6) A final notice about a requirement to make a payment or distribution in accordance with section 384(5) must state—
  - (a) the persons to whom,
  - (b) the manner in which, and
  - (c) the period within which,it must be made.
- (7) In any other case, the final notice must—
  - (a) give details of the action being taken;
  - (b) state the date on which the action is to be taken.
- (8) The period stated under subsection (5)(b) or (6)(c) may not be less than 14 days beginning with the date on which the final notice is given.
- (9) If all or any of the amount of a penalty payable under a final notice is outstanding at the end of the period stated under subsection (5)(b), [the body giving the notice] may recover the outstanding amount as a debt due to it.
- (10) If all or any of a required payment or distribution has not been made at the end of a period stated in a final notice under subsection (6)(c), the obligation to make the payment is enforceable, on the application of [the body giving the notice], by injunction or, in Scotland, by an order under section 45 of the <sup>M57</sup>Court of Session Act 1988.

#### Annotations:

#### Amendments (Textual)

**F469** Words in s. 390(1) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(2)(e), 5(1), **Sch. 2 para. 47(a)**

**F470** S. 390(2)(b) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(2)(e), 5(1), **Sch. 2 para. 47(b)**

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

**C632** S. 390 applied (1.12.2001) by [S.I. 2001/1228](#), **regs. 1(2)(c)**, 8(d) (with [reg. 1\(2\)\(3\)](#)); [S.I. 2001/3538](#), **art. 2(1)**

**C633** S. 390 applied (N.I.) (1.11.2004) by [Open-Ended Investment Companies Regulations \(Northern Ireland\) 2004 \(S.R. 2004/335\)](#), **regs. 1(1)(b)**, **8(d)** (with [reg. 1\(2\)](#))

**C634** S. 390(3)(4)(7) applied (1.12.2001) by [S.I. 2001/3592](#), **arts. 1(2)**, 110(7) (with [art. 23\(2\)](#))

**C635** S. 390(3)-(5)(8)(9) applied (1.12.2001) by [S.I. 2001/3592](#), **arts. 1(2)**, 85(5)(b) (with [art. 23\(2\)](#))

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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**C636** S. 390(3)-(5)(7)-(9) applied (1.12.2001) by S.I. 2001/3592, arts. 1(2), 61(7) (with art. 23(2))

**C637** S. 390(7) applied (1.12.2001) by S.I. 2001/3592, arts. 1(2), 115(5), 122(4), 129 (with art. 23(2))

#### Marginal Citations

**M57** 1988 c. 36.

### Publication

#### 391 Publication.

[(1) In the case of a warning notice falling within subsection (1ZB)—

- (a) neither the body giving the notice nor a person to whom it is given or copied may publish the notice;
- (b) a person to whom the notice is given or copied may not publish any details concerning the notice unless the body giving the notice has published those details; and
- (c) after consulting the persons to whom the notice is given or copied, the body giving the notice may publish such information about the matter to which the notice relates as it considers appropriate.

(1ZA) In the case of a warning notice not falling within subsection (1ZB), neither the body giving the notice nor a person to whom it is given or copied may publish the notice or any details concerning it.

(1ZB) A warning notice falls within this subsection if it is given under—

- (a) section 63B;
- (b) section 67;
- (c) section 87M;
- (d) section 88B;
- (e) section 89K;
- (f) section 89R;
- (g) section 92;
- (h) section 126;
- (i) section 131H;
- (j) section 207;
- (k) section 312G;
- (l) section 345.]

<sup>[F472]</sup>(1A) A person to whom a decision notice is given or copied may not publish the notice or any details concerning it unless [the body giving the notice] has published the notice or those details.]

- (2) A notice of discontinuance must state that, if the person to whom the notice is given consents, [the body giving the notice] may publish such information as it considers appropriate about the matter to which the discontinued proceedings related.
- (3) A copy of a notice of discontinuance must be accompanied by a statement that, if the person to whom the notice is copied consents, [the body giving the notice] may publish such information as it considers appropriate about the matter to which the discontinued proceedings related, so far as relevant to that person.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (4) [The body giving a decision or final notice] must publish such information about the matter to which [the notice] relates as it considers appropriate.
- (5) When a supervisory notice takes effect, [the body giving the notice] must publish such information about the matter to which the notice relates as it considers appropriate.
- [(5A) Subsection (5) does not apply in relation to a notice given in accordance with section 137P(5) or (8)(a) (but see section 137P(11)).]
- [(6) The FCA may not publish information under this section if, in its opinion, publication of the information would be—
- (a) unfair to the person with respect to whom the action was taken (or was proposed to be taken);
  - (b) prejudicial to the interests of consumers; or
  - (c) detrimental to the stability of the UK financial system.
- [(6A) The PRA may not publish information under this section if, in its opinion, publication of the information would be—
- (a) unfair to the person with respect to whom the action was taken (or was proposed to be taken);
  - (b) prejudicial to the safety and soundness of PRA-authorised persons; or
  - (c) in a case where section 2C applies, prejudicial to securing the appropriate degree of protection for policy holders.]
- (7) Information is to be published under this section in such manner as [the FCA or (as the case may be) the PRA] considers appropriate.
- (8) For the purposes of determining when a supervisory notice takes effect, a matter to which the notice relates is open to review if—
- (a) the period during which any person may refer the matter to the Tribunal is still running;
  - (b) the matter has been referred to the Tribunal but has not been dealt with;
  - (c) the matter has been referred to the Tribunal and dealt with but the period during which an appeal may be brought against the Tribunal’s decision is still running; or
  - (d) such an appeal has been brought but has not been determined.
- (9) “Notice of discontinuance” means a notice given under section 389.
- (10) “Supervisory notice” has the same meaning as in section 395.
- <sup>F474</sup>[(11) Section 425A (meaning of “consumers”)] applies for the purposes of this section.]

**Annotations:**

**Amendments (Textual)**

**F471** Words in s. 391(1) omitted (12.10.2010) by virtue of [Financial Services Act 2010 \(c. 28\)](#), [ss. 13\(2\)](#), [26\(3\)](#); S.I. 2010/2480, [art. 2](#) (with [art. 4](#))

**F472** S. 391(1A) inserted (12.10.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 13\(3\)](#), [26\(3\)](#); S.I. 2010/2480, [art. 2](#) (with [art. 4](#))

**F473** Words in s. 391(4) inserted (12.10.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 13\(4\)](#), [26\(3\)](#); S.I. 2010/2480, [art. 2](#) (with [art. 4](#))

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**F474** S. 391(11) substituted (8.4.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(1)(l), **Sch. 2 para. 28**

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

**C638** S. 391 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 9** (with reg. 1(2)(3)); S.I. 2001/3538, **art. 2(1)**

**C639** S. 391 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 9** (with reg. 1(2))

**C640** S. 391(4)(6)(7) applied (1.12.2001) by S.I. 2001/2957, **arts. 1, 13(8)(a)**, S.I. 2001/3538, **art. 2(1)**

**C641** S. 391(4) applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 61(7), 85(5)(b), 110(7), 115(5), 122(4), 129** (with art. 23(2))

**C642** S. 391(8) applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 27(14)** (with reg. 1(2))

**C643** S. 391(8)(a)-(d) applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I. 2009/209), **regs. 1(2)(b)(v)(c), {11(13)}** (with reg. 3)

**C644** S. 391(11) modified (18.6.2001) by S.I. 2001/1821, **arts. 1(1), 3(5)**

*Third party rights and access to evidence*

**392 Application of sections 393 and 394.**

Sections 393 and 394 apply to—

- (a) a warning notice given in accordance with section 54(1), 57(1), 63(3), [F475 63B(1),] 67(1), 88(4)(b), [88B(1)], 92(1), 126(1), [F476 131H(1),] 207(1), 255(1), 280(1), [[312G(1)],] 331(1), 345(2) (whether as a result of subsection (1) of that section or section 249(1)) [F477, 385(1) or 412B(4) or (8)];
- (b) a decision notice given in accordance with section 54(2), 57(3), 63(4), [F478 63B(3),] 67(4), 88(6)(b), [88B(5)], 92(4), 127(1), [F479 131H(4),] 208(1), 255(2), 280(2), [[312H(1)],] 331(3), 345(3) (whether as a result of subsection (1) of that section or section 249(1)) [F480, 386(1) or 412B(5) or (9)].

**Annotations:**

**Amendments (Textual)**

**F475** Word in s. 392(a) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(e), **Sch. 2 para. 29(2)(a)**

**F476** Word in s. 392(a) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(e), **Sch. 2 para. 29(2)(b)**

**F477** Words in s. 392(a) substituted (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(5), Sch. 5 para. 16(a)**

**F478** Word in s. 392(b) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(e), **Sch. 2 para. 29(3)(a)**

**F479** Word in s. 392(b) inserted (8.6.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(2)(e), **Sch. 2 para. 29(3)(b)**

**F480** Words in s. 392(b) substituted (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(5), Sch. 5 para. 16(b)**

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

C645 S. 392(a) excluded (1.12.2001) by S.I. 2001/3592, arts. 1(2), 46(2), 47(2), 48(2), 52(4), 55(2) (with art. 23(2))

**393 Third party rights.**

- (1) If any of the reasons contained in a warning notice to which this section applies relates to a matter which—
  - (a) identifies a person (“the third party”) other than the person to whom the notice is given, and
  - (b) in the opinion of [the body giving the notice], is prejudicial to the third party, a copy of the notice must be given to the third party.
- (2) Subsection (1) does not require a copy to be given to the third party if [the body giving the notice]—
  - (a) has given him a separate warning notice in relation to the same matter; or
  - (b) gives him such a notice at the same time as it gives the warning notice which identifies him.
- (3) The notice copied to a third party under subsection (1) must specify a reasonable period (which may not be less than [14 days]) within which he may make representations to [the body giving the notice].
- (4) If any of the reasons contained in a decision notice to which this section applies relates to a matter which—
  - (a) identifies a person (“the third party”) other than the person to whom the decision notice is given, and
  - (b) in the opinion of [the body giving the notice], is prejudicial to the third party, a copy of the notice must be given to the third party.
- (5) If the decision notice was preceded by a warning notice, a copy of the decision notice must (unless it has been given under subsection (4)) be given to each person to whom the warning notice was copied.
- (6) Subsection (4) does not require a copy to be given to the third party if [the body giving the notice]—
  - (a) has given him a separate decision notice in relation to the same matter; or
  - (b) gives him such a notice at the same time as it gives the decision notice which identifies him.
- (7) Neither subsection (1) nor subsection (4) requires a copy of a notice to be given to a third party if [the body giving the notice] considers it impracticable to do so.
- (8) Subsections (9) to (11) apply if the person to whom a decision notice is given has a right to refer the matter to the Tribunal.
- (9) A person to whom a copy of the notice is given under this section may refer to the Tribunal—
  - (a) the decision in question, so far as it is based on a reason of the kind mentioned in subsection (4); or
  - (b) any opinion expressed by [the body giving the notice] in relation to him.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (10) The copy must be accompanied by an indication of the third party’s right to make a reference under subsection (9) and of the procedure on such a reference.
- (11) A person who alleges that a copy of the notice should have been given to him, but was not, may refer to the Tribunal the alleged failure and—
- (a) the decision in question, so far as it is based on a reason of the kind mentioned in subsection (4); or
  - (b) any opinion expressed by [the body giving the notice] in relation to him.
- (12) Section 394 applies to a third party as it applies to the person to whom the notice to which this section applies was given, in so far as the material [to which access must be given] under that section relates to the matter which identifies the third party.
- (13) A copy of a notice given to a third party under this section must be accompanied by a description of the effect of section 394 as it applies to him.
- (14) Any person to whom a warning notice or decision notice was copied under this section must be given a copy of a notice of discontinuance applicable to the proceedings to which the warning notice or decision notice related.

**Annotations:**

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

- C646** S. 393 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 24(3)** (with **reg. 1(2)(3)**); S.I. 2001/3538, **art. 2(1)**  
 S. 393 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 38(2), 46(2), 47(2), 48(2), 52(4), 55(2)** (with **art. 23(2)**)
- C647** S. 393 applied by **Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544)**, **art. 95(10)** (as inserted (31.10.2004 for certain purposes and 14.1.2005 otherwise) by **The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476)**, **arts. 1(3), 13**)
- C648** S. 393 applied (N.I.) (1.11.2004) by **Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335)**, **regs. 1(1)(b), 24(3)** (with **reg. 1(2)**)
- C649** S. 393(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 36(4)** (with **art. 23(2)**)

**394 Access to [FCA or PRA] material.**

- (1) If [the FCA or the PRA] gives a person (“A”) a notice to which this section applies, it must—
- (a) allow him access to the material on which it relied in taking the decision which gave rise to the obligation to give the notice;
  - (b) allow him access to any secondary material which, [in its opinion,] might undermine that decision.
- (2) But [the body giving the notice] does not have to allow A access to material under subsection (1) if the material is excluded material or it—
- (a) relates to a case involving a person other than A; and
  - (b) was taken into account by [the body giving the notice] in A’s case only for purposes of comparison with other cases.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (3) [The body giving the notice] may refuse access A to particular material which it would otherwise have to allow him access to if, in its opinion, allowing him access to the material—
- (a) would not be in the public interest; or
  - (b) would not be fair, having regard to—
    - (i) the likely significance of the material to A in relation to the matter in respect of which he has been given a notice to which this section applies; and
    - (ii) the potential prejudice to the commercial interests of a person other than A which would be caused by the material’s disclosure.
- (4) If [the body giving the notice] does not allow A access to material because it is excluded material consisting of a protected item, it must give A written notice of—
- (a) the existence of the protected item; and
  - (b) [the body’s] decision not to allow him access to it.
- (5) If [the body giving the notice] refuses under subsection (3) to allow A access to material, it must give him written notice of—
- (a) the refusal; and
  - (b) the reasons for it.
- (6) “Secondary material” means material, other than material falling within paragraph (a) of subsection (1) which—
- (a) was considered by [the body giving the notice] in reaching the decision mentioned in that paragraph; or
  - (b) was obtained by [the body giving the notice in connection with the matter to which that notice] relates but which was not considered by it in reaching that decision.
- (7) “Excluded material” means material which—
- <sup>F481</sup>(a) is material the disclosure of which for the purposes of or in connection with any legal proceedings is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000; or
  - (c) is a protected item (as defined in section 413).

**Annotations:**

**Amendments (Textual)**

**F481** S. 394(7)(a) substituted (2.10.2000) for s. 394(7)(a)(b) by 2000 c. 23, s. 82, **Sch. 4 para. 11** (with s. 82(3)); S.I. 2000/2543, **art. 3**

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

**C650** S. 394 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 24(3)** (with **reg. 1(2)(3)**); S.I. 2001/3538, **art. 2(1)**

S. 394 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 36(3), 38(2), 46(2), 47(2), 48(2), 52(4), 55(2)** (with **art. 23(2)**)

**C651** S. 394 applied by Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), **art. 95(10)** (as inserted (31.10.2004 for certain purposes and 14.1.2005 otherwise) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), **arts. 1(3), 13**)

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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**C652** S. 394 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), regs. 1(1)(b), **24(3)** (with reg. 1(2))

*The [FCA's and PRA's] procedures*

**395 The[FCA's and PRA's] procedures.**

- (1) [The FCA and the PRA must each] determine the procedure that it proposes to follow in relation to the giving of—
  - (a) supervisory notices; and
  - (b) warning notices and decision notices.
- (2) That procedure must be designed to secure, among other things, that the decision which gives rise to the obligation to give any such notice is taken by a person not directly involved in establishing the evidence on which that decision is based, or by two or more persons who include a person not directly involved in establishing that evidence.
- (3) But the procedure may permit a decision which gives rise to an obligation to give a supervisory notice to be [taken otherwise as mentioned in subsection (2) if the person taking the decision is of a level of seniority laid down by the procedure and—]
  - (a) in the case of procedure proposed by the FCA, the FCA considers that, in the particular case, it is necessary in order to advance one or more of its operational objectives, or
  - (b) in the case of procedure proposed by the PRA, the PRA considers that, in the particular case, it is necessary in order to advance its general objective or its insurance objective.
- (4) A level of seniority laid down by the procedure for the purposes of subsection (3)(b) must be appropriate to the importance of the decision.
- (5) [The FCA and the PRA must each] issue a statement of [its procedure].
- (6) The statement must be published in the way appearing to [the body issuing it] to be best calculated to bring [the statement] to the attention of the public.
- (7) [The body issuing the statement] may charge a reasonable fee for providing a person with a copy of the statement.
- (8) [The body issuing a statement under this section] must, without delay, give the Treasury a copy of [the statement].
- (9) When [the FCA or the PRA gives] a supervisory notice, or a warning notice or decision notice, [it] must follow its stated procedure.
- (10) If [the FCA or the PRA] changes [its procedure] in a material way, it must publish a revised statement.
- (11) [The FCA's or the PRA's] failure in a particular case to follow its procedure as set out in the latest published statement does not affect the validity of a notice given in that case.
- (12) But subsection (11) does not prevent the Tribunal from taking into account any such failure in considering a matter referred to it.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

(13) “Supervisory notice” means a notice [or notification] given in accordance with section

[(a) 55Y(4), (7) or (8)(b);]

(b) 78(2) or (5);

[<sup>F482</sup>(bza) 78A(2) or (8)(b);]

[(bzb) section 88F(3), (5) or (6)(b);]

[(bzc) section 89V(3), (5) or (6)(b);]

[<sup>F483</sup>(ba) 96C;]

[<sup>F484</sup>(bb) 87O(2) or (5);]

[(bba) section 137P(5) or (8)(a);]

[<sup>F485</sup>(bc) 191B(1);]

(c) 197(3), (6) or (7)(b);

(d) 259(3), (8) or (9)(b);

(e) 268(3), (7)(a) or (9)(a) (as a result of subsection (8)(b));

(f) 282(3), (6) or (7)(b);

[<sup>F486</sup>(fa) 301J(1);]

(g) 321(2) or (5).

#### Annotations:

##### Amendments (Textual)

**F482** S. 395(13)(bza) inserted (12.7.2007) by The Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (S.I. 2007/1973), **art. 8**

**F483** S. 395(13)(ba) inserted (1.7.2005) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 (S.I. 2005/381), **reg. 7**

**F484** S. 395(13)(bb) inserted (1.7.2005) by The Prospectus Regulations 2005 (S.I. 2005/1433), **reg. 2(1), Sch. 1 para. 14**

**F485** S. 395(13)(bc) inserted (21.3.2009) by The Financial Services and Markets Act 2000 (Controllers) Regulations 2009 (S.I. 2009/534), **reg. 6(a)**

**F486** S. 395(13)(fa) inserted (21.3.2009) by The Financial Services and Markets Act 2000 (Controllers) Regulations 2009 (S.I. 2009/534), **reg. 6(b)**

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

**C653** S. 395 applied (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 10** (with **reg. 1(2)(3)**); S.I. 2001/3538, **art. 2(1)**

S. 395 amended (1.12.2001) by S.I. 2001/1228, **regs. 1(2)(c), 27(15)** (with **reg. 1(2)(3)**); S.I. 2001/3538, **art. 2(1)**

**C654** S. 395 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 10** (with **reg. 1(2)**)

**C655** S. 395 modified (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 27(15)** (with **reg. 1(2)**)

**C656** S. 395(1)(9) excluded (1.12.2001) by S.I. 2001/2957, **arts. 1, 12(9)**; S.I. 2001/3538, **art. 2(1)**

#### 396 Statements under section 395: consultation.

(1) Before issuing a statement of [its] procedure under section 395, [the FCA or (as the case may be) the PRA] must publish a draft of the proposed statement in the way appearing to [it] to be best calculated to bring [the draft] to the attention of the public.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (2) The draft must be accompanied by notice that representations about the proposal may be made to [the body publishing the draft] within a specified time.
- (3) [Before the FCA or the PRA issues the proposed statement of its procedure, it] must have regard to any representations made to it in accordance with subsection (2).
- (4) If [the FCA or the PRA issues the proposed statement of its procedure,] 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 of the FCA’s or the PRA’s procedure differs from the draft published by it] under subsection (1) in a way which is[, in its opinion,] significant, [it must] (in addition to complying with subsection (4)) publish details of the difference.
- (6) [The body publishing a draft under subsection (1)] may charge a reasonable fee for providing a person with a copy of [the draft].
- (7) This section also applies to a proposal to revise a statement of policy.

## PART XXVII

### OFFENCES

#### *Miscellaneous offences*

#### **397 Misleading statements and practices.**

- (1) This subsection applies to a person who—
  - (a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive in a material particular;
  - (b) dishonestly conceals any material facts whether in connection with a statement, promise or forecast made by him or otherwise; or
  - (c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive in a material particular.
- (2) A person to whom subsection (1) applies is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made)—
  - (a) to enter or offer to enter into, or to refrain from entering or offering to enter into, a relevant agreement; or
  - (b) to exercise, or refrain from exercising, any rights conferred by a relevant investment.
- (3) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any relevant investments is guilty of an offence if he does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those investments.

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (4) In proceedings for an offence under subsection (2) brought against a person to whom subsection (1) applies as a result of paragraph (a) of that subsection, it is a defence for him to show that the statement, promise or forecast was made in conformity with
- [<sup>F487</sup>(a) price stabilising rules;
  - (b) control of information rules; or
  - (c) the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.]
- (5) In proceedings brought against any person for an offence under subsection (3) it is a defence for him to show—
- (a) that he reasonably believed that his act or conduct would not create an impression that was false or misleading as to the matters mentioned in that subsection;
  - (b) that he acted or engaged in the conduct—
    - (i) for the purpose of stabilising the price of investments; and
    - (ii) in conformity with price stabilising rules; <sup>F488</sup>...
  - (c) that he acted or engaged in the conduct in conformity with control of information rules [<sup>F489</sup>; or
  - (a) that he acted or engaged in the conduct in conformity with the relevant provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.]
- (6) Subsections (1) and (2) do not apply unless—
- (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the United Kingdom or arrangements are made in or from the United Kingdom for the statement, promise or forecast to be made or the facts to be concealed;
  - (b) the person on whom the inducement is intended to or may have effect is in the United Kingdom; or
  - (c) the agreement is or would be entered into or the rights are or would be exercised in the United Kingdom.
- (7) Subsection (3) does not apply unless—
- (a) the act is done, or the course of conduct is engaged in, in the United Kingdom; or
  - (b) the false or misleading impression is created there.
- (8) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both.
- (9) “Relevant agreement” means an agreement—

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (a) the entering into or performance of which by either party constitutes an activity of a specified kind or one which falls within a specified class of activity; and
  - (b) which relates to a relevant investment.
- (10) “Relevant investment” means an investment of a specified kind or one which falls within a prescribed class of investment.
- (11) Schedule 2 (except paragraphs 25 and 26) applies for the purposes of subsections (9) and (10) with references to section 22 being read as references to each of those subsections.
- (12) Nothing in Schedule 2, as applied by subsection (11), limits the power conferred by subsection (9) or (10).
- (13) “Investment” includes any asset, right or interest.
- (14) “Specified” means specified in an order made by the Treasury.

**Annotations:**

**Amendments (Textual)**

- F487** Words in s. 397(4) substituted (17.3.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), **reg. 8(2)**
- F488** Word in s. 397(5)(b) repealed (17.3.2005) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), **reg. 8(3)**
- F489** S. 397(5)(a) and preceding word inserted (17.3.2005) after paragraph (c) by [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2005 \(S.I. 2005/381\)](#), **reg. 8(3)**

**Commencement Information**

- I117** S. 397 wholly in force at 1.12.2001; s. 397 not in force at Royal Assent see s. 431(2); s. 397(9)-(14) in force at 25.2.2001 by [S.I. 2001/516](#), **art. 2(a)**, **Sch. Pt. 1**; s. 397 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

**398 Misleading [FCA or PRA]: residual cases.**

- (1) A person who, in purported compliance with any requirement imposed by or under this Act, knowingly or recklessly gives [the FCA or the PRA] information which is false or misleading in a material particular is guilty of an offence.
- (2) Subsection (1) applies only to a requirement in relation to which no other provision of this Act creates an offence in connection with the giving of information.
- (3) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

**Annotations:**

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

- C657** S. 398 extended (1.12.2001) by [S.I. 2001/3646](#), **arts. 1(2)**, **3(3)(b)(4)**  
 S. 398 excluded (1.12.2001) by [S.I. 2001/3646](#), **arts. 1(2)**, **2(6)**

- C658** S. 398 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, **12(2)**
- C659** S. 398 applied (with modifications) (7.6.2010) by [The Credit Rating Agencies Regulations 2010 \(S.I. 2010/906\)](#), **reg. 25**
- C660** S. 398(1)(3) applied (1.12.2001) by [S.I. 1995/1537](#), **reg. 23(5)** (as amended (1.12.2001) by [S.I. 2001/3649](#), **arts. 1, 509(f)**)
- C661** S. 398(1)(3) applied (6.3.2008) by [The Regulated Covered Bonds Regulations 2008 \(S.I. 2008/346\)](#), **reg. 38(1)**

### **399 Misleading [F<sup>490</sup>the OFT].**

Section 44 of the <sup>M58</sup>Competition Act 1998 (offences connected with the provision of false or misleading information) applies in relation to any function of [F<sup>491</sup>the Office of Fair Trading] under this Act as if it were a function under Part I of that Act.

#### **Annotations:**

##### **Amendments (Textual)**

- F490** Words in s. 399 sidenote substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278(1), 279, **Sch. 25 para. 40(16)(b)**; [S.I. 2003/766](#), **art. 2**, Sch. (with art. 3)
- F491** Words in s. 399 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278(1), 279, **Sch. 25 para. 40(16)(a)**; [S.I. 2003/766](#), **art. 2**, Sch. (with art. 3)

##### **Marginal Citations**

- M58** 1998 c. 41.

### *Bodies corporate and partnerships*

### **400 Offences by bodies corporate etc.**

- (1) If an offence under this Act committed by a body corporate is shown—
  - (a) to have been committed with the consent or connivance of an officer, or
  - (b) to be attributable to any neglect on his part,the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.
- (3) If an offence under this Act committed by a partnership is shown—
  - (a) to have been committed with the consent or connivance of a partner, or
  - (b) to be attributable to any neglect on his part,the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) In subsection (3) “partner” includes a person purporting to act as a partner.
- (5) “Officer”, in relation to a body corporate, means—

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity; and
  - (b) an individual who is a controller of the body.
- (6) If an offence under this Act committed by an unincorporated association (other than a partnership) is shown—
- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
  - (b) to be attributable to any neglect on the part of such an officer or member, that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.
- (7) Regulations may provide for the application of any provision of this section, with such modifications as the Treasury consider appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside the United Kingdom.

#### Annotations:

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

**C662** S. 400 applied (3.9.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/1228, **regs. 1(2)(b)(c)**, 81 (with **reg. 1(2)(3)**); S.I. 2001/2632, **art. 2(2)**, **Sch. Pt. 2**; S.I. 2001/3538, **art. 2(1)**

S. 400 applied (1.12.2001) by S.I. 1995/1537, **reg. 23(6)** (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1**, 509(g))

S. 400 amended (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 10(8), 11(8) (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**

S. 400 amended (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 10(8), 11(8); S.I. 2001/3538, **art. 2(1)**

S. 400 modified (1.12.2001) by S.I. 2001/3646, **arts. 1(1)**, 12(2), 13(3)

**C663** S. 400 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b)**, **80** (with **reg. 1(2)**)

**C664** S. 400 applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 38(2)**

**C665** S. 400 applied by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), s. 15A(7) (as substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), **arts. 2(2)**, 3(1), **Sch. 1 para. 232(2)** (with **arts. 6**, 11, 12))

**C666** S. 400 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 26**

#### *Institution of proceedings*

### **401 Proceedings for offences.**

- (1) In this section “offence” means an offence under this Act or subordinate legislation made under this Act.
- (2) Proceedings for an offence may be instituted in England and Wales only—
  - (a) by **[the appropriate regulator]** or the Secretary of State; or
  - (b) by or with the consent of the Director of Public Prosecutions.
- (3) Proceedings for an offence may be instituted in Northern Ireland only—

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- (a) by [the appropriate regulator] or the Secretary of State; or
- (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.

[(3A) For the purposes of subsections (2)(a) and (3)(a), the PRA is the “appropriate regulator” in respect of each of the following offences—

- (a) an offence under section 55P(10) where the contravention is of a requirement imposed by the PRA;
- (b) an offence under section 56(4) where the prohibition order is made by the PRA;
- (c) an offence under section 177(3) where the investigation is being, or is likely to be, conducted on behalf of the PRA;
- (d) an offence under section 177(4) where the requirement is imposed by the PRA;
- (e) an offence under section 177(6) where the warrant is issued as a result of information on oath given by the PRA or a person appointed by the PRA to conduct an investigation on its behalf;
- (f) an offence under section 191F(1) where the notice should have been given to the PRA;
- (g) an offence under any of section 191F(2) to (7) where the notice, approval or information was given to or by the PRA;
- (h) an offence under section 366(3);
- (i) an offence under section 398(1) where the information was given to the PRA.

(3B) For the purposes of subsections (2)(a) and (3)(a), the FCA is the “appropriate regulator” in respect of all other offences under this Act or subordinate legislation made under this Act.]

- (4) Except in Scotland, proceedings for an offence under section 203 may also be instituted by [<sup>F492</sup>the Office of Fair Trading]
- (5) In exercising its power to institute proceedings for an offence, [the appropriate regulator] must comply with any conditions or restrictions imposed in writing by the Treasury.
- (6) Conditions or restrictions may be imposed under subsection (5) in relation to—
  - (a) proceedings generally; or
  - (b) such proceedings, or categories of proceedings, as the Treasury may direct.

**Annotations:**

**Amendments (Textual)**

**F492** Words in s. 401 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(17)**; S.I. 2003/766, **art. 2**, **Sch.** (with art. 3)

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

**C667** S. 401 applied (1.12.2001) by S.I. 1995/1537, **reg. 23(6)** (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1**, 509(g))

**C668** S. 401 amended (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 10(8), 11(8), 13(1)(3) (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**

S. 401 amended (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 10(8), 11(8), 13(1); S.I. 2001/3538, **art. 2(1)**

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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S. 401 modified (1.12.2001) by S.I. 2001/3646, **arts. 1(1), 12(2), 13(3)**

**C669** S. 401 applied by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), s. 15A(7) (as substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 232(2)** (with arts. 6, 11, 12))

**C670** S. 401 applied (with modifications) (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 27**

**C671** S. 401(2)(3)(5)(6) applied (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), **reg. 38(2)**

#### **402 Power of [FCA] to institute proceedings for certain other offences.**

- (1) Except in Scotland, [the FCA] may institute proceedings for an offence under—
  - (a) Part V of the <sup>M59</sup>Criminal Justice Act 1993 (insider dealing); <sup>F493</sup> ...
  - (b) prescribed regulations relating to money laundering. [<sup>F494</sup> or
  - (c) Schedule 7 to the Counter-Terrorism Act 2008 (terrorist financing or money laundering).]
- (2) In exercising its power to institute proceedings for any such offence, [the FCA] must comply with any conditions or restrictions imposed in writing by the Treasury.
- (3) Conditions or restrictions may be imposed under subsection (2) in relation to—
  - (a) proceedings generally; or
  - (b) such proceedings, or categories of proceedings, as the Treasury may direct.

#### **Annotations:**

##### **Amendments (Textual)**

**F493** Word in s. 402(1) omitted (27.11.2008) by virtue of Counter-Terrorism Act 2008 (c. 28), ss. 62, 100(2), **Sch. 7 para. 33(4)** (with s. 101(2), **Sch. 7 para. 43**)

**F494** S. 402(1)(c) and preceding word inserted (27.11.2008) by Counter-Terrorism Act 2008 (c. 28), ss. 62, 100(2), **Sch. 7 para. 33(4)** (with s. 101(2), **Sch. 7 para. 43**)

##### **Commencement Information**

**I118** S. 402 wholly in force at 1.12.2001; s. 402 not in force at Royal Assent see s. 431(2); s. 402(1)(b) in force for certain purposes at 25.2.2001 by S.I. 2001/516, **art. 2(b), Sch. Pt. 2**; s. 402 in force for specified purposes at 19.10.2001 by S.I. 2001/3436, **art. 2**; s. 402 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

##### **Marginal Citations**

**M59** 1993 c. 36.

#### **403 Jurisdiction and procedure in respect of offences.**

- (1) A fine imposed on an unincorporated association on its conviction of an offence is to be paid out of the funds of the association.
- (2) Proceedings for an offence alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in that of any of its members).

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (3) Rules of court relating to the service of documents are to have effect as if the association were a body corporate.
- (4) In proceedings for an offence brought against an unincorporated association—
- (a) section 33 of the <sup>M60</sup>Criminal Justice Act 1925 and Schedule 3 to the <sup>M61</sup>Magistrates’ Courts Act 1980 (procedure) apply as they do in relation to a body corporate;
  - (b) section 70 of the <sup>M62</sup>Criminal Procedure (Scotland) Act 1995 (procedure) applies as if the association were a body corporate;
  - (c) section 18 of the <sup>M63</sup>Criminal Justice (Northern Ireland) Act 1945 and Schedule 4 to the <sup>M64</sup>Magistrates’ Courts (Northern Ireland) Order 1981 (procedure) apply as they do in relation to a body corporate.
- (5) Summary proceedings for an offence may be taken—
- (a) against a body corporate or unincorporated association at any place at which it has a place of business;
  - (b) against an individual at any place where he is for the time being.
- (6) Subsection (5) does not affect any jurisdiction exercisable apart from this section.
- (7) “Offence” means an offence under this Act.

#### Annotations:

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

**C672** S. 403 applied (1.12.2001) by S.I. 1995/1537, **reg. 23(6)** (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1, 509(g)**)

**C673** S. 403 amended (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 10(8), 11(8), 13(1)(3)** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**

S. 403 amended (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 10(8), 11(8), 13(1)**; S.I. 2001/3538, **art. 2(1)**

S. 403 modified (1.12.2001) by S.I. 2001/3646, **arts. 1(1), 12(2), 13(3)**

S. 403 applied (3.9.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/1228, **regs. 1(2)(b) (c), 82** (with **reg. 1(2)(3)**); S.I. 2001/2632, **art. 2(2), Sch. Pt. 2**; S.I. 2001/3538, **art. 2(1)**

**C674** S. 403 applied (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) 2004 (S.R. 2004/335), **regs. 1(1)(b), 81** (with **reg. 1(2)**)

**C675** S. 403 applied by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), s. 15A(7) (as substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), **arts. 2(2), 3(1), Sch. 1 para. 232(2)** (with **arts. 6, 11, 12**))

**C676** S. 403 applied (7.6.2010) by The Credit Rating Agencies Regulations 2010 (S.I. 2010/906), **reg. 28**

##### Marginal Citations

**M60** 1925 c. 86.

**M61** 1980 c. 43.

**M62** 1995 c. 46.

**M63** 1945 c. 15 (N.I.)

**M64** S.I. 1981/1675

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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## PART XXVIII

### MISCELLANEOUS

#### *[<sup>F495</sup>Consumer redress schemes]*

#### Annotations:

#### Amendments (Textual)

**F495** Ss. 404-404G and preceding cross-heading substituted (12.10.2010) for s. 404 and preceding cross-heading by [Financial Services Act 2010 \(c. 28\)](#), **ss. 14, 26(3)**; [S.I. 2010/2480](#), **art. 2**

#### <sup>F496</sup>**404 Consumer redress schemes**

- (1) This section applies if—
  - (a) it appears to the Authority that there may have been a widespread or regular failure by relevant firms to comply with requirements applicable to the carrying on by them of any activity;
  - (b) it appears to it that, as a result, consumers have suffered (or may suffer) loss or damage in respect of which, if they brought legal proceedings, a remedy or relief would be available in the proceedings; and
  - (c) it considers that it is desirable to make rules for the purpose of securing that redress is made to the consumers in respect of the failure (having regard to other ways in which consumers may obtain redress).
- (2) “Relevant firms” means—
  - (a) authorised persons; <sup>F497</sup> ...
  - (b) payment service providers. [<sup>F498</sup> or
  - (c) electronic money issuers.]
- (3) The Authority may make rules requiring each relevant firm (or each relevant firm of a specified description) which has carried on the activity on or after the specified date to establish and operate a consumer redress scheme.
- (4) A “consumer redress scheme” is a scheme under which the firm is required to take one or more of the following steps in relation to the activity.
- (5) The firm must first investigate whether, on or after the specified date, it has failed to comply with the requirements mentioned in subsection (1)(a) that are applicable to the carrying on by it of the activity.
- (6) The next step is for the firm to determine whether the failure has caused (or may cause) loss or damage to consumers.
- (7) If the firm determines that the failure has caused (or may cause) loss or damage to consumers, it must then—
  - (a) determine what the redress should be in respect of the failure; and
  - (b) make the redress to the consumers.
- (8) A relevant firm is required to take the above steps in relation to any particular consumer even if, after the rules are made, a defence of limitation becomes available to the firm in respect of the loss or damage in question.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

(9) Before making rules under this section, the Authority must consult the scheme operator of the ombudsman scheme.

(10) For the meaning of consumers, see section 404E.]

**Annotations:**

**Amendments (Textual)**

**F496** Ss. 404-404G and preceding cross-heading substituted (12.10.2010) for s. 404 and preceding cross-heading by [Financial Services Act 2010 \(c. 28\)](#), [ss. 14, 26\(3\)](#); [S.I. 2010/2480](#), [art. 2](#)

**F497** Word in [s. 404\(2\)](#) omitted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by virtue of [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), [regs. 1\(2\)\(a\)\(xv\)\(b\), 79](#), [Sch. 4 para. 2\(4\)\(a\)](#) (with [reg. 3](#))

**F498** [S. 404\(2\)\(c\)](#) and preceding word inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), [regs. 1\(2\)\(a\)\(xv\)\(b\), 79](#), [Sch. 4 para. 2\(4\)\(a\)](#) (with [reg. 3](#))

[<sup>F495</sup> **404A** **Rules under s.404: supplementary**

(1) Rules under section 404 may make provision—

- (a) specifying the activities and requirements in relation to which relevant firms are to carry out investigations under consumer redress schemes;
- (b) setting out, in relation to any specified description of case, examples of things done, or omitted to be done, that are to be regarded as constituting a failure to comply with a requirement;
- (c) setting out, in relation to any specified description of case, matters to be taken into account, or steps to be taken, by relevant firms for the purpose of—
  - (i) assessing evidence as to a failure to comply with a requirement; or
  - (ii) determining whether such a failure has caused (or may cause) loss or damage to consumers;
- (d) as to the kinds of redress that are, or are not, to be made to consumers in specified descriptions of case and the way in which redress is to be determined in specified descriptions of case;
- (e) as to the things that relevant firms are, or are not, to do in establishing and operating consumer redress schemes;
- (f) securing that relevant firms are not required to investigate anything occurring after a specified date;
- (g) specifying the times by which anything required to be done under any consumer redress scheme is to be done;
- (h) requiring relevant firms to provide information to the Authority;
- (i) authorising one or more competent persons to do anything for the purposes of, or in connection with, the establishment or operation of any consumer redress scheme;
- (j) for the nomination or approval by the Authority of persons authorised under paragraph (i);
- (k) as to the circumstances in which, instead of a relevant firm, the Authority (or one or more competent persons acting on the Authority's behalf) may carry out the investigation and take the other relevant steps under any consumer redress scheme;

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- (l) as to the powers to be available to those carrying out an investigation by virtue of paragraph (k);
  - (m) as to the enforcement of any redress (for example, in the case of a money award, as a debt owed by a relevant firm).
- (2) The only examples that may be set out in the rules as a result of subsection (1)(b) are examples of things done, or omitted to be done, that have been, or would be, held by a court or tribunal to constitute a failure to comply with a requirement.
- (3) Matters may not be set out in the rules as a result of subsection (1)(c) if they have not been, or would not be, taken into account by a court or tribunal for the purpose mentioned there.
- (4) The Authority must exercise the power conferred as a result of subsection (1)(d) so as to secure that, in relation to any description of case, the only kinds of redress to be made are those which it considers to be just in relation to that description of case.
- (5) In acting under subsection (4), the Authority must have regard (among other things) to the nature and extent of the losses or damage in question.
- (6) The provision that may be made under subsection (1)(h) includes provision applying (with or without modifications)—
- (a) any provision of section 165; or
  - (b) any provision of Part 11 relating to that section.
- (7) The reference in subsection (1)(k) to the other relevant steps under any consumer redress scheme is a reference to the Authority making the determinations mentioned in section 404(6) and (7) (with the firm still required to make the redress).
- (8) If the rules include provision under subsection (1)(k), they must also include provision for—
- (a) giving warning and decision notices, and
  - (b) conferring rights on relevant firms to refer matters to the Tribunal,
- in relation to any determination mentioned in section 404(6) and (7) made by the Authority.
- (9) Nothing in this section is to be taken as limiting the power conferred by section 404.

#### **404B Complaints to the ombudsman scheme**

- (1) If—
- (a) a consumer makes a complaint under the ombudsman scheme in respect of an act or omission of a relevant firm, and
  - (b) at the time the complaint is made, the subject-matter of the complaint falls to be dealt with (or has been dealt with) under a consumer redress scheme,
- the way in which the complaint is to be determined by the ombudsman is to be as mentioned in subsection (4).
- (2) If a consumer—
- (a) is not satisfied with a determination made by a relevant firm under a consumer redress scheme, or
  - (b) considers that a relevant firm has failed to make a determination in accordance with a consumer redress scheme,

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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the consumer may, in respect of that determination or failure, make a complaint under the ombudsman scheme.

- (3) A complaint mentioned in subsection (1) or (2) is referred to in the following provisions of this section as a “relevant complaint”.
- (4) A relevant complaint is to be determined by reference to what, in the opinion of the ombudsman, the determination under the consumer redress scheme should be or should have been (subject to subsection (5)).
- (5) If, in determining a relevant complaint, the ombudsman determines that the firm should make (or should have made) a payment of an amount to the consumer, the amount awarded by the ombudsman (a “money award”) must not exceed the monetary limit (within the meaning of section 229).
- (6) But the ombudsman may recommend that the firm pay a larger amount.
- (7) A money award—
  - (a) may specify the date by which the amount awarded is to be paid;
  - (b) may provide for interest to be payable, at a rate specified in the award, on any amount which is not paid by that date; and
  - (c) is enforceable by the consumer in accordance with Part 3 or 3A of Schedule 17 (as the case may be).
- (8) If, in determining a relevant complaint, the ombudsman determines that the firm should take (or should have taken) particular action in relation to the consumer, the ombudsman may direct the firm to take that action.
- (9) Compliance with a direction under subsection (8) is enforceable, on the application of the consumer, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (10) In consequence of the provision made by this section, sections 228(2) and 229 do not apply in relation to relevant complaints; but all other provision made by or under Part 16 applies in relation to those complaints.
- (11) The compulsory jurisdiction of the ombudsman scheme is to include the jurisdiction resulting from this section.
- (12) Nothing in subsection (1) is to be taken as requiring the ombudsman to determine a complaint in any case where (apart from that subsection) the complaint would not fall to be determined (whether as a result of rules made under Schedule 17 or otherwise).
- (13) Nothing in subsection (2) is to be taken as conferring an entitlement on a person who, for the purposes of the ombudsman scheme, is not an eligible complainant in relation to the subject-matter of the determination mentioned there.

#### **404C Enforcement**

The following provisions—

- (a) Part 14 (disciplinary measures), and
  - (b) so much of this Act as relates to any provision of that Part,
- (which apply only in relation to authorised persons) are also to apply in relation to relevant firms which are not (or are no longer) authorised persons.

**404D Applications to Tribunal to quash rules or provision of rules**

- (1) Any person may apply to the Tribunal for a review of any rules made under section 404.
- (2) The Tribunal may—
  - (a) dismiss the application; or
  - (b) make an order (a “quashing order”) quashing any rules made under section 404 or any provision of those rules.
- (3) An application may be made only if permission to make it has first been obtained from the Tribunal.
- (4) The Tribunal may grant permission to make an application only if it considers that the applicant has a sufficient interest in the matter to which the application relates.
- (5) The general rule is that, in determining an application, the Tribunal is to apply the principles applicable on an application for judicial review.
- (6) If (or so far as) an application relates to an example set out in the rules as a result of section 404A(1)(b), the Tribunal may determine whether the example constitutes a failure to comply with the requirement in question.
- (7) If (or so far as) an application relates to a matter set out in the rules as a result of section 404A(1)(c), the Tribunal may determine whether the matter should be taken into account as mentioned in that provision.
- (8) In the case of an application within subsection (6) or (7), the Tribunal's jurisdiction under that subsection is in addition to its jurisdiction under subsection (5).
- (9) A quashing order may be enforced as if it were an order made, on an application for judicial review, by the High Court or, in Scotland, the Court of Session.
- (10) The Tribunal may award damages to the applicant if—
  - (a) the application includes a claim for damages arising from any matter to which the application relates; and
  - (b) the Tribunal is satisfied that an award would have been made by the High Court or, in Scotland, the Court of Session if the claim had been made in an action begun in that court by the applicant when making the application.
- (11) An award of damages under subsection (10) may be enforced as if it were an award made by the High Court or, in Scotland, the Court of Session.
- (12) In the case of any proceedings under this section, the judge presiding at the proceedings must be—
  - (a) a judge of the High Court or the Court of Appeal or a judge of the Court of Session; or
  - (b) such other person as may be agreed from time to time by—
    - (i) the Lord Chief Justice, the Lord President or the Lord Chief Justice of Northern Ireland (as the case may be); and
    - (ii) the Senior President of Tribunals.
- (13) Section 133 does not apply in the case of an application under this section, but—
  - (a) Tribunal Procedure Rules may make provision for the suspension of rules made under section 404 or of any provision of those rules, pending determination of the application; and

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (b) in the case of an application within subsection (6) or (7), the Tribunal may consider any evidence relating to the application's subject-matter, whether or not it was available at the time the rules were made.
- (14) If—
- (a) the Tribunal refuses to grant permission to make an application under this section, and
  - (b) on an appeal by the applicant, the Court of Appeal grants the permission, the Court of Appeal may go on to decide the application under this section.

#### **404E Meaning of “consumers”**

- (1) For the purposes of sections 404 to 404B “consumers” means persons who—
- (a) have used, or may have contemplated using, any of the services within subsection (2); or
  - (b) have relevant rights or interests in relation to any of the services within that subsection.
- (2) The services within this subsection are services provided by—
- (a) authorised persons in carrying on regulated activities;
  - (b) authorised persons in carrying on a consumer credit business in connection with the accepting of deposits;
  - (c) authorised persons in communicating, or approving the communication by others of, invitations or inducements to engage in investment activity;
  - (d) authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services;
  - (e) persons acting as appointed representatives; <sup>F499</sup> ...
  - (f) payment service providers in providing payment services. [<sup>F500</sup> or
  - (g) electronic money issuers in issuing electronic money.]
- (3) A person (“P”) has a “relevant right or interest” in relation to any services within subsection (2) if P has a right or interest—
- (a) which is derived from, or is otherwise attributable to, the use of the services by others; or
  - (b) which may be adversely affected by the use of the services by persons acting on P's behalf or in a fiduciary capacity in relation to P.
- (4) If a person is providing a service within subsection (2) as a trustee, the persons who have been, or may have been, beneficiaries of the trust are to be treated as persons who have used, or may have contemplated using, the service.
- (5) A person who deals with another person (“B”) in the course of B providing a service within subsection (2) is to be treated as using the service.
- (6) In this section—
- “accepting”, in relation to deposits, includes agreeing to accept;
  - “consumer credit business” has the same meaning as in the Consumer Credit Act 1974 (see section 189(1));
  - “credit institution” has the meaning given by section 138(1B);
  - “engage in investment activity” has the meaning given by section 21;

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[<sup>F501</sup>“electronic money” has the same meaning as in the Electronic Money Regulations 2011 and any reference to issuing electronic money must be read accordingly;]

“payment services” has the same meaning as in the Payment Services Regulations 2009;

“payment service provider” means a person who is a payment service provider for the purposes of those regulations as a result of falling within any of paragraphs (a) to (e) of the definition in regulation 2(1);

“relevant ancillary services” has the meaning given by section 138(1C).

#### Annotations:

##### Amendments (Textual)

**F499** Word in s. 404E(2) omitted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by virtue of [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, [Sch. 4 para. 2\(4\)\(b\)\(i\)](#) (with reg. 3)

**F500** S. 404E(2)(g) and preceding word inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, [Sch. 4 para. 2\(4\)\(b\)\(i\)](#) (with reg. 3)

**F501** S. 404E(6): definition of “electronic money” inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, [Sch. 4 para. 2\(4\)\(b\)\(ii\)](#) (with reg. 3)

#### 404F Other definitions etc

- (1) For the purposes of sections 404 to 404B—
  - “redress” includes—
    - (a) interest; and
    - (b) a remedy or relief which could not be awarded in legal proceedings;
  - “specified” means specified in rules made under section 404.
- (2) In determining for the purposes of those sections whether an authorised person has failed to comply with a requirement, anything which an appointed representative has done or omitted as respects business for which the authorised person has accepted responsibility is to be treated as having been done or omitted by the authorised person.
- (3) References in those sections to the failure by a relevant firm to comply with a requirement applicable to the carrying on by it of any activity include anything done, or omitted to be done, by it in carrying on the activity—
  - (a) which is in breach of a duty or other obligation, prohibition or restriction; or
  - (b) which otherwise gives rise to the availability of a remedy or relief in legal proceedings.
- (4) It does not matter whether—
  - (a) the duty or other obligation, prohibition or restriction, or
  - (b) the remedy or relief,
 arises as a result of any provision made by or under this or any other Act, a rule of law or otherwise.
- (5) References in sections 404 to 404B to a relevant firm include—

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- (a) a person who was at any time a relevant firm but has subsequently ceased to be one; and
  - (b) a person who has assumed a liability (including a contingent one) incurred by a relevant firm in respect of a failure by the firm to comply with a requirement applicable to the carrying on by it of any activity.
- (6) References in those sections to the carrying on of an activity by a relevant firm are, accordingly, to be read in that case with the appropriate modifications.
- [<sup>F502</sup>(6A) References in sections 404 and 404E to an “electronic money issuer” are references to a person mentioned in paragraph (a), (b), (c), (d), (h) or (i) of the definition of “electronic money issuer” in regulation 2(1) of the Electronic Money Regulations 2011.]
- (7) If the Authority varies a permission or authorisation of a person so as to impose requirements on the person to establish and operate a scheme which corresponds to, or is similar to, a consumer redress scheme, the provision that may be included in the permission or authorisation as varied includes—
- (a) provision imposing requirements on the person corresponding to those that could be included in rules made under section 404; and
  - (b) provision corresponding to section 404B.
- (8) In subsection (7) the reference to the variation of a permission or authorisation by the Authority is a reference to—
- (a) the variation under section 44 or 45 of a Part IV permission; <sup>F503</sup> ...
  - (b) the variation under regulation 8 or 11 of the Payment Services Regulations 2009 of an authorisation under those regulations. [<sup>F504</sup> or
  - (c) the variation under regulation 8 or 11 of the Electronic Money Regulations 2011 of an authorisation under those regulations.]

#### Annotations:

##### Amendments (Textual)

- F502** S. 404F(6A) inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, [Sch. 4 para. 2\(5\)\(i\)](#) (with reg. 3)
- F503** Word in s. 404F(8)(a) omitted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by virtue of [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, [Sch. 4 para. 2\(5\)\(ii\)](#) (with reg. 3)
- F504** S. 404F(8)(c) and preceding word inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, [Sch. 4 para. 2\(5\)\(ii\)](#) (with reg. 3)

#### 404G Power to widen the scope of consumer redress schemes

- (1) The Treasury may by order amend the definition of “relevant firms” in section 404 or the definition of “consumers” in section 404E (or both).
- (2) An order under this section may make consequential amendments of any provision of sections 404 to 404F.]

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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### *Third countries*

#### **405 Directions.**

- (1) For the purpose of implementing a third country decision, the Treasury may direct the Authority to—
  - (a) refuse an application for permission under Part IV made by a body incorporated in, or formed under the law of, any part of the United Kingdom;
  - (b) defer its decision on such an application either indefinitely or for such period as may be specified in the direction;
  - (c) give a notice of objection to a person who has served a notice of control to the effect that he proposes to acquire a 50% stake in a UK authorised person; or
  - (d) give a notice of objection to a person who has acquired a 50% stake in a UK authorised person without having served the required notice of control.
- (2) A direction may also be given in relation to—
  - (a) any person falling within a class specified in the direction;
  - (b) future applications, notices of control or acquisitions.
- (3) The Treasury may revoke a direction at any time.
- (4) But revocation does not affect anything done in accordance with the direction before it was revoked.
- (5) “Third country decision” means a decision of the Council or the Commission under—
  - [<sup>F505</sup>(a) Article 15(3) of the markets in financial instruments directive;]
  - (b) <sup>F506</sup> .....
  - (c) Article 29b(4) of the first non-life insurance directive; or
  - [<sup>F507</sup>(d) Article 59(4) of the life assurance consolidation directive.]

#### **Annotations:**

##### **Amendments (Textual)**

- F505** S. 405(5)(a) substituted (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(5), **Sch. 5 para. 17**
- F506** S. 405(5)(b) repealed (1.1.2007) by [The Capital Requirements Regulations 2006 \(S.I. 2006/3221\)](#), reg. 29(1), **Sch. 3 para. 1**
- F507** S. 405(5)(d) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), **reg. 6(4)**

##### **Commencement Information**

- I119** S. 405 wholly in force at 1.12.2001; s. 405 not in force at Royal Assent see s. 431(2); s. 405 (except (1)(c)(d)) in force at 3.9.2001 by [S.I. 2001/2632](#), art. 2(2), **Sch. Pt. 2**; s. 405 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

#### **406 Interpretation of section 405.**

- (1) For the purposes of section 405, a person (“the acquirer”) acquires a 50% stake in a UK authorised person (“A”) on first falling within any of the cases set out in subsection (2).
- (2) The cases are where the acquirer—

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (a) holds 50% or more of the shares in A;
  - (b) holds 50% or more of the shares in a parent undertaking (“P”) of A;
  - (c) is entitled to exercise, or control the exercise of, 50% or more of the voting power in A; or
  - (d) is entitled to exercise, or control the exercise of, 50% or more of the voting power in P.
- (3) In subsection (2) “the acquirer” means—
- (a) the acquirer;
  - (b) any of the acquirer’s associates; or
  - (c) the acquirer and any of his associates.
- (4) “Associate”, “shares” and “voting power” have the same meaning as in section 422.

#### **407 Consequences of a direction under section 405.**

- (1) If the Authority refuses an application for permission as a result of a direction under section 405(1)(a)—
- (a) subsections (7) to (9) of section 52 do not apply in relation to the refusal; but
  - (b) the Authority must notify the applicant of the refusal and the reasons for it.
- (2) If the Authority defers its decision on an application for permission as a result of a direction under section 405(1)(b)—
- (a) the time limit for determining the application mentioned in section 52(1) or (2) stops running on the day of the deferral and starts running again (if at all) on the day the period specified in the direction (if any) ends or the day the direction is revoked; and
  - (b) the Authority must notify the applicant of the deferral and the reasons for it.
- (3) If the Authority gives a notice of objection to a person as a result of a direction under section 405(1)(c) or (d)—
- (a) sections 189 and 191 have effect as if the notice was a notice of objection within the meaning of Part XII; and
  - (b) the Authority must state in the notice the reasons for it.

#### **Annotations:**

##### **Commencement Information**

**I120** S. 407 wholly in force at 1.12.2001; s. 407 not in force at Royal Assent see s. 431(2); s. 407(1)(2) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 407 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

#### **408 EFTA firms.**

- (1) If a third country decision has been taken, the Treasury may make a determination in relation to an EFTA firm which is a subsidiary undertaking of a parent undertaking which is governed by the law of the country to which the decision relates.
- (2) “Determination” means a determination that the firm concerned does not qualify for authorisation under Schedule 3 even if it satisfies the conditions in paragraph 13 or 14 of that Schedule.

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (3) A determination may also be made in relation to any firm falling within a class specified in the determination.
- (4) The Treasury may withdraw a determination at any time.
- (5) But withdrawal does not affect anything done in accordance with the determination before it was withdrawn.
- (6) If the Treasury make a determination in respect of a particular firm, or withdraw such a determination, they must give written notice to that firm.
- (7) The Treasury must publish notice of any determination (or the withdrawal of any determination)—
  - (a) in such a way as they think most suitable for bringing the determination (or withdrawal) to the attention of those likely to be affected by it; and
  - (b) on, or as soon as practicable after, the date of the determination (or withdrawal).
- (8) “EFTA firm” means a firm, institution or undertaking which—
  - (a) is an EEA firm as a result of paragraph 5(a), (b) or (d) of Schedule 3; and
  - (b) is incorporated in, or formed under the law of, an EEA State which is not a member State.
- (9) “Third country decision” has the same meaning as in section 405.

**Annotations:**

**Commencement Information**

**I121** S. 408 wholly in force at 1.12.2001; s. 408 not in force at Royal Assent see s. 431(2); s. 408 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 408 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**409 Gibraltar.**

- (1) The Treasury may by order—
  - (a) modify Schedule 3 so as to provide for Gibraltar firms of a specified description to qualify for authorisation under that Schedule in specified circumstances;
  - (b) modify Schedule 3 so as to make provision in relation to the exercise by UK firms of rights under the law of Gibraltar which correspond to EEA rights;
  - (c) modify Schedule 4 so as to provide for Gibraltar firms of a specified description to qualify for authorisation under that Schedule in specified circumstances;
  - (d) modify section 264 so as to make provision in relation to collective investment schemes constituted under the law of Gibraltar;
  - (e) provide for the Authority to be able to give notice under section 264(2) on grounds relating to the law of Gibraltar;
  - (f) provide for this Act to apply to a Gibraltar recognised scheme as if the scheme were a scheme recognised under section 264.
- (2) The fact that a firm may qualify for authorisation under Schedule 3 as a result of an order under subsection (1) does not prevent it from applying for a Part IV permission.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (3) “Gibraltar firm” means a firm which has its head office in Gibraltar or is otherwise connected with Gibraltar.
- (4) “Gibraltar recognised scheme” means a collective investment scheme—
  - (a) constituted in an EEA State other than the United Kingdom, and
  - (b) recognised in Gibraltar under provisions which appear to the Treasury to give effect to the provisions of a relevant [F508 EU ] instrument.
- (5) “Specified” means specified in the order.
- (6) “UK firm” and “EEA right” have the same meaning as in Schedule 3.

**Annotations:**

**Amendments (Textual)**

**F508** Word in s. 409(4) 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\(1\)\(3\)\(4\)](#)

*International obligations*

**410 International obligations.**

- (1) If it appears to the Treasury that any action proposed to be taken by a relevant person would be incompatible with [F509 EU ] obligations or any other international obligations of the United Kingdom, they may direct that person not to take that action.
- (2) If it appears to the Treasury that any action which a relevant person has power to take is required for the purpose of implementing any such obligations, they may direct that person to take that action.
- (3) A direction under this section—
  - (a) may include such supplemental or incidental requirements as the Treasury consider necessary or expedient; and
  - (b) is enforceable, on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the <sup>M65</sup>Court of Session Act 1988.
- (4) “Relevant person” means—

.....

  - [(a) the FCA;
  - (aa) the PRA;
  - (ab) the Bank of England when exercising functions conferred on it by Part 18;]
  - (c) any recognised investment exchange (other than one which is an overseas investment exchange);
  - (d) any recognised clearing house (other than one which is an overseas clearing house);
  - (e) a person included in the list maintained under section 301; or
  - (f) the scheme operator of the ombudsman scheme.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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**Annotations:****Amendments (Textual)**

**F509** Word in s. 410(1) 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\(1\)\(3\)\(4\)](#)

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

**C677** S. 410 applied (1.12.2001) by [S.I. 1995/1537](#), [reg. 23\(3\)](#) (as amended (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 509(d))

**Marginal Citations**

**M65** 1988 c. 36.

*Tax treatment of levies and repayments***411 Tax treatment of levies and repayments.**

- <sup>F510</sup>(1) .....
- (2) <sup>F511</sup> .....

**Annotations:****Amendments (Textual)**

**F510** S. 411(1) repealed (1.12.2001) by [S.I. 2001/3629](#), [arts. 1\(2\)\(a\)](#), 109, [Sch.](#)

**F511** S. 411(2) repealed (1.4.2009 with effect in accordance with [s. 1329\(1\)](#) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [ss. 1326](#), [1329\(1\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1](#), 2)

*Gaming contracts***412 Gaming contracts.**

- (1) No contract to which this section applies is void or unenforceable because of—
- (a) <sup>F512</sup>... Article 170 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985; or
  - (b) <sup>F513</sup> .....
- (2) This section applies to a contract if—
- (a) it is entered into by either or each party by way of business;
  - (b) the entering into or performance of it by either party constitutes an activity of a specified kind or one which falls within a specified class of activity; and
  - (c) it relates to an investment of a specified kind or one which falls within a specified class of investment.
- (3) Part II of Schedule 2 applies for the purposes of subsection (2)(c), with the references to section 22 being read as references to that subsection.
- (4) Nothing in Part II of Schedule 2, as applied by subsection (3), limits the power conferred by subsection (2)(c).

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (5) “Investment” includes any asset, right or interest.
- (6) “Specified” means specified in an order made by the Treasury.

**Annotations:**

**Amendments (Textual)**

**F512** Words in s. 412(1)(a) repealed (1.9.2007) by Gambling Act 2005 (c. 19), ss. 334(1)(e)(i), 356(4)(5), 358(1), **Sch. 17** (with ss. 334(2), 352, 354); S.I. 2006/3272, art. 2(4), Sch. 3B (with Sch. 4) (as amended by S.I. 2007/1157, arts. 3(5), 7-12; S.I. 2007/1527, art. 2(2); S.I. 2007/2169, arts. 3, 6-11, Sch.)

**F513** S. 412(1)(b) repealed (1.9.2007) by Gambling Act 2005 (c. 19), ss. 334(1)(e)(ii), 356(4)(5), 358(1), **Sch. 17** (with ss. 334(2), 352, 354); (as amended by S.I. 2007/1157, arts. 3(5), 7-12; S.I. 2007/1527, art. 2(2); S.I. 2007/2169, arts. 3, 6-11, Sch.)

**Commencement Information**

**I122** S. 412 wholly in force at 1.12.2001; s. 412 not in force at Royal Assent see s. 431(2); s. 412 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 412 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

*<sup>F514</sup>Trade-matching and reporting systems*

**Annotations:**

**Amendments (Textual)**

**F514** Ss. 412A, 412B and preceding 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(5), **Sch. 5 para. 18**

**412A Approval and monitoring of trade-matching and reporting systems**

- (1) A relevant system is an approved relevant system if it is approved by the [FCA] under subsection (2) for the purposes of Article 25.5 of the markets in financial instruments directive; and references in this section and section 412B to an “approved relevant system” are to be read accordingly.
- (2) The [FCA] must approve a relevant system if, on an application by the operator of the system, it is satisfied that the arrangements established by the system for reporting transactions comply with Article 12(1) of Commission Regulation 1287/2006 of 10 August 2006 <sup>F515</sup> (“the Regulation”).
- (3) Section 51(3) and (4) applies to an application under this section as it applies to an application under Part 4.
- (4) If, at any time after approving a relevant system under subsection (2), the [FCA] is not satisfied as mentioned in that subsection, it may suspend or withdraw the approval.
- (5) The [FCA] must keep under review the arrangements established by an approved relevant system for reporting transactions for the purpose of ensuring that the arrangements comply with Article 12(1) of the Regulation; and for the purposes of this

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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subsection the [FCA] must have regard to information provided to it under subsections (6) and (7).

- (6) The operator of an approved relevant system must make reports to the [FCA] at specified intervals containing specified information relating to—
- (a) the system,
  - (b) the reports made by the system in accordance with Article 25 of the markets in financial instruments directive and the Regulation, and
  - (c) the transactions to which those reports relate.

“Specified” means specified by the [FCA].

- (7) The [FCA] may by written notice require the operator of an approved relevant system to provide such additional information as may be specified in the notice, by such reasonable time as may be so specified, about any of the matters mentioned in subsection (6).
- (8) The recipient of a notice under subsection (7) must provide the information by the time specified in the notice.
- (9) In this section and section 412B, “relevant system” means a trade-matching or reporting system of a kind described in Article 12 of the Regulation.

**Annotations:**

**Amendments (Textual)**

F515 OJ No L 241, 2.9.2006, p. 1.

**412B Procedure for approval and suspension or withdrawal of approval**

- (1) If the [FCA] approves a relevant system, it must give the operator of the system written notice specifying the date from which the approval has effect.
- (2) If the [FCA] proposes to refuse to approve a relevant system, it must give the operator of the system a warning notice.
- (3) If the [FCA] decides to refuse to approve a relevant system, it must give the operator of the system a decision notice.
- (4) If the [FCA] proposes to suspend or withdraw its approval in relation to an approved relevant system, it must give the operator of the system a warning notice.
- (5) If the [FCA] decides to suspend or withdraw its approval in relation to an approved relevant system, it must give the operator of the system a decision notice specifying the date from which the suspension or withdrawal is to take effect.
- (6) Subsections (7) to (9) apply if—
  - (a) the [FCA] has suspended its approval in relation to an approved relevant system, and
  - (b) the operator of the system has applied for the suspension to be cancelled.
- (7) The [FCA] must grant the application if it is satisfied as mentioned in section 412A(2); and in such a case the [FCA] must give written notice to the operator that the suspension is to be cancelled from the date specified in the notice.

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- (8) If the [FCA] proposes to refuse the application, it must give the operator a warning notice.
- (9) If the [FCA] decides to refuse the application, it must give the operator a decision notice.
- (10) A person who receives a decision notice under subsection (3), (5) or (9) may refer the matter to the Tribunal.]

*Limitation on powers to require documents*

**413 Protected items.**

- (1) A person may not be required under this Act to produce, disclose or permit the inspection of protected items.
- (2) “Protected items” means—
  - (a) communications between a professional legal adviser and his client or any person representing his client which fall within subsection (3);
  - (b) communications between a professional legal adviser, his client or any person representing his client and any other person which fall within subsection (3) (as a result of paragraph (b) of that subsection);
  - (c) items which—
    - (i) are enclosed with, or referred to in, such communications;
    - (ii) fall within subsection (3); and
    - (iii) are in the possession of a person entitled to possession of them.
- (3) A communication or item falls within this subsection if it is made—
  - (a) in connection with the giving of legal advice to the client; or
  - (b) in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.
- (4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

**Annotations:**

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

**C678** S. 413 applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2)(b)(xiii)(c), 95, **Sch. 5 para. 8** (with reg. 3)

**C679** S. 413 applied (11.2.2010) by [The Cross-Border Payments in Euro Regulations 2010 \(S.I. 2010/89\)](#), reg. 19, **Sch. para. 6**

**C680** S. 413 applied (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xiv)(b), 62, **Sch. 3 para. 9** (with reg. 3)

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### *Service of notices*

#### **414 Service of notices.**

- (1) The Treasury may by regulations make provision with respect to the procedure to be followed, or rules to be applied, when a provision of or made under this Act requires a notice, direction or document of any kind to be given or authorises the imposition of a requirement.
- (2) The regulations may, in particular, make provision—
  - (a) as to the manner in which a document must be given;
  - (b) as to the address to which a document must be sent;
  - (c) requiring, or allowing, a document to be sent electronically;
  - (d) for treating a document as having been given, or as having been received, on a date or at a time determined in accordance with the regulations;
  - (e) as to what must, or may, be done if the person to whom a document is required to be given is not an individual;
  - (f) as to what must, or may, be done if the intended recipient of a document is outside the United Kingdom.
- (3) Subsection (1) applies however the obligation to give a document is expressed (and so, in particular, includes a provision which requires a document to be served or sent).
- (4) Section 7 of the <sup>M66</sup>Interpretation Act 1978 (service of notice by post) has effect in relation to provisions made by or under this Act subject to any provision made by regulations under this section.

#### **Annotations:**

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

**C681** S. 414 amended (1.12.2001) by S.I. 2001/2657, arts. 1(1), 10(7), 11(7) (which was revoked (8.10.2001) by S.I. 2001/3083, arts. 1(2), 23); S.I. 2001/3538, art. 2(1)

S. 414 amended (1.12.2001) by S.I. 2001/3083, arts. 1(2), 10(7), 11(7); S.I. 2001/3538, art. 2(1)

##### **Commencement Information**

**I123** S. 414 wholly in force at 18.6.2001; s. 414 not in force at Royal Assent see s. 431(2); s. 414(1)-(3) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), Sch. Pt. 1; s. 414 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.

##### **Marginal Citations**

**M66** 1978 c. 30.

### *Jurisdiction*

#### **415 Jurisdiction in civil proceedings.**

- (1) Proceedings arising out of any act or omission (or proposed act or omission) of—
  - (a) the Authority,
  - (b) ~~[the competent authority for the purposes of Part VI,]~~
  - (c) the scheme manager, or

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- (d) the scheme operator,  
in the discharge or purported discharge of any of its functions under this Act may be brought before the High Court or the Court of Session.
- (2) The jurisdiction conferred by subsection (1) is in addition to any other jurisdiction exercisable by those courts.

**Annotations:**

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

**C682** S. 415 applied (1.12.2001) by S.I. 1995/1537, **reg. 23(2)** (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1, 509(c)**)

**C683** S. 415 modified (17.8.2001) by S.I. 2001/2617, **arts. 2(a), 4(3), 8, Sch. 2 para. 8**

[<sup>F516</sup>Powers of the Authority

**Annotations:**

**Amendments (Textual)**

**F516** S. 415A and preceding cross-heading inserted (8.4.2010) by **Financial Services Act 2010 (c. 28), ss. 24(1), 26(1)(l), Sch. 2 para. 30**

**415A Powers of the Authority**

Any power which the Authority has under any provision of this Act is not limited in any way by any other power which it has under any other provision of this Act.]

*[Consultation*

**415B Consultation in relation to taking certain enforcement action**

- (1) The FCA must consult the PRA before taking a qualifying step in relation to a person who—
- (a) is a PRA-authorised person; or
  - (b) has a qualifying relationship with a PRA-authorised person.
- (2) The PRA must consult the FCA before taking a qualifying step.
- (3) In this section any reference to the taking of a qualifying step is a reference to—
- (a) the giving of a warning notice or decision notice under section 63B (performance of controlled functions without approval);
  - (b) the giving of a warning notice or decision notice under section 67 (disciplinary powers in relation to approved person);
  - (c) the giving of a warning notice under section 126 or a decision notice under section 127 (market abuse);
  - (d) the giving of a warning notice or decision notice under section 131H (short selling);
  - (e) the giving of a warning notice under section 207 or a decision notice under section 208 (breaches of requirements imposed by or under Act etc);

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- (f) the giving of a warning notice under section 312G or a decision notice under section 312H (recognised bodies);
  - (g) the making of an application to the court under section 380, 381, 382 or 383 (injunctions or restitution); or
  - (h) the giving of a warning notice under section 385 or a decision notice under section 386 (power of FCA or PRA to require restitution).
- (4) A person has a qualifying relationship with a PRA-authorized person (“A”) for the purposes of this section if—
- (a) the person is a member of A’s immediate group; or
  - (b) in the case of a qualifying step within subsection (3)(a) or (b), the person performs a significant-influence function under an arrangement entered into by A, or by a contractor of A, in relation to the carrying on by A of a regulated activity.

“Significant-influence function” and “arrangement” have the same meanings here as in section 59.]

*Removal of certain unnecessary provisions*

**416 Provisions relating to industrial assurance and certain other enactments.**

- (1) The following enactments are to cease to have effect—
- (a) the <sup>M67</sup>Industrial Assurance Act 1923;
  - (b) the <sup>M68</sup>Industrial Assurance and Friendly Societies Act 1948;
  - (c) the <sup>M69</sup>Insurance Brokers (Registration) Act 1977.
- (2) The <sup>M70</sup>Industrial Assurance (Northern Ireland) Order 1979 is revoked.
- (3) The following bodies are to cease to exist—
- (a) the Insurance Brokers Registration Council;
  - (b) the Policyholders Protection Board;
  - (c) the Deposit Protection Board;
  - (d) the Board of Banking Supervision.
- (4) If the Treasury consider that, as a consequence of any provision of this section, it is appropriate to do so, they may by order make any provision of a kind that they could make under this Act (and in particular any provision of a kind mentioned in section 339) with respect to anything done by or under any provision of Part XXI.
- (5) Subsection (4) is not to be read as affecting in any way any other power conferred on the Treasury by this Act.

**Annotations:**

**Commencement Information**

**I124** S. 416 wholly in force at 1.12.2001; s. 416 not in force at Royal Assent see s. 431(2); s. 416(4)(5) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), Sch. Pt. 1; s. 416(1)(c)(3)(a) in force at 30.4.2001 by S.I. 2001/1282, art. 2(a); s. 416 in force at 1.12.2001 so far as not already in force (except sub-section (3) (b)(c) which are in force at 2.3.2002) by S.I. 2001/3538, art. 2(1)(4)

#### Marginal Citations

- M67** 1923 c. 8.  
**M68** 1948 c. 39.  
**M69** 1977 c. 46.  
**M70** S.I. 1979/1574 (N.I. 13).

## PART XXIX

### INTERPRETATION

#### 417 Definitions.

(1) In this Act—

- “appointed representative” has the meaning given in section 39(2);  
“auditors and actuaries rules” means rules made under section 340;  
“authorisation offence” has the meaning given in section 23(2);  
“authorised open-ended investment company” has the meaning given in section 237(3);  
“authorised person” has the meaning given in section 31(2);  
[“the Authority” means the Financial Services Authority;]  
“body corporate” includes a body corporate constituted under the law of a country or territory outside the United Kingdom;  
“chief executive”—  
(a) in relation to a body corporate whose principal place of business is within the United Kingdom, means an employee of that body who, alone or jointly with one or more others, is responsible under the immediate authority of the directors, for the conduct of the whole of the business of that body; and  
(b) in relation to a body corporate whose principal place of business is outside the United Kingdom, means the person who, alone or jointly with one or more others, is responsible for the conduct of its business within the United Kingdom;  
[<sup>F517</sup>“claim”, in relation to the Financial Services Compensation Scheme under Part XV, is to be construed in accordance with section 214(1B);  
“collective investment scheme” has the meaning given in section 235;  
“the Commission” means the European Commission (except in provisions relating to the Competition Commission);  
“the compensation scheme” has the meaning given in section 213(2);  
“control of information rules” has the meaning given in [section 137M];  
“director”, in relation to a body corporate, includes—  
(a) a person occupying in relation to it the position of a director (by whatever name called); and  
(b) a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act;  
“documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its

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production include references to producing a copy of the information in legible form [<sup>F518</sup>, or in a form from which it can readily be produced in visible and legible form];

[<sup>F519</sup>“electronic commerce directive” means Directive 2000/31/EC of the European Parliament and the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce);

“exempt person”, in relation to a regulated activity, means a person who is exempt from the general prohibition in relation to that activity as a result of an exemption order made under section 38(1) or as a result of section 39(1) or 285(2) or (3);

[“the FCA” means the Financial Conduct Authority;]

“financial promotion rules” means rules made under [section 137O];

“friendly society” means an incorporated or registered friendly society;

“general prohibition” has the meaning given in section 19(2);

[“general rules”—

(a) in relation to the FCA, has the meaning given in section 137A(2), and

(b) in relation to the PRA, has the meaning given in section 137E(2);]

“incorporated friendly society” means a society incorporated under the <sup>M71</sup>Friendly Societies Act 1992;

“industrial and provident society” means a society registered or deemed to be registered under the <sup>M72</sup>Industrial and Provident Societies Act 1965 or the <sup>M73</sup>Industrial and Provident Societies Act (Northern Ireland) 1969;

[<sup>F520</sup>“information society service” means an information society service within the meaning of Article 2(a) of the electronic commerce directive;

[<sup>F521</sup>“investment services and activities” has the meaning given in Article 4.1.2 of the markets in financial instruments directive, read with—

(a) Chapter VI of Commission Regulation 1287/2006 of 10 August 2006, and

(b) Article 52 of Commission Directive 2006/73/EC of 10 August 2006;

“market abuse” has the meaning given in section 118;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

[“money-laundering rules” means rules made under section 146;]

“notice of control” [<sup>F522</sup>(except in Chapter 1A of Part 18)] has the meaning given in section 178(5);

“the ombudsman scheme” has the meaning given in section 225(3);

“open-ended investment company” has the meaning given in section 236;

[“Part 4A permission” has the meaning given in section 55A(5);]

“partnership” includes a partnership constituted under the law of a country or territory outside the United Kingdom;

[“the PRA” means the Prudential Regulation Authority;

“PRA-authorized person” has the meaning given in section 2B(5);

“PRA-regulated activity” has the meaning given in section 22A;]

“prescribed” (where not otherwise defined) means prescribed in regulations made by the Treasury;

“price stabilising rules” means rules made under [section 137N];

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“private company” has [<sup>F523</sup>the same meaning as in the Companies Acts (see section 4 of the Companies Act 2006)];

“prohibition order” has the meaning given in section 56(2);

“recognised clearing house” and “recognised investment exchange” have the meaning given in section 285;

“registered friendly society” means a society which is—

(a) a friendly society within the meaning of section 7(1)(a) of the <sup>M74</sup>Friendly Societies Act 1974; and

(b) registered within the meaning of that Act;

“regulated activity” has the meaning given in section 22;

“regulating provisions” has the meaning given in [section 140A];

[“regulators” has the meaning given in section 3A(2);]

[“regulatory objectives” means the objectives mentioned in section 2;]

[“regulatory provisions” has the meaning given in section 302;]

[“rule” means a rule made by the FCA or the PRA under this Act;]

“rule-making instrument” has the meaning given in [section 138H];

“the scheme manager” has the meaning given in section 212(1);

“the scheme operator” has the meaning given in section 225(2);

“scheme particulars rules” has the meaning given in section 248(1);

“Seventh Company Law Directive” means the European Council Seventh Company Law Directive of 13 June 1983 on consolidated accounts (No. 83/349/EEC);

[<sup>F524</sup>“Takeovers Directive” means Directive 2004/25/EC of the European Parliament and of the Council;

“threshold conditions”, in relation to a regulated activity, has the meaning given in section 41;

“the Treaty” means the treaty establishing the European Community;

[<sup>F525</sup>“the Tribunal” means the Upper Tribunal;]

“trust scheme rules” has the meaning given in section 247(1);

“UK authorised person” has the meaning given in [section 191G(1)];

[<sup>F526</sup>“the UK financial system” has the meaning given in [section 2 of 2B(6)];] and

“unit trust scheme” has the meaning given in section 237.

(2) In the application of this Act to Scotland, references to a matter being actionable at the suit of a person are to be read as references to the matter being actionable at the instance of that person.

(3) For the purposes of any provision of this Act [<sup>F527</sup>(other than a provision of Part 6)] authorising or requiring a person to do anything within a specified number of days no account is to be taken of any day which is a public holiday in any part of the United Kingdom.

[<sup>F528</sup>(4) For the purposes of this Act—

(a) an information society service is provided from an EEA State if it is provided from an establishment in that State;

(b) an establishment, in connection with an information society service, is the place at which the provider of the service (being a national of an EEA State

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- or a company or firm as mentioned in Article 48 of the Treaty) effectively pursues an economic activity for an indefinite period;
- (c) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute that place as an establishment of the kind mentioned in paragraph (b);
  - (d) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment where the provider has the centre of his activities relating to the service.|||||

#### Annotations:

##### Amendments (Textual)

- F517** S. 417(1): definition of "claim" inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\), ss. 174\(2\), 263\(1\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), [Sch. para. 4](#)
- F518** S. 417(1): words in definition of "documents" inserted (1.4.2003) by 2001 c. 16, ss. 70, 138(2), [Sch. 2 Pt. 2 para. 16\(2\)\(f\)](#); S.I. 2003/708, [art. 2\(c\)\(k\)](#)
- F519** S. 417: definition of "electronic commerce directive" inserted (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, [13\(2\)\(a\)](#)
- F520** S. 417: definition of "information society service" inserted (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, [13\(2\)\(b\)](#)
- F521** S. 417(1): definition of "investment services and activities" 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(5), [Sch. 5 para. 19\(a\)](#)
- F522** S. 417(1): words in definition of "notice of control" 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(5), [Sch. 5 para. 19\(b\)](#)
- F523** S. 417(1): words in definition of "private company" substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), [Sch. 1 para. 181\(4\)](#) (with art. 10)
- F524** S. 417(1): definition inserted (6.4.2007) by [Companies Act 2006 \(c. 46\), ss. 964\(6\), 1300\(2\)](#); S.I. 2007/1093, [art. 2\(1\)\(b\)](#) (with arts. 4, 11)
- F525** S. 417: definition of "the Tribunal" inserted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(2)(e), 5(1), [Sch. 2 para. 48](#)
- F526** S. 417(1): definition of "the UK financial system" inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(1)(l), [Sch. 2 para. 31](#)
- F527** Words in s. 417(3) inserted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 15](#)
- F528** S. 417(4) inserted (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, [13\(2\)\(c\)](#)

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

- C684** S. 417 modified (22.2.2008) by [The Northern Rock plc Transfer Order 2008 \(S.I. 2008/432\)](#), [art. 17](#)
- C685** S. 417 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. 13](#)
- C686** S. 417(1) modified (30.3.2009 at 8.00 a.m.) by [The Amendments to Law \(Resolution of Dunfermline Building Society\) Order 2009 \(S.I. 2009/814\)](#), [art. 7\(2\)-\(4\)](#)

#### Marginal Citations

- M71** 1992 c. 40.  
**M72** 1965 c. 12.  
**M73** 1969 c. 24. (N.I.)  
**M74** 1992 c. 40.

#### 418 Carrying on regulated activities in the United Kingdom.

- (1) In the [<sup>F529</sup> five] cases described in this section, a person who—
- (a) is carrying on a regulated activity, but
  - (b) would not otherwise be regarded as carrying it on in the United Kingdom,
- is, for the purposes of this Act, to be regarded as carrying it on in the United Kingdom.
- (2) The first case is where—
- (a) his registered office (or if he does not have a registered office his head office) is in the United Kingdom;
  - (b) he is entitled to exercise rights under a single market directive as a UK firm; and
  - (c) he is carrying on in another EEA State a regulated activity to which that directive applies.
- (3) The second case is where—
- (a) his registered office (or if he does not have a registered office his head office) is in the United Kingdom;
  - (b) he is the manager of a scheme which is entitled to enjoy the rights conferred by an instrument which is a relevant [<sup>F530</sup> EU ] instrument for the purposes of section 264; and
  - (c) persons in another EEA State are invited to become participants in the scheme.
- (4) The third case is where—
- (a) his registered office (or if he does not have a registered office his head office) is in the United Kingdom;
  - (b) the day-to-day management of the carrying on of the regulated activity is the responsibility of—
    - (i) his registered office (or head office); or
    - (ii) another establishment maintained by him in the United Kingdom.
- (5) The fourth case is where—
- (a) his head office is not in the United Kingdom; but
  - (b) the activity is carried on from an establishment maintained by him in the United Kingdom.
- [<sup>F531</sup>(5A) The fifth case is any other case where the activity—
- (a) consists of the provision of an information society service to a person or persons in one or more EEA States; and
  - (b) is carried on from an establishment in the United Kingdom.]

(6) For the purposes of subsections (2) to [<sup>F532</sup>(5A)] it is irrelevant where the person with whom the activity is carried on is situated.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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#### Annotations:

#### Amendments (Textual)

- F529** Word in s. 418(1) substituted (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, **13(3)(a)**
- F530** Word in s. 418(3)(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(1)(3)(4)**
- F531** S. 418(5A) inserted (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, **13(3)(b)**
- F532** Word in s. 418(6) substituted (18.7.2002 for certain purposes and 21.8.2002 otherwise) by [The Electronic Commerce Directive \(Financial Services and Markets\) Regulations 2002 \(S.I. 2002/1775\)](#), regs. 1, **13(3)(c)**

#### 419 Carrying on regulated activities by way of business.

- (1) The Treasury may by order make provision—
- (a) as to the circumstances in which a person who would otherwise not be regarded as carrying on a regulated activity by way of business is to be regarded as doing so;
  - (b) as to the circumstances in which a person who would otherwise be regarded as carrying on a regulated activity by way of business is to be regarded as not doing so.
- (2) An order under subsection (1) may be made so as to apply—
- (a) generally in relation to all regulated activities;
  - (b) in relation to a specified category of regulated activity; or
  - (c) in relation to a particular regulated activity.
- (3) An order under subsection (1) may be made so as to apply—
- (a) for the purposes of all provisions;
  - (b) for a specified group of provisions; or
  - (c) for a specified provision.
- (4) “Provision” means a provision of, or made under, this Act.
- (5) Nothing in this section is to be read as affecting the provisions of section 428(3).

#### 420 Parent and subsidiary undertaking.

- (1) In this Act, except in relation to an incorporated friendly society, “parent undertaking” and “subsidiary undertaking” have the same meaning as in <sup>F533</sup>the Companies Acts (see section 1162 of, and Schedule 7 to, the Companies Act 2006)].
- (2) But—
- (a) “parent undertaking” also includes an individual who would be a parent undertaking for the purposes of those provisions if he were taken to be an undertaking (and “subsidiary undertaking” is to be read accordingly);

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

(b) “subsidiary undertaking” also includes, in relation to a body incorporated in or formed under the law of an EEA State other than the United Kingdom, an undertaking which is a subsidiary undertaking within the meaning of any rule of law in force in that State for purposes connected with implementation of the Seventh Company Law Directive (and “parent undertaking” is to be read accordingly).

(3) In this Act “subsidiary undertaking”, in relation to an incorporated friendly society, means a body corporate of which the society has control within the meaning of section 13(9)(a) or (aa) of the <sup>M75</sup>Friendly Societies Act 1992 (and “parent undertaking” is to be read accordingly).

**Annotations:**

**Amendments (Textual)**

**F533** Words in s. 420(1) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 212(1)** (with arts. 6, 11, 12)

**Marginal Citations**

**M75** 1992 c. 40.

**421 Group.**

- (1) In this Act “group”, in relation to a person (“A”), means A and any person who is—
- (a) a parent undertaking of A;
  - (b) a subsidiary undertaking of A;
  - (c) a subsidiary undertaking of a parent undertaking of A;
  - (d) a parent undertaking of a subsidiary undertaking of A;
  - (e) an undertaking in which A or an undertaking mentioned in paragraph (a), (b), (c) or (d) has a participating interest;
  - (f) if A or an undertaking mentioned in paragraph (a) or (d) is a building society, an associated undertaking of the society; or
  - (g) if A or an undertaking mentioned in paragraph (a) or (d) is an incorporated friendly society, a body corporate of which the society has joint control (within the meaning of section 13(9)(c) or (cc) of the <sup>M76</sup>Friendly Societies Act 1992).
- (2) “Participating interest” <sup>F534</sup>has the meaning given in section 421A]; but also includes an interest held by an individual which would be a participating interest for the purposes of those provisions if he were taken to be an undertaking.
- (3) “Associated undertaking” has the meaning given in section 119(1) of the <sup>M77</sup>Building Societies Act 1986.

**Annotations:**

**Amendments (Textual)**

**F534** Words in s. 421(2) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 212(2)** (with arts. 6, 11, 12)

**Marginal Citations**

**M76** 1992 c. 40.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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M77 1986 c. 53.

### **[421ZA Immediate group**

In this Act “immediate group”, in relation to a person (“A”), means—

- (a) A;
- (b) a parent undertaking of A;
- (c) a subsidiary undertaking of A;
- (d) a subsidiary undertaking of a parent undertaking of A;
- (e) a parent undertaking of a subsidiary undertaking of A.]

### **[<sup>F535</sup>421A Meaning of “participating interest”**

- (1) In section 421 a “participating interest” means an interest held by an undertaking in the shares of another undertaking which it holds on a long-term basis for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest.
- (2) A holding of 20% or more of the shares of an undertaking is presumed to be a participating interest unless the contrary is shown.
- (3) The reference in subsection (1) to an interest in shares includes—
  - (a) an interest which is convertible into an interest in shares, and
  - (b) an option to acquire shares or any such interest;
 and an interest or option falls within paragraph (a) or (b) notwithstanding that the shares to which it relates are, until the conversion or the exercise of the option, unissued.
- (4) For the purposes of this section an interest held on behalf of an undertaking shall be treated as held by it.
- (5) In this section “undertaking” has the same meaning as in the Companies Acts (see section 1161(1) of the Companies Act 2006).]

#### **Annotations:**

#### **Amendments (Textual)**

**F535** S. 421A inserted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), **Sch. 1 para. 212(3)** (with arts. 6, 11, 12)

### **[<sup>F536</sup>422 Controller.**

- (1) In this Act “controller”, in relation to an undertaking (“B”), means a person (“A”) who falls within any of the cases in subsection (2).
- (2) The cases are where A holds—
  - (a) 10% or more of the shares in B or in a parent undertaking of B (“P”);
  - (b) 10% 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.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (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) In this section “shares”—
- (a) in relation to an undertaking with a share capital, means allotted shares;
  - (b) in relation to an undertaking with capital but no share capital, means rights to share in the capital of the undertaking;
  - (c) in relation to an undertaking without capital, means interests—
    - (i) conferring any right to share in the profits, or liability to contribute to the losses, of the undertaking; or
    - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.
- (5) In this section “voting power”—
- (a) includes, in relation to a person (“H”)—
    - (i) voting power held by a third party with whom H has concluded an agreement, which obliges H and the third party to adopt, by concerted exercise of the voting power they hold, a lasting common policy towards the management of the undertaking in question;
    - (ii) voting power held by a third party under an agreement concluded with H providing for the temporary transfer for consideration of the voting power in question;
    - (iii) voting power attaching to shares which are lodged as collateral with H, provided that H controls the voting power and declares an intention to exercise it;
    - (iv) voting power attaching to shares in which H has a life interest;
    - (v) voting power which is held, or may be exercised within the meaning of subparagraphs (i) to (iv), by a subsidiary undertaking of H;
    - (vi) voting power attaching to shares deposited with H which H has discretion to exercise in the absence of specific instructions from the shareholders;
    - (vii) voting power held in the name of a third party on behalf of H;
    - (viii) voting power which H may exercise as a proxy where H has discretion about the exercise of the voting power in the absence of specific instructions from the shareholders; and
  - (b) in relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, means the right under the constitution of the undertaking to direct the overall policy of the undertaking or alter the terms of its constitution.]

**Annotations:**

**Amendments (Textual)**

**F536** Ss. 422, 422A substituted (21.3.2009) for s. 422 by virtue of [The Financial Services and Markets Act 2000 \(Controllers\) Regulations 2009 \(S.I. 2009/534\)](#), reg. 7, [Sch. 3](#) (with reg. 8)

**[<sup>F537</sup>422A] Disregarded holdings**

- (1) For the purposes of section 422, shares and voting power that a person holds in an undertaking (“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 attached to 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.
- (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 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 shares; 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 Article 1a.2 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—
  - (a) manages holdings for its parent undertaking or an undertaking in respect of which the parent undertaking is a controller;
  - (b) has no discretion to exercise 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) its parent undertaking; or
    - (ii) an undertaking in respect of which of the parent undertaking is a controller.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (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.
- (10) In this section “credit institution” means—
- (a) a credit institution authorised under the banking consolidation 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.]

**Annotations:**

**Amendments (Textual)**

**F537** Ss. 422, 422A substituted (21.3.2009) for s. 422 by virtue of [The Financial Services and Markets Act 2000 \(Controllers\) Regulations 2009](#) (S.I. 2009/534), reg. 7, [Sch. 3](#) (with reg. 8)

**423 Manager.**

- (1) In this Act, except in relation to a unit trust scheme or a registered friendly society, “manager” means an employee who—
- (a) under the immediate authority of his employer is responsible, either alone or jointly with one or more other persons, for the conduct of his employer’s business; or
  - (b) under the immediate authority of his employer or of a person who is a manager by virtue of paragraph (a) exercises managerial functions or is responsible for maintaining accounts or other records of his employer.
- (2) If the employer is not an individual, references in subsection (1) to the authority of the employer are references to the authority—
- (a) in the case of a body corporate, of the directors;
  - (b) in the case of a partnership, of the partners; and
  - (c) in the case of an unincorporated association, of its officers or the members of its governing body.
- (3) “Manager”, in relation to a body corporate, means a person (other than an employee of the body) who is appointed by the body to manage any part of its business and includes an employee of the body corporate (other than the chief executive) who, under the immediate authority of a director or chief executive of the body corporate, exercises managerial functions or is responsible for maintaining accounts or other records of the body corporate.

**424 Insurance.**

- (1) In this Act, references to—

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (a) contracts of insurance,
- (b) reinsurance,
- (c) contracts of long-term insurance,
- (d) contracts of general insurance,

are to be read with section 22 and Schedule 2.

- (2) In this Act “policy” and “policyholder”, in relation to a contract of insurance, have such meaning as the Treasury may by order specify.
- (3) The law applicable to a contract of insurance, the effecting of which constitutes the carrying on of a regulated activity, is to be determined, if it is of a prescribed description, in accordance with regulations made by the Treasury.

**Annotations:**

**Commencement Information**

**I125** S. 424 wholly in force at 1.12.2001; s. 424 not in force at Royal Assent see s. 431(2); s. 424(1)(2) in force and s. 424(3) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(a)(b), Sch. Pts. 1, 2; s. 424 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**[<sup>F538</sup>424A] Investment firm**

- (1) In this Act, “investment firm” has the meaning given in Article 4.1.1 of the markets in financial instruments directive.
- (2) Subsection (1) is subject to subsections (3) to (5).
- [<sup>F539</sup>(3) References in this Act to an “investment firm” include references to a person who would be an investment firm (within the meaning of Article 4.1.1 of the markets in financial instruments directive) if—
  - (a) in the case of a body corporate, his registered office or, if he has no registered office, his head office, and
  - (b) in the case of a person other than a body corporate, his head office, were in an EEA State.]
- (4) But subsection (3) does not apply if the person in question is one to whom the markets in financial instruments directive would not apply by virtue of Article 2 of that directive.
- (5) References in this Act to an “investment firm” do not include references to—
  - (a) a person to whom the markets in financial instruments directive does not apply by virtue of Article 2 of the directive; or
  - (b) a person whose home Member State (within the meaning of Article 4.1.20 of the markets in financial instruments directive) is an EEA State and to whom, by reason of the fact that the State has given effect to Article 3 of that directive, that directive does not apply by virtue of that Article.]

**Annotations:**

**Amendments (Textual)**

**F538** S. 424A 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. 10

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

**F539** S. 424A(3) substituted (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(5), **Sch. 5 para. 21**

## **425 Expressions relating to authorisation elsewhere in the single market.**

(1) In this Act—

- [<sup>F540</sup>(a) “banking consolidation directive”, [<sup>F541</sup> “life assurance consolidation directive”] “EEA authorisation”, “EEA firm”, “EEA right”, “EEA State”, <sup>F542</sup> ..., “first non-life insurance directive”, “insurance directives”, [<sup>F543</sup> “reinsurance directive”, ] [<sup>F544</sup> “insurance mediation directive”,] “insurance mediation directive”, <sup>F545</sup> ... [<sup>F546</sup> “markets in financial instruments directive”, ] “single market directives” [<sup>F547</sup> “, tied agent”] and “UCITS directive” have the meaning given in Schedule 3; and]
- (b) “home state regulator”, in relation to an EEA firm, has the meaning given in Schedule 3.

(2) In this Act—

- (a) “home state authorisation” has the meaning given in Schedule 4;
- (a) “Treaty firm” has the meaning given in Schedule 4; and
- (c) “home state regulator”, in relation to a Treaty firm, has the meaning given in Schedule 4.

### **Annotations:**

#### **Amendments (Textual)**

- F540** S. 425(1)(a) substituted (13.2.2004) by The Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2066), **reg. 2(1)**
- F541** Words in s. 425(1)(a) inserted (11.1.2005) by The Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 (S.I. 2004/3379), **reg. 6(5)(a)**
- F542** Words in s. 425(1)(a) omitted (11.1.2005) by virtue of The Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 (S.I. 2004/3379), **reg. 6(5)(b)**
- F543** Words in s. 425(1)(a) inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), **reg. 2(1), Sch. 1 para. 5**
- F544** Words in s. 425(1)(a) inserted (14.1.2005) by virtue of The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), **reg. 2(1)**
- F545** Words in s. 425(1)(a) omitted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by virtue of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(5), **Sch. 5 para. 22(a)**
- F546** Words in s. 425(1)(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. 11**
- F547** Words in s. 425(1)(a) 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(5), **Sch. 5 para. 22(b)**

### **[<sup>F548</sup>425A Consumers: regulated activities etc carried on by authorised persons**

- (1) This section has effect for the purposes of the provisions of this Act which apply this section.
- (2) “Consumers” means persons who—

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (a) use, have used or may use any of the services within subsection (3); or
  - (b) have relevant rights or interests in relation to any of those services.
- (3) The services within this subsection are services provided by—
- (a) authorised persons in carrying on regulated activities;
  - (b) authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services; or
  - (c) persons acting as appointed representatives.
- (4) A person (“P”) has a “relevant right or interest” in relation to any services within subsection (3) if P has a right or interest—
- (a) which is derived from, or is otherwise attributable to, the use of the services by others; or
  - (b) which may be adversely affected by the use of the services by persons acting on P’s behalf or in a fiduciary capacity in relation to P.
- (5) If a person is providing a service within subsection (3) 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.
- (6) A person who deals with another person (“A”) in the course of A providing a service within subsection (3) is to be treated as using the service.
- (7) In this section—
- “credit institution” means—
- (a) a credit institution authorised under the banking consolidation 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 does not have one, its head office) in an EEA State;
- “relevant ancillary service” means any service of a kind mentioned in Section B of Annex I to the markets in financial instruments directive the provision of which does not involve the carrying on of a regulated activity.

**Annotations:**

**Amendments (Textual)**

**F548** Ss. 425A, 425B inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(1)(l), [Sch. 2 para. 32](#)

**425B Consumers: regulated activities carried on by others**

- (1) This section has effect for the purposes of the provisions of this Act which apply this section.
- (2) “Consumers” means persons who, in relation to regulated activities carried on otherwise than by authorised persons, would be consumers as defined by section 425A if the activities were carried on by authorised persons.]

## PART XXX

### SUPPLEMENTAL

#### 426 Consequential and supplementary provision.

- (1) A Minister of the Crown may by order make such incidental, consequential, transitional or supplemental provision as he considers necessary or expedient for the general purposes, or any particular purpose, of this Act or in consequence of any provision made by or under this Act or for giving full effect to this Act or any such provision.
- (2) An order under subsection (1) may, in particular, make provision—
  - (a) for enabling any person by whom any powers will become exercisable, on a date set by or under this Act, by virtue of any provision made by or under this Act to take before that date any steps which are necessary as a preliminary to the exercise of those powers;
  - (b) for applying (with or without modifications) or amending, repealing or revoking any provision of or made under an Act passed before this Act or in the same Session;
  - (c) dissolving any body corporate established by any Act passed, or instrument made, before the passing of this Act;
  - (d) for making savings, or additional savings, from the effect of any repeal or revocation made by or under this Act.
- (3) Amendments made under this section are additional, and without prejudice, to those made by or under any other provision of this Act.
- (4) No other provision of this Act restricts the powers conferred by this section.

#### Annotations:

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

C687 S. 426 modified (1.10.2001) by 2001 c. 16, s. 70, Sch. 2 Pt. 2 para. 26; S.I. 2001/3150, art. 2(d)

#### 427 Transitional provisions.

- (1) Subsections (2) and (3) apply to an order under section 426 which makes transitional provisions or savings.
- (2) The order may, in particular—
  - (a) if it makes provision about the authorisation and permission of persons who before commencement were entitled to carry on any activities, also include provision for such persons not to be treated as having any authorisation or permission (whether on an application to the Authority or otherwise);
  - (b) make provision enabling the Authority to require persons of such descriptions as it may direct to re-apply for permissions having effect by virtue of the order;
  - (c) make provision for the continuation as rules of such provisions (including primary and subordinate legislation) as may be designated in accordance with the order by the Authority, including provision for the modification by the Authority of provisions designated;

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- (d) make provision about the effect of requirements imposed, liabilities incurred and any other things done before commencement, including provision for and about investigations, penalties and the taking or continuing of any other action in respect of contraventions;
  - (e) make provision for the continuation of disciplinary and other proceedings begun before commencement, including provision about the decisions available to bodies before which such proceedings take place and the effect of their decisions;
  - (f) make provision as regards the Authority’s obligation to maintain a record under section 347 as respects persons in relation to whom provision is made by the order.
- (3) The order may—
- (a) confer functions on the Treasury, the Secretary of State, the Authority, the scheme manager, the scheme operator, members of the panel established under paragraph 4 of Schedule 17, the Competition Commission or [<sup>F549</sup>the Office of Fair Trading];
  - (b) confer jurisdiction on the Tribunal;
  - (c) provide for fees to be charged in connection with the carrying out of functions conferred under the order;
  - (d) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act).
- (4) In subsection (2) “commencement” means the commencement of such provisions of this Act as may be specified by the order.

**Annotations:**

**Amendments (Textual)**

**F549** Words in s. 427(3)(a) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), ss. 278\(1\), 279, Sch. 25 para. 40\(18\)](#); S.I. 2003/766, [art. 2, Sch.](#) (with art. 3)

**428 Regulations and orders.**

- (1) Any power to make an order which is conferred on a Minister of the Crown by this Act and any power to make regulations which is conferred by this Act is exercisable by statutory instrument.
- (2) The Lord Chancellor’s power to make rules under section 132 is exercisable by statutory instrument.
- (3) Any statutory instrument made under this Act may—
  - (a) contain such incidental, supplemental, consequential and transitional provision as the person making it considers appropriate; and
  - (b) make different provision for different cases.

**429 Parliamentary control of statutory instruments.**

- (1) No order is to be made under—
  - (a) section [~~1F, 3B(3), 144(4), 192(b) or (e), 138L(6)(c), 192B(8), 204A(6), 213(1A), 236(5), 380(11), 382(14), 384(12), 404G~~]<sup>F550</sup> ~~404G~~<sup>F551</sup> ... or 419, [~~or~~]

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- (b) [~~paragraph 1 of Schedule 8;~~]  
unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (2) No regulations are to be made under section [~~F<sup>552</sup>90B~~ [~~F<sup>553</sup>~~, 214A, 214B [~~F<sup>554</sup>~~, 214D]] or] 262 unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.
- (3) An order to which, if it is made, subsection (4) or (5) will apply is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (4) This subsection applies to an order under section 21 if—
- (a) it is the first order to be made, or to contain provisions made, under section 21(4);
  - (b) it varies an order made under section 21(4) so as to make section 21(1) apply in circumstances in which it did not previously apply;
  - (c) it is the first order to be made, or to contain provision made, under section 21(5);
  - (d) it varies a previous order made under section 21(5) so as to make section 21(1) apply in circumstances in which it did not, as a result of that previous order, apply;
  - (e) it is the first order to be made, or to contain provisions made, under section 21(9) or (10);
  - (f) it adds one or more activities to those that are controlled activities for the purposes of section 21; or
  - (g) it adds one or more investments to those which are controlled investments for the purposes of section 21.
- (5) This subsection applies to an order under section 38 if—
- (a) it is the first order to be made, or to contain provisions made, under that section; or
  - (b) it contains provisions restricting or removing an exemption provided by an earlier order made under that section.
- (6) An order containing a provision to which, if the order is made, subsection (7) will apply is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (7) This subsection applies to a provision contained in an order if—
- (a) it is the first to be made in the exercise of the power conferred by subsection (1) of section 326 or it removes a body from those for the time being designated under that subsection; or
  - (b) it is the first to be made in the exercise of the power conferred by subsection (6) of section 327 or it adds a description of regulated activity or investment to those for the time being specified for the purposes of that subsection.
- (8) Any other statutory instrument made under this Act, apart from one made under section [~~F<sup>555</sup>[3G(1), 137C(1)(b),]165A(2)(d)[, 192A(4)]~~ or] 431(2) or to which [~~section 22A(7) or ]~~paragraph 26 of Schedule 2 applies, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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#### Annotations:

#### Amendments (Textual)

- F550** Word in s. 429(1)(a) inserted (12.10.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(3), [Sch. 2 para. 33\(2\)\(b\)](#); S.I. 2010/2480, [art. 2](#)
- F551** Word in s. 429(1)(a) omitted (12.10.2010) by virtue of [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(3), [Sch. 2 para. 33\(2\)\(a\)](#); S.I. 2010/2480, [art. 2](#)
- F552** Words in s. 429(2) inserted (8.11.2006) by [Companies Act 2006 \(c. 46\)](#), ss. 1272, 1300(1)(a), [Sch. 15 para. 12](#)
- F553** Words in s. 429(2) inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\)](#), ss. 178, 263(1) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), [Sch. para. 4](#)
- F554** Word in s. 429(2) inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(1)(l), [Sch. 2 para. 33\(3\)](#)
- F555** Words in s. 429(8) inserted (8.6.2010) by [Financial Services Act 2010 \(c. 28\)](#), ss. 24(1), 26(2)(e), [Sch. 2 para. 33\(4\)](#)

#### 430 Extent.

- (1) This Act, except Chapter IV of Part XVII, extends to Northern Ireland.
- (2) Except where Her Majesty by Order in Council provides otherwise, the extent of any amendment or repeal made by or under this Act is the same as the extent of the provision amended or repealed.
- (3) Her Majesty may by Order in Council provide for any provision of or made under this Act relating to a matter which is the subject of other legislation which extends to any of the Channel Islands or the Isle of Man to extend there with such modifications (if any) as may be specified in the Order.

#### 431 Commencement.

- (1) The following provisions come into force on the passing of this Act—
  - (a) this section;
  - (b) sections 428, 430 and 433;
  - (c) paragraphs 1 and 2 of Schedule 21.
- (2) The other provisions of this Act come into force on such day as the Treasury may by order appoint; and different days may be appointed for different purposes.

#### Annotations:

#### Subordinate Legislation Made

- P1** [S. 431\(2\)](#) power partly exercised: 25.2.2001 appointed for specified provisions by [S.I. 2001/516](#), [art. 2 Sch.](#)
- [S. 431\(2\)](#) power partly exercised: 30.4.2001 appointed for specified provisions by [S.I. 2001/1282](#), [art. 2](#)
- [S. 431\(2\)](#) power partly exercised: 18.6.2001 appointed for specified provisions by [S.I. 2001/1820](#), [art. 2 Sch.](#)
- [S. 431\(2\)](#) power partly exercised: 20.7.2001 and 3.9.2001 appointed for specified provisions by [S.I. 2001/2632](#), [art. 2 Sch.](#)
- [S. 431\(2\)](#) power partly exercised: 19.10.2001 appointed for specified provisions by [S.I. 2001/3436](#), [art. 2](#)

S. 431(2) power partly exercised: different dates appointed for specified provisions by S.I. 2001/3538, art. 2

**432 Minor and consequential amendments, transitional provisions and repeals.**

- (1) Schedule 20 makes minor and consequential amendments.
- (2) Schedule 21 makes transitional provisions.
- (3) The enactments set out in Schedule 22 are repealed.

**Annotations:**

**Commencement Information**

**I126** S. 432 wholly in force at 1.12.2001; s. 432 not in force at Royal Assent see s. 431(2); s. 432(3) in force for specified purposes at 30.4.2001 by S.I. 2001/1282, art. 2; s. 432(1) in force for specified purposes at 2.7.2001 by S.I. 2001/2364, art. 2(1)(b); s. 432(1) in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 432 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**433 Short title.**

This Act may be cited as the Financial Services and Markets Act 2000.

## SCHEDULES

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

C688 Sch. 1 extended (17.8.2001) by S.I. 2001/2617, arts. 2(a), 4(3), 8, Sch. 2 para. 2

[SCHEDULE 1ZA

Section 1A

THE FINANCIAL CONDUCT AUTHORITY**PART 1**GENERAL*Interpretation*

- 1 (1) In this Schedule—  
     “the Bank” means the Bank of England;  
     “functions” means functions conferred on the FCA by or under any provision of this Act.
- (2) For the purposes of this Schedule, the following are the FCA’s legislative functions—
- (a) making rules;
  - (b) issuing codes under section 64 or 119;
  - (c) issuing statements under section 63C, 64, 69, 88C, 89S, 93, 124, 131J, 138O, 192H, 210 or 312J;
  - (d) giving directions under section 316, 318 or 328;
  - (e) issuing general guidance (as defined in section 139B(5)).

*Constitution*

- 2 (1) The constitution of the FCA must provide for the FCA to have a governing body.
- (2) The governing body must consist of—
- (a) a chair appointed by the Treasury,
  - (b) a chief executive appointed by the Treasury,
  - (c) the Bank’s Deputy Governor for prudential regulation,
  - (d) 2 members appointed jointly by the Secretary of State and the Treasury, and
  - (e) at least one other member appointed by the Treasury.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- (3) The members referred to in sub-paragraph (2)(a), (c) and (d) are to be non-executive members.
- (4) In exercising its powers under sub-paragraph (2)(e) to appoint executive or non-executive members, the Treasury must secure that the majority of members of the governing body are non-executive members.
- (5) An employee of the FCA may not be appointed as a non-executive member.
- (6) In the following provisions of this Schedule an “appointed member” means a member of the governing body appointed under sub-paragraph (2)(a), (b), (d) or (e).
- 3 (1) The terms of service of the appointed members are to be determined by the Treasury.

(2) In the case of a member appointed under paragraph 2(2)(d), the Treasury must consult the Secretary of State about the terms of service.

(3) Before appointing a person as an appointed member, the Treasury (or as the case requires the Treasury and the Secretary of State) must consider whether the person has any financial or other interests that could have a material effect on the extent of the functions as member that it would be proper for the person to discharge.

(4) The terms of service of an appointed member (“M”) must be such as—

  - (a) to secure that M is not subject to direction by the Treasury or the Secretary of State,
  - (b) to require M not to act in accordance with the directions of any other person, and
  - (c) to prohibit M from acquiring any financial or other interests that have a material effect on the extent of the functions as member that it would be proper for M to discharge.

(5) If an appointed member is an employee of the FCA, the member’s interest as employee is to be disregarded for the purposes of sub-paragraphs (3) and (4)(c) and paragraph 4(1)(b).

(6) A person who is an employee of the PRA is disqualified for appointment as an appointed member.

(7) The FCA may pay expenses to the Bank’s Deputy Governor for prudential regulation in respect of that person’s service as a member.
- 4 (1) The Treasury may remove an appointed member from office—

  - (a) on the grounds of incapacity or serious misconduct, or
  - (b) on the grounds that in all the circumstances the member’s financial or other interests are such as to have a material effect on the extent of the functions as member that it would be proper for the person to discharge.

(2) Before removing from office a member appointed under paragraph 2(2)(d), the Treasury must consult the Secretary of State.
- 5 The validity of any act of the FCA is not affected—

  - (a) by any vacancy in the office of the Bank’s Deputy Governor for prudential regulation,
  - (b) by a defect in the appointment of a person—
    - (i) to that office, or

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(ii) as an appointed member.

- 6     The Bank’s Deputy Governor for prudential regulation must not take part in any discussion by or decision of the FCA which relates to—
- (a) the exercise of the FCA’s functions in relation to a particular person, or
  - (b) a decision not to exercise those functions.

*Remuneration*

- 7     The FCA must pay to the appointed members such remuneration as may be determined—
- (a) in the case of the non-executive members, by the Treasury;
  - (b) in the case of the executive members, by the FCA.

*Arrangements for discharging functions*

- 8     (1) The FCA may make arrangements for any of its functions to be discharged by a committee, sub-committee, officer or member of staff of the FCA, but subject to the following provisions.
- (2) In exercising the legislative functions mentioned in paragraph 1(2)(a) to (d), the FCA must act through its governing body.
- (3) The legislative function mentioned in paragraph 1(2)(e) may not be discharged by an officer or member of staff of the FCA.

*Monitoring and enforcement*

- 9     (1) The FCA must maintain arrangements designed to enable it to determine, in cases where it is the appropriate regulator for the purposes of Part 14 of this Act, whether persons on whom requirements are imposed—
- (a) by or under this Act, or
  - (b) by any directly applicable EU regulation specified, or of a description specified, by the Treasury by order,
- are complying with them.
- (2) Those arrangements may provide for functions to be performed on behalf of the FCA by any body or person who, in its opinion, is competent to perform them.
- (3) The FCA must also maintain arrangements for enforcing, in cases where it is the appropriate regulator for the purposes of Part 14 of this Act—
- (a) the provisions of, or made under, this Act, and
  - (b) the provisions of any directly applicable EU regulation specified, or of a description specified, by the Treasury by order.
- (4) Sub-paragraph (2) does not affect the FCA’s duty under sub-paragraph (1).

*Records*

- 10    The FCA must maintain satisfactory arrangements for—
- (a) recording decisions made in the exercise of its functions, and
  - (b) the safe-keeping of those records which it considers ought to be preserved.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

### *Annual report*

- 11 (1) At least once a year the FCA must make a report to the Treasury on—
- (a) the discharge of its functions,
  - (b) the extent to which, in its opinion, its operational objectives have been advanced,
  - (c) the extent to which, in its opinion, it has acted compatibly with its strategic objective,
  - (d) how far its general functions have been exercised in a way which promotes competition,
  - (e) its consideration of the matter mentioned in section 1B(5)(b),
  - (f) its consideration of the principles in section 3B,
  - (g) how it has complied with section 3D,
  - (h) any direction received under section 3F during the period to which the report relates, and
  - (i) such other matters as the Treasury may from time to time direct.
- (2) Sub-paragraph (1) does not require the inclusion in the report of any information whose publication would in the opinion of the FCA be against the public interest.
- (3) The report must be accompanied by such other reports or information, prepared by such persons, as the Treasury may from time to time direct.
- (4) The report must be accompanied by—
- (a) a statement of the remuneration of the appointed members of the governing body of the FCA during the period to which the report relates, and
  - (b) such other reports or information, prepared by such persons, as the Treasury may from time to time direct.
- (5) The Treasury must lay before Parliament a copy of each report received by them under this paragraph.
- (6) The Treasury may—
- (a) require the FCA to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
  - (b) direct that any such provision of that Act is to apply to the FCA with such modifications as are specified in the direction.
- (7) Compliance with any requirement under sub-paragraph (5)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.
- (8) Proceedings under sub-paragraph (6) may be brought only by the Treasury.

### *Annual public meeting*

- 12 (1) Not later than 3 months after making a report under paragraph 11, the FCA must hold a public meeting (“the annual meeting”) for the purposes of enabling that report to be considered.
- (2) The FCA must organise the annual meeting so as to allow—
- (a) a general discussion of the contents of the report which is being considered, and

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- (b) a reasonable opportunity for those attending the meeting to put questions to the FCA about the way in which it discharged, or failed to discharge, its functions during the period to which the report relates.
- (3) But otherwise the annual meeting is to be organised and conducted in such a way as the FCA considers appropriate.
- (4) The FCA must give reasonable notice of its annual meeting.
- (5) That notice must—
  - (a) give details of the time and place at which the meeting is to be held,
  - (b) set out the proposed agenda for the meeting,
  - (c) indicate the proposed duration of the meeting,
  - (d) give details of the FCA’s arrangements for enabling persons to attend, and
  - (e) be published by the FCA in the way appearing to it to be best calculated to bring the notice to the attention of the public.
- (6) If the FCA proposes to alter any of the arrangements which have been included in the notice given under sub-paragraph (5), it must—
  - (a) give reasonable notice of the alteration, and
  - (b) publish that notice in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

*Report of annual meeting*

- 13 Not later than one month after its annual meeting, the FCA must publish a report of the proceedings of the meeting.

*Audit of accounts*

- 14 (1) The FCA must send a copy of its annual accounts to the Comptroller and Auditor General as soon as is reasonably practicable.
- (2) The Comptroller and Auditor General must—
- (a) examine, certify and report to the Treasury on accounts received under this paragraph, and
  - (b) send a copy of the accounts and the report to the Treasury.
- (3) The Treasury must lay the copy of the accounts and the report before Parliament.
- (4) The expenses of the Comptroller and Auditor General under this paragraph are to be met by the FCA.
- (5) Except as provided by paragraph 11(6), the FCA is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.
- (6) In this paragraph “annual accounts” has the meaning given in section 471 of the Companies Act 2006.

## **PART 2**

### INVESTIGATION OF COMPLAINTS

#### *Arrangements for the investigation of complaints*

- 15 (1) The FCA must—
- (a) make arrangements (“the complaints scheme”) for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of its functions (other than its legislative functions); and
  - (b) appoint an independent person (“the investigator”) to be responsible for the conduct of investigations in accordance with the complaints scheme.
- (2) The complaints scheme must be designed so that, as far as reasonably practicable, complaints are investigated quickly.
- (3) The Treasury’s approval is required for the appointment or dismissal of the investigator.
- (4) The terms and conditions on which the investigator is appointed must be such as, in the opinion of the FCA, are reasonably designed to secure—
- (a) that the investigator will be free at all times to act independently of the FCA, and
  - (b) that complaints will be investigated under the complaints scheme without favouring the FCA.

#### *Consultation in relation to, and publication of, complaints scheme*

- 16 (1) Before making the complaints scheme, the FCA must publish a draft of the proposed scheme in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about it may be made to the FCA within a specified time.
- (3) Before making the proposed complaints scheme, the FCA must have regard to any representations made to it in accordance with sub-paragraph (2).
- (4) If the FCA makes the proposed complaints scheme, it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with sub-paragraph (2), and
  - (b) its response to them.
- (5) If the complaints scheme differs from the draft published under sub-paragraph (1) in a way which is, in the opinion of the FCA, significant the FCA must (in addition to complying with sub-paragraph (4)) publish details of the difference.
- (6) The FCA must publish up-to-date details of the complaints scheme including, in particular, details of—
- (a) the provision made under paragraph 17(5), and
  - (b) the powers which the investigator has to investigate a complaint.
- (7) Those details must be published in the way appearing to the FCA to be best calculated to bring them to the attention of the public.

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- (8) The FCA must notify the Treasury of the publication of details under sub-paragraph (6).
- (9) The FCA may charge a reasonable fee for providing a person with a copy of—
  - (a) a draft published under sub-paragraph (1), or
  - (b) details published under sub-paragraph (6).
- (10) Sub-paragraphs (1) to (5) and (9)(a) also apply to a proposal to alter or replace the complaints scheme.

#### *Investigation of complaints*

- 17
- (1) The FCA is not obliged to investigate a complaint in accordance with the complaints scheme which it reasonably considers would be more appropriately dealt with in another way (for example by referring the matter to the Tribunal or by the institution of other legal proceedings).
  - (2) The complaints scheme must provide—
    - (a) for reference to the investigator of any complaint which the FCA is investigating, and
    - (b) for the investigator—
      - (i) to have the means to conduct a full investigation of the complaint,
      - (ii) to report to the FCA and the complainant on the result of the investigator’s investigation, and
      - (iii) to be able to publish the investigator’s report (or part of it) if the investigator considers that it (or the part) ought to be brought to the attention of the public.
  - (3) If the FCA has decided not to investigate a complaint, it must notify the investigator.
  - (4) If the investigator considers that a complaint of which the investigator has been notified under sub-paragraph (3) ought to be investigated, the investigator may proceed as if the complaint had been referred to the investigator under the complaints scheme.
  - (5) The complaints scheme must confer on the investigator the power to recommend, if the investigator thinks it appropriate, that the FCA takes either or both of the following steps—
    - (a) makes a compensatory payment to the complainant, or
    - (b) remedies the matter complained of.
  - (6) The complaints scheme must require the FCA, in a case where the investigator—
    - (a) has reported that a complaint is well-founded, or
    - (b) has criticised the FCA in a report,to inform the investigator and the complainant of the steps which it proposes to take in response to the report.
  - (7) The investigator may require the FCA to publish the whole or a specified part of the response.
  - (8) The investigator may appoint a person to conduct the investigation on the investigator’s behalf but subject to the investigator’s direction.

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- (9) Neither an officer nor an employee of the FCA may be appointed under sub-paragraph (8).
- (10) Sub-paragraph (2) is not to be taken as preventing the FCA from making arrangements for the initial investigation of a complaint to be conducted by the FCA.

### **PART 3**

#### STATUS

##### *Status*

- 18 In relation to any of its functions—
- (a) the FCA is not to be regarded as acting on behalf of the Crown, and
  - (b) its members, officers and staff are not to be regarded as Crown servants.

##### *Exemption from requirement for use of “limited” in name of FCA*

- 19 The FCA is to continue to be exempt from the requirements of the Companies Act 2006 relating to the use of “limited” as part of its name.
- 20 If the Secretary of State is satisfied that any action taken by the FCA makes it inappropriate for the exemption given by paragraph 19 to continue, the Secretary of State may, after consulting the Treasury, give a direction removing it.

### **PART 4**

#### PENALTIES AND FEES

##### *Penalties*

- 21 (1) In determining its policy with respect to the amounts of penalties to be imposed by it under this Act, the FCA must take no account of the expenses which it incurs, or expects to incur, in discharging its functions.
- (2) The FCA must prepare and operate a scheme (“the financial penalty scheme”) for ensuring that—
- (a) the amounts paid to it by way of penalties imposed under this Act (other than Part 6 or 18) are applied for the benefit of authorised persons, and
  - (b) the amounts paid to it by way of penalties imposed under Part 6 of this Act are applied for the benefit of—
    - (i) issuers of securities admitted to the official list, and
    - (ii) issuers who have requested or approved the admission of financial instruments to trading on a regulated market.
- (3) The financial penalty scheme may, in particular, make different provision with respect to different classes of authorised person or issuer.
- (4) Up-to-date details of the financial penalty scheme must be set out in a document (“the scheme details”).

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- 22 (1) The scheme details must be published by the FCA in the way appearing to it to be best calculated to bring them to the attention of the public.
- (2) Before making the financial penalty scheme, the FCA must publish a draft of the proposed scheme in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (3) The draft must be accompanied by notice that representations about the proposals may be made to the FCA within a specified time.
- (4) Before making the scheme, the FCA must have regard to any representations made to it in accordance with sub-paragraph (3).
- (5) If the FCA makes the proposed scheme, it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with sub-paragraph (3), and
  - (b) its response to them.
- (6) If the scheme differs from the draft published under sub-paragraph (2) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with sub-paragraph (5)) publish details of the difference.
- (7) The FCA must, without delay, give the Treasury a copy of any scheme details published by it.
- (8) The FCA may charge a reasonable fee for providing a person with a copy of—
- (a) a draft published under sub-paragraph (2);
  - (b) scheme details.
- (9) Sub-paragraphs (2) to (6) and (8)(a) also apply to a proposal to alter or replace the financial penalty scheme.

#### *Fees*

- 23 (1) The FCA may make rules providing for the payment to it of such fees, in connection with the discharge of any of its functions under or as a result of this Act, as it considers will (taking account of its expected income from fees and charges provided for by any other provision of this Act) enable it—
- (a) to meet expenses incurred in carrying out its functions or for any incidental purpose,
  - (b) to repay the principal of, and pay any interest on, any relevant borrowing and to meet relevant commencement expenses, and
  - (c) to maintain adequate reserves.
- (2) In sub-paragraph (1)(b)—
- “relevant borrowing” means any money borrowed by the FCA which has been used for the purpose of meeting expenses incurred in relation to its assumption of functions under this Act, and
- “relevant commencement expenses” means expenses incurred by the FCA
- 
- (a) in preparation for the exercise of functions by the FCA under this Act,  
or
  - (b) for the purpose of facilitating the exercise by the FCA of those functions or otherwise in connection with their exercise by it.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- (3) For the purposes of sub-paragraph (2) it is irrelevant when the borrowing of the money, the incurring of the expenses or the assumption of functions took place (and, in particular, it is irrelevant if any of those things were done at a time when the FCA was known as the Financial Services Authority).
- (4) In the case of rules made under Part 6 of this Act, the rules may, in particular, require the payment of fees in respect of—
- (a) the continued inclusion of securities or persons in any list or register required to be kept by the FCA as a result of any provision made by or under that Part,
  - (b) access to any list or register within paragraph (a), and
  - (c) the continued admission of financial instruments to trading on a regulated market.
- (5) In fixing the amount of any fee which is to be payable to the FCA, no account is to be taken of any sums which the FCA receives, or expects to receive, by way of penalties imposed by it under this Act.
- (6) Any fee which is owed to the FCA under any provision made by or under this Act may be recovered as a debt due to the FCA.

*Services for which fees may not be charged*

- 24 The power conferred by paragraph 23 may not be used to require—
- (a) a fee to be paid in respect of the discharge of any of the FCA's functions under paragraph 13, 14, 19 or 20 of Schedule 3, or
  - (b) a fee to be paid by any person whose application for approval under section 59 has been granted.

**PART 5**

MISCELLANEOUS

*Exemption from liability in damages*

- 25 (1) Neither the FCA nor any person who is, or is acting as, a member, officer or member of staff of the FCA is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the FCA's functions.
- (2) Neither the investigator appointed under paragraph 15 nor a person appointed to conduct an investigation on the investigator's behalf under paragraph 17(8) is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of functions in relation to the investigation of a complaint.
- (3) Neither sub-paragraph (1) nor sub-paragraph (2) applies—
- (a) if the act or omission is shown to have been in bad faith, or
  - (b) so as to 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 Human Rights Act 1998.

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*Accredited financial investigators*

- 26 For the purposes of this Act anything done by an accredited financial investigator within the meaning of the Proceeds of Crime Act 2002 who is—
- (a) a member of the staff of the FCA, or
  - (b) a person appointed by the FCA under section 97, 167 or 168 to conduct an investigation,
- is to be treated as done in the exercise or discharge of a function of the FCA.

*Amounts required by rules to be paid to the FCA*

- 27 Any amount (other than a fee) which is required by rules to be paid to the FCA may be recovered as a debt due to the FCA.

SCHEDULE 1ZB

Section 2A

THE PRUDENTIAL REGULATION AUTHORITY

**PART 1**

GENERAL

*Interpretation*

- 1 (1) In this Schedule—
- “the Bank” means the Bank of England;
  - “functions”, in relation to the PRA, means functions conferred on the PRA by or under any provision of this Act.
- (2) For the purposes of this Schedule, the following are the PRA’s legislative functions—
- (a) making rules;
  - (b) issuing codes under section 64;
  - (c) issuing statements under section 63C, 64, 69, 192H or 210;
  - (d) giving directions under section 316, 318 or 328;
  - (e) issuing guidance under section 2H.

*Constitution*

- 2 The constitution of the PRA must provide—
- (a) for the Governor of the Bank to be the chair of the PRA,
  - (b) for the Bank’s Deputy Governor for prudential regulation to be the chief executive of the PRA, and
  - (c) for the PRA to have a governing body.
- 3 The governing body must include—
- (a) the chair,
  - (b) the chief executive,
  - (c) the Bank’s Deputy Governor for financial stability,

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- (d) the chief executive of the FCA, and
  - (e) other members (in this Schedule referred to as “appointed members”).
- 4 The validity of any act of the PRA is not affected—
- (a) by any vacancy resulting from a vacancy in the office of Governor of the Bank, Deputy Governor of the Bank for prudential regulation, Deputy Governor of the Bank for financial stability, or chief executive of the FCA, or
  - (b) by a defect in the appointment of a person—
    - (i) to any of those offices, or
    - (ii) as an appointed member.
- 5 The chief executive of the FCA must not take part in any discussion by or decision of the PRA which relates to—
- (a) the exercise of the PRA’s functions in relation to a particular person, or
  - (b) a decision not to exercise those functions.

*Appointed members of governing body*

- 6 The appointed members must be appointed by the Bank with the approval of the Treasury.
- 7 Paragraphs 8 to 12 apply to the exercise by the Bank of its power to appoint appointed members.
- 8 The Bank must secure that the majority of the members of the governing body of the PRA are non-executive members.
- 9 For the purposes of paragraph 8, and for the purposes of the principles to which section 3C requires the PRA to have regard, none of the following can be non-executive members—
- (a) the members referred to in paragraph 3(a), (b) and (c), and
  - (b) a member who is an employee of the PRA or a servant of the Bank.
- 10 The Bank must have regard to generally accepted principles of good practice relating to the making of public appointments.
- 11 (1) Before appointing a person as an appointed member, the Bank must consider whether the person has any financial or other interests that could have a material effect on the extent of the functions as member that it would be proper for the person to discharge.
- (2) The terms on which an appointed member (“M”) is appointed must be such as—
- (a) to secure that M is not subject to direction by the Bank,
  - (b) to require M not to act in accordance with the directions of any other person, and
  - (c) to prohibit M from acquiring any financial or other interests that have a material effect on the extent of the functions as member that it would be proper for M to discharge.
- (3) If M is an employee of the PRA, M’s interest as employee is to be disregarded for the purposes of sub-paragraphs (1) and (2)(c) and paragraph 14.
- 12 An employee of the FCA is disqualified for appointment as an appointed member.
- 13 The PRA must pay to the Bank the amount of any expenses incurred by the Bank in connection with the appointment of appointed members.

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- 14      The Bank may, with the approval of the Treasury, remove an appointed member from office—
- (a) on the grounds of incapacity or serious misconduct, or
  - (b) on the grounds that in all the circumstances the member's financial or other interests are such as to have a material effect on the extent of the functions as member that it would be proper for the person to discharge.

*Terms of service*

- 15      (1) The terms of service of the members of the governing body are to be determined by the Bank.
- (2) The PRA must pay to the members of its governing body such remuneration as may be determined by the Bank.
- (3) The functions of the Bank under sub-paragraphs (1) and (2) are to stand delegated to the sub-committee constituted by section 3 of the Bank of England Act 1998 (functions to be carried out by non-executive members).

*Arrangements for discharging functions*

- 16      (1) The PRA may make arrangements for any of its functions to be discharged by a committee, sub-committee, officer or member of staff of the PRA, but subject to the following provisions.
- (2) In exercising its legislative functions, the PRA must act through its governing body.

*Monitoring and enforcement*

- 17      (1) The PRA must maintain arrangements designed to enable it to determine, in cases where it is the appropriate regulator for the purposes of Part 14 of this Act, whether persons on whom requirements are imposed—
- (a) by or under this Act, or
  - (b) by any directly applicable EU regulation specified, or of a description specified, by the Treasury by order,
- are complying with them.
- (2) Those arrangements may provide for functions to be performed on behalf of the PRA by any body or person who, in its opinion, is competent to perform them.
- (3) The PRA must also maintain arrangements for enforcing, in cases where it is the appropriate regulator for the purposes of Part 14 of this Act—
- (a) the provisions of, or made under, this Act, and
  - (b) the provisions of any directly applicable EU regulation specified, or of a description specified, by the Treasury by order.
- (4) Sub-paragraph (2) does not affect the PRA's duty under sub-paragraph (1).

*Records*

- 18      The PRA must maintain satisfactory arrangements for—
- (a) recording decisions made in the exercise of its functions, and
  - (b) the safe-keeping of those records which it considers ought to be preserved.

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*Annual report*

- 19 (1) At least once a year the PRA must make a report to the Treasury on—
- (a) the discharge of its functions,
  - (b) the extent to which, in its opinion, its objectives have been advanced,
  - (c) its consideration of the principles in section 3B,
  - (d) how it has complied with section 3D,
  - (e) any direction given under section 3F during the period to which the report relates, and
  - (f) such other matters as the Treasury may from time to time direct.
- (2) Sub-paragraph (1) does not require the inclusion in the report of any information whose publication would in the opinion of the PRA be against the public interest.
- (3) The report must be accompanied by—
- (a) a statement of the remuneration of the members of the governing body of the PRA during the period to which the report relates, and
  - (b) such other reports or information, prepared by such persons, as the Treasury may from time to time direct.
- (4) The Treasury must lay before Parliament a copy of each report received by them under this paragraph.
- (5) The Treasury may—
- (a) require the PRA to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
  - (b) direct that any such provision of that Act is to apply to the PRA with such modifications as are specified in the direction.
- (6) Compliance with any requirement under sub-paragraph (5)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.
- (7) Proceedings under sub-paragraph (6) may be brought only by the Treasury.

*Consultation about annual report*

- 20 (1) In relation to each report made under paragraph 19, the PRA must publish at the same time as the report an invitation to members of the public to make representations to the PRA, within the 3 months beginning with the date of publication—
- (a) about the report,
  - (b) about the way in which the PRA has discharged, or failed to discharge, its functions during the period to which the report relates, and
  - (c) about the extent to which, in their opinion, the PRA's objectives have been advanced and the PRA has considered the regulatory principles in section 3B.
- (2) The invitation must be published in the way appearing to it to be best calculated to bring the invitation to the attention of the public.

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*Report on consultation*

- 21 (1) The PRA must publish a report about its consultation in accordance with paragraph 20.
- (2) The report must contain an account, in general terms, of any representations received in pursuance of the invitation published under that paragraph.
- (3) The report must be published not later than 4 months after the date on which the report under paragraph 19 was published.

*Audit of accounts*

- 22 (1) The PRA must send a copy of its annual accounts to the Comptroller and Auditor General as soon as is reasonably practicable.
- (2) The Comptroller and Auditor General must—
- (a) examine, certify and report on accounts received under this paragraph, and
- (b) send a copy of the accounts and the report to the Treasury.
- (3) The Treasury must lay a copy of the accounts and the report before Parliament.
- (4) The PRA must send a copy of the accounts and the report to the Bank.
- (5) The expenses of the Comptroller and Auditor General under this paragraph are to be met by the PRA.
- (6) Except as provided by paragraph 19(5), the PRA is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.
- (7) In this paragraph “annual accounts” has the meaning given in section 471 of the Companies Act 2006.

**PART 2**

INVESTIGATION OF COMPLAINTS

*Arrangements for the investigation of complaints*

- 23 (1) The PRA must make arrangements (“the complaints scheme”) for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of its functions (other than its legislative functions).
- (2) The complaints scheme must be designed so that, as far as reasonably practicable, complaints are investigated quickly.
- (3) The complaints scheme requires the approval of the Bank.
- (4) The Bank must appoint an independent person (“the investigator”) to be responsible for the conduct of investigations in accordance with the complaints scheme.
- (5) The terms and conditions on which the investigator is appointed must be such as, in the opinion of the Bank, are reasonably designed to secure—
- (a) that the investigator will be free at all times to act independently of the PRA,  
and

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- (b) that complaints will be investigated under the complaints scheme without favouring the PRA.

#### *Publication of complaints scheme*

- 24 (1) The PRA must publish up-to-date details of the complaints scheme including, in particular, details of—
  - (a) the provision made under paragraph 25(5), and
  - (b) the powers which the investigator has to investigate a complaint.
- (2) Those details must be published in the way appearing to the PRA to be best calculated to bring them to the attention of the public.
- (3) The PRA must notify the Treasury and the Bank of the publication of details under this paragraph.
- (4) The PRA may charge a reasonable fee for providing a person with a copy of details published under this paragraph.

#### *Investigation of complaints*

- 25 (1) The PRA is not obliged to investigate a complaint in accordance with the complaints scheme which it reasonably considers would be more appropriately dealt with in another way (for example by referring the matter to the Tribunal or by the institution of other legal proceedings).
- (2) The complaints scheme must provide—
  - (a) for reference to the investigator of any complaint which the PRA is investigating, and
  - (b) for the investigator—
    - (i) to have the means to conduct a full investigation of the complaint,
    - (ii) to report to the PRA, the Bank and the complainant on the result of the investigator's investigation, and
    - (iii) to be able to publish the investigator's report (or part of it) if the investigator considers that it (or the part) ought to be brought to the attention of the public.
- (3) If the PRA has decided not to investigate a complaint, it must notify the investigator.
- (4) If the investigator considers that a complaint of which the investigator has been notified under sub-paragraph (3) ought to be investigated, the investigator may proceed as if the complaint had been referred to the investigator under the complaints scheme.
- (5) The complaints scheme must confer on the investigator the power to recommend, if the investigator thinks it appropriate, that the PRA takes either or both of the following steps—
  - (a) makes a compensatory payment to the complainant, or
  - (b) remedies the matter complained of.
- (6) The complaints scheme must require the PRA, in a case where the investigator—
  - (a) has reported that a complaint is well-founded, or
  - (b) has criticised the PRA in a report,

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to inform the investigator and the complainant of the steps which it proposes to take in response to the report.

- (7) The investigator may require the PRA to publish the whole or a specified part of the response.
- (8) The investigator may appoint a person to conduct the investigation on the investigator’s behalf but subject to the investigator’s direction.
- (9) None of the following may be appointed under sub-paragraph (8)—
  - (a) an officer or employee of the PRA or the FCA;
  - (b) a servant of the Bank.
- (10) Sub-paragraph (2) is not to be taken as preventing the PRA from making arrangements for the initial investigation of a complaint to be conducted by the PRA.

### **PART 3**

#### **STATUS**

##### *Status*

- 26      In relation to any of its functions—
- (a) the PRA is not to be regarded as acting on behalf of the Crown, and
  - (b) its members, officers and staff are not to be regarded as Crown servants.

##### *Exemption from requirement for use of “limited” in name of PRA*

- 27      The PRA is to be exempt from the requirements of the Companies Act 2006 relating to the use of “limited” as part of its name.
- 28      If the Secretary of State is satisfied that any action taken by the PRA makes it inappropriate for the exemption given by paragraph 27 to continue, the Secretary of State may, after consulting the Treasury, give a direction removing it.

### **PART 4**

#### **PENALTIES AND FEES**

##### *Penalties*

- 29      (1) In determining its policy with respect to the amounts of penalties to be imposed by it under this Act, the PRA must take no account of the expenses which it incurs, or expects to incur, in discharging its functions.
- (2) The PRA must prepare and operate a scheme (“the financial penalty scheme”) for ensuring that the amounts paid to the PRA by way of penalties imposed under this Act are applied for the benefit of authorised persons.
- (3) The financial penalty scheme may, in particular, make different provision with respect to different classes of authorised person.

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- (4) Up-to-date details of the financial penalty scheme must be set out in a document (“the scheme details”).
- 30 (1) The scheme details must be published by the PRA in the way appearing to it to be best calculated to bring them to the attention of the public.
- (2) Before making the financial penalty scheme, the PRA must publish a draft of the proposed scheme in the way appearing to the PRA to be best calculated to bring it to the attention of the public.
- (3) The draft must be accompanied by notice that representations about the proposals may be made to the PRA within a specified time.
- (4) Before making the scheme, the PRA must have regard to any representations made to it in accordance with sub-paragraph (3).
- (5) If the PRA makes the proposed scheme, it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with sub-paragraph (3), and
  - (b) its response to them.
- (6) If the scheme differs from the draft published under sub-paragraph (2) in a way which is, in the opinion of the PRA, significant, the PRA must (in addition to complying with sub-paragraph (5)) publish details of the difference.
- (7) The PRA must, without delay, give the Treasury a copy of any scheme details published by it.
- (8) The PRA may charge a reasonable fee for providing a person with a copy of—
- (a) a draft published under sub-paragraph (2);
  - (b) scheme details.
- (9) Sub-paragraphs (2) to (6) and (8)(a) also apply to a proposal to alter or replace the financial penalty scheme.

#### *Fees*

- 31 (1) The PRA may make rules providing for the payment to it of such fees, in connection with the discharge of any of its functions under or as a result of this Act, as it considers will (taking account of its expected income from fees and charges provided for by any other provision of this Act) enable it—
- (a) to meet expenses incurred in carrying out its functions or for any incidental purpose,
  - (b) to repay the principal of, and pay any interest on, any relevant borrowing and to meet relevant commencement expenses, and
  - (c) to maintain adequate reserves.
- (2) In sub-paragraph (1)(b)—
- “relevant borrowing” means any money borrowed by the PRA which has been used for the purpose of meeting expenses incurred in relation to its assumption of functions under this Act, and
- “relevant commencement expenses” means expenses incurred by the PRA, the FCA or the Bank of England—

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- (a) in preparation for the exercise of functions by the PRA under this Act, or
  - (b) for the purpose of facilitating the exercise by the PRA of those functions or otherwise in connection with their exercise by it.
- (3) For the purposes of sub-paragraph (2) it is irrelevant when the borrowing of the money, the incurring of the expenses or the assumption of functions took place (and, in particular, it is irrelevant if expenses were incurred by the FCA at a time when it was known as the Financial Services Authority).
- (4) In fixing the amount of any fee which is to be payable to the PRA, no account is to be taken of any sums which the PRA receives, or expects to receive, by way of penalties imposed by it under this Act.
- (5) Any fee which is owed to the PRA under any provision made by or under this Act may be recovered as a debt due to the PRA.
- (6) The PRA may authorise the FCA to act on its behalf in relation to the payment and recovery of any fees payable under any provision made by or under this Act.

*Services for which fees may not be charged*

- 32 The power conferred by paragraph 31 may not be used to require—
- (a) a fee to be paid in respect of the discharge of any of the PRA’s functions under paragraph 13, 14, 19 or 20 of Schedule 3, or
  - (b) a fee to be paid by any person whose application for approval under section 59 has been granted.

**PART 5**

MISCELLANEOUS

*Exemption from liability in damages*

- 33 (1) Neither the PRA nor any person who is, or is acting as, a member, officer or member of staff of the PRA is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the PRA’s functions.
- (2) Neither the investigator appointed under paragraph 23 nor a person appointed to conduct an investigation on the investigator’s behalf under paragraph 25(8) is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of functions in relation to the investigation of a complaint.
- (3) Neither sub-paragraph (1) nor sub-paragraph (2) applies—
- (a) if the act or omission is shown to have been in bad faith, or
  - (b) so as to 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 Human Rights Act 1998.

*Accredited financial investigators*

- 34 For the purposes of this Act anything done by an accredited financial investigator within the meaning of the Proceeds of Crime Act 2002 who is—

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- (a) a member of the staff of the PRA, or
- (b) a person appointed by the PRA under section 167 or 168 to conduct an investigation,

is to be treated as done in the exercise or discharge of a function of the PRA.

*Amounts required by rules to be paid to the PRA*

- 35 Any amount (other than a fee) which is required by rules to be paid to the PRA may be recovered as a debt due to the PRA.]

[<sup>F566</sup>SCHEDULE 1A

Section 6A

FURTHER PROVISION ABOUT THE CONSUMER FINANCIAL EDUCATION BODY

**Annotations:**

**Amendments (Textual)**

**F566** Sch. 1A inserted (8.4.2010 for certain purposes and 1.4.2011 otherwise) by [Financial Services Act 2010](#) (c. 28), ss. 2(6), 26(1)(b)(k), [Sch. 1 para. 1](#) (with [Sch. 1 para. 2](#)); S.I. 2010/2480, [art. 3](#)

**PART 1**

GENERAL

Ensuring exercise of consumer financial education function etc

- 1 (1) The Authority must take such steps as are necessary to ensure that the consumer financial education body is, at all times, capable of exercising the consumer financial education function.
- (2) In complying with the duty under sub-paragraph (1) the Authority may, in particular, provide services to that body which the Authority considers would facilitate the exercise of that function.

Constitution

- 2 (1) The constitution of the consumer financial education body must provide for it to have—
- (a) a chair;
  - (b) a chief executive; and
  - (c) a board (which must include the chair and chief executive) whose members are the body's directors.
- (2) The members of the board must be persons appointed, and liable to removal from office, by the Authority (acting, in the case of the chair or chief executive, with the approval of the Treasury).

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- (3) But the terms of appointment of members of the board (and in particular those governing removal from office) must be such as to secure their independence from the Authority in the exercise of the consumer financial education function.
- (4) The Authority may appoint a person to be a member of the board only if it is satisfied that the person has knowledge or experience which is likely to be relevant to the exercise by the body of the consumer financial education function.

#### Status

- 3 (1) The consumer financial education body is not to be regarded as exercising functions on behalf of the Crown.
- (2) The body's board members, officers and staff are not to be regarded as Crown servants.

#### Discharge of function by others

- 4 (1) The consumer financial education body may discharge the consumer financial education function by—
  - (a) supporting the doing by other persons of anything that it considers would enhance the understanding, knowledge or ability mentioned in section 6A(1); or
  - (b) arranging for other persons to do anything that it considers would enhance that understanding, knowledge or ability.
- (2) The reference in sub-paragraph (1)(a) to support includes financial support.
- (3) The reference in sub-paragraph (1)(b) to arrangements includes arrangements under which payments are made to the other persons.
- (4) Nothing in this paragraph is to limit other ways in which the consumer financial education body may discharge the consumer financial education function.
- 5 (1) This paragraph applies if the consumer financial education body arranges for any person (including one established by or under an enactment) to do anything that it considers would enhance the understanding, knowledge or ability mentioned in section 6A(1).
- (2) The person may do that thing despite any limitation on its capacity (whether under a rule of law or otherwise) which, but for this paragraph, would have applied.

#### Market confidence and financial stability

- 6 In discharging the consumer financial education function, the consumer financial education body must have regard to the importance of—
  - (a) maintaining confidence in the UK financial system; and
  - (b) maintaining the stability of the UK financial system.

#### Budget

- 7 (1) The consumer financial education body must adopt an annual budget which has been approved by the Authority.

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- (2) The budget must be adopted—
  - (a) in the case of the body's first financial year, as soon as reasonably practicable after the body is established; and
  - (b) in the case of each subsequent financial year, before the start of the financial year.
- (3) The consumer financial education body may, with the approval of the Authority, vary the budget for a financial year at any time after its adoption.
- (4) Before adopting or varying a budget, the consumer financial education body must consult—
  - (a) the Treasury;
  - (b) the Secretary of State;
  - (c) the Office of Fair Trading; and
  - (d) such other persons (if any) as the body considers appropriate.
- (5) The consumer financial education body must publish each budget, and each variation of a budget, in the way it considers appropriate.

#### Annual plan

- 8 (1) The consumer financial education body must in respect of each of its financial years prepare an annual plan which has been approved by the Authority.
- (2) The plan must be prepared—
  - (a) in the case of the body's first financial year, as soon as reasonably practicable after the body is established; and
  - (b) in the case of each subsequent financial year, before the start of the financial year.
- (3) The consumer financial education body may, with the approval of the Authority, vary the plan in respect of a financial year at any time after its preparation.
- (4) An annual plan in respect of a financial year must set out—
  - (a) the objectives of the consumer financial education body for the year;
  - (b) how the extent to which each of those objectives is met is to be determined;
  - (c) the relative priorities of each of those objectives; and
  - (d) how its resources are to be allocated among the activities to be carried on in connection with the discharge of the consumer financial education function.
- (5) In sub-paragraph (4) references to objectives for a financial year include objectives for a longer period that includes that year.
- (6) Before preparing or varying an annual plan, the consumer financial education body must consult—
  - (a) the Treasury;
  - (b) the Secretary of State;
  - (c) the Office of Fair Trading;
  - (d) the Practitioner Panel;
  - (e) the Consumer Panel; and
  - (f) such other persons (if any) as the body considers appropriate.

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- (7) The consumer financial education body must publish each annual plan, and each variation of an annual plan, in the way it considers appropriate.

#### Annual reports

- 9 (1) At least once a year, the consumer financial education body must make a report to the Authority in relation to the discharge of the consumer financial education function.
- (2) The report must—
- (a) set out the extent to which the body has met its objectives and priorities for the period covered by the report;
  - (b) include a copy of its latest accounts; and
  - (c) comply with any requirements specified in rules made by the Authority.
- (3) The consumer financial education body must publish each report in the way it considers appropriate.
- (4) Nothing in this paragraph requires the consumer financial education body to make a report at any time in the period of 12 months beginning with its establishment.

#### Exemption from consumer credit rules

- 10 (1) A licence is not required under Part 3 of the Consumer Credit Act 1974 in respect of anything done by—
- (a) the consumer financial education body in discharging the consumer financial education function; or
  - (b) a person acting on its behalf in accordance with arrangements made under paragraph 4(1)(b).
- (2) Nothing in Part 4 or 10 of that Act (seeking business or ancillary credit business) is to apply in relation to anything done by—
- (a) the consumer financial education body in discharging the consumer financial education function; or
  - (b) a person acting on its behalf in accordance with arrangements made under paragraph 4(1)(b).

## PART 2

### FUNDING

#### Meaning of “the relevant costs”

- 11 (1) In this Part of this Schedule “the relevant costs” means—
- (a) the expenses incurred by the Authority in establishing the consumer financial education body; and
  - (b) the expenses incurred, or expected to be incurred, by the consumer financial education body in connection with the discharge of the consumer financial education function.
- (2) For the purposes of sub-paragraph (1)(a) it does not matter when the expenses were incurred.

Funding of the relevant costs by authorised persons [<sup>F567</sup>,  
payment service providers or electronic money issuers]

**Annotations:**

**Amendments (Textual)**

**F567** Words in cross-heading preceding Sch. 1A para. 12 substituted (9.2.2011 for certain purposes, otherwise 30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, **Sch. 4 para. 2(6)(a)** (with art. 3)

- 12 (1) For the purpose of meeting a proportion of the relevant costs the Authority may make rules requiring—
- (a) authorised persons [<sup>F568</sup>, electronic money issuers] or payment service providers, or
  - (b) any specified class of authorised person [<sup>F569</sup>, electronic money issuer] or payment service provider,
- to pay to the Authority specified amounts or amounts calculated in a specified way.
- (2) Before making the rules the Authority must have regard to other anticipated sources of funding of the relevant costs.
- (3) The amounts to be paid under the rules may include a component to cover the expenses of the Authority in collecting the payments (“collection costs”).
- (4) The Authority must pay to the consumer financial education body the amounts that it receives under the rules apart from amounts in respect of its collection costs (which it may keep).
- [<sup>F570</sup>(4A) “Electronic money issuer” means a person who is an electronic money issuer for the purposes of the Electronic Money Regulations 2011 as a result of falling within any of paragraphs (a) to (e) and (h) to (j) of the definition in regulation 2(1).]
- (5) “Payment service provider” means a person who is a payment service provider for the purposes of the Payment Services Regulations 2009 as a result of falling within any of paragraphs (a) to (f) of the definition in regulation 2(1).
- (6) “Specified” means specified in the rules.

**Annotations:**

**Amendments (Textual)**

**F568** Words in [Sch. 1A para. 12\(1\)\(a\)](#) inserted (9.2.2011 for certain purposes, otherwise 30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, **Sch. 4 para. 2(6)(b)** (with art. 3)

**F569** Words in [Sch. 1A para. 12\(1\)\(b\)](#) inserted (9.2.2011 for certain purposes, otherwise 30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, **Sch. 4 para. 2(6)(c)** (with art. 3)

**F570** [Sch. 1A para. 12\(4A\)](#) inserted (9.2.2011 for certain purposes, otherwise 30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, **Sch. 4 para. 2(6)(d)** (with art. 3)

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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Funding of the relevant costs by consumer credit licensees etc

- 13 (1) For the purpose of meeting a proportion of the relevant costs the OFT may, with the approval of the Secretary of State and the Treasury, from time to time require—
- (a) qualifying consumer credit licensees or applicants, or
  - (b) any specified class of qualifying consumer credit licensee or applicant,
- to pay to the OFT specified amounts or amounts calculated in a specified way.
- (2) The requirements are to be imposed by general notice.
- (3) “Qualifying consumer credit licensee or applicant” means—
- (a) a licensee under a licence which covers to any extent the carrying on of a type of business specified in an order under section 226A(2)(e); or
  - (b) an applicant for a licence, or for the renewal of a licence, which (if granted or renewed) will fall within paragraph (a) above.
- (4) Before giving a general notice the OFT must have regard to other anticipated sources of funding of the relevant costs.
- (5) Before giving a general notice, the OFT must consult—
- (a) the Authority;
  - (b) the consumer financial education body; and
  - (c) such other persons (if any) as the OFT considers appropriate.
- (6) The amounts to be paid under a general notice may include a component to cover the expenses of the OFT in collecting the payments (“collection costs”).
- (7) The OFT must pay to the consumer financial education body the amounts that it receives under a general notice apart from amounts in respect of its collection costs (which it may keep).
- (8) A general notice may—
- (a) specify the time at or by which the payments are to be made;
  - (b) provide for exceptions from requirements imposed on a class of qualifying consumer credit licensee or applicant;
  - (c) impose different requirements on different classes of qualifying consumer credit licensee or applicant;
  - (d) make provision for refunds in specified circumstances.
- (9) Expressions which are used in sub-paragraph (3) and in the Consumer Credit Act 1974 have the same meaning in that sub-paragraph as in that Act.
- (10) In this paragraph—
- “general notice” means a notice published by the OFT at a time and in a manner appearing to it suitable for securing that the notice is seen within a reasonable time by persons likely to be affected by it;
- “the OFT” means the Office of Fair Trading;
- “specified” means specified in the general notice.

Funding by grants or loans etc made by Treasury or Secretary of State

- 14 (1) The Treasury or the Secretary of State may—
- (a) make grants or loans, or

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (b) provide any other form of financial assistance,  
to the consumer financial education body for the purpose of meeting any expenses incurred by it in connection with the discharge of the consumer financial education function.
- (2) Any grant or loan or other form of financial assistance under this paragraph may be made or provided subject to such terms as the Treasury or the Secretary of State consider appropriate.
- (3) Any expenses incurred by the Treasury or the Secretary of State under this paragraph are to be met out of money provided by Parliament.

### PART 3

#### REVIEWS

Reviews of economy etc of the consumer financial education body

- 15
- (1) The Authority may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the consumer financial education body has used its resources in discharging the consumer financial education function.
  - (2) The Authority must consult the Treasury before acting under this paragraph.
  - (3) A review is not to be concerned with the merits of the body's general policy or principles in discharging the consumer financial education function.
  - (4) On completion of a review, the person conducting it must make a written report to the Authority—
    - (a) setting out the result of the review; and
    - (b) making such recommendations (if any) as the person considers appropriate.
  - (5) The Authority must publish a copy of the report in the way it considers appropriate.
  - (6) Any expenses reasonably incurred in the conduct of the review are to be met by the Authority.
  - (7) “Independent” means appearing to the Authority to be independent of the consumer financial education body.

Right to obtain documents and information

- 16
- (1) A person conducting a review under paragraph 15—
    - (a) has a right of access at any reasonable time to all such documents as the person may reasonably require for the purposes of the review; and
    - (b) may require any person holding or accountable for any such document to provide such information and explanation as are reasonably required for those purposes.
  - (2) This paragraph applies only to documents in the custody or under the control of the consumer financial education body.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- (3) An obligation imposed on a person as a result of this paragraph is enforceable by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.]

## SCHEDULE 2

Section 22(2).

### REGULATED ACTIVITIES

#### Annotations:

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

**C717** Sch. 2 applied by 1974 c. 39, s. 16(6E)(c) (as inserted (1.9.2002) by S.I. 2001/544, arts. 2(1)(2)(b), 90(2); S.I. 2001/3538, art. 2(1))

## PART I

### [<sup>F571</sup>REGULATED ACTIVITIES: GENERAL]

#### Annotations:

#### Amendments (Textual)

**F571** Sch. 2 Pt. 1 heading substituted (12.3.2009) by *Dormant Bank and Building Society Accounts Act 2008* (c. 31), ss. 15, 31(1), Sch. 2 para. 1(2); S.I. 2009/490, art. 2 (with art. 3)

#### *General*

- 1 The matters with respect to which provision may be made under section 22(1) in respect of activities include, in particular, those described in general terms in this Part of this Schedule.

#### *Dealing in investments*

- 2 (1) Buying, selling, subscribing for or underwriting investments or offering or agreeing to do so, either as a principal or as an agent.
- (2) In the case of an investment which is a contract of insurance, that includes carrying out the contract.

#### *Arranging deals in investments*

- 3 Making, or offering or agreeing to make—
- (a) arrangements with a view to another person buying, selling, subscribing for or underwriting a particular investment;
  - (b) arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.

*Deposit taking*

- 4 Accepting deposits.

*Safekeeping and administration of assets*

- 5 (1) Safeguarding and administering assets belonging to another which consist of or include investments or offering or agreeing to do so.
- (2) Arranging for the safeguarding and administration of assets belonging to another, or offering or agreeing to do so.

*Managing investments*

- 6 Managing, or offering or agreeing to manage, assets belonging to another person where—
- (a) the assets consist of or include investments; or
  - (b) the arrangements for their management are such that the assets may consist of or include investments at the discretion of the person managing or offering or agreeing to manage them.

*Investment advice*

- 7 Giving or offering or agreeing to give advice to persons on—
- (a) buying, selling, subscribing for or underwriting an investment; or
  - (b) exercising any right conferred by an investment to acquire, dispose of, underwrite or convert an investment.

*Establishing collective investment schemes*

- 8 Establishing, operating or winding up a collective investment scheme, including acting as—
- (a) trustee of a unit trust scheme;
  - (b) depositary of a collective investment scheme other than a unit trust scheme; or
  - (c) sole director of a body incorporated by virtue of regulations under section 262.

*Using computer-based systems for giving investment instructions*

- 9 (1) Sending on behalf of another person instructions relating to an investment by means of a computer-based system which enables investments to be transferred without a written instrument.
- (2) Offering or agreeing to send such instructions by such means on behalf of another person.
- (3) Causing such instructions to be sent by such means on behalf of another person.
- (4) Offering or agreeing to cause such instructions to be sent by such means on behalf of another person.

**[<sup>F572</sup>PART 1A**

## REGULATED ACTIVITIES: RECLAIM FUNDS

**Annotations:****Amendments (Textual)**

**F572** Sch. 2 Pt. 1A inserted (12.3.2009) by Dormant Bank and Building Society Accounts Act 2008 (c. 31), ss. 15, 31(1), **Sch. 2 para. 1(3)**; S.I. 2009/490, **art. 2** (with art. 3)

*Activities of reclaim funds*

- 9A (1) The matters with respect to which provision may be made under section 22(1) in respect of activities include, in particular, any of the activities of a reclaim fund.
- (2) “Reclaim fund” has the meaning given by section 5(1) of the Dormant Bank and Building Society Accounts Act 2008.]

**PART II**

## INVESTMENTS

*General*

- 10 The matters with respect to which provision may be made under section 22(1) in respect of investments include, in particular, those described in general terms in this Part of this Schedule.

*Securities*

- 11 (1) Shares or stock in the share capital of a company.
- (2) “Company” includes—
- (a) any body corporate (wherever incorporated), and
  - (b) any unincorporated body constituted under the law of a country or territory outside the United Kingdom,
- other than an open-ended investment company.

*Instruments creating or acknowledging indebtedness*

- 12 Any of the following—
- (a) debentures;
  - (b) debenture stock;
  - (c) loan stock;
  - (d) bonds;
  - (e) certificates of deposit;
  - (f) any other instruments creating or acknowledging a present or future indebtedness.

**Annotations:**

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

**C718** Sch. 2 para. 12(f) extended (24.6.2003) by [The Uncertificated Securities \(Amendment\) \(Eligible Debt Securities\) Regulations 2003 \(S.I. 2003/1633\)](#), regs. 1(1), 15, [Sch. 2 para. 8\(2\)\(h\)](#)

*Government and public securities*

- 13 (1) Loan stock, bonds and other instruments—
- (a) creating or acknowledging indebtedness; and
  - (b) issued by or on behalf of a government, local authority or public authority.
- (2) “Government, local authority or public authority” means—
- (a) the government of the United Kingdom, of Northern Ireland, or of any country or territory outside the United Kingdom;
  - (b) a local authority in the United Kingdom or elsewhere;
  - (c) any international organisation the members of which include the United Kingdom or another member State.

*Instruments giving entitlement to investments*

- 14 (1) Warrants or other instruments entitling the holder to subscribe for any investment.
- (2) It is immaterial whether the investment is in existence or identifiable.

*Certificates representing securities*

- 15 Certificates or other instruments which confer contractual or property rights—
- (a) in respect of any investment held by someone other than the person on whom the rights are conferred by the certificate or other instrument; and
  - (b) the transfer of which may be effected without requiring the consent of that person.

*Units in collective investment schemes*

- 16 (1) Shares in or securities of an open-ended investment company.
- (2) Any right to participate in a collective investment scheme.

*Options*

- 17 Options to acquire or dispose of property.

*Futures*

- 18 Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date.

*Contracts for differences*

- 19 Rights under—

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (a) a contract for differences; or
- (b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in—
  - (i) the value or price of property of any description; or
  - (ii) an index or other factor designated for that purpose in the contract.

*Contracts of insurance*

- 20 Rights under a contract of insurance, including rights under contracts falling within head C of Schedule 2 to the <sup>M84</sup>Friendly Societies Act 1992.

**Annotations:**

**Marginal Citations**

**M84** 1992 c. 40.

*Participation in Lloyd's syndicates*

- 21 (1) The underwriting capacity of a Lloyd's syndicate.
- (2) A person's membership (or prospective membership) of a Lloyd's syndicate.

*Deposits*

- 22 Rights under any contract under which a sum of money (whether or not denominated in a currency) is paid on terms under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it.

*Loans secured on land*

- 23 (1) Rights under any contract under which—
- (a) one person provides another with credit; and
  - (b) the obligation of the borrower to repay is secured on land.
- (2) "Credit" includes any cash loan or other financial accommodation.
- (3) "Cash" includes money in any form.

*<sup>F573</sup>Other finance arrangements involving land*

**Annotations:**

**Amendments (Textual)**

**F573** Sch. 2 para. 23A inserted (19.2.2006) by [Regulation of Financial Services \(Land Transactions\) Act 2005](#) (c. 24), ss. 1, 2(2)

- 23A (1) Rights under any arrangement for the provision of finance under which the person providing the finance either—
- (a) acquires a major interest in land from the person to whom the finance is provided, or

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(b) disposes of a major interest in land to that person,  
as part of the arrangement.

(2) References in sub-paragraph (1) to a “major interest” in land are to—

- (a) in relation to land in England or Wales—
  - (i) an estate in fee simple absolute, or
  - (ii) a term of years absolute,whether subsisting at law or in equity;
- (b) in relation to land in Scotland—
  - (i) the interest of an owner of land, or
  - (ii) the tenant's right over or interest in a property subject to a lease;
- (c) in relation to land in Northern Ireland—
  - (i) any freehold estate, or
  - (ii) any leasehold estate,whether subsisting at law or in equity.

(3) It is immaterial for the purposes of sub-paragraph (1) whether either party acquires or (as the case may be) disposes of the interest in land—

- (a) directly, or
- (b) indirectly.]

#### *Rights in investments*

24 Any right or interest in anything which is an investment as a result of any other provision made under section 22(1).

### **PART III**

#### **SUPPLEMENTAL PROVISIONS**

#### *The order-making power*

- 25 (1) An order under section 22(1) may—
- (a) provide for exemptions;
  - (b) confer powers on the Treasury or the Authority;
  - (c) authorise the making of regulations or other instruments by the Treasury for purposes of, or connected with, any relevant provision;
  - (d) authorise the making of rules or other instruments by the Authority for purposes of, or connected with, any relevant provision;
  - (e) make provision in respect of any information or document which, in the opinion of the Treasury or the Authority, is relevant for purposes of, or connected with, any relevant provision;
  - (f) make such consequential, transitional or supplemental provision as the Treasury consider appropriate for purposes of, or connected with, any relevant provision.
- (2) Provision made as a result of sub-paragraph (1)(f) may amend any primary or subordinate legislation, including any provision of, or made under, this Act.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (3) “Relevant provision” means any provision—
- (a) of section 22 or this Schedule; or
  - (b) made under that section or this Schedule.

*Parliamentary control*

- 26 (1) This paragraph applies to the first order made under section 22(1).
- (2) This paragraph also applies to any subsequent order made under section 22(1) which contains a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed order would be that an activity which is not a regulated activity would become a regulated activity.
- (3) An order to which this paragraph applies—
- (a) must be laid before Parliament after being made; and
  - (b) ceases to have effect at the end of the relevant period unless before the end of that period the order is approved by a resolution of each House of Parliament (but without that affecting anything done under the order or the power to make a new order).
- (4) “Relevant period” means a period of twenty-eight days beginning with the day on which the order is made.
- (5) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

*Interpretation*

- 27 (1) In this Schedule—
- “buying” includes acquiring for valuable consideration;
- “offering” includes inviting to treat;
- “property” includes currency of the United Kingdom or any other country or territory; and
- “selling” includes disposing for valuable consideration.
- (2) In sub-paragraph (1) “disposing” includes—
- (a) in the case of an investment consisting of rights under a contract—
    - (i) surrendering, assigning or converting those rights; or
    - (ii) assuming the corresponding liabilities under the contract;
  - (b) in the case of an investment consisting of rights under other arrangements, assuming the corresponding liabilities under the contract or arrangements;
  - (c) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists.
- (3) In this Schedule references to an instrument include references to any record (whether or not in the form of a document).

## SCHEDULE 3

Sections 31(1)(b) and 37.

### EEA PASSPORT RIGHTS

#### Annotations:

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

- C719** Sch. 3 extended (with modifications) (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 25-27; S.I. 2001/3538, **art. 2(1)**  
Sch. 3 extended (with modifications) (Gibraltar) (5.10.2001 for specified purposes otherwise 1.12.2001) by S.I. 2001/3084, **arts. 1(1)**, 2-4; S.I. 2001/3538, **art. 2(1)**  
Sch. 3 modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 114(3)(b), 128(3)(b) (with art. 23(2))

## PART I

### DEFINED TERMS

#### *The single market directives*

- 1 “The single market directives” means—
- [<sup>F574</sup>(a) the banking consolidation directive;]
  - (c) the insurance directives; <sup>F575</sup> ...
  - [<sup>F576</sup>(ca) the reinsurance directive;]
  - (d) the [<sup>F577</sup>markets in financial instruments directive][<sup>F578</sup>, <sup>F579</sup> ...
  - (e) the insurance mediation directive][<sup>F580</sup>; and
  - (f) the UCITS directive.]

#### Annotations:

##### Amendments (Textual)

- F574** Sch. 3 para. 1(a) substituted (22.11.2000) for Sch. 3 para. 1(a)(b) by S.I. 2000/2952, **reg. 8(5)(a)**  
**F575** Word in Sch. 3 para. 1(c) omitted (14.1.2005) by virtue of The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2004/1473), **reg. 2(2)(a)(i)**  
**F576** Sch. 3 para. 1(ca) inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 6(a)**  
**F577** Words in Sch. 3 para. 1(d) substituted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(4), **Sch. 4 para. 2**  
**F578** Sch. 3 para. 1(e) and preceding word inserted (14.1.2005) by The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2004/1473), **reg. 2(2)(a)(ii)**  
**F579** Word in Sch. 3 para. 1(d) omitted (13.2.2004) by virtue of The Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2066), **reg. 2(2)(a)(i)**  
**F580** Sch. 3 para. 1(f) and preceding word inserted (13.2.2004) after Sch. 3 para. 1(e) by The Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2066), **reg. 2(2)(a)(i)**

##### Commencement Information

- I129** Sch. 3 Pt. I para. 1 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 1 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 1 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c), Sch.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

Pts. 2, 3; Sch. 3 Pt. I para. 1 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.;  
Sch. 3 Pt. I para. 1 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

*The banking co-ordination directives*

- [<sup>F581</sup>2] ”The banking consolidation directive” means Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions [<sup>F582</sup>as last amended by Directive 2009/111/EC of the European Parliament and of the Council].]

**Annotations:**

**Amendments (Textual)**

**F581** Sch. 3 para. 2 substituted (1.1.2007) by The Capital Requirements Regulations 2006 (S.I. 2006/3221), reg. 29(1), Sch. 3 para. 2(2)

**F582** Words in Sch. 3 para. 2 inserted (31.12.2010) by The Capital Requirements (Amendment) Regulations 2010 (S.I. 2010/2628), reg. 14, Sch. 1 para. 17

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

**C720** Sch. 3 para. 2 modified (9.2.2011 for certain purposes, otherwise 30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(a)(xiii)(b), 78 (with art. 3)

**Commencement Information**

**I130** Sch. 3 Pt. I para. 2 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 2 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 2 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c), Sch. Pts. 2, 3; Sch. 3 Pt. I para. 2 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; Sch. 3 Pt. I para. 2 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

*The insurance directives*

- 3 (1) “The insurance directives” means the first, second and third non-life insurance directives and the [<sup>F583</sup>life assurance consolidation directive].
- (2) “First non-life insurance directive” means the Council Directive of 24 July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance (No.73/239/EEC).
- (3) “Second non-life insurance directive” means the Council Directive of 22 June 1988 on the co-ordination of laws, etc, and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC (No.88/357/EEC).
- (4) “Third non-life insurance directive” means the Council Directive of 18 June 1992 on the co-ordination of laws, etc, and amending Directives 73/239/EEC and 88/357/EEC (No.92/49/EEC).
- [<sup>F584</sup>(8) “Life assurance consolidation directive” means Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance.]

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

**Annotations:**

**Amendments (Textual)**

**F583** Words in Sch. 3 para. 3(1) substituted (11.1.2005) by The Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 (S.I. 2004/3379), reg. 6(6)(a)(i)

**F584** Sch. 3 para. 3(8) substituted (11.1.2005) for Sch. 3 para. 3(5)(6)(7) by The Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 (S.I. 2004/3379), reg. 6(6)(a)(ii)

**Commencement Information**

**I131** Sch. 3 Pt. I para. 3 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 3 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 3 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c), Sch. Pts. 2, 3; Sch. 3 Pt. I para. 3 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; Sch. 3 Pt. I para. 3 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

*[<sup>F585</sup>The reinsurance directive*

**Annotations:**

**Amendments (Textual)**

**F585** Sch. 3 para. 3A and cross-heading inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), Sch. 1 para. 6(b)

3A “The reinsurance directive” means Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC.]

*The investment services directive*

4 <sup>F586</sup> .....

**Annotations:**

**Amendments (Textual)**

**F586** Sch. 3 para. 4 repealed (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(4), Sch. 4 para. 3

*[<sup>F587</sup>The insurance mediation directive*

**Annotations:**

**Amendments (Textual)**

**F587** Sch. 3 para. 4A and cross-heading inserted (14.1.2005) by The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), reg. 2(b)

4A “The insurance mediation directive” means the European Parliament and Council Directive of 9th December 2002 on insurance mediation (No.2002/92/EC).]

[<sup>F588</sup>The UCITS directive**Annotations:****Amendments (Textual)**

**F588** Sch. 3 para. 4B and cross-heading inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), reg. 2(2)(b)

- 4B “The UCITS directive” means the Council Directive of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (No.85/611/EEC).]

[<sup>F589</sup>The markets in financial instruments directive**Annotations:****Amendments (Textual)**

**F589** Sch. 3 para. 4C and preceding cross-heading 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. 13

- 4C ”The markets in financial instruments directive” means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.]

*EEA firm*

- 5 “EEA firm” means any of the following if it does not have its [<sup>F590</sup>relevant office] in the United Kingdom—
- (a) an investment firm (as defined in [<sup>F591</sup>Article 4.1.1 of the markets in financial instruments directive]) which is authorised (within the meaning of [<sup>F592</sup>Article 5]) by its home state regulator;
  - [<sup>F593</sup>(b) a credit institution (as defined in Article 4.1 of the banking consolidation directive) which is authorised (within the meaning of Article 4.2) by its home state regulator,
  - (c) a financial institution (as defined in Article 4.5 of the banking consolidation directive) which is a subsidiary of the kind mentioned in Article 24 and which fulfils the conditions in that Article;]
  - (d) an undertaking pursuing the activity of direct insurance (within the meaning of [<sup>F594</sup>Article 2 of the life assurance consolidation directive or Article 1 of the first non-life insurance directive]) which has received authorisation under [<sup>F595</sup>Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive] from its home state regulator.[<sup>F596</sup>; <sup>F597</sup> ...
  - [<sup>F598</sup>(da) an undertaking pursuing the activity of reinsurance (within the meaning of Article 2.1(a) of the reinsurance directive) which has received authorisation under (or is deemed to be authorised in accordance with) Article 3 of the reinsurance directive from its home state regulator;]

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (e) an insurance intermediary (as defined in Article 2.5 of the insurance mediation directive), or a reinsurance intermediary (as defined in Article 2.6) which is registered with its home state regulator under Article 3.<sup>[F599]</sup>; or
- (f) a management company (as defined in Article 1a.2 of the UCITS directive) which is authorised (within the meaning of Article 5) by its home state regulator.]

**Annotations:**

**Amendments (Textual)**

- F590** Words in Sch. 3 para. 5 substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#). {reg. 2(c)(i)}
- F591** Words in Sch. 3 para. 5(a) substituted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(4), **Sch. 4 para. 4(a)**
- F592** Words in Sch. 3 para. 5(a) substituted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(4), **Sch. 4 para. 4(b)**
- F593** Sch. 3 para. 5(b)(c) substituted (1.1.2007) by [The Capital Requirements Regulations 2006 \(S.I. 2006/3221\)](#), reg. 29(1), **Sch. 3 para. 2(3)**
- F594** Words in Sch. 3 para. 5(d) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), **reg. 6(6)(b)(i)**
- F595** Words in Sch. 3 para. 5(d) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), **reg. 6(6)(b)(ii)**
- F596** Sch. 3 para. 5(e) and preceding word inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 2(c)(iii)**
- F597** Word in Sch. 3 para. 5(d) omitted (13.2.2004) by virtue of [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg. 2(2)(c)(i)**
- F598** Sch. 3 para. 5(da) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), **Sch. 1 para. 6(c)**
- F599** Sch. 3 para. 5(f) and preceding word inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg. 2(2)(c)(ii)**

**Commencement Information**

- I132** Sch. 3 Pt. I para. 5 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 5 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 5 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c), Sch. Pts. 2, 3; Sch. 3 Pt. I para. 5 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, **art. 2 Sch.**; Sch. 3 Pt. I para. 5 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

- [<sup>F600</sup>5A In paragraph 5, “relevant office” means—
- (a) in relation to a firm falling within sub-paragraph (e) of that paragraph which has a registered office, its registered office;
  - (b) in relation to any other firm, its head office.]

**Annotations:**

**Amendments (Textual)**

- F600** Sch. 3 para. 5A inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 2(2)(d)**

*EEA authorisation*

- [<sup>F601</sup>6 “EEA authorisation” means—
- (a) in relation to an EEA firm falling within paragraph 5(e), registration with its home state regulator under Article 3 of the insurance mediation directive;
  - (b) in relation to any other EEA firm, authorisation granted to an EEA firm by its home state regulator for the purpose of the relevant single market directive.]

**Annotations:****Amendments (Textual)**

**F601** Sch. 3 para. 6 substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 2(2)(e)**

**Commencement Information**

**I133** Sch. 3 Pt. I para. 6 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 6 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 6 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c), Sch. Pts. 2, 3; Sch. 3 Pt. I para. 6 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; Sch. 3 Pt. I para. 6 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

*EEA right*

- 7 “EEA right” means the entitlement of a person to establish a branch, or provide services, in an EEA State other than that in which he has his [<sup>F602</sup>relevant office]—
- (a) in accordance with the Treaty as applied in the EEA; and
  - (b) subject to the conditions of the relevant single market directive.

**Annotations:****Amendments (Textual)**

**F602** Words in Sch. 3 para. 7 substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 2(2)(f)**

**Commencement Information**

**I134** Sch. 3 Pt. I para. 7 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 7 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 7 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c), Sch. Pts. 2, 3; Sch. 3 Pt. I para. 7 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; Sch. 3 Pt. I para. 7 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

- [<sup>F603</sup>7A In paragraph 7, “relevant office” means—
- (a) in relation to a person who has a registered office and whose entitlement is subject to the conditions of the insurance mediation directive, his registered office;
  - (b) in relation to any other person, his head office.]

**Annotations:**

**Amendments (Textual)**

**F603** Sch. 3 para. 7A inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 2(2)(g)**

*EEA State*

[<sup>F604</sup>8 “EEA State” has the meaning given by Schedule 1 to the Interpretation Act 1978.]

**Annotations:**

**Amendments (Textual)**

**F604** Sch. 3 para. 8 substituted (13.2.2007) by [The Financial Services \(EEA State\) Regulations 2007 \(S.I. 2007/108\)](#), **reg. 2**

**Commencement Information**

**I135** Sch. 3 Pt. I para. 8 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 8 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 8 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c), Sch. Pts. 2, 3; Sch. 3 Pt. I para. 8 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; Sch. 3 Pt. I para. 8 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

*Home state regulator*

9 “Home state regulator” means the competent authority (within the meaning of the relevant single market directive) of an EEA State (other than the United Kingdom) in relation to the EEA firm concerned.

**Annotations:**

**Commencement Information**

**I136** Sch. 3 Pt. I para. 9 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 9 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 9 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c), Sch. Pts. 2, 3; Sch. 3 Pt. I para. 9 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; Sch. 3 Pt. I para. 9 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

*UK firm*

10 “UK firm” means a person whose [<sup>F605</sup>relevant office] is in the UK and who has an EEA right to carry on activity in an EEA State other than the United Kingdom.

**Annotations:**

**Amendments (Textual)**

**F605** Words in Sch. 3 para. 10 substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 2(2)(h)**

**Commencement Information**

**I137** Sch. 3 Pt. I para. 10 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 10 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 10 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c), Sch. Pts. 2, 3; Sch. 3 Pt. I para. 10 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2 Sch.; Sch. 3 para. 10 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

[<sup>F606</sup>10A In paragraph 10, “relevant office” means—  
 (a) in relation to a firm whose EEA right derives from the insurance mediation directive and which has a registered office, its registered office;  
 (b) in relation to any other firm, its head office.]

**Annotations:****Amendments (Textual)**

**F606** Sch. 3 para. 10A inserted (14.1.2005) by The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), reg. 2(2)(i)

[<sup>F607</sup>UK investment firm

**Annotations:****Amendments (Textual)**

**F607** Sch. 3 para. 10B inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(4), Sch. 4 para. 5

10B “UK investment firm” means a UK firm—  
 (a) which is an investment firm, and  
 (b) whose EEA right derives from the markets in financial instruments directive.]

*Host state regulator*

11 “Host state regulator” means the competent authority (within the meaning of the relevant single market directive) of an EEA State (other than the United Kingdom) in relation to a UK firm’s exercise of EEA rights there.

**Annotations:****Commencement Information**

**I138** Sch. 3 Pt. I para. 11 wholly in force at 1.12.2001; Sch. 3 Pt. I para. 11 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. I para. 11 in force for certain purposes (25.2.2001) by S.I. 2001/516, art. 2 Sch. Pts. 2, 3; Sch. 3 Pt. I para. 11 in force for specified purposes (18.6.2001) by S.I. 2001/1820, art. 2 Sch.; Sch. 3 Pt. I para. 11 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

[<sup>F608</sup>Tied agent

**Annotations:**

**Amendments (Textual)**

**F608** Sch. 3 para. 11A inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(4), **Sch. 4 para. 6**

- 11A       ”Tied agent” has the meaning given in Article 4.1.25 of the markets in financial instruments directive.]

**PART II**

EXERCISE OF PASSPORT RIGHTS BY EEA FIRMS

*Firms qualifying for authorisation*

- 12       (1) Once an EEA firm which is seeking to establish a branch in the United Kingdom in exercise of an EEA right satisfies the establishment conditions, it qualifies for authorisation.
- (2) Once an EEA firm which is seeking to provide services in the United Kingdom in exercise of an EEA right satisfies the service conditions, it qualifies for authorisation.
- [<sup>F609</sup>(3) If an EEA firm falling within paragraph 5(a) is seeking to use a tied agent established in the United Kingdom in connection with the exercise of an EEA right deriving from the markets in financial instruments directive, this Part of this Schedule applies as if the firm were seeking to establish a branch in the United Kingdom.
- (4) But if—
- (a) an EEA firm already qualifies for authorisation by virtue of sub-paragraph (1); and
- (b) the EEA right which it is exercising derives from the markets in financial instruments directive,
- sub-paragraph (3) does not require the firm to satisfy the establishment conditions in respect of its use of the tied agent in question.]
- [<sup>F610</sup>(5) An EEA firm which falls within paragraph 5(da) which establishes a branch in the United Kingdom, or provides services in the United Kingdom, in exercise of an EEA right qualifies for authorisation.
- (6) Sub-paragraphs (1) and (2) do not apply to an EEA firm falling within paragraph 5(da).]

**Annotations:**

**Amendments (Textual)**

**F609** Sch. 3 para. 12(3)(4) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(4), **Sch. 4 para. 7**

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

**F610** Sch. 3 para. 12(5)(6) inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 6(d)**

#### Commencement Information

**I139** Sch. 3 Pt. II para. 12 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 12 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 12 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c), Sch. Pts. 2, 3; Sch. 3 Pt. II para. 12 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; Sch. 3 Pt. II para. 12 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

#### Establishment

- 13 (1) [<sup>F611</sup>If the firm falls within paragraph 5(a), (b), [<sup>F612</sup>(c), (d) or (f)],] the establishment conditions are that—
- (a) the [appropriate UK regulator] has received notice (“a consent notice”) from the firm’s home state regulator that it has given the firm consent to establish a branch in the United Kingdom;
  - (b) the consent notice—
    - (i) is given in accordance with the relevant single market directive;
    - (ii) identifies the activities to which consent relates; and
    - (iii) includes such other information as may be prescribed; <sup>F613</sup>...
  - [<sup>F614</sup>(ba) in the case of a firm falling within paragraph 5(a), the [appropriate UK regulator] has given the firm notice for the purposes of this paragraph or two months have elapsed beginning with the date when the home state regulator gave the consent notice; and]
  - (c) [<sup>F615</sup>in the case of a firm falling within paragraph 5(b), (c), (d) or (f),] the firm has been informed of the applicable provisions or two months have elapsed beginning with the date when the [appropriate UK regulator] received the consent notice.
- [<sup>F616</sup>(1A) If the firm falls within paragraph 5(e), the establishment conditions are that—
- (a) the firm has given its home state regulator notice of its intention to establish a branch in the United Kingdom;
  - (b) the [appropriate UK regulator] has received notice (“a regulator’s notice”) from the firm’s home state regulator that the firm intends to establish a branch in the United Kingdom;
  - (c) the firm’s home state regulator has informed the firm that the regulator’s notice has been sent to the [appropriate UK regulator]; and
  - (d) one month has elapsed beginning with the date on which the firm’s home state regulator informed the firm that the regulator’s notice has been sent to the [appropriate UK regulator].]
- [(1B) Where the PRA receives a consent notice, it must give a copy to the FCA without delay.
- (1C) Where the FCA receives a consent notice it must in prescribed cases give a copy to the PRA without delay.
- (1D) In a case where the FCA is the appropriate UK regulator, the consent of the PRA is required for any notice by the FCA for the purposes of sub-paragraph (1)(ba) which relates to—
- (a) a PRA-regulated activity,

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- (b) a PRA-authorised person, or
- (c) a person whose immediate group includes a PRA-authorised person.

(1E) If the FCA—

- (a) receives a consent notice, or
- (b) receives under sub-paragraph (1B) a copy of a consent notice,  
it must prepare for the firm’s supervision.

(1F) If the PRA—

- (a) receives a consent notice,
- (b) receives under sub-paragraph (1C) a copy of a consent notice which  
identifies PRA-regulated activities or relates to a PRA-authorised person,  
it must prepare for the firm’s supervision.]

(2) If the [appropriate UK regulator] has received a consent notice, it must—

- (a) [prepare for the firm’s supervision;]
- (b) [<sup>F617</sup>except if the firm falls within paragraph 5(a),] notify the firm of the  
applicable provisions (if any); and
- (c) if the firm falls within paragraph 5(d), notify its home state regulator of the  
applicable provisions (if any).

(3) A notice under sub-paragraph (2)(b) or (c) must be given before the end of the period of two months beginning with the day on which the [appropriate UK regulator] received the consent notice.

(4) For the purposes of this paragraph—

“applicable provisions” means the host state rules with which the firm is required to comply when carrying on a permitted activity through a branch in the United Kingdom;

[“appropriate UK regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the relevant single market directive;]

“host state rules” means rules—

- (a) made in accordance with the relevant single market directive; and
- (b) which are the responsibility of the United Kingdom (both as to implementation and as to supervision of compliance) in accordance with that directive; and

“permitted activity” means an activity identified in the consent notice <sup>F618</sup>or regulator’s notice, as the case may be].

**Annotations:**

**Amendments (Textual)**

**F611** Words in Sch. 3 para. 13(1) inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), **reg. 3(2)**

**F612** Words in Sch. 3 para. 13(1) substituted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg. 3(1)(a)**

**F613** Word in Sch. 3 para. 13(1)(b) omitted (1.4.2007 for certain purposes, otherwise 1.11.2007) by virtue of [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(4), **Sch. 4 para. 8(a)(i)** (with reg. 6)

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- F614** Sch. 3 para. 13(1)(ba) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(4), **Sch. 4 para. 8(a)(ii)** (with reg. 6)
- F615** Words in Sch. 3 para. 13(1)(c) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(4), **Sch. 4 para. 8(a)(iii)** (with reg. 6)
- F616** Sch. 3 para. 13(1A) inserted (14.1.2005) by The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), **reg. 3(3)**
- F617** Words in Sch. 3 para. 13(2)(b) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(4), **Sch. 4 para. 8(b)** (with reg. 6)
- F618** Sch. 3 para. 13(4): words in definition of "permitted activity" inserted (14.1.2005) by The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), **reg. 3(4)**

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

- C721** Sch. 3 para. 13 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 96** (with art. 23(2))

#### Commencement Information

- I140** Sch. 3 Pt. II para. 13 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 13 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 13 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c), Sch. Pts. 2, 3; Sch. 3 Pt. II para. 13 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; Sch. 3 Pt. II para. 13 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

#### Services

- 14 (1) The service conditions are that—
- (a) the firm has given its home state regulator notice of its intention to provide services in the United Kingdom (“a notice of intention”);
  - (b) if the firm falls within [<sup>F619</sup>paragraph 5(a), [<sup>F620</sup>(d), (e) or (f)]], the [appropriate UK regulator] has received notice (“a regulator’s notice”) from the firm’s home state regulator containing such information as may be prescribed; <sup>F621</sup> ...
  - [<sup>F622</sup>(ba) if the firm falls within paragraph 5(b) and is seeking to provide services in exercise of the right under Article 31.5 of the markets in financial instruments directive, the [appropriate UK regulator] has received notice (“a regulator’s notice”) from the firm’s home state regulator stating that the firm intends to exercise that right in the United Kingdom;]
  - (c) if the firm falls within [<sup>F623</sup>paragraph 5(d) or (e)], its home state regulator has informed it that the regulator’s notice has been sent to the [appropriate UK regulator]. [<sup>F624</sup>; and
  - (d) if the firm falls within paragraph 5(e), one month has elapsed beginning with the date on which the firm’s home state regulator informed the firm that the regulator’s notice has been sent to the [appropriate UK regulator].]
- [(1A) “Relevant notice” means—
- (a) a regulator’s notice, or
  - (b) where none is required by sub-paragraph (1), a notice informing the appropriate UK regulator of the firm’s intention to provide services in the United Kingdom.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- (1B) Where the PRA receives a relevant notice, it must give a copy to the FCA without delay.
- (1C) Where the FCA receives a relevant notice, it must in prescribed cases give a copy to the PRA without delay.
- (1D) If the FCA—  
(a) receives a relevant notice, or  
(b) receives under sub-paragraph (1B) a copy of a relevant notice,  
it must prepare for the firm’s supervision.
- (1E) If the PRA—  
(a) receives a relevant notice,  
(b) receives under sub-paragraph (1C) a copy of a relevant notice which identifies PRA-regulated activities or relates to a PRA-authorised person,  
it must, unless the firm falls within paragraph 5(e), prepare for the firm’s supervision.]
- [(2) If the appropriate UK regulator has received a relevant notice, it must, unless the firm falls within paragraph 5(a) or (e), notify the firm of the applicable provisions (if any).]  
.....
- (3) A notice under sub-paragraph [(2)]must be given before the end of the period of two months beginning on the day on which the [appropriate UK regulator received the relevant notice].
- (4) For the purposes of this paragraph—  
“applicable provisions” means the host state rules with which the firm is required to comply when carrying on a permitted activity by providing services in the United Kingdom;  
[“appropriate UK regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the relevant single market directive;]  
“host state rules” means rules—  
(a) made in accordance with the relevant single market directive; and  
(b) which are the responsibility of the United Kingdom (both as to implementation and as to supervision of compliance) in accordance with that directive; and  
“permitted activity” means an activity identified in—  
(a) the regulator’s notice; or  
(b) where none is required by sub-paragraph (1), the notice of intention.

**Annotations:**

**Amendments (Textual)**

**F619** Words in Sch. 3 para. 14(1)(b) substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), reg. 4(2)(a)

**F620** Words in Sch. 3 para. 14(1)(b) substituted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), reg. 3(1)(b)

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- F621** Word in Sch. 3 para. 14(1)(b) omitted (14.1.2005) by virtue of The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), **reg. 4(2)(b)**
- F622** Sch. 3 para. 14(1)(ba) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(4), **Sch. 4 para. 9(a)**
- F623** Words in Sch. 3 para. 14(1)(c) substituted (14.1.2005) by The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), **reg. 4(2)(c)**
- F624** Sch. 3 para. 14(1)(d) and preceding word inserted (14.1.2005) by The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), **reg. 4(2)(d)**
- F625** Words in Sch. 3 para. 14(2) inserted (14.1.2005) by The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), **reg. 4(3)**
- F626** Sch. 3 para. 14(2A) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(4), **Sch. 4 para. 9(b)**

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

- C722** Sch. 3 para. 14(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 97 (with art. 23(2))

#### **Commencement Information**

- I141** Sch. 3 Pt. II para. 14 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 14 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 14 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c), Sch. Pts. 2, 3; Sch. 3 Pt. II para. 14 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; Sch. 3 Pt. II para. 14 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

#### *Grant of permission*

- 15 (1) On qualifying for authorisation as a result of [<sup>F627</sup>paragraph 12(1), (2) or (3)], a firm has, in respect of each permitted activity which is a regulated activity, permission to carry it on through its United Kingdom branch (if it satisfies the establishment conditions) or by providing services in the United Kingdom (if it satisfies the service conditions).
- [<sup>F628</sup>(1A) Sub-paragraph (1) is to be read subject to paragraph 15A(3).]
- (2) The permission is to be treated as being on terms equivalent to those appearing from the consent notice, regulator’s notice or notice of intention.
- (3) Sections [<sup>F629</sup>21 and 39(1)] of the <sup>M85</sup>Consumer Credit Act 1974 (business requiring a licence under that Act) do not apply in relation to the carrying on of a permitted activity which is Consumer Credit Act business by a firm which qualifies for authorisation as a result of paragraph 12, unless [<sup>F630</sup>the Office of Fair Trading] has exercised the power conferred on [<sup>F631</sup>it] by section 203 in relation to the firm.
- (4) “Consumer Credit Act business” has the same meaning as in section 203.
- [<sup>F632</sup>(5) A firm which qualifies for authorisation as a result of paragraph 12(5) has, in respect of each permitted activity which is a regulated activity, permission to carry it on through its United Kingdom branch or by providing services in the United Kingdom.
- (6) The permission is to be treated as being on terms equivalent to those appearing in the authorisation granted to the firm under Article 3 of the reinsurance directive by its home state regulator (“its home authorisation”).

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

(7) For the purposes of sub-paragraph (5), “permitted activity” means an activity which the firm is permitted to carry on under its home authorisation.]

**Annotations:**

**Amendments (Textual)**

- F627** Words in Sch. 3 para. 15(1) substituted (10.12.2007) by [The Reinsurance Directive Regulations 2007](#) (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 6(e)(i)**
- F628** Sch. 3 para. 15(1A) inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003](#) (S.I. 2003/2066), **reg 3(1)(c)**
- F629** Words in Sch. 3 para. 15(3) substituted (6.4.2008) by [Consumer Credit Act 2006](#) (c. 14), **ss. 33(9)**, 71(2); S.I. 2007/3300, **art. 3(2)**, Sch. 2
- F630** Words in Sch. 3 para. 15(3) substituted (1.4.2003) by [Enterprise Act 2002](#) (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(19)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F631** Word in Sch. 3 para. 15(3) substituted (1.4.2003) by [Enterprise Act 2002](#) (c. 40), ss. 278(1), 279, **Sch. 25 para. 40(19)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F632** Sch. 3 para. 15(5)-(7) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007](#) (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 6(e)(ii)**

**Commencement Information**

- I142** Sch. 3 Pt. II para. 15 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 15 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 15 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c), Sch. Pts. 2, 3; Sch. 3 Pt. II para. 15 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; Sch. 3 Pt. II para. 15 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

**Marginal Citations**

- M85** 1974 c. 39.

*<sup>F633</sup> Power to restrict permission of management companies*

**Annotations:**

**Amendments (Textual)**

- F633** Sch. 3 para. 15A and cross-heading inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003](#) (S.I. 2003/2066), **reg. 3(1)(d)**

15A (1) Sub-paragraph (2) applies if—

- (a) a firm falling within paragraph 5(f) qualifies for authorisation as a result of paragraph 12(1) (establishment conditions satisfied); but
- (b) the [FCA] determines that the way in which the firm intends to invite persons in the United Kingdom to become participants in any collective investment scheme which that firm manages does not comply with the law in force in the United Kingdom.

(2) The [FCA] may give a notice to the firm and the firm’s home state regulator of the [FCA]’s determination under sub-paragraph (1)(b).

[(2A) If the firm is a PRA-authorised person or the firm’s immediate group includes a PRA-authorised person, the FCA must give the PRA a copy of the notice under sub-paragraph (2).]

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (3) Paragraph 15(1) does not give a firm to which the [FCA] has given (and not withdrawn) a notice under sub-paragraph (2) permission to carry on through the firm's United Kingdom branch the regulated activity of dealing in units in the collective investment schemes which the firm manages.
- (4) Any notice given under sub-paragraph (2) must be given before the end of the period of two months beginning with the day on which the [FCA] received the consent notice.
- (5) Sections 264(4) and 265(1), (2) and (4) apply to a notice given under sub-paragraph (2) as they apply to a notice given by the [FCA] under section 264(2).
- (6) If a decision notice is given to the firm under section 265(4), by virtue of sub-paragraph (5), the firm may refer the matter to the Tribunal.
- (7) In sub-paragraph (3)—
  - (a) “units” has the meaning given by section 237(2); and
  - (b) the reference to “dealing in” units in a collective investment scheme must be read with—
    - (i) section 22;
    - (ii) any relevant order under that section; and
    - (iii) Schedule 2.]

*Effect of carrying on regulated activity when not qualified for authorisation*

- 16 (1) This paragraph applies to an EEA firm which is not qualified for authorisation under paragraph 12.
- (2) Section 26 does not apply to an agreement entered into by the firm.
- (3) Section 27 does not apply to an agreement in relation to which the firm is a third party for the purposes of that section.
- (4) Section 29 does not apply to an agreement in relation to which the firm is the deposit-taker.

**Annotations:**

**Commencement Information**

**I143** Sch. 3 Pt. II para. 16 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 16 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 16 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c), Sch. Pts. 2, 3; Sch. 3 Pt. II para. 16 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; Sch. 3 Pt. II para. 16 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

*Continuing regulation of EEA firms*

- 17 Regulations may—
  - [(za) require the FCA and the PRA to notify each other about EEA firms qualifying for authorisation;]
  - (a) modify any provision of this Act which is an applicable provision (within the meaning of paragraph 13 or 14) in its application to an EEA firm qualifying for authorisation;

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- (b) make provision as to any change (or proposed change) of a prescribed kind relating to an EEA firm or to an activity that it carries on in the United Kingdom and as to the procedure to be followed in relation to such cases;
- (c) provide that the [the FCA or the PRA] may treat an EEA firm's notification that it is to cease to carry on regulated activity in the United Kingdom as a request for cancellation of its qualification for authorisation under this Schedule.

**Annotations:**

**Commencement Information**

**I144** Sch. 3 Pt. II para. 17 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 17 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 17 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c), Sch. Pts. 2, 3; Sch. 3 Pt. II para. 17 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; Sch. 3 Pt. II para. 17 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

*Giving up right to authorisation*

- 18 Regulations may provide that in prescribed circumstances an EEA firm falling within paragraph 5(c) may, on following the prescribed procedure—
- (a) have its qualification for authorisation under this Schedule cancelled; and
  - (b) seek to become an authorised person by applying for a [Part 4A permission].

**Annotations:**

**Commencement Information**

**I145** Sch. 3 Pt. II para. 18 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 18 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 18 in force for specified purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c), Sch. Pts. 2, 3; Sch. 3 Pt. I para. 18 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2 Sch.; Sch. 3 Pt. II para. 18 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**PART III**

EXERCISE OF PASSPORT RIGHTS BY UK FIRMS

*Establishment*

- 19 (1) [<sup>F634</sup>Subject to [<sup>F635</sup>sub-paragraphs (5ZA) and (5A)],] a UK firm may not exercise an EEA right to establish a branch unless three conditions are satisfied.
- (2) The first is that the firm has given the [appropriate UK regulator], in the specified way, notice of its intention to establish a branch (“a notice of intention”) which—
- (a) identifies the activities which it seeks to carry on through the branch; and
  - (b) includes such other information as may be specified.
- (3) [<sup>F636</sup>Subject to sub-paragraph (5B), the] activities identified in a notice of intention may include activities which are not regulated activities.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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(4) The second is that the [appropriate UK regulator] has given notice in specified terms (“a consent notice”) to the host state regulator.

[<sup>F637</sup>(5) The third is—

- (a) if the EEA right in question derives from the insurance mediation directive, that one month has elapsed beginning with the date on which the firm received notice, in accordance with sub-paragraph (11), that the [appropriate UK regulator] has given a consent notice;
- (b) in any other case, that either—
  - (i) the host state regulator has notified the firm (or, where the EEA right in question derives from any of the insurance directives, the [appropriate UK regulator]) of the applicable provisions; or
  - (ii) two months have elapsed beginning with the date on which the [appropriate UK regulator] gave the consent notice.]

[<sup>F638</sup>(5ZA) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the reinsurance directive.]

[<sup>F639</sup>(5A) If—

- (a) the EEA right in question derives from the insurance mediation directive, and
- (b) the EEA State in which the firm intends to establish a branch has not notified the Commission, in accordance with Article 6(2) of that directive, of its wish to be informed of the intention of any UK firm to establish a branch in its territory,

the second and third conditions do not apply (and so the firm may establish the branch to which its notice of intention relates as soon as the first condition is satisfied).]

[<sup>F640</sup>(5B) If the firm is a UK investment firm, a notice of intention may not include ancillary services unless such services are to be provided in connection with the carrying on of one or more investment services and activities.

(5C) In sub-paragraph (5B) “ancillary services” has the meaning given in Article 4.1.3 of the markets in financial instruments directive.]

(6) If the firm’s EEA right derives from [<sup>F641</sup>the banking consolidation directive, [<sup>F642</sup>the UCITS directive or, in the case of a credit institution authorised under the banking consolidation directive, the markets in financial instruments directive]] and the first condition is satisfied, the [appropriate UK regulator] must give a consent notice to the host state regulator unless it has reason to doubt the adequacy of the firm’s resources or its administrative structure.

(7) If the firm’s EEA right derives from any of the insurance directives and the first condition is satisfied, the [appropriate UK regulator] must give a consent notice unless it has reason—

- (a) to doubt the adequacy of the firm’s resources or its administrative structure, or
- (b) to question the reputation, qualifications or experience of the directors or managers of the firm or the person proposed as the branch’s authorised agent for the purposes of those directives,

in relation to the business to be conducted through the proposed branch.

[<sup>F643</sup>(7A) If—

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- (a) the firm's EEA right derives from the insurance mediation directive,
- (b) the first condition is satisfied, and
- (c) the second condition applies,

the [appropriate UK regulator] must give a consent notice, and must do so within one month beginning with the date on which it received the firm's notice of intention.]

[<sup>F644</sup>(7B) If the firm is a UK investment firm and the first condition is satisfied, the [appropriate UK regulator] must give a consent notice to the host state regulator within three months beginning with the date on which it received the firm's notice of intention unless the [appropriate UK regulator] has reason to doubt the adequacy of the firm's resources or its administrative structure.]

[(7C) Where the appropriate UK regulator is the PRA, it must consult the FCA before deciding whether to give a consent notice, except where sub-paragraph (7A) applies.]

[(7D) Where the appropriate UK regulator is the FCA, it must consult the PRA before deciding whether to give a consent notice in relation to a UK firm whose immediate group includes a PRA-authorized person.]

(8) If the [appropriate UK regulator] proposes to refuse to give a consent notice it must give the firm concerned a warning notice.

(9) If the firm's EEA right derives from any of the insurance directives and the host state regulator has notified it of the applicable provisions, the [appropriate UK regulator] must inform the firm of those provisions.

(10) Rules may specify the procedure to be followed by the [appropriate UK regulator] in exercising its functions under this paragraph.

(11) If the [appropriate UK regulator] gives a consent notice it must give written notice that it has done so to the firm concerned.

(12) If the [appropriate UK regulator] decides to refuse to give a consent notice—

- (a) it must, [<sup>F645</sup>within the relevant period], give the person who gave that notice a decision notice to that effect; and
- (b) that person may refer the matter to the Tribunal.

[<sup>F646</sup>(12A) In sub-paragraph (12), "the relevant period" means—

- (a) if the firm's EEA right derives from the UCITS directive, two months beginning with the date on which the [appropriate UK regulator] received the notice of intention;
- (b) in any other case, three months beginning with that date.]

[(12B) In this paragraph "the appropriate UK regulator" means—]

- [(a) where the UK firm is a PRA-authorized person, the PRA,]
- [(b) in any other case, the FCA.]

(13) In this paragraph, "applicable provisions" means the host state rules with which the firm will be required to comply when conducting business through the proposed branch in the EEA State concerned.

(14) In sub-paragraph (13), "host state rules" means rules—

- (a) made in accordance with the relevant single market directive; and

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- (b) which are the responsibility of the EEA State concerned (both as to implementation and as to supervision of compliance) in accordance with that directive.

(15) “Specified” means specified in rules.

**Annotations:**

**Amendments (Textual)**

- F634** Words in Sch. 3 para. 19(1) inserted (14.1.2005) by The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), **reg. 5(2)**
- F635** Words in Sch. 3 para. 19(1) substituted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 6(f)**
- F636** Words in Sch. 3 para. 19(3) substituted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(4), **Sch. 4 para. 10(a)**
- F637** Sch. 3 para. 19(5) substituted (14.1.2005) by The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), **reg. 5(3)**
- F638** Sch. 3 para. 19(5ZA) inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 6(g)**
- F639** Sch. 3 para. 19(5A) inserted (14.1.2005) by The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), **reg. 5(4)**
- F640** Sch. 3 para. 19(5B)(5C) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(4), **Sch. 4 para. 10(b)**
- F641** Words in Sch. 3 para. 19(6) substituted (13.2.2004) by The Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2066), **reg 4(1)(a)(i)**
- F642** Words in Sch. 3 para. 19(6) substituted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(4), **Sch. 4 para. 10(c)** (with reg. 8)
- F643** Sch. 3 para. 19(7A) inserted (14.1.2005) by The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), **reg. 5(5)**
- F644** Sch. 3 para. 19(7B) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(4), **Sch. 4 para. 10(d)** (with reg. 8)
- F645** Words in Sch. 3 para. 19(12)(a) substituted (13.2.2004) by The Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2066), **reg 4(1)(a)(ii)**
- F646** Sch. 3 para. 19(12A) inserted (13.2.2004) by The Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2066), **reg 4(1)(a)(iii)**

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

- C723** Sch. 3 Pt. III para. 19 applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 104(3)(a) (with art. 23(2))  
Sch. 3 Pt. III para. 19 modified (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 77(1)-(3)(7); S.I. 2001/3538, **art. 2(1)**
- C724** Sch. 3 Pt. III para. 19(2)(4)(6)(7) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 100 (with art. 23(2))

**Commencement Information**

- I146** Sch. 3 Pt. III para. 19 wholly in force at 1.12.2001; Sch. 3 Pt. III para. 19 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. III para. 19 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b) (c), Sch. Pts. 2, 3; Sch. 3 Pt. III para. 19 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; Sch. 3 Pt. III para. 19 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art.

2(2), **Sch. Pt. 2**; Sch. 3 Pt. III para. 19 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

### *Services*

- 20 (1) [<sup>F647</sup>Subject to sub-paragraph (4D), ] a UK firm may not exercise an EEA right to provide services unless the firm has given the [appropriate UK regulator], in the specified way, notice of its intention to provide services (“a notice of intention”) which—
- (a) identifies the activities which it seeks to carry out by way of provision of services; and
  - (b) includes such other information as may be specified.
- (2) [<sup>F648</sup>Subject to sub-paragraph (2A), the] activities identified in a notice of intention may include activities which are not regulated activities.
- [<sup>F649</sup>(2A) If the firm is a UK investment firm, a notice of intention may not include ancillary services unless such services are to be provided in connection with the carrying on of one or more investment services and activities.
- (2B) In sub-paragraph (2A) “ancillary services” has the meaning given in Article 4.1.3 of the markets in financial instruments directive.]
- (3) If the firm’s EEA right derives from [<sup>F650</sup>the banking consolidation directive, [<sup>F651</sup>markets in financial instruments directive] or the UCITS directive], the [appropriate UK regulator] must, within one month of receiving a notice of intention, send a copy of it to the host state regulator [<sup>F652</sup>with such other information as may be specified].
- [<sup>F653</sup>(3A) If the firm’s EEA right derives from any of the insurance directives, the [appropriate UK regulator] must, within one month of receiving the notice of intention—
- (a) give notice in specified terms (“a consent notice”) to the host state regulator; or
  - (b) give written notice to the firm of—
    - (i) its refusal to give a consent notice; and
    - (ii) its reasons for that refusal.]
- [(3AA) Where the PRA is the appropriate UK regulator, it must consult the FCA before deciding whether to give a consent notice.
- [(3AB) Where the FCA is the appropriate UK regulator, it must consult the PRA before deciding whether to give a consent notice in relation to a UK firm whose immediate group includes a PRA-authorised person.
- [<sup>F654</sup>(3B) If the firm’s EEA right derives from the insurance mediation directive and the EEA State in which the firm intends to provide services has notified the Commission, in accordance with Article 6(2) of that directive, of its wish to be informed of the intention of any UK firm to provide services in its territory—
- (a) the [appropriate UK regulator] must, within one month of receiving the notice of intention, send a copy of it to the host state regulator;
  - (b) the [appropriate UK regulator], when it sends the copy in accordance with sub-paragraph (a), must give written notice to the firm concerned that it has done so; and

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- (c) the firm concerned must not provide the services to which its notice of intention relates until one month, beginning with the date on which it receives the notice under sub-paragraph (b), has elapsed.]
- (4) When the [appropriate UK regulator] sends the copy under sub-paragraph (3) [<sup>F655</sup>or gives a consent notice], it must give written notice to the firm concerned.
- [<sup>F656</sup>(4A) If the firm is given notice under sub-paragraph (3A)(b), it may refer the matter to the Tribunal.
- (4B) If the firm’s EEA right derives from any of the insurance directives [<sup>F657</sup>or from the markets in financial instruments directive], it must not provide the services to which its notice of intention relates until it has received written notice under sub-paragraph (4).
- [<sup>F658</sup>(4BA) If the firm’s EEA right derives from the markets in financial instruments directive, the [appropriate UK regulator] must comply as soon as reasonably practicable with a request for information under the second sub-paragraph of Article 31.6 of that directive from the host state regulator.]
- (4C) Rules may specify the procedure to be followed by the [appropriate UK regulator] under this paragraph.]
- [<sup>F659</sup>(4D) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the reinsurance directive.]
- <sup>F660</sup>(5) . . . . .
- [(5A) In this paragraph “the appropriate UK regulator” means—
- (a) where the UK firm is a PRA-authorised person, the PRA,
- (b) in any other case, the FCA.]
- (6) “Specified” means specified in rules.

#### Annotations:

##### Amendments (Textual)

- F647** Words in Sch. 3 para. 20(1) inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 6(h)**
- F648** Words in Sch. 3 para. 20(2) substituted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(4), **Sch. 4 para. 11(a)**
- F649** Sch. 3 para. 20(2A)(2B) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(4), **Sch. 4 para. 11(b)**
- F650** Words in Sch. 3 para. 20(3) substituted (13.2.2004) by The Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2066), **reg 4(1)(b)(i)**
- F651** Words in Sch. 3 para. 20(3) substituted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(4), **Sch. 4 para. 11(c)**
- F652** Words in Sch. 3 para. 20(3) inserted (13.2.2004) by The Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2066), **reg 4(1)(b)(ii)**
- F653** Sch. 3 Pt. III para. 20(3A) inserted (30.4.2001) by S.I. 2001/1376, **regs. 1, 2(2)**
- F654** Sch. 3 para. 20(3B) inserted (14.1.2005) by The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), **reg. 6(1)**

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- F655** Words in Sch. 3 Pt. III para. 20(4) inserted (30.4.2001) by S.I. 2001/1376, **regs. 1, 2(3)**
- F656** Sch. 3 Pt. III para. 20(4A)-(4C) inserted (30.4.2001) by S.I. 2001/1376, **regs. 1, 2(4)**
- F657** Words in Sch. 3 para. 20(4B) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(4), **Sch. 4 para. 11(d)**
- F658** Sch. 3 para. 20(4BA) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(4), **Sch. 4 para. 11(e)**
- F659** Sch. 3 para. 20(4D) inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 6(i)**
- F660** Sch. 3 Pt. III para. 20(5) omitted (30.4.2001) by virtue of S.I. 2001/1376, **regs. 1, 2(5)**

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

- C725** Sch. 3 Pt. III para. 20(1) modified (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b), 77(1)(4)-(7); S.I. 2001/3538, art. 2(1)**
- C726** Sch. 3 Pt. III para. 20(1)(3A)(a) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 101 (with art. 23(2))**

**Commencement Information**

- I147** Sch. 3 Pt. III para. 20 wholly in force at 1.12.2001; Sch. 3 Pt. III para. 20 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. III para. 20 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b) (c), Sch. Pts. 2, 3; Sch. 3 Pt. III para. 20 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; Sch. 3 Pt. III para. 20 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; Sch. 3 Pt. III para. 20 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

[<sup>F661</sup>Tied agents

**Annotations:**

**Amendments (Textual)**

- F661** Sch. 3 para. 20A and preceding cross-heading inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(4), **Sch. 4 para. 12**

- 20A (1) If a UK investment firm is seeking to use a tied agent established in an EEA State (other than the United Kingdom) in connection with the exercise of an EEA right deriving from the markets in financial instruments directive, this Part of this Schedule applies as if the firm were seeking to establish a branch in that State.
- (2) But if—
- (a) a UK investment firm has already established a branch in an EEA State other than the United Kingdom in accordance with paragraph 19; and
- (b) the EEA right which it is exercising derives from the markets in financial instruments directive,
- paragraph 19 does not apply in respect of its use of the tied agent in question.]

*Offence relating to exercise of passport rights*

- 21 (1) If a UK firm which is not an authorised person contravenes the prohibition imposed by—
- (a) sub-paragraph (1) of paragraph 19, or

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- (b) [<sup>F662</sup>sub-paragraph (1), (3B)(c) or (4B)] of paragraph 20, it is guilty of an offence.
- (2) A firm guilty of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.
- (3) In proceedings for an offence under sub-paragraph (1), it is a defence for the firm to show that it took all reasonable precautions and exercised all due diligence to avoid committing the offence.

**Annotations:**

**Amendments (Textual)**

**F662** Words in [Sch. 3 para. 21\(1\)\(b\)](#) substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 6\(2\)](#)

**Commencement Information**

**I148** [Sch. 3 Pt. III para. 21](#) wholly in force at 1.12.2001; [Sch. 3 Pt. III para. 21](#) not in force at Royal Assent see [s. 431\(2\)](#); [Sch. 3 Pt. III para. 21](#) in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)\(c\)](#), [Sch. Pts. 2, 3](#); [Sch. 3 Pt. III para. 21](#) in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); [Sch. 3 Pt. III para. 21](#) in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

*Continuing regulation of UK firms*

- 22 (1) Regulations may make such provision as the Treasury consider appropriate in relation to a UK firm's exercise of EEA rights, and may in particular provide for the application (with or without modification) of any provision of, or made under, this Act in relation to an activity of a UK firm.
- (2) Regulations may—
- (a) make provision as to any change (or proposed change) of a prescribed kind relating to a UK firm or to an activity that it carries on and as to the procedure to be followed in relation to such cases;
  - (b) make provision with respect to the consequences of the firm's failure to comply with a provision of the regulations.
- (3) Where a provision of the kind mentioned in sub-paragraph (2) requires [the consent of the FCA or the PRA] to a change (or proposed change)—
- (a) consent may be refused only on prescribed grounds; and
  - (b) if the [FCA or the PRA] decides to refuse consent, the firm concerned may refer the matter to the Tribunal.

**Annotations:**

**Commencement Information**

**I149** [Sch. 3 Pt. III para. 22](#) wholly in force at 1.12.2001; [Sch. 3 Pt. III para. 22](#) not in force at Royal Assent see [s. 431\(2\)](#); [Sch. 3 Pt. III para. 22](#) in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2\(b\)\(c\)](#), [Sch. Pts. 2, 3](#); [Sch. 3 Pt. III para. 22](#) in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art.](#)

2, Sch.; Sch. 3 Pt. III para. 22 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

- 23 (1) [<sup>F663</sup>Sub-paragraphs (2) and (2A) apply] if a UK firm—
- (a) has a [Part 4A permission]; and
  - (b) is exercising an EEA right to carry on any Consumer Credit Act business in an EEA State other than the United Kingdom.
- (2) [The FCA] may exercise its power under [section 55J or 55L] in respect of the firm if [<sup>F664</sup>the Office of Fair Trading] has informed the [the FCA] that—
- (a) the firm,
  - (b) any of the firm's employees, agents or associates (whether past or present), or
  - (c) if the firm is a body corporate, a controller of the firm or an associate of such a controller,
- has done any of the things specified in paragraphs [<sup>F665</sup>(a) to (e) of section 25(2A)] of the <sup>M86</sup>Consumer Credit Act 1974.
- [<sup>F666</sup>(2A) [The FCA] may also exercise its power under [section 55J or 55L] in respect of the firm if the Office of Fair Trading has informed[the FCA] that it has concerns about any of the following—
- (a) the firm's skills, knowledge and experience in relation to Consumer Credit Act businesses;
  - (b) such skills, knowledge and experience of other persons who are participating in any Consumer Credit Act business being carried on by the firm;
  - (c) practices and procedures that the firm is implementing in connection with any such business.]
- [(2B) This paragraph does not affect any duty of the FCA to consult the PRA before exercising its power under section 55J or 55L.]
- (3) “Associate”, “Consumer Credit Act business” and “controller” have the same meaning as in section 203.

#### Annotations:

##### Amendments (Textual)

- F663** Words in Sch. 3 para. 23(1) substituted (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. 33(10), 71(2); S.I. 2007/3300, art. 3(2), Sch. 2
- F664** Words in Sch. 3 para. 23(2) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, Sch. 25 para. 40(19)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F665** Words in Sch. 3 para. 23(2) substituted (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. 33(11), 71(2); S.I. 2007/3300, art. 3(2), Sch. 2
- F666** Sch. 3 para. 23(2A) inserted (6.4.2008) by Consumer Credit Act 2006 (c. 14), ss. 33(12), 71(2); S.I. 2007/3300, art. 3(2), Sch. 2

##### Commencement Information

- I150** Sch. 3 Pt. III para. 23 wholly in force at 1.12.2001; Sch. 3 Pt. III para. 23 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. III para. 23 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c) Sch. Pts. 2, 3; Sch. 3 Pt. III para. 23 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; Sch. 3 Pt. III para. 23 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

### Marginal Citations

**M86** 1974 c. 39.

- 24 (1) Sub-paragraph (2) applies if a UK firm—
- (a) is not required to have a [Part 4A permission] in relation to the business which it is carrying on; and
  - (b) is exercising the right conferred by [<sup>F667</sup>[<sup>F668</sup>Article 24] of the banking consolidation directive] to carry on that business in an EEA State other than the United Kingdom.
- (2) If requested to do so by the host state regulator in the EEA State in which the UK firm's business is being carried on, [either regulator] may impose any requirement in relation to the firm which it could impose if—
- (a) the firm had a [Part 4A permission] in relation to the business which it is carrying on; and
  - (b) [that regulator] was entitled to exercise its power under that Part to vary that permission.

### Annotations:

#### Amendments (Textual)

**F667** Words in Sch. 3 Pt. III para. 24(1)(b) substituted (22.11.2000) by S.I. 2000/2952, reg. 8(5)(f)

**F668** Words in Sch. 3 para. 24(1)(b) substituted (1.1.2007) by The Capital Requirements Regulations 2006 (S.I. 2006/3221), reg. 29(1), Sch. 3 para. 2(4)

#### Commencement Information

**I151** Sch. 3 Pt. III para. 24 wholly in force at 1.12.2001; Sch. 3 Pt. III para. 24 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. III para. 24 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b)(c), Sch. Pts. 2, 3; Sch. 3 Pt. III para. 24 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; Sch. 3 Pt. III para. 24 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

### *[Arrangements between FCA and PRA*

- 24A (1) The regulators may make arrangements about—
- (a) how they will consult each other when required to do so by paragraph 19(7C) or (7D) or by regulations under paragraph 22;
  - (b) how each of them will act in response to any advice or representations received from the other.
- (2) The arrangements may require one regulator to obtain the consent of the other in specified circumstances before—
- (a) giving a consent notice under paragraph 19 or 20, or
  - (b) exercising specified functions under regulations under paragraph 22.
- (3) The arrangements must be in writing, and must specify—
- (a) the EEA rights to which they relate, and
  - (b) the date on which they come into force.
- (4) Where arrangements are in force under this paragraph, the regulators must exercise functions in accordance with the arrangements.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

(5) The regulators must publish any arrangements under this paragraph in such manner as they think fit.]

*[<sup>F669</sup>Information to be included in the public record*

**Annotations:**

**Amendments (Textual)**

**F669** Sch. 3 para. 25 and preceding cross-heading inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 7](#)

- 25 The [FCA] must include in the record that it maintains under section 347 in relation to any UK firm whose EEA right derives from the insurance mediation directive information as to each EEA State in which the UK firm, in accordance with such a right—
- (a) has established a branch; or
  - (b) is providing services.]

SCHEDULE 4

Section 31(1)(c).

TREATY RIGHTS

**Annotations:**

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

**C727** Sch. 4 extended (1.12.2001) by [S.I. 2001/2636](#), [arts. 1\(2\)\(b\)](#), 28-32; [S.I. 2001/3538](#), [art. 2\(1\)](#)

*Definitions*

1 [<sup>F670</sup>(1)] In this Schedule—

<sup>F671</sup>

“Treaty firm” means a person—

- (a) whose head office is situated in an EEA State (its “home state”) other than the United Kingdom; and
  - (b) which is recognised under the law of that State as its national; and
- “home state regulator”, in relation to a Treaty firm, means the competent authority of the firm’s home state for the purpose of its home state authorisation (as to which see paragraph 3(1)(a)).

[<sup>F672</sup>(2) Section 425A (meaning of “consumers”) applies for the purposes of this Schedule.]

**Annotations:**

**Amendments (Textual)**

**F670** Sch. 4 para. 1 renumbered (8.4.2010) as Sch. 4 para. 1(1) by virtue of [Financial Services Act 2010 \(c. 28\)](#), [ss. 24\(1\)](#), [26\(1\)\(g\)\(i\)](#), [Sch. 2 para. 35\(2\)](#)

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

**F671** Sch. 4 para. 1(1): definition of "consumers" omitted (8.4.2010) by virtue of Financial Services Act 2010 (c. 28), ss. 24(1), 26(1)(g)(l), **Sch. 2 para. 35(3)**

**F672** Sch. 4 para. 1(2) inserted (8.4.2010) by Financial Services Act 2010 (c. 28), ss. 24(1), 26(1)(g)(l), **Sch. 2 para. 35(4)**

*Firms qualifying for authorisation*

- 2 Once a Treaty firm which is seeking to carry on a regulated activity satisfies the conditions set out in paragraph 3(1), it qualifies for authorisation.

*Exercise of Treaty rights*

- 3 (1) The conditions are that—
- (a) the firm has received authorisation (“home state authorisation”) under the law of its home state to carry on the regulated activity in question (“the permitted activity”);
  - (b) the relevant provisions of the law of the firm’s home state—
    - (i) afford equivalent protection; or
    - (ii) satisfy the conditions laid down by [<sup>F673</sup>an EU] instrument for the co-ordination or approximation of laws, regulations or administrative provisions of member States relating to the carrying on of that activity; and
  - (c) the firm has no EEA right to carry on that activity in the manner in which it is seeking to carry it on.
- (2) A firm is not to be regarded as having home state authorisation unless its home state regulator has so informed the [the FCA or the PRA] in writing.
- [(2A) Where the PRA receives a notification under sub-paragraph (2), it must give a copy to the FCA without delay.]
- [(2B) Where the FCA receives a notification under sub-paragraph (2), it must in prescribed cases give a copy to the PRA without delay.]
- (3) Provisions afford equivalent protection if, in relation to the firm’s carrying on of the permitted activity, they afford consumers protection which is at least equivalent to that afforded by or under this Act in relation to that activity.
- (4) A certificate issued by the Treasury that the provisions of the law of a particular EEA State afford equivalent protection in relation to the activities specified in the certificate is conclusive evidence of that fact.

**Annotations:**

**Amendments (Textual)**

**F673** Words in Sch. 4 para. 3(1)(b)(ii) 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(1)(3)(4)**

### Commencement Information

**I152** Sch. 4 para. 3 wholly in force at 1.12.2001; Sch. 4 para. 3 not in force at Royal Assent see s. 431(2); Sch. 4 para. 3 force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; Sch. 4 para. 3 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

### *[Notification between UK regulators]*

**3A** Regulations may require the PRA and the FCA to notify each other about Treaty firms qualifying for authorisation.]

### *Permission*

- 4 (1) On qualifying for authorisation under this Schedule, a Treaty firm has permission to carry on each permitted activity through its United Kingdom branch or by providing services in the United Kingdom.
- (2) The permission is to be treated as being on terms equivalent to those to which the firm's home state authorisation is subject.
- (3) If, on qualifying for authorisation under this Schedule, a firm has a [Part 4A permission] which includes permission to carry on a permitted activity, the [appropriate UK regulator] must give a direction cancelling the permission so far as it relates to that activity.
- (4) The [appropriate UK regulator] need not give a direction under sub-paragraph (3) if it considers that there are good reasons for not doing so.
- [(5) "The appropriate UK regulator" means—
- (a) where the Treaty firm is a PRA-authorised person, the FCA or the PRA;
  - (b) in any other case, the FCA.]

### *Notice to [UK regulator]*

- 5 (1) Sub-paragraph (2) applies to a Treaty firm which—
- (a) qualifies for authorisation under this Schedule, but
  - (b) is not carrying on in the United Kingdom the regulated activity, or any of the regulated activities, which it has permission to carry on there.
- (2) At least seven days before it begins to carry on such a regulated activity, the firm must give [the appropriate UK regulator] written notice of its intention to do so.
- [(2A) "The appropriate UK regulator" means—
- (a) where any of the activities to which the notice relates is a PRA-regulated activity, the PRA;
  - (b) in any other case, the FCA.
- (2B) Where the PRA receives a notice under sub-paragraph (2), it must give a copy to the FCA without delay.
- (2C) Where the FCA receives a notice under sub-paragraph (2) from—
- (a) a PRA-authorised person, or
  - (b) a person whose immediate group includes a PRA-authorised person,
- it must give a copy to the PRA without delay.]

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

(3) If a Treaty firm to which sub-paragraph (2) applies has given notice under that sub-paragraph, it need not give such a notice if it again becomes a firm to which that sub-paragraph applies.

[(4) Subsections (1), (4) and (8) of section 55U apply to a notice under sub-paragraph (2) as they apply to an application for a Part 4A permission.]

**Annotations:**

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

**C728** Sch. 4 para. 5(1) amended (*temp.* from 3.9.2001 to 1.12.2001) by [S.I. 2001/2659, arts. 1\(2\), 3\(12\)](#); [S.I. 2001/3538, art. 2\(1\)](#)

**Commencement Information**

**I153** Sch. 4 para. 5 wholly in force at 1.12.2001; Sch. 4 para. 5 not in force at Royal Assent see s. 431(2); Sch. 4 para. 5 force for specified purposes at 3.9.2001 by [S.I. 2001/2632, art. 2\(2\)](#), [Sch. Pt. 2](#); Sch. 4 para. 5 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538, art. 2\(1\)](#)

*Offences*

- 6 (1) A person who contravenes paragraph 5(2) is guilty of an offence.
- (2) In proceedings against a person for an offence under sub-paragraph (1) it is a defence for him to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- (3) A person is guilty of an offence if in, or in connection with, a notice given by him under paragraph 5(2) he—
- (a) provides information which he knows to be false or misleading in a material particular; or
  - (b) recklessly provides information which is false or misleading in a material particular.
- (4) A person guilty of an offence under this paragraph is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

SCHEDULE 5

Section 36.

PERSONS CONCERNED IN COLLECTIVE INVESTMENT SCHEMES

*Authorisation*

- 1 (1) A person who for the time being is an operator, trustee or depositary of a recognised collective investment scheme is an authorised person.
- (2) “Recognised” means recognised by virtue of section 264.
- (3) An authorised open-ended investment company is an authorised person.
- [<sup>F674</sup>(4) A body—

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (a) incorporated by virtue of regulations made under section 1 of the Open-Ended Investment Companies Act (Northern Ireland) 2002 in respect of which an authorisation order is in force, and
  - (b) to which the UCITS directive applies,
- is an authorised person.

- (5) “Authorisation order” means an order made under (or having effect as made under) any provision of those regulations which is made by virtue of section 1(2)(1) of that Act (provision corresponding to Chapter 3 of Part 17 of the Act).]

**Annotations:**

**Amendments (Textual)**

**F674** Sch. 5 para. 1(4)(5) inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg 10(a)**

*Permission*

- 2 (1) A person authorised as a result of paragraph 1(1) has permission to carry on, so far as it is a regulated activity—
- (a) any activity, appropriate to the capacity in which he acts in relation to the scheme, of the kind described in paragraph 8 of Schedule 2;
  - (b) any activity in connection with, or for the purposes of, the scheme.
- (2) A person authorised as a result of paragraph 1(3) [<sup>F675</sup>or (4)] has permission to carry on, so far as it is a regulated activity—
- (a) the operation of the scheme;
  - (b) any activity in connection with, or for the purposes of, the operation of the scheme.

**Annotations:**

**Amendments (Textual)**

**F675** Words in Sch. 5 para. 2(2) inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg 10(b)**

SCHEDULE 6

Section 41.

THRESHOLD CONDITIONS

**Annotations:**

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

**C729** Sch. 6 modified (3.9.2001) by [S.I. 2001/2507](#), **arts. 1(1), 3(1)**; [S.I. 2001/2632](#), art. 2(2), **Sch. Pt. 2**

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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## PART I

### [PART 4A] PERMISSION

#### *[Interpretation]*

- A1**      In this Part of this Schedule, “the appropriate regulator” means—
- (a) in relation to the discharge by the FCA of functions in relation to the threshold conditions, the FCA;
  - (b) in relation to the discharge by the PRA of functions in relation to the threshold conditions, the PRA.]

#### *Legal status*

- 1      (1) If the regulated activity concerned is the effecting or carrying out of contracts of insurance the authorised person must be a body corporate [<sup>F676</sup>(other than a limited liability partnership)], a registered friendly society or a member of Lloyd’s.
- (2) If the person concerned appears to the [appropriate regulator] to be seeking to carry on, or to be carrying on, a regulated activity constituting accepting deposits [<sup>F677</sup>or issuing electronic money] , it must be—
- (a) a body corporate; or
  - (b) a partnership.

#### **Annotations:**

##### **Amendments (Textual)**

**F676** Words in Sch. 6 para. 1(1) inserted (3.9.2001) by S.I. 2001/2507, arts. 1(1), 2; S.I. 2001/2632, art. 2(2), Sch. Pt. 2

**F677** Words in Sch. 6 para. 1(2) inserted (11.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), art. 8

#### *Location of offices*

- 2      (1) [<sup>F678</sup>Subject to [<sup>F679</sup>sub-paragraphs (2A) and (3)],] if the person concerned is a body corporate constituted under the law of any part of the United Kingdom—
- (a) its head office, and
  - (b) if it has a registered office, that office,
- must be in the United Kingdom.

- (2) If the person concerned has its head office in the United Kingdom but is not a body corporate, it must carry on business in the United Kingdom.

[<sup>F680</sup>(2A) If—

- (a) the regulated activity concerned is any of the investment services and activities, and
  - (b) the person concerned is a body corporate with no registered office,
- sub-paragraph (2B) applies in place of sub-paragraph (1).

- (2B) If the person concerned has its head office in the United Kingdom, it must carry on business in the United Kingdom.]

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- [<sup>F681</sup>(3) If the regulated activity concerned is an insurance mediation activity, sub-paragraph (1) does not apply.
- (4) If the regulated activity concerned is an insurance mediation activity, the person concerned—
- (a) if he is a body corporate constituted under the law of any part of the United Kingdom, must have its registered office, or if it has no registered office, its head office, in the United Kingdom;
  - (b) if he is a natural person, is to be treated for the purposes of sub-paragraph (2), as having his head office in the United Kingdom if his residence is situated there.
- (5) “Insurance mediation activity” means any of the following activities—
- (a) dealing in rights under a contract of insurance as agent;
  - (b) arranging deals in rights under a contract of insurance;
  - (c) assisting in the administration and performance of a contract of insurance;
  - (d) advising on buying or selling rights under a contract of insurance;
  - (e) agreeing to do any of the activities specified in sub-paragraph (a) to (d).
- (6) Paragraph (5) must be read with—
- (a) section 22;
  - (b) any relevant order under that section; and
  - (c) Schedule 2.]

**Annotations:**

**Amendments (Textual)**

- F678** Words in Sch. 6 para. 2(1) inserted (31.10.2004 for certain purposes, otherwise 14.1.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **19(a)**
- F679** Words in Sch. 6 para. 2(1) substituted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(5), **Sch. 5 para. 24(a)**
- F680** Sch. 6 para. 2(2A)(2B) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(5), **Sch. 5 para. 24(b)**
- F681** Sch. 6 para. 2(3)-(6) inserted (31.10.2004 for certain purposes, otherwise 14.1.2005) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (S.I. 2003/1476), arts. 1(3), **19(b)**

[<sup>F682</sup>*Appointment of claims representatives*

**Annotations:**

**Amendments (Textual)**

- F682** Sch. 6 para. 2A inserted (19.1.2003) by The Financial Services and Markets Act 2000 (Variation of Threshold Conditions) Order 2002 (S.I. 2002/2707), **art. 2**

- 2A (1) If it appears to the [appropriate regulator] that—

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (a) the regulated activity that the person concerned is carrying on, or is seeking to carry on, is the effecting or carrying out of contracts of insurance, and
  - (b) contracts of insurance against damage arising out of or in connection with the use of motor vehicles on land (other than carrier's liability) are being, or will be, effected or carried out by the person concerned,
- that person must have a claims representative in each EEA State other than the United Kingdom.
- (2) For the purposes of sub-paragraph (1)(b), contracts of reinsurance are to be disregarded.
  - (3) A claims representative is a person with responsibility for handling and settling claims arising from accidents of the kind mentioned in Article 1(2) of the fourth motor insurance directive.
  - (4) In this paragraph "fourth motor insurance directive" means Directive [2000/26/EC](#) of the European Parliament and of the Council of 16th May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives [73/239/EEC](#) and [88/357/EEC](#).]

*Close links*

- 3 (1) If the person concerned ("A") has close links with another person ("CL") the [appropriate regulator] must be satisfied—
  - (a) that those links are not likely to prevent the [appropriate regulator's] effective supervision of A; and
  - (b) if it appears to the [appropriate regulator] that CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State ("the foreign provisions"), that neither the foreign provisions, nor any deficiency in their enforcement, would prevent the [appropriate regulator's] effective supervision of A.
- (2) A has close links with CL if—
  - (a) CL is a parent undertaking of A;
  - (b) CL is a subsidiary undertaking of A;
  - (c) CL is a parent undertaking of a subsidiary undertaking of A;
  - (d) CL is a subsidiary undertaking of a parent undertaking of A;
  - (e) CL owns or controls 20% or more of the voting rights or capital of A; or
  - (f) A owns or controls 20% or more of the voting rights or capital of CL.
- (3) "Subsidiary undertaking" includes all the instances mentioned in Article 1(1) and (2) of the Seventh Company Law Directive in which an entity may be a subsidiary of an undertaking.

**Annotations:**

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

**C730** Sch. 6 para. 3 restricted (3.9.2001) by S.I. 2001/2507, arts. 1(1), 3(3); S.I. 2001/2632, art. 2(2), Sch. Pt. 2

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

*Adequate resources*

- 4 (1) The resources of the person concerned must, in the opinion of the [appropriate regulator], be adequate in relation to the regulated activities that he seeks to carry on, or carries on.
- (2) In reaching that opinion, the [appropriate regulator] may—
- (a) take into account the person’s membership of a group and any effect which that membership may have; and
  - (b) have regard to—
    - (i) the provision he makes and, if he is a member of a group, which other members of the group make in respect of liabilities (including contingent and future liabilities); and
    - (ii) the means by which he manages and, if he is a member of a group, which other members of the group manage the incidence of risk in connection with his business.

**Annotations:**

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

C731 Sch. 6 para. 4 restricted (3.9.2001) by S.I. 2001/2507, arts. 1(1), 3(3); S.I. 2001/2632, art. 2(2), Sch. Pt. 2

*Suitability*

- 5 The person concerned must satisfy the [appropriate regulator] that he is a fit and proper person having regard to all the circumstances, including—
- (a) his connection with any person;
  - (b) the nature of any regulated activity that he carries on or seeks to carry on; and
  - (c) the need to ensure that his affairs are conducted soundly and prudently.

**Annotations:**

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

C732 Sch. 6 para. 5 restricted (3.9.2001) by S.I. 2001/2507, arts. 1(1), 3(3); S.I. 2001/2632, art. 2(2), Sch. Pt. 2

*[Business model]*

- 5A The person concerned (“P”) must satisfy the regulator that P’s business model (that is, P’s strategy for doing business) is suitable having regard to the regulated activities that P carries on or seeks to carry on.]

**PART II**

**AUTHORISATION**

*Authorisation under Schedule 3*

- 6 In relation to an EEA firm qualifying for authorisation under Schedule 3, the conditions set out in paragraphs 1 and 3 to 5 apply, so far as relevant, to—

- (a) an application for permission under [Part 4A];
- [(b) the exercise of a regulator’s own-initiative variation power under section 55J or own-initiative requirement power under section 55L or 55M in relation to a Part 4A permission.]

*Authorisation under Schedule 4*

- 7 In relation to a person who qualifies for authorisation under Schedule 4, the conditions set out in paragraphs 1 and 3 to 5 apply, so far as relevant, to—
- (a) an application for an additional permission;
  - [(b) the exercise of a regulator’s own-initiative variation power under section 55J or own-initiative requirement power under section 55L or 55M in relation to a Part 4A permission.]

**PART III**

ADDITIONAL CONDITIONS

- 8 (1) If this paragraph applies to the person concerned, he must, for the purposes of such provisions of this Act as may be specified, satisfy specified additional conditions.
- (2) This paragraph applies to a person who—
- (a) has his head office outside the EEA; and
  - (b) appears to [the appropriate regulator (as defined by paragraph A1)] to be seeking to carry on a regulated activity relating to insurance business.
- (3) “Specified” means specified in, or in accordance with, an order made by the Treasury.

**Annotations:**

**Commencement Information**

**I154** Sch. 6 Pt. III para. 8 wholly in force at 3.9.2001; Sch. 6 Pt. III para. 8 not in force at Royal Assent see s. 431(2); Sch. 6 Pt. III para. 8 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pt. 2; Sch. 6 Pt. III para. 8 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2

- 9 The Treasury may by order—
- (a) vary or remove any of the conditions set out in Parts I and II;
  - (b) add to those conditions.

**Annotations:**

**Commencement Information**

**I155** Sch. 6 Pt. III para. 9 wholly in force at 3.9.2001; Sch. 6 Pt. III para. 9 not in force at Royal Assent see s. 431(2); Sch. 6 Pt. III para. 9 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pt. 2; Sch. 6 Pt. III para. 9 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2

## SCHEDULE 7

Section 72(2).

.....

## SCHEDULE 8

Section 72(3).

.....

F684

## SCHEDULE 9

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**Annotations:****Amendments (Textual)**

**F684** Sch. 9 repealed (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 16**

## SCHEDULE 10

Section 90(2) and (5).

## COMPENSATION: EXEMPTIONS

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

**C733** Sch. 10 restricted (1.12.2001) by [S.I. 2001/2957](#), **arts. 1, 7(3)**; [S.I. 2001/3538](#), **art. 2(1)**

*Statements believed to be true*

- 1 (1) In this paragraph “statement” means—
- (a) any untrue or misleading statement in listing particulars; or
  - (b) the omission from listing particulars of any matter required to be included by section 80 or 81.
- (2) A person does not incur any liability under section 90(1) for loss caused by a statement if he satisfies the court that, at the time when the listing particulars were submitted to the competent authority, he reasonably believed (having made such enquiries, if any, as were reasonable) that—
- (a) the statement was true and not misleading, or
  - (b) the matter whose omission caused the loss was properly omitted,
- and that one or more of the conditions set out in sub-paragraph (3) are satisfied.
- (3) The conditions are that—

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (a) he continued in his belief until the time when the securities in question were acquired;
- (b) they were acquired before it was reasonably practicable to bring a correction to the attention of persons likely to acquire them;
- (c) before the securities were acquired, he had taken all such steps as it was reasonable for him to have taken to secure that a correction was brought to the attention of those persons;
- (d) he continued in his belief until after the commencement of dealings in the securities following their admission to the official list and they were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused.

*Statements by experts*

- 2 (1) In this paragraph “statement” means a statement included in listing particulars which —
- (a) purports to be made by, or on the authority of, another person as an expert; and
  - (b) is stated to be included in the listing particulars with that other person’s consent.
- (2) A person does not incur any liability under section 90(1) for loss in respect of any securities caused by a statement if he satisfies the court that, at the time when the listing particulars were submitted to the competent authority, he reasonably believed that the other person—
- (a) was competent to make or authorise the statement, and
  - (b) had consented to its inclusion in the form and context in which it was included,
- and that one or more of the conditions set out in sub-paragraph (3) are satisfied.
- (3) The conditions are that—
- (a) he continued in his belief until the time when the securities were acquired;
  - (b) they were acquired before it was reasonably practicable to bring the fact that the expert was not competent, or had not consented, to the attention of persons likely to acquire the securities in question;
  - (c) before the securities were acquired he had taken all such steps as it was reasonable for him to have taken to secure that that fact was brought to the attention of those persons;
  - (d) he continued in his belief until after the commencement of dealings in the securities following their admission to the official list and they were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused.

*Corrections of statements*

- 3 (1) In this paragraph “statement” has the same meaning as in paragraph 1.
- (2) A person does not incur liability under section 90(1) for loss caused by a statement if he satisfies the court—

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- (a) that before the securities in question were acquired, a correction had been published in a manner calculated to bring it to the attention of persons likely to acquire the securities; or
- (b) that he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the securities were acquired.

(3) Nothing in this paragraph is to be taken as affecting paragraph 1.

*Corrections of statements by experts*

- 4 (1) In this paragraph “statement” has the same meaning as in paragraph 2.
- (2) A person does not incur liability under section 90(1) for loss caused by a statement if he satisfies the court—
- (a) that before the securities in question were acquired, the fact that the expert was not competent or had not consented had been published in a manner calculated to bring it to the attention of persons likely to acquire the securities; or
  - (b) that he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the securities were acquired.
- (3) Nothing in this paragraph is to be taken as affecting paragraph 2.

*Official statements*

- 5 A person does not incur any liability under section 90(1) for loss resulting from—
- (a) a statement made by an official person which is included in the listing particulars, or
  - (b) a statement contained in a public official document which is included in the listing particulars,
- if he satisfies the court that the statement is accurately and fairly reproduced.

*False or misleading information known about*

- 6 A person does not incur any liability under section 90(1) or (4) if he satisfies the court that the person suffering the loss acquired the securities in question with knowledge—
- (a) that the statement was false or misleading,
  - (b) of the omitted matter, or
  - (c) of the change or new matter,
- as the case may be.

*Belief that supplementary listing particulars not called for*

- 7 A person does not incur any liability under section 90(4) if he satisfies the court that he reasonably believed that the change or new matter in question was not such as to call for supplementary listing particulars.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

*Meaning of “expert”*

- 8 “Expert” includes any engineer, valuer, accountant or other person whose profession, qualifications or experience give authority to a statement made by him.

[<sup>F685</sup>SCHEDULE 10A

Section 90A

LIABILITY OF ISSUERS IN CONNECTION WITH PUBLISHED INFORMATION

**Annotations:**

**Amendments (Textual)**

**F685** Sch. 10A inserted (1.10.2010 with effect in accordance with reg. 3(1) of the amending S.I.) by [The Financial Services and Markets Act 2000 \(Liability of Issuers\) Regulations 2010 \(S.I. 2010/1192\)](#), reg. 2(3), [Sch.](#)

**PART 1**

SCOPE OF THIS SCHEDULE

*Securities to which this Schedule applies*

- 1 (1) This Schedule applies to securities that are, with the consent of the issuer, admitted to trading on a securities market, where—
- (a) the market is situated or operating in the United Kingdom, or
  - (b) the United Kingdom is the issuer's home State.
- (2) For the purposes of this Schedule—
- (a) an issuer of securities is not taken to have consented to the securities being admitted to trading on a securities market by reason only of having consented to their admission to trading on another market as a result of which they are admitted to trading on the first-mentioned market;
  - (b) an issuer who has accepted responsibility (to any extent) for any document prepared for the purposes of the admission of the securities to trading on a securities market (such as a prospectus or listing particulars) is taken to have consented to their admission to trading on that market.
- (3) For the purposes of this Schedule the United Kingdom is the home State of an issuer—
- (a) in the case of securities in relation to which the transparency obligations directive applies, if the United Kingdom is the home Member State for the purposes of that directive (see Article 2.1 of the directive);
  - (b) in any other case, if the issuer has its registered office (or, if it does not have a registered office, its head office) in the United Kingdom.

*Published information to which this Schedule applies*

- 2 (1) This Schedule applies to information published by the issuer of securities to which this Schedule applies—

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (a) by recognised means, or
  - (b) by other means where the availability of the information has been announced by the issuer by recognised means.
- (2) It is immaterial whether the information is required to be published (by recognised means or otherwise).
- (3) The following are “recognised means”—
- (a) a recognised information service;
  - (b) other means required or authorised to be used to communicate information to the market in question, or to the public, when a recognised information service is unavailable.
- (4) A “recognised information service” means—
- (a) in relation to a securities market situated or operating in the EEA, a service used for the dissemination of information in accordance with Article 21 of the transparency obligations directive;
  - (b) in relation to a securities market situated or operating outside the EEA, a service used for the dissemination of information corresponding to that required to be disclosed under that directive; or
  - (c) in relation to any securities market, any other service used by issuers of securities for the dissemination of information required to be disclosed by the rules of the market.

## PART 2

### LIABILITY IN CONNECTION WITH PUBLISHED INFORMATION

#### *Liability of issuer for misleading statement or dishonest omission*

- 3 (1) An issuer of securities to which this Schedule applies is liable to pay compensation to a person who—
- (a) acquires, continues to hold or disposes of the securities in reliance on published information to which this Schedule applies, and
  - (b) suffers loss in respect of the securities as a result of—
    - (i) any untrue or misleading statement in that published information, or
    - (ii) the omission from that published information of any matter required to be included in it.
- (2) The issuer is liable in respect of an untrue or misleading statement only if a person discharging managerial responsibilities within the issuer knew the statement to be untrue or misleading or was reckless as to whether it was untrue or misleading.
- (3) The issuer is liable in respect of the omission of any matter required to be included in published information only if a person discharging managerial responsibilities within the issuer knew the omission to be a dishonest concealment of a material fact.
- (4) A loss is not regarded as suffered as a result of the statement or omission unless the person suffering it acquired, continued to hold or disposed of the relevant securities—
- (a) in reliance on the information in question, and

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- (b) at a time when, and in circumstances in which, it was reasonable for him to rely on it.
- 4 An issuer of securities to which this Schedule applies is not liable under paragraph 3 to pay compensation to a person for loss suffered as a result of an untrue or misleading statement in, or omission from, published information to which this Schedule applies if—
- (a) the published information is contained in listing particulars or a prospectus (or supplementary listing particulars or a supplementary prospectus), and
  - (b) the issuer is liable under section 90 (compensation for statements in listing particulars or prospectus) to pay compensation to the person in respect of the statement or omission.

*Liability of issuer for dishonest delay in publishing information*

- 5 (1) An issuer of securities to which this Schedule applies is liable to pay compensation to a person who—
- (a) acquires, continues to hold or disposes of the securities, and
  - (b) suffers loss in respect of the securities as a result of delay by the issuer in publishing information to which this Schedule applies.
- (2) The issuer is liable only if a person discharging managerial responsibilities within the issuer acted dishonestly in delaying the publication of the information.

*Meaning of dishonesty*

- 6 For the purposes of paragraphs 3(3) and 5(2) a person's conduct is regarded as dishonest if (and only if)—
- (a) it is regarded as dishonest by persons who regularly trade on the securities market in question, and
  - (b) the person was aware (or must be taken to have been aware) that it was so regarded.

*Exclusion of certain other liabilities*

- 7 (1) The issuer is not subject—
- (a) to any liability other than that provided for by paragraph 3 in respect of loss suffered as a result of reliance by any person on—
    - (i) an untrue or misleading statement in published information to which this Schedule applies, or
    - (ii) the omission from any such published information of any matter required to be included in it;
  - (b) to any liability other than that provided for by paragraph 5 in respect of loss suffered as a result of delay in the publication of information to which this Schedule applies.
- (2) A person other than the issuer is not subject to any liability, other than to the issuer, in respect of any such loss.
- (3) This paragraph does not affect—
- (a) civil liability—

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- (i) under section 90 (compensation for statements in listing particulars or prospectus),
    - (ii) under rules made by virtue of section 954 of the Companies Act 2006 (compensation),
    - (iii) for breach of contract,
    - (iv) under the Misrepresentation Act 1967, or
    - (v) arising from a person's having assumed responsibility, to a particular person for a particular purpose, for the accuracy or completeness of the information concerned;
  - (b) liability to a civil penalty; or
  - (c) criminal liability.
- (4) This paragraph does not affect the powers conferred by sections 382 and 384 (powers of the court to make a restitution order and of the Authority to require restitution).
- (5) References in this paragraph to liability, in relation to a person, include a reference to another person being entitled as against that person to be granted any civil remedy or to rescind or repudiate an agreement.

### PART 3

#### SUPPLEMENTARY PROVISIONS

##### *Interpretation*

- 8 (1) In this Schedule—
- (a) “securities” means transferable securities within the meaning of Article 4.1.18 of the markets in financial instruments directive, other than money-market instruments as defined in Article 4.1.19 of that directive that have a maturity of less than 12 months (and includes instruments outside the EEA);
  - (b) “securities market” means—
    - (i) a regulated market as defined in Article 4.1.14 of the markets in financial instruments directive,
    - (ii) a multilateral trading facility as defined in Article 4.1.15 of the markets in financial instruments directive, or
    - (iii) a market or facility of a corresponding description outside the EEA.
- (2) References in this Schedule to the issuer of securities are—
- (a) in relation to a depositary receipt, derivative instrument or other financial instrument representing securities where the issuer of the securities represented has consented to the admission of the instrument to trading as mentioned in paragraph 1(1), to the issuer of the securities represented;
  - (b) in any other case, to the person who issued the securities.
- (3) References in this Schedule to the acquisition or disposal of securities include—
- (a) acquisition or disposal of any interest in securities, or
  - (b) contracting to acquire or dispose of securities or of any interest in securities, except where what is acquired or disposed of (or contracted to be acquired or disposed of) is a depositary receipt, derivative instrument or other financial instrument representing securities.

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- (4) References to continuing to hold securities have a corresponding meaning.
- (5) For the purposes of this Schedule the following are persons “discharging managerial responsibilities” within an issuer—
- (a) any director of the issuer (or person occupying the position of director, by whatever name called);
  - (b) in the case of an issuer whose affairs are managed by its members, any member of the issuer;
  - (c) in the case of an issuer that has no persons within paragraph (a) or (b), any senior executive of the issuer having responsibilities in relation to the information in question or its publication.
- (6) The following definitions (which apply generally for the purposes of Part 6 of this Act) do not apply for the purposes of this Schedule:
- (a) section 102A(1), (2) and (6) (meaning of “securities” and “issuer”);
  - (b) section 102C (meaning of “home State” in relation to transferable securities).]

F686

## SCHEDULE 11

**Annotations:****Amendments (Textual)**

**F686** Sch. 11 repealed (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 16**

[<sup>F691</sup>SCHEDULE 11A

Section 85(5)(a)

## TRANSFERABLE SECURITIES

**Annotations:****Amendments (Textual)**

**F691** Sch. 11A inserted (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(2), **Sch. 2**

**PART 1**

- 1 Units (within the meaning in section 237(2)) in an open-ended collective investment scheme.
- 2 Non-equity transferable securities issued by
  - (a) the government of an EEA State;
  - (b) a local or regional authority of an EEA State;

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- (c) a public international body of which an EEA State is a member;
  - (d) the European Central Bank;
  - (e) the central bank of an EEA State.
- 3 Shares in the share capital of the central bank of an EEA State.
- 4 Transferable securities unconditionally and irrevocably guaranteed by the government, or a local or regional authority, of an EEA State.
- 5 (1) Non-equity transferable securities, issued in a continuous or repeated manner by a credit institution, which satisfy the conditions in sub-paragraph (2).  
(2) The conditions are that the transferable securities—
  - (a) are not subordinated, convertible or exchangeable;
  - (b) do not give a right to subscribe to or acquire other types of securities and are not linked to a derivative instrument;
  - (c) materialise reception of repayable deposits; and
  - (d) are covered by a deposit guarantee under directive 94/19/EC of the European Parliament and of the Council on deposit-guarantee schemes.
- 6 Non-fungible shares of capital—
  - (a) the main purpose of which is to provide the holder with a right to occupy any immovable property, and
  - (b) which cannot be sold without that right being given up.

## PART 2

- 7 (1) Transferable securities issued by a body specified in sub-paragraph (2) if, and only if, the proceeds of the offer of the transferable securities to the public will be used solely for the purposes of the issuer's objectives.  
(2) The bodies are
  - (a) a charity within the meaning of—
    - (i) section 96(1) of the Charities Act 1993 (c. 10), or
    - (ii) section 35 of the Charities Act (Northern Ireland) 1964 (c. 33 (N.I.));
  - <sup>F692</sup>(b) a body entered in the Scottish Charity Register;
  - (c) a housing association within the meaning of—
    - (i) section 5(1) of the Housing Act 1985 (c. 68),
    - (ii) section 1 of the Housing Associations Act 1985 (c. 69), or
    - (iii) Article 3 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15));
  - (d) an industrial and provident society registered in accordance with—
    - (i) section 1(2)(b) of the Industrial and Provident Societies Act 1965 (c. 12), or
    - (ii) section 1(2)(b) of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.));
  - (e) a non-profit making association or body recognised by an EEA State with objectives similar to those of a body falling within any of sub-paragraphs (a) to (d).

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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**Annotations:**

**Amendments (Textual)**

**F692** Sch. 11A para. 7(2)(b) substituted (1.4.2006) by [The Charities and Trustee Investment \(Scotland\) Act 2005 \(Consequential Provisions and Modifications\) Order 2006 \(S.I. 2006/242\)](#), arts. 1(3), 5, **Sch. para. 7**

- 8 (1) Non-equity transferable securities, issued in a continuous or repeated manner by a credit institution, which satisfy the conditions in sub-paragraph (2).
- (2) The conditions are—
- (a) that the total consideration of the offer is less than 50,000,000 euros (or an equivalent amount); and
  - (b) those mentioned in paragraph 5(2)(a) and (b).
- (3) In determining whether sub-paragraph (2)(a) is satisfied in relation to an offer (“offer A”), offer A is to be taken together with any other offer of transferable securities of the same class made by the same person which—
- (a) was open at any time within the period of 12 months ending with the date on which offer A is first made; and
  - (b) had previously satisfied sub-paragraph (2)(a).
- (4) For the purposes of this paragraph, an amount (in relation to an amount denominated in euros) is an “equivalent amount” if it is an amount of equal value denominated wholly or partly in another currency or unit of account.
- (5) The equivalent is to be calculated at the latest practicable date before (but in any event not more than 3 working days before) the date on which the offer is first made.
- (6) “Credit institution” means a credit institution as defined in [<sup>F693</sup>Article [<sup>F694</sup>4(1)]] of the banking consolidation directive.

**Annotations:**

**Amendments (Textual)**

**F693** Words in Sch. 11A para. 8(6) substituted (1.1.2007) by [The Capital Requirements Regulations 2006 \(S.I. 2006/3221\)](#), reg. 29(1), **Sch. 3 para. 3**

**F694** Sch. 11A para. 8(6): “4(1)” substituted (9.2.2011 for certain purposes and 30.4.2011 otherwise) for “4(1)(a)” by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), regs. 1(2)(a)(xv)(b), 79, **Sch. 4 para. 2(7)** (with reg. 3)

- 9 (1) Transferable securities included in an offer where the total consideration of the offer is less than 2,500,000 euros (or an equivalent amount).
- (2) Sub-paragraphs (3) to (5) of paragraph 8 apply for the purposes of this paragraph but with the references in sub-paragraph (3) to “sub-paragraph (2)(a)” being read as references to “paragraph 9(1)”.]

[<sup>F695</sup>SCHEDULE 11B

Section 96B(2)

CONNECTED PERSONS

**Annotations:**

**Amendments (Textual)**

**F695** Sch. 11B inserted (1.10.2009) by [The Financial Services and Markets Act 2000 \(Amendment\) Regulations 2009 \(S.I. 2009/2461\)](#), reg. 2(2)(3), **Sch.** (this amendment supersedes the amendment in para. 181(2) of Sch. 1 to the [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#))

**PART 1**

MEANING OF “CONNECTED PERSON”

*Introduction*

- 1 (1) In this Schedule “manager” means a person discharging managerial responsibilities within an issuer.
- (2) This Schedule defines what is meant by references in the provisions of this Part relating to disclosure rules to a person being “connected” with a manager (or a manager being “connected” with a person).

*Meaning of “connected person”*

- 2 (1) The following persons (and only those persons) are connected with a manager—
  - (a) members of the manager's family (see paragraph 3);
  - (b) a body corporate with which the manager is associated (as defined in paragraph 4);
  - (c) a person acting in his capacity as trustee of a trust—
    - (i) the beneficiaries of which include the manager or a person who by virtue of paragraph (a) or (b) is connected with him, or
    - (ii) the terms of which confer a power on the trustees that may be exercised for the benefit of the manager or any such person,other than a trust for the purposes of an employees' share scheme or a pension scheme;
  - (d) a person acting in his capacity as partner—
    - (i) of the manager, or
    - (ii) of a person who, by virtue of paragraph (a), (b) or (c), is connected with that manager;
  - (e) a firm that is a legal person under the law by which it is governed and in which—
    - (i) the manager is a partner,
    - (ii) a partner is a person who, by virtue of paragraph (a), (b) or (c) is connected with the manager, or

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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(iii) a partner is a firm in which the manager is a partner or in which there is a partner who, by virtue of paragraph (a), (b) or (c), is connected with the director.

(2) References to a person connected with a manager do not include a person who is also a manager of the issuer in question.

#### *Family members*

3 (1) This paragraph defines what is meant by references to members of a manager's family.

(2) The members of a manager's family are—

- (a) the manager's spouse or civil partner;
- (b) any relative of the manager who, on the date of the transaction in question, has shared the same household as the manager for at least 12 months;
- (c) the manager's children or step-children under the age of 18.

#### *Associated bodies corporate*

4 (1) This paragraph defines what is meant by a manager being “associated” with a body corporate.

(2) A manager is associated with a body corporate if, but only if—

- (a) the manager, or a person connected with the manager, is a director or senior executive who has the power to make management decisions affecting the future development and business prospects of the body corporate; or
- (b) the manager and the persons connected with the manager together—
  - (i) are interested in shares comprised in the equity share capital of that body corporate of a nominal value equal to at least 20% of that share capital, or
  - (ii) are entitled to exercise or control the exercise of more than 20% of the voting power at any general meeting of that body.

(3) The rules set out in Part 2 of this Schedule (references to interest in shares or debentures) apply for the purposes of this paragraph.

(4) References in this paragraph to voting power the exercise of which is controlled by a manager include voting power whose exercise is controlled by a body corporate controlled by the manager.

(5) Shares in a company held as treasury shares, and any voting rights attached to such shares, are disregarded for the purposes of this paragraph.

#### *Control of a body corporate*

5 (1) This paragraph defines what is meant by a manager “controlling” a body corporate.

(2) A manager is taken to control a body corporate if, but only if—

- (a) the manager or a person connected with the manager—
  - (i) is interested in any part of the equity share capital of that body, or
  - (ii) is entitled to exercise or control the exercise of any part of the voting power at any general meeting of that body, and

- (b) the manager, the persons connected with the manager and the other managers of the issuer in question, together—
  - (i) are interested in more than 50% of that share capital, or
  - (ii) are entitled to exercise or control the exercise of more than 50% of that voting power.
- (3) The rules set out in Part 2 of this Schedule (references to interest in shares or debentures) apply for the purposes of this paragraph.
- (4) References in this paragraph to voting power the exercise of which is controlled by a manager include voting power whose exercise is controlled by a body corporate controlled by the manager.
- (5) Shares in a company held as treasury shares, and any voting rights attached to such shares, are disregarded for the purposes of this paragraph.

#### *Supplementary provisions*

- 6 For the purposes of paragraphs 4 and 5 (associated bodies corporate and control of a body corporate)—
  - (a) a body corporate with which a manager is associated is not treated as connected with that manager unless it is also connected with that manager by virtue of sub-paragraph (1)(c) or (d) of that paragraph (connection as trustee or partner); and
  - (b) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a manager is associated is not treated as connected with a manager by reason only of that fact.

## **PART 2**

### **CONNECTED PERSONS: REFERENCES TO AN INTEREST IN SHARES OR DEBENTURES**

#### *Introduction*

- 7 (1) The provisions of this Part of this Schedule have effect for the interpretation of references in paragraphs 4 and 5 (associated bodies corporate and control of a body corporate) to an interest in shares or debentures.
- (2) The provisions are expressed in relation to shares but apply to debentures as they apply to shares.

#### *General provisions*

- 8 (1) A reference to an interest in shares includes any interest of any kind whatsoever in shares.
- (2) Any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject shall be disregarded.
- (3) It is immaterial that the shares in which a person has an interest are not identifiable.
- (4) Persons having a joint interest in shares are deemed each of them to have that interest.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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### *Rights to acquire shares*

- 9 (1) A person who enters into a contract to acquire shares is taken to have an interest in the shares.
- (2) A person who—
- (a) has a right to call for delivery of shares to the person or to the person's order, or
  - (b) has a right to acquire an interest in shares or is under an obligation to take an interest in shares,
- is taken to have an interest in the shares, whether the right or obligation is conditional or absolute.
- (3) Rights or obligations to subscribe for shares are not to be taken for the purposes of sub-paragraph (2) to be rights to acquire or obligations to take an interest in shares.
- (4) A person (“A”) ceases to have an interest in shares by virtue of this paragraph—
- (a) on the shares being delivered to another person at A's order—
    - (i) in fulfilment of a contract for their acquisition by A, or
    - (ii) in satisfaction of a right of A's to call for their delivery;
  - (b) on a failure to deliver the shares in accordance with the terms of such a contract or on which such a right falls to be satisfied;
  - (c) on the lapse of A's right to call for the delivery of shares.

### *Right to exercise or control exercise of rights*

- 10 (1) A person who, not being the registered holder, is entitled—
- (a) to exercise any right conferred by the holding of the shares, or
  - (b) to control the exercise of any such right.
- is taken to have an interest in the shares.
- (2) For this purpose a person is taken to be entitled to exercise or control the exercise of a right conferred by the holding of shares who—
- (a) has a right (whether subject to conditions or not) the exercise of which would make the person so entitled, or
  - (b) is under an obligation (whether or not so subject) the fulfilment of which would make the person so entitled.
- (3) A person who—
- (a) has been appointed a proxy to exercise any of the rights attached to the shares, or
  - (b) has been appointed by a body corporate to act as its representative at any meeting of a company or of any class of its members,
- is not, by reason only of that fact, to be taken by virtue of this paragraph to be interested in the shares.

### *Bodies corporate*

- 11 (1) A person is taken to be interested in shares if a body corporate is interested in them and—
- (a) the body corporate or its directors are accustomed to act in accordance with the person's directions or instructions, or

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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- (b) the person is entitled to exercise or control the exercise of more than one-half of the voting power at general meetings of the body corporate.
- (2) For the purposes of sub-paragraph (1)(b) where—
- (a) a person is entitled to exercise or control the exercise of more than one-half of the voting power at general meetings of a body corporate, and
  - (b) that body corporate is entitled to exercise or control the exercise of any of the voting power at general meetings of another body corporate,
- the voting power mentioned in paragraph (b) above is taken to be exercisable by that person.

### *Trusts*

- 12 (1) Where an interest in shares is comprised in property held on trust, every beneficiary of the trust is taken to have an interest in shares, subject as follows.
- (2) So long as a person is entitled to receive, during the lifetime of that person or another, income from trust property comprising shares, an interest in the shares in reversion or remainder or (as regards Scotland) in fee shall be disregarded.
- (3) A person is treated as not interested in shares if and so long as the person holds them—
- (a) under the law in force in any part of the United Kingdom, as a bare trustee or as a custodian trustee, or
  - (b) under the law in force in Scotland, as a simple trustee.
- (4) There shall be disregarded any interest of a person subsisting by virtue of—
- (a) an authorised unit trust scheme (within the meaning of section 237 (other definitions));
  - (b) a scheme made under section 22 or 22A of the Charities Act 1960 (c. 58), section 25 of the Charities Act (Northern Ireland) 1964 (c. 33 (N.I.)) or section 24 or 25 of the Charities Act 1993 (c. 10), section 11 of the Trustee Investments Act 1961 (c. 62) or section 42 of the Administration of Justice Act 1982 (c. 53); or
  - (c) the scheme set out in the Schedule to the Church Funds Investment Measure 1958 (1958 No. 1).
- (5) There shall be disregarded any interest—
- (a) of the Church of Scotland General Trustees or of the Church of Scotland Trust in shares held by them;
  - (b) of any other person in shares held by those Trustees or that Trust otherwise than as simple trustees.

“The Church of Scotland General Trustees” are the body incorporated by the order confirmed by the Church of Scotland (General Trustees) Order Confirmation Act 1921 (1921 c. xxv), and “the Church of Scotland Trust” is the body incorporated by the order confirmed by the Church of Scotland Trust Order Confirmation Act 1932 (1932 c. xxi).]

## SCHEDULE 12

Sections 111(2) and 115.

## TRANSFER SCHEMES: CERTIFICATES

## PART I

## INSURANCE BUSINESS TRANSFER SCHEMES

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

C735 Sch. 12 Pt. I (paras. 1-6) applied (1.12.2001) by S.I. 2001/3626, arts. 1, 3(c)

- 1 (1) For the purposes of section 111(2) the appropriate certificates, in relation to an insurance business transfer scheme, are—
- (a) a certificate under paragraph 2;
  - (b) if sub-paragraph (2) applies, a certificate under paragraph 3;
  - (c) if sub-paragraph (3) applies, a certificate under paragraph 4;
  - (d) if sub-paragraph (4) applies, a certificate under paragraph 5<sup>[F696]</sup>;
  - (e) if sub-paragraph (5) applies, the certificates under paragraph 5A.]
- (2) This sub-paragraph applies if—
- (a) the authorised person concerned is a UK authorised person which has received authorisation under [<sup>F697</sup>Article 4 of the life assurance consolidation directive or Article 6] or of the first non-life insurance directive from the Authority; and
  - (b) the establishment from which the business is to be transferred under the proposed insurance business transfer scheme is in an EEA State other than the United Kingdom.
- (3) This sub-paragraph applies if—
- (a) the authorised person concerned has received authorisation under [<sup>F698</sup>Article 4 [<sup>F699</sup>or Article 51] of the life assurance consolidation directive] from the Authority;
  - (b) the proposed transfer relates to business which consists of the effecting or carrying out of contracts of long-term insurance; and
  - (c) as regards any policy which is included in the proposed transfer and which evidences a contract of insurance (other than reinsurance), an EEA State other than the United Kingdom is the State of the commitment.
- (4) This sub-paragraph applies if—
- (a) the authorised person concerned has received authorisation under Article 6 [<sup>F700</sup>or Article 23] of the first non-life insurance directive from the Authority;
  - (b) the business to which the proposed insurance business transfer scheme relates is business which consists of the effecting or carrying out of contracts of general insurance; and
  - (c) as regards any policy which is included in the proposed transfer and which evidences a contract of insurance (other than reinsurance), the risk is situated in an EEA State other than the United Kingdom.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- [<sup>F701</sup>(5) This sub-paragraph applies if—
- (a) the authorised person concerned has received authorisation under Article 23 of the first non-life insurance directive or Article 51 of the life assurance consolidation directive from the Authority; and
  - (b) the proposed transfer is to a branch or agency, in an EEA State other than the United Kingdom, authorised under the same Article.]

**Annotations:**

**Amendments (Textual)**

- F696** Sch. 12 para. 1(1)(e) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), **Sch. 1 para. 2(5)(a)**
- F697** Words in Sch. 12 para. 1(2)(a) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), reg. 6(7)(a)(i)
- F698** Words in Sch. 12 para. 1(3)(a) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), reg. 6(7)(a)(ii)
- F699** Words in Sch. 12 para. 1(3)(a) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), **Sch. 1 para. 2(5)(b)**
- F700** Words in Sch. 12 para. 1(4)(a) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), **Sch. 1 para. 2(5)(c)**
- F701** Sch. 12 para. 1(5) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), **Sch. 1 para. 2(5)(d)**

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

- C736** Sch. 12 Pt. I para. 1(2)(a)(3)(a)(4)(a) modified (1.12.2001) by [S.I. 2001/3626](#), arts. 1, 5(2)

*Certificates as to margin of solvency*

- 2 (1) A certificate under this paragraph is to be given—
- (a) by the relevant authority; or
  - (b) in a case in which there is no relevant authority, by the Authority.
- (2) A certificate given under sub-paragraph (1)(a) is one certifying that, taking the proposed transfer into account—
- (a) the transferee possesses, or will possess before the scheme takes effect, the necessary margin of solvency; or
  - (b) there is no necessary margin of solvency applicable to the transferee.
- (3) A certificate under sub-paragraph (1)(b) is one certifying that the Authority has received from the authority which it considers to be the authority responsible for supervising persons who effect or carry out contracts of insurance in the place to which the business is to be transferred that, taking the proposed transfer into account—
- (a) the transferee possesses or will possess before the scheme takes effect the margin of solvency required under the law applicable in that place; or
  - (b) there is no such margin of solvency applicable to the transferee .
- (4) “Necessary margin of solvency” means the margin of solvency required in relation to the transferee, taking the proposed transfer into account, under the law which it is the responsibility of the relevant authority to apply.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- (5) “Margin of solvency” means the excess of the value of the assets of the transferee over the amount of its liabilities.
- (6) “Relevant authority” means—
- (a) if the transferee is an EEA firm falling within paragraph 5(d) [<sup>F702</sup>or (da)] of Schedule 3, its home state regulator;
  - [<sup>F703</sup>(aa) if the transferee is a non-EEA branch, the competent authorities of the EEA State in which the transferee is situated or, where appropriate, the competent authorities of an EEA State which supervises the state of solvency of the entire business of the transferee's agencies and branches within the EEA in accordance with Article 26 of the first non-life insurance directive or Article 56 of the life assurance consolidation directive;]
  - (b) if the transferee is a Swiss general insurer, the authority responsible in Switzerland for supervising persons who effect or carry out contracts of insurance;
  - (c) if the transferee is an authorised person not falling within [<sup>F704</sup>paragraph (a), (aa)] or (b), the Authority.
- (7) In sub-paragraph (6), any reference to a transferee of a particular description includes a reference to a transferee who will be of that description if the proposed scheme takes effect.
- [<sup>F705</sup>(7A) “Competent authorities” has the same meaning as in the insurance directives.]
- (8) “Swiss general insurer” means a body—
- (a) whose head office is in Switzerland;
  - (b) which has permission to carry on regulated activities consisting of the effecting and carrying out of contracts of general insurance; and
  - (c) whose permission is not restricted to the effecting or carrying out of contracts of reinsurance.
- [<sup>F706</sup>(9) “Non-EEA branch” means a branch or agency which has received authorisation under Article 23 of the first non-life insurance directive or Article 51 of the life assurance consolidation directive.]

**Annotations:**

**Amendments (Textual)**

- F702** Words in Sch. 12 para. 2(6)(a) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007](#) (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 2(5)(e)(i)**
- F703** Sch. 12 para. 2(6)(aa) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007](#) (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 2(5)(e)(ii)**
- F704** Words in Sch. 12 para. 2(6)(c) substituted (10.12.2007) by [The Reinsurance Directive Regulations 2007](#) (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 2(5)(e)(iii)**
- F705** Sch. 12 para. 2(7A) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007](#) (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 2(5)(e)(iv)**
- F706** Sch. 12 para. 2(9) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007](#) (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 2(5)(e)(v)**

*Certificates as to consent*

- 3 A certificate under this paragraph is one given by the Authority and certifying that the host State regulator has been notified of the proposed scheme and that—
- (a) that regulator has responded to the notification; or
  - (b) that it has not responded but the period of three months beginning with the notification has elapsed.

*Certificates as to long-term business*

- 4 A certificate under this paragraph is one given by the Authority and certifying that the authority responsible for supervising persons who effect or carry out contracts of insurance in the State of the commitment has been notified of the proposed scheme and that—
- (a) that authority has consented to the proposed scheme; or
  - (b) the period of three months beginning with the notification has elapsed and that authority has not refused its consent.

*Certificates as to general business*

- 5 A certificate under this paragraph is one given by the Authority and certifying that the authority responsible for supervising persons who effect or carry out contracts of insurance in the EEA State in which the risk is situated has been notified of the proposed scheme and that—
- (a) that authority has consented to the proposed scheme; or
  - (b) the period of three months beginning with the notification has elapsed and that authority has not refused its consent.

<sup>F707</sup>*Certificates as to legality and as to consent*

**Annotations:**

**Amendments (Textual)**

**F707** Sch. 12 para. 5A and cross-heading inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(5\)\(f\)](#)

- 5A (1) The certificates under this paragraph are to be given—
- (a) in the case of the certificate under sub-paragraph (2), by the Authority;
  - (b) in the case of the certificate under sub-paragraph (3), by the relevant authority.
- (2) A certificate given under this sub-paragraph is one certifying that the relevant authority has been notified of the proposed scheme and that—
- (a) the relevant authority has consented to the proposed scheme; or
  - (b) the period of three months beginning with the notification has elapsed and that relevant authority has not refused its consent.
- (3) A certificate given under this sub-paragraph is one certifying that the law of the EEA State in which the transferee is set up permits such a transfer.
- (4) “Relevant authority” means the competent authorities (within the meaning of the insurance directives) of the EEA State in which the transferee is set up.]

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

### *Interpretation of Part I*

- 6 (1) “State of the commitment”, in relation to a commitment entered into at any date, means—
- (a) if the policyholder is an individual, the State in which he had his habitual residence at that date;
  - (b) if the policyholder is not an individual, the State in which the establishment of the policyholder to which the commitment relates was situated at that date.
- (2) “Commitment” means a commitment represented by contracts of insurance of a prescribed class.
- (3) References to the EEA State in which a risk is situated are—
- (a) if the insurance relates to a building or to a building and its contents (so far as the contents are covered by the same policy), to the EEA State in which the building is situated;
  - (b) if the insurance relates to a vehicle of any type, to the EEA State of registration;
  - (c) in the case of policies of a duration of four months or less covering travel or holiday risks (whatever the class concerned), to the EEA State in which the policyholder took out the policy;
  - (d) in a case not covered by paragraphs (a) to (c)—
    - (i) if the policyholder is an individual, to the EEA State in which he has his habitual residence at the date when the contract is entered into; and
    - (ii) otherwise, to the EEA State in which the establishment of the policyholder to which the policy relates is situated at that date.
- [<sup>F708</sup>(4) If the insurance relates to a vehicle dispatched from one EEA State to another, in respect of the period of 30 days beginning with the day on which the purchaser accepts delivery a reference to the EEA State in which a risk is situated is a reference to the State of destination (and not, as provided by sub-paragraph (3)(b), to the State of registration).]

#### **Annotations:**

#### **Amendments (Textual)**

**F708** Sch. 12 para. 6(4) added (5.9.2007) by [The Financial Services and Markets Act 2000 \(Motor Insurance\) Regulations 2007 \(S.I. 2007/2403\)](#), **reg. 2(2)**

#### **Commencement Information**

**I156** Sch. 12 Pt I para. 6 wholly in force at 1.12.2001; Sch. 12 Pt. I para. 6 not in force at Royal Assent see s. 431(2); Sch. 12 para. 6(2) in force at 25.2.2001 by [S.I. 2001/516](#), art. 2(b), Sch. Pts. 1, 3; Sch. 12 Pt. I para. 6 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

## **PART II**

### **BANKING BUSINESS TRANSFER SCHEMES**

- 7 (1) For the purposes of section 111(2) the appropriate certificates, in relation to a banking business transfer scheme, are—

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- (a) a certificate under paragraph 8; and
  - (b) if sub-paragraph (2) applies, a certificate under paragraph 9.
- (2) This sub-paragraph applies if the authorised person concerned or the transferee is an EEA firm falling within paragraph 5(b) of Schedule 3.

*Certificates as to financial resources*

- 8 (1) A certificate under this paragraph is one given by the relevant authority and certifying that, taking the proposed transfer into account, the transferee possesses, or will possess before the scheme takes effect, adequate financial resources.
- (2) “Relevant authority” means—
- (a) if the transferee is a person with a Part IV permission or with permission under Schedule 4, the Authority;
  - (b) if the transferee is an EEA firm falling within paragraph 5(b) of Schedule 3, its home state regulator;
  - (c) if the transferee does not fall within paragraph (a) or (b), the authority responsible for the supervision of the transferee’s business in the place in which the transferee has its head office.
- (3) In sub-paragraph (2), any reference to a transferee of a particular description of person includes a reference to a transferee who will be of that description if the proposed banking business transfer scheme takes effect.

*Certificates as to consent of home state regulator*

- 9 A certificate under this paragraph is one given by the Authority and certifying that the home State regulator of the authorised person concerned or of the transferee has been notified of the proposed scheme and that—
- (a) the home State regulator has responded to the notification; or
  - (b) the period of three months beginning with the notification has elapsed.

[<sup>F709</sup>PART 2A

RECLAIM FUND BUSINESS TRANSFER SCHEMES

**Annotations:**

**Amendments (Textual)**

**F709** Sch. 12 Pt. 2A inserted (12.3.2009) by Dormant Bank and Building Society Accounts Act 2008 (c. 31), ss. 15, 31(1)(2), Sch. 2 para. 5; S.I. 2009/490, art. 2 (with art. 3)

*Certificate as to financial resources*

- 9A For the purposes of section 111(2) the appropriate certificate, in relation to a reclaim fund business transfer scheme, is a certificate given by the Authority certifying that, taking the proposed transfer into account, the transferee possesses, or will possess before the scheme takes effect, adequate financial resources.]

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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### PART III

#### INSURANCE BUSINESS TRANSFERS EFFECTED OUTSIDE THE UNITED KINGDOM

- 10 (1) This paragraph applies to a proposal to execute under provisions corresponding to Part VII in a country or territory other than the United Kingdom an instrument transferring all the rights and obligations of the transferor under general or long-term insurance policies, or under such descriptions of such policies as may be specified in the instrument, to the transferee if any of the conditions in sub-paragraphs (2), (3) or (4) is met in relation to it.
- (2) The transferor is an EEA firm falling within paragraph 5(d) [<sup>F710</sup>or (da)] of Schedule 3 and the transferee is an authorised person whose margin of solvency is supervised by the Authority.
- (3) The transferor is a company authorised in an EEA State other than the United Kingdom under [<sup>F711</sup>Article 51 of the life assurance consolidation directive], or Article 23 of the first non-life insurance directive and the transferee is a UK authorised person which has received authorisation under [<sup>F712</sup>Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive].
- (4) The transferor is a Swiss general insurer and the transferee is a UK authorised person which has received authorisation under [<sup>F713</sup>Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive].
- (5) In relation to a proposed transfer to which this paragraph applies, the Authority may, if it is satisfied that the transferee possesses the necessary margin of solvency, issue a certificate to that effect.
- (6) “Necessary margin of solvency” means the margin of solvency which the transferee, taking the proposed transfer into account, is required by the Authority to maintain.
- (7) “Swiss general insurer” has the same meaning as in paragraph 2.
- (8) “General policy” means a policy evidencing a contract which, if it had been effected by the transferee, would have constituted the carrying on of a regulated activity consisting of the effecting of contracts of general insurance.
- (9) “Long-term policy” means a policy evidencing a contract which, if it had been effected by the transferee, would have constituted the carrying on of a regulated activity consisting of the effecting of contracts of long-term insurance.

#### Annotations:

##### Amendments (Textual)

**F710** Words in Sch. 12 para. 10(2) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), **Sch. 1 para. 2(5)(g)**

**F711** Words in Sch. 12 para. 10(3) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), reg. 6(7)(b)(i)

**F712** Words in Sch. 12 para. 10(3) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), reg. 6(7)(b)(ii)

**F713** Words in Sch. 12 para. 10(4) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), reg. 6(7)(c)

F714

SCHEDULE 13

**Annotations:**

**Amendments (Textual)**

**F714** Sch. 13 omitted (6.4.2010) by virtue of The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(2)(e), 5(1), **Sch. 2 para. 49**

SCHEDULE 14

Section 162.

~~[ROLE OF THE COMPETITION COMMISSION]~~

SCHEDULE 15

Sections 165(11) and 171(4).

INFORMATION AND INVESTIGATIONS: CONNECTED PERSONS

**PART I**

**RULES FOR SPECIFIC BODIES**

**Annotations:**

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

**C745** Sch. 15 Pt. I (paras. 1-7) modified (1.12.2001) by S.I. 2001/2657, **arts. 1(1), 15(2)** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23**); S.I. 2001/3538, **art. 2(1)**

Sch. 15 Pt. I (paras. 1-7) modified (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 15(2)**; S.I. 2001/3538, **art. 2(1)**

Sch. 15 Pt. I (paras. 1-7) amended (*temp.* from 11.8.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2), 2(2)**; S.I. 2001/3538, **art. 2(1)**

**C746** Sch. 15 Pt. I modified (8.4.2002) by The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002 (S.I. 2002/704), **art. 8(2)**

*Corporate bodies*

- 1 If the authorised person (“BC”) is a body corporate, a person who is or has been—
- (a) an officer or manager of BC or of a parent undertaking of BC;
  - (b) an employee of BC;
  - (c) an agent of BC or of a parent undertaking of BC.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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*Partnerships*

- 2 If the authorised person (“PP”) is a partnership, a person who is or has been a member, manager, employee or agent of PP.

*Unincorporated associations*

- 3 If the authorised person (“UA”) is an unincorporated association of persons which is neither a partnership nor an unincorporated friendly society, a person who is or has been an officer, manager, employee or agent of UA.

*Friendly societies*

- 4 (1) If the authorised person (“FS”) is a friendly society, a person who is or has been an officer, manager or employee of FS.
- (2) In relation to FS, “officer” and “manager” have the same meaning as in section 119(1) of the <sup>M100</sup>Friendly Societies Act 1992.

**Annotations:**

**Marginal Citations**

**M100** 1992 c. 40.

*Building societies*

- 5 (1) If the authorised person (“BS”) is a building society, a person who is or has been an officer or employee of BS.
- (2) In relation to BS, “officer” has the same meaning as it has in section 119(1) of the <sup>M101</sup>Building Societies Act 1986.

**Annotations:**

**Marginal Citations**

**M101** 1986 c. 53.

*Individuals*

- 6 If the authorised person (“IP”) is an individual, a person who is or has been an employee or agent of IP.

*Application to sections 171 and 172*

- 7 For the purposes of sections 171 and 172, if the person under investigation is not an authorised person the references in this Part of this Schedule to an authorised person are to be taken to be references to the person under investigation.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

## PART II

### ADDITIONAL RULES

- 8 A person who is, or at the relevant time was, the partner, manager, employee, agent, appointed representative, banker, auditor, actuary or solicitor of—
- (a) the person under investigation (“A”);
  - (b) a parent undertaking of A;
  - (c) a subsidiary undertaking of A;
  - (d) a subsidiary undertaking of a parent undertaking of A; or
  - (e) a parent undertaking of a subsidiary undertaking of A.

### SCHEDULE 16

Section 203(8).

#### PROHIBITIONS AND RESTRICTIONS IMPOSED BY [F729 OFFICE OF FAIR TRADING]

##### Annotations:

##### Amendments (Textual)

F729 Sch. 16: words in heading substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(a); S.I. 2003/766, art. 2, Sch. (with art. 3)

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

C747 Sch. 16 applied (with modifications) (1.5.2009 for certain purposes and 1.11.2009 otherwise) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2), 26(1) (with reg. 3)

C748 Sch. 16 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), reg. 31(1) (with reg. 3)

#### *Preliminary*

- 1 In this Schedule—
- “appeal period” has the same meaning as in the M102 Consumer Credit Act 1974;
  - “prohibition” means a consumer credit prohibition under section 203;
  - “restriction” means a restriction under section 204.

##### Annotations:

##### Marginal Citations

M102 1974 c. 39.

#### *Notice of prohibition or restriction*

- 2 (1) This paragraph applies if the [F730 OFT ] proposes, in relation to a firm—
- (a) to impose a prohibition;
  - (b) to impose a restriction; or
  - (c) to vary a restriction otherwise than with the agreement of the firm.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- (2) The [F730 OFT ] must by notice—
  - (a) inform the firm of [F731its] proposal, stating [F731its] reasons; and
  - (b) invite the firm to submit representations in accordance with paragraph 4.
- (3) If [F732the OFT] imposes the prohibition or restriction or varies the restriction, the [F730 OFT ] may give directions authorising the firm to carry into effect agreements made before the coming into force of the prohibition, restriction or variation.
- (4) A prohibition, restriction or variation is not to come into force before the end of the appeal period.
- (5) If the [F730 OFT ] imposes a prohibition or restriction or varies a restriction, [F732the OFT] must serve a copy of the prohibition, restriction or variation—
  - (a) on the Authority; and
  - (b) on the firm’s home state regulator.

**Annotations:**

**Amendments (Textual)**

- F730** Sch. 16: words substituted (1.4.2003) in each place by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F731** Sch. 16: word substituted (1.4.2003) in each place by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F732** Sch. 16: words substituted (1.4.2003) in both places by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

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

- C749** Sch. 16 para. 2(2) extended (1.12.2001) by S.I. 2001/3592, arts. 1(2), 24 (with art. 23(2))
- C750** Sch. 16 para. 2(3) extended (1.12.2001) by S.I. 2001/2636, arts. 1(2)(b), 53(4); S.I. 2001/3538, art. 2(1)

*Application to revoke prohibition or restriction*

- 3 (1) This paragraph applies if the [F733 OFT ] proposes to refuse an application made by a firm for the revocation of a prohibition or restriction.
- (2) The [F733 OFT ] must by notice—
  - (a) inform the firm of the proposed refusal, stating [F734its] reasons; and
  - (b) invite the firm to submit representations in accordance with paragraph 4.

**Annotations:**

**Amendments (Textual)**

- F733** Sch. 16: words substituted (1.4.2003) in each place by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F734** Sch. 16: word substituted (1.4.2003) in each place by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

### *Representations to [F735 OFT ]*

#### **Annotations:**

#### **Amendments (Textual)**

**F735** Sch. 16: words substituted (1.4.2003) in each place by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

- 4 (1) If this paragraph applies to an invitation to submit representations, the [F736 OFT ] must invite the firm, within 21 days after the notice containing the invitation is given to it or such longer period as [F737 the OFT] may allow—
- (a) to submit its representations in writing to [F738 the OFT]; and
  - (b) to give notice to [F738 the OFT], if the firm thinks fit, that it wishes to make representations orally.
- (2) If notice is given under sub-paragraph (1)(b), the [F736 OFT ] must arrange for the oral representations to be heard.
- (3) The [F736 OFT ] must give the firm notice of [F739 its] determination.

#### **Annotations:**

#### **Amendments (Textual)**

**F736** Sch. 16: words substituted (1.4.2003) in each place by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

**F737** Sch. 16: words substituted (1.4.2003) in both places by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

**F738** Sch. 16: words substituted (1.4.2003) in both places by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

**F739** Sch. 16: word substituted (1.4.2003) in each place by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(21)(b); S.I. 2003/766, art. 2, Sch. (with art. 3)

### *Appeals*

- 5 Section 41 of the <sup>M103</sup>Consumer Credit Act 1974 (appeals to the Secretary of State) has effect as if—
- (a) the following determinations were mentioned in column 1 of the table set out at the end of that section—
    - (i) imposition of a prohibition or restriction or the variation of a restriction; and
    - (ii) refusal of an application for the revocation of a prohibition or restriction; and
  - (b) the firm concerned were mentioned in column 2 of that table in relation to those determinations.

#### **Annotations:**

#### **Marginal Citations**

**M103** 1974 c. 39.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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## SCHEDULE 17

Section 225(4).

## THE OMBUDSMAN SCHEME

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

**C751** Sch. 17 applied (1.5.2009 for certain purposes and 1.11.2009 otherwise) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), regs. 1(2), **125** (with reg. 3)

**C752** Sch. 17 applied (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), **reg. 76(2)** (with reg. 3)

**PART I**

## GENERAL

*Interpretation*

1 In this Schedule—

“ombudsman” means a person who is a member of the panel; and  
“the panel” means the panel established under paragraph 4.

**PART II**

## THE SCHEME OPERATOR

*Establishment by the Authority*

- 2 (1) The Authority must establish a body corporate to exercise the functions conferred on the scheme operator by or under this Act.
- (2) The [\[FCA\]](#) must take such steps as are necessary to ensure that the scheme operator is, at all times, capable of exercising those functions.

*Constitution*

- 3 (1) The constitution of the scheme operator must provide for it to have—
- (a) a chairman; and
  - (b) a board (which must include the chairman) whose members are the scheme operator’s directors.
- (2) The chairman and other members of the board must be persons appointed, and liable to removal from office, by the [\[FCA\]](#) (acting, in the case of the chairman, with the approval of the Treasury).
- (3) But the terms of their appointment (and in particular those governing removal from office) must be such as to secure their independence from the [\[FCA\]](#) in the operation of the scheme.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- (4) The function of making voluntary jurisdiction rules under section 227 [F740, the function of making consumer credit rules, the function of making determinations under section 234A(1)] and the functions conferred by paragraphs 4, 5, 7, 9 or 14 may be exercised only by the board.
- (5) The validity of any act of the scheme operator is unaffected by—
- (a) a vacancy in the office of chairman; or
  - (b) a defect in the appointment of a person as chairman or as a member of the board.

**Annotations:**

**Amendments (Textual)**

**F740** Words in Sch. 17 para. 3(4) inserted (16.6.2006) by [Consumer Credit Act 2006 \(c. 14\), ss. 61\(10\)\(a\), 71\(2\); S.I. 2006/1508, art. 3\(1\), Sch. 1](#)

*Relationship with FCA*

- 3A (1) The scheme operator and the FCA must each take such steps as it considers appropriate to co-operate with the other in the exercise of their functions under this Part.
- (2) The scheme operator and the FCA must prepare and maintain a memorandum of understanding describing how they intend to comply with sub-paragraph (1).
- (3) The scheme operator must ensure that the memorandum of understanding as currently in force is published in the way appearing to the scheme operator to be best calculated to bring it to the attention of the public.]

*The panel of ombudsmen*

- 4 (1) The scheme operator must appoint and maintain a panel of persons, appearing to it to have appropriate qualifications and experience, to act as ombudsmen for the purposes of the scheme.
- (2) A person's appointment to the panel is to be on such terms (including terms as to the duration and termination of his appointment and as to remuneration) as the scheme operator considers—
- (a) consistent with the independence of the person appointed; and
  - (b) otherwise appropriate.

*The Chief Ombudsman*

- 5 (1) The scheme operator must appoint one member of the panel to act as Chief Ombudsman.
- (2) The Chief Ombudsman is to be appointed on such terms (including terms as to the duration and termination of his appointment) as the scheme operator considers appropriate.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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### *Status*

- 6 (1) The scheme operator is not to be regarded as exercising functions on behalf of the Crown.
- (2) The scheme operator's board members, officers and staff are not to be regarded as Crown servants.
- (3) Appointment as Chief Ombudsman or to the panel or as a deputy ombudsman does not confer the status of Crown servant.

### *Annual reports*

- 7 (1) At least once a year—
- (a) the scheme operator must make a report to the [FCA] on the discharge of its functions; and
  - (b) the Chief Ombudsman must make a report to the [FCA] on the discharge of his functions.
- (2) Each report must distinguish between functions in relation to the scheme's compulsory jurisdiction [F741, functions in relation to its consumer credit jurisdiction] and functions in relation to its voluntary jurisdiction.
- (3) Each report must also comply with any requirements specified in rules made by the [FCA]
- (4) The scheme operator must publish each report in the way it considers appropriate.
- [(5) The Treasury may—
- (a) require the scheme operator to comply with any provisions of the Companies Act 2006 about accounts and their audit which would not otherwise apply to it, or
  - (b) direct that any such provision of that Act is to apply to the scheme operator with such modifications as are specified in the direction.
- (6) Compliance with any requirement under sub-paragraph (5)(a) or (b) is enforceable by injunction or, in Scotland, an order for specific performance under section 45 of the Court of Session Act 1988.
- (7) Proceedings under sub-paragraph (6) may be brought only by the Treasury.]

#### **Annotations:**

#### **Amendments (Textual)**

**F741** Words in Sch. 17 para. 7(2) inserted (16.6.2006) by [Consumer Credit Act 2006 \(c. 14\)](#), **ss. 61(10)(b), 71(2)**; S.I. 2006/1508, **art. 3(1)**, Sch. 1

### *[Audit of accounts*

- 7A (1) The scheme operator must send a copy of its annual accounts to the Comptroller and Auditor General as soon as is reasonably practicable.
- (2) The Comptroller and Auditor General must—

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- (a) examine, certify and report to the Treasury on accounts received under this paragraph, and
- (b) send a copy of the accounts and the report to the Treasury.
- (3) The Treasury must lay the copy of the accounts and the report before Parliament.
- (4) The scheme operator must send a copy of the accounts and the report to the FCA.
- (5) The expenses of the Comptroller and Auditor General under this paragraph are to be met by the scheme operator.
- (6) Except as provided by paragraph 7(5), the scheme operator is exempt from the requirements of Part 16 of the Companies Act 2006 (audit), and its balance sheet must contain a statement to that effect.
- (7) In this paragraph “annual accounts” has the meaning given by section 471 of the Companies Act 2006.]

*[Information, advice and guidance]*

- 8 The scheme operator may publish [such information, guidance or advice] as it considers appropriate and may charge for it or distribute it free of charge.

*Budget*

- 9 (1) The scheme operator must, before the start of each of its financial years, adopt an annual budget which has been approved by the [FCA]
- (2) The scheme operator may, with the approval of the [FCA], vary the budget for a financial year at any time after its adoption.
- (3) The annual budget must include an indication of—
- (a) the distribution of resources deployed in the operation of the scheme, and
  - (b) the amounts of income of the scheme operator arising or expected to arise from the operation of the scheme,
- distinguishing between the scheme’s compulsory [<sup>F742</sup>, consumer credit] and voluntary jurisdiction.

**Annotations:**

**Amendments (Textual)**

**F742** Words in Sch. 17 para. 9(3) inserted (16.6.2006) by [Consumer Credit Act 2006 \(c. 14\), ss. 61\(10\)\(c\), 71\(2\); S.I. 2006/1508, art. 3\(1\), Sch. 1](#)

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

**C753** Sch. 17 para. 9(3) excluded (18.6.2001) by [S.I. 2001/1821, arts. 1\(1\), 4\(1\)](#)

*[Annual plan]*

- 9A (1) The scheme operator must in respect of each of its financial years prepare an annual plan.
- (2) The plan must be prepared before the start of the financial year.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- (3) An annual plan in respect of a financial year must make provision about the use of the resources of the scheme operator.
- (4) The plan may include material relating to periods longer than the financial year in question.
- (5) Before preparing an annual plan, the scheme operator must consult such persons (if any) as the scheme operator considers appropriate.
- (6) The scheme operator must publish each annual plan in the way it considers appropriate.]

*Exemption from liability in damages*

- 10 (1) No person is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of any functions under this Act in relation to the compulsory jurisdiction [<sup>F743</sup>or to the consumer credit jurisdiction].
- (2) Sub-paragraph (1) does not apply—
- (a) if the act or omission is shown to have been in bad faith; or
  - (b) so as to 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>M104</sup>Human Rights Act 1998.

**Annotations:**

**Amendments (Textual)**

**F743** Words in Sch. 17 para. 10(1) inserted (16.6.2006) by [Consumer Credit Act 2006 \(c. 14\), ss. 61\(10\)\(d\), 71\(2\)](#); S.I. 2006/1508, [art. 3\(1\)](#), Sch. 1

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

**C754** Sch. 17 para. 10(1) amended (19.7.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/2326, arts. 1\(1\), 13](#); S.I. 2001/3538, [art. 2\(1\)](#)

**C755** Sch. 17 para. 10(1) extended (31.10.2004 for certain purposes and 14.1.2005 otherwise) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Complaints Relating to General Insurance and Mortgages\) Order 2004 \(S.I. 2004/454\), arts. 1\(2\), 7](#)

**Marginal Citations**

**M104** 1998 c. 42.

*Privilege*

- 11 For the purposes of the law relating to defamation, proceedings in relation to a complaint which is subject to the compulsory jurisdiction [<sup>F744</sup>or to the consumer credit jurisdiction] are to be treated as if they were proceedings before a court.

**Annotations:**

**Amendments (Textual)**

**F744** Words in Sch. 17 para. 11 inserted (16.6.2006) by [Consumer Credit Act 2006 \(c. 14\), ss. 61\(10\)\(d\), 71\(2\)](#); S.I. 2006/1508, [art. 3\(1\)](#), Sch. 1

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

**C756** Sch. 17 para. 11 amended (19.7.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/2326](#), [arts. 1\(1\)](#), 14; [S.I. 2001/3538](#), [art. 2\(1\)](#)

**C757** Sch. 17 para. 11 extended (31.10.2004 for certain purposes and 14.1.2005 otherwise) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Complaints Relating to General Insurance and Mortgages\) Order 2004 \(S.I. 2004/454\)](#), [arts. 1\(2\)](#), **8**

**PART III**

THE COMPULSORY JURISDICTION

*Introduction*

12 This Part of this Schedule applies only in relation to the compulsory jurisdiction.

*[FCA]'s procedural rules*

- 13 (1) The [FCA] must make rules providing that a complaint is not to be entertained unless the complainant has referred it under the ombudsman scheme before the applicable time limit (determined in accordance with the rules) has expired.
- (2) The rules may provide that an ombudsman may extend that time limit in specified circumstances.
- (3) The [FCA] may make rules providing that a complaint is not to be entertained (except in specified circumstances) if the complainant has not previously communicated its substance to the respondent and given him a reasonable opportunity to deal with it.
- (4) The [FCA] may make rules requiring an authorised person [<sup>F745</sup>, [<sup>F746</sup>an electronic money issuer within the meaning of the Electronic Money Regulations 2011] or a payment service provider within the meaning of the Payment Services Regulations 2009,] who may become subject to the compulsory jurisdiction as a respondent to establish such procedures as the [FCA] considers appropriate for the resolution of complaints which—
- (a) may be referred to the scheme; and
- (b) arise out of activity to which the [FCA]'s powers under Part X do not apply.

**Annotations:**

**Amendments (Textual)**

**F745** Words in Sch. 17 para. 13(4) inserted (2.3.2009 for certain purposes, 1.5.2009 for certain further purposes and 1.11.2009 otherwise) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), [regs. 1\(2\)](#), 126, [Sch. 6 para. 1\(2\)](#) (with [reg. 3](#))

**F746** Words in Sch. 17 para. 13(4) inserted (9.2.2011 for certain purposes and 30.4.2011 otherwise) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), [regs. 1\(2\)\(a\)\(xv\)\(b\)](#), 79, [Sch. 4 para. 2\(8\)](#) (with [reg. 3](#))

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

**C758** Sch. 17 para. 13 amended (19.7.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/2326](#), [arts. 1\(1\)](#), 4; [S.I. 2001/3538](#), [art. 2\(1\)](#)

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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**C759** Sch. 17 para. 13 modified (31.10.2004 for certain purposes and 14.1.2005 otherwise) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Complaints Relating to General Insurance and Mortgages\) Order 2004 \(S.I. 2004/454\)](#), arts. 1(2), 3

*The scheme operator's rules*

- 14 (1) The scheme operator must make rules, to be known as “scheme rules”, which are to set out the procedure for reference of complaints and for their investigation, consideration and determination by an ombudsman.
- (2) Scheme rules may, among other things—
- (a) specify matters which are to be taken into account in determining whether an act or omission was fair and reasonable;
  - (b) provide that a complaint may, in specified circumstances, be dismissed without consideration of its merits;
  - (c) provide for the reference of a complaint, in specified circumstances and with the consent of the complainant, to another body with a view to its being determined by that body instead of by an ombudsman;
  - (d) make provision as to the evidence which may be required or admitted, the extent to which it should be oral or written and the consequences of a person's failure to produce any information or document which he has been required (under section 231 or otherwise) to produce;
  - (e) allow an ombudsman to fix time limits for any aspect of the proceedings and to extend a time limit;
  - (f) provide for certain things in relation to the reference, investigation or consideration (but not determination) of a complaint to be done by a member of the scheme operator's staff instead of by an ombudsman;
  - ~~(fa) allow the correction of any clerical mistake in the written statement of a determination made by an ombudsman;~~
  - ~~(fb) provide that any irregularity arising from a failure to comply with any provisions of the scheme rules does not of itself render a determination void;~~
  - (g) make different provision in relation to different kinds of complaint.
- (3) The circumstances specified under sub-paragraph (2)(b) may include the following
- (a) the ombudsman considers the complaint frivolous or vexatious;
  - (b) legal proceedings have been brought concerning the subject-matter of the complaint and the ombudsman considers that the complaint is best dealt with in those proceedings; or
  - (c) the ombudsman is satisfied that there are other compelling reasons why it is inappropriate for the complaint to be dealt with under the ombudsman scheme.
- (4) If the scheme operator proposes to make any scheme rules it must publish a draft of the proposed rules in the way appearing to it to be best calculated to bring them to the attention of persons appearing to it to be likely to be affected.
- (5) The draft must be accompanied by a statement that representations about the proposals may be made to the scheme operator within a time specified in the statement.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

(6) Before making the proposed scheme rules, the scheme operator must have regard to any representations made to it under sub-paragraph (5).

(7) The consent of the [FCA] is required before any scheme rules may be made.

**Annotations:**

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

- C760** Sch. 17 para. 14 amended (19.7.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/2326, arts. 1\(1\), 5](#); [S.I. 2001/3538, art. 2\(1\)](#)
- C761** Sch. 17 para. 14 modified (31.10.2004 for certain purposes and 14.1.2005 otherwise) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Complaints Relating to General Insurance and Mortgages\) Order 2004 \(S.I. 2004/454\), arts. 1\(2\), 4](#)
- C762** Sch. 17 para. 14 modified by [The Payment Services Regulations 2009 \(S.I. 2009/209\), Sch. 7 para. 3\(2\)](#) (as inserted (1.10.2009 for certain purposes and 1.11.2009 otherwise) by [S.I. 2009/2475, reg. 13](#))
- C763** Sch. 17 para. 14(4)(5) amended (19.7.2001) by [S.I. 2001/2326, arts. 1\(1\)\(a\), 16\(a\)](#); [S.I. 2001/3538, art. 2\(1\)](#)
- C764** Sch. 17 para. 14(4)-6) excluded by [S.I. 2004/454, art. 12\(2\)](#) (as inserted (15.7.2004) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Complaints Relating to General Insurance and Mortgages\) \(Amendment\) Order 2004 \(S.I. 2004/1609\), art. 6](#))

*Fees*

- 15 (1) Scheme rules may require a respondent to pay to the scheme operator such fees as may be specified in the rules.
- (2) The rules may, among other things—
- provide for the scheme operator to reduce or waive a fee in a particular case;
  - set different fees for different stages of the proceedings on a complaint;
  - provide for fees to be refunded in specified circumstances;
  - make different provision for different kinds of complaint.

**Annotations:**

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

- C765** Sch. 17 para. 15 amended (19.7.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/2326, arts. 1\(1\), 12\(2\)\(3\)](#); [S.I. 2001/3538, art. 2\(1\)](#)
- C766** Sch. 17 para. 15 extended (31.10.2004 for certain purposes and 14.1.2005 otherwise) by [The Financial Services and Markets Act 2000 \(Transitional Provisions\) \(Complaints Relating to General Insurance and Mortgages\) Order 2004 \(S.I. 2004/454\), arts. 1\(2\), 6\(2\)\(3\)](#)

*Enforcement of money awards*

- 16 A money award, including interest, which has been registered in accordance with scheme rules may—
- if a county court so orders in England and Wales, be recovered by execution issued from the county court (or otherwise) as if it were payable under an order of that court;
  - be enforced in Northern Ireland as a money judgment under the <sup>M105</sup>Judgments Enforcement (Northern Ireland) Order 1981;

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- (c) be enforced in Scotland by the sheriff, as if it were a judgment or order of the sheriff and whether or not the sheriff could himself have granted such judgment or order.

**Annotations:**

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

**C767** Sch. 17 para. 16 applied (19.7.2001 for specified purposes otherwise 1.12.2001) by [S.I. 2001/2326](#), [arts. 1\(1\)](#), [16\(4\)\(6\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

**Marginal Citations**

**M105** [S.I. 1981/226 \(N.I.6\)](#).

[<sup>F747</sup>**PART 3A**

THE CONSUMER CREDIT JURISDICTION

**Annotations:**

**Amendments (Textual)**

**F747** Sch. 17 Pt. 3A inserted (16.6.2006) by [Consumer Credit Act 2006 \(c. 14\)](#), [ss. 59\(2\)](#), [71\(2\)](#), [Sch. 2](#); [S.I. 2006/1508](#), [art. 3\(1\)](#), [Sch. 1](#)

Introduction

- 16A This Part of this Schedule applies only in relation to the consumer credit jurisdiction.

Procedure for complaints etc.

- 16B (1) Consumer credit rules—
- (a) must provide that a complaint is not to be entertained unless the complainant has referred it under the ombudsman scheme before the applicable time limit (determined in accordance with the rules) has expired;
  - (b) may provide that an ombudsman may extend that time limit in specified circumstances;
  - (c) may provide that a complaint is not to be entertained (except in specified circumstances) if the complainant has not previously communicated its substance to the respondent and given him a reasonable opportunity to deal with it;
  - (d) may make provision about the procedure for the reference of complaints and for their investigation, consideration and determination by an ombudsman.
  - [(e) may provide that an ombudsman may correct any clerical mistake in a determination made by that ombudsman;
  - (f) provide that any irregularity arising from a failure to comply with any provisions of the consumer credit rules does not of itself render a determination void.]

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- (2) Sub-paragraphs (2) and (3) of paragraph 14 apply in relation to consumer credit rules under sub-paragraph (1) of this paragraph as they apply in relation to scheme rules under that paragraph.
- (3) Consumer credit rules may require persons falling within sub-paragraph (6) to establish such procedures as the scheme operator considers appropriate for the resolution of complaints which may be referred to the scheme.
- (4) Consumer credit rules under sub-paragraph (3) may make different provision in relation to persons of different descriptions or to complaints of different descriptions.
- (5) Consumer credit rules under sub-paragraph (3) may authorise the scheme operator to dispense with or modify the application of such rules in particular cases where the scheme operator—
  - (a) considers it appropriate to do so; and
  - (b) is satisfied that the specified conditions (if any) are met.
- (6) A person falls within this sub-paragraph if he is licensed by a standard licence (within the meaning of the Consumer Credit Act 1974) to carry on to any extent a business of a type specified in an order under section 226A(2)(e) of this Act.

#### Fees

- 16C
- (1) Consumer credit rules may require a respondent to pay to the scheme operator such fees as may be specified in the rules.
  - (2) Sub-paragraph (2) of paragraph 15 applies in relation to consumer credit rules under this paragraph as it applies in relation to scheme rules under that paragraph.

#### Enforcement of money awards

- 16D
- A money award, including interest, which has been registered in accordance with consumer credit rules may—
- (a) if a county court so orders in England and Wales, be recovered by execution issued from the county court (or otherwise) as if it were payable under an order of that court;
  - (b) be enforced in Northern Ireland as a money judgment under the Judgments Enforcement (Northern Ireland) Order 1981;
  - (c) be enforced in Scotland as if it were a decree of the sheriff and whether or not the sheriff could himself have granted such a decree.

#### Procedure for consumer credit rules

- 16E
- (1) If the scheme operator makes any consumer credit rules, it must give a copy of them to the [FCA] without delay.
  - (2) If the scheme operator revokes any such rules, it must give written notice to the [FCA] without delay.
  - (3) The power to make such rules is exercisable in writing.
  - (4) Immediately after the making of such rules, the scheme operator must arrange for them to be printed and made available to the public.

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- (5) The scheme operator may charge a reasonable fee for providing a person with a copy of any such rules.

#### Verification of consumer credit rules

- 16F (1) The production of a printed copy of consumer credit rules purporting to be made by the scheme operator—
- (a) on which there is endorsed a certificate signed by a member of the scheme operator's staff authorised by the scheme operator for that purpose, and
  - (b) which contains the required statements,
- is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (2) The required statements are—
- (a) that the rules were made by the scheme operator;
  - (b) that the copy is a true copy of the rules; and
  - (c) that on a specified date the rules were made available to the public in accordance with paragraph 16E(4).
- (3) A certificate purporting to be signed as mentioned in sub-paragraph (1) is to be taken to have been duly signed unless the contrary is shown.

#### Consultation

- 16G (1) If the scheme operator proposes to make consumer credit rules, it must publish a draft of the proposed rules in the way appearing to it to be best calculated to bring the draft to the attention of the public.
- (2) The draft must be accompanied by—
- (a) an explanation of the proposed rules; and
  - (b) a statement that representations about the proposals may be made to the scheme operator within a specified time.
- (3) Before making any consumer credit rules, the scheme operator must have regard to any representations made to it in accordance with sub-paragraph (2)(b).
- (4) If consumer credit rules made by the scheme operator differ from the draft published under sub-paragraph (1) in a way which the scheme operator considers significant, the scheme operator must publish a statement of the difference.]

### PART IV

#### THE VOLUNTARY JURISDICTION

##### *Introduction*

- 17 This Part of this Schedule applies only in relation to the voluntary jurisdiction.

##### *Terms of reference to the scheme*

- 18 (1) Complaints are to be dealt with and determined under the voluntary jurisdiction on standard terms fixed by the scheme operator with the approval of the [FCA]

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- (2) Different standard terms may be fixed with respect to different matters or in relation to different cases.
- (3) The standard terms may, in particular—
  - (a) require the making of payments to the scheme operator by participants in the scheme of such amounts, and at such times, as may be determined by the scheme operator;
  - (b) make provision as to the award of costs on the determination of a complaint.
- (4) The scheme operator may not vary any of the standard terms or add or remove terms without the approval of the [FCA]
- (5) The standard terms may include provision to the effect that (unless acting in bad faith) none of the following is to be liable in damages for anything done or omitted in the discharge or purported discharge of functions in connection with the voluntary jurisdiction—
  - (a) the scheme operator;
  - (b) any member of its governing body;
  - (c) any member of its staff;
  - (d) any person acting as an ombudsman for the purposes of the scheme.

*Delegation by and to other schemes*

- 19
- (1) The scheme operator may make arrangements with a relevant body—
    - (a) for the exercise by that body of any part of the voluntary jurisdiction of the ombudsman scheme on behalf of the scheme; or
    - (b) for the exercise by the scheme of any function of that body as if it were part of the voluntary jurisdiction of the scheme.
  - (2) A “relevant body” is one which the scheme operator is satisfied—
    - (a) is responsible for the operation of a broadly comparable scheme (whether or not established by statute) for the resolution of disputes; and
    - (b) in the case of arrangements under sub-paragraph (1)(a), will exercise the jurisdiction in question in a way compatible with the requirements imposed by or under this Act in relation to complaints of the kind concerned.
  - (3) Such arrangements require the approval of the [FCA]

*Voluntary jurisdiction rules: procedure*

- 20
- (1) If the scheme operator makes voluntary jurisdiction rules, it must give a copy to the [FCA] without delay.
  - (2) If the scheme operator revokes any such rules, it must give written notice to the [FCA] without delay.
  - (3) The power to make voluntary jurisdiction rules is exercisable in writing.
  - (4) Immediately after making voluntary jurisdiction rules, the scheme operator must arrange for them to be printed and made available to the public.
  - (5) The scheme operator may charge a reasonable fee for providing a person with a copy of any voluntary jurisdiction rules.

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*Verification of the rules*

- 21 (1) The production of a printed copy of voluntary jurisdiction rules purporting to be made by the scheme operator—
- (a) on which is endorsed a certificate signed by a member of the scheme operator’s staff authorised by the scheme operator for that purpose, and
  - (b) which contains the required statements,
- is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (2) The required statements are—
- (a) that the rules were made by the scheme operator;
  - (b) that the copy is a true copy of the rules; and
  - (c) that on a specified date the rules were made available to the public in accordance with paragraph 20(4).
- (3) A certificate purporting to be signed as mentioned in sub-paragraph (1) is to be taken to have been duly signed unless the contrary is shown.

*Consultation*

- 22 (1) If the scheme operator proposes to make voluntary jurisdiction rules, it must publish a draft of the proposed rules in the way appearing to it to be best calculated to bring them to the attention of the public.
- (2) The draft must be accompanied by—
- (a) an explanation of the proposed rules; and
  - (b) a statement that representations about the proposals may be made to the scheme operator within a specified time.
- (3) Before making any voluntary jurisdiction rules, the scheme operator must have regard to any representations made to it in accordance with sub-paragraph (2)(b).
- (4) If voluntary jurisdiction rules made by the scheme operator differ from the draft published under sub-paragraph (1) in a way which the scheme operator considers significant, the scheme operator must publish a statement of the difference.

**Annotations:**

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

C768 Sch. 17 para. 22(1)(2) amended (19.7.2001) by S.I. 2001/2326, arts. 1(1)(a), 16(b); S.I. 2001/3538, art. 2(1)

[SCHEDULE 17A

Section 285A

FURTHER PROVISION IN RELATION TO EXERCISE  
OF PART 18 FUNCTIONS BY BANK OF ENGLAND

**PART 1**

CO-OPERATION BETWEEN APPROPRIATE REGULATORS

*Memorandum of understanding between appropriate regulators and PRA*

- 1 (1) The appropriate regulators must prepare and maintain a memorandum describing how they intend to work together in exercising their functions in relation to persons who are recognised bodies.
- (2) The memorandum must in particular make provision about—
  - (a) the need for each party when exercising a function in relation to any person (“A”) who is a recognised body, or any member of A’s group, to have regard to the exercise (or possible exercise) of any function by the other party in relation to A or any member of A’s group;
  - (b) the role of each party in cases where they are both exercising functions in relation to the same persons;
  - (c) the obtaining and disclosure of information;
  - (d) the co-ordination by the parties of the exercise of their powers to appoint competent persons under Part 11 (information gathering and investigations) to conduct investigations on their behalf.
- (3) In this paragraph any reference to a function is to any function whether conferred by or under any provision of this Part of this Act or any other provision of this Act or otherwise.
- 2 (1) The appropriate regulators and the PRA must prepare and maintain a memorandum describing how they intend to work together in exercising their functions in relation to persons who are recognised bodies and who—
  - (a) are PRA authorised persons; or
  - (b) are members of a group of which a member is a PRA-authorised person.
- (2) The memorandum must in particular make provision about—
  - (a) the need for each party when exercising a function in relation to any person (“A”) who is a recognised body, or any member of A’s group, to have regard to the exercise (or possible exercise) of any function by the other party in relation to A or any member of A’s group;
  - (b) the role of each party in cases where they are both exercising functions in relation to the same persons;
  - (c) the obtaining and disclosure of information;
  - (d) the co-ordination by the parties of the exercise of their powers to appoint competent persons under Part 11 (information gathering and investigations) to conduct investigations on their behalf.
- (3) In this paragraph any reference to a function is to any function whether conferred by or under any provision of this Part of this Act or any other provision of this Act or otherwise.

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- 3        The parties to a memorandum under paragraph 1 or 2 must review the memorandum at least once in each calendar year.
- 4        The parties to a memorandum under paragraph 1 or 2 must send to the Treasury a copy of the memorandum and any revised memorandum.
- 5        The Treasury must lay before Parliament a copy of any document received by them under paragraph 4.
- 6        The parties to a memorandum under paragraph 1 or 2 must ensure that the memorandum as currently in force is published in the way appearing to them to be best calculated to bring it to the attention of the public.

*Notification by FCA of action in relation to recognised clearing houses*

- 7        The FCA must notify the Bank of England of any direction given by it under section 128 to a recognised clearing house (market abuse: suspension of investigations).
- 8        The FCA must notify the Bank of England of any requirement imposed by it under section 313A on a recognised clearing house (power to require suspension or removal of financial instruments from trading).

## **PART 2**

### APPLICATION OF PROVISIONS OF THIS ACT IN RELATION TO BANK OF ENGLAND

#### *Introduction*

- 9        (1) The provisions of this Act mentioned in this Part of this Schedule are to apply in relation to the Bank of England in accordance with the provision made by this Part of this Schedule.
- (2) In any case where sub-paragraph (1) applies—
- (a) any reference in this Act to the FCA or the PRA which is contained in, or relates to, any of those provisions (however expressed) is to be read as a reference to the Bank; and
- (b) this Act has effect with any other necessary modifications.

#### *Rules*

- 10      (1) The following provisions of Part 9A of this Act are to apply in relation to rules made by the Bank under any provision made by or under this Act—
- (a) section 137Q (general supplementary powers);
- (b) sections 138A and 138C (modification or waiver of rules), but with the omission of subsection (4)(b) of section 138A and subsection (4) of section 138C;
- (c) section 138D (evidential provisions);
- (d) section 138E (actions for damages), but with the omission of subsection (2);
- (e) section 138F (limits on effect of contravening rules);
- (f) section 138G (notification of rules);
- (g) section 138H (rule-making instruments);

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- (h) section 138I (verification of rules);
  - (i) section 138K (consultation), but with the omission of subsections (1)(a), (2)(c) and (5)(b); and
  - (j) section 138M (consultation: general exemptions), but with the omission of subsections (1) and (3).
- (2) Any reference in any of those provisions to an authorised person is to be read as a reference to a recognised clearing house.
- (3) Section 138K(2)(d) has effect in relation to rules proposed to be made by the Bank as if the reference to the compatibility of the proposed rules with section 2B(1) were a reference to their compatibility with the Bank’s financial stability objective.
- (4) Section 138M(2) has effect as if for paragraphs (a) and (b) there were substituted “be prejudicial to financial stability”.

*Information gathering and investigations*

- 11 (1) The powers conferred by section 165(1) and (3) (power to require information) are exercisable by the Bank or (as the case may be) its officers to impose requirements on—
- (a) a recognised clearing house;
  - (b) a person who for the purposes of section 165 is connected with a recognised clearing house.
- (2) The information or documents that the Bank may require to be provided or produced are limited to—
- (a) information or documents reasonably required in connection with the exercise by the Bank of functions conferred on it by or under this Part of this Act; and
  - (b) information or documents reasonably required in connection with the exercise by the Bank of any of its other functions in pursuance of its financial stability objective.
- (3) In consequence of the provision made by sub-paragraph (2), section 165(4) is not to apply in relation to section 165(1) and (3) as applied by this paragraph.
- 12 The power conferred by section 166 (reports by skilled person) is exercisable by the Bank as if references in that section to an authorised person were to a recognised clearing house.
- 13 (1) The powers conferred by section 167 (appointment of persons to carry out general investigations) are exercisable by the Bank as if references in that section to an authorised person were to any recognised clearing house other than an overseas clearing house.
- (2) In addition to the powers conferred by section 171, a person conducting an investigation under section 167 as a result of this paragraph is to have the powers conferred by sections 172 and 173 (and for this purpose the references in those sections to an investigator are to be read accordingly).
- 14 (1) The power conferred by section 168(5) (appointment of persons to carry out investigations in particular cases) is exercisable by the Bank.

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- (2) That power is exercisable if it appears to the Bank that there are circumstances suggesting that—
- (a) a clearing house may be guilty of an offence under section 398(1) or an offence under prescribed regulations relating to money laundering;
  - (b) a clearing house may have contravened a rule made by the Bank under Part 18 of this Act;
  - (c) a clearing house may have contravened the recognition requirements;
  - (d) a clearing house may have contravened any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury;
  - (e) a clearing house may have breached the general prohibition.
- (3) In addition to the powers conferred by section 171, a person conducting an investigation under section 168(5) as a result of this paragraph is to have the powers conferred by sections 172 and 173 (and for this purpose the references in those sections to an investigator are to be read accordingly).
- 15 An overseas regulator may, in accordance with section 169, request the Bank to exercise the power conferred by section 165 (as applied by paragraph 11 of this Schedule).
- 16 The power to give an information under section 176(1) (entry of premises under warrant) is exercisable by the Bank, or an investigator appointed by the Bank, as if the reference to the second set of conditions were omitted.

*Public record and disclosure of information*

- 17 Section 347 (record of authorised persons, recognised investment exchanges, etc) applies in relation to the Bank as if references in that section to a recognised investment exchange were to a recognised clearing house.
- 18 Sections 348 to 350 and 353 (disclosure of information) apply in relation to information received by the Bank for the purposes of, or in the discharge of, any of its functions relating to recognised clearing houses.

*Injunctions and restitution*

- 19 (1) The power to make an application under section 380(1), (2) or (3) (injunctions) is exercisable by the Bank.
- (2) For the purposes of the application, any reference in that section to a relevant requirement is to—
- (a) a requirement that is imposed by or under any provision of Part 18 of this Act 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 any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury; 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 24).

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- 20 (1) The power to make an application under section 382(1) (restitution order) is exercisable by the Bank.
- (2) For the purposes of the application, any reference in that section to a relevant requirement is to be read in accordance with paragraph 19(2) of this Schedule.
- 21 (1) The power conferred by section 384(5) (power of FCA to require restitution order) is exercisable by the Bank.
- (2) That power is exercisable if the Bank is satisfied that a recognised clearing house has contravened a relevant requirement, or been knowingly concerned in the contravention of a relevant requirement, and—
- (a) that profits have accrued to the recognised clearing house as a result of the contravention; or
- (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.
- (3) For the purposes of that power, “relevant requirement” is to be read in accordance with paragraph 19(2) of this Schedule.
- (4) Where this paragraph applies, section 384(5) and (6) are to have effect as if—
- (a) any reference to the person concerned were a reference to the recognised clearing house; and
- (b) any reference to subsection (1) were a reference to sub-paragraph (2) of this paragraph.

#### *Notices*

- 22 The provisions of Part 26 of this Act (notices) apply in relation to a warning or decision notice given by the Bank under section 312G or 312H as they apply in relation to such a notice given by the FCA under that section.

#### *Offences*

- 23 Section 398 (misleading the FCA: residual cases) applies to information given to the Bank in purported compliance with—
- (a) a requirement that is imposed by or under any provision of Part 18 of this Act that relates to a recognised clearing house;
- (b) a requirement that is imposed under any other provision of this Act by the Bank; or
- (c) a requirement that is imposed by any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury.
- 24 (1) Section 401 (proceedings for an offence) applies to the Bank as if for the purposes of subsections (2)(a) and (3)(a) of that section the Bank were an appropriate regulator in respect of each of the following offences—
- (a) an offence under section 177(3) where the investigation is being, or is likely to be, conducted on behalf of the Bank;
- (b) an offence under section 177(4) where the requirement is imposed by the Bank;
- (c) an offence under section 177(6) where the warrant is issued as a result of information on oath given by the Bank or a person appointed by it to conduct an investigation on its behalf;

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(d) an offence under section 398(1) where the information was given to the Bank.

(2) Section 401(3B) has effect subject to the provision made by this paragraph (so that the FCA is not the appropriate regulator for the purposes of subsections (2)(a) and (3)(a) in respect of the above offences).

#### *Jurisdiction*

25 Section 415 (jurisdiction in civil proceedings) applies in relation to any act or omission (or proposed act or omission) of the Bank in the discharge or purported discharge of any of its functions relating to recognised clearing houses.

#### *Powers of Bank relating to recognised clearing houses*

26 Section 415A (powers of the FCA) applies in relation to any power which the Bank has that relates to recognised clearing houses.

#### *Monitoring and enforcement*

27 (1) The duty imposed on the PRA by paragraph 17(1) of Schedule 1ZB (monitoring and enforcement) is to apply to the Bank in cases where it is exercising functions relating to recognised clearing houses.

(2) That duty is to apply in relation to compliance with relevant requirements within the meaning of paragraph 19(2) of this Schedule.

(3) The duty imposed on the PRA by paragraph 17(3) of Schedule 1ZB is to apply to the Bank in cases where it is exercising functions relating to recognised clearing houses.

(4) That duty is to apply in relation to the enforcement of—

- (a) the provisions of, or made under, Part 18 of this Act that relate to recognised clearing houses;
- (b) any other provisions of this Act under which requirements may be imposed by the Bank;
- (c) the provisions of any directly applicable EU regulation specified (or of a description specified) in an order made by the Treasury; and
- (d) the provisions of this Act the contravention of which constitutes an offence that the Bank has power to prosecute under this Act (see section 401, as applied by paragraph 24).

#### *Records*

28 Paragraph 18 of Schedule 1ZB (records) applies in relation to the recording of decisions made by the Bank in the exercise of its functions relating to recognised clearing houses.

#### *Annual report*

29 The requirement to make a report to the Treasury imposed by paragraph 19 of Schedule 1ZB (annual report by PRA) is to apply to the Bank, but—

- (a) as if for paragraphs (a) to (e) of sub-paragraph (1) there were substituted—

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- “(a) the discharge of its functions relating to recognised clearing houses,
  - (b) the extent to which, in its opinion, in discharging those functions its financial stability objective has been met, and
  - (c) such other matters as the Treasury may from time to time direct.”, and
- (b) as if sub-paragraph (3) were omitted.

#### *Investigation of complaints*

30 Part 2 of Schedule 1ZB (investigation of complaints) is to apply to the Bank in relation to the discharge of any of its functions relating to recognised clearing houses other than the function of—

- (a) making rules;
- (b) issuing statements under section 312J.

### **PART 3**

#### FEES

- 31 (1) The Bank of England may, in connection with the discharge of any of its functions under or as a result of this Part of this Act, require recognised clearing houses to pay fees to the Bank.
- (2) The power of the Bank to set fees includes power to set fees for the purpose of meeting expenses incurred by it or the FCA—
- (a) in preparation for the exercise of functions by the Bank under this Part of this Act, or
  - (b) for the purpose of facilitating the exercise by the Bank of those functions or otherwise in connection with their exercise by it.
- (3) It is irrelevant when the expenses were incurred (and, in particular, it is irrelevant if expenses were incurred by the FCA at a time when it was known as the Financial Services Authority).
- 32 Any fee which is owed to the Bank under paragraph 31 may be recovered as a debt due to the Bank.]

## SCHEDULE 18

Sections 334, 336 and 338.

## MUTUALS

## PART I

## FRIENDLY SOCIETIES

*The Friendly Societies Act 1974 (c.46)*

- 1 Omit sections 4 (provision for separate registration areas) and 10 (societies registered in one registration area carrying on business in another).
- 2 In section 7 (societies which may be registered), in subsection (2)(b), for “in the central registration area or in Scotland” substitute “in the United Kingdom, the Channel Islands or the Isle of Man”.
- 3 In section 11 (additional registration requirements for societies with branches), omit “and where any such society has branches in more than one registration area, section 10 above shall apply to that society”.
- 4 In section 99(4) (punishment of fraud etc and recovery of property misapplied), omit “in the central registration area”.

*The Friendly Societies Act 1992 (c.40)*

- 5 Omit sections 31 to 36A (authorisation of friendly societies business).
- 6 In section 37 (restrictions on combinations of business), omit subsections (1), (1A) and (7A) to (9).
- 7 Omit sections 38 to 43 (restrictions on business of certain authorised societies).
- 8 Omit sections 44 to 50 (regulation of friendly societies business).

## PART II

## FRIENDLY SOCIETIES: SUBSIDIARIES AND CONTROLLED BODIES

*Interpretation*

- 9 In this Part of this Schedule—  
     “the 1992 Act” means the <sup>M106</sup>Friendly Societies Act 1992; and  
     “section 13” means section 13 of that Act.

**Annotations:****Marginal Citations**

M106 1992 c. 40.

*Qualifying bodies*

- 10 (1) Subsections (2) to (5) of section 13 (incorporated friendly societies allowed to form or acquire control or joint control only of qualifying bodies) cease to have effect.
- (2) As a result, omit—
- (a) subsections (8) and (11) of that section, and
  - (b) Schedule 7 to the 1992 Act (activities which may be carried on by a subsidiary of, or body jointly controlled by, an incorporated friendly society).

*Bodies controlled by societies*

- 11 In section 13(9) (defined terms), after paragraph (a) insert—
- “(aa) an incorporated friendly society also has control of a body corporate if the body corporate is itself a body controlled in one of the ways mentioned in paragraph (a)(i), (ii) or (iii) by a body corporate of which the society has control;”.

*Joint control by societies*

- 12 In section 13(9), after paragraph (c) insert—
- “(cc) an incorporated friendly society also has joint control of a body corporate if—
- (i) a subsidiary of the society has joint control of the body corporate in a way mentioned in paragraph (c)(i), (ii) or (iii);
  - (ii) a body corporate of which the society has joint control has joint control of the body corporate in such a way; or
  - (iii) the body corporate is controlled in a way mentioned in paragraph (a)(i), (ii) or (iii) by a body corporate of which the society has joint control;”.

*Acquisition of joint control*

- 13 In section 13(9), in the words following paragraph (d), after “paragraph (c)” insert “ or (cc) ”.

*Amendment of Schedule 8 to the 1992 Act*

- 14 (1) Schedule 8 to the 1992 Act (provisions supplementing section 13) is amended as follows.
- (2) Omit paragraph 3(2).
- (3) After paragraph 3 insert—
- “3A (1) A body is to be treated for the purposes of section 13(9) as having the right to appoint to a directorship if—
- (a) a person’s appointment to the directorship follows necessarily from his appointment as an officer of that body; or
  - (b) the directorship is held by the body itself.
- (2) A body (“B”) and some other person (“P”) together are to be treated, for the purposes of section 13(9), as having the right to appoint to a directorship if—

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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- (a) P is a body corporate which has directors and a person's appointment to the directorship follows necessarily from his appointment both as an officer of B and a director of P;
  - (b) P is a body corporate which does not have directors and a person's appointment to the directorship follows necessarily from his appointment both as an officer of B and as a member of P's managing body; or
  - (c) the directorship is held jointly by B and P.
- (3) For the purposes of section 13(9), a right to appoint (or remove) which is exercisable only with the consent or agreement of another person must be left out of account unless no other person has a right to appoint (or remove) in relation to that directorship.
- (4) Nothing in this paragraph is to be read as restricting the effect of section 13(9)."
- (4) In paragraph 9 (exercise of certain rights under instruction by, or in the interests of, incorporated friendly society) insert at the end " or in the interests of any body over which the society has joint control ".

#### *Consequential amendments*

- 15 (1) Section 52 of the 1992 Act is amended as follows.
- (2) In subsection (2), omit paragraph (d).
  - (3) In subsection (3), for "(4) below" substitute "(2)".
  - (4) For subsection (4) substitute—
    - "(4) A court may not make an order under subsection (5) unless it is satisfied that one or more of the conditions mentioned in subsection (2) are satisfied."
  - (5) In subsection (5), omit the words from "or, where" to the end.

#### *References in other enactments*

- 16 References in any provision of, or made under, any enactment to subsidiaries of, or bodies jointly controlled by, an incorporated friendly society are to be read as including references to bodies which are such subsidiaries or bodies as a result of any provision of this Part of this Schedule.

### PART III

#### BUILDING SOCIETIES

##### *The Building Societies Act 1986 (c.53)*

- 17 Omit section 9 (initial authorisation to raise funds and borrow money).
- 18 Omit Schedule 3 (supplementary provisions about authorisation).

**PART IV**

## INDUSTRIAL AND PROVIDENT SOCIETIES

*The Industrial and Provident Societies Act 1965 (c.12)*

- 19 Omit section 8 (provision for separate registration areas for Scotland and for England, Wales and the Channel Islands).
- 20 Omit section 70 (scale of fees to be paid in respect of transactions and inspection of documents).

**PART V**

## CREDIT UNIONS

*The Credit Unions Act 1979 (c.34)*

- 21 In section 6 (minimum and maximum number of members), omit subsections (2) to (6).
- 22 In section 11 (loans), omit subsections (2) and (6).
- 23 Omit sections 11B (loans approved by credit unions), 11C (grant of certificates of approval) and 11D (withdrawal of certificates of approval).
- 24 In section 12, omit subsections (4) and (5).
- 25 In section 14, omit subsections (2), (3), (5) and (6).
- 26 In section 28 (offences), omit subsection (2).

F748

## SCHEDULE 19

**Annotations:****Amendments (Textual)**

**F748** Sch. 19 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 247(k), 278(2), 279, Sch. 26 (with s. 237); S.I. 2003/1397, art. 2(1), Sch.

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*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

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## SCHEDULE 20

Section 432(1).

## MINOR AND CONSEQUENTIAL AMENDMENTS

*The House of Commons Disqualification Act 1975 (c. 24)*

- 1 In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices)—
- (a) omit—
- “Any member of the Financial Services Tribunal in receipt of remuneration”;
- and
- (b) <sup>F749</sup> .....

**Annotations:****Amendments (Textual)**

**F749** Sch. 20 para. 1(b) repealed (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(2)(g), 5(3), **Sch. 4 Pt. 2**

**Commencement Information**

**I158** Sch. 20 para. 1 wholly in force at 1.12.2001; Sch. 20 para. 1 not in force at Royal Assent see s. 431(2); Sch. 20 para. 1(b) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; Sch. 20 para. 1 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

*The Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

- 2 In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (disqualifying offices)—
- (a) omit—
- “Any member of the Financial Services Tribunal in receipt of remuneration”;
- and
- (b) <sup>F750</sup> .....

**Annotations:****Amendments (Textual)**

**F750** Sch. 20 para. 2(b) repealed (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(2)(g), 5(3), **Sch. 4 Pt. 2**

**Commencement Information**

**I159** Sch. 20 para. 2 wholly in force at 1.12.2001; Sch. 20 para. 2 not in force at Royal Assent see s. 431(2); Sch. 20 para. 2(b) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; Sch. 20 para. 2 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

*The Civil Jurisdiction and Judgments Act 1982 (c. 27)*

- 3 In paragraph 10 of Schedule 5 to the Civil Jurisdiction and Judgments Act 1982 (proceedings excluded from the operation of Schedule 4 to that Act), for “section 188 of the Financial Services Act 1986” substitute “ section 415 of the Financial Services and Markets Act 2000 ”.

*The Income and Corporation Taxes Act 1988 (c. 1)*

- 4 (1) The Income and Corporation Taxes Act 1988 is amended as follows.
- (2) In section 76 (expenses of management: insurance companies), in subsection (8), omit the definitions of—
- “the 1986 Act”;
  - “authorised person”;
  - “investment business”;
  - “investor”;
  - “investor protection scheme”;
  - “prescribed”; and
  - “recognised self-regulating organisation”.

- (3) F751 .....
- (4) F752 .....
- (5) F753 .....
- (6) F754 .....

**Annotations:**

**Amendments (Textual)**

- F751** Sch. 20 para. 4(3) repealed (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), 1181(1), 1184(1)(3)(4), {Sch. 3 Pt. 1} (subject to Sch. 2)
- F752** Sch. 20 para. 4(4) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), ss. 1031, 1034(1), Sch. 3 Pt. 1 (with transitional provisions and savings in Sch. 2)
- F753** Sch. 20 para. 4(5) omitted (13.8.2009) by virtue of The Finance Act 2009, Schedule 47 (Consequential Amendments) Order 2009 (S.I. 2009/2035), art. 2, {Sch. para. 60(h)}
- F754** Sch. 20 para. 4(6) repealed (19.7.2007) by Finance Act 2007 (c. 11), s. 114, Sch. 27 Pt. 6(5)

*The Finance Act 1991 (c. 31)*

- 5 (1) The Finance Act 1991 is amended as follows.
- (2) In section 47 (investor protection schemes), omit subsections (1), (2) and (4).
- (3) In section 116 (investment exchanges and clearing houses: stamp duty), in subsection (4)(b), for “Financial Services Act 1986” substitute “ Financial Services and Markets Act 2000 ”.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

*The Tribunals and Inquiries Act 1992 (c. 53)*

6 <sup>F755</sup> .....

**Annotations:**

**Amendments (Textual)**

**F755** Sch. 20 para. 6 repealed (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(2)(g), 5(3), **Sch. 4 Pt. 2**

**Commencement Information**

**I160** Sch. 20 para. 6 in force at 3.7.2001; Sch. 20 para. 6 not in force at Royal Assent see s. 431(2); Sch. 20 para. 6 in force at 3.7.2001 by [S.I. 2001/2364](#), **art. 2(a)** (with transitional savings in art. 3)

*The Judicial Pensions and Retirement Act 1993 (c. 8)*

7 (1) The Judicial Pensions and Retirement Act 1993 is amended as follows.

(2) <sup>F756</sup> .....

(3) In Schedule 5 (relevant offices in relation to retirement provisions)—

(a) omit the entry—

“Member of the Financial Services Tribunal appointed by the Lord Chancellor”;

and

(b) <sup>F757</sup> .....

**Annotations:**

**Amendments (Textual)**

**F756** Sch. 20 para. 7(2) repealed (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(2)(g), 5(3), **Sch. 4 Pt. 2**

**F757** Sch. 20 para. 7(3)(b) repealed (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(2)(g), 5(3), **Sch. 4 Pt. 2**

**Commencement Information**

**I161** Sch. 20 para. 7 wholly in force at 1.12.2001; Sch. 20 para. 7 not in force at Royal Assent see s. 431(2); Sch. 20 para. 7(except sub-para. (3)(a)) in force at 3.9.2001 by [S.I. 2001/2632](#), **art. 2(2)**, **Sch. Pt. 2**; Sch. 20 para. 7 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

SCHEDULE 21

Section 432(2).

TRANSITIONAL PROVISIONS AND SAVINGS

*Self-regulating organisations*

1 (1) No new application under section 9 of the 1986 Act (application for recognition) may be entertained.

**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

- (2) No outstanding application made under that section before the passing of this Act may continue to be entertained.
- (3) After the date which is the designated date for a recognised self-regulating organisation—
  - (a) the recognition order for that organisation may not be revoked under section 11 of the 1986 Act (revocation of recognition);
  - (b) no application may be made to the court under section 12 of the 1986 Act (compliance orders) with respect to that organisation.
- (4) The powers conferred by section 13 of the 1986 Act (alteration of rules for protection of investors) may not be exercised.
- (5) “Designated date” means such date as the Treasury may by order designate.
- (6) Sub-paragraph (3) does not apply to a recognised self-regulating organisation in respect of which a notice of intention to revoke its recognition order was given under section 11(3) of the 1986 Act before the passing of this Act if that notice has not been withdrawn.
- (7) Expenditure incurred by the Authority in connection with the winding up of any body which was, immediately before the passing of this Act, a recognised self-regulating organisation is to be treated as having been incurred in connection with the discharge by the Authority of functions under this Act.
- (8) “Recognised self-regulating organisation” means an organisation which, immediately before the passing of this Act, was such an organisation for the purposes of the 1986 Act.
- (9) “The 1986 Act” means the <sup>M124</sup>Financial Services Act 1986.

**Annotations:**

**Marginal Citations**

M124 1986 c. 60.

*Self-regulating organisations for friendly societies*

- 2 (1) No new application under paragraph 2 of Schedule 11 to the 1986 Act (application for recognition) may be entertained.
- (2) No outstanding application made under that paragraph before the passing of this Act may continue to be entertained.
- (3) After the date which is the designated date for a recognised self-regulating organisation for friendly societies—
  - (a) the recognition order for that organisation may not be revoked under paragraph 5 of Schedule 11 to the 1986 Act (revocation of recognition);
  - (b) no application may be made to the court under paragraph 6 of that Schedule (compliance orders) with respect to that organisation.
- (4) “Designated date” means such date as the Treasury may by order designate.

*Proposed Legislation: This version shows proposed changes to this legislation item. It has no official standing.*

- (5) Sub-paragraph (3) does not apply to a recognised self-regulating organisation for friendly societies in respect of which a notice of intention to revoke its recognition order was given under section 11(3) of the 1986 Act (as applied by paragraph 5(2) of that Schedule) before the passing of this Act if that notice has not been withdrawn.
- (6) Expenditure incurred by the Authority in connection with the winding up of any body which was, immediately before the passing of this Act, a recognised self-regulating organisation for friendly societies is to be treated as having been incurred in connection with the discharge by the Authority of functions under this Act.
- (7) “Recognised self-regulating organisation for friendly societies” means an organisation which, immediately before the passing of this Act, was such an organisation for the purposes of the 1986 Act.
- (8) “The 1986 Act” means the <sup>M125</sup>Financial Services Act 1986.

**Annotations:**

**Marginal Citations**

M125 1986 c. 60.

SCHEDULE 22

Section 432(3).

REPEALS

**Annotations:**

**Commencement Information**

**I162** Sch. 22 wholly in force at 2.7.2002; Sch. 22 not in force at Royal Assent see s. 431(2); Sch. 22 in force for specified purposes at 30.4.2001 by S.I. 2001/1282, art. 2(b); Sch. 22 in force 2.7.2002 in relation to the Credit Union Act 1979 by S.I. 2001/3538, art. 2(5)(b); Sch. 22 in force at in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

Chapter	Short title	Extent of repeal
1923 c. 8.	The Industrial Assurance Act 1923.	The whole Act.
1948 c. 39.	The Industrial Assurance and Friendly Societies Act 1948.	The whole Act.
1965 c. 12.	The Industrial and Provident Societies Act 1965.	Section 8. Section 70.
1974 c. 46.	The Friendly Societies Act 1974.	Section 4. Section 10.

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**Proposed Legislation:** This version shows proposed changes to this legislation item. It has no official standing.

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		In section 11, from “and where” to “that society”.
		In section 99(4), “in the central registration area”.
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 1, in Part III, “Any member of the Financial Services Tribunal in receipt of remuneration”.
1975 c. 25.	The Northern Ireland Assembly Dis-qualification Act 1975.	In Schedule 1, in Part III, “Any member of the Financial Services Tribunal in receipt of remuneration”.
1977 c. 46.	The Insurance Brokers (Registration) Act 1977.	The whole Act.
1979 c. 34.	The Credit Unions Act 1979.	Section 6(2) to (6). Section 11(2) and (6). Sections 11B, 11C and 11D. Section 12(4) and (5). In section 14, subsections (2), (3), (5) and (6). Section 28(2).
1986 c. 53.	The Building Societies Act 1986.	Section 9.  Schedule 3.
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 76, in subsection (8), the definitions of “the 1986 Act”, “authorised person”, “investment business”, “investor”, “investor protection scheme”, “prescribed” and “recognised self-regulating organisation”.
1991 c. 31.	The Finance Act 1991.	In section 47, subsections (1), (2) and (4).
1992 c. 40.	The Friendly Societies Act 1992.	In section 13, subsections (2) to (5), (8) and (11). Sections 31 to 36. In section 37, subsections (1), (1A) and (7A) to (9). Sections 38 to 50. In section 52, subsection (2) (d) and, in subsection (5), the

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		words from “or where” to the end.
		Schedule 7.
		In Schedule 8, paragraph 3(2).
1993 c. 8.	The Judicial Pensions and Retirement Act 1993.	In Schedule 5, “Member of the Financial Services Tribunal appointed by the Lord Chancellor”.

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